

**BEFORE THE IMMIGRATION ADVISERS
COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2012] NZIACDT 56

Reference No: IACDT 006/12

IN THE MATTER

of a referral under s 48 of the Immigration
Advisers Licensing Act 2007

BY

Immigration Advisers Authority

Authority

BETWEEN

Sarah McLaren

Complainant

AND

Glen William Standing

Adviser

DECISION

REPRESENTATION:

Complainant: In person

Adviser: In person

Date Issued: 30 August 2012

DECISION

Introduction

- [1] Ms McLaren engaged Mr Standing to provide immigration services.
- [2] She paid money to him in advance for professional fees.
- [3] Ms McLaren and her husband met Mr Standing in the United Kingdom where he was promoting his services as a licensed immigration adviser.
- [4] Ms McLaren is a specialist teacher, and she approached Mr Standing and asked for advice regarding immigration prospects. She identified that she was a specialist teacher, and said she appreciated that she may have difficulty in securing employment in New Zealand, and consequently getting residence. Her husband also explained his employment skills and experience.
- [5] Mr Standing gave Ms McLaren and her husband an assurance that Ms McLaren's skills were in demand in New Zealand, and they should pay him a fee in advance, with the expectation of being able to migrate to New Zealand.
- [6] Mr Standing fabricated Ms McLaren's employment prospects and ignored her husband's prospects. He did so as his intention was to procure the advance fees, and he had little regard for their true immigration opportunities. He was negligent when he did lodge an application. A stronger application could have been lodged had he taken into account Ms McLaren's husband's occupational qualifications and experience, but instead he relied only on Ms McLaren's occupation.
- [7] Mr Standing was obliged to deal with some of the fees paid in advance as client funds (trust funds); whereas in fact he has misappropriated the money, and has not accounted for it. He also failed to repay fees.
- [8] The evidence supporting the complaint, and the potential conclusion that he was dishonest, was put to Mr Standing by the Tribunal. He has neither answered, nor explained, that evidence
- [9] The Tribunal has upheld the complaint. The evidence supporting the complaint requires that the Tribunal conclude the complaint was justified, including finding Mr Standing was dishonest and that he misappropriated money.

The Complaint and the Response

The complaint

- [10] Ms and Mr McLaren wished to migrate to New Zealand from the United Kingdom where they live. They approached Mr Standing to assist; he was a licensed immigration adviser. They met him at a trade fair in the United Kingdom. He had a stand at the fair, and was promoting his immigration practice.
- [11] While at the fair, Mr Standing purported to evaluate Ms and Mr McLaren's ability to gain employment and a residence visa to come and live in New Zealand. Mr Standing ascertained that Ms McLaren was a teacher and Mr McLaren was a panel beater, and both held qualifications and had experience in their respective fields.
- [12] Ms McLaren had already researched her employment prospects. She was a specialist in teaching religious studies at secondary school level. She knew that in New Zealand her area of expertise was not taught in all schools, and it was a minority subject. Accordingly, she was concerned that her employment prospects may not be strong, and that was a key issue in determining whether they should try and move to New Zealand.

- [13] Mr Standing was told of Ms McLaren's specialist skills. He said that she would have no trouble finding a job in that field, and said "why are you still here?" Mr Standing appeared to regard Mr McLaren's occupational qualifications and experience as irrelevant.
- [14] Ms McLaren entered a written agreement which she signed on 15 November 2009, and Mr Standing signed on 24 November 2009. The agreement provided for Mr Standing's services as an immigration adviser to be utilised to seek residence in New Zealand. The fee was £4,500, of which £3,545 was professional fees, and the balance was fees to be paid to Immigration New Zealand.
- [15] The fees were to be paid in two instalments:
- [15.1] The first was 50 per cent of the professional fee (£1,772.50), and also Government fees of £150 and £705, being for lodging the expression of interest and residence application respectively. In total £2,627.50.
- [15.2] The second was the remaining 50 per cent of the professional fee, and also the Government migrant levy of £120 and residence application fee of £120.
- [16] Mr Standing issued an invoice for £2,677.50 which was for the first instalment. He inflated the first half of the professional fee from £1,772.50 to £1,822.50, but provided no explanation.
- [17] Ms McLaren paid the invoice.
- [18] Mr Standing assisted Ms and Mr McLaren to lodge an expression of interest, and told them to get "police clearances".
- [19] They did not have enough "points", so were not successful in having their expressions of interest selected.
- [20] Mr Standing was slow in dealing with Ms McLaren.
- [21] Obtaining the police report was not appropriate at that time, as it only had a currency of six months. It should have been obtained at the application stage.
- [22] On 17 August 2011, Mr Standing wrote to Ms McLaren in a standard letter which appears to have been sent to his clients generally; it was not personalised. It said Mr Standing had his licence cancelled by this Tribunal on 15 August 2011, and Living New Zealand Ltd (the company through which he apparently ran his practice) had gone into liquidation. The letter suggested Mr Standing would continue to provide immigration services in conjunction with an unnamed licensed immigration adviser. It is not evident how Mr Standing could lawfully perform his professional engagement with Ms McLaren.
- [23] The liquidator instructed Ms Cottrell, a lawyer experienced in providing immigration advice. She evaluated Ms and Mr McLaren's file, and reported. This report concluded:
- [23.1] An expression of interest had been lodged.
- [23.2] It was "on the border" of having enough points to qualify for selection.
- [23.3] Even if selected, it was not likely that a residence visa would result, without Ms McLaren having a position of employment. However, she would be likely to get a work permit to come to New Zealand to seek employment.
- [23.4] The file lacked sufficient information in relation to medical conditions.
- [24] Ms Cottrell also reported to Ms McLaren in a telephone conversation that Ms McLaren had been treated as the main applicant, without claiming points for Mr McLaren's occupational qualifications and experience. If the expression of interest form had included this information, they would have likely qualified.

- [25] Ms McLaren inquired into her prospects of getting employment through a specialist consultant in New Zealand. She was advised that her original understanding was correct; there was little demand for her specialist skills as very few schools taught religious studies. Those that did were generally faith-based and taught religious doctrine, which is not where Ms McLaren's expertise lies. Accordingly, her prospects of employment in New Zealand were unfavourable.
- [26] Ms McLaren believes Mr Standing misled her and Mr McLaren by failing to give them accurate and realistic advice, then failed to lodge the application with the points they could have claimed. He has taken fees from them and they have gained no benefit.
- [27] Mr Standing has not refunded any fees, explained what happen to the money he received, or otherwise accounted for the money.

The response

- [28] The Authority put Ms McLaren's allegations to Mr Standing, to give him the opportunity to respond, but he did not respond.

Context and Scope of Evidence and Mr Standing Failing to Respond to Questions

Other complaints against Mr Standing

- [29] The Tribunal issued a Minute dated 31 July 2012, which identified the grounds of complaint, response, and the issues arising; and indicated conclusions that may be reached on the basis of the information held at that point by the Tribunal.
- [30] The Minute made it clear to the parties they could provide further information, which would be considered by the Tribunal.
- [31] The Minute also requested further information from Mr Standing, and put him on notice that any response should take account of the fact he was facing multiple complaints, some of which had strikingly similar components.
- [32] The Minute explained to Mr Standing:
 - [32.1] This Tribunal is an inquisitorial body, and is required to pursue issues raised by complaints, where necessary requesting further information and requiring persons with information to appear before the Tribunal.
 - [32.2] This Tribunal was dealing with other complaints against Mr Standing. This complaint was not unique in presenting an allegation that substantial fees had been paid in advance, they were procured by misrepresentations, and that was followed by a total or substantial failure to deliver the professional services and results promised, a failure to refund fees, and a failure to account for client funds.
 - [32.3] The approach this Tribunal would take was that it would not unnecessarily use evidence in one complaint to support another complaint. However, multiple complaints which involve strikingly similar features may be probative evidence when the Tribunal determines whether there was systematic dishonesty, incompetence, or a set of circumstances amounting to an innocent explanation.
 - [32.4] At that point, subject to further submissions, the Tribunal put Mr Standing on notice that this complaint should be addressed in a context where he faces multiple complaints that include the features of:
 - [32.4.1] Misrepresenting clients' immigration prospects, and his standards of professional service delivery.
 - [32.4.2] Demanding and receiving fees in advance amounting to several thousands of dollars (using the misrepresentations to facilitate that).

[32.4.3] Failing to account for client funds.

[32.4.4] Failing to deliver the professional services promised.

[32.4.5] Refusing to refund the fees paid in advance when he did not deliver the professional services he promised.

[32.5] Accordingly, Mr Standing was invited to consider informing the Tribunal of any general circumstances that may have affected professional service delivery in his practice, and recognise that he cannot expect the Tribunal to approach this complaint as though it was an isolated lapse in the context of a practice that was otherwise meeting the minimum professional standards, if other complaints were upheld on the same grounds.

[32.6] If the Tribunal did find a series of complaints established that Mr Standing had repeatedly taken fees after misrepresentations, failed to account for client funds, failed to perform professional services, and not refunded fees when services have not been provided, that would potentially be regarded as material when determining the present complaint, subject to any submissions on the point.

Request for further information from Mr Standing

[33] The Licensed Immigration Advisers Code of Conduct (clause 3) requires Mr Standing to maintain complete client records for seven years, and confirm, in writing, the details of material discussions with clients. Accordingly, he should be in a position to present a fully documented record of the professional engagement which is subject to the complaint. He had not produced that material to the Authority or the Tribunal.

[34] Pursuant to section 49(4)(a) of the Act the Tribunal requested Mr Standing to:

[34.1] Provide a full and complete copy of his client records relating to his professional engagement with Ms McLaren.

[34.2] Explain and document how he dealt with the fees paid to him, and how he took into account his apparent obligation to deal with the receipts in whole or in part as client funds held on trust, and keep them in a separate bank account in accordance with clause 4 of the Code.

[34.3] Respond to each of the issues raised by this complaint, with reference to his client record.

[35] Mr Standing had indicated in relation to other complaints that he does not have client records, as they are in the hands of the liquidator of Living New Zealand Ltd.

[36] The Code has the force of law (see sections 37–39 and 44 of the Act). It is implausible that any responsible liquidator would impede Mr Standing from obtaining a copy of his client record to respond to a complaint, given the legal duties the Code imposed on Mr Standing.

[37] Mr Standing had produced no evidence he has attempted to produce the record.

[38] The Tribunal gave Mr Standing notice that if any person is withholding his client record, he should notify the Tribunal of the circumstances, and the Tribunal would consider issuing a summons to that person, to secure the production of the client record.

[39] Mr Standing was further put on notice that unless he demonstrates he has taken the steps available to secure the production of his client record, the Tribunal would potentially take the view that he had chosen to withhold his record, and reach conclusions adverse to him on that basis.

No response to the Minute from Mr Standing

- [40] As it has transpired, Mr Standing has not responded to the Minute, either by providing the information requested or addressing the potential findings and the evidence supporting them.
- [41] The Tribunal is required to determine this complaint on the balance of probabilities; however the test must be applied with regard to the gravity of the finding (*Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1). I am mindful that the complaint involves an allegation of dishonesty, and deception. That is at the highest end of the scale, and I must be sure the evidence requires such a finding.
- [42] The other potentially relevant complaints are published in the series of this Tribunal's decisions: [2012] IACDT 46 to 58. In that series of decisions, there are other examples of complaints that have similar characteristics to this complaint (outlined in para [32.4] above), and those complaints have been upheld.
- [43] The complaints when viewed together show Mr Standing was systematically using misrepresentations to have multiple clients pay him money in advance, and he was dishonestly failing to account for the funds. He provided neither the professional service required by the Code nor a refund of the fees.
- [44] The issue is discussed below in relation to the finding of dishonesty.

The Issues to be Determined

- [45] Mr Standing is bound by the Immigration Advisers Licensing Act 2007 and the Licensed Immigration Advisers Code of Conduct.
- [46] Clause 1 of the Code of Conduct requires:
 - [46.1] A licensed immigration adviser is to act with professionalism. In doing so, they must ensure that the terms of professional engagements are fair and appropriate, and presented to the client honestly.
 - [46.2] That a licensed immigration adviser discharge professional engagements with due care, diligence and respect. That requires them to ensure that their professional service delivery meets proper standards.
- [47] Clause 4 of the Code treats receipts, to the extent that they are held on behalf of clients, as trust funds, and a licensed immigration adviser must bank them separately.
- [48] Clause 5 of the Code requires that a licensed immigration adviser must not misrepresent his business or a client's immigration opportunities, or New Zealand's immigration requirements.
- [49] Clause 8 of the Code prohibits a licensed immigration adviser setting a fee that is not "fair and reasonable".
- [50] Section 44 of the Act provides breaches of the Code, negligence, incompetence, dishonesty and misleading behaviour are all grounds for complaint.
- [51] The issue for determination by the Tribunal is whether it is satisfied Mr Standing breached any of these professional standards, having regard to the standard of proof.

Decision

Preliminary

- [52] The Tribunal observes that the regime in the Act is one where individuals are licensed as immigration advisers and it is not possible for a corporate entity or a practice to be licensed. It follows that it is individual licensed immigration advisers who are the subject of complaints and personally face disciplinary sanctions and orders for compensation.

- [53] The Tribunal will regard Mr Standing as personally responsible both for professional service delivery and accounting for receipts in relation to this matter.
- [54] I accept the account given in support of the complaint; it is consistent with the record. Mr Standing has not challenged it.

Dishonest and misleading behaviour

- [55] I am satisfied Mr Standing induced Ms and Mr McLaren to pay fees to him through unrealistic representations regarding their immigration prospects.
- [56] The key element of misrepresentation involved Ms McLaren's employment prospects. Mr Standing told her she would easily find employment, and that qualified her as the principal party to lodge an expression of interest.
- [57] In reality, Ms McLaren was going to face considerable difficulties in finding employment in New Zealand. Without employment:
- [57.1] she was unlikely to get a residence visa; and
- [57.2] Ms and Mr McLaren would not be in a financial position to migrate to New Zealand if Ms McLaren was not likely to find work.
- [58] They would not have proceeded with instructing Mr Standing if he gave them a true representation of their prospects.
- [59] Even if the Tribunal concludes the misrepresentations were made, it does not necessarily follow they were either dishonest, or proved to be dishonest.
- [60] However, I am satisfied the evidence before the Tribunal requires me to find Mr Standing was unprofessional, dishonest and misleading. As noted, I am conscious of the standard of proof. The evidence which requires that I find dishonesty, rather than carelessness or recklessness, has four elements.
- [61] First, Mr Standing's cavalier approach to problematic employment prospects is concerning. The need for thorough investigation of employment prospects for a person with highly specialised skills should be obvious to any licensed immigration adviser working in the relevant area.
- [62] New Zealand is a small employment market, and the issue of specialised employment opportunities being rare in New Zealand is common. It was striking that Mr Standing did not suggest he needed to research the issue; instead he immediately gave assurances and spoke as though he had expertise.
- [63] What Mr Standing said about Ms McLaren's employment prospects was wrong. I am satisfied Mr Standing had no regard for the accuracy of the representations he was making.
- [64] Mr Standing has had ample opportunity to explain if he had a genuine but mistaken belief regarding Ms McLaren's employment prospects. He has given no explanation. I am accordingly satisfied the obvious explanation is the correct one; Mr Standing was willing to make the representations without regard to their accuracy. He did so as his only concern was to induce Ms McLaren and her husband to pay fees to him. He was indifferent as to his ability to deliver what he promised.
- [65] Immigration opportunities are a crucial and life changing step, the advice Mr Standing gave could not be given casually, that is something all licensed immigration advisers must be aware of.
- [66] Second, the Code of Conduct is very clear in terms of the requirements on a licensed immigration adviser. The adviser is required to keep proper records of all advice (clause 3), act on **informed** instructions (clause 1.1), and they must accurately represent their client's immigration opportunities (clause 5). It follows that a licensed immigration adviser in

Mr Standing's situation in relation to this instruction should be able to produce a client record showing that he:

- [66.1] Evaluated his clients' eligibility for residence visas.
- [66.2] Informed them of any reasonably material risks associated with their entitlement to gain residence.
- [66.3] Adequately informed them of the process for applying for residence.
- [66.4] Made an evaluation of the proper cost of the professional services required, and satisfied himself his fee was fair and reasonable.
- [66.5] Disclosed and obtained his clients' informed consent to pursue an appropriate course.
- [67] The Tribunal asked Mr Standing to produce his client record. He has not produced any record, and the material before the Tribunal is sufficient to conclude that Mr Standing made no attempt to take informed instructions from his client; rather he gave advice which was wrong and he did nothing to ensure it was right. This too points to Mr Standing having abandoned integrity in the course of dealing with Ms McLaren.
- [68] Third, I am satisfied I must give some weight to the series of complaints the Tribunal has upheld against Mr Standing. The series of complaints where those findings have been made have already been referred to above (para [42]).
- [69] I emphasise that I give weight to the evidence in the other complaints with caution, and only to the extent they truly have probative value in this complaint. I accept there is probative value, as the other complaints evidence a distinctive *modus operandi* (*R v Tukuafu* [2003] 1 NZLR 659 (CA)).
- [70] The key features of these complaints evidence a willingness to make whatever false representations were required to secure the payment of fees, regardless of the potential client's immigration prospects. The representations were tailored to fit Mr Standing's perceptions of what his prospective clients may believe, and take as assurance. In some cases grossly extravagant promises were made in writing, and provided to the Tribunal in support of complaints.
- [71] For example, among the fabrications he presented to prospective clients in writing were that:
 - [71.1] he provided his professional services as "an immigration law firm";
 - [71.2] prospective clients were "100% guaranteed" a residence visa; and
 - [71.3] if Mr Standing did not deliver a residence visa to a client, he could be prosecuted for the failure to do so.
- [72] This conduct is distinctive, and it is only necessary to refer to the standards required in the Code of Conduct to see how aberrant such behaviour is for a licensed immigration adviser.
- [73] The present case is not identical to all the other complaints, as in other cases Mr Standing typically wholly failed to provide the services promised. However, there is considerable similarity in Mr Standing's willingness to make whatever representations he thought may induce his client or prospective client to pay money to him; indifferent as to the fact he could not deliver what he promised. Incompetent service delivery, rather than a complete failure to provide services, also appears in some other complaints.
- [74] Fourth, as discussed below, in the course of this instruction Mr Standing has misappropriated client funds, which he was obliged to hold on trust. While I could not accept one example of dishonesty proved another, I do accept this is a further indication that Mr Standing was not simply incompetent. It adds some weight to the conclusion that Mr Standing embarked on a dishonest enterprise, where he had no regard to his professional obligations or the harm he

was causing to his clients. Part of his objective was to access funds, which he misappropriated.

- [75] Giving weight to the four factors, I am sure the only proper finding is that Mr Standing was dishonest and he misrepresented his clients' immigration opportunities for the purpose of his own financial gain; in part accessing funds which he was obliged to hold on trust, which he misappropriated.
- [76] Accordingly, this aspect of the complaint must be upheld. Mr Standing's behaviour was both misleading and dishonest, and accordingly grounds for complaint under section 44(2)(d) of the Act. It was also in breach of the Code of Conduct (clauses 1 and 5), which is grounds for complaint pursuant to section 44(2)(e) of the Act.

Negligence and incompetence

- [77] Mr Standing failed to include Mr McLaren's occupational qualifications, and that likely or potentially resulted in Ms and Mr McLaren's expression of interest not being accepted.
- [78] It appears this ought to have been a necessary, and elementary, aspect of Mr Standing's evaluation of Ms and Mr McLaren's immigration prospects.
- [79] Further, he put them to the unnecessary expense of obtaining a police report that was of no value.
- [80] Mr Standing has had the opportunity to answer or explain these deficiencies that are supported by the evidence before the Tribunal, but he has not done so. Indeed, he has elected not to answer questions put to him by the Tribunal. He has not been compelled to do so, as the material lodged with the complaint is sufficient to support the complaint.
- [81] I am satisfied Mr Standing failed to meet his obligations under clause 1.1 of the Code due to lack of care and professionalism, and he was negligent.
- [82] Section 44(2)(e) provides that a breach of the Code is a ground for complaint, and section 44(2)(a) provides that negligence is also a ground for complaint. The complaint is upheld in this respect.

Failure to account for client funds

- [83] On the information presently before the Tribunal, it appears at least some of the money paid to Mr Standing was in respect of fees to be paid to Immigration New Zealand. The amount identified was £705, being the residence application fee. The expression of interest fee has apparently been paid.
- [84] Client funds are treated by the Code (clause 4) as trust funds, and must be banked in a separate bank account. It appears that at least £705 was unambiguously identified as client funds, and should have been banked in a separate bank account. It appears that was not done, as the money has not been located or refunded.
- [85] The fact Mr Standing did not do so required an explanation, and in the absence of an explanation the inevitable inference is that he failed to deal with the funds as trust funds and has failed to account for them. That inference has been put to Mr Standing pursuant to the Tribunal's statutory process for making inquiries, and he has not responded.
- [86] Where trust funds are received by a professional and they are not banked into the appropriate account, and then are not accounted for, the probable reason involves misappropriation of the funds. There is no discretion in relation to dealing with client funds.
- [87] I am satisfied Mr Standing dishonestly misappropriated client funds. Given the fruitless and repeated efforts to have Mr Standing account for this money, which he was obliged to hold in a designated bank account, I am satisfied he took his client's money for his own purposes.

- [88] I am satisfied this aspect of the complaint must be upheld, as a breach of the Code (clause 4), and it also involved a dishonest failure to deal with, and account for funds. Section 44(2)(d) and (e) provide these circumstances are grounds for complaint.

Demanding and retaining excess fees

- [89] I am satisfied Mr Standing did not provide professional services that reflected the fees he demanded and retained.
- [90] What he has in fact done is put Ms McLaren and her husband in a difficult position through misleading them as to their immigration opportunities; he had no right to any professional fee. He had failed to deliver the advice and professional service to which they were entitled, and was obliged to return the fees they paid.
- [91] Mr Standing was put on notice by the Tribunal's Minute that the Tribunal may conclude that:
- [91.1] Clause 8 of the Code obliged him to set fees that were fair and reasonable.
- [91.2] The fee was not fair and reasonable, either at inception, or when his engagement terminated.
- [91.3] Clause 3(d) of the Code required him to provide a refund of fees payable when his engagement ceased.
- [91.4] The fees were repayable as they were not fair or reasonable, and he could no longer lawfully provide the professional services he agreed to supply.
- [91.5] That he breached the Code by failing to refund fees.
- [92] Mr Standing has not responded.
- [93] I am satisfied on the material before the Tribunal that Mr Standing was not entitled to retain any of the money he received, and he should have returned it in full. That was a direct consequence of the dishonesty that induced the payment of fees in the first place.
- [94] I uphold the complaint in this respect also. Mr Standing's breach of the Code (clauses 8 and 3(d)) is a ground for complaint under section 44(2)(e) of the Act.

Submissions on Sanctions

Issues

- [95] As the complaint has been upheld, section 51 allows the Tribunal to impose sanctions. The section provides:

"Disciplinary sanctions

- (1) The sanctions that the Tribunal may impose are —
- (a) caution or censure:
 - (b) a requirement to undertake specified training or otherwise remedy any deficiency within a specified period:
 - (c) suspension of licence for the unexpired period of the licence, or until the person meets specified conditions:
 - (d) cancellation of licence:
 - (e) an order preventing the person from reapplying for a licence for a period not exceeding two years or until the person meets specified conditions:
 - (f) an order for the payment of a penalty not exceeding \$10,000:

- (g) an order for the payment of all or any of the costs or expenses of the investigation, inquiry, or hearing, or any related prosecution:
- (h) an order directing the licensed immigration adviser or former licensed immigration adviser to refund all or any part of fees or expenses paid by the complainant or another person to the licensed immigration adviser or former licensed immigration adviser:
- (i) an order directing the licensed immigration adviser or former licensed immigration adviser to pay reasonable compensation to the complainant or other person."

- [96] The Authority and Ms McLaren have the opportunity to provide submissions on the appropriate sanctions, including potential orders for costs, refund of fees and compensation. Whether they do so or not, Mr Standing is entitled to make submissions and respond to any submissions from the other parties.
- [97] Any application for an order for the payment of costs or expenses under section 51(1)(g) should be accompanied by a schedule particularising the amounts and basis for the claim.
- [98] The Tribunal will make any decision on the refund of fees based on the amount of fees identified in this decision, subject to any submissions from the parties.
- [99] It appears that the appropriate approach, if there is an order for the refund of fees, is that the amount paid should be converted to New Zealand dollars at the rate for the day it was paid, and an order made of a refund of that amount of New Zealand dollars.
- [100] That would be on the basis that the payment was intended to be for services in New Zealand and could be expected to be converted when paid. The parties may contend for some other basis.

Mr Standing's circumstances

- [101] This Tribunal is an inquisitorial body and is required to pursue issues raised by complaints, where necessary requesting further information and requiring persons with information to appear before the Tribunal.
- [102] This Tribunal is currently dealing with other complaints against Mr Standing and has previously dealt with complaints against Mr Standing.
- [103] Mr Standing is not presently a licensed immigration adviser, as his licence was cancelled by this Tribunal and limitations placed on him seeking another licence.
- [104] Mr Standing has also informed the Tribunal that the company through which he most recently conducted his practice had gone into liquidation (Living New Zealand Ltd – now struck off, as liquidation has been completed).
- [105] In this and other complaints Mr Standing is alleged to have failed to meet financial obligations to clients. The Tribunal is aware of the liquidator's reports, and draws Mr Standing's attention to those reports which state:
- [105.1] Mr Standing has been referred to the National Enforcement Unit in relation to suspected criminal offences, which apparently relate to Mr Standing's conduct and the absence of funds to pay creditors.
- [105.2] The company had assets that could be realised of \$8,078, and liabilities and liquidation expenses of \$497,422. Creditors received no distribution from the liquidation.
- [105.3] Overseas clients had paid \$635,769.49 in deposits for work that had not been completed.

- [106] The Tribunal is aware this company did not operate the entire time Mr Standing was operating his practice, and the fees received relate only to clients where work was incomplete. Accordingly, the fees received from overseas clients of \$635,769.49 are less than the total fees Mr Standing received.
- [107] Mr Standing is facing complaints before this Tribunal that he procured the payment of fees and failed to perform work; in many cases those fees were deposited into offshore bank accounts.
- [108] This information is sufficient to raise a concern that Mr Standing has received a substantial body of fees which have not been accounted for.
- [109] Accordingly, the Tribunal puts Mr Standing on notice that if he claims he does not have the means to pay penalties and compensation:
- [109.1] He is expected to explain to the Tribunal the circumstances identified in the liquidator's reports.
- [109.2] He should consider making arrangements for a chartered accountant to prepare a source and application of funds statement in relation to his practice, and producing that to the Tribunal.
- [109.3] He will be expected to fully explain his personal financial circumstances, including providing a statement of assets and liabilities.
- [110] If Mr Standing does not respond, the Tribunal may proceed on the basis that Mr Standing has the means to meet the financial sanctions that fully reflect the findings against him.

Timetable

- [111] The timetable for submissions will be as follows:
- [111.1] The Authority and Ms McLaren are to make any submissions within 10 working days of the issue of this decision.
- [111.2] Mr Standing is to make any further submissions (whether or not the Authority or Ms McLaren make submissions) within 15 working days of the issue of this decision.
- [112] Any party may apply to extend the timetable. If Mr Standing seeks to have time to have the assistance of a chartered accountant, he should provide a written statement from that person identifying the work they are undertaking and the likely time required to complete it.
- [113] The parties are notified that this decision will be published with the names of the parties after five working days, unless any party applies for orders not to publish any aspect.

DATED at WELLINGTON this 30th day of August 2012.

G D Pearson
Chair