IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2019] NZIACDT 62

Reference No: IACDT 027/18

IN THE MATTER	of a referral under s 48 of the Immigration Advisers Licensing Act 2007
BY	**THE REGISTRAR OF IMMIGRATION ADVISERS** Registrar
BETWEEN	**NT** Complainant
AND	**DAMON PARKER** Adviser

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 4 September 2019

REPRESENTATION:

Registrar:	Self-represented
Complainant:	Self-represented
Adviser:	S Laurent, J Turner, counsel

PRELIMINARY

[1] Mr Damon Parker, the adviser, represented Ms [NT], the complainant, who sought residence under the skilled migrant category. Her application failed as Immigration New Zealand found she provided false and misleading information. Her complaint is that she was left to work with a staff member of Mr Parker's company, Ms Jessie Cheng, who is also his wife. Furthermore, Mr Parker initially refused to show her a letter of concern issued by Immigration New Zealand.

[2] The complainant is concerned about any potential warning Immigration New Zealand may have as to her character which may affect her future applications, due to what she regards as Mr Parker's negligence. She seeks compensation for her financial loss.

[3] The Registrar of Immigration Advisers (the Registrar), the head of the Immigration Advisers Authority (the Authority), alleges that Mr Parker has been negligent and/or has unlawfully used unlicensed staff to provide immigration services contrary to the Immigration Advisers Licensing Act 2007 (the Act) and the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

BACKGROUND

[4] Mr Parker, a licensed immigration adviser, is the managing director of Swiftvisa. Ms Cheng, an unlicensed employee, is also described as the managing director.

[5] The complainant, a national of China, had studied in New Zealand and was working as a chef. In February 2017, she was offered a permanent position as a chef in a small town. She contacted Swiftvisa to assist her to obtain residence.

[6] On 5 February 2017, there was an exchange of Chinese language messages between the complainant and Ms Cheng by messaging app, WeChat. Ms Cheng advised the complainant she could claim 130 points by herself and then explained how she could claim other points.

[7] On 13 February 2017, the complainant signed terms of engagement with Swiftvisa. The scope of the services set out was to prepare and file applications for a work visa, then an expression of interest and finally for residence in the skilled migrant category. The fee was $2,500 for the work visa, and $2,500 for the expression of interest and residence application. Mr Parker signed it on behalf of Swiftvisa.

[8] There is a one-page note on Mr Parker's file, dated 13 February 2017 at 3 pm, headed "Initial consultation with client". Mr Parker says he wrote it as he was present at the consultation on that day with the complainant. It set out the following points assessment and comment:[1]

> Points assessment for SMC
>
> | | |
> |---|---|
> | Offer of skilled employment | 50 |
> | Region outside Auckland | 30 |
> | Age | 30 |
> | Recognised Qualification | 40 |
> | Work Experience in NZ | 5 |
> | Total | 155 |
>
> Client advised that she does not have enough points to make an application under SMC and she will have to wait until she can claim additional points for work experience, a suggestion was made that she may be able to claim points for skilled employment – 12 months or more due to the fact that she has worked continuously for 12 months as a chef however I do not agree. Policy may be interpreted in this way so client has agreed that we will lodge the EOI with the points claimed and INZ can decide if the claim of points is credible. It is likely the claim will be rejected and her application will be returned to the pool.

[9] The note concluded with action points, being to file a work visa, an expression of interest and a residence (skilled migrant) application.

[10] Mr Parker says he gave a copy of the file note to the complainant, along with the terms of engagement, his complaints procedure, the Code, a client information page and a document checklist.[2]

[11] From 13 February 2017, the complainant began communicating with Ms Cheng and other employees of Swiftvisa in relation to her immigration applications. The communications were by email (in English), WeChat (Chinese), telephone and face-to-face meetings (probably both languages).

[12] It started with emails that day to the complainant from an employee concerning the former's passport. There were then numerous text messages between the complainant and Ms Cheng from about 5:45 pm to after 9 pm.[3] Ms Cheng gave information about what points the complainant could claim and how work experience

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[1] Registrar's supporting documents at 167.
[2] Affirmation of Mr Parker (11 October 2018) at [11], Registrar's supporting documents at 162.
[3] Registrar's supporting documents at 68–69, translation at 72-74. Transcripts of further audio messages provided to the Tribunal on 30 August 2019.

could be calculated, including the use of IRD records. At 9:26 pm, Ms Cheng set out a points calculation adding up to 165, with the complainant eventually replying, "Now I finally get it."

[13] It was during that exchange on the evening of 13 February 2017 that Ms Cheng left a voice message for the complainant. There are multiple English translations of the message, which are not easy to follow. According to a professional translation, Ms Cheng said (*verbatim*):[4]

> Then I put a large paragraph on internet. Continuously worked in New Zealand for twelve months or more, this includes part-time and full-time, the full-time five months plus and part-time, handles like that if got one year that you are not 50 points for this part, is 60 points, because this 5 points can be aded if needed.

[14] The complainant's own translation (*verbatim*):[5]

> The skilled migrant points that I sent in the beginning, it said skilled work experience gained in New Zealand for 12 months. This experience includes full time and part time. You got full time experience around 6 months already. If takes part time experience to make up to one year experience. Your will get 60 points instead of 50 points. You can gain this 60 points, also plus another 5 points (one year worked in New Zealand). You can collect all those points.

[15] There is also Mr Parker's translation (*verbatim*):[6]

> And based on all the information I've sent you above, on the top there is "already worked in New Zealand for 12 months or more" include both full-time and part-time in New Zealand. So full-time for 6 months, and if part-time experience could be calculated as equivalent to 1 year experience, in this part you will have 60 points not 50. This is similar to additional 5 points, if you qualify you could add both points.

[16] On 23 February 2017 at 1:03 pm, an employee of Swiftvisa sent the complainant a form for her employer to complete and requested some other information concerning her work experience.

[17] At 11:13 pm on the same day, the complainant sent the employee details of her work experience. Then at 4:57 pm, the complainant sent another email to the employee confirming that she would contact her employer and noting also that Ms Cheng had said her IRD records would help her work experience. She said she had given the employee her IRD information when the employee had helped her to set up her personal file.

[18] From 4:39 pm to 5:09 pm, there were text and voice messages between the complainant and Ms Cheng regarding the former's work experience and what parts of

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[4] At 279.
[5] At 73–74.
[6] At 272.

the form needed to be completed. The complainant said in a voice message (English translation *verbatim*):

> This form did not have previous job's information section, I don't know what the [employee] want, could you find SOMEONE WHO SPEAKS CHINESE to explain all those questions for me?

[19] On 2 March 2017 at 2:26 pm, the complainant emailed her photo to the employee.

[20] Also, on 2 March 2017, Mr Parker applied for a work visa for the complainant based on her new offer as a chef.

[21] It is assumed the visa was granted as the complainant began work as a chef in the permanent position on 6 March 2017.

[22] There was an exchange of messages on WeChat between the complainant and Ms Cheng commencing on 21 April 2017. The complainant provided information and documents, and asked questions. Ms Cheng replied answering the complainant's queries.

[23] In particular, the complainant asked Ms Cheng on 22 April 2017 whether she needed to put together on the form all her work experience, part-time and full-time. Ms Cheng replied that she should write it on a separate piece of paper and they would calculate it and put it on the form. The complainant then sent details of her work experience on 23 April.

[24] On 24 April 2017 at 10:23 am, the complainant asked Ms Cheng by text whether she was filling in the expression. Ms Cheng replied that she was doing it "now". At 12:43 pm, an employee sent an email to the complainant requesting information. The complainant then asked Ms Cheng by text at 3:12 pm whether it had been filed. Ms Cheng replied that a second person check was being done.

[25] The complainant had the following text exchange with Ms Cheng at 8:30 pm on 24 April 2017 (as translated *verbatim*):

> [The complainant]: that [employee] said my eoi is qualified for 175 points, but we've calculated only a total of 165 point, is there any where wrong?
>
> [Ms Cheng]: probably add 10 addition points at somewhere, afraid if can not claim the work experience part
>
> [The complainant]: my work experience is less than 1 year, OK
>
> [Ms Cheng]: total still got 2 – 3 months short
>
> [The complainant]: Understood

[26] On 24 April 2017, an employee of Swiftvisa sent the expression of interest to Mr Parker, with the supporting documents, advising that it was "ready to go".

Expression of interest filed

[27] An expression of interest on behalf of the complainant was filed electronically with Immigration New Zealand by Swiftvisa on 24 April 2017. A total of 175 points were claimed:

Age	30
Skilled employment over 12 months	60
Outside Auckland	30
Qualifications	40
NZ qualification	5
NZ study (grandparented)	5
Bonus NZ work experience	5
	175

[28] The expression advised that the complainant had commenced her then current employment on 27 February 2017.

[29] As the threshold at the time for selection was 160 points, the complainant's expression was duly selected from the pool. The complainant was advised of this on 27 April 2017 by email from an employee of Swiftvisa. On 29 April 2017, she was invited by Immigration New Zealand to apply for residence. Ms Cheng sent the invitation to the complainant by email on the same day.

[30] The invitation to apply, residence application form and a document checklist were sent to the complainant by someone at Swiftvisa on 2 May 2017.

[31] By email on 10 May 2017, an employee of Swiftvisa sent a document to the complainant and asked for "a Document Checklist", so he could check whether any documents were missing. The employee sent two emails to her the next day asking for further information. There were WeChat messages that same day between the complainant and Ms Cheng concerning the International English Language Testing System (IELTS) test.

Residence application filed

[32] On 25 May 2017, an application for residence was filed with Immigration New Zealand. Mr Parker signed the covering letter. The application recorded that he

was the immigration adviser who had provided immigration advice. The application continued to claim 175 points, including the points for current skilled employment for 12 months or more.

[33] The complainant asked Ms Cheng by text message on 26 May 2017 whether the application had been filed. Ms Cheng replied that it had.

Immigration New Zealand's letter of concern

[34] Immigration New Zealand wrote to Mr Parker on 31 July 2017 identifying a concern about the expression of interest. The complainant's expression had been automatically selected following a *prima facie* assessment of the claims made, as she had claimed 165 points, more than the threshold of 160. The immigration officer discounted the claims for five points for a New Zealand qualification and five points for two years of "grandparented study", as the officer found that she was not eligible for these points.

[35] The officer advised that it appeared that false or misleading information had been intentionally provided. The complainant had claimed 60 points for current skilled employment for 12 months or more, but Inland Revenue's summary of earnings showed that she had only been with her then employer from 6 March 2017. She was therefore only entitled to 50 points for her current employment. If the complainant had claimed the correct number of points for employment in New Zealand, she would have been awarded only 155 points and would not have been selected from the pool.

[36] It was noted in the letter of 31 July 2017 that the immigration instructions (at SM 3.5) stated that if factually inaccurate information was supplied in an expression of interest, it would be considered misleading unless a reasonable basis for the omission could be demonstrated. The Immigration and Protection Tribunal (IPT) had decided there was no *mens rea* component to that provision.

[37] The complainant was requested by the officer to provide an explanation for her conduct, though she was advised there was no provision under the instructions for consideration of a character waiver. A deadline of 14 August 2017 was given to provide a response.

[38] On the same day, 31 July 2017, Ms Cheng telephoned the complainant and informed her that a letter of concern had been received from Immigration New Zealand. According to the complainant, she asked Ms Cheng to show her the letter but Ms Cheng

would not do so on the ground that some false allegations had been made by Immigration New Zealand which Mr Parker was contesting with the agency.

Mr Parker contests Immigration New Zealand's interpretation of SM 3.5

[39] Mr Parker sent an email to the immigration officer on 1 August 2017 at 12:08 pm asking whether it was being said that the complainant's expression would not have been selected if she had not withheld her start date in the expression.

[40] Then on the same day at 2 pm, Mr Parker said he could not accept the letter as the officer had failed to establish that material information was in fact withheld. According to the relevant case law, claiming points for which an applicant was not eligible was not sufficient to constitute a breach of the immigration instructions (SM 3.5). For a breach, Immigration New Zealand was required to establish that information relating to the points claimed was inaccurate.

[41] Mr Parker noted that it had been claimed by Immigration New Zealand that the complainant withheld relevant information concerning her correct start date. However, the complainant had set out her work history in the expression. It was clear from the information in the expression that the claimant was not eligible to claim points for skilled employment of 12 months or more. He acknowledged that his office had made errors during the entry of the information in the online application, but the inescapable fact was that the relevant information was supplied.

[42] According to Mr Parker, Immigration New Zealand had made an error in its *prima facie* assessment of the expression and consequently the invitation to apply was issued in error. A refund of the residence application fee would therefore be sought. As an alternative, the immigration instructions allowed an immigration officer to defer a decision. It was noted that the complainant would become eligible for at least 160 points under proposed changes to the instructions. He asked the officer to advise on a proposed course of action so that he could consult with his client.

[43] The complainant sent Ms Cheng a message on 3 August 2017 at 9:52 am seeking an update and requesting a copy of Immigration New Zealand's letter of concern. In reply at 9:59 am, Ms Cheng sent the complainant screenshots of the email communications between Mr Parker and Immigration New Zealand regarding the concerns raised in Immigration New Zealand's letter.

[44] On 7 August 2017 at 10:07 am, the immigration officer sent an email to Mr Parker stating that the invitation had been issued on the basis of the information in the

expression. The claim of "current skilled employment in New Zealand for 12 months or more" did not appear to be correct at the time the expression was filed. Immigration New Zealand was unable to grant a refund.

[45] At 10:55 am that day, Mr Parker repeated that the start date had been properly declared, so the invitation to apply had been issued in error.

[46] At 4:44 pm, the officer advised Mr Parker that the decision could not be deferred. The complainant had declared the correct start date, but had wrongly declared that she was in current skilled employment in New Zealand for 12 months or more. The invitation to apply had been issued on the basis of the information provided and the points claimed. During the application stage, the information had been assessed and verification undertaken. The due date to provide a response to the letter of concern remained 14 August 2017.

[47] Mr Parker then sent another email to the officer at 5:27 pm on 7 August 2017 repeating that the complainant had declared the correct start date in the expression. The officer was asked to confirm that the concern identified regarding the withholding of material information had been addressed and the complainant was not in breach of the immigration instructions (including SM 3.5).

[48] The officer replied on 8 August 2017 at 9:46 am stating that the concerns in Immigration New Zealand's letter remained. Mr Parker had until 14 August 2017 to provide a full and final response.

[49] On the same day at 10:54 am, Mr Parker sent the following email to the immigration officer:

> I can't pass this PPI [letter of concern] on to my client because it contains false allegations that she withheld material information. You have already conceded that the information was provided. At the very least, can you amend the PPI so that I can pass it on to my client.

[50] The officer then sent an email to Mr Parker at 4:28 pm that day, 8 August 2017, advising that the basis of the letter of concern was the false declaration of current skilled employment in New Zealand for 12 months or more. The complainant had supplied information which was false and misleading by answering that question, when it appeared she had actually been employed for less than 12 months. She had therefore withheld relevant information. The officer offered to amend the letter by removing the allegation that the complainant had not provided the correct information about her start date to one stating that she had not claimed the correct points for employment in New Zealand.

[51] An amended letter of concern was issued by the officer on 9 August 2017 at 8:50 am (unseen by the Tribunal). She reminded Mr Parker that the response had to be provided by 14 August 2017. Mr Parker replied at 1:24 pm stating that the letter was no different, as it was still claimed that the actual start date had been withheld. Furthermore, she had not identified what information had been withheld.

[52] On the same day at 3:13 pm, the officer sent an email to Mr Parker advising that the letter of concern had been amended by removing the sentence which stated the start date had been withheld. The basis of the letter of concern continued to be the false and misleading declaration of being in current skilled employment for 12 months or more.

[53] On 9 August 2017 at 4:33 pm, Mr Parker sent an email to a technical adviser at Immigration New Zealand stating that he did not think the letter of concern issued by the officer was correct. He noted that in all the decisions of the IPT concerning the provision at SM 3.5 of the immigration instructions, it had said that a claim of points could not itself constitute false and misleading information. Immigration New Zealand was required to establish that information relating to the claim of points was factually inaccurate. In this case, Immigration New Zealand had been provided with all the relevant information.

[54] Mr Parker said to the technical adviser that it was possible to interpret "current skilled employment 12 months or more" as including "continuous employment in the same profession for 12 months or more" and not necessarily for the same employer.

[55] According to Mr Parker, the fee of $530 for the expression was more than for any temporary visa application, so it was expected that Immigration New Zealand would properly assess the credibility of the claimed points. If it was now saying that the complainant was not eligible to claim the points, then the expression was not assessed with due care. It was unreasonable to raise a character issue that was ultimately the result of an error by Immigration New Zealand. The complainant's declaration that she met the criteria for the claimed points was truthful from her perspective.

[56] Mr Parker contended in his email to the technical adviser that the letter of concern did not stand up to scrutiny. While it was understood that in all likelihood it was impossible for the application to succeed, it was entirely unreasonable to claim that the complainant had breached the character provisions when it was clear that Immigration New Zealand had made an error assessing the points claimed before issuing the invitation to apply. He sought clarification as soon as possible as he needed to consult his client.

[57] The complainant phoned Ms Cheng on 14 August 2017 at 4 pm. She passed the call onto Mr Parker. He explained he had not sent her Immigration New Zealand's letter of concern earlier as it was not consistent with the facts and he had been arguing about that with the immigration officer. He explained the character issue and how it would affect her future applications. Mr Parker advised that the best course would be to let Immigration New Zealand decline the application on character grounds and then appeal to the IPT. Mr Parker's file note recorded that while the complainant might not have been eligible for residence, it was incorrect to decline residence on the ground of character.[7]

[58] On 14 August 2017 at 4:24 pm, Mr Parker sent the complainant the original letter of concern as well as some or all of his email communications with Immigration New Zealand.

[59] Immigration New Zealand's technical adviser sent an email to Mr Parker on 16 August 2017 advising that she agreed with the immigration officer that the incorrect points claim triggered the provision at SM 3.5.

[60] The complainant then engaged a solicitor to act for her and a new deadline of 25 September 2017 was set by Immigration New Zealand.

[61] Mr Parker provided a refund to the complainant of his fee of $5,000 on 21 August 2017. The complainant had completed a refund request form on that day and it had been immediately approved by Mr Parker.

[62] The complainant's solicitor sent submissions to Immigration New Zealand on 25 September 2017. They have not been sent to the Tribunal.

Immigration New Zealand declines residence

[63] Immigration New Zealand declined the residence application in a letter to the complainant's solicitor on 25 October 2017. As the complainant had declared in her expression of interest having current skilled employment for 12 months or more, information had been provided that was factually inaccurate and she had withheld material information without a reasonable basis for her actions.

[64] The application was declined in accordance with SM 3.5 of the instructions. Her claim for 60 points for current skilled employment had been material to the decision. If she had correctly declared the length of time in her current employment, she would not have been eligible. The concern remained that she had provided false and misleading

[7] Registrar's supporting documents at 189.

information as part of her expression, and that she had withheld relevant and potentially prejudicial information.

[65] The instructions (SM 3.5.b) stated that if factually inaccurate information relevant to the issue of the invitation had been supplied, it would be considered misleading unless a reasonable basis for the omission could be demonstrated. The complainant's solicitor had explained that the expression had been completed by the adviser who had misunderstood the immigration instructions. He had misinterpreted "current employment" as combining all work experience accumulated at the time the expression was filed. While an accurate employment start date had been provided in the expression, the incorrect length of time in current employment had been provided.

[66] The officer considered that the explanation was not reasonable, as it was the complainant's responsibility to ensure that all the forms lodged with Immigration New Zealand were truthful and complete. She had signed the declaration on the residence form, understood the notes and questions and had declared that the information was true and correct.

[67] According to the immigration officer, the instructions also stated that a visa could be declined where an officer was satisfied that the person, whether personally or through an agent, in obtaining an invitation to apply for residence, had submitted false or misleading information or withheld relevant information.

COMPLAINT

[68] On 21 November 2017, the complainant made a complaint against Mr Parker to the Authority. She alleged that she had barely been able to consult him since contact during the process had been with Ms Cheng. It was Ms Cheng who had convinced her she had 165 points. Mr Parker had also repeatedly refused to show her Immigration New Zealand's letter of concern, which she did not see until 14 August 2017, the deadline to respond. It was not until then that she realised that Immigration New Zealand thought she was not eligible because of the claim in relation to current skilled employment. Mr Parker had admitted that his assistant had incorrectly filled out the expression of interest form.

[69] The complainant told the Authority she wanted help in lifting any potential alert concerning her character in Immigration New Zealand's management system and compensation for her "huge" financial loss.

[70] The Authority formally notified Mr Parker of the complaint on 9 May 2018 and invited his explanation.

Mr Parker's explanation to the Authority

[71] On 6 June 2018, Mr Parker's counsel, Mr Turner, replied to the Authority. He contended that the allegation that the complainant had barely consulted with Mr Parker was incorrect. It was contradicted by his consultation notes of a personal discussion with her about the merits of her application at the start of the process.

[72] As for the allegation that Mr Parker maintained a business practice relying on unlicensed individuals, it was submitted that the tasks carried out by the unlicensed staff were clerical work. They were acting under his instruction. He was the person giving immigration advice. There were a number of after-hours calls from the complainant to Mr Parker and Ms Cheng, but it was only Mr Parker who was giving advice with Ms Cheng acting as an interpreter. Ms Cheng gave publicly available information or relayed questions and answers between the complainant and Mr Parker.

[73] In respect of the alleged breach of the Code regarding the points claimed, Mr Parker categorically disagreed with the approach being advanced by the complainant as to claiming those points. Accordingly, there was no breach of cl 9(a) and (b) of the Code, nor of cl 1. Mr Parker acted with due care and professionalism. His file note of 13 February 2017 supported his position.

[74] Mr Turner accepted that the word "current" suggested that the skilled employment must be with the same employer, but contended that a different interpretation was arguable. According to counsel, the IPT in *NI (Skilled Migrant)* [2016] NZIPT 203187 took seriously the submission that 12 months of "current skilled employment" could be made by multiple periods of employment, although it eventually rejected this as a strained interpretation. Mr Turner pointed out that it was possible this decision was not available for Mr Parker at the time he considered the complainant's strategy. His approach amounted to the exercise of a judgement call on a policy question.

[75] According to Mr Turner, the Tribunal (being the disciplinary tribunal) had previously found that even an erroneous approach to a technical question was a permissible exercise of professional skill. The Authority was referred to the Tribunal's decision in *CO v DSI* [2011] NZIACDT 5. This ground of complaint should therefore be dismissed, as it did not demonstrate a failure of Mr Parker to apply himself to the technical questions raised by the application.

[76] As for the alleged breach of the Code due to the failure to provide a copy of Immigration New Zealand's letter of concern to the complainant until 14 August 2017, Mr Parker responded to Immigration New Zealand immediately on the date of the letter, but there were some problems with the letter he needed to resolve before it could be provided to the complainant.

[77] Counsel submitted that the history of the email communications between the complainant and Mr Parker showed that the complainant was aware on 3 August 2017 of the email correspondence between Mr Parker and Immigration New Zealand. The letter from the agency could not be provided to her as it was not in a suitable form to which a response could be made. After 3 August 2017, the complainant made no demand to see the letter until 14 August. By this time, it had been reissued. Mr Parker denied the claim that he repeatedly refused to provide her with the letter.

Complaint referred to Tribunal

[78] On 10 August 2018, the Registrar referred the complaint to the Tribunal. It is alleged that Mr Parker's conduct amounted to the statutory ground of complaint of negligence and/or that he breached the Code in the following respects:

(1) by failing to take personal responsibility for managing the client relationship and maintaining business practices under which he relied on unlicensed individuals to complete the engagement process and perform services which could only be performed by a licensed adviser, he has been negligent or in breach of cls 2(e), 3(c) and 18(b);

(2) by failing to advise the complainant in writing that the expression had little hope of success nor asking her to acknowledge in writing that she had been advised of the risks, in breach of cl 9(a) and (b);

(3) by managing the expression and residence application without due care and diligence, in breach of cl 1; and

(4) by failing to provide a copy of Immigration New Zealand's letter of concern to the complainant until the due date of the response, in breach of cl 1.

JURISDICTION AND PROCEDURE

[79] 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 Act:

(a) negligence;

(b) incompetence;

(c) incapacity;

(d) dishonest or misleading behaviour; and

(e) a breach of the code of conduct.

[80] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.[8]

[81] The Tribunal must hear complaints on the papers, but may in its discretion request further information or any person to appear before the Tribunal.[9] It has been established to deal relatively summarily with complaints referred to it.[10]

[82] 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.[11]

[83] The sanctions that may be imposed by the Tribunal are set out in the Act.[12] The focus of professional disciplinary proceedings is not punishment but the protection of the public.[13]

[84] 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.[14]

[85] The Registrar has filed a statement of complaint, dated 10 August 2018, with supporting documents.

[86] A procedural Minute was issued by the Tribunal on 21 September 2018.

[87] The complainant sent to the Tribunal on 18 October 2018 a commentary on Mr Parker's statement of reply, with two supporting documents. She made a further comprehensive submission on 30 August 2019. I record that I have not considered the

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[8] Immigration Advisers Licensing Act 2007, s 45(2) & (3).
[9] Section 49(3) & (4).
[10] *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].
[11] Section 50.
[12] Section 51(1).
[13] *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citation omitted).
[14] *Z v Dental Complaints Assessment Committee*, above n 13, at [97], [101]–[102] & [112].

audio messages sent, which are in Chinese, except to the extent that transcriptions in English are provided in the written submission.

[88] The Tribunal has received from Mr Parker a statement of reply of 11 October 2018, submissions from Mr Turner of 12 October 2018, and affirmations from Mr Parker and Ms Cheng both affirmed on 11 October 2018.

[89] Neither the complainant nor Mr Parker have requested an oral hearing. The parties were advised by the Tribunal on 15 August 2019 that the complaint would be heard on the papers. There are no material issues requiring the Tribunal to hear any witness, in terms of s 49(4) of the Act. The parties were given until 30 August 2019 to provide any further evidence or submissions.

[90] Counsel for Mr Parker provided further submissions on 19 August 2019.

Affirmations of Mr Parker and Ms Cheng

[91] In his affirmation, Mr Parker states that there was no refusal by him to provide Immigration New Zealand's letter of concern to the complainant. He perceived there was a problem with the letter and took steps to have it corrected. He judged that it was better to do this than to create potential confusion for the complainant about the process or his response.

[92] Mr Parker says he provided the complainant on 3 August 2017 with his communications with Immigration New Zealand regarding the letter of concern. After that, she made no demand for the letter until 14 August. He acknowledged he could have provided the letter in the first place and explained it needed correcting. He has since adopted a new process, which is to provide correspondence from Immigration New Zealand to the client immediately.

[93] The file note of 13 February 2017 contained his assessment of the complainant's situation and showed that she "may" have been able to claim points for skilled employment for 12 months or more. The note recorded his disagreement to interpreting the instructions that way. The message exchange of 24 April 2017 demonstrated his concern with this proposed points claim. It was indicated to the complainant that she was two to three months short of work experience, to which she responded "understood".

[94] When the expression was filed with the points claimed, it was done on the basis that the immigration instructions would be interpreted in a way that it would be selected. At the time it was lodged, there was no basis for it being futile or hopeless. There was

no need to put in writing that it had no chance of success and get the complainant's acknowledgement of this.

[95] The complainant's allegation that the first contact with him was on 14 August 2017 is false. He spoke with her directly on 13 February 2017 during a consultation lasting 40 minutes and made notes of this. He also visited her place of work on 12 March 2017 and spoke to her.

[96] Mr Parker says he prepared the terms of engagement and signed them on 13 February 2017, then personally provided them to her. At the same time, he provided to her his initial consultation notes. This is his standard practice.

[97] Mr Parker further says there were a number of after-hours phone calls from the complainant to Ms Cheng. He acknowledges they could have been dealt with better, but it was him giving the immigration advice, with Ms Cheng acting as the interpreter only. Ms Cheng knows she cannot give immigration advice and that he does not allow it. The complainant had asked for an interpreter.

[98] According to Mr Parker, the employee carried out administrative tasks only. A paper expression had been sent to the complainant, with the employee transcribing this information to the expression under his directions. He checked the expression before it was filed.

[99] Mr Parker's affirmation exhibits two short statements from former colleagues of the complainant.

[100] The first statement, dated 10 May 2018, said that on 12 March 2017 Mr Parker, Ms Cheng and their children had lunch at the café where the complainant and the colleague both worked. Mr Parker spoke to the complainant about her visa. He had on an earlier occasion spoken to the colleague (who was also the café manager) about the complainant's duties.

[101] According to another statement, dated 9 May 2018, the complainant had told the colleague that she contacted Ms Cheng after hours as she knew Ms Cheng would be with Mr Parker and she (the complainant) would therefore get a reply straight away. She also preferred communicating in Chinese which was much easier. On one occasion, the complainant told the colleague she did not want to talk to Mr Parker but preferred to talk to Ms Cheng, so her boyfriend could listen to the conversation in Chinese.

[102] There is also an affirmation from Ms Cheng, affirmed on 11 October 2018. She states that during the complainant's visa process, she acted as an interpreter only. She

denies saying anything to convince the complainant she was eligible to claim 165 points. The complainant insisted on contacting her after hours, late in the evening when at home with her husband. He was therefore present and any responses were only what he had instructed her to say. Any communications during the day were at the office in Mr Parker's presence, including the correspondence relating to the expression on 24 April 2017. Since this complaint was made, she and Mr Parker had decided she would no longer be involved in client contact.

ASSESSMENT

[103] 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.
>
> **Client Care**
>
> 2. A licensed immigration adviser must:
>
> …
>
> e. obtain and carry out the informed lawful instructions of the client, and
>
> …
>
> **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.
>
> **Futile immigration matters**
>
> 9. If a proposed application, appeal, request or claim is futile, grossly unfounded, or has little or no hope of success, a licensed immigration adviser must:
>
> a. advise the client in writing that, in the adviser's opinion, the immigration matter is futile, grossly unfounded or has little or no hope of success, and
>
> b. if the client still wishes to make or lodge the immigration matter, obtain written acknowledgement from the client that they have been advised of the risks.

Written agreements

18. A licensed immigration adviser must ensure that:

…

b. before any written agreement is accepted, they explain all significant matters in the written agreement to the client

…

(1) By failing to take personal responsibility for managing the client relationship and maintaining business practices under which he relied on unlicensed individuals to complete the engagement process and perform services which could only be performed by a licensed adviser, he has been negligent or in breach of cls 2(e), 3(c) and 18(b)

[104] The complainant has been mobile in her evidence as to contact with Mr Parker.

[105] The complainant initially told the Authority's investigator by email on 23 April 2018 that her first direct contact with Mr Parker was on 14 August 2017.[15]

[106] In answer to the investigator's question whether she met Mr Parker at any stage, the complainant modified her initial position. She said to the investigator on 28 April 2018 that she met him at the beginning of March 2017 when she went to see Ms Cheng at Swiftvisa's office about an IELTS test. Mr Parker was there, so he explained it to her.[16] The complainant said this was the first time she had met him. She added that the next time they were in contact was his phone call and email on 14 August.

[107] Then on 3 July 2018, the complainant told the investigator she was (*verbatim*) "totally sure that Damon Parker never talked with me before signed the service contract".[17]

[108] In her statement of reply to the Tribunal of 18 October 2018, the complainant says (*verbatim*):

> I did not get the consultation for 40min from Damon on 13 February, and Damon did not point out that my EOI points were not enough. The evidence provided by Damon is just his notes, in my opinion, the notes as internal files, there is a chance to be modified afterward by photoshop or forgery. During the period of my application, even if there was consultation from Damon, the crucial material discussion should be written down and confirmed with me before proceeding, but I did not receive any of it.

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[15] Registrar's supporting documents at 99.
[16] At 106.
[17] Email from the complainant to the investigator on 3 July 2018, Registrar's supporting documents at 110.

[109] It is not clear whether the complainant is denying Mr Parker's presence at the initial consultation on 13 February 2017, or denying he was there for 40 minutes. She does, however, appear to accept that there was consultation with him during the process. I dismiss her accusation regarding forgery of the notes. She presents no evidence in support.

[110] I find the complainant's evidence as to contact with Mr Parker to be unreliable. I accept his notes of the initial consultation at face value and his evidence that he was present at that meeting and gave the notes to her, along with other documents. Mr Parker's version of their initial contact is consistent with the contemporary documents.

[111] I discount the café meeting on 12 March 2017. It was a social visit. The Parker family had lunch. Any discussion with the complainant, who was apparently on duty in the kitchen, may have been brief and could easily be overlooked by the complainant as having any relevance to her professional contact with Mr Parker.

[112] In rejecting the complainant's evidence regarding the extent of the consultation with Mr Parker, I record that I do not find the complainant to be generally unreliable. Indeed, as will be seen, I find much of her evidence to be plausible, clear and consistent with the documents.

[113] Following the initial consultation, there were numerous communications between the complainant and either Ms Cheng or two other Swiftvisa employees. They relate to the calculation of points, the extent of the complainant's relevant work experience and to obtaining information and documents for the various immigration applications. They cross the boundary between "clerical work" which an unlicensed person is permitted to undertake and an adviser's exclusive "immigration advice" work.[18]

[114] To the extent they amount to providing immigration advice, Mr Parker says he instructed his wife or the other employees. The bulk of the communications, particularly those which amount to immigration advice, are with his wife. Mr Parker and his wife say he was present and with her, whether at the office or at home, when she dealt with the messages. This is plausible and there is no evidence to the contrary.

[115] I find any breach of cl 3(c) of the Code, permitting unlicensed advice to be given contrary to the Act, to be unproven.

[116] This brings me to cl 2(e), failing to obtain instructions from the complainant or to carry out her instructions. Like all Code obligations, Mr Parker must do this personally

[18] See the statutory definitions at ss 5 "clerical work" and 7(1) "immigration advice" of the Act.

and directly.[19] The focus in the complaint is on the obtaining of instructions. Mr Parker cannot delegate this to the staff. In other words, even if it is only clerical work and hence not in breach of cl 3(c), there will be a breach of cl 2(e) if Mr Parker has permitted unlicensed staff to be the primary point of contact with the complainant.

[117] It is obvious that most of the client engagement was left to Ms Cheng and, to a lesser extent, the two employees who also dealt with the complainant. It is acceptable for unlicensed employees to occasionally deal with clients to obtain information or documents on the instruction of the adviser, but not to the extent that occurred here.[20]

[118] The frequent communications Ms Cheng had with the complainant do not breach cl 3(c), since they were either clerical work or, if advice work, were done on Mr Parker's instruction (according to the evidence of Mr Parker and Ms Cheng). However, it is the frequency of the contact which proves the impermissible delegation of client engagement. It was Mr Parker's personal responsibility to take charge of the client engagement process, from the beginning when instructions were taken until the end when the instructions ceased. For the purpose of cl 2(e), it is not sufficient for the adviser to be in direct contact with the client only at key points in the process.

[119] Nor do I accept that Ms Cheng was merely an interpreter. Her role went well beyond that. The complainant did not need an interpreter. Her study in New Zealand, her IELTS score, her employment in the hospitality trade (not in Chinese restaurants) and her communications with the Authority and the Tribunal show that the complainant did not need an interpreter to communicate with Mr Parker.

[120] The complainant's request for a Chinese speaker on 23 February 2017 related to difficulties understanding one of Mr Parker's staff.

[121] As for the brief statements from her former colleagues, the complainant disputes saying to one of them that she spoke to Ms Cheng in preference to Mr Parker because she found Chinese easier, or because her boyfriend wanted to listen into a conversation and could not do so in English. She says her boyfriend's score in IELTS shows his competence in English. I accept that the English language ability of both of them would be sufficient to communicate in English with Mr Parker. I place limited weight on those statements. I note the complainant's evidence as to the long-standing relationship between one of them and both Mr Parker and his wife. That person had introduced the complainant to Mr Parker's company.

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[19] *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [29], [34] & [47].
[20] *Immigration New Zealand (Calder) v Ahmed* [2019] NZIACDT 18 at [65], [69] & [88]–[89].

[122] While I have accepted Mr Parker's contention that Ms Cheng's "immigration advice" work was done on his instruction, I do not accept that the other information she gave to the complainant ("clerical work") was done on his instruction, with Ms Cheng merely being an interpreter. This is implausible. There were far too many communications using an instant text messaging system, which appears to show some rapid exchanges, for this to be likely.

[123] I consider it highly unlikely that Ms Cheng turned to Mr Parker for assistance every time the complainant had a query about some item of information or document required for an application. I have given Mr Parker the benefit of the doubt in relation to instructing his wife on what would be regarded as immigration advice. It is plausible she referred the 'big questions' to him before answering the complainant. But it is contrary to common sense to accept that Ms Cheng's frequent clerical communications were on his instruction and she was the point of contact only as an interpreter.

[124] I find Mr Parker to be in breach of cl 2(e) of the Code.

[125] As for the alleged breach of cl 18(b), Mr Parker says in his affirmation that he believes the terms of engagement and nature of his instructions had been explained to the complainant at the initial consultation before she signed the terms, since that is his standard practice. As I accept that Mr Parker was present at the initial consultation, there is no reason not to accept this evidence. I find the breach of cl 18(b) to be unproven.

[126] I do not find Mr Parker to have been negligent in the context of this head of complaint. I would not describe his conduct as careless or as lacking reasonable care. He intended that Ms Cheng engage with the complainant, though I accept he did not realise this was a breach of his professional obligations.

(2) By failing to advise the complainant in writing that the expression had little hope of success nor asking her to acknowledge in writing that she had been advised of the risks, in breach of cl 9(a) and (b)

[127] Immigration New Zealand assessed the entitlement to points as only 155, less than the threshold of 160. That was not, however, the reason for the decline of residence. It was declined because the officer found that the complainant had given false or misleading information or withheld relevant potentially prejudicial information in the expression of interest. The complainant had incorrectly claimed 60 points for current skilled employment in New Zealand for 12 months or more, when she was only entitled to 50 points for skilled employment.

[128] I will assess later whether Immigration New Zealand was entitled to make that character finding. This head of complaint is about whether the expression and subsequent residence applications could have succeeded. It is therefore about whether the complainant was entitled to 160 points or more. This depends on whether she was entitled to 60 points for current skilled employment for 12 months or more, or only 50 points for being in current skilled employment of less than 12 months. To a lesser extent, it also concerns the claims for five points for a New Zealand qualification and five points for grandparented study, since they are another way for the complainant to get the extra five points she needed to be selected at the expression stage.

[129] In its assessment of 155 points only, 20 less than those claimed, Immigration New Zealand discounted the additional 10 points for skilled employment of 12 months or more, and the 10 points (5 x 2) for both the New Zealand qualification and the so-called grandparented study.

[130] Mr Parker does not dispute that the application was correctly failed.[21] It is only the character finding that he contests. Irrespective of whether Immigration New Zealand was justified in a finding that false and misleading information had been provided, the application was rightly declined. It might be thought therefore that it was doomed to failure at the outset and that the complainant should have been warned of this.

[131] Nor does Mr Parker dispute that the complainant was not entitled to the 10 combined points claimed for the New Zealand qualification and the grandparented study. That left a claim for 165 points. So the issue here is the possibility that the claim for 60 points (for current skilled employment of 12 months or more) was valid or at least reasonably arguable.

[132] The first point to note is that Mr Parker is not saying that the claim for 60 points was a mere 'keystroke' mistake on an electronic form. Inadvertent human error of that nature would not necessarily breach a professional obligation. Instead, what Mr Parker is saying is that the relevant immigration criteria (at SM 7.5) could conceivably be interpreted to permit the aggregation of all similar skilled employment, not just the period with the then current employer.

[133] I agree with Mr Turner's submission to the Authority that an application relying on an alternative interpretation of the immigration instructions advanced by an adviser, even if erroneous, does not necessarily mean the adviser has been negligent or breached a professional standard.

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[21] See Mr Parker's email to the technical adviser of 9 August 2017 and Mr Parker's file note of 14 August 2017, Registrar's documents at 29 & 189.

[134] Mr Turner observes that the IPT, on 13 May 2016, decided that SM 7.5 meant only employment in the current position.[22] This decision was prior to Mr Parker filing the complainant's expression on 24 April 2017, though Mr Turner queries whether it was available on the IPT's website at that time.

[135] According to counsel, the IPT took seriously the submission of the lawyer that it could cover the earlier periods. I do not agree. The IPT disposed of that argument summarily, describing it as straining the natural meaning of the provision. It seems to me that the only decision on SM 7.5 cited by Mr Turner is contrary to Mr Parker's contention that his alternative interpretation of the provision was seriously arguable.

[136] Whether or not that decision of the IPT was available to Mr Parker, he has advanced no authority in support of the argument that earlier employment can be accumulated in this way. Moreover, even he did not believe it, as his file note of 13 February 2017 makes clear.

[137] I accept the complainant's contention that it was Ms Cheng who persuaded her that it was possible to succeed in the expression. The text and voice messages on 13 February 2017 and the messages on 22 to 24 April 2017 establish this. Ms Cheng left the complainant with the understanding that the extra points would come from somewhere. The complainant would not have known whether the extra points needed would come from the additional 10 points for current skilled employment, or the 10 points (of which only five were needed) for the other items later rejected by Immigration New Zealand.

[138] As I have accepted Mr Parker's contention that any immigration advice given by Ms Cheng came from him, it follows that it was Mr Parker who was ultimately responsible for persuading the complainant that it was a viable expression.

[139] It cannot possibly be the case that the complainant herself was somehow responsible for claiming the extra points. She would not have known how many points were viable. Nor would the complainant have spent $2,500 for the expression and residence applications, as well as Immigration New Zealand's fee of apparently $530, if she had been told by Mr Parker and/or Ms Cheng that the application had little or no chance of success. It is inherently improbable that the complainant decided to spend over $3,000 to 'have a go'. I accept her evidence that she was unaware of the low

[22] *NI (Skilled Migrant)* [2016] NZIPT 203187 at [18].

chance of success and that she would not have gone ahead if she knew she did not have enough points.[23]

[140] I find that it was Ms Cheng who persuaded the complainant to file the expression on the basis that 160 points plus would come from either the period of current skilled employment or the other items rejected by Immigration New Zealand.

[141] I also find that the application had little chance of success, if any. The alternative interpretation was arguable, but only marginally so. It was not a reasonable or serious argument. It was contrary to the IPT's interpretation of SM 7.5. It was also contrary to Mr Parker's own opinion as to what the criterion meant.

[142] Mr Parker should therefore have advised the complainant in writing that the application had little chance of success and obtained her written acknowledgment that she was aware of the risks but wanted to go ahead. Mr Parker's notes of the initial consultation expressing his then view that he did not agree with the suggestion that such extra points could be claimed for current employment, notes which were handed to the complainant, is not a sufficient discharge of cl 9(a).

[143] I do not accept Mr Turner's submission to the Tribunal that the application was not hopeless because, if the officer had left it in the pool for six months instead of declining it on character grounds, the complainant's further work experience might have given her sufficient points.

[144] I am not persuaded that is correct. I would not have thought another six months' work experience would have given the complainant sufficient points, even if Immigration New Zealand allow points to be added this way. It is also speculative. In any event, it was not the strategy agreed between Mr Parker and the complainant.[24] At the time the expression was filed, I find it to have had little chance of success.

[145] Mr Parker breached cl 9(a) and (b) of the Code.

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[23] Email from the complainant to the Authority on 2 July 2018, Registrar's supporting documents at 112.

[24] According to the complainant, an audio message from Ms Cheng left on the complainant's phone on 24 April 2017 indicates that Ms Cheng knew of the discrepancy between the points claim and the work experience, but considered Immigration New Zealand would not identify it at the expression stage. If it was later identified, Ms Cheng told the complainant another three months of work experience would have been accumulated. There is no evidence the complainant agreed to this strategy. Nor is there evidence Mr Parker knew about it. If I understand correctly the complainant's submission of 30 August 2019 to the Tribunal (at 10–12, 18), even she accepts Mr Parker did not file the expression knowing of the discrepancy between the points claimed and the work experience. I do not consider it worthwhile to investigate this voice message.

(3) By managing the expression and residence application without due care and diligence, in breach of cl 1

[146] This head of complaint is advanced as an alternative to the complaint concerning cl 9(a) and (b). As I have found breaches of cl 9(a) and (b), I do not need to assess this head.

(4) By failing to provide a copy of Immigration New Zealand's letter of concern to the complainant until the due date of the response, in breach of cl 1

[147] Immigration New Zealand wrote to Mr Parker on 31 July 2017 identifying the concern with the expression and residence applications in claiming 60 points for current skilled employment of 12 months or more. He did not send that letter to the complainant until 14 August 2017, the deadline which had been set by Immigration New Zealand for a response. This is despite her request on 3 August 2017 to be sent a copy.

[148] It is denied that Mr Parker breached his professional obligations in sending the letter to his client two weeks later on the day of the deadline. His explanation is that there was a problem with the letter, in that Immigration New Zealand had incorrectly found that the complainant had provided false and misleading information and had withheld adverse information. He wanted to correct this first, as otherwise the complainant would have been confused.

[149] Mr Parker now understands that he should have provided the letter immediately to his client. He says that is his present practice.

[150] Whether or not the complainant expressly requested the letter, it should have been sent to her promptly. Immigration New Zealand was making a serious allegation against her.

[151] Mr Parker should have immediately provided the letter to the complainant, at the same time explaining what he intended to do about the erroneous character finding. His failure to do so was not an attempt to hide from her the existence of such a letter or the issue raised. Ms Cheng advised the complainant immediately that a letter of concern had been received from Immigration New Zealand. Within a few days, on 3 August 2017, his early exchange with Immigration New Zealand had been provided to the complainant. It is hard to understand why the letter was not copied to her as well but the decision to withhold it from her was clearly deliberate.

[152] Mr Parker is in breach of cl 1, as it was unprofessional to withhold such an important letter from the complainant for two weeks and then produce it to her only on the deadline for a response.

[153] While that disposes of this head of the complaint, I will say something about the merit of Immigration New Zealand's finding that false and misleading information was provided, and potentially prejudicial information was withheld. This will be relevant to sanctions later.

[154] I conclude that Mr Parker is correct in asserting that the immigration officer has wrongly made an adverse character finding. It is quite unfair to the complainant. The officer has misunderstood the immigration instructions. It follows that Mr Parker and his staff, while responsible for the incorrect points claim, are not responsible for the officer's flawed character finding arising from that points claim.

[155] The officer has relied on the SM 3.5 of the immigration instructions:[25]

> **SM 3.5 Implications of providing false or misleading information**
>
> *See also Immigration Act 2009 s 93*
>
> a. The Immigration Act 2009 provides that:
>
> i the provision of false or misleading information as part of an EOI or associated submission; or
>
> ii the withholding of relevant, potentially prejudicial information from an EOI or associated submission; or
>
> iii failure to advise an immigration or visa officer of any fact or material change in circumstances that occurs after an EOI is notified that may affect a decision to invite the person to apply for residence or to grant a residence visa or permit;
>
> is sufficient grounds for the decline of an application for a resident visa and for the holder of a resident visa granted under the Skilled Migrant Category to become liable for deportation.
>
> b. Information relating to a claim made in an EOI that is factually inaccurate and is relevant to the issuing of an invitation to apply or the assessment of a resident visa application, will be considered misleading unless the principal applicant can demonstrate that there is a reasonable basis for making that claim.
>
> *Effective 29/11/2010*

[25] This appears to be the version applicable at the time of the expression. It has since been replaced by SM 3.10.1.

[156] According to the officer, the IPT has decided that Immigration New Zealand is not required to establish any *mens rea* (intention to deceive) element.[26] The officer cites three decisions of the IPT.[27] None of those decisions actually say that.

[157] In this case, the officer accepted that the complainant had provided her correct start date for the current employment in the expression. However, the box for a claim of 60 points for current skilled employment of 12 months or more was wrongly ticked.

[158] It is the points claim that is incorrect, not the underlying information provided.

[159] This distinction was made by Mr Parker in his email to the officer on 1 August 2017 at 2:00 pm. He repeated it to the technical adviser on 9 August 2017 at 4:33 pm. He noted that the IPT had decided that an incorrect points claim could not constitute false or misleading information, as it had to be established that the underlying information was inaccurate.[28]

[160] So far as the withholding of information is concerned, Mr Parker points out the obvious, namely that no information, potentially prejudicial or otherwise, has been withheld. The correct start date of current employment had been given in the expression. The officer agreed with this and apparently amended the letter of concern, but in the decision letter of 25 October 2017 reverted to her original position that information had been withheld.

[161] I conclude that the adverse character finding against the complainant is not consistent with the immigration instructions and is unjustified. This is the fault of the officer, not Mr Parker.

OUTCOME

[162] The complaint is upheld. Mr Parker has breached cls 1, 2(e), 9(a) and (b) of the Code.

SUBMISSIONS ON SANCTIONS

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

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[26] Immigration New Zealand letter to Mr Parker of 31 July 2017.
[27] *CM (Skilled Migrant)* [2014] NZIPT 202019, *DU (Skilled Migrant)* [2014] NZIPT 2027, *FQ (Skilled Migrant)* [2014] NZIPT 202029.
[28] *YH (Skilled Migrant)* [2013] NZIPT 201879 (11 November 2013) at [28] & [32]; *YO (Skilled Migrant)* [2018] NZIPT 205002 (23 August 2018) at [36]–[38].

[164] A timetable is set out below. Any requests that Mr Parker 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

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

(1) The Registrar, the complainant and Mr Parker are to make submissions by **26 September 2019**.

(2) The Registrar, the complainant and Mr Parker may reply to submissions of any other party by **10 October 2019.**

ORDER FOR SUPPRESSION

[166] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.[29]

[167] There is no public interest in knowing the name of Mr Parker's client, the complainant.

[168] The Tribunal orders that no information identifying the complainant is to be published other than to the parties and Immigration New Zealand.

D J Plunkett
Chair

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