

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

Decision No: [2013] NZIACDT 35

Reference No: IACDT 024/11

IN THE MATTER

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

BY

Immigration Advisers Authority

Authority

BETWEEN

Peter Wiezoreck

Complainant

AND

Anneline Joanna (Anna) McHugh

Adviser

DECISION

REPRESENTATION:

Complainant: In person

Adviser: In person

Date Issued: 4 June 2013

DECISION

Introduction

- [1] Ms McHugh conducts her practice as a licensed immigration adviser through a company, which has an office in Christchurch. The company has international offices, and Mr Wiezoreck encountered Ms McHugh through referral from the company's Netherlands representative.
- [2] Mr Wiezoreck wished to migrate to New Zealand. The complaint was lodged with only part of the records. There were a number of potential issues, and the Tribunal has undertaken a process to determine what issues arise from the complaint.
- [3] Ultimately the issues resolved to whether Ms McHugh:
 - [3.1] Had been party to the provision of immigration advice by a person in the Netherlands who was not a licensed immigration adviser;
 - [3.2] Complied with the Code of Conduct in relation to establishing the professional relationship;
 - [3.3] Advised Mr Wiezoreck properly in relation to his immigration prospects;
 - [3.4] Was responsible for mismanaging mail; and
 - [3.5] Behaved inappropriately in relation to fees.
- [4] Each of the issues was essentially factual. There was also an element of judgement regarding the advice Ms McHugh gave Mr Wiezoreck in relation to his immigration prospects.
- [5] It suffices to note Ms McHugh provided information to establish the only aspect of the complaint that would potentially be upheld was the issue relating to fees.
- [6] That was the most serious aspect of the complaint. When Ms McHugh disclosed her file it emerged she had told Mr Wiezoreck in a letter dated 24 February 2010 that the "industry standard" hourly rate for a licensed immigration adviser was in the range of €400 to €545 (NZ\$740 to NZ\$1,000 - approximately).
- [7] Mr Wiezoreck ultimately accepted a "budget service" from Ms McHugh, which was based on an hourly rate of approximately \$315. Pursuant to the agreement, Mr Wiezoreck had to pay for 18 hours of non-refundable service on a "take or pay" basis. However, he was still required to undertake his own immigration work as the 18 hours of service was only in the nature of assistance.
- [8] The Tribunal has found:
 - [8.1] Ms McHugh could not have honestly believed "industry standard" rates were in the range of NZ\$740 to NZ\$1,000;
 - [8.2] Ms McHugh used this dishonest representation with the intent of having Mr Wiezoreck accept grossly inflated rates, or accept an overpriced "budget service" thinking he was receiving a heavy discount; and
 - [8.3] Mr Wiezoreck did accept the "budget service", and the fees set were not fair and reasonable.
- [9] Accordingly, the complaint has been upheld on the basis Ms McHugh engaged in misleading and dishonest behaviour, and breached the Code by setting fees that were not fair and reasonable.

The complaint

- [10] Mr Wiezoreck lodged his complaint on the following basis.
- [11] Ms McHugh is a licensed immigration adviser and her practice is based in Christchurch. She works in conjunction with other immigration advisers under the trading name “Migration Bureau Consulting Group”, which is run by a company named Oceania Development Group (EMEAR) Ltd (Oceania).
- [12] Mr Wiezoreck is a national of the Netherlands and had an interest in migrating to New Zealand. His circumstances were complicated by his life partner’s health issues as she was suffering from a serious illness.
- [13] Mr Wiezoreck attended a migration fair in the Netherlands and met Mr Ralf Gerritsen, a representative of Oceania. Mr Gerritsen was not a licensed immigration adviser.
- [14] Mr Wiezoreck discussed his circumstances and those of his partner with Mr Gerritsen. He was advised that his partner would not be eligible to migrate to New Zealand, but Mr Wiezoreck was likely to be able to do so.
- [15] Mr Wiezoreck and his partner discussed the situation, and they determined that Mr Wiezoreck could migrate, and his partner would visit New Zealand as much as temporary permits would allow. Mr Wiezoreck discussed this strategy with Mr Gerritsen. Mr Wiezoreck then agreed to pay €150 for a preliminary report on his migration prospects.
- [16] The report was delivered and dated 24 February 2010 and it was written by Ms McHugh. The report indicated Mr Wiezoreck could migrate to New Zealand, but he would need to find skilled employment. The analysis said that entitlement depended to a large extent on the “points” gained from Mr Wiezoreck’s qualifications and work experience.
- [17] The report was accompanied by two documents not before the Tribunal, which appear relevant. They are identified in the report as “terms of business”, and an outline of the range of fees.
- [18] Mr Wiezoreck, in reliance on the report and the accompanying material, agreed to engage Ms McHugh to provide professional services. The apparent terms were that he was to pay €2,900 which was to provide 18 hours of professional service. The service was apparently a “budget service”, where Mr Wiezoreck was required to attend to his own immigration application, and would receive service in the nature of checking and advice.
- [19] At the time the complaint was received, the Tribunal did not have the essential compliance material showing Mr Wiezoreck entered into a written agreement, was informed of his right to take legal advice, given a copy of the Code of Conduct and internal complaints procedure, and that he gave written authority to Ms McHugh. Mr Wiezoreck does not believe that he did sign a written agreement and the material before the Tribunal contained no indication the other elements were complied with either.
- [20] On 12 April 2010 Ms McHugh wrote a further report for Mr Wiezoreck. This second report confirmed the engagement, outlined the process for lodging an expression of interest and identified the supporting documentation that would be required. It also discussed the process for getting a New Zealand Qualifications Authority (NZQA) assessment of Mr Wiezoreck’s qualifications.
- [21] Mr Wiezoreck began implementing the advice. He found Ms McHugh’s professional service delivery unsatisfactory, and advice to be wrong. The difficulties he faced included:
- [21.1] Twice information was posted to the United Kingdom rather than the Netherlands, and mail was delayed due to insufficient postage.
- [21.2] Ms McHugh advised that Mr Wiezoreck’s qualifications could be expected to be assessed at Level 7, whereas in fact they were Level 4, and qualified for no points.

This was information that was readily available from NZQA, and should have been known to Ms McHugh.

- [21.3] There were difficulties with translations of qualifications.
- [21.4] Mr Wiezoreck found communications were unsatisfactory.
- [22] On 12 December 2010 Mr Wiezoreck wrote a letter of complaint to Oceania. The key points he raised were as follows:
- [22.1] Ms McHugh's first report overestimated his migration prospects.
- [22.2] The mechanism for overestimation was indicating that Mr Wiezoreck could expect to get a Level 7 assessment for his qualification from NZQA, whereas it was a Level 4, and rather than receiving 50 points none would be awarded.
- [22.3] Mr Wiezoreck had ascertained that to get a level 7 assessment he would have required a bachelor's degree at least, and Ms McHugh had no basis for thinking that he held one. He has ascertained that his work experience would potentially give him the equivalent points, but the assessment NZQA had undertaken was pointless, as they did not assess work experience.
- [22.4] Communications were unsatisfactory, and documents sent to the wrong places.
- [22.5] When Ms McHugh was informed of the outcome with NZQA she failed to deal with the issues, and "fobbed off" Mr Wiezoreck's concerns.
- [22.6] Mr Wiezoreck was concerned he had not received the professional service he had paid for, and incurred further unnecessary costs of \$530 (translations), and NZQA fees of \$477.
- [23] Ms Susan Atherton, who is not a licensed immigration adviser and is presented by Oceania as working in its "Client Care & Compliance Department", responded to the complaint regarding Ms McHugh's professional conduct. The letter essentially disclaimed responsibility for the advice given. The letter emphasised the need for further investigation of entitlement. In relation to the level at which Mr Wiezoreck's qualification would be assessed, Ms Atherton said:
- "We did believe that as you had informed us that your qualification required 3 years of full time study from a tertiary educational institution that it may be likely that your qualification would be assessed as being at the required level 7. The decision on the level of your qualification is decided by NZQA and we have no control over their decisions."
- [24] Ms Atherton generally said that service delivery and advice was appropriate, subject to some minor administrative matters.
- [25] Mr Wiezoreck replied by email dated 11 January 2011 to Ms Atherton. Mr Wiezoreck said he had accurately explained his qualifications, and both the reports of 24 February 2010 and 12 April 2010 had accurately recorded the information, and conveyed to him that the writer understood the information, stating:
- "Qualifications**
- We note that you have an MBO from the Netherlands."
- [26] Mr Wiezoreck said that by using that terminology the writer was exhibiting knowledge of the Dutch educational system. The fact a MBO was not a Level 7 qualification was readily available from the NZQA. Mr Wiezoreck, by this time, had the true position explained to him by the NZQA.

- [27] Mr Wiezoreck accordingly regarded Ms McHugh's explanation (put forward by Ms Atherton) as misleading, and inconsistent with the written record. His view was that Ms McHugh should have told him he needed to have a job offer in his field of expertise, and without it he would not qualify.
- [28] Mr Wiezoreck said in the circumstances he expected to be given assistance to find a position of employment, a credit of some of the hours debited against the 18 hours of time he paid for, and reimbursement of wasted expenses.
- [29] On 13 January 2011 Ms Atherton replied and said that the advice to apply to NZQA was correct, and Mr Wiezoreck could not expect to be reimbursed for the expenses he incurred.
- [30] Mr Wiezoreck and his partner subsequently travelled to New Zealand and visited Oceania's premises. They met with Mr Rupert Ward, who was presented as the Director of Oceania. Mr Wiezoreck raised his concerns regarding his qualifications and how he had been treated. Mr Ward is not a licensed immigration adviser; he claimed there was no fault in the professional services Mr Wiezoreck received.
- [31] In the course of the conversation Mr Wiezoreck explained his partner's health issues. Mr Ward said he should have told Oceania earlier, despite the fact he had told Mr Gerritsen at the outset. Mr Ward did eventually agree to refund €800, and Mr Wiezoreck's partner's health was used as the justification, not the professional failings Mr Wiezoreck complained of.
- [32] Mr Wiezoreck is concerned that the fees he paid have been regarded as "non-refundable".

The response

- [33] Ms McHugh responded to Mr Wiezoreck's complaint in a letter to the Authority dated 4 August 2011. Ms McHugh stated:
- [33.1] She was surprised by the complaint and considered it had been resolved. She regarded it as intentionally timed to cause her discomfort. She produced correspondence regarding what she considered to be the resolution of the dispute.
- [33.2] Mr Wiezoreck was untruthful and withheld significant information in relation to his partner.
- [33.3] She explained administrative problems in relation to postal communication.
- [33.4] In relation to Mr Wiezoreck's qualifications:
- [33.4.1] Mr Wiezoreck completed a "quick check eligibility form" that indicated he had 5 years of study after secondary school, 8 years of work experience, his highest qualification was a MBO, and English was his "mother tongue".
- [33.4.2] Mr Wiezoreck also submitted a Curriculum Vitae which showed he had worked in his occupation since 2000, and accordingly had 10 years experience; plus 4 years in a "college for photography" (though the supporting material does not indicate full-time study, or necessarily that period of time in a single occupation).
- [33.4.3] Ms McHugh at no time stated Mr Wiezoreck would be assessed at Level 7 by the NZQA; that was entirely a matter for NZQA, and Mr Wiezoreck was advised to get a preliminary review by the NZQA first.
- [33.5] Ms McHugh did not understand why NZQA would not have accepted translations of Mr Wiezoreck's qualifications and experience.
- [33.6] In relation to Mr Wiezoreck's complaint that communication was difficult for him due to English being a second language, and that Ms McHugh had not communicated well; she had been mindful of this factor and endeavoured to communicate effectively.

- [33.7] Ms McHugh was surprised at the outcome of the NZQA assessment, but considered she had given accurate information to Mr Wiezoreck on the basis of what he told her.
- [33.8] Ms McHugh had responded properly to each of the concerns Mr Wiezoreck raised with her from the time he first complained.
- [33.9] When Mr Wiezoreck and his partner came to Christchurch, Ms McHugh met with them in the company of Mr Ward. They were treated with dignity, and a goodwill payment of €800 was ultimately offered and accepted. Mr Wiezoreck's partner's illness was a reason for compassionate settlement, but Ms McHugh accepts it was not relevant to the ground of complaint.
- [33.10] Ms McHugh has acted professionally and fairly. However, Mr Wiezoreck had withheld "significant and important information". This complaint is intended to "intentionally seek punishment and reprimand" for accurate advice given in response to limited and incomplete information.

The Tribunal's Minute

- [34] On 3 December 2012 the Tribunal issued a Minute which explained that the Tribunal had conducted a review of the material then before the Tribunal. The Minute identified apparent issues, potential factual findings, and emphasised that the parties would have the opportunity to respond, and that the Tribunal had reached no conclusions at that point.
- [35] The key elements of the complaint, and the response identified in the Minute, were as outlined above.
- [36] The Authority and the complainant do not lay charges, and are not responsible to prove them. The Tribunal is an expert inquisitorial body, which receives complaints, and determines whether the proof before it is adequate to uphold the complaint, and if so in what respects. Accordingly, the Minute identified issues and potential conclusions on the material presented before the Tribunal in order to give the parties the opportunity to consider their positions and provide submissions and further proof if they wish.

The issues and potential conclusions

- [37] The Minute emphasised its purpose was to identify potential findings on the basis of material presently before it, and quite different conclusions may follow if further information was presented, or submissions made as to the effect of the material presently held.
- [38] The Minute related the potential factual findings to the professional standards required under the Code, and the Act.
- [39] The Minute stated, on the papers before the Tribunal at the time, the following findings below appeared to be open.

Preliminary

- [40] Ms McHugh works in an environment where it appears there were other licensed immigration advisers. At least one other, Ms Margita Grins, may have had some involvement. She was said, in the letter of 12 April 2010, to be supervising Ms McHugh.
- [41] The Minute noted it is not possible for a company to hold a licence, and the Code of Conduct makes it clear that it is necessary for a licensed immigration adviser to be identified, and hold written authority from a client (clause 2.1(h) of the Code). The Code does not leave open the possibility of a licensed immigration adviser providing professional services without personally holding a written record of their authority from the client. This is important, as licensed immigration advisers are personally responsible for dealing with client funds, fees, and all professional obligations under the Code of Conduct. They cannot avoid personal responsibility for these matters by pointing to an employer or other party. Accordingly, Ms McHugh should be in a position where she had control of these issues, and ensured that if she was to conduct

her practice in association with Oceania, that the company respected and preserved her professional control over all material financial and professional matters in relation to clients.

- [42] This Tribunal only has jurisdiction to deal with complaints that come before it under the process prescribed by the Act. Ms McHugh is subject to a complaint. The complaint would be addressed on its merits, on the basis of her role; she would not be made responsible for the actions of others. However, she could expect to be potentially held accountable for furthering, promoting, or relying on any improper actions, whether or not she was the only person involved.

Potential role of an unlicensed person

- [43] Mr Wiezoreck first engaged with Oceania through its representative Mr Gerritsen in Amsterdam. Mr Gerritsen is not a licensed immigration adviser. Mr Wiezoreck reported that he told Mr Gerritsen of his plans to migrate, and asked about the eligibility of his partner given her medical circumstances. Mr Gerritsen gave advice that his partner could not be included in an application, and later agreed that Mr Wiezoreck could proceed as a sole applicant and his partner could visit for periods within the limits of temporary permits.

- [44] The advice appeared to be correct, though as he was not a licensed immigration adviser his actions would be unlawful. Section 63 of the Act provides that a person commits an offence if they provide “immigration advice”, without being either licensed or exempt from the requirement to be licensed.

- [45] Section 73 provides that a person may be charged with an offence under section 63, whether or not any part of it occurred outside New Zealand.

- [46] The scope of “immigration advice” is defined in section 7 very broadly. It includes:

“using, or purporting to use, knowledge of or experience in immigration to advise, direct, assist, or represent another person in regard to an immigration matter relating to New Zealand ...”

- [47] Ms McHugh alleges Mr Wiezoreck withheld information in relation to this issue. The view appears open that in fact Mr Wiezoreck engaged with, and was given immigration advice by an unlicensed person within the organisation where Ms McHugh conducted her practice.

- [48] Ms McHugh was, or ought to have been, aware of how Mr Wiezoreck’s instructions were received, and accordingly known of this part of the engagement.

- [49] A potential conclusion was that Ms McHugh accepted instructions and conducted her practice in a manner that involved an unlicensed person taking instructions and giving advice. If so, the view would be open that there were two consequences:

[49.1] The lack of candour on Mr Wiezoreck’s part, of which Ms McHugh complained, was the product of her allowing an unlicensed person to perform the initial part of the professional engagement. Mr Wiezoreck had fully disclosed his position to Mr Gerritsen.

[49.2] Ms McHugh was a party to an unlicensed person giving immigration advice in breach of the Act.

Whether the Code had been complied with in relation to establishing a professional relationship

- [50] This complaint deals with fees, and an entitlement to the refund of fees. Ms McHugh had not provided the Authority with the documentation relevant to establishing the professional relationship in accordance with the Code, or the setting of fees in accordance with the Code.

- [51] The complaint and the material supporting it raised these issues.

- [52] If there was no further material placed before the Tribunal, the potential conclusion was that Ms McHugh pursued this instruction without complying with the Code. In particular:

- [52.1] There did not appear to be a written agreement, which either complies with the Code or was accepted in writing.
- [52.2] There did not appear to be evidence of the Code and the internal complaints procedure being supplied, or advice given to Mr Wiezoreck of his right to take independent legal advice.
- [52.3] Further, the complaint raised questions as to whether clause 8 of the Code was complied with. That clause required both that fees are “fair and reasonable” and “set out”, along with the client being made aware of all relevant matters prior to a written agreement being signed (clause 1.5):
- [52.3.1] The 24 February 2010 report referred to attachments that may provide the relevant information; however, the report itself does not satisfactorily communicate the necessary information relating to fees.
- [52.3.2] The material indicated there was an hourly rate of approximately NZ\$285, and non-refundable fees equating to 18 hours of professional services. There are also indications that the hourly rate was inflated by debiting time for matters that were not productive professional input.
- [52.3.3] If there was no further information before the Tribunal, the view may be open that clause 8 of the Code was not complied with.

Provision of professional services on the basis of 18 hours minimum, and not taking professional responsibility for the lodging of applications

- [53] There were no written terms of engagement before the Tribunal. Ms McHugh’s letter of 12 April 2010 did, however, say in relation to the terms of engagement:

“Under the Budget Visa Service [the terms Mr Wiezoreck accepted] you get 18 hours of our consulting time.

You prepare the application yourself and we spend the 18 hours on writing this letter, answering questions and checking your application prior to lodgement.

It is important that you understand the limitation of the Budget Plan. In summary, these limitations are as follows:

1. We send you this substantive letter outlining all aspects of migration to New Zealand.
2. We are able to answer your questions on the telephone or email or fax.
3. We will check, in summary, the content of your completed application.
4. We take no responsibility for the outcome of your application.”

- [54] The minute indicated the Tribunal would consider:
- [54.1] the extent to which the purported limitation of responsibility is consistent with the Code of Conduct; and
- [54.2] the apparent charging of fees that appear greater than usual fees for a professional service with full professional responsibility accepted.
- [55] To do so, the Tribunal required the full record, so as to understand the disclosure provided to Mr Wiezoreck in relation to the terms of service.
- [56] Ms McHugh’s conduct in relation to the client engagement process was, potentially, integrally linked with these issues.
- [57] The client engagement process is intended to require licensed immigration advisers to disclose to clients the true nature and cost of the services provided. If a reduced service is provided for a premium price, non-compliance with the disclosure regime may raise issues as

to whether the non-compliance was intentional, and intended to circumvent the client protection the Act and Code are intended to provide.

Whether Ms McHugh's assessment overestimated Mr Wiezoreck's potential to migrate to New Zealand

- [58] The Minute noted Ms McHugh is said to have potentially overestimated Mr Wiezoreck's prospects of migrating to New Zealand.
- [59] The issue in isolation potentially amounted to an allegation of lack of care.
- [60] In her letter of 24 February 2010, Ms McHugh said all Level 5 and higher assessments qualified for 50 or more points, and with various conditions, Levels 3 and 4 could be awarded 50 points.
- [61] In contrast, her letter dated 12 April 2010 stated "[s]hould you wish to claim points for your qualifications, you would have to obtain an NZQA assessment at Level 7".
- [62] Mr Wiezoreck complained that when he did proceed with an assessment, NZQA had no difficulty communicating to him in the English language that a Level 7 assessment required him to have a degree. He did not have a degree, and readily understood that.
- [63] The Minute noted the view may be open that Mr Wiezoreck's complaint that Ms McHugh's communication was confusing to him is justified. Ms McHugh's description of the NZQA levels and points in her 24 February 2010 letter may be appropriate to communicate with an expert. However, references to technical documents such as "the List of Skilled Occupations held at Appendix 11 of the INZ Operations Manual; and are not included in the List of Excluded Qualifications" would convey little to anyone else.
- [64] Further the Minute recorded it is important to appreciate that this letter and this particular information was intended to persuade Mr Wiezoreck that he had sufficiently sound prospects of migrating to commit to a substantial expenditure in non-refundable fees.
- [65] It was not evident on the material then held that Ms McHugh engaged with her potential client and gathered the information necessary to provide the advice. This was advice Mr Wiezoreck paid for; he was a client and entitled to expect due care and diligence that reflected the fact Ms McHugh's advice would result in both expenditure in excess of €3,500, and an important emotional and time commitment to life ambitions.
- [66] Ms McHugh had referred to a "checklist" type document as the source of the information she relied on. The view may be open that the document was unsatisfactory, using colloquial terms such as "mother tongue", rather than a more accurate description of first language or recognised level of language. Regardless, taking professional instructions from a checklist will potentially be regarded as a circumstance where a licensed immigration adviser would be expected to exercise caution and ensure there was communication that reinforced key facts on which advice turned.
- [67] In addition to the potential view that Ms McHugh's advice lacked care, the issue of overestimating Mr Wiezoreck's immigration prospects could, potentially, not be divorced from the wider concerns regarding Ms McHugh's compliance with the Code.
- [68] Soliciting a non-refundable fee, which may be higher than is fair or reasonable, in itself raised serious questions of integrity.
- [69] Any attendant non-compliance designed to obscure the protections the Act and the Code afford to clients would bear upon the same issue.
- [70] An overestimation of immigration prospects when soliciting non-refundable fees would be an additional factor bearing upon integrity.
- [71] These issues were identified in the Minute as very much at large, as key parts of the record were absent from the material before the Tribunal. Ms McHugh was given notice of the

potential conclusions to ensure she had the opportunity to respond and provide such additional material.

Misdirected mail

- [72] The Minute noted the issues relating to misdirected mail appeared to be administrative issues for which Ms McHugh did not have initial responsibility, and any slowness to correct the situation may not have been her responsibility. Even if there was some lack of oversight on Ms McHugh's part, the issue potentially fell short of having sufficient gravity for the Tribunal to make an adverse disciplinary finding.

Settlement

- [73] Ms McHugh had raised the issue of the complaint having been settled; however she had not expressly said that affects the Tribunal's jurisdiction to address the complaint. The Minute noted the Tribunal would proceed on the basis that it did have jurisdiction, subject to any further submissions, for the following reasons:

[73.1] The complaint is a statutory process. Being a professional disciplinary matter, there are public interest issues arising. A complaint which has been lodged with the Tribunal is not solely an inter-party matter.

[73.2] This Tribunal, as is commonly the case for professional disciplinary tribunals, has an inquisitorial function. The Tribunal is not dependent on a complainant to "prosecute" a complaint. Indeed, in the case of this Tribunal, it is not usual for counsel to represent complainants and "prosecute" their complaint.

[73.3] The Act provides for complaints to be put before the Tribunal, and requires the Tribunal to hear the complaint; usually on the papers, and where necessary by exercising powers to seek further information (Immigration Advisers Licensing Act 2007, section 49).

[73.4] In the present case, the issues raised are potentially serious.

- [74] As it had transpired, there has been no challenge to this view, and the Tribunal has proceeded on the basis that it has jurisdiction.

Request for further information from Ms McHugh

- [75] Pursuant to section 49(4)(a), the Tribunal in the Minute requested that Ms McHugh produce all of the records relating to Mr Wiezoreck.

- [76] The Code (clause 3) required Ms McHugh to maintain complete client records for seven years, and confirm in writing the details of material discussions with clients. Accordingly, she should be in a position to present a fully-documented record of the professional engagement which is subject to the complaint.

- [77] Ms McHugh was required to fully explain:

[77.1] What was done when she took responsibility for the file to ensure the instructions were in order and she complied with the Act and the Code of Conduct. In particular:

[77.1.1] the extent and lawfulness of Mr Gerritsen's role, and Ms McHugh's knowledge of and responsibility for it;

[77.1.2] what the position was in relation to having a written agreement;

[77.1.3] holding written authority for each of the immigration advisers who were involved in the matter; and

- [77.1.4] disclosure of the Code, internal complaints procedure, and provision of advice regarding the entitlement to take independent legal advice.
- [77.2] How she determined that Mr Wiezoreck would have sufficient points to have a good prospect of migrating to New Zealand and explain:
- [77.2.1] how she communicated with Mr Wiezoreck to ensure the information she relied on was accurate, and that he understood what information was essential;
- [77.2.2] why there is differing advice regarding points and NZQA assessments in her two reports;
- [77.2.3] whether her last advice regarding the need for a Level 7 assessment was correct, whether she accepts that required a degree, and the grounds for thinking Mr Wiezoreck should proceed with an assessment to have NZQA recognise his qualifications as a degree;
- [77.3] Whether it was fair and reasonable to commit a client to 18 hours of service, particularly when:
- [77.3.1] The fee purported to be non-refundable.
- [77.3.2] The service was only supplementary to the client taking responsibility for their own affairs.
- [77.3.3] Some clients may require little assistance and be committed to the full fee.
- [77.3.4] The hourly rate had not been justified at that point.
- [77.4] The extent of Ms McHugh's role in the instructions, and the role of others in Oceania.
- [77.5] The justification for Mr Wiezoreck only being refunded part of the fees he paid.

Ms McHugh's response to the Minute

- [78] Ms McHugh responded in a submission dated 1 February 2013.
- [79] Ms McHugh's submission addressed the following matters. She first explained her role in Oceania was as a self-employed contractor.

Explanation of Oceania's client engagement process

- [80] Ms McHugh provided a detailed record, and explanation of the client engagement process that applied in the present case, and generally.
- [81] The key elements in her explanation were:
- [81.1] It was usual for "Personal Relocation Agents" to have contact with clients, these people are not licensed immigration advisers, and Oceania takes active steps to ensure they do not provide immigration advice.
- [81.2] There is an information gathering process, which provides licensed immigration advisers with the information required to give immigration advice, and provide immigration services.
- [81.3] Mr Wiezoreck completed a form named a "Full Check Immigration Evaluation Form", and he ticked a box identified as "Single (never married)", and did not tick a box named "De Facto (living together)". Ms McHugh said this was evidence that Mr Wiezoreck withheld information regarding his relationship with Ms Mulder.

- [81.4] Ms McHugh produced document headed "Statutory Declaration", but it is in fact a witnessed statement. In this document Mr Gerritsen said he had met Mr Wiezoreck in his capacity as a Personal Relocation Agent, and interpreter. Mr Wiezoreck had completed the Full Check form, and completed it as a single person. Mr Gerritsen said he did not know about Mr Wiezoreck's circumstances. In relation to Ms Mulder who was present he said "his girlfriend could be anybody", and said he had no discussion about Ms Mulder's terminal illness and Mr Wiezoreck's plans to migrate as a single person.
- [81.5] Ms McHugh provided details of the process for complying with the Code in relation to the various compulsory disclosure requirements. In relation to holding written authority under clause 2.1(h) of the Code, Ms McHugh said it was sufficient that she was named in a letter sent to Mr Wiezoreck.
- [81.6] The Authority has been provided with at least 20 files which disclose the process Ms McHugh used to commence the client relationship, and has not taken issue with it.

Care and competence

- [82] Ms McHugh said her evaluation of Mr Wiezoreck's immigration prospects was accurate based on the information she initially received. She said that there was a process to verify the information, and in this case another licensed immigration adviser telephoned Mr Wiezoreck to verify the information. In a letter 23 April 2010 Ms McHugh made it clear that Mr Wiezoreck would require a skilled job offer before he could proceed further.

- [83] Her submission said:

"My practices have altered since working on this file and I now follow very strictly the policy of a phone call within 2 working days of receiving the initial letter following signing a service agreement. ... Looking at this file, going against the clients initial wishes of a call may have been of some benefit in relation to some small clarifications.

...

There was no overestimation of Mr Wiezoreck's prospects of migrating to New Zealand. The prospects for migration were clear even in the original assessment dated 24 February 2010."

- [84] She emphasised that the process of gathering information was progressive. She emphasised also that the assessment by NZQA was critical. Ms McHugh did accept that she was in error in relation to the suggesting that a NZQA assessment may be at level 7, when in fact she should have stated in her letter of 12 April 2010 that the assessment was potentially at level 5. However, this was not a critical issue, as the same result would follow from a level 5 qualification with 5 years of work experience.
- [85] Ms McHugh said that identifying the level of qualifications is technical, and referred to the Tribunal's decision in *BC v SO* [2012] NZIACDT 63. That decision recognised that while a licensed immigration adviser is required to be aware of, and understand the NZQA assessment process, they are not required to have the information or professional skill to undertake an assessment in cases, which are not clear.
- [86] The submission concluded by noting that in the letter of 12 April 2012 Ms McHugh said that Mr Wiezoreck could initially obtain a PAR from NZQA; and that she had identified the two qualifications that were relevant.
- [87] In all, Ms McHugh accepted a relatively minor error, and emphasised she acted in good faith.

Whether fees were fair and reasonable for the services provided

- [88] Ms McHugh said that the original complaint did not clearly raise the question of fees.

- [89] Ms McHugh referred to the Tribunal's decision in *BC v SO* [2012] NZIACDT 63 and referred to it as a case involving non-refundable fixed fees. She said Oceania no longer provides services which are charged on this basis.
- [90] She went on to say that while the fees were not refundable, there were many instances where the fees would be refunded "none of which would be an admission of guilt, but possibly proper recognition of a professional responsibility".
- [91] In relation to the specific case Ms McHugh noted that there had been a refund of €800, which had been accepted by Mr Wiezoreck on 14 April 2011.
- [92] She said the fees had been well explained to Mr Wiezoreck both prior to and upon signing the agreement. Ms McHugh described Oceania as providing a "bespoke solution for each individual circumstance", and described a complex fee arrangement, which included altering the fees quoted according to where the client lived; and that there may be discounts of "10, 20, 30, 40, 50%+".
- [93] However, what in fact occurred was Mr Wiezoreck selected the "budget service" with a fixed fee for predetermined hours, Ms McHugh said:
- "Mr Wiezoreck was free to enter into this Agreement and to accept the Budget service rather than another type of service. The Agreement also invited him to ask questions about the service before signing up. If he chose to commit to the Agreement in such circumstances then it is not appropriate for the Tribunal to interfere with a legitimate contract for services. For instance, if the Tribunal was to order a refund of fees, which is contrary to the terms of the contract, but cannot otherwise establish a serious breach of the Act or the Code, then this would not be a proper use of its authority."
- [94] Ms McHugh said that Mr Wiezoreck breached the agreement as he falsely completed his Quick Check and Full Check Assessments by claiming to be single when that was false, and withheld medical information. Ms McHugh suggested that Mr Wiezoreck used "false pretences".
- [95] The submission proceeded to claim that a fee of €2,900 for 18 hours of service was within reasonable comparative levels of alternative providers servicing the same Dutch market with similar service levels. Ms McHugh referred to service providers in the UK having fees ranging from £2,800 to £5,000. She said that she could not identify information from Netherlands service providers.
- [96] Ms McHugh did not provide the information, however the Reserve Bank exchange rates indicate that on 24 February 2010 when the agreement for the provision of services was entered into:
- [96.1] €2,900 which was agreed for 18 hours of service equated to NZ\$ 5,659.65, which is NZ\$314.42 per hour.
- [96.2] The range of UK fees of £2,800 to £5,000 equates to a range of NZ\$ 6,241.65 to NZ\$11,145.79.
- [97] The submission did not provide any authentication of the comparable fees, or indicate that they related to 18 hours of service on the non-refundable basis.
- [98] Ms McHugh said that the figures for fees that the Authority publishes, "tells us nothing about the range of fees charged throughout the industry", and the fees charged by firms operating in the Northern Hemisphere could not be usefully compared with the Authority's published information.

Justification for partial refund

- [99] Ms McHugh's submission said that she stood by the advice she gave, there were no breaches of her professional obligations, and the refund was out of concern for Mr Wiezoreck.

Justification for limiting liability

[100] Ms McHugh said that the nature of the “budget service” precluded her taking professional responsibility for the outcome. She said that after a client filed an application they may take steps without reference to her, and prejudice their case.

Further documentation

[101] Ms McHugh produced a copy of her file, and also statutory declarations from Mr Rupert Ward, the director of Oceania. Mr Ward discussed meeting with Mr Wiezoreck and Ms Mulder, and also spoke of what he considered to be Ms McHugh’s high standards.

Mr Wiezoreck’s response to the Minute and Ms McHugh’s submission

[102] Mr Wiezoreck noted that his view was that he would prefer the complaint to be against Oceania rather than just against Ms McHugh. He had dealt with 10 or more people in Oceania, and that added to the difficulties.

[103] Ms Mulder had come into Mr Wiezoreck’s life in 2004, and she was terminally ill; and at that time expected to have only one or two more years of life. As it transpired, she died on 12 September 2011.

[104] Given Ms Mulder’s situation, she and Mr Wiezoreck never expected that it was realistic for her to be in New Zealand more than was permitted by a visitor’s permit; and they did not intend to apply for more than that.

[105] Mr Wiezoreck confirms that he was clear with Mr Gerritsen about these circumstances. Further that Ms Mulder’s relationship was also evident in the correspondence; in the way that would be expected in such circumstances:

[105.1] In an email of 30 March 2010 Mr Gerritsen used a Dutch word that is only applicable to describe Ms Mulder as being in a relationship with Mr Wiezoreck; and then went on to say “Thanks and both welcome ...”. Mr Wiezoreck translated the wording.

[105.2] On 19 April 2010 Mr Wiezoreck wrote to Ms McHugh and said: “My girlfriend, Annelies, is doing the paperwork ...”

[105.3] On 18 June 2010 Ms McHugh wrote a file note stating: “Spoke to Mr Wiezoreck’s partner Annelies.”

[105.4] On 9 and 18 June 2010 Ms Rebecca Rae sent emails from Oceania addressed to: “Mr and Mrs Wiezoreck”, they were copied to Ms McHugh at the time.

[106] Mr Wiezoreck said he filled in the form that they said partner “if applicable”, and he understood that was not the case.

[107] Given the communications Mr Wiezoreck cannot accept that Ms McHugh and Oceania could have failed to understand that Ms Mulder was his partner, and not his “personal assistant” for immigration purposes.

[108] Mr Wiezoreck is sceptical of the claim that Oceania readily refunds fees that have been designated as “non refundable”, and points to a comment in an email from Mr Gerritsen of 10 February 2011 that states “we will not give money back”.

[109] Mr Wiezoreck obtained an employment appraisal report from ODG Recruitment, which is associated with Oceania. The report was not favourable in its evaluation of Mr Wiezoreck’s employment opportunities, and that contrasted with the favourable reports that Mr Wiezoreck initially received from Oceania; ultimately, employment was an essential ingredient in Mr Wiezoreck’s immigration opportunities.

Discussion

Preliminary

- [110] Mr Wiezoreck's concern that Oceania should be the subject of his complaint is understandable. However, the limits of the Tribunal's jurisdiction are clear; it can only deal with complaints against licensed immigration advisers. The only matter before it is the complaint regarding Ms McHugh.
- [111] Ms McHugh was required be in a position where she had control of professional service delivery, and ensure that if she was to conduct her practice in association with Oceania, that the company respected and preserved her professional control over all material financial and professional matters in relation to clients.
- [112] The complaint will be addressed on its merits, based on Ms McHugh's role; she will not be made responsible for the actions of others. However, she will be held responsible for furthering, promoting, or relying on any improper actions, whether or not she was the only person involved.

Potential role of an unlicensed person

- [113] I accept Mr Wiezoreck's evidence regarding him frankly explaining to Mr Gerritsen the situation with Ms Mulder's health, and receiving from him advice to the effect he should proceed on the basis he was single.
- [114] The Tribunal is required to determine facts 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). There is a direct conflict between Mr Wiezoreck and Mr Gerritsen.
- [115] I am satisfied I must accept Mr Wiezoreck's account for the following reasons:
- [115.1] It is inherently plausible Mr Wiezoreck would explain the circumstances accurately. He attended the meeting with Ms Mulder.
- [115.2] The subsequent correspondence shows Oceania was well aware of Ms Mulder, as Mr Wiezoreck has pointed out (refer to paragraph [105] above); that is consistent with him being frank about Ms Mulder and her situation.
- [116] I reject Ms McHugh's suggestion that Mr Wiezoreck engaged in "false pretences". On the contrary, it is a most unimpressive submission, unsupported by evidence, and at odds with the information Ms McHugh had available to her.
- [117] It follows I am satisfied Mr Gerritsen gave immigration advice, and did so unlawfully.
- [118] However, the Tribunal has no jurisdiction over Mr Gerritsen. I do accept Ms McHugh's evidence that she believed on reasonable grounds that Oceania has systems in place to ensure only qualified persons gave immigration advice. Ms McHugh has acknowledged that she can and should be more vigilant in establishing personal contact with clients at an early stage. However, I do not consider that there were circumstances that put her on notice that there was an imperative to do so.
- [119] It follows I make no adverse finding against Ms McHugh in relation to Mr Gerritsen's role.

Whether the Code had been complied with in relation to establishing a professional relationship

- [120] The Minute noted the view appeared to be open that when Ms McHugh engaged with the file there were a number of serious irregularities in relation to the engagement. The specific issues were addressed in the Minute (refer to the section commencing at paragraph [50] above).

- [121] Ms McHugh has addressed the issues and provided further material and I am satisfied that there was compliance with the Code.
- [122] I am now satisfied Ms McHugh has produced material that establishes Mr Wiezoreck:
- [122.1] was advised he was entitled to seek independent legal advice before entering into an agreement (clause 1.5(c) of the Code);
- [122.2] received a copy of the Code supplied to her (clause 1.4(a) of the Code); and
- [122.3] was provided with a copy of the internal complaints procedure (clause 9(c) of the Code).
- [123] It is appropriate to further examine the question of whether clause 8 of the Code was complied with. That clause requires both that fees are “fair and reasonable” and “set out”, along with the client being made aware of all relevant matters prior to a written agreement being signed (clause 1.5). The terms Mr Wiezoreck agreed to were \$315 per hour (more or less) for 18 hours of Ms McHugh’s professional time. I am satisfied those terms were clear, however the information that Ms McHugh has disclosed has established the material presented to Mr Wiezoreck was misleading. That is discussed below in the section that discusses fees.

Whether Ms McHugh’s assessment overestimated Mr Wiezoreck’s potential to migrate to New Zealand

- [124] The Minute noted Ms McHugh is alleged to have potentially overestimated Mr Wiezoreck’s prospects of migrating to New Zealand.
- [125] When the Minute was issued, these matters were identified as being very much at large, as key parts of the record were absent from the material before the Tribunal. Ms McHugh was given notice of the potential conclusions to ensure she had the opportunity to respond.
- [126] Ms McHugh accepted that she had made an error in suggesting that Mr Wiezoreck may qualify at level 7, and she should have said level 5. However, I accept Ms McHugh’s submission that does not reach the level for an adverse disciplinary finding. She points out the difference was not critical for the application.
- [127] I also accept the assessment of qualification is a matter which a licensed immigration adviser must be aware of, and understand the process for evaluation. However, the evaluation itself is a specialist matter that NZQA addresses. I am satisfied that in identifying the two relevant qualifications, and noting that a PAR could be obtained that was, in the circumstances, adequate.
- [128] There was some miscommunication; however, Ms McHugh is entitled to the benefit of the doubt. I am not satisfied an adverse finding can be made in relation to this issue on the material before me.

Misdirected mail

- [129] The Minute noted the issues relating to misdirected mail appeared to be administrative issues for which Ms McHugh did not have initial responsibility, and any slowness to correct the situation may not have been her responsibility. Even if there was some lack of oversight on Ms McHugh’s part, the issue potentially fell short of having sufficient gravity for the Tribunal to make an adverse disciplinary finding.
- [130] The parties have not presented any information that altered that perspective. Accordingly, there will be no adverse finding against Ms McHugh in relation to that issue.

Fees – further issues

- [131] This complaint deals with fees, and an entitlement to the refund of fees. Ms McHugh has claimed that the original complaint was not related to fees. That is not correct, in his complaint to the Authority of 9 June 2011 Mr Wiezoreck complained he had only received a partial refund

of fees, and only 6 of 18 hours professional time was used, and of those 6 hours some were not necessary.

- [132] Ms McHugh was required to provide further information.
- [133] As a result of the further information disclosed in Ms McHugh's response to the Tribunal's Minute, a further minute was issued on 19 April 2013. This Minute gave Ms McHugh notice of the following.
- [134] The Tribunal's minute put Ms McHugh on notice that section 44 of the Act provides dishonest and misleading behaviour are grounds for complaint.
- [135] This Minute also requested that Ms McHugh explain her role, and that of others in Oceania; and identify how the hourly rated charged to Mr Wiezoreck was justified and explained to him.
- [136] The material Ms McHugh had produced to the Tribunal included the following:
- [136.1] A "New Zealand Fee Estimate" dated 24 February 2010. The document apparently contained representations to Mr Wiezoreck that:
- [136.1.1] The fees identified in it were "in line with industry standards".
- [136.1.2] The hourly rates were presented as €400 on p.17 of the document, and €545 for an "Immigration Advisor" on p.21.
- [136.2] An unsigned service agreement described as "Last updated 9th February 2010". It contained representations that:
- [136.2.1] Professional charges were in line with industry standards;
- [136.2.2] There was a "budget service", which would provide a set number of hours of professional time, and implied it was less costly.
- [136.3] In a "go ahead conversation" of 7 April 2010, the notes produced indicate Mr Wiezoreck was told:
- [136.3.1] It was the quality of service not location that counted.
- [136.3.2] Whereas the form stated that the relevant fee was €2,900 (approximately, it said, NZ\$5,340) "or onshore NZ\$3,250". Only the higher fee was disclosed to Mr Wiezoreck.
- [136.4] A schedule of current fees, which show that clients are now charged in the range from \$203 to \$290 per hour for the professional services of a licensed immigration adviser.
- [137] Ms McHugh was given the opportunity to provide an explanation as to whether she should be held responsible for this material; and, if not in whole, in what respects.
- [138] She was also put on notice the Tribunal will potentially conclude this material evidenced a course of conduct, which was misleading and for the dishonest purpose of misrepresenting costs.
- [139] The view was potentially open that the material proved a course of behaviour intended to cause Mr Wiezoreck to believe it was in his interests to enter into an agreement to purchase a discounted service, which was priced substantially below the usual fee charged by other licensed immigration advisers for a full professional service. Whereas, the alternatives Mr Wiezoreck was presented were fees grossly above the true "industry standard" levels of professional fees charged by licensed immigration advisers. Further, the "budget service" fees actually charged were not discounted, and the elements such as being non-refundable inflated the true cost to the level of a full professional service, or higher.
- [140] In particular:

[140.1] The representation made on 24 February 2010 was to the effect that a licensed immigration adviser's "industry standard" fee was in the range of €400 to €545 (approximately NZ\$740 to NZ\$1,000).

[140.2] Ms McHugh had not justified those rates as representing industry standards, and instead presented evidence that the current fee rates for her services lie in the range of approximately NZ\$200 to NZ\$300. Unless explained, the Tribunal would potentially conclude the fees of €400 to €545 cannot have been believed to have honestly been accurately described as in line with industry standards.

[140.3] Ms McHugh had claimed she was entitled to inflate fees depending on where clients lived. The price of services would usually be based on the location of the practice providing the service, which is in New Zealand. Furthermore, the "go ahead" conversation represented that location was not important; and then quoted a fee of €2,900 (approximately, it said, NZ\$5,340) rather than a fee \$3,250 which a client in New Zealand would be charged.

[141] Ms McHugh was given the opportunity to explain why it appeared Mr Wiezoreck was told fees were "in line with industry standards", when Ms McHugh appears unable to establish that was so; and as measured by the fees Ms McHugh currently charges the representation was clearly false.

[142] If Ms McHugh sought to justify the fees as proper on the basis she was entitled to charge a differential fee based on where her client was located, she was expected to justify the approach. If doing so she should consider the issue of whether there was proper and professional disclosure to her client; and whether the level of fee was "fair and reasonable".

Fees – Ms McHugh's further response

[143] In a submission dated 19 April 2012 Ms McHugh said her role in relation to providing information was to send her letter of 24 February 2010 to Mr Wiezoreck. The letter detailed the "full case management rates" (refer to paragraph [140.1] above). These rates, she said, were not placed alongside the "budget fees" rate.

[144] Ms McHugh said she was an independent contractor to Oceania, and had no reason to be dishonest in relation to fees, and to do so was neither in her "professional nor personal nature."

[145] She ensured Mr Wiezoreck fully understood the fees.

[146] Ms McHugh reiterated that she did not consider the complaint related to fees, and claimed that *BC v SO* [2012] NZIACDT 63 accepted the charging mechanism that applied.

[147] The fee charged being 18 hours of assistance for €2,900 was comparable with other service providers. Ms McHugh's comparison appeared to be based on a skilled migrant application providing a full professional service, not 18 hours of assistance on a "take or pay" basis to a person doing their own immigration application.

[148] Ms McHugh said that she was not aware of survey data that showed what licensed immigration advisers would normally charge. She accordingly reasoned that it was not for the Tribunal to conclude that her representation to Mr Wiezoreck that "industry standard" fee was in the range of €400 to €545 (approximately NZ\$740 to NZ\$1,000) was wrong. Ms McHugh claimed that her original submission supported the view that hourly fees in the range of NZ\$740 to NZ\$1,000 were justified.

[149] Ms McHugh sought to justify the practice of charging fees according to where clients were located. She said an international company with offices and staff around the world needed to do that. However, she did not address the fact she was located in New Zealand, and provided the service.

[150] Ms McHugh said that her representation to Mr Wiezoreck in the "go ahead call" that "location is not important" was taken out of context and it referred to communication and time zones.

[151] She went on to say her practices have changed, with clients only being charged in New Zealand currency and that there is no longer a “budget” service.

Fees – conclusions

[152] Ms McHugh has been put on notice the view was open that a representation that “industry standard” fees were in the range of €400 to €545 (approximately NZ\$740 to NZ\$1,000) was dishonest.

[153] Her response that there is nothing to show the representation is not true is both wrong and misguided in terms of her responsibility.

[154] First, the claim that “industry standard” hourly rates for a licensed immigration adviser are NZ\$740 to NZ\$1,000 is obviously false to anyone familiar with hourly rates for professionals in New Zealand.

[155] Furthermore, the information relating to this complaint is not consistent with the claim.

[156] A schedule of the current fees Ms McHugh charges clients are in the range from \$203 to \$290 per hour. That points to Ms McHugh having misrepresented that fees were in the order of some three times higher than she herself regards as an appropriate fee. In making that observation, I should not be taken to conclude that Ms McHugh’s current fees are not higher or even greatly higher than “industry standard”; simply that even within her own practice she has the information to know her representation was not defensible.

[157] Furthermore, Ms McHugh chose to make the representation to her client. It is her responsibility to represent only what she knows was true; she is not free to make factual representations to clients without knowing they are true; or at least taking care to ensure they are.

[158] The remaining issue is whether Ms McHugh was dishonest in making the representation. I am very conscious of the standard of proof in this regard; a dishonest representation of this kind is at the most serious level of misconduct. The Tribunal is required to determine facts 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).

[159] It is necessary that I am sure before making a finding of dishonesty.

[160] I am satisfied Ms McHugh made the representation dishonestly, knowing it was false, and doing so with the intention of inducing Mr Wiezoreck to agree to terms of engagement that he may not have accepted if he was aware of the true “industry standard” fees. Ms McHugh misled Mr Wiezoreck with the intention he would believe grossly inflated hourly rates were competitive, or to alternatively accept a “budget” service believing it was a heavily discounted service compared with industry standards.

[161] The first factor I have had regard to in reaching this conclusion that Ms McHugh was dishonest rather than made a careless or even reckless representation, is the level to which Ms McHugh inflated “industry standard” hourly rates.

[162] Her representation was in the order of three times what was justifiable in her own practice. That in itself points to dishonesty. This was more than exaggeration and rationalisation. I have no doubt Ms McHugh was at the time well aware the hourly rates licensed immigration advisers could charge was far less than \$740 to \$1,000 per hour. She chose to say otherwise.

[163] The second factor is the very large apparent discounting factor from the range of \$740 to \$1,000 said to be “industry standard” to approximately \$315 for the “budget” service. That ensured Ms McHugh had to confront the issue. There was a very large gap between her representation, and the hourly rates charged to this particular client.

[164] Ms McHugh claimed that she only presented the higher level of fees and was not using them to induce acceptance of the “budget” service. However, it is clear she knew that someone in Oceania had presented Mr Wiezoreck with the budget service, and she provided her services at that rate.

- [165] In addition, Ms McHugh was aware that she quoted Mr Wiezoreck, during the “go ahead call”, a fee that was said in the notes (although not entirely accurately) to be equivalent to approximately NZ\$5,340. However, on the notes she was reading from there was a fee of NZ\$3,250 for clients in New Zealand. She therefore knew of but did not refer to the lower rate.
- [166] Those two factors satisfy me Ms McHugh was fully aware her representation was false, and grossly so. The only reason for making the representation was to induce Mr Wiezoreck either to accept the grossly inflated fees, or to accept other terms thinking they were good value.
- [167] When considering whether she acted dishonestly, I have been willing to give full weight to Ms McHugh’s submission that she is a contractor for Oceania, and the implied claim she did not benefit from the representation. In effect, she says she did not have a financial motive, and that proves her actions were innocent.
- [168] However, Ms McHugh is the person who held the licence, and she is personally responsible for the professional engagement. It is far from unknown for employees, officers, contractors and others operating within organisations to engage in, or further, dishonest practices in the way they deal with clients and customers of the organisation.
- [169] It is clear Ms McHugh’s practice depended on clients being induced to engage her services through Oceania. She has not disclosed the financial arrangements between her and Oceania; however it is evident that it was in her financial interest to ensure clients were engaged. She furthered that process with gross misrepresentations. I do not consider Ms McHugh’s arrangements with Oceania can derogate from the evidence that satisfied me the representations were dishonest.
- [170] I am satisfied Ms McHugh’s conduct was misleading and dishonest, and grounds for complaint under section 44(2)(d) of the Act.
- [171] I am also satisfied that the fee charged did not meet the requirement of being fair and reasonable under clause 8 of the Code, which is also a ground for upholding a complaint pursuant to section 44(2)(e).
- [172] Ms McHugh has produced material to show the total fee charged for the “budget service” was approximately the average charged for a licensed immigration adviser to provide professional services for similar applications. That was the result of her analysis of the Authority’s website information.
- [173] However, licensed immigration advisers do not usually provide services based on an arrangement that leaves clients to carry the responsibility for preparing and lodging applications.
- [174] Ms McHugh charged at the level of a full professional fee; but provided limited service on a “take or pay” basis with a capped number of hours of assistance. Accordingly, the fees were higher than typical, and misrepresented as heavily discounted. I am satisfied the fees were not set at a fair and reasonable level. That view is reinforced by the fact Ms McHugh charged a lower fee for the same service to clients located in New Zealand.

Decision

- [175] Pursuant to section 50 of the Act, the complaint is upheld in respect of Ms McHugh as she:
- [175.1] Engaged in dishonest and misleading behaviour concerning the fees she charged Mr Wiezoreck; and
- [175.2] Breached clause 8 the Code as she set fees that were not fair or reasonable.
- [176] In other respects, the complaint is dismissed.

Submissions on Sanctions

- [177] As the complaint has been upheld, section 51 allows the Tribunal to impose sanctions.
- [178] The Authority and Mr Wiezoreck 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, Ms McHugh is entitled to make submissions and respond to any submissions from the other parties.
- [179] 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.

Timetable

- [180] The timetable for submissions will be as follows:
- [180.1] The Authority and Mr Wiezoreck are to make any submissions within 10 working days of the issue of this decision.
- [180.2] Ms McHugh is to make any further submissions (whether or not the Authority or Mr Wiezoreck make submissions) within 15 working days of the issue of this decision.
- [181] 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 4th day of June 2013

G D Pearson
Chairperson