Drug and Alcohol Counselling Service
Counsellor, Mrs C
Counsellor, Mr D

A Report by the
Deputy Health and Disability Commissioner

(Cases 21HDC02793 & 21HDC02985)

Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Contents

Executive summary

1. This report considers the counselling services received by two consumers, Ms A and Ms B. The counselling was provided by Mrs C and Mr D, who are the directors of the counselling service.

2. During the period she was providing therapy, Mrs C developed inappropriate relationships with both clients, and, in both cases, she blamed her clients for the inappropriate relationships that developed.

3. The counselling service had no complaints procedure, other than an unwritten expectation that any complaint would be referred to the clinician's supervisor. The counselling service had no adequate structure in place to provide services to its clients. Prior to 2019, the counselling service had no policies in place. No treatment plans were documented, and there is no evidence of records of the services provided to Ms A. The directors of the counselling service were aware of the breaches of professional boundaries by Mrs C, yet they took no effective action to remedy her conduct.

4. Mr D, acting as a director of the counselling service, responded to Ms A having made a complaint to dapaanz by sending an aggressive message to her social media account that reinforced the dual nature of the relationship between Mrs C and Ms A and personally attacked Ms A for making the complaint.

Findings

5. The Deputy Commissioner found that Mrs C breached Right 2 of the Code as she abused her position of trust when she took advantage of Ms A for her own ends. Mrs C also breached Right 2 of the Code by exploiting Ms B's vulnerability and concern about her legal situation in encouraging her to attend sessions and asking her to pay extra for a court report. Mrs C also asked Ms B to provide food and drinks for a Christmas party and sought a benefit from the relationship when she asked Ms B to provide the drinks for Mrs C's wedding.

6. The Deputy Commissioner found that Mrs C also breached Right 4(2) of the Code as she failed to maintain appropriate professional and ethical standards during her professional relationship with Ms A; failed to prepare and update a treatment plan for Ms A and maintain appropriate records; gave Ms B photographs of her breasts; breached confidentiality; and failed to provide Ms B with an addiction treatment plan and pre-sentencing report.

7. The Deputy Commissioner found that Mr D breached Right 4(2) of the Code as he failed to provide services to Ms A and Ms B that complied with ethical and professional standards.

8. The Deputy Commissioner found that the counselling service breached Right 4(2) of the Code as it failed to operate a service that met ethical and professional standards.

Names have been removed to protect privacy. Identifying letters are assigned in alphabetical order and bear no relationship to the person's actual name.

Recommendations

9. The Deputy Commissioner recommended that the counselling service, Mrs C, and Mr D each separately provide written apologies to Ms A and Ms B.

10. The Deputy Commissioner recommended that the counselling service develop a complaints policy, arrange a review of its policies to be conducted by an independent practitioner approved by dapaanz, and conduct training on the policies and the Code of Rights, also provided by an independent practitioner.

11. The Deputy Commissioner recommended that Mrs C arrange for an independent clinical supervisor to prepare a report to be sent to HDC every six months for two years, indicating whether the supervisor is satisfied that Mrs C is operating within the ethical standards expected of a counsellor or coach.

12. The Deputy Commissioner recommended that Mrs C and Mr D each complete HDC's online learning Module 1 (How the Code of Rights improves health and disability services) and Module 3 (Complaints management and early resolution).

Complaint and investigation

13. The Health and Disability Commissioner (HDC) received complaints from Ms A and Ms B about the services provided to them by alcohol and drug counsellor Mrs C. The following issues were identified for investigation:

- *Whether Mrs C provided Ms A with an appropriate standard of care during 2018–2021 (inclusive).*
- *Whether Mr D provided Ms A with an appropriate standard of care during 2018–2021 (inclusive).*
- *Whether the counselling service provided Ms A with an appropriate standard of care during 2018–2021 (inclusive).*
- *Whether Mrs C provided Ms B with an appropriate standard of care in 2019 and 2020.*
- *Whether Mr D provided Ms B with an appropriate standard of care in 2019 and 2020.*
- *Whether the counselling service provided Ms B with an appropriate standard of care in 2019 and 2020.*

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

15. The parties directly involved in the investigation were:

Ms A	Consumer
Ms B	Consumer
Mrs C	Provider/director
Mr D	Provider/director
Provider/alcohol and drug counselling service	

16. Further information was received from the Addiction Practitioners Association Aotearoa New Zealand (dapaanz).

Information gathered during investigation

Structure of opinion

17. This opinion sets out the background that is applicable to both complaints, and then considers the details of each complaint separately. It then sets out the Deputy Commissioner's findings regarding each complaint.

Background

Mrs C

18. Mrs C told HDC that she has a bachelor's degree in Alcohol and Drug Studies, along with other qualifications. Prior to 2019 she was employed by a Community Alcohol and Drug Service (CADS), which provides treatment for people with alcohol and/or drug problems.

19. In February 2019 Mrs C left CADS and went into full-time private practice through the counselling service.

Counselling service

20. Mrs C and Mr D incorporated the counselling service in 2018. They are the co-directors, and the company operates a small private addiction counselling service. The only clinicians involved are Mrs C and Mr D. From February 2019 Mrs C provided all counselling services via the counselling service.

21. Mrs C told HDC that the counselling service was established to provide support to those seeking treatment for addiction, primarily through individual counselling, sober coaching, and peer support. She said that in its early stage, the counselling service trialled a sober community programme, which consisted of a face-to-face support group and a social media group[1] so that individuals could connect with others in recovery and gain support through shared experiences.

[1] The group chat was intended to allow counselling service clients to share inspirational quotes and recovery-focused matters amongst themselves.

Addiction Practitioners Association Aotearoa NZ (dapaanz)

22. Dapaanz represents the professional interests of Aotearoa's addiction workforce. At the time of the events in these complaints, both Mrs C and Mr D were dapaanz-registered alcohol and drug practitioners. Dapaanz requires its registered members to be engaged in supervision.

23. Mrs C said that she had been engaged with a clinical supervisor since April 2018 and works closely with co-director Mr D. Mr D told HDC: 'As a team Mrs C and I had regular supervision/ concern sharing meetings.' Mrs C told HDC that she has also sought support by way of personal therapy outside the counselling service because of the impact the complaints have had on her mental and physical health and wellbeing.

24. Dapaanz told HDC that in mid-June 2021 Ms A and Ms B each complained to dapaanz about Mrs C's conduct. Dapaanz investigated the complaints, and the Practice Standards Committee investigating panel upheld the complaints specific to the breaching of ethical boundaries and the way the practitioner–client relationship had been conducted. The investigating panel also found that the ethical breaches were of such a nature that it recommended referral of the complaint to HDC.

25. The dapaanz executive director accepted the outcome and advised Mrs C of the decision. Mrs C unsuccessfully appealed the decision and was de-registered from dapaanz, and her membership was revoked in 2021. Dapaanz then referred the matter to HDC with the support of Ms A and Ms B.[2]

26. At present, the counselling profession in New Zealand is not regulated under the Health Practitioners Competence Assurance Act 2003, and there is no requirement for counsellors to register with any association for counsellors (eg, dapaanz). Consequently, Mrs C has been able to continue as an alcohol and drug practitioner.

Complaint: Ms A (21HDC02793)

Background

27. Ms A said that she first met Mrs C around 2016, when Mrs C was a therapist working in the public health system at CADS. At that time, Ms A was in her twenties and was receiving treatment from CADS for mental health and addiction issues. Ms A said that Mrs C was not her individual therapist, although Ms A had engagement with her through various CADS groups. In addition, Mrs C provided Ms A with individual therapy when Ms A's usual therapist was away.

28. Mrs C told HDC that when she first met Ms A, Ms A was 'very unwell with an extensive history of mental health and addiction issues' and struggled immensely with the services

[2] Ms A and Ms B had provided extensive evidence to dapaanz, which was supplied to HDC. They also provided additional evidence to HDC directly.

provided by CADS. Mrs C agreed that she was not Ms A's assigned therapist at that time, but said she developed a friendship with Ms A outside of CADS. According to Mrs C, this was 'where the boundaries began to get blurred'.

29. Ms A told HDC that they developed a 'fairly close' relationship and she found Mrs C's help to be 'extremely special' to her and her recovery. Ms A said she felt that Mrs C was one of the only therapists who understood her and her struggles, and who cared. Ms A stated:

> 'I had vulnerabilities of not feeling validated mitigated by her which I believe was because [Mrs C] herself has a unique background, being led into the field due to her own personal struggles with mental illness and addiction, and her own personal experiences of recovery.'

30. Ms A said that during the period she was receiving treatment from CADS, Mrs C's professional conduct was, for the most part, in line with ethical practice, although they exchanged personal and private telephone numbers to keep in touch and for Ms A to gain additional support. They had text conversations that were mostly 'just chit-chat', but included Mrs C sharing how internal meetings went in the dialectical behaviour therapy (DBT) consult team.[3] This included Mrs C sharing her views about the other clinicians' approaches and conduct, and informing Ms A when she would be working as duty clinician so that Ms A could come in and get support from Mrs C, rather than from her assigned therapist.

31. Ms A stated that by 2018 she was at an 'incredibly vulnerable stage' in her life. She had completed the intensive DBT programme twice, but she was still struggling. She was in the very early stages of sobriety, still relapsing with self-harm behaviours, and feeling 'very scared'. She had identified that she needed some alternative form of treatment such as trauma therapy, but her treating team at CADS told her that she had to choose between their treatment or private treatment funded by ACC.

Private treatment with Mrs C

32. Mrs C said that after she left CADS in February 2019 to go into full-time private practice through the counselling service, she continued to support Ms A as a friend/mentor. In May 2019, Ms A asked whether she could start therapy with Mrs C, and Mrs C agreed to this. Mrs C told HDC:

> 'I agreed and we discussed the professional boundaries and I guess I hoped this would be ok. Again, on reflection this is where I crossed the line and I should never have agreed to working with [Ms A] on a professional level.'

33. Ms A said that she stepped away from the public system and began treatment with Mrs C because she (Ms A) felt she needed just one person to help her. She was seeing Mrs C

[3] Dialectical behavioural therapy (DBT) is a type of talk therapy based on cognitive behavioural therapy. DBT is used to help people with depression, anxiety, borderline personality disorders, addiction, and post-traumatic stress disorder (PTSD).

privately for one-to-one addictions therapy while searching for an ACC therapist. Ms A said that at the time, she was doing some study, and she would see Mrs C after her classes.

34. Ms A stated that at that time, there was already a blurring of 'ethical and professional boundaries' between the therapy relationship and that of a friend. Mrs C was seeing her professionally almost every week, and they now had a dual relationship. They would socialise outside of therapy, go out for lunch, get manicures, and Ms A visited Mrs C at her home on several occasions, all while also being a paying client. Ms A said that they bought each other gifts, and essentially, they were close friends.

35. Ms A told HDC that the therapy with Mrs C was both 'productive, extremely counterproductive and extremely conflicting'. Ms A said that Mrs C supported her to overcome some difficult challenges, including her addiction to opiates, self-harming, and the damaged relationship with a family member. However, Ms A said that Mrs C's therapeutic approach was misinformed and harmful towards her underlying diagnosis of complex post-traumatic stress disorder (CPTSD).[4]

36. Ms A stated:

> 'I would often be told my struggles were because I wasn't ready to let go of my past or that I was addicted to my misery … and there [were] many times where I felt like I didn't have an identity outside of our relationship.'

37. Ms A told HDC that while she was seeing Mrs C, she also began seeing an ACC registered psychologist, who helped her to begin to understand and heal from her trauma. Ms A said that she was upset that Mrs C's interpretation of this therapy invalidated her trauma, which Ms A felt was counterproductive. She said that when the ACC therapy ended, Mrs C never discussed referring her to someone else for help.

38. Ms A said that Mrs C knew about her vulnerability and her need to 'people please' in order to be validated, yet she allowed Ms A to continue to be both a paying client and a friend. Ms A said that she paid $120 per hour for private counselling services. Ms A told HDC: 'It got to a point where I continued to pay for therapy sessions even when some of these sessions ended up virtually just me paying to spend an hour with my friend.'

Photographs of breasts

39. Ms A said that Mrs C sent her unsolicited photographs of her (Mrs C's) breasts following her breast augmentation surgery in October 2019. Ms A provided dapaanz and HDC with screenshots of some of the photographs Mrs C sent her while she was Mrs C's client. The photographs show Mrs C naked above the waist apart from one in which she is wearing a surgical bra. Some photographs include Mrs C's face.

[4] CPTSD is a stress-related mental disorder generally occurring in response to complex traumas where there is repetitive exposure to a series of traumatic events, within which individuals perceive few or no chances to escape.

40. Ms A said that the photographs were not all sent on the same day. Some were sent directly after Mrs C's surgery, some were of the healing process, and some showed the healed results of the breast augmentation. Ms A agreed that she asked Mrs C how she was feeling, but Ms A said that the photographs were unsolicited.

41. In contrast, Mrs C told dapaanz that Ms A requested the photographs of her surgery as she was wanting a breast reduction and was interested in the quality of cosmetic surgery overseas. Mrs C said that this was the only reason she sent the photographs, and they were shared in a personal capacity, which is why they were 'uncensored'.

Text messages

42. Ms A provided copies of multiple text messages exchanged between herself and Mrs C throughout the professional relationship. Mrs C also provided dapaanz with multiple text messages from Ms A. In her messages, Mrs C frequently used expletives and endearments, such as referring to Ms A as 'sweetheart', ending her messages with XXX (kisses), and telling Ms A that she loved her.

Clinical records and treatment plan

43. Mrs C did not maintain clinical records of her treatment of Ms A other than the dates of appointments and, at times, a few words. Mrs C has provided no treatment plan for Ms A.

Therapy groups and social relationships with other clients

44. Ms A said that in addition to her private sessions with Mrs C, she also participated in Mrs C and Mr D's private face-to-face therapy groups, which started towards the end of 2019. Each person paid $25 per week to attend. The groups comprised 10 to 20 clients of the counselling service, who would discuss topics of recovery, and the floor would be open for participants to share their experiences. Ms A said that during the groups she built social connections and friendships with other clients who were in recovery. In 2019 Ms A attended the counselling service's Christmas party, which was held in a house owned by one of Mrs C's clients. Ms A said that at the party, it was evident to her that Mrs C had multiple friendship style/therapeutic relationships. As examples of this, during the party Mrs C asked one of her clients to do the drinks for her wedding. Ms A said:

> 'It felt like it was all one big extended family dynamic, everyone was eager to help because of the help she gave them and the dual therapist/friend relation was a somewhat normalised reality.'

45. Ms A told HDC that two of the friendships she built out of the counselling service connections were damaged due to her dual relationship with Mrs C. Ms A said that in February 2020, one of Mrs C's other clients, Ms B, had stopped seeing Mrs C. Mrs C then warned Ms A not to socialise with that client anymore. According to Ms A, Mrs C called Ms B narcissistic and told Ms A that Ms B was harmful to Ms A's recovery. When Ms A continued to socialise with Ms B, Mrs C asked her to report back on her interactions with Ms B, which Ms A did. Ms A said that Mrs C told her to cease contact with Ms B, which again she did. Ms A stated: 'I was terrified of losing [Mrs C], so I did whatever she asked of me.' Ms A said that this also resulted in her losing a friendship with another client. In contrast, Mrs C told

dapaanz that after the therapy group started, connections were formed between group members, including between Ms A and two other clients.

46. Mrs C told dapaanz that Ms A offered to organise the flowers for her wedding as she could get a good deal. Mrs C stated: '[Ms A] insisted the flowers were a wedding present to thank me for all the additional support I provided her as a friend.' Mrs C said that Ms A paid for the flowers plus several other wedding expenses. Mrs C said that Ms A also 'insisted' on having her friend make the wedding cake as it would be free, but several weeks after the wedding the person who made the cake contacted Mrs C for payment because Ms A had not paid her.

Housesitting

47. As further examples of personal interactions, Ms A said that Mrs C asked her to house sit and care for her pets on several occasions. Mrs C told dapaanz that she agreed to let Ms A house sit 'under duress'. Mrs C said that this was an example of her having experienced 'emotional terrorism' by Ms A (see further comments below).

Other personal involvement

48. As further examples of personal interactions, Ms A said that she visited Mrs C's home regularly to socialise, and Mrs C and Mr D also came to her house. Mrs C also bought her gifts, such as a bracelet and perfume, and picked her up late at night when she was unwell so she could sleep at Mrs C's house. Ms A said: 'As someone who struggles to build and maintain relationships this meant everything to me. We essentially talked every day so [Mrs C] felt like family.'

Ending of relationship with Mrs C

49. Mrs C told HDC that she ended the dual relationship with Ms A in early June 2021. Mrs C said that she did this because she had concerns about 'maintaining the safety of another client' because Ms A had posted a 'concerning' message on the group chat.[5] The message read:

> 'I'm really struggling right now guys like [immensely] and wondered if someone could message me and just talk shit to help me distract. Tried turning phone off didn't help. Not feeling good.'

50. Mrs C stated that she considered that the message from Ms A was inappropriate, given that the social media group was not a crisis support line. Mrs C said that she tried to reach out to Ms A in phone messages, but Ms A became 'defensive, reactive and oppositional'.

51. Ms A said that at the time she posted the message, she was experiencing a challenging night and had reached out for help in the social media group chat. When Mrs C messaged her to

[5] Mrs C told HDC that this group chat was initially set up for clients who were engaged in or had completed the counselling service's 28-day treatment programme. The group was designed to share reading and motivation quotes.

see what was wrong, she had already received help and support from three other members in the group.

52. According to Ms A, Mrs C's responses to her were dismissive and included telling her that her thinking was 'out the gate (crazy)' and that she needed to go back on her medication. Ms A responded to Mrs C saying that those types of comments were not helpful, but Mrs C responded that 'she couldn't be f**ked with this and [their] interactions and that she was done'. Ms A provided HDC with copies of the messages relating to this exchange.

53. Ms A stated that the following day, when she tried to say sorry and repair the relationship, Mrs C replied with text messages saying the reason Ms A sought help through one of the other clients and not her was because she was trauma bonding and addicted to her own past, trauma, and misery. Ms A told Mrs C that she was putting space in place to protect them both and because she could not deal with that type of behaviour. Mrs C then sent a text to Ms A saying that she no longer had the capacity to be Ms A's therapist and friend. On 7 June 2021 Ms A messaged Mrs C that she had booked in with a new psychotherapist. Ms A requested her clinical records to provide to her new therapist, but Mrs C provided only a list of contact dates without any details of the care provided. Ms A told HDC that initially Mrs C told her that the records would be sent to her, but later told her that they did not exist.

54. Ms A said that the ending of the relationship with Mrs C was extremely damaging to her wellbeing and put her recovery in jeopardy. Ms A told HDC:

> 'I have struggled maintaining my 2 and ½ years clean time and am barely holding onto it as a result. My studies have been severely impacted due to a heavy burden of stress, I have been unable to sleep and additionally my physical health has deteriorated as a result of this stress. Due to this I have also had to seek outside professional advice at a cost of my own in which I was advised to disengage completely from the relationship, advised on its toxicity and to lay a formal complaint.'

55. Mrs C said that Ms A has a long history of addiction and borderline personality disorder and, after years of 'fawning to her emotional terrorism', she finally held a boundary and Ms A's complaint was the result. Mrs C accepted that she could have managed the boundaries of the dual relationship better, and that on reflection, being unwell with the flu, it was not the best time to start putting boundaries in place.

Further information

Mrs C

56. Mrs C told HDC that when she attempted to navigate any boundaries with Ms A it was met with emotional blackmail, which resulted in Mrs C allowing the continuation of the blurred boundaries. She stated that she felt emotionally manipulated by Ms A. Mrs C also said that she has taken full responsibility for not maintaining boundaries with Ms A, as they had already established a friendship prior to Ms A receiving professional treatment from her.

Mr D

57. Mr D told dapaanz that he observed the development of Ms A's professional counselling relationship with Mrs C in her private practice. He said that previously it had been just a supportive friendship for some time, but as time went on, he became increasingly 'weary' of the development of an unhealthier form of time-consuming relationship, where Ms A's time demands (of Mrs C) would regularly begin at 6am, and not stop until late at night. He said that on occasion he discussed his concerns about the relationship with Mrs C, and at times some changes were made, but they would rarely last.

58. After Ms A complained to dapaanz, Mr D sent her a message via social media on 26 July 2021 at 6.17am. The full message is set out in Appendix B. Ms A then blocked Mr D on her social media account.

59. Mr D told dapaanz that as co-director of the counselling service, a formal complaint made in relation to his co-director was of concern to him, and he also noted that he was mentioned in the complaint.

60. Regarding the content of the message Mr D sent to Ms A, Mr D told dapaanz that he reacted unprofessionally when he read the complaint. He said: 'My reaction to shut the door to her was regrettably impulsive and reactive.' Mr D's registration as a member of dapaanz was suspended in November 2021.

Complaint: Ms B (21HDC02985)

Background

61. Ms B complained to HDC about her personal experiences and incidents that occurred while Mrs C was providing her with addiction treatment.

62. Ms B said that she had a serious motor vehicle accident in September 2019 while she was under the influence of alcohol. Following the accident, she had to resign from her employment, effective immediately, due to her having sustained a serious head injury and other physical injuries.

63. At that time, a private residential rehabilitation facility (the residential facility) contracted Mrs C to provide therapy to Ms B. Ms B said that she entered the residential facility in mid-September 2019 and stayed there for 30 days, during which period she was seen by Mrs C twice a week.

Private therapy arrangement with Mrs C

64. Ms B told HDC that after she was discharged, Mrs C 'insisted' that she continue seeing her weekly. Ms B said that she had to travel for an hour and a half to see Mrs C, who charged her $120 per hour/session. According to Ms B:

> '[Mrs C] even bullied me into having a [social media] video session with her whilst she was [overseas], getting a breast augmentation, and still charged me the full amount of $120. I had asked her for invoices for my sessions, which she was very reluctant to do, yet was very fast in making sure I had paid her on the day, even when my payment dates from WINZ and ACC had changed.'

65. Mrs C agreed that on completion of Ms B's treatment with the residential facility she encouraged Ms B to remain engaged in treatment for ongoing support, which Ms B willingly agreed to do. Mrs C has provided no treatment plan for Ms B. Mrs C said: 'At no time was [Ms B] bullied into therapy, this was a mutual agreement as was the session conducted while I was overseas.' Mrs C said that this session was paid for by the residential facility and was part of Ms B's 30-day treatment programme.[6]

66. Ms B told HDC that she was charged with driving under the influence and careless driving, and Mrs C told her that if she did not continue seeing her after her discharge from the residential facility, she would be facing time in prison as a consequence of the vehicle accident. Ms B stated that Mrs C told her that she was court affiliated, and that if she continued to see Mrs C, she would 'receive a glowing report for pre-sentencing'. Ms B said that this created a huge sense of dependence, and she believes that Mrs C played on her stress and desperation to avoid time in prison. Ms B's clinical records contain repeated references to Ms B being 'court motivated'. Mrs C told HDC that 'court motivated' meant that the counselling sessions were for Ms B's court sentencing, and Ms B had no interest in doing the work required to identify the drivers behind her addictions and ongoing issues.

67. Mrs C told HDC that she encouraged Ms B to remain engaged in treatment for her addiction but did not tell Ms B that this had to be done with her personally. Mrs C denied telling Ms B that if she did not continue treatment with her then she would be facing time in prison. Mrs C stated:

> 'When working with clients on significant charges or not, we do encourage remaining engaged in treatment for as long as possible and also provide court reports and confirmation of treatment on request.'

Support group

68. Ms B stated that she was made to feel that she also had to attend Mrs C and Mr D's private counselling service support group, which was conducted one and a half to two hours' drive from her home. She said that she was charged $25 for each group session. She stated that she was uncomfortable and struggled with the format of the groups, as it seemed that either Mr or Mrs C would pick one or two people out from the group and 'break them down'. On one occasion when they were doing this to another client, she spoke up, and Mrs C then told her in front of the entire group to 'shut up and don't try to save others'. Ms B said that after that incident she did not attend any further groups.

[6] Mrs C told HDC that from 19 September 2019 until 15 October 2019, the sessions with Ms B were paid for by the residential facility as part of its service, and from 22 October 2019 to 16 January 2020, the sessions were funded by Work and Income New Zealand and paid for by Ms B.

69. Mrs C denied that Ms B was told to 'shut up and don't save others' or that anyone had been 'broken down' or 'attacked' in any of the groups. Mrs C told HDC that the counselling service provides a safe and supportive space for individuals to work through their issues.

Confidentiality

70. Ms B said that Mrs C breached her confidentiality by repeating things Ms B had said during a counselling session to various people, including the residential facility's directors and other clients, without obtaining Ms B's permission. Ms B said that she asked Mrs C to discuss the breach of confidentiality with her and, during the conversation, Mrs C became very aggressive and tried to justify the breach of confidentiality because of her concerns about the management of the residential facility.

71. The alleged breach of confidentiality took place on 10 October 2019 when Ms B disclosed that she had been exposed to gambling behaviour whilst she was at the residential facility. Mrs C said that after the session, she contacted her supervisor to discuss whether this was unsafe practice and should be discussed with the residential facility. A professional meeting was held at the residential facility on 3 November 2019, but the director denied that the gambling behaviour had taken place and said that Ms B's behaviour was becoming problematic.

72. The counselling service stated that Ms B discussed her concerns about the breach of confidentiality with Mrs C, and Mrs C apologised to Ms B for not informing her that she had discussed the gambling issue with the director of the residential facility and reminded Ms B of the limitations of confidentiality. The counselling service said that Ms B appeared to accept the apology but chose not to continue the therapy. Ms B said that she told Mrs C that she would not be continuing with her services because of the breach of confidentiality and Mrs C's behaviour towards her. Ms B stated that Mrs C was then 'verbally derisive' of Ms B's new counsellor and said that 'a free counsellor will not be able to give you the help you so clearly need'.

73. In response to the Deputy Commissioner's provisional opinion, Ms B told HDC that she was not aware of any counselling service policies regarding professional boundaries and confidentiality and had never seen these policies or signed a confidentiality agreement in her time as a client of Mrs C.

Court hearing

74. Ms B said that Mrs C promised that she would provide her with a 'rock-star' pre-sentencing report. A few days before the court date, Ms B asked Mrs C to forward the report, so that she could provide it to her lawyer. Ms B said that Mrs C responded that there was no such report, and that if she wanted one at the last minute it would require Mrs C to stay up late, and Ms B would be charged a further $120. No report was provided. Ms B stated:

> 'I was incredibly confused and asked her what she had provided to probations for my pre-sentence report, and she responded that she had only given them an acknowledgement of my attendance. I was shocked and incredibly angry — that this woman had essentially lied to me, played upon my stress and despair regarding the

> court sentencing outcome, and had not even done the report that she had promised many times.'

75. Ms B also told HDC that Mrs C offered to attend her court hearing to support her as it was Mrs C's day off, but when Mrs C arrived, she was not dressed in clothing appropriate for court and did not stay for the sentencing. Ms B said that Mrs C told her in a later telephone call that she had other things to do on her day off.

76. Mrs C agreed that she offered to support Ms B during her court appearance. Mrs C stated:

> 'I tried to stay for as long as possible but unfortunately her case was not heard before I had to leave for my appointment, and I was dressed in shorts and a T-shirt as it was the middle of summer.'

Other personal involvement

77. Ms B said that Mrs C asked her for personal favours, such as supplying and preparing drinks and food at Ms B's expense for a Christmas party for counselling service clients in December 2019. Ms B said that Mrs C also asked her to supply the drinks for her wedding, but when Ms B said that she would need to be reimbursed, Mrs C said she did not require Ms B's involvement.

78. Mrs C told HDC that the 2019 Christmas party was a shared lunch, and every member of the group brought something for the event. She acknowledged that Christmas time is challenging for many clients, and as part of sober coaching, the counselling service tries to facilitate sober events to enable connections and safe sober fun.

79. Mrs C said that her comment about Ms B making mocktails for her wedding was made in jest, and, when Ms B said that she would make mocktails for $50 per hour, she respectfully declined, 'as this was a boundary [she] was not willing to cross, nor was it appropriate'.

Support group

80. Ms B said that Mrs C set up a support group via social media, into which she added all her clients. Ms B stated that Mrs C encouraged friendships between the clients but, subsequently, she discouraged the friendships. Ms B said that Mrs C made posts in the social media group that were passive aggressive and very clearly directed at her, and when Mrs C removed her from the group, it isolated her from the support she had come to depend on.

81. Mrs C said that Ms B was removed from the social media support group after numerous complaints from clients about toxic behaviour and to protect the safety of the rest of the group.

Photographs of breasts

82. Mrs C underwent breast augmentation surgery in October 2019. Ms B said that Mrs C sent pictures of her naked body via text to show Ms B her breast augmentation. Ms B provided dapaanz with screenshots of messages that include photographs of Mrs C's breasts. Some include Mrs C's face.

83. Mrs C said that while she was in a video session with Ms B, Ms B asked about the breast augmentation surgery and was curious about the results. Mrs C stated: 'On reflection this conversation was inappropriate and although I showed her my results on request (still had surgical bra on) at no time did I send her naked photos of my body.' Mrs C stated: 'On reflection yes this did cross a boundary, however these photos were never sent in the context that the allegations have been made.' In response to the Deputy Commissioner's provisional opinion, Ms B denied ever requesting to see photographs of Mrs C's breasts after the augmentation surgery and maintains that the photographs were unsolicited.

Further information

Ms B

84. Ms B told HDC that these events have caused her extensive harm, and the therapist relationship issues, as well as other personal matters, led to her having a severe relapse and harming herself in February 2020. She said that she spent two days in the Intensive Care Unit of a public hospital and a further three weeks in a mental health facility. She said that she sustained severe injuries from the suicide attempt.

Further comment

Mrs C

85. Mrs C said that in her 'professional opinion' Ms B lacked personal insight about her behaviours from the time she entered treatment until her last contact with the counselling service. Mrs C said that Ms B was court motivated from the beginning and had no interest in doing the work required to identify the drivers behind her addiction and her issues.

Counselling service policies

86. Mrs C told HDC that this is the first complaint the counselling service has had to navigate, so it did not have any complaints processes in place at the time. She said that the standard practice for a complaints process in New Zealand is first to contact the company/service and ask for its complaints process, and then write an email to the company/service with the complaint, thus providing the opportunity for resolution. She said that the complaints process was to refer complaints to the clinical supervisor.

87. The counselling service provided HDC with its 'Professional Boundaries in Therapy 2019' policy, which states that it is the clinician's responsibility to set and maintain clear, appropriate, professional boundaries with clients. It states that a boundary violation occurs when a clinician violates or exploits the provider–client relationship, and it notes:

> 'Often this can happen when the provider has displaced or confused his or her own needs with that of the client. Examples include:
>
> - Excessive self-disclosure
> - Deliberate socialization outside the professional environment
> - Keeping secrets for a client breaching confidentiality'

88. The counselling service provided HDC with its 'Confidentiality 2019' policy, which requires its counsellors to treat all communication between counsellor and client as confidential and privileged information, unless the client gives consent to information being disclosed. The counselling service also provided HDC with a document called 'Code of Ethics 2019', which lists the core values to which its counsellors were expected to adhere. These are respect for human dignity, partnership, autonomy, responsible caring, personal integrity, and social justice.

Responses to provisional opinion

89. Ms A and Ms B were given the opportunity to comment on the 'information gathered' section of the Deputy Commissioner's provisional opinion. Ms A had nothing to add.

90. Ms B's response has been incorporated into the 'information gathered' section of this opinion where appropriate. Overall, Ms B expressed concern regarding the counselling service, Mrs C, and Mr D continuing to practise as counsellors despite being deregistered by dapaanz.

91. Mr D, Mrs C, and the counselling service were given the opportunity to comment on the full provisional report.

92. Mr D said that he has diligently implemented numerous changes to his professional practice, viewing this experience as a significant learning curve. He acknowledged and accepted the provisional findings.

93. The counselling service's comments have been incorporated into the information gathered where appropriate. The counselling service stated that it fully acknowledges and accepts responsibility for the broader issues outlined in the report. It stated: 'We are committed to rectifying any breaches of the Code of Health and Disability Services Consumers' Rights identified within [the counselling service].'

94. Mrs C emphasised her sincere regret for the distress and discomfort experienced by Ms A, Ms B, or any other individuals involved in this matter. Mrs C stated that she continues to dispute certain aspects of the complaints, but she recognises the importance of acknowledging the impact of the allegations and the need for resolution. Mrs C acknowledged that maintaining clear professional boundaries from the beginning would have avoided this situation. She outlined the personal challenges she was confronting at the time and said:

> 'Managing these crises alongside the demands of my profession undoubtedly placed considerable strain on my ability to maintain the highest standards of conduct and decision-making.'

Opinion: Mrs C — breach

Introduction

95. Mrs C provided therapy to Ms A over several years and provided therapy to Ms B for approximately a year. During the period she was providing therapy, Mrs C developed inappropriate relationships with both clients, and in both cases, she has blamed her clients for the inappropriate relationships that developed. As the professional concerned, it was Mrs C's responsibility to maintain ethical and professional standards, and to comply with the Code of Health and Disability Services Consumers' Rights (the Code) and the dapaanz Code of Ethics (see Appendix A). Furthermore, Mrs C should have been aware of the standards she was required to meet when providing counselling services, given her counselling qualifications. In addition, from 2019, the counselling service had policies in place that clearly set out the ethical and professional responsibilities with which Mrs C was required to comply.

96. Ms A and Ms B were vulnerable clients who had the right to services that complied with legal, professional, ethical, and other relevant standards in accordance with Right 4(2) of the Code. Under Right 2 of the Code, they also had the right to be free from discrimination, coercion, harassment, and sexual, financial, or other exploitation.

97. The dapaanz Code of Ethics requires its members to identify and manage dual relationships to ensure the safety of, and promote the best interests of, the people they serve, engaging support as needed. Members are required to ensure that the boundaries of the professional relationship are clearly identifiable to those involved. The dapaanz Code of Ethics also requires members to maintain trustworthy relationships and fulfil their professional role obligations in a trustworthy manner with integrity to dapaanz values and principles. Examples include that they must not engage in, condone, or leave unchallenged any form of harassment or exploitation, and not seek any inappropriate special benefits or financial or personal gain that could arise from their role. Dapaanz members must also not engage in relationships, including sexual relationships, during the professional relationship.

Opinion: Treatment of Ms A

Professional and ethical standards — breach

Boundary issues

98. There is a conflict between establishing professional relationships as a counsellor/addiction treatment practitioner and developing more intimate family-like relationships. The friendship/relationship between Mrs C and Ms A exacerbated the power differential in the relationship between them and fell outside the generally accepted nature of a therapeutic relationship.

99. Many of the issues in this situation, such as the intermingling of Ms A's and Mrs C's personal lives, occurred because of Mrs C's lack of clear boundaries and failure to differentiate between her personal life and professional role. Mrs C saw Ms A professionally most weeks,

but outside of therapy they also socialised, bought each other gifts, and were close friends, to the extent that Mrs C asked Ms A to help plan her wedding.

100. Despite the counselling service having a professional boundaries policy from 2019, the blurring of ethical and professional boundaries between therapy and friendship continued until June 2021. I note that Mrs C's co-director, Mr D, discussed his concerns about Mrs C's relationship with Ms A and stated that at times some changes were made, but they would rarely last. From the outset of the private counselling, Mrs C was aware of the dual relationship. She said that she was coerced and manipulated by Ms A to continue the dual relationship. I do not accept this. In my view, Mrs C's conduct was unprofessional and unethical and took advantage of Ms A's emotional fragility. As the professional, it was Mrs C's responsibility to set and enforce boundaries, and to maintain a professional relationship.

Unprofessional conduct

101. Mrs C's lack of professionalism is demonstrated by the language she used in her messages to Ms A. She frequently used expletives and endearments, such as referring to Ms A as 'sweetheart', ending her messages with XXX (kisses) and telling Ms A that she loved her.

102. The counselling service's 'Professional Boundaries in Therapy 2019' policy states that it is the clinician's responsibility to set and maintain clear, appropriate, professional boundaries with clients. It states that excessive self-disclosure is an example of a boundary violation. Mrs C sent Ms A photographs of her (Mrs C's) breasts following her breast augmentation surgery. The photographs (viewed by this Office) show Mrs C naked above the waist apart from one photograph in which she is wearing a surgical bra. Some include her face. This was unethical and unprofessional conduct for a counsellor, and highly inappropriate. It is irrelevant whether Ms A had expressed an interest in the outcome of Mrs C's surgery.

103. In February 2020, after Ms B had stopped seeing Mrs C, Mrs C warned Ms A not to socialise with Ms B, called Ms B narcissistic, and said that Ms B was harmful for Ms A's recovery. When Ms A continued to socialise with Ms B, Mrs C asked her to report back on her interactions with Ms B. Ms A said that Mrs C told her to cease contact with Ms B. In my view, it was inappropriate and a breach of the dapaanz Code of Ethics for Mrs C to discuss Ms B with Ms A even after the professional relationship with Ms B had ended.

Termination of relationship

104. The dapaanz Code of Ethics states that a practitioner '[e]nsures that any decision to withhold services is made with due consideration for the rights of people to benefit from the service and helps people to access alternative services suited to their need'.

105. Ms A posted a message in the counselling service's social media group chat when she was experiencing a challenging night and reached out for help. By the time Mrs C messaged Ms A to see what was wrong, Ms A had already received help and support from three other members in the group. Mrs C considered that it was inappropriate to use the group chat in this way, told Ms A that her thinking was 'out the gate', and said that Ms A needed to go back on her medication. When Ms A told Mrs C that those types of comment were not

helpful, Mrs C responded that 'she couldn't be f**ked with this and [their] interactions and that she was done'. Ms A attempted to apologise without success.

106. I am particularly concerned about the way Mrs C terminated the relationship with Ms A. Mrs C failed to comply with the dapaanz Code of Ethics by terminating the relationship without consideration of the harm this would cause Ms A. The ending of the relationship with Mrs C was damaging to Ms A's wellbeing and put her recovery in jeopardy. Mrs C was aware that Ms A was vulnerable, but she did not arrange any support for her and appears to have taken only her own interests into account. Mrs C has acknowledged that her actions were inappropriate.

Conclusion

107. In my view, and for the reasons set out above, Mrs C failed to maintain appropriate professional and ethical standards during her professional relationship with Ms A and, accordingly, breached Right 4(2) of the Code.

Treatment planning — breach

108. The dapaanz 'Addiction Intervention Competency Framework' (May 2011) requires a practitioner to collaborate with clients and others to 'assess, plan, provide and evaluate interventions tailored to the strengths and needs of the client'.

109. Ms A required an addiction treatment programme that was suitable to address her needs. Mrs C has not provided a treatment plan for Ms A. In my view, there should have been a documented assessment of the issues presented by Ms A and the treatment plan on entering treatment, which should have been evaluated regularly and updated. I am critical that this did not occur and, in my view, the failure to do so set the scene for the subsequent blurring of the personal and professional boundaries between Mrs C and Ms A.

110. In addition, when Ms A asked for her clinical records in order to supply them to her new therapist, only a list of contact dates was provided. Initially, Ms A was told that the records would be sent to her, but later she was told that they did not exist. Neither the counselling service nor Mrs C provided HDC with clinical records in relation to Ms A's care when requested, and I am critical of the lack of record-keeping in this case. The dapaanz Addiction Intervention Competency Framework (May 2011) states at 5.4 that it is essential that an addictions therapist 'maintains and stores records relevant to clients in accordance with legal and professional standards and organisational requirements'.

111. I consider that Mrs C's failure to prepare and update a treatment plan and failure to maintain appropriate records meant that services were not provided in accordance with professional standards, in breach of Right 4(2) of the Code.

Exploitation — breach

112. Right 2 of the Code provides that every consumer has the right to be free from financial or other exploitation. Clause 4 of the Code states that exploitation 'includes any abuse of a position of trust, breach of a fiduciary duty, or exercise of undue influence'. Similarly, the dapaanz Code of Ethics requires members to be trustworthy and not to harass or exploit

clients or seek any inappropriate special benefits or financial or personal gain that could arise from their role.

113. Previously, this Office has stated:[7]

> 'Any relationship between a patient and a health professional, whether the health professional is registered or not, involves trust, even more so when the patient is vulnerable.'

114. In my view, Mrs C held a position of trust in respect of Ms A, and there was a substantial power imbalance in their relationship. Mrs C abused this position of trust when she took advantage of Ms A for her own ends — to provide advantage for herself. Mrs C charged Ms A for meetings that were largely social, asked Ms A to house/pet sit on several occasions, and asked Ms A to help plan her wedding. Ms A contributed to Mrs C's wedding by paying for various items. Ms A also decorated the wedding venue on the day of the wedding. Ms A was willing to provide these services because of the importance to her of her relationship with Mrs C. I do not accept Mrs C's argument that Ms A insisted on doing so and Mrs C reluctantly agreed.

115. In my view, Mrs C exploited Ms A and consequently Mrs C breached Right 2 of the Code.

Opinion: Treatment of Ms B

Professional and ethical standards — breach

Unprofessional conduct

116. Mrs C provided services to Ms B from September 2019. The counselling service's 'Professional Boundaries in Therapy 2019' policy states that it is the clinician's responsibility to set and maintain clear, appropriate, professional boundaries with clients. It states that excessive self-disclosure is an example of a boundary violation.

117. Ms B said that Mrs C sent her photographs of her breasts. In contrast, Mrs C said that while she was in a session with Ms B via video, Ms B asked about Mrs C's breast augmentation surgery and was curious about the results. Mrs C said:

> 'On reflection this conversation was inappropriate and although I showed her my results on request (and still had surgical bra on) at no time did I send her naked photos of my body.'

118. Mrs C also told dapaanz that she sent 'censored photos' to Ms B.

119. However, Ms B provided dapaanz with screenshots of the messages containing photographs that show Mrs C naked above the waist, some of which include her face (these have been

[7] Opinion 09HDC01375, 17 March 2010, available at www.hdc.org.nz.

viewed by this Office). I accept that Mrs C sent Ms B these photographs. This was inappropriate and a breach of professional boundaries. By her own account, Mrs C also showed Ms B the results of her surgery (allegedly while wearing a bra). This was also unprofessional and breached boundaries.

Breach of confidentiality

120. Ms B said that Mrs C breached her confidentiality by repeating to various people, including to the directors and to other clients, things that Ms B said during a session, without obtaining her permission. Ms B said that Mrs C tried to justify her breach of confidentiality on the basis that she was concerned about the management of the residential facility.

121. The dapaanz Code of Ethics states that a therapist:

> '6.1 Upholds people's rights to confidentiality and privacy in accordance with relevant legislation and codes of practice …
>
> 6.2 Understands and conveys the limits of confidentiality and privacy. Conveys that when safety is threatened there is an obligation to share information with appropriate people, services and/or authorities. Carefully weighs the requirements of confidentiality and privacy against therapeutic benefit and the need to maintain safety and protect people from harm. Where it is necessary to share information to prevent harm, supports people to share their own information wherever possible.'

122. Mrs C said that after Ms B disclosed in therapy that there were unsafe practices at the residential facility, a professionals meeting was conducted to discuss the concerns. However, there is no evidence that Ms B was informed that Mrs C was concerned about any threat to safety or that Mrs C intended to mention Ms B's confidential information in her discussions with the directors.

123. Regarding her divulging information to two other clients, Mrs C said that Ms B and the other clients 'had relations' outside of the group, which raised risk and safety concerns, so they were all reminded about boundaries and encouraged to focus on their own recoveries and not to get involved in the dynamics of others.

124. Ms B said she told Mrs C that she would not be continuing with her services due to Mrs C's breach of confidentiality and Mrs C's behaviour towards her. In February 2020, after Ms B had stopped seeing Mrs C, Mrs C warned Ms A not to socialise with Ms B, called Ms B narcissistic, and said that Ms B was harmful for Ms A's recovery. When Ms A continued to socialise with Ms B, Mrs C asked her to report back on her interactions with Ms B. Ms A said that Mrs C told her to cease contact with Ms B. In my view, it was inappropriate and a breach of the dapaanz Code of Ethics for Mrs C to discuss Ms B with her other clients, even after the professional relationship with Ms B had ended.

Conclusion

125. Mrs C's conduct was unprofessional in that she gave Ms B photographs of her breasts and breached confidentiality. In doing so, Mrs C failed to provide services to Ms B that complied with professional and ethical standards and breached Right 4(2) of the Code.

Treatment planning and report — breach

126. The dapaanz 'Addiction Intervention Competency Framework' (May 2011) requires a practitioner to collaborate with clients and others to 'assess, plan, provide and evaluate interventions tailored to the strengths and needs of the client'.

127. Ms B was a vulnerable consumer facing serious criminal charges, and she required an addiction treatment programme that was suitable to address her needs. Mrs C has not provided a treatment plan for Ms B. In my view, there should have been a documented assessment of the issues presented by Ms B on entering treatment and a treatment plan, which should have been evaluated and updated regularly.

128. The dapaanz Code of Ethics states:

> '4.1 Engenders trust by communicating openly, truthfully and sincerely in all aspects of their work, aiming to ensure that communication, in any form, is not misleading.
>
> 4.2 Accurately and openly communicates their qualifications, experience and the limits of their capabilities. Where fees for service apply, ensures these are clearly identified and explained to those who will be required to pay such fees.'

129. Mrs C had promised Ms B that she would provide her with a favourable pre-sentencing report. Ms B was understandably anxious about the sentencing, and Mrs C's failure to provide the report added to her distress. I consider that providing this report was a term and expectation of Ms B's engagement with Mrs C, and, in my view, it was inappropriate to ask for additional payment to provide the report.

130. Mrs C's failure to provide an addiction treatment plan and the pre-sentencing report meant that she did not provide services of a professional standard to Ms B and breached Right 4(2) of the Code.

Exploitation — breach

131. Ms B told HDC that after she was discharged from the residential facility, Mrs C 'insisted' that she continue seeing her weekly and charged her $120 per hour/session. Ms B said that she was made to feel that she also had to attend the counselling service's support group, and she was charged another $25 for each group session. Ms B had been charged with driving under the influence and careless driving. She said that Mrs C told her that if she did not continue seeing her after her discharge from the residential facility, she would be facing time in prison. Mrs C told Ms B that she was court affiliated and, if Ms B continued to see her, Mrs C would provide a glowing report for pre-sentencing. Ms B said that this created a sense of dependence and played on her stress and desperation to avoid time in prison.

132. Mrs C denied that Ms B was bullied into therapy and said that she encouraged Ms B to remain engaged in treatment for her addiction but did not tell Ms B that this had to be done with her personally. Mrs C also said that she did not tell Ms B that if she did not continue treatment with her then she would be facing time in prison, but Mrs C agreed that she

provided court reports and confirmation of treatment on request. She was aware that Ms B was 'court motivated' and anxious about her situation.

133. I am unable to make any finding about whether Mrs C pressured Ms B to continue treatment with her. However, I accept that Mrs C led Ms B to believe that her court outcome would be assisted by Mrs C's involvement.

134. A few days before the court date, Ms B asked Mrs C to forward the report, so she could provide it to her lawyer. Ms B said that Mrs C responded that there was no such report and that if she wanted one, she would be charged a further $120. In the event, no report was provided.

135. Ms B was concerned about the possibility of imprisonment and believed that Mrs C could prepare a favourable report. Ms B also believed that to obtain the report, she needed to attend the individual and group sessions. In my view, Mrs C should have ensured that the boundaries of the professional relationship were clearly identifiable to Ms B, and she should not have sought additional payment to prepare the agreed report.

136. Ms B said that Mrs C asked her for personal favours such as supplying and preparing drinks and food at Ms B's expense for a Christmas party for the counselling service clients in December 2019. Mrs C also asked Ms B to supply the drinks for Mrs C's wedding, but when Ms B said that she would need to be reimbursed, Mrs C said that she did not require Ms B's involvement.

137. In response, Mrs C said that the Christmas party was a shared lunch, and every member of the group brought something for the event. She also said that the comment about making mocktails for the wedding was made in jest, and when Ms B said that she would make mocktails for $50 per hour, she 'respectfully declined', as that would have amounted to a breach of boundaries.

138. In light of the evidence provided to this Office by Ms A that Mrs C also asked her and other clients to contribute to her wedding, I accept Ms B's account and do not consider that the request was a joke, as Mrs C maintains. Although Ms B did not provide the drinks for the wedding, I note that the dapaanz Code of Ethics requires that members do not seek any inappropriate special benefits or financial or personal gain that could arise from their role.

139. Right 2 of the Code provides that every consumer has the right to be free from financial or other exploitation. Clause 4 of the Code states that exploitation 'includes any abuse of a position of trust, breach of a fiduciary duty, or exercise of undue influence'.

140. Previously, this Office has stated:[8]

> 'Any relationship between a patient and a health professional, whether the health professional is registered or not, involves trust, even more so when the patient is vulnerable.'

141. In my view, Mrs C held a position of trust, and there was a substantial power imbalance in her relationship with Ms B. Mrs C abused this position of trust when she took advantage of Ms B for her own ends — to provide advantage for herself. Mrs C exploited Ms B's vulnerability and concern about her legal situation to encourage her to attend sessions, asked her to pay extra for the court report, and asked her to provide food and drinks for the Christmas party. She also sought a benefit from the relationship when she asked Ms B to provide the drinks for her wedding. In my view, Mrs C exploited Ms B and, consequently, breached Right 2 of the Code.

Opinion: Counselling service — breach

142. As a health services provider, the counselling service was required to comply with the Code. Mrs C and Mr D were the sole directors of the counselling service, operating an addiction counselling service through the company.

143. The Health and Disability (Core) Standards[9] in place at the time of events required that:

> '(a) Consumers receive safe services of an appropriate standard that complies with consumer rights legislation;
>
> (b) Consumers receive timely services, which are planned, coordinated, and delivered in an appropriate manner;
>
> (c) Services are managed in a safe, efficient, and effective manner, which complies with legislation'

144. Standard 1.1 required complaints made by consumers to be respected and upheld through an easily accessible, responsive, fair, and documented complaints process.

145. Standard 1.3 required that consumers be treated with respect and receive services in a manner that had regard for their dignity, privacy, and independence.

146. Standard 1.7 required that service providers maintain professional boundaries and have policies and procedures to ensure that consumers are not subjected to exploitation.

[8] Opinion 09HDC01375, 17 March 2010, available at www.hdc.org.nz.
[9] NZS 8134.1.3:2008 current at the time of events. This has since been replaced.

147. Standard 2.2 required the day-to-day operation of a health service to be managed in an efficient and effective manner that ensured the timely, appropriate, and safe provision of services to consumers.

148. Standard 2.9 required consumer information to be uniquely identifiable, accurately recorded, current, confidential, and accessible when required. It stated:

> '*Criteria*
> …
>
> 2.9.9: All records are legible and the name and designation of the service provider is identifiable.
>
> 2.9.10: All records pertaining to individual consumer service delivery are integrated.'

149. At the time of these events, the counselling service had no complaints procedure, as was required by Right 10(6) of the Code. I consider that it was not sufficient to have an unwritten expectation that any complaint would be referred to the clinician's supervisor. I am critical that the counselling service did not have a formal complaints process in place at the time.

150. In addition, Mr D, acting as a director of the counselling service, responded to Ms A having made a complaint to dapaanz by sending an aggressive message to her social media account that reinforced the dual nature of the relationship between Mrs C and Ms A and personally attacked Ms A for making the complaint (see Appendix B).

151. Furthermore, the counselling service had no adequate structure in place to provide services to its clients. No treatment plans were documented, and there is no evidence of records of the services provided to Ms A. The directors of the counselling service were aware of the breaches of professional boundaries by Mrs C, yet they took no effective action to remedy her conduct. It is also concerning that prior to 2019, there were no policies in place. At a minimum, and in accordance with Core Standards of the time, I would have expected the counselling service to have had policies and procedures in place that documented safeguards to protect consumers from inappropriate conduct and exploitation, including the actions to be taken if the safety of a consumer was compromised or put at risk.

152. Overall, I consider that the omissions outlined above demonstrate that the counselling service failed to operate a service that met ethical and professional standards. Accordingly, I find that the counselling service breached Right 4(2) of the Code.

Opinion: Mr D — breach

153. The services that Mrs C provided to Ms A and Ms B were via the counselling service. Mr D was a director of the counselling service, and he also took part in some of the group therapy sessions attended by Ms A and Ms B. I note that Ms B was distressed by some of the interactions in the groups.

154. Mr D told dapaanz that he had observed the development of Mrs C's professional counselling and friendship relationships with Ms A. Mr D was present at the Christmas function when Mrs C asked clients to contribute to her wedding and discussed her breast augmentation surgery. He visited Ms A's home. He was aware that the relationship had become unhealthy and time-consuming, and, on various occasions, he discussed his concerns about this relationship with his co-director, Mrs C.

155. Furthermore, Mr D was closely involved in the counselling service, conducting regular peer supervision and concern/sharing meetings during the period when the unprofessional and unethical conduct took place. Consequently, I consider that he shares culpability for the breaches of professional standards that occurred.

156. Noting that Mr D was a co-director of the counselling service and a counsellor in his own right, on 26 July 2021, after Ms A had complained to dapaanz, Mr D sent an aggressive message to her social media account that reinforced the dual nature of the relationship between Mrs C and Ms A and personally attacked Ms A for making the complaint (see Appendix B).

157. In my view, this was unethical and inappropriate. I am critical of Mr D's action in that he criticised Ms A for making a complaint and demonstrated a lack of concern for her wellbeing. I consider that this was unethical conduct. I note that Mr D has accepted that his message was inappropriate.

158. Overall, I consider that Mr D failed to provide services to Ms A and Ms B that complied with ethical and professional standards, and accordingly I find that Mr D breached Right 4(2) of the Code.

Changes made

159. Mrs C said that since these events she has had much time to reflect and has made several changes regarding personal boundaries and professional practice. She stated that she revisited the Code of Ethics regarding professional boundaries while completing further studies, and currently she is working online in a coaching capacity with very clear professional boundaries.

160. The counselling service has introduced and updated its policies regarding social media, professional boundaries, and the code of conduct, and has strengthened its commitment to its policies. The counselling service no longer provides a sober community platform for

individuals to connect for peer support, nor does the service condone contact outside the service on any level. It no longer has a social media support group or face-to-face support groups and does not encourage or facilitate experiential recovery events.

Recommendations

161. I recommend that within three weeks of the date of this report, the counselling service, Mrs C, and Mr D each separately provide written apologies to Ms A for the criticisms in this report. The apologies are to be sent to HDC for forwarding.

162. I recommend that within three weeks of the date of the final report, the counselling service, Mrs C, and Mr D, each separately provide written apologies to Ms B for the criticisms in this report. The apologies are to be sent to HDC for forwarding.

163. I recommend that within three months of the date of this report, the counselling service develop a complaints policy, arrange a review of its policies to be conducted by an independent practitioner approved by dapaanz, and conduct training on the policies and the Code of Rights, also provided by an independent practitioner. The counselling service is to report back to HDC on the complaints policy, the review, and the training, with evidence of it having taken place.

164. I recommend that within three months of the date of this report, Mrs C arrange for an independent clinical supervisor to prepare a report to be sent to HDC every six months for two years, indicating whether the supervisor is satisfied that Mrs C is operating within the ethical standards expected of a counsellor or coach.

165. I recommend that within three months of the date of this report, Mr D provide evidence to HDC of having completed HDC's online learning Module 1 (How the Code of Rights improves health and disability services) and Module 3 (Complaints management and early resolution). Mrs C has provided HDC with evidence of having completed the modules.

Follow-up actions

166. Mrs 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.

167. A copy of this report with details identifying the parties removed will be sent to dapaanz and the New Zealand Association of Counsellors, and they will be advised of the name of the counselling service.

168. 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, for educational purposes.

Appendix A: Relevant standards

The dapaanz Tikanga Matatika Code of Ethics (April 2020) states:

> '3.3 Fulfils their duty of care, i.e., by action, intent or omission does no harm to those they work with and/or their whānau by meeting the responsibilities, obligations, and commitments of their role. In situations where harm is unavoidable, then the goal should be to minimise harm and trauma.
>
> 3.4 Identifies and provides appropriate care to ensure the safety of people who are vulnerable.
>
> …
>
> 4.5 Maintains trustworthy relationships and fulfills their professional role obligations in a trustworthy manner with integrity to dapaanz values and principles. Examples include:
>
> — Does not engage in, condone or leave unchallenged any form of harassment or exploitation.
>
> — Does not seek any inappropriate special benefits, financial or personal gain which could arise from their role.
>
> — Does not engage in relationships, including sexual relationships, during the professional relationship or any time when the power dynamic within the relationship (current or historic) may influence personal decision making for a person who is accessing or has previously accessed services. Dapaanz applies a timeframe of two years after termination of the professional relationship as one factor in determining the appropriateness of a relationship … However, dapaanz members must be mindful that a former power relationship may not cease to influence a person's decision-making and that sexual relationships with people who have formerly accessed service from a dapaanz member may never be ethical.
>
> 4.6 Identifies and manages dual relationships to ensure the safety and promote the best interests of the people they serve, engaging support as needed. Acts to ensure that the boundaries of the professional relationship are clearly identifiable to those involved.
>
> …
>
> 5.3 Ensures that any decision to withhold services is made with due consideration for the rights of people to benefit from the service. Helps people to access alternative services suited to their need.
>
> …
>
> 6.1 Upholds people's rights to confidentiality and privacy in accordance with relevant legislation and codes of practice. For example, ensures privacy in communications, the safe storage of information and vigilance about the disclosure of personal information that has been entrusted to them in their work.

6.2 Understands and conveys the limits of confidentiality and privacy. Conveys that when safety is threatened there is an obligation to share information with appropriate people, services and/or authorities. Carefully weighs the requirements of confidentiality and privacy against therapeutic benefit and the need to maintain safety and protect people from harm. Where it is necessary to share information to prevent harm, supports people to share their own information wherever possible.

6.3 Manages confidentiality and privacy requirements when working in group contexts.

…

7.4 Promptly takes all necessary steps if personal issues impact negatively, or may be perceived to impact negatively on their ability to meet the responsibilities and obligations of their role. Acts to protect the interests of the people, whānau and communities they serve, and preserve public trust in the services.'

Appendix B: Message from Mr D to Ms A

The following message was sent by Mr D to Ms A at 6.17am on 26 July 2021:

> 'Hi [Ms A], we receive notification from the DAPAANZ today, in reflection of that, I have a few things to say. I am absolutely disgusted at the behaviour you have exhibited here. Over so many years now I have witnessed the support and love being exchanged between you and [Mrs C], for you to turn around and intentionally try to hurt her with your own pain is quite revolting, when you should understand and be able to intervene in your own self-destructive process by now. In all my years, I have not witnessed quite such a purge of one's own issues on to another, with no other intention other than to cause pain to that person with no constructive intent at all. After so much love has been openly given, I am sickened by what I see you engaging in, the expression "biting the hand that feeds" as a gross understatement. If your intent is to drive a permanent stake between the longest and most supportive care, you have, and possibly could ever experience, then you have succeeded. [Mrs C] opened her heart, skills, love, friendship, and coaching to you, well beyond any others to date, and you have now chosen to treat this with behaviour, nothing short of disgusting, and hurt her with it. We opened our hearts and our home to you, [Ms A], and I now give you notice that you are no longer welcome in our lives. [Mr D]'