IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2019] NZIACDT 48

Reference No: IACDT 031/17

IN THE MATTER	of a referral under s 48 of the Immigration Advisers Licensing Act 2007
BY	**THE REGISTRAR OF IMMIGRATION ADVISERS** Registrar
BETWEEN	**IMMIGRATION NEW ZEALAND (DARREN CALDER)** Complainant
AND	**QING TIAN** Adviser

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 19 July 2019

REPRESENTATION:

Registrar: S Carr, counsel
Complainant: J Ongley, counsel
Adviser: P East QC, C Heaton, S Gunatunga, counsel

PRELIMINARY

[1] The primary allegation against Ms Tian, the adviser, is that she lacked professionalism in refusing to provide English language test results, known as an IELTS certificate, to Immigration New Zealand for five of her residence visa clients. There is also an allegation concerning unprofessional language in communications with Immigration New Zealand.

BACKGROUND

[2] Ms Qing Tian is a licensed immigration adviser. She is a director of Phoenix International Consultancy Group Limited.

[3] The complaint concerns five of her clients, all from China, who sought residence in New Zealand under the skilled migrant category. All had lived and worked here for some years. The issue for Immigration New Zealand was whether their employment met the criteria for skilled employment, as well as their English language ability. To some extent these issues were inter-connected, as skilled employment was one way of satisfying the required English standard.

(Mr Z)

[4] Mr Z applied for residence on 19 August 2014. He had been working in New Zealand as a chef since June 2009.

[5] On 21 January 2015, Immigration New Zealand wrote to Ms Tian advising that Mr Z's English language ability might not meet the required standard. It had been claimed that he met the English criteria through his current skilled employment in New Zealand for 12 months or more, but his position had not been assessed as skilled.

[6] It was noted by Immigration New Zealand that while he had lived in New Zealand since June 2009, he had only worked in Chinese speaking environments. Furthermore, his partner was Chinese so it was likely the home language was not entirely English. Indeed, his partner did not meet the minimum standard of English.

[7] According to Immigration New Zealand, decisions of both the Residence Review Board and the Immigration and Protection Tribunal (IPT) that were quoted in the letter established that the agency retained a discretion to require an IELTS certificate.

[8] The letter stated that Immigration New Zealand required an IELTS report as evidence that Mr Z met the minimum standard of English. The failure to provide a report could result in an assessment that he did not meet the standard.

[9] In response, Ms Tian wrote to Immigration New Zealand on 4 February 2015. She described its assessment as lacking in clarity, merit and substance, as well as misguided and ill-informed. Mr Z's English language ability could be assessed on the basis that he had been involved in skilled employment in New Zealand for a period of 12 months or more. It was therefore not necessary to provide an IELTS certificate as the criteria were met by way of the additional evidence provided. Ms Tian referred to another decision of the IPT.

[10] It was Ms Tian's personal recommendation that it would be beneficial for the immigration officer to liaise with other named officers and to seek guidance in relation to Mr Z's application. These officers could provide a 'heads up' as to acceptable requests for an IELTS certificate.

[11] Two additional character references were provided. According to Ms Tian, they attested to Mr Z's command of English and successful settlement contribution within the community. He had no ongoing difficulties using English to discharge his responsibilities in his skilled employment. He had successfully settled in a small rural township.

[12] Ms Tian asserted that applicants such as Mr Z should not be ridiculed by being subjected to vague and misguided assumptions as outlined in the letter of 21 January 2015. It would be extremely concerning if the application was to be assessed in a manner that did not display the same degree of consistency as occurred previously when she was dealing with the other officers. She referred to two successful applications in respect of other clients.

[13] Ms Tian remained satisfied that Mr Z met the applicable immigration criteria as a chef for skilled employment and that he satisfied the English language component of immigration instructions. If after completing a further review, any valid concerns were raised, they would have to be properly identified so she could prepare a written response. Alternatively, she looked forward to hearing from the officer confident in the knowledge that the criteria had been met and the application approved without further fuss or delay.

[14] On 3 March 2015, Immigration New Zealand wrote to Ms Tian declining Mr Z's application for residence as he did not meet either the skilled employment or English language criteria.

[15] As for the skilled employment criteria, it was noted by Immigration New Zealand he was a chef at a fast food establishment selling fish and chips and Chinese takeaways.

[16] The letter recorded that pursuant to the immigration instructions, an immigration officer could require an IELTS certificate and in such cases the certificate determined whether the minimum standard of English had been met. According to the supporting letter from his English language tutor, Mr Z had some difficulty especially in writing though had improved greatly in speaking and understanding English. That letter stated they had made plans to work together to reach the next stage in his English study.

[17] Mr Z, represented by Ms Tian, appealed the decline of his residence application to the IPT. In its decision on 22 December 2015, the IPT found that Immigration New Zealand had correctly advised Mr Z that his employment was not skilled. It found that full consideration had been given to all the evidence of English language ability before requesting an IELTS certificate. The reasons behind the request for a certificate were clearly documented and conveyed to Mr Z. The request was fair and reasonable. Once requested, the certificate was determinative. Having failed to provide the requested certificate, the immigration instructions allowed no discretion for Immigration New Zealand to do anything but decline the application on the ground that the required English language criteria was not met.

(Mr W)

[18] Mr W applied for residence on 28 April 2015. He had been working in New Zealand as a chef since 2003.

[19] On 5 October 2015, Immigration New Zealand wrote to Ms Tian advising that Mr W's role did not substantially match the description of chef required for skilled employment. He worked at a company which provided Asian food in shopping malls. It was not a dining and catering establishment. His role was more comparable to that of a fast food cook.

[20] According to Immigration New Zealand, an attempt had been made to telephone Mr W to discuss his role and responsibilities but this had been declined by Ms Tian. A request for an interview had also been declined by her. Immigration New Zealand had been unable to establish whether Mr W met the English language requirement for a skilled migrant. A colleague of Mr W had provided his mobile telephone number, so the officer had briefly spoken to him, but it appeared he was unable to hold a conversation with the officer. The employer had advised Immigration New Zealand that his English

was fine for him to perform as a chef and he could communicate with customers and suppliers, but his written skills needed to be improved.

[21] While Mr W had spent some time in New Zealand, it did not appear that his English had risen to the level of a skilled migrant. After considering all the available evidence, Immigration New Zealand had decided to require an IELTS certificate. Based on the information available, it was unlikely his application would be approved if no certificate was produced.

[22] On 30 October 2015, Ms Tian wrote to Immigration New Zealand in reply to the letter of 5 October 2015. She stated that the officer's letter unfortunately had the appearance of engineered premeditated agenda, whereby the officer was desperate to justify a negative outcome. Mr W was in skilled employment. This was not the first occasion that the use of the criteria had highlighted a reoccurring training and competency issue. It was always unfortunate when officers took it upon themselves to reclassify qualified, trained and experienced Chinese chefs as fast food cooks.

[23] According to Ms Tian, Mr W had first arrived in New Zealand in 2003 and since then he had been approved for numerous work visas. There was a recognised long-term shortage of chefs. It was a misguided suggestion that Mr W was employed as a fast food cook. She was confident that the officer's colleagues could provide guidance as to how to properly assess Mr W's employment. A similar skilled migrant application had been approved the previous year for employment in a takeaway outlet.

[24] As for the English language requirement, Ms Tian regarded it as tiresome that she was continually required to enlighten officers from that branch of Immigration New Zealand concerning what constituted a fair and reasonable assessment. Mr W's engagement in skilled employment for a period exceeding 12 months invoked one of the English criteria. She said it would be helpful if the officer confirmed whether he was familiar with the lessons learned by the branch in this regard.

[25] Ms Tian stated in her letter that additional supporting materials were being provided to show Mr W's competency in English. He had continuously resided in New Zealand for 12 years and was successfully settled. Numerous letters of support for his application were being provided, some signed by multiple people. She welcomed Immigration New Zealand's completion of a further assessment and issue of a residence visa to Mr W. If the officer disagreed with her assessment, she requested that the manager contact her directly.

[26] On 16 November 2015, Immigration New Zealand declined Mr W's residence application. There was a concern as to whether his employment was skilled but Immigration New Zealand had been unable to verify this, as his adviser had declined to provide his phone number and had declined an interview on his behalf.

[27] As for Mr W's English language ability, it was claimed he met this as a result of holding skilled employment in New Zealand for 12 months or more, but during verification Immigration New Zealand was unable to establish whether he met the standard. An IELTS certificate requested had not been provided.

[28] It was acknowledged that an officer could on a case-by-case basis consider alternative ways of establishing the standard of English, but the consideration undertaken had raised concerns regarding Mr W. Hence an objective assessment of his English by way of IELTS testing was fair. Without an IELTS test result, Immigration New Zealand was unable to establish whether Mr W met the minimum standard of English. His application was therefore declined.

[29] Mr W appealed to the IPT against the decline of his residence application. He was represented by Ms Tian. The appeal was dismissed in a decision issued on 9 May 2016. The IPT noted that the statements by Mr W's supporters were qualified in relation to his English language ability. The letters from suppliers had not commented on his English language skills. Furthermore, he had been unable to have a short telephone conversation with the officer and had hung up.

[30] The IPT found Immigration New Zealand had been correct to have concerns about Mr W's English language ability and to have requested an IELTS test result. It was correct to decline the application on the basis he did not meet the minimum standard of English. The adviser was wrong in asserting that being in skilled employment in New Zealand for 12 months or more was an alternative means of meeting the minimum standard when there were reasonable concerns about Mr W's ability. It had been reasonable and fair for Immigration New Zealand to request an interview or completion of an IELTS test.

(Mr Y)

[31] Mr Y applied for residence on 17 July 2014. He had been working in New Zealand as a chef since 2011.

[32] On 16 March 2015, Immigration New Zealand wrote to Ms Tian advising that Mr Y's employment at a noodle canteen did not amount to skilled employment. It appeared he was a fast food cook and not a chef.

[33] In respect of his English language ability, it was noted that there were letters of support from those he met in the course of his day-to-day activities at work. While they indicated he had a level of English in a limited context, that was not sufficient for the standard. The officer visited him at work on 13 March 2015 and found that he had difficulty understanding some questions and was unable to provide an answer.

[34] Mr Y was therefore requested to provide an IELTS certificate. While he had claimed he could meet the minimum standard by way of skilled employment for over 12 months, the site visit showed that he experienced difficulties in communication. His work was largely food preparation rather than face-to-face customer interaction, so it appeared that only limited English was required. His native language was not English.

[35] Ms Tian wrote to Immigration New Zealand on 26 March 2015 in reply to the letter of 16 March 2015. She set out why Mr Y met the skilled migrant category. In relation to his English language ability, she said she was passionate about ensuring a correct and fair assessment where an applicant was engaged in skilled employment. She was not in the business of lodging skilled migrant applications which had no chance of success. Mr Y satisfied the criteria by way of his skilled employment. The officer's assessment was a misguided attempt to exert a personal view which was not defendable when measured against precedents and decisions made by other officers.

[36] According to Ms Tian, being assessed as a competent user of English pursuant to the criteria did not require an IELTS certificate. This was only required in the absence of being able to demonstrate successful settlement by way of engagement in skilled employment for 12 months or more or using other evidence. She referred to two successful applications decided by the IPT.

[37] It had been Ms Tian's experience over the years that in response to thoroughly defendable arguments, some immigration officers had committed themselves to disagreeing so as to satisfy their own desire to decline the application. If the officer was entertaining such thoughts, it would be necessary to reassign the application to a manager.

[38] Ms Tian said she remained duly satisfied that the supporting documentation provided showed Mr Y met both the skilled employment and "other evidence" option of the English language criteria. He had already successfully settled and was contributing to New Zealand's economic and social wellbeing.

[39] In her letter, Ms Tian stated that, for reasons which were unexplained, the officer's assessment had failed to accept this assessment pathway. It was not necessary or

appropriate to play along with any form of desperate assessment to perfect an alternative outcome other than approval. The contents of the officer's letter were troubling in that it took on an appearance of predetermining an outcome by way of a premature request for an IETLS certificate. Ms Tian looked forward to finalisation and approval of the residence application.

[40] Immigration New Zealand declined Mr Y's application for residence on 4 May 2015. He had not demonstrated that he met the minimum standard of English. A site visit had identified concerns with his ability to speak and understand English. After reviewing the file, a manager had advised Ms Tian by email that she was satisfied the IELTS request was justified. An IELTS certificate, once requested, was determinative so the application had to be declined.

[41] On Mr Y's behalf, Ms Tian lodged an appeal against the decline of residence with the IPT. It was dismissed on 27 January 2016, the IPT finding that Immigration New Zealand had fairly and properly considered the evidence regarding Mr Y's English language ability. It was noted that at an interview, he had been unable to answer a number of questions because he did not understand them.

[42] The IPT found that Immigration New Zealand had given reasons why the supporting letters and Mr Y's overall circumstances did not satisfy the standard. Those factors were indicators by which Immigration New Zealand might assume the standard was met, but if there were legitimate concerns in a particular case the assumption would be displaced. Immigration New Zealand was correct to decline the application when the IELTS certificate was not provided.

(Mr S)

[43] Mr S applied for residence on 4 June 2015. He had been working in New Zealand as a chef since 2010.

[44] On 12 November 2015, Immigration New Zealand wrote to Ms Tian requesting an IELTS test result for Mr S. It was noted that he had claimed to meet the skilled migrant language requirement through his current skilled employment for 12 months or more. However, when spoken to by the officer on 28 October 2015, he had difficulty understanding the officer's questions which had to be repeated to help him understand. Mr S's wife had interrupted the interview even after being told that the officer needed to speak to Mr S only. The call was terminated as Mr S had been unable to answer the questions and his wife's interruptions had prevented the officer from being satisfied that the answers had been obtained from him.

[45] Immigration New Zealand was not satisfied that Mr S's claimed role as a chef necessitated skill in English. Even if he was required to receive orders, it would appear this was only to comprehend certain items on the menu. The officer was not convinced that Mr S conversed in English at home when he shared a common native language with his family.

[46] Although Mr S had predominantly resided in New Zealand since 2010, the officer was not satisfied that his English language ability had risen to a level that met the skilled migrant requirement. He had not lived or worked in other countries where English was spoken as a first language.

[47] The letters of support only reinforced the concern regarding his language ability. One of the letters stated that Mr S had made a genuine effort to improve his English but had not commented on his ability. Another letter stated that he was doing his best to learn English but again had not commented on his ability. While a further letter stated that he had great communication skills and had no problem discussing work matters with staff, the officer was not satisfied that the matters encountered required skill in English. As a result, in order to fairly assess Mr S's English, he was required to provide an IETLS test report.

[48] On 27 November 2015, Ms Tian wrote to Immigration New Zealand in reply to the letter of 12 November 2015. According to her, the officer's assessment failed to follow the proper guidelines so the findings were invalid. A proper assessment would confirm that Mr S met the minimum standard. The examples provided in the officer's letter were irrelevant. This, when combined with failing to confirm Mr S's points for skilled employment, rendered the assessment incomplete. Mr S had been engaged in skilled employment for a period exceeding 12 months, yet the officer's letter did not confirm this fact.

[49] As full consideration had not taken place, the request for an IELTS certificate was premature and invalid. Furthermore, the letter did not set out justifiable reasons for the certificate. The skilled employment opportunity identified an accepted pathway to meeting the English language criteria. It was not for immigration officers to disguise personal opinions as prejudicial information and what had the appearance of being a premeditated outcome. The requirement to provide an IELTS certificate was not supported by the applicable immigration instructions when applied properly and fairly.

[50] Ms Tian was confident that the two officers named by her would be able to enlighten the officer as to assessing English language ability. She considered it would be beneficial for him to familiarise himself with two approved applications. The

assessment made for Mr S was a serious breach of the administrative law principles of fairness and natural justice, as it did not properly recognise his skilled employment.

[51] In the absence of any concerns being raised with skilled employment or any other aspect of the application, approval of the application was not hindered. As points could be awarded for his skilled employment as a chef, Mr S was able to successfully navigate the English language criteria. In the event that the officer was determined to proceed on the basis outlined in the earlier letter, she requested that he discuss it with his area manager. It was her expectation that the manager would contact her to discuss the assessment.

[52] On 26 January 2016, Immigration New Zealand declined Mr S's residence application as he had not demonstrated that he met the minimum standard of English. The letter repeated much of what was set out in the earlier letter of 12 November 2015. Mr S was employed as a chef in a Chinese takeaway and his circumstances did not indicate a need for competence in English. The telephone interview had identified a concern. While people in the community had stated that he was a competent user of English, this was not sufficient to allay the officer's concerns. Mr S had refused to undertake an IELTS examination, so his application was refused.

[53] An appeal to the IPT, at which Mr S was represented by Ms Tian, was declined on 19 July 2016. The IPT noted that if an officer gave full consideration to all the evidence of English language ability and clearly documented and conveyed to an applicant the reasons why the officer was not satisfied that the evidence established the minimum standard, then the officer could require an IELTS certificate. In such a case, the certificate was determinative.

[54] The IPT stated that the various alternatives outlined in the instructions were not substitutes for the minimum standard of English required, which was an overall IETLS band score of at least 6.5. Such factors were only indicators by which the officer might assume the person met the standard. If Immigration New Zealand had legitimate concerns in the particular case, it would not avail the applicant to point to other pathways because the assumption arising from those provisions would have been displaced.

[55] It was found by the IPT that Immigration New Zealand was right to hold concerns regarding Mr S's English language ability. During the telephone interview with him, he struggled to answer the officer's questions and the circumstances of his employment and home life were not such as to require competence in English. The letters of support established that he was able to communicate in English in certain limited contexts, but they were not sufficient to demonstrate that he met the minimum standard. Immigration

New Zealand was correct to decline the application when the IELTS certificate was not provided.

[56] Furthermore, while Ms Tian had submitted that Mr S met the minimum requirement by virtue of being in skilled employment of 12 months or more, this was not correct. This factor was not a substitute for the minimum standard of English. While an assumption could arise that applicants with such employment met the standard, that assumption could be displaced. In any event, having regard to the concerns arising from the telephone interview, it was unnecessary for Immigration New Zealand to complete the assessment of Mr S's employment before requesting an IELTS certificate.

(Mr F)

[57] A residence application was made by Mr F on 16 April 2015. He had been working as a carpenter in New Zealand since 2005. He had previously made two applications for residence under the skilled migrant category which had been withdrawn when a request for an IELTS certificate was made.

[58] In response to a request by Immigration New Zealand for Mr F's telephone number, Ms Tian sent an email on 26 August 2015 asking for the purpose of this request and to be advised of the questions to be asked.

[59] On 14 September 2015, Ms Tian advised Immigration New Zealand, in response to an officer's request to speak with Mr F directly so he could explain his employment role, that he had set this out in writing. She was satisfied that he had skilled employment in terms of the requirements. Nonetheless, Mr F would welcome the officer visiting him onsite so his level of skill could be assessed.

[60] Immigration New Zealand wrote to Mr F on 12 February 2016 raising concerns about his English language ability and requesting an IELTS test certificate. His contact details had been requested, but had not been provided. The intention of the phone call was to discuss his employment and check his English. The letter set out a long list of factors that had been taken into account in assessing his English ability. While Mr F had resided in New Zealand since 2005, his employer was Asian, he had lived only in China before coming to New Zealand and it was highly likely Chinese was spoken at home. Furthermore, concern had been raised in two previous applications as to his ability in English as a result of interviews and he had withdrawn those applications when an IELTS certificate was requested.

[61] On 22 April 2016, Ms Tian wrote to Immigration New Zealand. Her research had shown there was an organised approach at the agency concerning prospective applicants who, in their expressions of interest, claimed to meet the English language criteria by way of skilled employment exceeding 12 months. Upon lodging their skilled migrant residence application and paying a fee of $ 1,810 (increased to $ 2,470), Immigration New Zealand went to great lengths to ensure that they were not approved by requiring an IELTS certificate.

[62] According to Ms Tian, this was an immigration scam. Immigration New Zealand viciously turned on such applicants to decline the application on the IELTS results alone. The officer had referred to an IPT decision as if Immigration New Zealand had "got the last laugh", yet this decision had highlighted the "absurdity and stupidity of the outcome". It was sad that Immigration New Zealand assessed applications as a "game to play" with no real oversight or understanding of how destructive and abusive its administrative processes had become.

[63] Ms Tian referred in her letter to two other clients who had been declined on English language ability, but where appeals to the IPT had been successful as it had found special circumstances and referred them to the Minister who had granted residence. Those clients had been in New Zealand more than 10 years, were well settled and contributing through skilled employment. It was suspected this outcome would have been a disappointment to the officers who had declined the applications.

[64] As for Mr F, Ms Tian noted that he had been living and engaging in skilled employment in New Zealand since 2005. His special circumstances were obvious. According to his employer, his English was adequate for his day-to-day work. He was a valued member of his employer's staff. There was a critical skill shortage of people with his skills.

[65] Ms Tian contended that Mr F's application could be processed through to an approval without the need to furnish an IELTS certificate. Such a certificate "WILL NOT" be provided. She was wholly confident a residence visa would be issued, even if that took an appeal to the IPT and a recommendation to the Minister to grant residence on the basis of special circumstances.

[66] An assistant area manager wrote to Ms Tian on 4 May 2016 advising that the instructions were not intended as a trap. At the expression of interest stage, the information provided was mainly taken at face value as it was limited. It was only once a residence application was lodged with a much greater depth of information that potential issues were identified. Furthermore, it would be expected that applicants would

be aware of the English language requirement prior to lodging their expression of interest. Having read the officer's letter, the assistant manager noted that reasons had been given as to why the level of English was not satisfactory.

[67] On 10 May 2016, Ms Tian wrote to Immigration New Zealand stating that staff knew which applications were "easy pickings" where no assessment of English language ability was undertaken, but simply a request was made for an IELTS certificate. This amounted to a targeted immigration trap.

[68] In respect of Mr F, Immigration New Zealand was asked by Ms Tian to proceed on the basis of the information held on the file. No IELTS certificate would be provided, as she was satisfied the English language criteria was met by way of skilled employment. In the event that the application was declined, she expected Mr F's employer to request a meeting with the Minister and the deputy chief executive. Mr F had already successfully settled in New Zealand for over 10 years. Ms Tian regarded it as an awfully officious process to go through to achieve a positive outcome.

[69] On 23 May 2016, Immigration New Zealand wrote to Mr F, care of Ms Tian, advising that his application for a residence visa had been declined because he did not meet the minimum standard of English. The letter set out in detail numerous factors that had been taken into account. In particular, he had declared having skilled employment in New Zealand, but the officer was not able to fully assess this as she was not able to contact him. It was uncertain why his contact details had not been made available by the adviser if English communication was not a concern.

[70] Furthermore, Mr F had been interviewed in two previous residence applications and concerns had been raised regarding his English language ability. One interview had been terminated when the officer realised that Mr F was struggling to understand the questions. In both applications, he had not provided an IETLS certificate.

[71] An appeal against the decline of residence to the IPT was made by Mr F. He was represented by Ms Tian. In her submissions in support of the appeal, Ms Tian advised that Mr F did not contest the correctness of Immigration New Zealand's decision, as the appeal focused on his special circumstances.

[72] It was noted by the IPT in its decision dismissing the appeal on 14 November 2016 that Mr F had been living and working in New Zealand for a number of years, but that earlier verification phone calls had raised a legitimate concern that he did not meet the minimum standard of English. This had led to the withdrawal of two previous residence applications when an IELTS certificate was requested. Immigration New

Zealand was entitled to request Mr F's phone number in order to contact him directly and Ms Tian's refusal to comply with a reasonable request was particularly unhelpful. As Mr F failed to provide an IELTS certificate, he did not satisfy the minimum English language requirement, so the decision of Immigration New Zealand was correct. The IPT found no special circumstances.

COMPLAINT

[73] A complaint against Ms Tian was lodged with the Immigration Advisers Authority (the Authority) by Immigration New Zealand (Mr Darren Calder) on 31 May 2016. It alleged that Ms Tian had breached her professional obligations in a deliberate and sustained way over several years. She had systematically misinterpreted immigration instructions regarding the standard of English under the skilled migrant residence category and had unreasonably refused to provide information in breach of the Immigration Act 2009. Her correspondence showed a progressively unreasonable rhetoric and extraordinary level of combatant behaviour.

[74] The Authority wrote to Ms Tian on 17 August 2016 seeking to inspect the client files of Messrs Z, W, Y, S and another person.

Ms Tian's letter to the Authority of 1 September 2016

[75] Ms Tian responded to the Authority's request by providing the files on 1 September 2016.

[76] In her letter, Ms Tian denied all the allegations. She confirmed her commitment to representing migrant interests and being a voice for long term well-settled migrants. She said she came to New Zealand as a migrant herself in 1995 and had started her own immigration consultancy business in 2001.

[77] According to Ms Tian, the complainant had for personal reasons sought to use the Authority as a forum in which to debate issues concerning the English language criteria. She would dismantle the complaint which amounted to a personal attack designed to "shut her up and shut her down".

[78] It had been Ms Tian's goal to achieve the best possible outcome for her clients. Over the years, she had become an advocate for Chinese migrants and especially a voice for chefs. Many of them had become marginalised but they were well-settled long term temporary residents with extended family in this country. It was upsetting for her to see immigration officers making decisions that did not fully appreciate or understand the

high emotion temporary migrants experienced living in New Zealand where they were seeking the long-held immigration dream.

[79] It was noted by Ms Tian that the complaint had not come from her clients but had been inspired by an assistant area manager within Immigration New Zealand. Indeed, not one of her clients had ever made a complaint to the Authority against her.

[80] Ms Tian set out the arguments in support of her interpretation of Immigration New Zealand's English language instructions. According to her, the agency took the fee, $1,890, allowing the applications to be lodged on the basis that the English criteria was met by way of skilled employment. It was only after lodgement that some immigration officers undertook a telephone interview of five minutes under the disguise of verification of skilled employment, in order to determine whether an IELTS certificate would be requested. This could have been done at the earlier expression of interest stage, therefore sparing applicants the cost of lodging the application. It was a matter of fairness and natural justice. It appeared that Immigration New Zealand was not willing to close this revenue stream.

[81] It was accepted by Ms Tian that where an applicant from a non-English speaking country was not onshore and engaged in skilled employment, then invariably it was necessary to meet the English language standard by way of an IELTS certificate. In her view, ad hoc telephone calls to verify English were not permitted, though they could be used to verify skilled employment.

[82] Ms Tian said an internal audit report into one of the branches of Immigration New Zealand had confirmed that a telephone or face-to-face interview could be used to verify an applicant's English language ability, especially where the claim was that the requirement was met through skilled employment. However, if the purpose of the interview was solely to verify English ability then the applicant should be informed of that prior to the interview. Furthermore, it had to be remembered that the officer could not assess language ability through the interview as he or she did not have the required knowledge and skills.

[83] It was asserted that some officers used the IELTS tactic to deliver quick decisions in order to meet an annual target of 300 residence decisions. Ms Tian said she was vocal in her engagement with Immigration New Zealand because these practices were a breach of the principles of fairness and natural justice.

[84] On the other hand, said Ms Tian, there were immigration officers who verified skilled employment by way of an employer questionnaire and when satisfied, they

accepted that the minimum standard of English was met. In such cases, no telephone call was made by the officer. Unfortunately, no such examples had been provided to the Authority by Immigration New Zealand, but she was able to refer to certain cases which were listed in her letter. Immigration officers could also ask for additional evidence in the form of letters from fellow workers or suppliers attesting to an ability to engage in conversation for the purpose of discharging their skilled employment. She noted certain examples of approvals for such applicants.

[85] While it was being alleged that she was endeavouring to mislead her clients, Ms Tian was of the view that she had been misled by Immigration New Zealand as different officers made the outcome of applications a lottery. She believed it would become clear to the Authority that the complaint lacked balance, perspective and fairness in regard to issues in which she had been actively engaged with senior management of Immigration New Zealand. The examples used in the complaint were out of context in terms of the wider issues relating to the English language criteria and the selective practice of some immigration officers of requiring IELTS results, despite the opportunity to consider other pathways.

[86] Ms Tian noted in her letter to the Authority that there had been two recent decisions of the IPT where she had successfully appealed. The IPT had found special circumstances and made a recommendation to the Minister to grant residence as an exception to immigration instructions. The Minister had approved the applications. The residence visas for these two successful appeals had been issued from the same branch where the officers had worked hard to justify decisions declining the two applications. She subsequently worked harder to ensure a fair and just outcome regardless of the debate regarding English language ability.

[87] Some of her clients sought residence visas through an appeal to the IPT. The decisions made by the Minister confirmed his understanding of the personal circumstances that temporary migrants faced, unlike some front-line immigration officers whose objective was focussed on how quickly they could decline an application after making a request for an IELTS certificate. Some of those officers did not even consider other factors such as skilled employment or “other evidence”. Her clients were not just off the plane but were settled families who had often purchased a home and had children at school. Some were prevented from realising their immigration dream due to the vagaries and inconsistencies of Immigration New Zealand’s policies.

[88] The correspondence Ms Tian had made available would verify her passion and commitment. She travelled up and down the country to personally meet her clients, learn their stories, know their journeys and understand their hopes and aspirations. She was

concerned that immigration officers requested a client's telephone number to assess whether an IELTS certificate should be required without considering other pathways in the English language criteria. In many instances, clients did not want to engage directly with the officers.

[89] According to Ms Tian, the complaint did not acknowledge those applications where she had successfully represented clients without an IELTS certificate when in all likelihood they would not have achieved the requisite score.

[90] The complaint appeared to her to be a response to her vocal and passionate concern about migrant interests and issues. It should be dismissed at an early stage. It was personal and the issues were not properly or fairly disclosed in a balanced manner. There was a much larger issue here and no question existed as to whether she had misled or misrepresented her clients.

[91] It was noted by Ms Tian that chefs were on the long-term skills shortage list and played an important role in promoting New Zealand as a preferred tourist destination. Her clients came from around the country, as they had heard of her work. She had a very good reputation in the Chinese community as one of the best advisers. The issue had much to do with the cultural divide in New Zealand and the stereotyping of certain types of migrants. Chefs were a vital part of our economy, yet when they applied for residence they were targeted and humiliated by some immigration officers in regard to their English language ability.

[92] Ms Tian noted that the complaint referred to the application of Mr Y. While Immigration New Zealand did not accept that Mr Y's position as a chef at a noodle canteen was skilled employment, it had accepted an identical position in another provincial city as skilled. This confirmed the inconsistent decision making of Immigration New Zealand.

[93] In her letter, Ms Tian referred to a complaint she had herself lodged with Immigration New Zealand which appeared to coincide with the counter complaint made by the agency against her. It appeared that managers were plotting to silence her victory by using an unprecedented complaint to the Authority amounting to a personal attack. It was an abuse of power by Immigration New Zealand to launch such an attack.

[94] Ms Tian described herself as a knowledgeable and capable adviser. She was not afraid to stand up and represent her clients' interests with passion and belief. An assistant area manager with the support of an area manager, both of whom did not like her, had planned and executed the complaint. On occasion, she has been subjected to

dishonest decision-making outcomes simply because the client was represented by her. Such behaviour had hardened her character in terms of dealing with Immigration New Zealand. She regretted on occasion using a strong tone in email communications, but when considered against the backdrop in which she operated this was unfortunately a by-product of being passionate about achieving fair and just outcomes.

Ms Tian's response to the Authority of 27 February 2017

[95] A further email was sent to the Authority by Ms Tian on 27 February 2017. She described the complaint by Immigration New Zealand as misleading, prejudicial, biased and dishonest. It was a personal attack and was readily dismissible as a rogue piece of work.

[96] According to Ms Tian, the ad hoc informal telephone interviews were conducted by immigration officers to assess English language ability, but they were not trained to conduct such assessments. They were being undertaken in breach of Immigration New Zealand's own internal guidelines and of the residence instructions.

[97] It seemed to Ms Tian that between 10,000 to 25,000 resident class visas could have been issued in error over the last five to seven years due to the vagaries of interpretation of the English language requirement. It was clear from her engagement with senior officials of Immigration New Zealand that the variable outcomes had contributed to English criteria changes. While she was working tirelessly with senior officials at the national office of Immigration New Zealand to obtain clarity around the English criteria, some disgruntled officials from a particular area office were without just cause engaging in a desperate attempt to destroy her. She had been the subject of a witch hunt initiated by an assistant area manager who clearly did not like her and who had combined in a tag team with the area manager. They had raised a complaint as an act of revenge and hate.

Ms Tian's letter to the deputy chief executive of 31 March 2017

[98] On 31 March 2017, Ms Tian wrote to the deputy chief executive (immigration) of the Ministry of Business, Innovation and Employment, with copies to other senior officers of Immigration New Zealand (including Mr Calder, the complainant manager in this complaint). The letter was 60 pages in length. It concerned the complaint made to the Authority by Immigration New Zealand.

[99] According to Ms Tian, the complaint relied on “alternative facts” and a “selective analysis” and was a deliberate effort to mislead the Authority. It was an attempt to “shut [her] up and shut [her] down”.

[100] Ms Tian set out at length her interpretation of the immigration instructions, together with her analysis of 104 skilled migrant applications. Immigration officers did not have the required knowledge or skills to conduct English language assessments over the phone. Immigration New Zealand’s own statement had confirmed that residence could be approved without providing an IELTS certificate, where the applicant had held skilled employment in New Zealand for 12 months or more. It had become a case of whether the assessing officer “liked you or not”. There was a fine line between discretionary judgement and corruption in terms of inconsistent outcomes being delivered on the whim of an officer.

[101] It was asserted by Ms Tian in the letter that the objective of the complaint was personal and revenge motivated. It sought to blame her for poorly worded instructions. It had been manufactured in a desperate attempt by two managers to have her licence cancelled, given her success. The complaint had been written with malicious and malignant intent. She believed she would have to go to the Ombudsman and/or the State Services Commissioner for justice to prevail. It was a narrowly selective, misleading, prejudiced, biased and dishonest account of her engagement with Immigration New Zealand. It constituted a hate crime against her.

[102] Ms Tian pointed out that the instructions had been changed as a result of announcements by the Minister of Immigration on 11 October 2016. Informal telephone interviews by officers were no longer permitted, as an IELTS certificate was now required at the time of lodgement of the skilled migrant residence application. If it was not provided, the application would not be accepted for assessment. This was the development envisaged by her letter of 1 September 2016 to the Authority. The Minister’s announcement was in part based on the sampling exercise initiated as a result of her earlier meeting with the deputy chief executive on 2 July 2015.

[103] The “comments/groans/moans” against her were a sign of jealousy and unprofessional conduct from the managers concerned. Any failure on her part to provide Immigration New Zealand with an IELTS certificate upon request was not a breach of her professional obligations. It did not hinder or obstruct the assessing officer from making an informed decision. Fortunately, the unacceptable lottery had been shut off by the Minister’s October 2016 announcement.

[104] Despite the announcement, Ms Tian accepted she was required to respond to the complaint. Far from being negligent, her letter of 1 September 2016 conclusively verified her ability, commitment and professionalism. The act of revenge from the branch managers to "take [her] out with a king hit" was a classic "*David v Goliath*", where David won. It was a cowardly, vile and vindictive act that was readily shamed. The complaint was prepared by way of an "OIA Black Op" whereby records were not made or were kept secret.

[105] The complaint would be fully exposed before the Tribunal as a hate crime, a personal attack and a corrupt document. This would reflect poorly on Immigration New Zealand. She prided herself on being confident and professional in her dealings with her clients and officials from Immigration New Zealand, as she sought to achieve positive outcomes.

[106] Ms Tian asked the deputy chief executive and other addressees of the letter whether they were satisfied it was a genuine complaint from the two managers. The objective of the complaint was nasty and evil. She requested that the Authority be advised of the deceit by the managers in the complaint document, thereby allowing it to be dismissed. The complaint showed the hatred of the managers towards her, as they sought to bring about financial harm and the destruction of her career and reputation. She asked that all of her applications be transferred out of the particular branch.

[107] The complainant immigration manager wrote to Ms Tian on 26 April 2017, replying to the letter of 31 March 2017 to the deputy chief executive. He advised that the complaint would not be withdrawn, but that it was not appropriate to respond to the allegations in her letter.

Ms Tian's letter to the Authority of 16 May 2017

[108] On 16 May 2017, Ms Tian sent an email to the Authority attaching a copy of her letter of 31 March 2017 to the Ministry's deputy chief executive, as well as the response from Mr Calder of 26 April 2017.

[109] According to Ms Tian, the response was somewhat underwhelming. She was the only adviser to have a complaint against her for an alleged breach of s 344(a) of the Immigration Act 2009 since the introduction of compulsory licensing.

[110] The allegations against her were false and lacked credibility but were nonetheless serious and of concern as they were a "hate crime" against her. Ms Tian was confident that the information she would receive in response to another letter to the deputy chief

executive would totally and finally discredit the complaint. It was a misleading, prejudiced, biased and dishonest account of her engagement with officials from Immigration New Zealand. It would be shown that she had not breached her professional obligations or any legislation.

[111] Ms Tian confirmed for the record that she had never been involved in a case involving fake IELTS certificates nor had she ever been the subject of an investigation involving professional wrongdoing on her part.

Ms Tian's letter to the Authority of 31 May 2017

[112] On 31 May 2017, Ms Tian wrote again to the Authority. She maintained that her approach to the instructions was correct, so she was unsure of the basis of the complaint advanced against her.

[113] A sampling exercise undertaken by an immigration manager also supported the conclusion that the complaint against her was not representative, but was a misleading account of her engagement with senior officials. It was not clear why the complaint failed to document various sampling exercises undertaken by Immigration New Zealand.

[114] It was a fair conclusion that where an applicant declared he or she met the English language criteria by one of the "proxies" outlined in the expression of interest form, such as skilled employment in New Zealand for 12 months or more, then Immigration New Zealand had no reasonable cause to request additional evidence in the form of an IELTS certificate. It could be confirmed that applicants represented by her had been required to provide an IELTS certificate regardless of which proxy had been declared. It was clear from the released documents that inconsistent decisions were being made by immigration officers.

[115] This was an unacceptable situation so it was unclear why Immigration New Zealand had made a complaint solely against her. That was particularly so given that she had tirelessly raised her concerns with senior immigration officials. The complaint was without precedent in terms of the motives of Immigration New Zealand, given that there was simply a difference of opinion relating to the interpretation of the English language criteria with one assistant area manager.

[116] The Authority formally notified Ms Tian of the complaint and set out the details on 23 June 2017. Her explanation was requested. In another letter on the same day, the Authority required her to produce a copy of her client file for Mr F.

Ms Tian's email to the Authority of 21 July 2017

[117] Ms Tian sent an email to the Authority on 21 July 2017. She advised she was bringing together a suitable response to the allegation that she was incompetent for failing to understand that each skilled migrant applicant had to demonstrate, prior to lodging the application, that the IELTS standard had been obtained. This had only been the case since 12 October 2016. It appeared the investigator was suggesting that Immigration New Zealand had approved 10,000 or more residence visas in error. She believed this was the largest failure at Immigration New Zealand in the past nine years, which would constitute grounds for an independent inquiry. Ms Tian asked whether the investigator had alerted the State Services Commissioner. She regarded the complaint as a form of criminal harassment.

Ms Tian's letter to the Authority of 3 August 2017

[118] In her letter of 3 August 2017 (of 48 pages in length) responding to the formal notification of the complaint and requesting an explanation, Ms Tian advised that she rejected the complaint in full. She set out in detail her reasons for rejecting each head of complaint.

[119] The Authority was accused of backing up Immigration New Zealand in the establishment of the complaint "under any circumstance". Furthermore, now that new grounds had been added, she thought she must be "so hated" at Immigration New Zealand and the Authority. It was very unfair to add to the complaint. It was a personal act of revenge.

[120] The Authority's investigator should interview the deputy chief executive, the complainant manager and another named officer of Immigration New Zealand. The investigation was a desperate act and suggested that the issues were beyond the investigator's comprehension. The selective reference to extracts from her letter to the deputy chief executive was an effort to assist a colleague's complaint.

[121] The investigator had not adequately addressed the fundamental policy issue and management failure at Immigration New Zealand, including casual racism against her and an "OIA Black Op" behind the compilation of the complaint. He had not assessed whether 95 of 98 skilled migrant cases had been correctly determined. Nor had he assessed why a complaint about this particular provision of immigration instructions was relevant today, given the change to those instructions.

[122] According to Ms Tian, if she responded to the complaint and provided comment uncomplimentary of Immigration New Zealand, then it was alleged she was unprofessional. The investigator was eager to please his colleague at Immigration New Zealand. He was acting as a censor of her comments and perverting her freedom of speech and her right to reply to false allegations. She stood "100%" by her comments in her letter to the deputy chief executive. The complaint was a misleading, dishonest, prejudiced and biased account of her dealings with Immigration New Zealand.

[123] The very reason the immigration instructions had been changed was due to the fact that applicants did not have to demonstrate they could obtain an IELTS test result of 6.5 in order to be approved, particularly where the applicant could be assessed under one of the other available proxies.

[124] Unless the investigator had personally interviewed those behind the complaint, he had no grounds to reject her allegations of "a racially motivated hate crime" or "lynch mob". To be able to undertake an appropriate assessment of the complaint, it would be necessary to investigate the management failure and inconsistent decision making of Immigration New Zealand.

[125] Ms Tian set out her interpretation of English language criteria, which the investigator did not understand. The failure to provide the IELTS certificate did not impede the immigration officer from completing the assessment, since all the applications had received a final outcome.

[126] Immigration New Zealand did not want an ethnic Chinese adviser representing Chinese citizens to be afforded a legitimate pathway via the proxies in the instructions. She had been a licensed immigration adviser since the inception of compulsory licensing in 2009 and had assisted thousands of applicants. She was not incompetent, given some of the successful clients she had represented.

[127] As for the request on 17 August 2016 to provide the files for the named clients, this was unreasonable. According to Ms Tian, the complaint was:

> … carefully planned in such a manner that its aim and intent was to bring [her] maximum havoc and destruction by [way] of presenting [her] with an overwhelming workload aimed towards destroying [her].

[128] Ms Tian confirmed unequivocally that she had no interest in being part of a dishonest game for the amusement of the investigator's colleagues at Immigration New Zealand. She did not have time to waste providing file after file until fault was found with her work. She would not be providing any further files to the Authority. The investigator could obtain them from Immigration New Zealand.

[129] It was noted by Ms Tian that none of the clients had made a complaint against her. They were satisfied with the quality of her work.

[130] In summary, Ms Tian regarded the complaint as dishonest and an abuse of power by those behind it. She set out her criticisms of the named manager said to be behind the complaint, repeating her accusation that it was a plan of revenge to settle a personal score.

[131] Nonetheless, Ms Tian said she had taken on board a learning opportunity from the experience. Her tone in some communications might have been strong, for which she apologised. This was due to the frustration from the inconsistent decision making and the manner in which the applicants were being sold false hope.

[132] It was unclear to Ms Tian why the Authority was seeking to punish her for identifying failures in the management of the earlier version of the English language criteria, prior to being changed by the Minister of Immigration in October 2016. The Authority was urged to dismiss the complaint or refer it to the Tribunal.

Complaint referred to Tribunal

[133] The Registrar of Immigration Advisers (the Registrar), the head of the Authority, filed a statement of complaint with the Tribunal on 4 October 2017. He has referred to the Tribunal the following possible breaches by Ms Tian of the Licensed Immigration Advisers Code of Conduct 2014 (the Code):

(1) failed to meet her obligation to apply the immigration instructions correctly and with due care and to act professionally, in breach of cl 1;

(2) refused to comply with a request for the contact details of clients, refused to facilitate interviews, failed to lodge IELTS test results when requested, thereby failing to comply with the operating requirements of Immigration New Zealand, in breach of cl 10(b);

(3) communicating with Immigration New Zealand in a way which is inconsistent with her obligation to be honest, professional, diligent, and respectful, in breach of cl 1; and

(4) refusing to provide full client files for each file requested by the Authority, in breach of cls 3(c) and 26(e).

JURISDICTION AND PROCEDURE

[134] The grounds for a complaint to the Registrar 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.

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

[136] 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] It has been established to deal relatively summarily with complaints referred to it.[3]

[137] 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.[4]

[138] The sanctions that may be imposed by the Tribunal are set out in the Act.[5] The focus of professional disciplinary proceedings is not punishment but the protection of the public.[6]

[139] 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.[7]

[140] The Tribunal has received from the Registrar the statement of complaint, dated 4 October 2017, together with the supporting documents.

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[1] Immigration Advisers Licensing Act 2007, s 45(2) & (3).
[2] Section 49(3) & (4).
[3] *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].
[4] Section 50.
[5] Section 51(1).
[6] *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citation omitted).
[7] *Z v Dental Complaints Assessment Committee* at [97], [101]–[102] & [112].

Statements of reply of 27 and 31 October 2017

[141] There is a statement of reply from Ms Tian, dated 27 October 2017. In the attached submissions, she repeats her accusation that the complaint is a personal act of revenge and a misleading account of her engagement with Immigration New Zealand.

[142] Ms Tian states that the papers presented to the Tribunal are a "selective discordant sample" of those she had provided to the Authority. She would make the missing papers available since they discredited the statement of complaint. The two named officers were seeking revenge for her success achieved over them in an immigration setting. Ms Tian sets out the nature of her success over each of them. They were working "in relative secrecy on a 'black op' complaint" against her.

[143] Ms Tian sets out the arguments in support of her interpretation of the English criteria and how it had been misapplied by Immigration New Zealand. Certain "selected 'favourite advisers' … predominantly Caucasian" had been favoured. But she was an "Asian adviser and regarded as a 'rat'" by one manager and was more likely to be required to provide an IELTS certificate.

[144] According to Ms Tian, she had achieved her goal of forcing changes to the English criteria, announced by the Minister of Immigration in October 2016, but now had to defend herself at the Tribunal. This was no different to being in a torture chamber for the amusement and pleasure of the named managers. She was aware that many Chinese applicants for residence were moving away from Asian advisers to Caucasian advisers, as it had become known in the Chinese community they would have more chance of success. Foreign immigration advisers were not equals on ability or commitment, but were differentiated by ethnicity. The complaint itself, "***Calder v Tian***", was also "***Caucasian v Asian***".

[145] It is submitted that public sector officials are seeking to use the machinery of government to exert control over individuals to the detriment of that individual, this being done for the personal pleasure and amusement of the official. This is a serious act. The Ministry of Justice should not be manipulated in this way. Notwithstanding that, she would continue to work in a positive and professional manner with senior leaders at Immigration New Zealand to achieve better outcomes for marginalised migrants.

[146] Ms Tian reviews every head of complaint and denies them all. She says she is professional and capable in her approach to being an adviser.

[147] When her clients were not treated with integrity, respect, fairness and natural justice, and were denied their legitimate expectations, this personally wounded her. The Minister's announcement in October 2016 verified the serious problem that previously existed and the inconsistent application of the English criteria.

[148] It is accepted by Ms Tian that she had not made available to the Authority full copies of all client applications, but instead the relevant material. She did make available one complete file, along with considerable additional material. The request to produce the six files was a form of harassment. She seeks to have this matter dismissed on the basis it is "inconsequential to the nature and motive of the complaint".

[149] It is contended by Ms Tian that, while the Authority is independent of Immigration New Zealand and on the surface assesses complaints, it is under the umbrella of the Ministry of Business, Innovation and Employment, so the assessment is really a continuation of the Immigration New Zealand's complaint. This is like passing the baton in a relay race. Her arguments had by and large been ignored by the Authority.

[150] Ms Tian acknowledges that her letter of 31 March 2017 to the deputy chief executive was in part a display of raw emotion and frustration, but it exposed the complexities of the complaint against the backdrop of a difficult working relationship with two officers from a particular branch. It was disappointing that the Authority's investigation could not see through the complaint. Selective comments to the deputy chief executive had been taken out of context. She totally rejected the accusation of impugning the professionalism of Immigration New Zealand. She was proud of the work she had done bringing clarity to the seriousness of the issues.

[151] According to Ms Tian, the Authority had not understood one word or reviewed one comment she had made to discredit the complaint. It was the ongoing inconsistent application of the English criteria by immigration officers that she had persisted in rectifying, only to find herself the subject of a surprise complaint compiled in secrecy as an act of revenge.

[152] The Tribunal is urged to dismiss the complaint.

[153] In a second statement of reply of 31 October 2017, Ms Tian sent more documents and added further witnesses whose testimony she sought at the oral hearing.

[154] In addition to the statements of reply, Ms Tian sent numerous emails to the Tribunal attaching additional documentation.

Ms Tian's letter to the Tribunal of 6 April 2018

[155] On 6 April 2018, Ms Tian wrote to the then Tribunal chair. According to her, it was unfortunate the Authority did not undertake any comparative analysis of Immigration New Zealand's inconsistent interpretation of the English language criteria. The appeals to the IPT would show that the complaint was a personal act of revenge by two named officers.

[156] A few appeals presented by "Caucasian advisers" showed that their skilled migrant applications were "more likely waived through the proxy … (skilled employment in NZ for 12 months or more) without having to provide an IELTS certificate." They received "white privilege rights". Whereas for non-Caucasian advisers, a request for an IELTS was made.

[157] Ms Tian named eight licenced advisers whom she stated were presumably guilty of the same acts of incompetence as her in lodging futile skilled migrant applications where they were not able to achieve an IELTS score of 6.5. If there was no complaint against them, then it verified that the complaint was a personal act of revenge against her.

[158] The Authority did not interview any of the officers from Immigration New Zealand identified by her, which would have given valuable insight into the dark and personal motivations of those behind the complaint.

[159] Nor was it appropriate for public officials seeking revenge, because they did not like her, to use the complaint process as a weapon of oppression. The named officers were using the process to bring actual and real harm to her, as a result of malice. They were seeking to persecute her psychologically, financially and personally as an act of revenge, so a Police investigation was not beyond question.

[160] The sheer scale of the complaint brought disruption to her business and family, so bringing laughter to the named officers. The complaint had been made to destroy her successful career of building positive professional relationships with Immigration New Zealand officials.

[161] According to Ms Tian, the Registrar of the Authority (now former Registrar) had colluded with Mr Calder, the complainant. This was an abuse of process.

Minutes issued by the Tribunal

[162] The Tribunal (Mr Pearson) issued a Minute on 10 April 2018 advising Ms Tian that a preliminary evaluation of the material disclosed a very serious complaint.

[163] The Minute stated that Ms Tian had failed to answer the complaint and had compounded the situation with an attack on Immigration New Zealand which lacked factual support. She was alleging a corrupt conspiracy by Immigration New Zealand officials and that, in essence, the evidence before the Tribunal was fabricated. No basis for these wholly implausible assertions had been presented. If an adviser made false allegations of official corruption, their removal from the profession was a likely consequence.

[164] The Tribunal was not satisfied there was any justification for an oral hearing or the issue of any summons. It required an affidavit from all witnesses who would give evidence, together with the documentary material on which they relied. If any witness would not provide an affidavit voluntarily then Ms Tian was to provide a statement of the evidence she believed the person would give and a supportive affidavit from her, together with the documentary evidence in support. If the Tribunal considered it necessary, it would convene an oral hearing and summons witnesses.

[165] Counsel for Ms Tian filed a memorandum with the Tribunal on 2 May 2018. Ms Tian wished to place on record her apology for allegations made against Immigration New Zealand. She did not call into question the professional integrity of the agency or its officers. Her comments were made out of frustration with the interpretation of immigration instructions and her desire to accurately represent clients in a stressful time of their lives. She acknowledged the Tribunal's discretion to determine the matter on the papers or by an oral hearing and would abide the Tribunal's decision as to the procedure.

[166] A further Minute was issued on 4 May 2018 adjusting the timetable for providing evidence.

[167] Ms Tian sent to the Tribunal on 24 May 2018 a copy of a letter she had received from Immigration New Zealand in response to a request for information under the Official Information Act 1982.

[168] In a Minute issued on 25 May 2018, the then Tribunal chair recorded that he had been approached at a meeting of the New Zealand Association of Immigration Professionals by a person who endeavoured to make observations regarding the merits of the complaint, purportedly on behalf of Ms Tian. He further recorded that the Tribunal would not accept simultaneous representation by both an agent and a lawyer.

[169] On about 12 June 2018, counsel confirmed that he was representing Ms Tian.

[170] Counsel for Ms Tian produced a formal response to the statement of complaint on 22 June 2018, with extensive supporting materials. Counsel's submissions are considered later.

Apology from Ms Tian

[171] Ms Tian wrote a letter of apology on 22 June 2018 to the Tribunal (Mr Pearson).

[172] Ms Tian explained that, having engaged counsel, she had the opportunity to reflect on the complaint and the manner in which she had dealt with it. She greatly regretted not engaging counsel earlier.

[173] While shocked by the allegations, Ms Tian acknowledged she should never have responded by lashing out in the way she did. She apologised for suggesting the complaint might have been racially motivated or an exercise of personal revenge and for attacking the professionalism and integrity of Immigration New Zealand staff. She withdrew those remarks without reservation and was particularly sorry for personalising those comments to individual officers.

[174] It was accepted by Ms Tian that it was foolish to deal with the complaint herself and that she had lost objectivity. She had not taken the complaint seriously enough. However, the complaint was selective and unfair. She had operated successfully in the field for more than 18 years and remained a popular and sought after adviser.

Response from Immigration New Zealand

[175] On 19 July 2018, counsel for Immigration New Zealand filed a response both to the complaint and to the adviser's response.

[176] It is pointed out that Ms Tian's apology for her correspondence with Immigration New Zealand is at odds with the conclusion in her statement of reply (22 June 2018 at [100]) that she "[a]cted professionally in correspondence with INZ". Immigration New Zealand disagreed with the latter statement. There were many examples over a prolonged period of time in which her correspondence with the national office and the processing staff was not conducted in a professional manner.

[177] Nor was it accepted that frustration caused by the complaint excused her serious accusations against numerous staff of Immigration New Zealand.

[178] It was only after the Tribunal had raised the seriousness of Ms Tian's allegations and suggested that, if she could not make them out, her licence might be at risk, that she withdrew the allegations.

Request for oral hearing

[179] In her statements of reply, Ms Tian requests an oral hearing, so she can present her argument in person. She identifies 12 officers, 10 from Immigration New Zealand and two from the Authority, who should give evidence. She sets out briefly the claimed connection each witness has with the complaint.

[180] In the Tribunal's Minute of 10 April 2018, the then chair stated he was not satisfied there was any justification for an oral hearing. He required Ms Tian to provide an affidavit from each witness she proposed would give evidence, or at least a statement of the evidence she believed they would give, as well as a supporting affidavit from her. The documentary evidence relied on for each would also have to be provided. Ms Tian was also invited to produce submissions in support of the request for an oral hearing.

[181] Ms Tian did not provide the affidavits or statements, nor any further submissions in support of an oral hearing.

[182] What was produced were comprehensive submissions from her counsel on 22 June 2018. Counsel makes no submissions in support of an oral hearing. Indeed, on 2 May 2018, counsel merely advised that Ms Tian would abide by the Tribunal's decision on procedure.

[183] In accordance with s 49(3) of the Act, complaints are usually heard on the papers. However, the Tribunal does have a discretion in s 49(4) to request any person to appear to make a statement or explanation in relation to the complaint.

[184] The Tribunal has received six full lever-arch files of documents, most from Ms Tian. It does not require any further explanation from any person. It regards the complaint as much more narrowly focussed than does Ms Tian. The circumstances of those five applications and the subsequent conduct of Ms Tian in response to the complaint itself are well explained by the documents already produced. Additionally, the Tribunal understands Ms Tian's arguments to the extent relevant to the complaint. Oral submissions would not assist the Tribunal.

[185] The request for an oral hearing is declined.

ASSESSMENT

[186] The Registrar relies on the following provisions of the Code:

> **General**
>
> 1. A licensed immigration adviser must be honest, professional, diligent and respectful and conduct themselves with due care and in a timely manner.
>
> **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.
>
> **Professional relationships**
>
> 10. A licensed immigration adviser must:
>
> …
>
> b. comply with the operating requirements of Immigration New Zealand
>
> …
>
> **File management**
>
> 26. A licensed immigration adviser must:
>
> …
>
> e. maintain each client file for a period of no less than 7 years from closing the file, and make those records available for inspection on request by the Immigration Advisers Authority, and
>
> …

[187] The first and second heads of complaint are linked. They both arise from Ms Tian's interpretation of Immigration New Zealand's immigration instructions, or policy as the instructions were previously known.

(1) Failed to meet her obligation to apply the immigration instructions correctly and with due care and to act professionally, in breach of cl 1

(2) Refused to comply with a request for the contact details of clients, refused to facilitate interviews, failed to lodge IELTS test results when requested, thereby

failing to comply with the operating requirements of Immigration New Zealand, in breach of cl 10(b)

[188] The immigration instructions regarding English language requirements that were applicable from July 2011 are as follows:

> **SM5.5 Minimum standard of English language for principal applicants (25/07/11)**
>
> a. Applications under the Skilled Migrant Category must be declined if the principal applicant has not met the minimum standard of English.
>
> b. Principal applicants under the Skilled Migrant Category meet the minimum standard of English if they provide a Test Report Form (no more than 2 years old at the time the application is lodged) from the International English Language Testing System (IELTS), showing they achieved an overall band score of at least 6.5 in the IELTS General or Academic Module.
>
> c. Notwithstanding (b) above, a visa or immigration officer may, on a case by case basis, consider the following as evidence of the principal applicant meeting the minimum standard of English if:
>
> i. they provide evidence that their recognised qualification(s):
>
> - was gained as a result of a course or courses of study in which English was the only medium of instruction; and
> - (if that qualification was gained in New Zealand) the qualification had a minimum completion time of at least two years or it is a post-graduate qualification and the applicant has an undergraduate qualification that qualifies for points; or
>
> ii. they have current skilled employment in New Zealand for a period of at least 12 months that qualifies for points (see SM7); or
>
> iii. they provide other evidence which satisfies a visa or immigration officer that, taking account of that evidence and all the circumstances of the application, they are a competent user of English. These circumstances may include but are not limited to:
>
> - the country in which the applicant currently resides;
> - the country(ies) in which the applicant has previously resided;
> - the duration of residence in each country;
> - whether the applicant speaks any language other than English;
> - whether members of the applicant's family speak English;
> - whether members of the applicant's family speak any language other than English;

- the nature of the applicant's current or previous employment (if any) and whether that is or was likely to require skill in English language;

- the nature of the applicant's qualifications (if any) and whether the obtaining of those qualifications was likely to require skill in the English language.

d. In any case, a visa or immigration officer may require an applicant to provide an IELTS certificate in terms of paragraph (b). In such cases, the IELTS certificate will be used to determine whether the principal applicant* meets the minimum standard of English.

Note: Full consideration must be given to all evidence of English language ability provided before a decision to request an IELTS certificate under SM5.5(d) is made. If an IELTS certificate is requested the reason(s) behind the decision must be clearly documented and conveyed to the applicant.

[189] These heads of complaint concern the visa applications of five clients, Messrs Z, W, Y, S and F.

[190] Ms Tian contests Immigration New Zealand's interpretation of the instructions. Her focus is on SM5.5.c.ii. which enables applicants to meet the minimum required English standard by virtue of skilled employment in New Zealand for a period of 12 months or more. She also relies on SM5.5.c.iii. enabling applicants to meet the standard by producing "other evidence", notably of being competent users of English through successful settlement in New Zealand. This might include evidence from the employer, work colleagues, customers, members of the community or of family members who speak English.

[191] However, as the IPT has made clear in numerous decisions, not just those concerning the five clients at issue here, the standard is set at SM5.5.b. It is an overall IELTS score of 6.5. It is possible, on a "case by case basis", for immigration officers to accept that the standard is met by skilled employment or other evidence, but if the officers have any concerns they are entitled to insist on an IELTS test report. Once they do so, that objective IELTS report becomes determinative (see particularly SM5.5.d.).

[192] Ms Tian's counsel, in his submissions of 22 June 2018, points out that Ms Tian has practised as an adviser since 2001 and has been licensed since the inception of the regime in 2009. In that time, she has represented hundreds of skilled visa applicants, the vast majority of whom were approved. Many had achieved the English requirement by demonstrating skilled employment in New Zealand for more than 12 months.

[193] Counsel adds that prior to the present complaint, Ms Tian had never had a complaint made against her. Nor has she ever had a complaint by a client at any time.

[194] Furthermore, Ms Tian has continuously raised with Immigration New Zealand inconsistency in the application of the English language criteria by officers. This led to considerable work being undertaken, including a sampling exercise. In due course, in October 2016, the Minister of Immigration announced changes to the criteria. Whereas, prior to that the skilled employment path could be used to satisfy the English criteria without an IELTS test, that was no longer the case after the changes. Indeed, Immigration New Zealand found that many of those approved this way did not meet the required standard.

[195] According to Ms Tian's counsel, the previous criteria in the instructions were unclear. Ms Tian has consistently raised this with Immigration New Zealand. Therefore, she cannot be found to have systematically misinterpreted the instructions where the officials themselves were unclear of the correct interpretation.

[196] Counsel also notes that the complaint provides a very narrow snapshot of applications made on the basis of skilled employment, since many have succeeded on that basis. Counsel identifies seven named applicants, represented by Ms Tian and other advisers.

[197] In summary, it is contended that Ms Tian has interpreted and applied immigration instructions consistently and correctly. The skilled employment path was an acceptable way to meet the English language requirement. Furthermore, the previous instructions were unclear. Counsel submits that Ms Tian has always acted in the best interests of her clients.

[198] Respectfully, counsel for Ms Tian has misunderstood the gravamen of these heads of complaint. They do not allege Ms Tian is generally incompetent as an adviser, whether specific to her understanding the English language criteria or more broadly.

[199] The complaint is about whether Ms Tian misapplied the criteria for these five clients. It is no defence that many other migrants represented by her and other advisers successfully achieved the English criteria using the skilled employment pathway. Nor is it material that Ms Tian campaigned for a change to the criteria, even if she regards herself as successful in bringing about those changes. This complaint has a much narrower foundation, being her conduct on behalf of five clients.

[200] Nor do I accept that Ms Tian was faced with an ambiguous, unclear or uncertain criteria. There will always be an element of uncertainty and even inconsistency where different officials are exercising a discretion, as they did when deciding whether an IELTS certificate should be provided. But the IPT decisions for these five clients show just how

straightforward the assessments were for them. The reasons given by the officers for requiring IELTS certificates for each of them were so compelling the IPT dismissed the appeals, to the extent based on the asserted incorrect application of the criteria, without hesitation. These were not marginal or 'boundary' applications in terms of meeting the English standard.

[201] Even if it could be said Ms Tian was right to 'test the water' on English ability, by advancing these applications initially on the basis of skilled employment or "other evidence" of settlement, the cause became hopeless in the face of Immigration New Zealand's letters in each case requiring an IELTS certificate. This was the point at which Ms Tian misapplied the criteria and failed her clients.

[202] It cannot possibly be in the best interests of her clients to so belligerently maintain these clients met a minimum standard they clearly did not meet.

[203] It is apparent Ms Tian misunderstood the instructions in relation to each of the five clients the subject of the complaint. She was wrong to assert that an IELTS test was not justified. I do not need to assess the specific evidence in relation to each client as the IPT, which has the expertise to do so, did that itself. It found in each case that Immigration New Zealand was justified in having concerns about each client's English language ability and correctly exercised its discretion to require an IELTS certificate.

[204] In the face of the detailed and compelling concerns expressed by Immigration New Zealand for each client, her advocacy was futile. Not one of them could meet the skilled migrant pathway. Moreover, even if they could, that English language option was overridden by identified concerns with the English ability of each of them. There was no merit to Ms Tian's contentions on behalf of any of these clients that they could meet the mandatory English requirement by any means other than an IELTS certificate.

[205] The law on the interpretation of the English language criteria in the instructions had been established many years ago, well before Ms Tian started acting for these five clients. It had been settled by the Residence Review Board, the predecessor tribunal to the IPT.[8]

[206] Ms Tian observes, in respect of Mr F, that residence applications could be successful, even for a client who did not meet the English standard, if the IPT recommended to the Minister that consideration be given to granting residence on the basis of special circumstances. She is right about that. It is a legitimate strategy of

[8] See Residence Appeal No 16251 (22 September 2009), at which Ms Tian was co-representative, which also concerned a Chinese chef.

advisers in some cases to advance residence applications on behalf of clients knowing they would be declined by Immigration New Zealand on the ground of English, but then to mount a special circumstances case before the IPT.

[207] This is the tactic Ms Tian eventually pursued before the IPT on behalf of Mr F. However, the first head of complaint against Ms Tian is still made out in respect of Mr F, for two reasons:

(1) At the earlier stage of the application, when it was before Immigration New Zealand, Ms Tian maintained Mr F could meet the English language standard through his skilled employment (which he did not have) and the evidence of settlement in New Zealand over some years. However, he had twice failed to obtain residence before due to a refusal to sit an IELTS test. In addition, the other concerns expressed by Immigration New Zealand in the letter of 12 February 2016 were compelling, as the IPT found. There was no merit in contending Mr F could satisfy the English language criteria.

(2) Ms Tian was even unable to properly assess special circumstances. The IPT dismissed the appeal on the basis no such circumstances existed.

[208] I find that Ms Tian did not assess and apply the instructions correctly and with due care and professionalism in respect of all five clients, in breach of cl 1 of the Code.

[209] Ms Tian's failure was not simply because she refused an IELTS test on their behalf, because this can be a legitimate strategy, but because she did so as a result of misunderstanding the criteria in circumstances where it was so clear the standard was not met. This was not the sort of isolated, marginal error in applying criteria that any adviser could make, which would not justify disciplinary action. Her conduct exceeds the disciplinary threshold by a demonstrable margin.

[210] Turning to the second head of complaint, cl 10(b) of the Code states that an adviser "must comply with the operating requirements of Immigration New Zealand".

[211] It is not clear to me what the "operating requirements" of Immigration New Zealand are, nor the scope of this provision as it relates to advisers. They are not defined in the Act, the Code or the Immigration Act 2009.

[212] Even if the operating requirements are the immigration instructions (criteria), it is not immediately apparent that declining a "request" (or even demand) from an immigration officer for an IELTS certificate on behalf of a client amounts to a failure by

an adviser to comply with them. It is the client who must comply with the immigration instructions, if the application is to be successful, not the adviser.

[213] An adviser who refuses to facilitate a reasonable, and therefore effectively mandatory, request for contact details or an interview or IELTS certificate may be acting unprofessionally, if that is done as a result of misunderstanding the immigration criteria and/or without instructions. However, I cannot see why that is a breach by the adviser of cl 10(b). The adviser's obligation is only to properly advise the client and to take instructions.

[214] In any event, this allegation adds nothing to the breach of cl 1. I dismiss the second head of complaint.

(3) Communicating with Immigration New Zealand in a way which is inconsistent with her obligation to be honest, professional, diligent, and respectful, in breach of cl 1

[215] The Registrar relies on the following extracts from Ms Tian's communications with Immigration New Zealand (*verbatim*):

> … used by INZ to 'sell a dream' to prospective migrants and thereafter 'abuse' those same applicants with the explicit intention of declining their SMC applications. There is an argument to be made that this practise is little more than an immigration scam designed by INZ officials, and being administered by INZ officials for the benefit of INZ officials and where prospective migrants are effectively exploited for the payment of a lodgement fee and where thereafter INZ viciously turns on them to decline their application on IELTS alone.
>
> …
>
> It is sad that INZ assesses SMC applications as a 'game to play' with no real oversight or understanding of how destructive and abusive its policy and administrative processes have become,…[9]
>
> The comment you have provided in regards to the application and interpretation of those immigration instructions at SM5.5 is troubling insofar as you HAVE NOT interpreted or understood the relevant instructions correctly.[10]
>
> In terms of assisting us further understand the nature of your assessment, could you please confirm the date upon which you commenced employment with INZ, the date upon which you obtained your immigration warrant, and the date upon which you commenced processing SMC applications?[11]

[9] Email from Ms Tian to Immigration New Zealand (22 April 2016), Registrar's supporting documents at 142–143.
[10] Email from Ms Tian to Immigration New Zealand (24 April 2015), Registrar's supporting documents at 162.
[11] Email from Ms Tian to Immigration New Zealand (14 April 2015), Registrar's supporting documents at 166.

[216] The Registrar also relies on Ms Tian's letter to the deputy chief executive of 31 March 2017:

> …the complaint is a misguided and desperate attempt to 'shut me up' and 'shut me down' and being an act of revenge by two [branch deleted] managers…[12]
>
> …the agenda is 'personal' and 'revenge motivated', thus constituting what I believe is a racially motivated 'hate crime' against me[13]
>
> … a misguided and rogue attempt by two [branch deleted] managers acting as a 'lynch mob' out to get me no matter what?[14]
>
> …the complaint document is a load of sh#t and when the fan is turned on at [branch and name deleted] is sitting far removed from her personal fiefdom of [branch deleted], just as [name deleted] has flown the [branch deleted] nest to take up a role with INZ role in [branch deleted].[15]
>
> It is my view that those behind the complaint in [branch deleted] acted with impunity and total disregard for the values of the New Zealand public service.[16]
>
> It is with disbelief that I am witnessing both of them risk their own careers in a public sector setting due only to their **not liking me** and wanting revenge for the success I have achieved in an immigration setting relative to [branch deleted] Office. That is however their choice and one which they both must now live with in terms of the consequences, which in this instance I believe will ultimately result in their dismissal from Immigration New Zealand, pending the outcome of a full employment investigation. Again that is **not** a comment I have made lightly, but with full appreciation of the circumstances and facts relative to the complaint as outlined throughout the course of this letter and my letter to IAA dated 1 September 2016.[17]
>
> Those [branch deleted] managers will need to come to terms with the fact that their actions amount to 'flushing their careers down the toilet'.[18]

[217] The Registrar also notes the numerous references to alleged corruption in the letter to the deputy chief executive, such as:

> …I consider the complaint a personally motivated attack which is a dishonest act, thus rendering the complaint a corrupt document.[19]

[218] The extracts relied on by the Registrar are, as the statement of complaint correctly points out, merely a sample of what can only be described as grossly unprofessional communications with Immigration New Zealand. They are related not

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[12] Letter from Ms Tian to deputy chief executive (31 March 2017), Registrar's supporting documents at 225.
[13] At 240.
[14] At 259.
[15] At 252.
[16] At 271.
[17] At 278.
[18] At 281.
[19] At 232.

just to her correspondence on behalf of the clients, but also to her response to the complaint against her.

[219] Ms Tian accuses named officers of incompetence, racism, dishonesty, exploiting and abusing migrants, corruption, running an immigration scam, malice, of instituting a hate crime against her, criminal harassment and of abusing a complaint process as an act of revenge.

[220] Ms Tian presents not a jot of evidence to support these serious allegations. The conspiracy against her because she is ethnically Chinese or a successful adviser is a figment of her imagination.

[221] Ms Tian's correspondence goes well beyond what might be described as robust advocacy on behalf of her clients, which is permissible. Her correspondence amounts to a personal attack on the competence, professionalism, integrity and motivation of named officers. It is unjustified, as proven by the IPT's decisions on the five clients. Plainly, the immigration officers who made those decisions and their managers were correctly, competently and professionally assessing the skilled employment and English criteria. It was Ms Tian who was not.

[222] I accept that Ms Tian is a deeply passionate and caring advocate for her clients, who can be vulnerable and marginalised in society, but she woefully lacks judgement in the acceptable bounds of professional representation.

[223] Ms Tian should pause to reflect on what she is endeavouring to achieve on behalf of those who pay for her services. Her combative and offensive language cannot, on any conceivable basis, be in the best interests of her clients. Her correspondence reflects an unjustified personal crusade against two named officers, if not a branch.

[224] It is also my view that Ms Tian's correspondence brings the immigration advisers' profession into disrepute. Most would be horrified by her personal animosity, and by her lack of judgement and objectivity in her relationship with Immigration New Zealand.

[225] I recognise that Ms Tian has made a reasonably full apology in her letter to the Tribunal, though it should have been addressed to the named officers. It is never too late to do so. However, I agree with Immigration New Zealand's counsel that it is not as fulsome as it might appear, given her stance on the standard of her correspondence with the agency. I will say more about this in the sanctions decision. The apology is insufficient to avoid the complaint being upheld against her.

[226] It is advanced in mitigation by Ms Tian's counsel, in relation to that part of her statement of complaint which concerns her correspondence on the complaint itself, that the complaint lacks merit, that it is misguided and that she was frustrated with how it eventuated. As for the complaint lacking merit or being misguided, the answer to that is this decision of the Tribunal upholding the complaint. Her belief that it was misguided or her frustration with it were not good reasons for her approach to the complaint, which was as unprofessional as her approach to the IELTS requests.

[227] Counsel for Ms Tian refers to an internal email from one immigration manager to a senior manager, dated 1 May 2014, concerning the minimum standard of English, describing Ms Tian as a "rat" and "attention grabbing". It is not authored by one of the managers she names as the alleged instigators of the complaint against her. It was an internal communication which was not copied to her, but she saw it on making a request under the Official Information Act 1982. Accordingly, she thought she was being targeted.

[228] I do not know at what point in this saga Ms Tian saw that email. It appears to be an isolated incident of unprofessional communication (internally, not with Ms Tian) by an Immigration New Zealand manager. It neither justifies nor explains her conduct.

[229] I find Ms Tian's correspondence, self-evidently, to breach cl 1 of the Code. It is neither professional nor respectful.

(4) Refusing to provide full client files for each file requested by the Authority, in breach of cls 3(c) and 26(e)

[230] On 17 August 2016, the Authority's investigator wrote to Ms Tian advising that the Registrar had determined that grounds of complaint appeared to have been disclosed. In accordance with s 57(1)(c) and (d) of the Act, she was required to produce the full client files relating to Messrs Z, W, Y, and S and another person by 1 September 2016.

[231] The files were produced by Ms Tian on 1 September 2016.

[232] As there was no evidence of a written client agreement nor of all correspondence, Ms Tian was advised on 23 June 2017 in the formal notification of the complaint that she appeared to be in breach of cl 26(e) of the Code. The request for the full client files still stood and she was asked again to provide them. In a separate letter on the same day, the Authority required Ms Tian to produce for inspection the file of Mr F, pursuant to s 57(1)(c) and (d) of the Act, by 30 June 2017.

[233] On 3 August 2017, in her lengthy letter to the Authority responding to the complaint, Ms Tian refused "unequivocally and beyond all doubt" to be part of a "dishonest game" and confirmed she would not provide any further files to the Authority. It could obtain them from Immigration New Zealand.

[234] Section 57 of the Act states:

> **57 Inspection powers**
>
> (1) Any person authorised by the Registrar may, for a purpose set out in section 56,—
>
> (a) at any reasonable time, enter any premises where the person has good cause to suspect that—
>
> (i) any licensed immigration adviser or former licensed immigration adviser works or has worked in the past 2 years; or
>
> (ii) any person who has applied to be licensed as an immigration adviser works; or
>
> (iii) a person provides immigration advice or contracts or employs a person to provide immigration advice:
>
> (b) question any licensed immigration adviser, former licensed immigration adviser, or other person at any premises of a kind described in paragraph (a):
>
> (c) require a person of a kind described in paragraph (a) to produce for inspection relevant documents in that person's possession or under that person's control:
>
> (d) inspect and take copies of documents referred to in paragraph (c):
>
> (e) retain documents referred to in paragraph (c), if there are grounds for believing that they are evidence of the commission of an offence.
>
> (2) If a requirement is made of a person under subsection (1)(c), the person must immediately comply with that requirement.
>
> (3) The provisions of subparts 1, 5, 6, 7, 9, and 10 of Part 4 of the Search and Surveillance Act 2012 apply.

[235] Section 56 in turn permits inspection for administering the licensing regime and investigating complaints against licensed advisers.

[236] It is an offence to fail to comply with any requirement under s 57, punishable by a maximum fine of $10,000.[20]

[20] Immigration Advisers Licensing Act 2007, s 69(1)(b) & (2).

[237] According to counsel, Ms Tian did not understand the relevance of the request. There was no complaint from a client and the Authority had not provided reasons for the request for files. Nor was she willing to accommodate the entire request given the volume of documentation. She had provided a reasonable amount of material, namely one complete file and key documents from other files, so she had complied with her file management obligations.

[238] The Authority's letters of 17 August 2016 and 23 June 2017 are lawful demands for the production of relevant documents in the possession or control of Ms Tian. Each letter gives a valid legal reason for the demand, being the receipt of a complaint against her. It is not for the adviser to pick and choose what files or documents she will give the Authority. I do not accept that the documentation required was voluminous, but in any event, that would be no defence.

[239] Ms Tian invites the Tribunal to dismiss this part of the complaint as inconsequential. I decline to do so. Her failure to disclose was deliberate and without any good reason.

[240] Ms Tian's contemptuous refusal to comply with a demand to make files available for inspection by the Authority, acting pursuant to a statutory power, is a breach of cl 26(e) of the Code. I also find that the refusal to comply with a s 57 demand, without just cause, is a breach of cl 3(c) of the Code.

OUTCOME

[241] The complaint against Ms Tian is upheld. She is found to be in breach of cls 1, 3(c) and 26(e) of the Code.

SUBMISSIONS ON SANCTIONS

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

[243] The Tribunal advises that the sanctions will reflect, not just the substantive complaint but Ms Tian's approach to the complaint, her disrespect for the Authority and her unfounded allegation of collusion by the Authority's former registrar and former investigator with Immigration New Zealand in advancing a complaint made by named officers of Immigration New Zealand as an act of revenge.

[244] A timetable is set out below. Any requests that Ms Tian 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

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

(1) The Authority, the complainant and Ms Tian are to make submissions by 9 August 2019.

(2) The Authority, the complainant and Ms Tian may reply to submissions of any other party by 23 August 2019.

ORDER FOR SUPPRESSION

[246] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.[21]

[247] There is no public interest in knowing the names of Ms Tian's clients.

[248] The Tribunal orders that no information identifying the clients is to be published other than to the parties.

D J Plunkett
Chair

[21] Immigration Advisers Licensing Act 2007, s 50A.