

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

Decision No: [2016] NZIACDT 29

Reference No: IACDT 031/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Sajeev Unnikrishnan

Complainant

AND

Amanda Tersia Goldsmith

Adviser

DECISION

REPRESENTATION:

Registrar: Karena England, Lawyer, MBIE, Auckland

Complainant: In person

Adviser: Mr S Laurent, lawyer, Auckland.

Date Issued: 2 June 2016

DECISION

Introduction

- [1] The allegations in the Registrar's statement of complaint include four grounds, two of which Ms Goldsmith admits. The alleged grounds of complaint Ms Goldsmith disputes are that:
- [1.1] Ms Goldsmith gave incorrect advice regarding what is required for a person to apply for a student visa to study in a New Zealand educational facility. Essentially, she said enrolment was necessary, whereas, an offer of a place and payment of fees was sufficient. Ms Goldsmith gave advice it was effectively impossible to deal with a polytechnic because its staff did not understand the process. Accordingly, she advised her client to study at a university, as its staff did understand. This ground of complaint alleges Ms Goldsmith did not understand the process and consequently gave poor advice.
- [1.2] Ms Goldsmith told the complainant he did not need to declare a drink driving conviction, and submitted a work visa application saying he had no convictions. Ms Goldsmith allegedly provided poor advice, and then provided false and misleading information to Immigration New Zealand.
- [2] Ms Goldsmith's response to these allegations is that her advice was correct, and that the complainant did not disclose his drink driving conviction to her. She says the complainant fabricated images of text messages that never took place.
- [3] Ms Goldsmith has admitted that she failed to complete the process required for client engagement, including obtaining a written agreement. She also admitted altering an immigration form after her client signed it; which is an offence under immigration legislation. She says these matters were not important because:
- [3.1] she gave her client an agreement; the only problem was her client did not sign it;
- [3.2] altering the form was only a minor matter and the Tribunal should take no further action after accepting her admission.
- [4] Accordingly, the Tribunal must evaluate Ms Goldsmith's advice and determine whether the complainant has fabricated evidence of text messages. The Tribunal must then decide whether Ms Goldsmith breached her professional obligations.
- [5] The Tribunal must also consider the circumstances relating to the breaches of the client engagement process and the alteration of the immigration form, which Ms Goldsmith admitted.

The complaint

- [6] The Registrar's statement of complaint put forward the following background:
- [6.1] In October 2012, Ms Goldsmith first met with the complainant and his life partner (partner) to discuss their immigration options.
- Student Visa – the complainant's partner*
- [6.2] On 11 February 2013, the complainant's partner emailed Ms Goldsmith a copy of an offer of a place in a New Zealand polytechnic (the polytechnic). The fees were \$18,741. She asked for advice on what was required to apply for a student visa.
- [6.3] On 19 February 2013, Ms Goldsmith emailed a response saying that they were wasting their time with the polytechnic. She said that she had tried her best but could not make the personnel at the polytechnic understand that Immigration New Zealand required formal confirmation of enrolment and registration before a student could apply for a visa.
- [6.4] Ms Goldsmith suggested a university, as personnel were more helpful. On 25 February 2013, the complainant's partner told Ms Goldsmith that she could not afford the

\$29,000 fees for the University, as her maximum was \$25,000. Later she decided to apply to the university. She obtained a student visa on 6 March 2013.

Work visa applications – the complainant

- [6.5] At 7:30 pm on Sunday 3 March 2013, the Complainant sent Ms Goldsmith a text message stating that he had a conviction for drink driving, and asking if he had to declare it.
- [6.6] Ms Goldsmith replied by text message saying he did not need to declare it at that point, but would have to do so when applying for a residence visa.
- [6.7] The following day (4 March 2013), Ms Goldsmith submitted the complainant's work visa application. The conviction was not declared on the application form.
- [6.8] In April 2013, Ms Goldsmith replaced the work visa application with another application using different grounds. Ms Goldsmith told the complainant and his partner they could sign the forms with blank sections and she would complete them.
- [6.9] In July 2013, Ms Goldsmith submitted a further work visa application for the complainant. It also failed to declare his conviction.
- [6.10] Immigration New Zealand (INZ) verified the application and discovered the failure to declare the conviction, which required a character waiver. INZ then declined the application due to the failure to declare the convictions.
- [6.11] Ms Goldsmith failed to enter into a written agreement for any of the services she provided.
- [7] The Registrar identified potential breaches of professional standards during the course of Ms Goldsmith's engagement. The allegations were that potentially:
- [7.1] Ms Goldsmith breached clauses 1.5 and 8 of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code). The provisions required her to enter into a written agreement to provide professional services, and attend to related disclosure obligations. In addition, she was required to set out details of fees and disbursements. The circumstances were:
- [7.1.1] Ms Goldsmith first began to provide immigration advice and services in October 2012, including assessing immigration options, study options, and then lodging work visa applications in March, April, and July 2013.
- [7.1.2] She failed to enter into written agreements in respect of any of these services.
- [7.2] Ms Goldsmith breached clause 1.1(a) of the 2010 Code. The provision required her to provide her services with due care, diligence, respect and professionalism. The circumstances were:
- [7.2.1] Ms Goldsmith advised her client that the polytechnic was wasting her time, as they required a student visa before registration. Ms Goldsmith said a student first had to register and then apply for a student visa.
- [7.2.2] The proper advice would have been that an offer of a place and paying the fees was enough to apply for the visa; registration would follow the issue of the visa.
- [7.2.3] Ms Goldsmith's advice was not accurate. It breached her duties.
- [7.3] Ms Goldsmith breached clause 1.1(a) and clause 5.2 of the 2010 Code. They required her to provide her services with due care, diligence, respect and professionalism, and not knowingly provide false information to Immigration New Zealand. The circumstances were:

- [7.3.1] The complainant told Ms Goldsmith of his drink driving conviction before she filed his work visa application.
- [7.3.2] Ms Goldsmith provided incorrect advice not to declare the convictions. In March and July 2013, she then submitted work visa applications for the complainant declaring he had no convictions.
- [7.3.3] Her advice was unprofessional and inaccurate. The visa applications concealed the complainant's convictions.
- [7.4] Ms Goldsmith breached clause 1.1(a) and clause 3 of the 2010 Code. They required her to provide her services with due care, diligence, respect and professionalism, and maintain professional business practices. The circumstances were:
 - [7.4.1] Ms Goldsmith told the complainant he should have his partner sign a blank partnership application form for Immigration New Zealand if he was unsure how to complete the form.
 - [7.4.2] His partner signed the incomplete form. They then gave it to Ms Goldsmith and she completed it.
 - [7.4.3] Section 348 of the Immigration Act 2009 (the Act) provides that it is an offence to add or attach information to a form when the person has already signed the form. Section 348(b) of the Act provides an exception if a person identifies and discloses alterations.
 - [7.4.4] Ms Goldsmith breached her duties of care, diligence, and the obligation to maintain professional practices by asking a client to sign an incomplete form, which she altered without disclosure.
- [8] The grounds of complaint were wider. However, the complainant has not filed a statement of reply seeking to pursue the wider grounds of complaint. Accordingly, the Tribunal will only consider the grounds the Registrar considered have potential support.

The responses

- [9] Ms Goldsmith applied to have the complaint dismissed. The Tribunal's decision relating to that application was dealt with in *Unnikrishnan v Goldsmith* [2015] NZIACDT 26.
- [10] The complainant filed a statement of reply agreeing with the statement of complaint.
- [11] After the Tribunal declined Ms Goldsmith's application to dismiss the complaint, she filed a statement of reply. The key elements of her reply were:
 - [11.1] She accepted she did not have a written agreement as required by the 2010 Code;
 - [11.2] She accepted she added details to an Immigration New Zealand form after the complainant signed it;
 - [11.3] She said her advice regarding student visas was correct and appropriate;
 - [11.4] She claimed she gave accurate information regarding the disclosure of the complainant's conviction and was not a party to concealing information from Immigration New Zealand.
- [12] The form of the statement of reply was not a conventional response to a complaint addressed by a disciplinary tribunal. On the two disputed allegations, the response was effectively to put the Registrar/complainant to proof, and not say what happened. The Tribunal issued directions addressing that issue, and pointed out Ms Goldsmith was required to address what did happen.

- [13] The Tribunal exercised its inquisitorial powers under section 49(4), which provides the power to request further information and to request a person to appear before the Tribunal. The Tribunal requested Ms Goldsmith to file and serve an affidavit which:
- [13.1] attached a complete copy of her file as an exhibit; paginated and in chronological order;
 - [13.2] contained a full narrative of her professional engagement; in chronological order, to the extent it is relevant to the statement of complaint on matters she disputes;
 - [13.2.1] That narrative was to include specific references to all material communications with her client including the details of her confirmation in writing of material discussions.
 - [13.2.2] If there were any material discussions with her client or other parties not confirmed in writing, Ms Goldsmith was to explain why her records are in that form and refer to her record keeping obligations under the Licensed Immigration Advisers Code of Conduct 2010.
- [14] Ms Goldsmith had the opportunity to provide other affidavits or submissions and apply for an oral hearing.
- [15] The Registrar and the complainant had the opportunity to reply to anything lodged by Ms Goldsmith, and may apply for an oral hearing.
- [16] Ms Goldsmith filed an affidavit. The Registrar and the complainant did not reply to it. Accordingly, I will decide the complaint on the papers before the Tribunal and with regard to Ms Goldsmith's affidavit.

Discussion

The standard of proof

- [17] The Tribunal determines 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 at [55].

The facts

- [18] The Registrar provided a chronology and supporting documentation. Ms Goldsmith has not generally challenged the information, except in relation to the evidence of text messages regarding the complainant's conviction. She provided her own record at the Tribunal's request.
- [19] The factual issues require the Tribunal to identify the grounds of complaint and satisfy itself that the Registrar's foundation for the alleged facts is justified on the material before it. The Tribunal must then examine Ms Goldsmith's explanation.

Advice relating to student visa

- [20] The first issue is the potentially deficient advice regarding the student visa application. Ms Goldsmith told the complainant's partner Immigration New Zealand would not issue a student visa without formal confirmation of enrolment, registration and payment of fees. However, the relevant immigration instructions only required evidence of an offer of a place and payment of fees. Accordingly, the complainant's partner could have paid the fees for an institution that had offered a place and not followed Ms Goldsmith's advice to enrol at a university, at substantially greater expense.
- [21] In support of the complaint, the Registrar identified an email of 19 February 2013, in which Ms Goldsmith stated:

... INZ will never issue a student visa without formal and original confirmation of enrolment, registration and receipt of fees ...

- [22] In her affidavit, Ms Goldsmith did not specifically address that email, notwithstanding that it is central to the grounds for complaint the Registrar identified. Instead, Ms Goldsmith discussed the series of events, presumably suggesting that viewed overall her advice was appropriate.
- [23] Ms Goldsmith did not challenge the Registrar's position that all that was necessary was an offer of a place and the payment of fees. Accordingly, I will review the series of communications Ms Goldsmith relies on and compare it with the requirements the Registrar has correctly identified.
- [24] Ms Goldsmith refers to a series of emails between 5 February 2013 and 16 February 2013. There is scant information on what is necessary to apply for a student visa in the emails. However:
- [25] On 8 January 2013, the polytechnic Ms Goldsmith criticised had sent the complainant's partner an email, which she forwarded to Ms Goldsmith on 11 February 2013. It was an offer of study. It provided accurate advice regarding accepting the offer and set out what was required to apply for a student visa (including a link to a checklist).
- [26] On 12 February 2013, the complainant's partner did clearly identify the question, she said:

How can I apply for a student visa? Do we need to pay full fees for getting visa or is this offer letter is enough for that?

- [27] Ms Goldsmith's reply was to the effect that the polytechnic could apply for the visa.
- [28] Accordingly, the correspondence Ms Goldsmith relies on demonstrates she had sufficient information to know the complainant's partner had been offered a place, had to pay fees, and at that point could lodge a visa application. The polytechnic is a New Zealand Polytechnic, and the correspondence Ms Goldsmith had makes it perfectly obvious it was fully familiar with international students, regulatory obligations, and visa requirements and processes.
- [29] On 17 February 2013, Ms Goldsmith sent an email to the polytechnic saying:
- It is [the complainant's partner's] desire to be enrolled for the February 2013 intake as you have initially indicated.
- [She has] received her admission fee from India and she can transfer the money immediately into your bank account and get registered immediately.
- INZ criteria and policy clearly stipulate that a student visa can **only be obtained** if we have **original written proof from the polytechnic where the student wants to study.** This confirmation must be on an official letterhead and must be accompanied by an **official payment receipt.**
- [30] It is not entirely clear what Ms Goldsmith thinks is required. If she understood she simply required proof of the offer of a place to study, and a receipt for the fees she should have said so. Ms Goldsmith sets out her evident confusion in her affidavit attributing it to the polytechnic, saying:

I have tried my best to let [the polytechnic] understand that we need an offer before we can lodge the Student Visa. They insist that she need to get the Student Visa first and then they will register her.

- [31] It appears that even now, Ms Goldsmith does not understand that what the polytechnic and the Registrar say is:
- [31.1] to apply for a student visa it is necessary for an appropriate service provider to offer a place in a course, and for the student to pay the fees in advance;
- [31.2] that is sufficient to apply for a student visa;
- [31.3] when the student visa issues, then they enrol or register the student in the course and the student commences study.

- [32] Ms Goldsmith sees no distinction between an offer of a place and enrolment. It is an elementary distinction in immigration. It also occurs with employment. A person may apply for a visa based on an offer; they cannot take up the offer and commence study or work until they have a visa.
- [33] Due to Ms Goldsmith's failure to understand this elementary principle, she advised the complainant's partner that she should forgo polytechnic study and try to get a place in a university at greater expense.
- [34] The Registrar has correctly identified that Ms Goldsmith's email of 19 February 2013 provides erroneous advice that resulted from her lack of understanding. She ought to have been on notice given she was dealing with a polytechnic that was obviously familiar with the enrolment of offshore students. However, Ms Goldsmith's email said:

I have tried my best to make [the Polytechnic] understand how Immigration work and what the criteria and regulations are. They do not seem to understand it at all and insist that [the complainant's partner] must first obtain the student visa before they will register her. This is absurd because INZ will never issue a student visa without formal and original confirmation of enrolment, registration and receipt of fees that was paid. I was promised that the manager will phone me back after 10 am this morning. I am still waiting!

It is my viewpoint that we are wasting our time with this institution.

- [35] On 26 February 2013, Ms Goldsmith had another opportunity to understand how the process worked. The university she recommended wrote to the complainant's partner and Ms Goldsmith received a copy of the email it said:

Please find attached the offer of place letter and fees assessment for the PGDipSci in Biotechnology, commencing Trimester 1, 2013.

You can use these letters to apply for your student visa. Please note that you will not be able to enrol at Victoria University unless you have the valid student visa so I strongly recommend that you apply for your student visa on an urgent basis.

- [36] The Registrar, the Polytechnic, and the University all understood the process. Ms Goldsmith did not. She advised her client to abandon her plan to study at the Polytechnic. She blamed the Polytechnic, saying its processes were absurd. She then recommended university study because of her own failure to provide proper advice. Having created confusion with her misguided advice, Ms Goldsmith now blames her clients saying:

If [they] were not satisfied with the guidance, advice and services I have provided, they could have at any time closed their file with me. I believe that I put a great deal of time and effort into successfully securing the Student Visa..., in the face of the changing instructions and wishes of the applicant.

- [37] Ms Goldsmith's clients relied on her advice. It was Ms Goldsmith's responsibility to provide sound and accurate advice. She failed to do that, and provided wrong advice in circumstances where it ought to have been obvious to her that she failed to understand. Not only did she provide wrong advice on an elementary point of practice, she failed to reflect on the fact that two institutions well used to dealing with the issues had a different approach.
- [38] Accordingly, I am satisfied that Ms Goldsmith failed to provide her services with due care, diligence, and professionalism, and accordingly, breached clause 1.1(a) of the Code of Conduct 2010.

The conviction

- [39] The information supporting the failure to disclose a conviction turns on evidence relating to text messages. There is an image appearing to be a text message and reply stating (verbatim):

Hi Amanda, I got a conviction for drunk driving. I told about it to you. I paid the fine and 6 months of the conviction period finished in first of Feb. do we need to mention about it?

7:30PM, 3 Mar

Not now. But will have to do an SD for the residency later on

7:32PM, 3 Mar

[40] There is also a copy of a usage record apparently from the cellphone service provider showing an outgoing text message (SMS) to an identified number at about that time. Plainly, documentation of that kind could be forged, but on its face, there are images of text communications that plausibly fit with the events occurring at the time. There is also a document appearing to be an image of an email from Ms Goldsmith to the complainant dated the following day of 4 March 2013 at 10:11 AM. That email states that Ms Goldsmith lodged the complainant's work visa that morning. Ms Goldsmith accepts the email is genuine.

[41] Ms Goldsmith's response to the evidence was initially to criticise the Registrar's investigation of the text messages and say that the information presented by the Registrar was distorted, and:

... in the context of the presentation of the complaint as a whole it may not be so innocuous.

[42] Ms Goldsmith made allegations of incompetence and bias against the Authority. She went so far as to say the Authority was "now acting dishonestly".

[43] After the Tribunal dismissed Ms Goldsmith's application, she filed a statement of reply to the Registrar's statement of complaint. In her statement of reply she described the images as "questionable at best", and said they were a mere allegation. In short, now rather than saying the Authority was dishonest, she implied the complainant was dishonest and had fabricated evidence of text messages that never occurred.

[44] It was at this point the Tribunal asked Ms Goldsmith to provide her sworn account of the matter. Her evidence is very different from the allegations she made against the complainant. She did not deny she sent the message and merely claimed she could not recall doing so. She said:

I **believe** I have never received a text or an email message from the complainant at any point in time to inform me that he had a conviction against his name. ...

I am aware that [the complainant] supplied an image of what he claims to be a text conversation between us on 3 March 2013 in which he asked what to do about a criminal conviction. However, I have **no memory** of receiving such a message, and I honestly believe that I did not receive and respond to such a message. (emphasis added)

[45] I refer to this progression for two reasons. First, it makes it very clear that Ms Goldsmith has had compelling reasons to examine the evidence regarding her text very closely, given that she has relied on it to impugn the honesty of the Authority and the complainant. Further, it is appropriate to recognise that Ms Goldsmith knew her denial of the existence of the texts involved asserting the complainant fabricated images of the texts.

[46] Ms Goldsmith claimed she would not have sent the message as she would normally spend time with her family on Sunday evenings (the time the texts were apparently sent) and not concerned herself with work. She said the absence of other references to the conviction in correspondence cast doubt on the complainant's claim.

[47] However, Ms Goldsmith did not deny the images showed a phone number that was her cellphone number. She did not expressly deny that she received the text and replied to it. If that were the position it required a straightforward statement:

[47.1] that she did not receive or send a text in that form,

[47.2] had she done so she would have known that, and

[47.3] accordingly she is satisfied the images of the text messages are fabricated.

[48] Instead, when required to provide evidence on oath she relied only on her "belief" and lack of "memory" and did not deny the text messages occurred.

- [49] Accordingly, I am required to decide whether the complainant probably sent the text to Ms Goldsmith and she replied; or whether the complainant probably produced fabricated evidence and there were no text messages in fact. I have regard to the sliding scale and treat the issue as at the high end of gravity. Therefore, this is an evaluation in which I must be sure the evidence does establish the parties sent and received the text messages before making an adverse finding against Ms Goldsmith.
- [50] The evidential position is the common one where in the face of apparently compelling evidence a witness claims they have no recollection of the facts to which evidence points. Rather than challenging the evidence in an objective basis, a witness simply asserts his or her own subjective denial of recall. The inquiry then necessarily goes back to the reliability of the evidence they are answering.
- [51] The evidence showing texts between the complainant and Ms Goldsmith is strong. The complainant asserts they are real; though he has not been required to provide evidence on oath. The images appear genuine and despite the grave allegations Ms Goldsmith made against both the Authority and the complainant, she has not identified any discrepancy in the images. Her explanation that she was too busy with family matters to compose a brief text is of slight weight. Her explanation that she and the complainant did not otherwise mention the issue in correspondence is also of little weight given that the text related to the content of an application she filed only hours later.
- [52] However, I am conscious neither the Registrar nor the complainant sought to cross-examine Ms Goldsmith. It is not a surprising decision, as her evidence does not challenge the images; she simply makes a different assertion based on her memory. Her memory is personal to her, and questioning her regarding her memory is unlikely to advance matters significantly. Ms Goldsmith did not seek to cross-examine the complainant. I am satisfied that I should decide the point on the papers before me in accordance with section 49(3) of the Act, and not exercise the discretion in section 49(4) in the absence of a request from any party to do so.
- [53] Accordingly, in the absence of cross-examination I will accept Ms Goldsmith's evidence she does not now believe she received the text and has no memory of the text. However, the frailty of Ms Goldsmith's memory does not displace the compelling images that do show she sent the text message. She is unable to identify any discrepancy in that evidence.
- [54] I note that in the absence of other information, the content of Ms Goldsmith's text is surprising. Any honest and competent licensed immigration adviser should have advised the complainant he must declare a conviction, and then ensured she included that information in the application she filed the following day. However, I do not approach Ms Goldsmith's conduct on the basis I should treat her as an honest and competent licensed immigration adviser. On the contrary, she has admitted she wilfully altered documents after her client signed them. For the reasons discussed below, the Act prohibits altering documents. Immigration New Zealand's forms give clear notice of the criminal sanctions that apply. Accordingly, Ms Goldsmith giving wrong advice is consistent with other aspects of her dealings with the complainant.
- [55] Given the proximity in time between Ms Goldsmith's text message and her filing the application without disclosing the conviction, I am satisfied that at the time she filed the application she knew of the conviction and filed the application knowing it failed to disclose the conviction. Ms Goldsmith's lack of memory can only have occurred at a later point in time.
- [56] Accordingly, I am satisfied Ms Goldsmith failed to perform her services with professionalism, as she advised her client to provide false information to Immigration New Zealand and then knowingly lodged an application containing false information. Accordingly, she breached clause 1.1(a) of the 2010 Code.
- [57] I also find that Ms Goldsmith knowingly provided false and misleading information to Immigration New Zealand and breached clause 5.2 of the 2010 Code. However, I make that finding only in relation to the work visa application filed on 4 March 2013, as I have accepted Ms Goldsmith's evidence that she does not now recall the deception. The March application was lodged before Ms Goldsmith had the opportunity to forget. Despite the Tribunal's request to provide a complete copy of her file, Ms Goldsmith failed to provide a copy of the application she lodged. However, I note that all work visa application forms contain notices regarding the importance of providing true and accurate information, and give warnings of the serious consequences. Ms Goldsmith could not have failed to understand the gravity of not declaring a

conviction; and later Immigration New Zealand declined the complainant's application due to the deception.

The admitted grounds – lack of written agreement, and altered form

[58] Ms Goldsmith accepted she failed to obtain a written agreement and failed to set out costs. Accordingly, she admitted she breached clauses 1.5(a), (b), (d) and 8(b) and (c) of the 2010 Code. However, she says that she provided an agreement to her clients and the deficiency only lies on the lack of a signature. Accordingly, she accepts the technical deficiency of not obtaining a signature as required by the 2010 Code but implies her clients accepted by conduct. Ms Goldsmith has not produced a copy of the document she claims she presented to her clients, despite the Tribunal requesting a complete copy of her file.

[59] Accordingly, I find Ms Goldsmith breached the 2010 Code in the respects alleged in the statement of complaint in relation to client engagement.

[60] Ms Goldsmith also admitted she breached clauses 1.1 and 3 in relation to having her client sign an incomplete form, which Ms Goldsmith altered without disclosure. The gravity of this matter is evident from section 348 of the Immigration Act 2009. That section makes it an offence to alter a signed application in that way. The reasons for the provision are clear. Applications have sections containing important declarations regarding the accuracy of information presented to Immigration New Zealand; altering a form in that way undermines the integrity of the process. There are often severe consequences when a person provides inaccurate information to Immigration New Zealand. Accordingly, understanding this requirement is a core competency for a licensed immigration adviser.

[61] Ms Goldsmith provided no explanation of why she breached this fundamental requirement of practice. Instead, she said through her counsel:

At no point has either the Complainant or the Authority identified any detriment accruing to this breach of proper practice. We propose that the Tribunal should uphold the complaint on this ground but take no further action per s 50(b) of the Act.

[62] Ms Goldsmith took that position despite producing a standard immigration application dated 25 July 2013; it was not the altered document in issue. However, it does contain the standard declaration a licensed immigration adviser is required to make on immigration applications. The material provision is:

I understand that after the applicant has signed this form it is an offence to change or add further information, change any documents attached to the form, or attach any further documents to the form.

I note that the maximum penalty for this offence is a fine of up to New Zealand \$100,000 and/or a term of imprisonment of up to seven years. However, if changes are needed, the person making the changes must state on the form what information or documents have been changed and give reasons for the changes.

[63] The declaration reflects section 355(1) of the Immigration Act 2009, which provides for those penalties. At this point, I observe that Ms Goldsmith's view is that there should be no consequences for her conduct, which apparently amounts to serious criminal offending. Immigration New Zealand considers such conduct important enough to include a standard declaration on every application a licensed immigration adviser submits. Ms Goldsmith's stance may suggest defiance and she may address that potential conclusion when providing submissions on what sanctions the Tribunal should impose.

[64] Accordingly, I uphold the ground of complaint that Ms Goldsmith breached clauses 1.1 and 3 of the 2010 Code when she invited her client to sign a partially completed form with the intention of entering further information, and further when adding information to the form.

Decision

[65] The Tribunal upholds the complaint pursuant to section 50 of the Act. Ms Goldsmith breached the 2010 Code in the respects identified and that is a ground for complaint pursuant to section 44(2)(e) of the Act.

[66] In other respects, the Tribunal dismisses the complaint.

Submissions on Sanctions

[67] The Tribunal has upheld the complaint and pursuant to section 51 of the Act, it may impose sanctions.

[68] The Authority and the complainant have the opportunity to provide submissions on appropriate sanctions, including potential orders for costs and compensation. Whether they do so or not, Ms Goldsmith is entitled to make submissions and respond to any submissions from the other parties.

[69] The findings against Ms Goldsmith potentially open the Tribunal to find her conduct was wilful defiance of the law regulating licensed immigration advisers, or a failure on her part to comprehend elementary professional obligations.

[70] As is evident from the preceding discussion, the Tribunal's findings are at the highest level of gravity. Further, Ms Goldsmith has potentially failed to address the grounds of complaint in a manner that shows insight or understanding. She has attacked the Authority and the complainant, contending they are dishonest.

[71] In these circumstances, Ms Goldsmith should appreciate the Tribunal may well determine the appropriate sanctions are orders that will exclude her from the profession, and impose penalties of some significance.

Timetable

[72] The timetable for submissions is:

[72.1] The Authority and the complainant may make any submissions within 10 working days of the issue of this decision.

[72.2] Ms Goldsmith is to make any further submissions (whether or not the Authority or the complainant make submissions) within 15 working days of the issue of this decision.

[72.3] The Authority and the complainant may reply to any submissions made by Ms Goldsmith within 5 working days of her filing and serving her submissions.

DATED at WELLINGTON this 2nd day of June 2016.

G D Pearson
Chair