IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2018] NZIACDT 45

Reference No: IACDT 023/18

BETWEEN	**MICHAEL CARLEY of Immigration New Zealand** Complainant
AND	**BENJAMIN NEIL STEWART DE'ATH** Adviser

DECISION
Date: 13 November 2018

REPRESENTATION:

Registrar:	In person
Complainant:	In person
Adviser:	P Moses, counsel

PRELIMINARY

[1] Mr De'Ath was the director of an immigration firm which brought into New Zealand a large number of dairy farm workers. The complaint against him by Michael Carley, a manager of Immigration New Zealand, concerns 10 or 11 Filipino clients of Mr De'Ath who were advised in relation to their immigration applications by unlicensed people in the Philippines. The clients had little or no contact with Mr De'Ath, their named immigration adviser, in breach of his obligations under the Code of Conduct 2014 (the Code).

[2] As a result of allowing unlicensed people to manage immigration applications, a false document was filed by one client and repeated applications by another client were incomplete. Immigration New Zealand contends Mr De'Ath failed to exercise due care in making these applications.

[3] Mr De'Ath accepts that his business practice was contrary to the relevant legislation and that he has breached his professional obligations.

BACKGROUND

[4] Mr Benjamin Neil Stewart De'Ath is a licensed immigration adviser.

[5] Mr De'Ath was the owner and managing director of Cross Country Recruitment Limited (Cross Country). It was a New Zealand based company which provided recruiting, immigration and pastoral care services for dairy workers in the Philippines who were brought to New Zealand to work on farms here. Mr De'Ath continues to be a licensed immigration adviser bringing into New Zealand dairy workers from the Philippines, though since September 2017 he has operated through a different company.

Breaches of professional obligations

[6] Between September 2016 and April 2017, Immigration New Zealand in Manila received at least 10 applications for work visas submitted by Cross Country under the license of Mr De'Ath. Each of the applicants had engaged the services of Cross Country for the purpose of obtaining employment in New Zealand and then pursuing immigration applications on their behalf. Once they had arrived in this country, Cross Country provided pastoral care services.

[7] The allegation is that Mr De'Ath was listed as the licensed adviser on all of the applications, yet he either did not personally communicate with them at all or only did so after their application had been filed with Immigration New Zealand.

[8] In November and early December 2016, Immigration New Zealand interviewed a number of Cross Country's clients who had filed visa applications. Both Mr B and Mr M identified Mr De'Ath as the immigration adviser, but said they had never spoken to him. They said their visa applications had been completed by Mr X from a Philippines management company and had been signed at the office of Mr X in his presence. Mr L advised Immigration New Zealand he had not entered into a written agreement with Mr De'Ath. Mr S said that Mr De'Ath did not provide a letter of engagement until 9 December 2016, after his visa had already been approved.

Immigration New Zealand formally raises professional obligations

[9] Immigration New Zealand's Manila branch sent a formal letter to Mr De'Ath on 16 December 2016 regarding his practices. It stated that he was associated with unlicensed individuals who appeared to be providing immigration advice to clients applying for visas. It had been informed by the clients that they had never spoken to him. He might therefore have provided false and misleading information to Immigration New Zealand on multiple occasions. The clients had said he had not provided a written agreement, which is a requirement of the Code. Furthermore, they may not have been fully informed of the fees they needed to pay.

[10] According to the letter, Immigration New Zealand was concerned that Mr De'Ath might not be meeting his professional responsibilities due to the lack of direct communication with his clients and his reliance on unlicensed individuals based in the Philippines. Mr De'Ath's comments were invited.

[11] Following some email communications between Immigration New Zealand and Mr De'Ath, the latter formally responded on 19 January 2017 to the letter of 16 December 2016. He advised that they had built a business providing immigration services, recruiting services and pastoral care and its unique nature meant that it did not fit perfectly into some categorisations. However, Immigration New Zealand's letter had acted as a catalyst for a wide review of their work.

[12] In his letter, Mr De'Ath rebutted the assertion of unlicensed advice being dispensed. No one other than himself had filed immigration forms or dispensed advice. While Immigration New Zealand's investigation suggested Mr X completed the forms, their internal system proved otherwise. Mr De'Ath explained the internal process at some length, starting with the client providing their CV and employment history. If he needed

further information, one of their two Manila staff would obtain it from the client and relay it to Mr De'Ath, who would add it to the immigration form. Mr De'Ath could now see that a lot of the information he believed was being communicated via his templates was not sticking. Once a client and the New Zealand employer accepted the job offer, the recruitment process merged into an immigration process, around which there had not been a clear enough distinction. He concurred that only Manila staff were present when the forms were signed.

[13] In the medium term, Mr De'Ath accepted the need for someone to undertake studies to become licensed and be based permanently in Manila. He could use video conferencing for document signing. He concurred that interaction with offshore clients had been in writing only and those investigated had not directly spoken to him. Mr De'Ath said that email and Facebook messages had been used. He accepted that providing templates outlining his services omitted the signing requirement and perhaps the clients had not understood the legislated obligations. He could foresee the need for a new service contract to be signed during a video conference and for all documents provided to be translated into Tagalog.

[14] In his letter, Mr De'Ath emphasised that he completed the immigration form based on information provided in the recruitment process. He dispensed the advice to the clients that they were qualified for the requisite visa, but he could see that it was not satisfactory to Immigration New Zealand that they had never verbally spoken to him. In the current age, numerous engagements and transactions were completed by email and he contended that his use of templates to advise clients met his obligations to communicate with them. However, the implementation of video conferencing would allow for the removal of any ambiguity in the process. Mr De'Ath welcomed feedback on addressing these logistical issues in the short term.

Continuing breaches

[15] Further interviews were carried out by Immigration New Zealand in March and April 2017.

[16] Messrs G, C and F all advised that Mr De'Ath was their immigration adviser, that they had not spoken to him before or at the time of signing their immigration applications and that Mr X of a management company had assisted with their immigration documents. Mr F was the only one who had spoken to Mr De'Ath at all and that was on the day before his interview with Immigration New Zealand, the discussion concerning a service agreement and not immigration matters. Both Mr F and Mr De'Ath signed the "Letter of Engagement and Agreement for Immigration Services" on 4 October 2017, with Mr F's

application for a visa having been filed earlier on 15 March 2017. There were electronic communications between Mr De'Ath and Mr F from 21 May to 24 July 2017 concerning the status of his application.

[17] Mr E advised Immigration New Zealand that he had not signed a letter of engagement and agreement for immigration services with Mr De'Ath until 16 March 2017, after his work visa application had been filed on 14 February 2017. Mr V stated that he had signed the letter of engagement with Mr De'Ath on 30 March 2017, the day it had been provided to him, being the day after his visa application was filed. He said Mr X had helped him with the application.

[18] There continued to be email exchanges, discussions and meetings between Immigration New Zealand's Manila branch and Mr De'Ath.

[19] On 25 May 2017, Immigration New Zealand informed Mr De'Ath at a meeting of its intention to escalate the complaint against him to the Immigration Advisers Authority regarding his lack of a relationship with clients. Mr De'Ath said he was in the process of finding someone to replace Mr X with whom he had concerns.

[20] On 29 May 2017, Mr De'Ath advised Immigration New Zealand that on 11 June 2017, they would be filing all work visa applications online and removing the role of any interaction with offshore agents after the job offer was signed. The "line in the sand" as to where recruitment ended and immigration began would be when the contract terms had been agreed. Mr De'Ath stated that he did not want to expose his almost 20 staff and 700 Filipinos working across the nation on dairy farms to the risk of Cross Country getting into trouble. He would phase out the use of offshore agents over the following fortnight.

Mr A

[21] Mr De'Ath was the named adviser in an application for a temporary class work visa from Mr A, received by Immigration New Zealand on 20 May 2017.

[22] An employment agreement on Cross Country letterhead appears to have been signed by the employer and Mr A on 5 September 2017.

[23] On 18 September 2017, Mr De'Ath was informed by Immigration New Zealand that the job offer did not meet the minimum hourly rate so an amended or revised "IEA" (presumably individual employment agreement) was needed.

[24] The addendum drafted by Mr De'Ath, apparently signed by both the employer and Mr A and dated 19 September 2017, was filed with Immigration New Zealand by Mr De'Ath on that day.

[25] On 27 September 2017, the employer advised Immigration New Zealand that she had not signed it. Mr A informed Immigration New Zealand on 2 October 2017 that he had dealt with Mr X in relation to the IEA and the addendum. He confirmed signing the letter.

[26] On 5 October 2017, Immigration New Zealand wrote to Mr De'Ath and Mr A advising that the addendum had not been seen or signed by the employer. It therefore appeared that Mr A had intentionally provided false and misleading information to Immigration New Zealand. This could make him ineligible for a visa. Their comments were invited.

[27] Mr De'Ath responded on 13 October 2017 advising that the employer had withdrawn the job offer. There had been an administrative error which was still being investigated. Mr A had not provided false and misleading information.

[28] Immigration New Zealand wrote to Mr De'Ath and Mr A on 17 October 2017 rejecting the explanation as not credible. It had concluded Mr A did not meet the good character requirements for a visa, which would make him ineligible for a visa unless a character waiver was granted. Their comments were invited.

[29] The application for a visa for Mr A was withdrawn by Mr De'Ath on 24 October 2017.

[30] Mr A, who continued to be represented by Mr De'Ath, was subsequently approved for a work visa in relation to a different employer.

Mr D

[31] Mr D was one of Mr De'Ath's clients whose immigration applications were facilitated by Mr X. Between 24 February and 13 June 2017, four work visa applications filed by Mr De'Ath were declined by Immigration New Zealand as a result of incomplete information. An application filed on 14 June 2017 was approved on 29 June 2017.

COMPLAINT

[32] A complaint against Mr De'Ath was lodged with the Immigration Advisers Authority (Authority) by Mr Carley on 26 July 2017. The grounds alleged were negligence, incapacity, dishonest or misleading behaviour and a breach of the Code.

[33] It was alleged Mr De'Ath declared being the licensed immigration adviser on applications, yet he did not communicate with the clients prior to the applications being lodged and in some cases did not communicate with them at all. His clients' applications were handled by Mr X, who was registered with the relevant Philippines' government agency but not licensed by the Authority for New Zealand immigration services. It appeared Mr De'Ath may have attempted to mislead Immigration New Zealand by purporting to be the adviser when he was relying on unlicensed individuals in the Philippines to provide immigration advice to his clients. This continued even after a letter of warning was issued by Immigration New Zealand on 16 December 2016.

[34] The Authority notified Mr De'Ath of the complaint on 19 April 2018 setting out the allegations at some length. He was invited to provide an explanation.

[35] Mr Moses, counsel for Mr De'Ath, responded on 7 June 2018. This response included a statement from Mr De'Ath of the same date. Essentially, Mr De'Ath admitted negligence and the various breaches of the Code alleged. He recorded that, having taken legal advice, he now knew he had made errors in individual cases filed in Manila. From 2015 to early 2017, he had relied on staff and agents employed by Cross Country in Manila to assist in the provision of services to job seekers and immigration applicants. He now recognised this did not comply with the Code. He took complete responsibility for the business practices adopted.

[36] According to Mr De'Ath's statement, Cross Country started out as a recruitment company for the dairy industry in 2012. He had become a licensed immigration adviser in 2014. The government of the Philippines required recruiting to be done by local agents registered with a government agency, the Philippine Overseas Employment Administration (the POEA). The structure established by Cross Country was to use the local registered agents to do the recruiting, with Mr De'Ath and other licensed advisers employed by Cross Country being responsible for all immigration matters.

[37] Mr De'Ath further stated that there had never been any intention of relying on unlicensed staff or agents to carry out immigration services. There was, however, a definite overlap between gathering information for recruiting purposes and the intended immigration applications. It was accepted they did not manage the overlap well. It was now understood that a licensed adviser's obligation to deliver services was a personal

one. Mr De'Ath acknowledged the risk of unlicensed people straying into giving immigration advice from the permitted role of information gathering for recruitment and pastoral care services.

[38] Mr De'Ath said in his statement that he had instructed Mr X, Cross Country's contractor in Manila, and his colleagues, not to give immigration advice. They were entitled only to gather information for recruitment, profiling and pastoral care services.

[39] During the period of complaint, according to Mr De'Ath, he had handled hundreds of immigration applications, the majority being done competently, successfully and in accordance with the Code.

[40] In his statement, Mr De'Ath advised that in September 2017, he set up a new company. He no longer relied on unlicensed people to record clients' information in their application forms. It was recognised that the person who completed the form was most likely to be seen by the client as the adviser, even where that person was lawfully limited to "clerical work" as the legislation allows. As a result, the recruitment phase of the recorded interview discussing farming competences was now with a licensed adviser who attended to all information gathering and advice through to the end of the process.

Complaint filed in Tribunal

[41] The Registrar filed a statement of complaint with the Tribunal on 16 July 2018. The complaint alleges that Mr De'Ath may have been negligent in the following respect:

(1) Failing to take personal responsibility for initiating and maintaining the client relationship and instead allowing unlicensed individuals to engage with the applicants and carry out services on his behalf.

[42] The complaint further alleges, in the alternative, that Mr De'Ath has breached the Code in the following respects:

(1) Failing to personally obtain lawful informed instructions from the applicants and allowing unlicensed individuals to complete the client engagement process, in breach of cl 2(e).

(2) Maintaining business practices reliant on unlicensed individuals to perform services which should have been personally carried out by a licensed adviser, in breach of cl 3(c).

(3) Failing to ensure that a written agreement was provided to all applicants once they decided to proceed and, in some instances where it was provided, failing to explain significant matters in the agreement before they signed it, in breach of cl 18(a) and (b).

(4) Submitting a fraudulent document to Immigration New Zealand in support of an application for a work visa, thereby failing to perform his services with due care and diligence, in breach of cl 1.

(5) Failing to be diligent and conduct himself with due care, by submitting multiple incomplete visa applications, resulting in the applications being declined and delays for Mr D, in breach of cl 1.

(6) Failing to ensure client files contain copies of all written communications between the adviser, the clients and other persons, in breach of cl 26(a)(iii).

JURISDICTION AND PROCEDURE

[43] The grounds for a complaint to the Registrar of the Authority made against an immigration adviser or former immigration adviser are set out in s 44(2) of the Immigration Advisers Licensing Act 2007 (the Act):

(a) negligence;

(b) incompetence;

(c) incapacity;

(d) dishonest or misleading behaviour; and

(e) a breach of the Code of Conduct.

[44] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.[1]

[45] The Tribunal must hear complaints on the papers, but may in its discretion request further information or any person to appear before the Tribunal.[2]

[46] After hearing a complaint, the Tribunal may dismiss it, uphold it but take no further action or uphold it and impose one or more sanctions.[3]

---

[1] Immigration Advisers Licensing Act 2007, s 45(2) & (3).
[2] Sections 49(3) & (4).
[3] Section 50.

[47] The sanctions that may be imposed by the Tribunal are set out in the Act.[4] It may also suspend a licence pending the outcome of a complaint.[5]

[48] The burden of proving each head of complaint lies with the Registrar. It is the civil standard of proof, the balance of probabilities, that is applicable in professional disciplinary proceedings. However, the quality of the evidence required to meet that standard may differ in cogency, depending on the gravity of the charges.[6]

[49] Following receipt of the statement of complaint against Mr De'Ath with supporting documents, the parties were informed on 18 July 2018 that the Tribunal usually hears complaints on the papers. The Tribunal further advised the parties on 16 August 2018 that the complaint would be determined without further notice. An oral hearing was not sought by any party.

[50] There is a statement of reply from Mr Moses filed on behalf of Mr De'Ath. No submissions were filed by the Registrar or Immigration New Zealand.

ASSESSMENT

[51] The complaint of negligence and items (1), (2) and (3) of the alleged Code breaches are inextricably linked.

Negligence

(1) Failing to take personal responsibility for initiating and maintaining the client relationship and instead allowing unlicensed individuals to engage with the applicants and carry out services on his behalf

Code Violations

(1) Failing to personally obtain lawful informed instructions from the applicants and allowing unlicensed individuals to complete the client engagement process, in breach of cl 2(e)

(2) Maintaining business practices reliant on unlicensed individuals to perform services which should have been personally carried out by a licensed adviser, in breach of cl 3(c)

---

[4] Section 51(1).
[5] Section 53(1).
[6] *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [101]–[102] & [112].

(3) Failing to ensure that a written agreement was provided to all applicants once they decided to proceed and, in some instances where it was provided, failing to explain significant matters in the agreement before they signed it, in breach of cl 18(a) and (b)

[52] The Registrar contends that Mr De'Ath failed to take personal responsibility for the client relationship, instead allowing unlicensed Manila based people to provide immigration advice, as defined in the Act, directly to clients. Those clients either never communicated at any time with Mr De'Ath or only did so after their applications were filed with Immigration New Zealand. Furthermore, he failed to take instructions from the clients personally, failed to ensure there was a written agreement with each client and failed to explain significant matters in the agreement to them.

[53] The Registrar alleges that Mr De'Ath has thereby been negligent, a statutory ground for complaint, or alternatively, he has breached the following obligations in the Code:

> CLIENT CARE
>
> 2. A licensed immigration adviser must:
>
> …
>
> e. obtain and carry out the informed lawful instructions of the client
>
> LEGISLATIVE REQUIREMENTS
>
> 3. A licensed immigration adviser must:
>
> …
>
> c. whether in New Zealand or offshore, act in accordance with New Zealand Immigration legislation, including the Immigration Act 2009, the Immigration Advisers Licensing Act 2007 and any applicable regulations.
>
> WRITTEN AGREEMENTS
>
> 18. A licensed immigration adviser must ensure that:
>
> a. when they and the client decide to proceed, they provide the client with a written agreement
>
> b. before any written agreement is accepted, they explain all significant matters in the written agreement to the client

[54] The obligations set out in the Code are personal to the licensed immigration adviser and cannot be delegated.[7]

---

[7] *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [29], [34] & [47].

[55] The Tribunal has adversely commented in previous decisions on the practice which developed in the immigration advisory industry of what is known as "rubber stamping".[8]

[56] Typically, this occurs where a licensed immigration adviser uses offshore agents who recruits the clients, prepares the immigration applications and sends them to the licensed adviser to sign off and file with Immigration New Zealand. There is little, if any, direct contact between the licensed adviser and the client.

[57] The practice is plainly unlawful. A person commits an offence under the Act if he or she provides "immigration advice" without being licensed or exempt from licensing.[9] A person may be charged with such an offence even where part or all of the actions occurred outside New Zealand.[10]

[58] The statutory scope of "immigration advice" is very broad:[11]

> **7 What constitutes immigration advice**
>
> (1) In this Act, **immigration advice**—
>
> (a) means 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, whether directly or indirectly and whether or not for gain or reward; but
>
> (b) does not include—
>
> (i) providing information that is publicly available, or that is prepared or made available by the Department; or
>
> (ii) directing a person to the Minister or the Department, or to an immigration officer or a refugee and protection officer (within the meaning of the Immigration Act 2009), or to a list of licensed immigration advisers; or
>
> (iii) carrying out clerical work, translation or interpreting services, or settlement services.
>
> (2) To avoid doubt, a person is not considered to be providing immigration advice within the meaning of this Act if the person provides the advice in the course of acting under or pursuant to—
>
> (a) the Ombudsmen Act 1975; or
>
> (b) any other enactment by which functions are conferred on Ombudsmen holding office under that Act.

---

[8] *Stanimirovic v Levarko* [2018] NZIACDT 3 at [4], [36]–[38]; *Calder (Immigration New Zealand) v Soni* [2018] NZIACDT 6 at [4], [50]–[61].
[9] Immigration Advisers Licensing Act 2007, s 63.
[10] Sections 8 & 73.
[11] Section 7.

[59] The exclusion from the scope of "immigration advice" relevant here is subs (1)(b)(iii) concerning clerical work, translation or interpretation services.

[60] "Clerical work" is narrowly defined in the Act:[12]

> **clerical work** means the provision of services in relation to an immigration matter, or to matters concerning sponsors, employers, and education providers, in which the main tasks involve all or any combination of the following:
>
> (a) the recording, organising, storing, or retrieving of information:
>
> (b) computing or data entry:
>
> (c) recording information on any form, application, request, or claim on behalf and under the direction of another person

[61] It is clear from Immigration New Zealand's interviews with the clients of Mr De'Ath that he had no contact with any of them until after their visa applications were filed, if at all. The application was completed by or with the assistance of the unlicensed Mr X from a Philippines management company which provided the recruiting services. Mr De'Ath gave no immigration advice to the clients prior to their application and may not have provided such advice to most of them at any time. He did not take personal responsibility for initiating and maintaining the immigration phase of the relationship with clients.

[62] That being the case, it is obvious that Mr X and his colleagues must have provided information or assistance falling within the statutory definition of immigration advice. It is plain that Mr De'Ath did not personally obtain instructions from these clients. Nor did he personally ensure that a written agreement was provided to them with an explanation as to significant matters, before they decided to proceed.

[63] It is apparent that Mr De'Ath's business practice was reliant on Mr X to assist clients with their immigration applications and answer questions in relation to immigration. It was Mr X who initiated the immigration relationship, as the recruitment phase of Cross Country's services merged into the immigration phase.

[64] In discharging his professional obligations, Mr De'Ath was reliant on what he calls template documents. The Tribunal has been sent the "Letter of Engagement and Agreement for Immigration Services" signed by Mr De'Ath and a number of his clients. He is identified as the licensed immigration adviser. The client is referred to the Authority's website for "a full outline of the ethical and professional standards" which Mr De'Ath must adhere to. It sets out the immigration services he will provide, including the preparation and submission of a work visa. It sets out the fees and complaints

[12] Section 5, "clerical work".

procedure. It records that all significant matters in the agreement have been explained to the client. I note that Mr De'Ath's contact details are not recorded.

[65] The letter of engagement is not of itself an adequate discharge of his personal obligations. Indeed, it is woefully inadequate for that purpose. It records that certain obligations, such as the requirement to explain significant matters and a summary of his professional obligations have been done, without actually performing them. In some cases, this document comes too late in the process, being signed after the visa applications have been filed.

[66] Nor is the availability of communications by email and Facebook a sufficient discharge of his professional obligations. In any event, there is no evidence of such communications before or at the time any of these immigration applications were filed.

[67] Mr De'Ath states that he instructed Mr X not to provide immigration services, but Mr De'Ath must have been aware Mr X was doing so. After all, who else did he think was helping these clients with the forms and supporting evidence and therefore necessarily advising the clients in relation to their immigration documents? He knew he had no contact with them.

[68] Counsel submits, in relation to all the charges here, that in a "real world setting", the breaches arose inadvertently in the context of an increasingly busy immigration practice, which was struggling to keep up with serving an essential sector, the dairy industry. Mr De'Ath's compliance protocols did not keep up with the growth of his business.

[69] I acknowledge that these Code violations are to some extent the product of a successful, rapidly growing business. That is particularly so in respect of the complaints concerning Mr A and Mr D, which I will deal with shortly.

[70] The growing pains of Cross Country's business, however, cannot be a justification for a business model which systematically breached the Code. Mr De'Ath put in place an unlawful business structure, whereby he was reliant on unlicensed contractors or staff (both terms are inconsistently used) to deal with the clients in person on immigration matters. The rapid growth of his business is no justification for the breach of his statutory and Code obligations.

[71] Nor do I accept that the breaches are inadvertent. Given the 'on the ground' reality of the clients dealing directly with Mr X and his staff in the Philippines, presumably in their native language of Tagalog, with Mr De'Ath in another country and time zone and available to communicate only in English, he must have known the clients were being

assisted with their immigration forms by Mr X. As noted above, there is no evidence that any of them asked Mr De'Ath any immigration questions before their applications were filed.

[72] However, I do not find that Mr De'Ath deliberately and systematically breached the Code, as I consider it more likely he just overlooked the personal obligations under the Code. He thought it a sufficient discharge of his obligations to identify himself to the clients as the adviser and make certain information available on template forms, with the opportunity of electronic communications. He probably also failed to appreciate just how narrow the clerical work exception is to the broad statutory ambit of immigration advice.

[73] Nor do I find that his breaches of the Code extend to all his many hundreds of clients from the Philippines. That is not alleged. I am dealing only with the 10 or 11 clients that are the subjects of this complaint.

[74] Mr De'Ath accepts he provided immigration services in breach of his statutory and Code obligations. He acknowledges he has been negligent and has breached cls 2(e), 3(c) and 18(a)/(b) of the Code. These heads of complaint are upheld.

[75] The Code violations are raised as alternatives to the negligence charge, but I find all are made out. When it comes to imposing sanctions, however, there will be no double punishment.

(4) Submitting a fraudulent document to Immigration New Zealand in support of an application for a work visa, thereby failing to perform his services with due care and diligence, in breach of cl 1

[76] This concerns Mr A, whose false addendum to an employment agreement, purportedly signed by the employer, was filed by Mr De'Ath with Immigration New Zealand. It was Mr X who dealt with Mr A in relation to this. The "administrative error" explanation provided by Mr De'Ath was rejected by Immigration New Zealand.

[77] The Registrar contends that by filing a fraudulent document, Mr De'Ath did not perform his services with due care and diligence, in breach of cl 1 of the Code. It is alleged that Mr De'Ath, in failing to provide the services directly, did not protect against the risk of a false document being supplied to Immigration New Zealand.

[78] Clause 1 of the Code states:

> GENERAL
>
> 1. A licensed immigration adviser must be honest, professional, diligent and respectful and conduct themselves with due care and in a timely manner.

[79] In his statement of 7 June 2018 to the Authority, Mr De'Ath accepts a failure to exercise due care in relation to Mr A's addendum. In counsel's statement of reply to the Tribunal, it is accepted that Mr De'Ath did not protect the client and himself against the provision of inaccurate information being provided to Immigration New Zealand. Just as important, I would add, Mr De'Ath did not protect the integrity of the immigration system.

[80] There is no evidence, indeed there is no allegation, that Mr De'Ath filed the addendum knowing it to be false.

[81] I uphold this head of complaint. Mr De'Ath did not exercise diligence and due care in filing Mr A's fraudulent addendum with Immigration New Zealand. This is a breach of cl 1 of the Code.

(5) Failing to be diligent and conduct himself with due care, by submitting multiple incomplete visa applications, resulting in the applications being declined and delays for Mr D, in breach of cl 1

[82] Four applications on behalf of Mr D made between February and June 2017 were declined. They were filed by Mr De'Ath as the responsible adviser. An application made on 14 June 2017 was finally approved on 29 June. The earlier ones were declined because complete information was not provided to Immigration New Zealand. This resulted in delays for Mr D in arriving in New Zealand to take up his employment.

[83] Mr De'Ath had previously been informed by Immigration New Zealand that it was his responsibility to ensure that all information and evidence was provided when the application was made.[13] In any event, he would know that as an experienced adviser.

[84] The repeated filing of incomplete applications is a breach of the cl 1 obligation to be professional, diligent and to conduct himself with due care and in a timely manner. It is not excused by his workload. Nor do I accept, as submitted, that this is merely an administrative error. There were repeated failures to provide sufficient evidence to satisfy the visa criteria. That goes to a primary function of the adviser. I uphold this head of complaint.

---

[13] Immigration New Zealand emails to Mr De'Ath, 20 October 2016 and 8 March 2017 concerning other clients.

(6) Failing to ensure client files contain copies of all written communications between the adviser, the clients and other persons, in breach of cl 26(a)(iii)

[85] The Registrar contends Mr De'Ath's client files "appear" to be incomplete. At the Authority's request, 14 files were provided by him. It is alleged they have only limited correspondence with Immigration New Zealand, limited file notes of material oral discussions and limited correspondence with staff in the Philippines assisting the clients in person.

[86] Clause 26(a)(iii) of the Code states:

> FILE MANAGEMENT
>
> 26. A licensed immigration adviser must:
>
> a. maintain a hard copy and/or electronic file for each client, which must include:
>
> …
>
> (iii) copies of all written communications (including any file notes recording material oral communications and any electronic communications) between the adviser, the client and any other person or organisation

[87] The Authority had requested 21 files from Mr De'Ath, but he had been tardy providing 14 of them to Immigration New Zealand. Additionally, he overlooked producing seven.

[88] In his statement of 7 June 2018, Mr De'Ath sets out an explanation for his tardiness, concluding with an offer to provide the missing files. Counsel's letter of the same date to the Authority accepts a breach of cl 26(a)(iii) relying on Mr De'Ath's statement. Counsel's statement of reply to the Tribunal accepts Mr De'Ath overlooked providing parts of the files to the Authority, said to be due to simple errors. There is no admission by Mr De'Ath or his counsel that the files are incomplete. Both seem to have overlooked the substance of this charge.

[89] The obligation in cl 26(a)(iii) of the Code is to have complete files, not to provide them to the Authority. The obligation to provide them on request is set out at cl 26(e), but is not the subject of the charge.

[90] The Registrar's statement of complaint under cl 26(a)(iii) relies on 187 pages of documents from multiple clients, but does not specifically identify any missing document from any particular client file. Indeed, the Registrar may not even be confident that the files are incomplete as it is alleged they do not "appear" to be incomplete.[14]

[91] This head of complaint is not proven. It is dismissed.

OUTCOME

[92] I uphold all the charges against Mr De'Ath, apart from that under cl 26(a)(iii). Mr De'Ath has been negligent and has breached cls 1, 2(e), 3(c) and 18(a)/(b) of the Code.

SUBMISSIONS ON SANCTIONS

[93] As the complaint has been upheld, the Tribunal may impose sanctions pursuant to s 51 of the Act.

[94] A timetable is set below. Any request that Mr De'Ath undertake training should specify the precise course suggested. Any request for repayment of fees or the payment of costs or expenses or for compensation must be accompanied by a schedule particularising the amounts and basis of the claim.

Timetable

[95] The timetable for submissions will be as follows:

(1) The Authority, the complainant and Mr De'Ath are to make submissions by **5 December 2018**.

(2) The Authority, the complainant and Mr De'Ath may reply to any submissions by the other party by **19 December 2108.**

D J Plunkett
Chair

[14] Statement of Complaint, 16 July 2018 at [69]– [70].