

**Counsellor, Mr B**

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

**(Case 20HDC01793)**

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## Executive summary

1. This opinion relates to a counsellor's failure to engage in HDC's process, and his professional conduct during his therapeutic relationship with a woman.
2. The counsellor was providing relationship counselling services to the woman, her husband, and her female partner. The woman complained about the counsellor's professional conduct, including his tone and manner of communication, and that he disclosed personal information about her to her husband and female partner, and refused to provide her with a copy of her clinical notes when she requested them.
3. HDC requested information from the counsellor on several occasions, and offered him an opportunity to participate in the investigation process and respond to the provisional opinion, but he was unwilling to engage with HDC.

## Findings

4. The Deputy Commissioner found that the counsellor failed to act in accordance with ethical standards, and breached Right 4(2) of the Code. The Deputy Commissioner considered that by failing to provide information that was crucial to the fair and speedy investigation of the complaint, the counsellor also breached Right 10(3) of the Code.

## Recommendations

5. The Deputy Commissioner recommended that the counsellor provide a written apology to the woman, and that he attend training on professional boundaries, ethics, therapeutic communication, establishing rapport and trust with patients, and counselling for patients who have experienced sexual assault, and provide HDC with evidence of his learnings. The Deputy Commissioner also recommended that the counsellor review and update his marketing material to ensure that he is transparent in his advertising of his qualifications, and that he is not registered with the New Zealand Association of Counsellors, and that the counsellor review and reflect on his obligations as a healthcare provider under the Code, and report to HDC on his learnings. It was also recommended that the counsellor develop a robust complaints management process that aligns with his obligations under the Code, for use in his practice.

## Complaint and investigation

6. On 29 September 2020, the Health and Disability Commissioner (HDC) received a complaint from Mrs A about the services provided to her by counsellor Mr B at his clinic.<sup>1</sup> The following issue was identified for investigation:

- *Whether Mr B provided Mrs A with an appropriate standard of care between June and September 2020 (inclusive).*

7. This report is the opinion of Deputy Commissioner Vanessa Caldwell, and is made in accordance with the power delegated to her by the Commissioner.

8. The parties directly involved in the investigation were:

Mrs A	Consumer/complainant
Mr B	Provider/counsellor

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## Information gathered during investigation

### Background

9. Mrs A told HDC that at the time of these events she was in a mutually consensual relationship with two partners, her husband and another woman, and in May 2020 they began attending relationship counselling sessions with Mr B.
10. Mrs A said that her female partner approached Mr B seeking relationship counselling as a group (Mrs A, Mrs A's husband, and Mrs A's female partner). Mrs A told HDC that Mr B "advised [them that] [a relative] was in a thuple and he was totally accepting".
11. Mrs A stated that during their first session as a group, Mr B advised that he needed to see Mrs A's female partner separately, and that he would "call [the group] back together shortly". Mrs A said that her female partner then began to attend individual sessions with Mr B on a weekly and then fortnightly basis, and that her husband also saw Mr B for two solo counselling sessions around August/September 2020.
12. Mrs A told HDC that she began to attend individual counselling with Mr B in June 2020.<sup>2</sup> Primarily this report focuses on the solo counselling sessions Mrs A attended with Mr B on 17 September and 24 September 2020.

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<sup>1</sup> From the limited information available to HDC, it appears that Mr B is the sole owner/operator of the clinic. HDC was unable to find any information about the business registration of the clinic.

<sup>2</sup> The date and frequency of all of the counselling sessions that Mrs A and her husband and her female partner attended is unknown, as Mr B did not provide this information to HDC.

**Mr B**

13. Mr B told HDC that he is a qualified counsellor. He said that he is not a member of the New Zealand Association of Counsellors (NZAC), “by choice”, but that he agrees in full, and adheres to, the NZAC Code of Ethics.<sup>3</sup> Mr B stated that he meets the requirements for membership of the NZAC “as has been confirmed directly upon [his] own investigation”.<sup>4</sup> Mr B said that he was a full member of an overseas counselling association before relocating to New Zealand.
14. 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.
15. As part of her complaint, Mrs A raised concerns that Mr B was not a member of the NZAC.

**Summary of events — Mrs A***Counselling session — 17 September 2020*

16. Mrs A attended a solo counselling session with Mr B on 17 September. She said that this session “hadn’t gone well”, and she left the session early because of this. Mrs A told HDC that directly following her session, her female partner had a session with Mr B. Mrs A said that her partner told her that during that session, Mr B “shared his side of the story” of what had happened during Mrs A’s session, and disclosed to her that she (Mrs A) had “made him cry”, and advised that he needed to cancel his appointments for the remainder of the day.
17. Mrs A told HDC that her female partner said that during her appointments with Mr B, he frequently asked her about Mrs A. Mrs A told HDC that her female partner stated that regularly Mr B told her that he believed she was in a manipulative relationship.
18. Mrs A said that her husband attended a session with Mr B on Tuesday 22 September, and during the session Mr B shared information about her session with him on 17 September. Mrs A told HDC that her husband returned from his session “agitated and angry”, and asked her what had happened during her previous session with Mr B, and why she had “stormed out” of that session. Mrs A said that her husband told her that Mr B made a comment to the effect that her husband needed to control her behaviour.
19. Mrs A advised that Mr B told her husband that he wanted to “bring the three of us together to confront me as I was at the center of all of the issues, controlling and manipulat[ing]”. Mrs A said that following this, her husband ceased seeing Mr B.

<sup>3</sup> There are no requirements for counsellors in New Zealand to register with any professional association.

<sup>4</sup> On HDC’s investigation, it appears that Mr B may not meet the standards to become a member of NZAC: [https://www.nzac.org.nz/counselling-information/are-you-thinking-of-becoming-a-counsellor/#:~:text=In%20order%20to%20qualify%20as,Zealand%20\(see%20list%20below\)](https://www.nzac.org.nz/counselling-information/are-you-thinking-of-becoming-a-counsellor/#:~:text=In%20order%20to%20qualify%20as,Zealand%20(see%20list%20below)). The NZAC states: “In order to qualify as a professional counsellor and attain membership of NZAC, counsellors need to hold either a bachelor’s or a masters degree in counselling”. Mr B does not hold either of these qualifications.

*Second counselling session — 24 September 2020*

20. Mrs A attended a further session with Mr B on 24 September, with the intention of trying to apologise to him for walking out of their previous session. Mrs A said that during this visit, Mr B proceeded to question her about a “non-consensual sexual event” that she had experienced six years earlier. Mrs A told HDC that Mr B’s line of questioning went “beyond interrogation, victim blaming [and] victim shaming”.<sup>5</sup> She told HDC:

“He asked LOTS [of] personal questions over and above what a police officer would ask in a similar situation[.] Things I couldn’t always remember or answer I was reliving the nightmare trying to answer[,] I didn’t and don’t understand his need to know[.]”

21. Mrs A told HDC that Mr B said that her story “didn’t add up”, and accused her of cheating on her husband. She stated: “[Mr B] [s]aid I had put myself in that position.” She also said that Mr B was taking notes throughout the session, but that when she asked to see them during the session, he refused.
22. Mr B told HDC: “I am of the belief [the claims made in the complaint] are false, manufactured lies.” He said that there were no witnesses who could substantiate Mrs A’s complaint, but did not provide any evidence that supported his contention that the claims made in the complaint were false. Mr B also denied that he disclosed Mrs A’s personal information to her husband or female partner.
23. With regard to what he discussed with Mrs A during the session on 24 September 2020, Mr B told HDC:

“To provide some insight to the counselling session [Mrs A] refers to in her complaint ... what [Mrs A] explained to me as the events she was alleging to be rape in my opinion was not rape. Based on the information and facts presented to me, [Mrs A’s] claim of rape is baseless, and nothing more than an attempt to disguise the guilt she has for being a willing participant in her own infidelity. This was discussed with [Mrs A] in session. [Mrs A] was also cautioned against falsely alleging rape as it is a criminal offence.”

24. Mrs A expressed to HDC that the ordeal was very distressing and traumatic for her, and when she left Mr B’s clinic she was visibly upset, shaking and crying. She said that Mr B left the clinic at the same time as her and in the same lift, and that she felt unsafe in the lift with him. Mrs A told HDC that Mr B showed no remorse, and she felt that he was angry with her.

*Subsequent events*

25. Mrs A told HDC that following these events, she decided not to attend any further sessions with Mr B.
26. Mrs A said that in total, she and her two partners attended only two counselling sessions with Mr B as a group at the same time — once in May, and then again in September. Mrs A

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<sup>5</sup> Mrs A provided HDC with specific examples of these questions and statements, but because of the nature of the information, it is not included in the report.

stated that the second session occurred only after she and her female partner “insisted to Mr B [that they] needed to come back for a session with the three of [them]”, but “he seemed to have no intent of this happening”.

### **Attempts to contact Mr B**

27. On 1 October 2020, HDC sent a letter to Mr B 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<sup>6</sup> under this Act”. The letter advised Mr B that Mrs A had made a complaint about him, and requested clinical records as well as a response to the complaint.
28. Mr B responded to HDC on 9 November 2020, stating that he rejected Mrs A’s complaint. However, Mr B declined to provide HDC with session notes or the other requested information. He told HDC:
- “[P]roviding my own session notes would be a breach of confidentiality not only for [Mrs A] but for her two partners ... whom I have commented on also who have not provided consent. For now I will reserve my right to withhold them at this time. I have also made this decision as I believe [Mrs A] will not respond well to my notes as they relate directly to my observations of her.”
29. Following this, four attempts<sup>7</sup> were made by HDC to contact Mr B by way of emails and a telephone call. On 17 December 2020, Mr B responded that he believed his original response to be sufficient, and advised that HDC could continue its assessment of the complaint without further information from him. On 3 November 2021, HDC commenced a formal investigation into Mrs A’s complaint, and a letter was sent to Mr B requesting further information under section 62(1) of the Health and Disability Commissioner Act 1994.<sup>8</sup> Mr B did not respond to this request. Between 3 November 2021 and 9 February 2022, five further follow-up emails<sup>9</sup> were sent to Mr B seeking this information. On 24 November 2021, Mr B advised that due to COVID-19 and rent arrears, he was unable to access his office and was therefore unable to provide any further information to HDC. Mr B advised that he would contact HDC to provide updates on his ability to access his office, but all further attempts to contact Mr B were unsuccessful.

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<sup>6</sup> 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 Rights (s 14(1)(e)).

<sup>7</sup> Three emails were sent to Mr B from HDC, on 12 November 2020, 30 November 2020, and 14 December 2020. A telephone call to Mr B was made on 14 December 2020, and a voicemail message was left.

<sup>8</sup> 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.”

<sup>9</sup> Emails were sent to Mr B from HDC on: 25 November 2021, 8 December 2021, 14 December 2021, 19 January 2022, and 9 February 2022.

30. A summary of the attempts to contact Mr B is outlined in Appendix 1.

### **Responses to provisional opinion**

31. Mrs A and Mr B were given an opportunity to comment on relevant sections of the provisional opinion.

#### *Mrs A*

32. In response to the provisional opinion, Mrs A told HDC: “[Mr B’s] response to HDC further cements my original complaint.”

#### *Mr B*

33. It is with criticism that I note that Mr B did not provide a response to the provisional report.
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## **Relevant standards**

### **New Zealand Association of Counsellors — Te Roopu Kaiwhiriwhiri o Aotearoa (NZAC) Code of Ethics**

34. Although not a member of NZAC, Mr B advised HDC that he abides by its Code of Ethics in his practice.
35. Section 4 of the NZAC Code of Ethics outlines the ethical principles for counsellors.
36. The NZAC Code of Ethics section 4.1 stipulates that counsellors shall “[a]ct with care and respect for individual and cultural differences and the diversity of human experience”. Section 4.2 states that counsellors shall “[a]void doing harm in all their professional work”.
37. Section 5 of the NZAC Code of Ethics outlines the general guidelines for professional practice.
38. NZAC Code of Ethics section 5.7(d) stipulates: “Counsellors shall inform clients of their right to access their documentation, to know how this information is being kept and to know who has access to it.” Section 5.7(e) states: “Counsellors shall take all reasonable steps to ensure that documentation remains retrievable as long as is professionally prudent, or as is required by law.”
39. NZAC Code of Ethics section 5.8(a) stipulates: “Counsellors shall use appropriate and respectful language in all communications, verbal and written, to and about clients.”
40. NZAC Code of Ethics section 5.11(c) stipulates: “When dealing with more than one party, counsellors should be even handed when responding to the needs, concerns and interests of each party.”
41. Section 5.11(f) states: “If conflicting roles with clients emerge during counselling, counsellors must clarify, adjust or withdraw from these roles by an appropriate process.”



## Opinion: Mr B — breach

### Background

42. Mrs A told HDC that she, her female partner, and her husband went together for their first relationship counselling session with Mr B in May 2020, during which Mr B expressed that he needed to see Mrs A's female partner separately and would "call [them] back together shortly". However, Mrs A and her partners did not attend another relationship counselling session together until some four months later, after she and her female partner insisted to Mr B that they have another session together as a group. Mrs A advised that her female partner saw Mr B regularly after the initial session (weekly, then fortnightly), she herself had further appointments with Mr B in June 2020, and her husband had two sessions by himself with Mr B around August/ September 2020.

### Introduction

43. 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.

44. As this Office has stated previously,<sup>10</sup> 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*,<sup>11</sup> the Tribunal stated:

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

45. Mr B advised HDC that he elected not to subscribe to a governing body organisation, but that he abides by the NZAC Code of Ethics. I consider that by 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 that 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 Mr B's practice.
46. At the time of these events, Mr B was operating out of his clinic and providing counselling services to Mrs A, her female partner, and her husband concurrently. Owing to Mr B's refusal to provide relevant consultation notes, policies, procedures, or a fulsome response to Mrs A's complaint, in forming my opinion I have had to rely on Mrs A's version of events and the limited response that Mr B has provided to this Office. I note that in that response, Mr B rejected the complaint, as he considered it false and consisting of "manufactured lies".

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<sup>10</sup> 12HDC01512, available at [www.hdc.org.nz](http://www.hdc.org.nz)

<sup>11</sup> *Director of Proceedings v Mogridge* [2007] NZHRRT 27.

### **Engagement with HDC investigation**

47. 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.
48. In her complaint to HDC, Mrs A outlined her concerns about the care provided to her by Mr B on 24 September 2020. HDC commenced an assessment of Mrs A's complaint and sought further information from Mr B under section 14 of the Health and Disability Commissioner Act 1994 (the Act). Citing confidentiality concerns, Mr B declined to provide this information to HDC.
49. Subsequently, an investigation was initiated on the basis that Mr B's actions appeared to be in breach of the Code. HDC sought information from Mr B under section 62 of the Act, including relevant clinical records/consultation notes, company policies, and a substantive response to the complaint. Section 62 of the Act allows the Commissioner to collect information that is relevant to an investigation. Mr B declined to provide this information to HDC on multiple occasions. Initially, he provided only a short statement denying the allegations made by Mrs A.
50. Subsequently, Mr B told HDC that he was unable to provide the information requested due to the COVID-19 health order in place at the time, and that he was unable to access records from his clinic having been declined access because of rent arrears. I understand that these may have been valid reasons at that time. However, all further attempts to contact Mr B were unsuccessful, and correspondence sent to him went unanswered.
51. Considering that previously Mr B declined to provide information requested under section 14 of the Act, citing confidentiality concerns, and given the time that has lapsed without contact from Mr B, I consider that Mr B has not made sufficient attempts to facilitate the efficient resolution of this complaint. I acknowledge that Mr B advised that he has been unable to access his clinic because of rent arrears, but consider that this is not a reasonable explanation for failing to provide the clinical notes. 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. It appears that Mr B did not store important information relevant to Mrs A's case securely, or back up the information so that it could be accessed as required. Accordingly, I am not satisfied that Mr B took reasonable steps to ensure that he was able to retrieve clinical records when necessary, and am critical that Mr B did not provide HDC with information when required.
52. This investigation is an impartial and fair process. The correspondence sent to Mr B from HDC represented an opportunity for Mr B not only to clarify and resolve the issues raised by Mrs A, but to provide information to support his assertion that the care provided to Mrs A was appropriate. Mr B did not take this opportunity. In doing so, he unnecessarily delayed Mrs A's right to have her complaint handled in a speedy, efficient, and satisfactory manner. As a result of Mr B's failure to engage with HDC, primarily the information available to me

throughout the investigation has been that provided by Mrs A. Mr B has provided only limited correspondence.

### *Conclusion*

53. 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 speedy investigation of the complaint, and, as a result, Mr B has not facilitated the speedy and efficient resolution of the complaint. Accordingly, I find that Mr B has breached Right 10(3) of the Code.

### **Professional conduct**

#### *Tone and manner of communication*

54. Mrs A attended a session with Mr B on 24 September 2020.<sup>12</sup> She told HDC that she attended this appointment with the intention of trying to apologise to Mr B for walking out on their previous session (discussed below).
55. Mrs A said that during this session, Mr B began to interrogate her about a non-consensual sexual event that had occurred six years previously. She told HDC that Mr B's questioning regarding the event went "beyond interrogation, victim blaming [and] victim shaming", and included a series of highly inappropriate questions and statements, of which Mrs A provided several examples.
56. Mrs A said that Mr B told her that her story "didn't add up", and he continued to accuse her of cheating on her husband, and told her that she had put herself in that situation willingly. Mrs A stated that this had a profound effect on her, and she was visibly shaking and upset when she left the session.
57. As part of his 9 November 2020 response to HDC, Mr B rejected Mrs A's complaint and stated: "I am of the belief they are false, manufactured lies."
58. Due to the absence of session notes and a fulsome response from Mr B, I acknowledge that I do not have a full picture of the events that took place during the session on 24 September 2020. However, when considering the evidence before me I have taken into account Mrs A's compelling and detailed description of Mr B's conduct, and the clear impact that these events have had on her. I also consider that Mr B has had sufficient notice and opportunity to provide his version of events and corroborating evidence. Aside from his rejection of Mrs A's complaint and his view on the validity of Mrs A's sexual assault allegation, he has been unwilling to do so. I consider that the response provided by Mr B was vague and offered no explanation of the service that he provided to Mrs A, or an explanation of the events that took place. I also consider that the tone and manner in which Mr B communicated to HDC about Mrs A is largely consistent with Mrs A's account. Accordingly, I reject Mr B's claim that the complaint made by Mrs A is untrue, and have chosen to accept Mrs A's version of events.

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<sup>12</sup> This was Mrs A's final session with Mr B.

59. With regard to the comments about the reported sexual assault, Mr B told HDC that the events that Mrs A had explained to him, in his view, “was not [sexual assault]”. Mr B stated:
- “Based on the information and facts presented to me, [Mrs A’s] claim of rape is baseless, and nothing more than an attempt to disguise the guilt she has for being a willing participant in her own infidelity. This was discussed with [Mrs A] in session. [Mrs A] was also cautioned against falsely alleging rape as it is a criminal offence.”
60. The NZAC Code of Ethics Section 4.1 stipulates that counsellors shall “[a]ct with care and respect for individual and cultural differences and the diversity of human experience”. Section 4.2 states that counsellors shall “[a]void doing harm in all their professional work”.
61. Aspects of the above statement made by Mr B in his correspondence with HDC correlate with the information provided to HDC by Mrs A in her complaint, particularly regarding Mr B’s passing of judgement on the validity of Mrs A’s lived experience. It is clear from the limited information provided by Mr B that there was a discussion with Mrs A about the reported sexual assault that was of sufficient detail for him to make this judgement. Therefore, I consider it more likely than not that during the session on 24 September 2020, Mr B questioned Mrs A inappropriately, or, at the very least, questioned her in a manner that was unsupportive in nature, about a particularly sensitive and distressing event in her life, and inappropriately came to a conclusion on the validity of that story of his own accord. I have chosen not to outline the details of what Mrs A said that Mr B asked her during the session. However, Mrs A provided a detailed account of the interaction, and many of the comments were sexually explicit in nature.
62. Whilst I accept that a counsellor will formulate opinions about what may be happening for clients in order to support appropriate treatment planning, this distress was further compounded by the fact that Mr B considered it appropriate to share his judgement of this event with Mrs A. I also note Mr B’s wholly inappropriate comments in his response to HDC that he considered her allegations of rape to be unsubstantiated, and that he cautioned her against falsely reporting it.
63. In my view, the sexually explicit questions posed by Mr B to Mrs A about the details of the sexual assault, Mr B telling Mrs A that he did not believe her, and his decision to advise Mrs A against reporting the events, were highly inappropriate. They were irrelevant to Mr B’s function as a counsellor, and, from the information available to me, knowing the details of the sexual assault was not pertinent to the care that Mr B was providing to Mrs A.
64. In order to foster a positive therapeutic relationship, it is important that counsellors act with care and respect for their clients. In my view, Mr B’s conduct on 24 September 2020 did not align with ethical standards in that he did not act with care and respect for Mrs A in his communication with her, and his decision both to tell Mrs A that he did not believe that she had been sexually assaulted, and to advise her against reporting the events to the police, was undertaken in a manner that clearly caused harm to Mrs A.
65. In my view, Mr B’s statement to HDC did not use respectful language about Mrs A, and I am concerned about the manner in which Mr B communicated with HDC about Mrs A.

Accordingly, I consider that Mr B did not adhere to ethical standards as reflected in the NZAC Code of Ethics.

*Disclosure of information to Mrs A's partners*

66. As noted above, Mrs A attended a solo consultation with Mr B on 17 September 2020. She told HDC that the session did not go well, and that she ended up leaving it early.
67. Mrs A said that subsequently Mr B shared details of this session with both her female partner and with her husband, including that Mrs A had “made him cry” and that she had stormed out of the session early. Mr B has denied disclosing this information to Mrs A’s partners.
68. Mrs A also told HDC that Mr B made comments to her female partner to the effect that she was in a manipulative relationship; that he told her husband that he should “control her behaviour”; and that Mr B wanted to “bring the three of us together to confront me as I was at the center of all of the issues, controlling and manipul[at]ing”.
69. The NZAC Code of Ethics section 5.11(c) stipulates that when dealing with more than one party, “counsellors should be even handed when responding to the needs, concerns and interests of each party”. Section 5.11(f) also states that “if conflicting roles with clients emerge during counselling, counsellors must clarify, adjust or withdraw from these roles by an appropriate process”.
70. As outlined above, I have decided to accept Mrs A’s version of events in the absence of any substantive information from Mr B. I also accept Mr B’s assertion that despite not being a member of NZAC, he endeavours to abide by its Code of Ethics in his practice.
71. Accordingly, I am critical that Mr B made accusatory and inflammatory comments about his private interactions with Mrs A, and about the nature of Mrs A’s relationship with her husband and partner, to two of his other clients (who were in a personal relationship with Mrs A at the time of the events). This conduct clearly constitutes a deviation from relevant ethical standards.

*Withholding personal health information*

72. The NZAC Code of Ethics section 5.7(d) stipulates that “[c]ounsellors shall inform clients of their right to access their documentation”.
73. Mrs A told HDC that during her session on 24 September 2020, she asked to see the notes Mr B had taken during their session, and that he refused to provide them. Mr B told HDC that one of his reasons for not providing the session notes was because he “believe[d] [Mrs A would] not respond well to [his] notes as they relate directly to [his] observations of her”.
74. As a provider of healthcare services, Mr B is required to provide Mrs A with a copy of her personal health information if requested, in accordance with the law. On the information available, I am not satisfied that Mr B informed Mrs A of her right to access her notes. Accordingly, I consider that Mr B failed to adhere to the relevant ethical standards.

## Conclusion

75. 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.”
76. I have acknowledged that although Mr B was not a member of NZAC, by his own admission he subscribes to its Code of Ethics in his practice. I consider the NZAC Code of Ethics to reflect the ethical standards to be reasonably expected of a counsellor in Mr B’s circumstances.
77. As outlined above, Mr B failed to abide by relevant ethical standards, as reflected in the NZAC Code of Ethics,<sup>13</sup> for the following reasons:
- He failed to act with care and respect during his session with Mrs A on 24 September 2020.
  - He failed to act in a manner that minimised harm to Mrs A, by telling her that he considered her experience of sexual assault to be false, and advising her against reporting it to the police.
  - He did not use appropriate or respectful language in his communication with or about Mrs A, particularly on 24 September 2020 and in his email to HDC of 9 November 2020.
  - He did not implement or adhere to clear professional boundaries, highlighted by statements/information that he shared about Mrs A with her partners.
  - He failed to provide Mrs A with her personal health information when requested.
78. Accordingly, I consider that Mr B failed to act in accordance with ethical standards, and breached Right 4(2) of the Code.
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## Recommendations

79. 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, and counselling for patients who have experienced sexual assault. 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 learnings from the training.

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<sup>13</sup> Particularly sections 4.1, 4.2, 5.7(d), 5.8(a), 5.11(c), and 5.11(f).

- c) Review and update all his marketing material to ensure that he is transparent in his advertising of his qualifications and that of any other staff in his clinic, and that he is not associated with the New Zealand Association of Counsellors (NZAC).
  - d) Attend training on ethics and professional boundaries. 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.
  - 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.
  - f) Develop a robust complaints management process that aligns with his obligations under the Code, for use in his practice. A copy of this policy is to be provided to HDC within three months of the date of this report, for review by HDC.
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### **Follow-up action**

- 80. A copy of this report with details identifying the parties removed will be placed on the Health and Disability Commissioner website, [www.hdc.org.nz](http://www.hdc.org.nz), for educational purposes.

**Appendix A: Summary of attempts to contact Mr B**

<b>Contact from HDC (date)</b>	<b>Response from Mr B (date)</b>	<b>Notes</b>
On 1 October 2020, a letter was sent to Mr B under section 14(1)(m) of the Act. The letter advised Mr B that Mrs A had made a complaint about him and requested clinical records and a response to the complaint.	On 9 October 2020, Mr B responded that he rejected the complaint, and declined to provide further information or clinical notes, citing confidentiality concerns.	
On 12 November 2020, HDC advised Mr B that if he did not provide the requested information by 19 November 2020, HDC would continue with its assessment of the complaint without the information.	No response.	
On 30 November 2020, HDC sent a follow-up email requesting the overdue information.	No response.	
On 14 December 2020, HDC telephoned Mr B and a message was left for him to check his email inbox for correspondence from HDC. A further email was also sent on this date.	On 17 December 2020, Mr B responded stating: "I believe my original response to be sufficient." He advised that he was happy for HDC to proceed with the assessment of Mrs A's complaint without providing a further response.	
On 3 November 2021, HDC commenced a formal investigation. HDC requested further information from Mr B under section 62 of the Act, to be provided by 24 November 2021.	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 25 November 2021, HDC sent a follow-up email to Mr B reminding him that his response was overdue and asking him to advise when HDC could expect to receive the requested information.	Mr B responded that day (25 November 2021) 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 B 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 B 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 B’s access to the building could be restored. Mr B 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 B did not contact HDC within the indicated timeframe.
On 8 December 2021, HDC contacted Mr B by email asking him to confirm whether or not he had been able to access his office.	Mr B responded on 9 December 2021 advising that he had not. He stated: “My lawyer was not able to achieve a resolution to the matter so I have applied to the Ministry of Justice [T]ribunal in the hope I can gain access to my office [as soon as possible].” Mr B said that he was yet to receive a date for the hearing.	
On 14 December 2021, HDC wrote to Mr B asking him to consider responding to questions in the absence of clinical notes.	No response.	
On 19 January 2022, a follow-up email was sent to Mr B	No response.	

<p>asking him to respond to HDC by 31 January 2022.</p>		
<p>On 9 February 2022, a final letter was sent to Mr B, outlining HDC's attempts to contact him to assess and investigate the matters raised in Mrs A's complaint. Mr B was asked to provide the requested information by 23 February 2022, and was advised: "If this Office does not receive the requested information in full by this date, we will proceed to drafting the Commissioner's provisional report ..."</p>	<p>No response.</p>	<p>The letter stated:</p> <p>"The role of HDC is to promote and protect the rights of consumers of health and disability services. Right 10(3) of the Code requires providers to facilitate the fair, simple, speedy, and efficient resolution of complaints. Health providers are routinely asked to produce consumers' clinical records, consultation notes, relevant policies and a response to the complaint before them. This information is crucial to an investigation, and section 62(1) of the Act requires parties to provide any such information when requested by the Commissioner."</p>