IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2019] NZIACDT 73

Reference No: IACDT 020/18

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

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 21 October 2019

REPRESENTATION:

Registrar:	Self-represented
Complainant:	Self-represented
Adviser:	S Ravindra, counsel

PRELIMINARY

[1] Mr Chiv, the adviser, represented many clients seeking work visas largely from the Philippines.

[2] The Registrar of Immigration Advisers (the Registrar), the head of the Immigration Advisers Authority (the Authority), has made numerous allegations against Mr Chiv. The allegations include unlawfully delegating his work to unlicensed advisers, failing to exercise proper care in relation to visa applications, and breaching his clients' confidentiality by sending group emails to them. This conduct is said to breach the Immigration Advisers Licensing Act 2007 (the Act) and the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

BACKGROUND

[3] Mr Khieng (Kevin) Chiv, was at the relevant time a licensed immigration adviser. He is a director of New Zealand Success Immigration Limited. As the Authority refused to renew his licence on 22 December 2017, Mr Chiv is no longer licensed.

[4] Mr Chiv is also director of JK Nails 89 Limited, trading as Regal Nails & Regal Beauty Therapist. His company was the prospective employer of most of the clients who are the subject of this complaint. Unusually, Mr Chiv undertook a dual role for these clients. He was both the immigration adviser and the employer.

[5] In addition, Mr Chiv also practises as a chartered accountant. According to Immigration New Zealand, his accounting business is under investigation by the Commissioner of Inland Revenue who has commenced legal action against him. It is also alleged that his accounting business provides international students with employment once they complete a course offered by a company owned by him. Much of this is disputed by Mr Chiv but, in any event, it is not the subject of complaint by the Registrar. I decline to consider any such allegations.

[6] The complaint largely concerns seven clients of Mr Chiv from the Philippines.[1] Six were offered employment by one of Mr Chiv's companies, five as nail technicians for the beauty company and one as a job placement program administrator for his immigration company. The seventh client was offered employment as a driver for a company unrelated to Mr Chiv. He represented these clients on 10 unsuccessful visa applications filed in August and September 2016. It is noted that none were charged

[1] NF, SN, DQ, MH, NKQ, SH, and SC.

professional fees, as it was Mr Chiv's practice to charge such fees only when the employment in New Zealand commenced.

COMPLAINT

[7] The complaint against Mr Chiv was lodged by Immigration New Zealand (Mr Darren Calder) with the Authority. It was signed on 18 January 2017. The complaint was based on interviews conducted by Immigration New Zealand with his seven clients. Alleged against Mr Chiv are complaints of dishonest and misleading behaviour / misrepresentation, incompetence, conflict of interest and a failure to provide to his clients certain documents required by the Code, including a written client agreement.

[8] The Authority wrote to Mr Chiv on 24 April 2017 requesting the full files of seven clients, pursuant to its statutory powers. The files, or at least part of each one, were in due course provided by Mr Chiv.

Explanation from Mr Chiv to the Authority

[9] Ms E Nerida, then counsel for Mr Chiv, wrote to the Authority on 24 July 2017 in the context of an application by Mr Chiv to renew his licence.

[10] In respect of the concern expressed by the Authority that Mr Chiv did not communicate directly with his clients, it was submitted by Ms Nerida that he was not required to do so. There was no prohibition on using an intermediary for communication with his clients for administration purposes. An intermediary would be able to maintain and bridge communication between countries and time zones. There was no detriment to his clients. Indeed, it facilitated timely communication, as well as the coordinated preparation of all the paperwork.

[11] As for the concern raised that Mr Chiv had apparently failed to maintain client confidentiality at all times, it was submitted that the disclosure of confidential information "albeit one-off for administrative efficiency", fell under one of the exceptions for disclosing confidential information. The disclosure was permitted because it had the clients' express authorisation. The clients had appointed "Sharon" to be the agent because of the distance, time differences and the practicality. The information remained confidential within the group. It was structured in the best interests of the clients to receive prompt and timely information.

[12] The Authority wrote to Mr Chiv formally advising him of the details of the complaint on 20 October 2017.

[13] Ms Nerida replied on Mr Chiv's behalf on 24 November 2017. In respect of his alleged failure to ensure that Immigration New Zealand's basic lodgement requirements were met, it was contended that he exercised due care by advising his clients of the requirement to lodge valid certificates. There was no evidence he was responsible for the purported failure to lodge valid police and medical certificates.

[14] As for the failure by Mr Chiv to give his clients the opportunity to review information in applications completed by him on their behalf, Ms Nerida said that the clients fully authorised him to complete and file their applications. Neither the Code nor the Competency Standards required licensed advisers to ask clients to review application forms prior to lodgement. The information set out in the online applications had been extracted from their documents and the interviews with them. It was because of Mr Chiv's professional expertise that the clients delegated this work to him. They had confidence in him.

[15] As for the emails from Mr Chiv's immigration company to his clients, counsel explained they were sent on his behalf according to his instructions. The administrative staff simply conveyed his messages. The same was true of those sent by Mr Paul Stevens of IAL Employment Services (the trading name of International Agent for Laborers Ltd), since he merely organised documents and relayed information for Mr Chiv. Mr Stevens did not provide advice, but mainly helped with the collection of the required documents. IAL Employment Services was a separate entity, which leased the same premises and referred clients to Mr Chiv. It acted as a point of contact under his directions. It was operating in a totally different industry. One employee was shared between IAL Employment Services and NZ Immigration Success.

[16] In relation to file management, the Code did not require Viber and Skype chats to be transcribed. That would place an incredible burden on an adviser.

[17] In conclusion, Ms Nerida submitted that the allegations had no evidential or factual basis and were an abuse of the power to make fair and lawful decisions. It was not every minor transgression that needed to be pursued.

[18] Mr Chiv also wrote directly to the Authority on 24 November 2017. He said the decline rate of applications he filed did not mean he was incompetent. He had submitted online applications for the clients, with the information extracted from their documents and the interviews with them. They had authorised the completion of applications on their behalf. The information was correct from their records.

[19] Mr Chiv then responded to the breach of confidentiality allegation. According to him, as the offshore clients spoke the same language, they provided consent to group communications and appointed a team leader for practical communications and for assisting one another. This was also because of time and geographical differences. There was no breach of his professional obligations as he had their full consent.

[20] The email address at nzsuccessimmigration@gmail.com was also used by him. The administration staff simply conveyed his messages. They did not provide advice, as it all came from him. Nor did Mr Stevens provide advice, as he relayed Mr Chiv's messages and mainly helped facilitate the collection of required documents.

[21] Mr Chiv said that his company was not associated with IAL Employment Services. It simply shared the sublease of his office. The staff there recommended his service to their clients. One employee worked part-time for both his company and IAL Employment Services. They were separate companies from totally different industries.

[22] According to Mr Chiv, in order to make communication with the clients more convenient and efficient, it was done through Skype and Viber. He only used written communication by letter for important documents.

Complaint referred to Tribunal

[23] On 21 May 2018, the Registrar referred the complaint to the Tribunal. It was alleged that Mr Chiv's conduct satisfied certain statutory grounds of complaint and/or was a breach of the Code in the following respects:

(1) failing to exercise diligence and due care when filing clients' work visa applications since they did not meet basic lodgement requirements, thereby acting negligently;

(2) alternatively, failing to exercise diligence and due care when filing clients' work visa applications, thereby breaching cl 1;

(3) failing to ensure that the clients had the opportunity to review their application forms in order to confirm the correctness of the information prior to filing with Immigration New Zealand and ticking 'yes' to the declaration section on the forms, thereby being negligent;

(4) alternatively, failing to ensure that the clients had the opportunity to review their application forms in order to confirm the correctness of the information prior to filing with Immigration New Zealand and ticking 'yes' to the declaration section on the forms, thereby breaching cls 1 and 2(e);

(5) allowing unlicensed administrative staff to provide immigration advice directly and failing to obtain and carry out the informed lawful instructions of his clients, thereby being negligent;

(6) alternatively, allowing unlicensed administrative staff to provide immigration advice and failing to obtain and carry out the informed lawful instructions of his clients, in breach of cls 1, 2(e) and 3(c);

(7) emailing communications *en masse* to clients thereby failing to preserve their confidentiality, in breach of cl 4(a)(i);

(8) failing to confirm in writing to clients all material discussions, in breach of cl 26(c); and

(9) failing to provide a complete copy of the client files for inspection, in breach of 26(e).

JURISDICTION AND PROCEDURE

[24] 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.

[25] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.[2]

[2] Immigration Advisers Licensing Act 2007, s 45(2) & (3).

[26] The Tribunal must hear complaints on the papers, but may in its discretion request further information or any person to appear before the Tribunal.[3] It has been established to deal relatively summarily with complaints referred to it.[4]

[27] 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.[5]

[28] The sanctions that may be imposed by the Tribunal are set out in the Act.[6] The focus of professional disciplinary proceedings is not punishment but the protection of the public.[7]

[29] 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.[8]

[30] The Tribunal has received from the Registrar a statement of complaint, dated 21 May 2018, with supporting documents. At the Tribunal's request, the Registrar provided further information and documents on 2 October 2019.

[31] Immigration New Zealand provided comments on 17 July 2018.

[32] There are submissions from Ms Ravindra, counsel for Mr Chiv, dated 2 July and 3 August 2018, with supporting documents. At the Tribunal's request, she provided further submissions and supporting documents on 14 October 2019.

[33] None of the parties requests an oral hearing.

ASSESSMENT

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

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

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

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.

Confidentiality

4. A licensed immigration adviser must:

a. preserve the confidentiality of the client except in the following circumstances:

i. with the client's written consent, or

ii. if making a complaint to the Immigration Advisers Authority relating to another adviser or reporting an alleged offence under the Immigration Advisers Licensing Act 2007, or

iii. for the administration of the Immigration Advisers Licensing Act 2007, or

iv. as required by law, and

…

File management

26. A licensed immigration adviser must:

…

c. confirm in writing to the client the details of all material discussions with the client

…

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

…

(1) Failing to exercise diligence and due care when filing clients' work visa applications since they did not meet basic lodgement requirements, thereby acting negligently

(2) Alternatively, failing to exercise diligence and due care when filing clients' work visa applications, thereby breaching cl 1

[35] Negligence, being a lack of reasonable care, is a statutory ground of complaint. Furthermore, cl 1 of the Code required Mr Chiv to conduct himself with diligence and due care.

[36] According to a schedule produced by Immigration New Zealand, 16 work visa applications filed by Mr Chiv between 18 November 2015 and 18 November 2016 were declined because they failed to meet the basic lodgement requirements of the agency.[9] The schedule sets out the specific failure of each application.

[37] The Registrar identifies in the statement of complaint five examples from the schedule, where Mr Chiv failed to file with the applications valid medical or police certificates.[10]

[38] Mr Chiv does not deny the applications were declined because of an omission to provide such essential information at the time of lodgement.

[39] In her submissions of 2 July 2018, Ms Ravindra contends Mr Chiv was not negligent in respect of the five identified applications since the medical and police certificates were expired at the time of lodgement, which was beyond his control. The need to renew them was "duly notified to clients and planned to be uploaded upon receipt". It was remedied in subsequent applications. It is submitted Mr Chiv would have breached his professional obligation if he had not notified the clients and taken appropriate measures, but given that he did so, he exercised diligence and due care.

[40] These 16 applications were declined because Mr Chiv filed applications but did not provide standard required information, such as valid medical or police certificates. It is self-evident that he should have checked that all the required information was not only provided when the applications were filed, but that it was compliant with Immigration New Zealand's criteria. He should not be filing invalid documents, such as out-of-date certificates, which are easily checked.

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[9] Schedule in Registrar's supporting documents at 7–10, being for the seven clients identified earlier and others.
[10] Statement of complaint, 21 May 2018, at [9].

[41] Assessing documents against Immigration New Zealand's specific criteria is an important part of an adviser's role. It is not enough that Mr Chiv cures the failure when an immigration officer points it out and that he remedies it in a subsequent application. As Immigration New Zealand observes in its submissions of 17 July 2018, obtaining valid medical and police certificates is within Mr Chiv's control. Furthermore, an officer is not obliged to give a visa applicant the opportunity to refile documents, but can decline an application on the basis of faulty documentation, as in fact occurred here. This will result in delay. It may also result in wasted visa application fees, but there is no evidence as to whether it did in respect of Mr Chiv's clients.

[42] I find that Mr Chiv failed to exercise diligence and due care in filing multiple visa applications which were unsuccessful because of a failure to provide standard valid documents or information. This is a breach of cl 1 of the Code. The second head of complaint is upheld.

[43] Mr Chiv has also been negligent, since he has failed to exercise reasonable care, but as the heads of complaint are alleged in the alternative, I will make no formal finding on the first head.

(3) Failing to ensure that the clients had the opportunity to review their application forms in order to confirm the correctness of the information prior to filing with Immigration New Zealand and ticking 'yes' to the declaration section on the forms, thereby being negligent

(4) Alternatively, failing to ensure that the clients had the opportunity to review their application forms in order to confirm the correctness of the information prior to filing with Immigration New Zealand and ticking 'yes' to the declaration section on the forms, thereby breaching cls 1 and 2(e)

[44] Three of the seven clients interviewed by Immigration New Zealand said that Mr Chiv completed and filed their applications online without them being given the opportunity of reviewing the information provided.[11]

[45] According to the Registrar, the duty to ensure that a client has an opportunity to confirm the correctness of information in an application is reflected in the adviser's declaration section of the work visa application form, which Mr Chiv answered affirmatively in the applications for these three clients:

[11] NF, SN and MH.

> I confirm that the applicant asked me to help them complete this form. I confirm that the applicant agreed that the information provided was correct before the declaration was completed.

[46] It is also said to be reflected in the client's declaration on the form:[12]

> I confirm that all the information I have provided is true and correct, and that I have provided all the necessary documents. I understand that information provided in the online form by another person on my behalf is considered to be information provided by me.

[47] Furthermore, says the Registrar, the client's declaration signature page (including the date against each of the client's signatures) on the first and second work visa applications for these same three clients are identical, indicating that the relevant page from the first application form had been recycled for the second application.[13] In respect of each client, Mr Chiv had also ticked 'yes' to the adviser's declaration on the second application, thereby confirming that the client had agreed the information was correct before Mr Chiv completed his declaration.

[48] The Registrar contends that Mr Chiv ought to have provided the clients with an opportunity to review how their information was being used and confirm its correctness. The interviews of three clients show that he did not. That is also clear from the recycled applications.

[49] Ms Ravindra points out that a licensed adviser has the exclusive right to file information with Immigration New Zealand on behalf of the client. Mr Chiv relied on the information and documents from each client to guide him as to what to put on the form. He used their information and clarified particulars verbally with them. As clients lack an understanding of the requirements and due also to the language barrier, they bestow trust in Mr Chiv to do this on their behalf.

[50] There is no express requirement in the Code that clients must be given the opportunity to confirm the correctness of information before it is provided to Immigration New Zealand. Nor is there any express requirement in the Immigration Advisers Competency Standards 2016.

[51] The Code clearly contemplates, and the Competency Standards expressly require, that an adviser will provide accurate information to Immigration New Zealand in applications.[14] This requires the careful review by the adviser of information provided by

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[12] Registrar's supporting documents at 465, 483 & 502.
[13] Statement of complaint at [16]–[18] with references to Registrar's supporting documents therein.
[14] Immigration Advisers Competency Standards 2016 at [4.2].

the client. But it also requires the adviser to give the client the opportunity of personally reviewing the draft of any application.

[52] The need for a personal check of an application by the client is made clear by the adviser's declaration on the visa application form:

> I confirm that the applicant asked me to help them complete this form. I confirm that the applicant agreed that the information provided was correct before the declaration was completed.

[53] The client (visa applicant) is in no position to inform the adviser of his or her agreement (that the information set out in the form and supporting documents is correct) unless the client sees the application and supporting documents before the adviser makes the declaration and the application is filed.

[54] This is reinforced by the client's declaration on a separate declaration form that all the information provided is true and correct.

[55] There is good reason for this. Visa applications require a lot of information. The High Court has noted that Immigration New Zealand relies on advisers providing accurate information.[15] The agency cannot possibly check every piece of information provided in every application. It relies on the accuracy and honesty of advisers and their clients. It is self-evident that errors can still occur despite careful review and checking by the adviser of the information and documents provided by the client. It follows that clients themselves should have a final opportunity to check the draft application. It adds another step in the process, but this is necessary. Many advisers already do this.

[56] It can be done by printing out the draft form for inspection by the client, or by populating an online form, saving the document and then providing a username and password for the client to access it. Some visa applications require a 'RealMe login' by the adviser, but even here the draft can be printed or saved and then shown or emailed to the client. The Registrar says these are all processes commonly used by advisers.

[57] Mr Chiv did not do this. The recycled declarations and the client interviews with Immigration New Zealand establish this.

[58] I find that Mr Chiv was neither professional or diligent, nor did he conduct himself with due care, in affirming the declaration and then filing the applications, without giving these three clients the opportunity of reviewing the information he or his staff had set out on the visa applications, before their applications were lodged with Immigration New Zealand. This is a breach of cl 1 of the Code. There has also been a failure to obtain

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[15] *Sparks*, above n 4, at [51] & [53].

the client's instruction to file the application (as completed with the specific information filled out by the adviser), in breach of cl 2(e). The fourth head of complaint is upheld.

[59] There is no need to assess the alternative third head of complaint.

(5) Allowing unlicensed administrative staff to provide immigration advice directly and failing to obtain and carry out the informed lawful instructions of his clients, thereby being negligent

(6) Alternatively, allowing unlicensed administrative staff to provide immigration advice and failing to obtain and carry out the informed lawful instructions of his clients, in breach of cls 1, 2(e) and 3(c)

[60] The Registrar alleges that Mr Chiv maintained a business practice whereby he relied on unlicensed staff of his company and another company to deal directly with his clients and provide immigration services exclusively reserved to him as the licensed adviser, in breach of his professional obligations.

General principles

[61] The Tribunal has adversely commented in previous decisions on the practice which developed in the immigration advisory industry of what is known as "rubber stamping".[16]

[62] Typically, this occurs where a licensed immigration adviser uses agents or employees sometimes in another country to recruit the clients, prepare the immigration applications and send them to the licensed adviser to sign off and file with Immigration New Zealand. There is little, if any, direct contact between the licensed adviser and the client.

[63] The practice is illegal. A person commits an offence under the Act if he or she provides "immigration advice" without being licensed or exempt from licensing.[17] A person employing as an immigration adviser another person who is neither licensed nor exempt also commits an offence.[18] A person may be charged with such an offence even where part or all of the actions occurred outside New Zealand.[19]

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[16] *Stanimirovic v Levarko* [2018] NZIACDT 3 at [4], [36]–[38]; *Immigration New Zealand (Calder) v Soni* [2018] NZIACDT 6 at [4], [50]–[61].
[17] Immigration Advisers Licensing Act 2007, s 63.
[18] Section 68(1).
[19] Sections 8 & 73.

[64] The statutory scope of "immigration advice" is very broad:[20]

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

[65] The words "advise", "advice" and "assist" are not to be given restrictive meanings.[21]

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

[67] "Clerical work" is narrowly defined in the Act:[22]

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

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[20] Section 7.

[21] *Yang v Ministry of Business, Innovation and Employment* [2015] NZHC 1307 at [22]–[23]. While the Court was considering s 63(1)(a) of the Act, it is plain it also had in mind the use of the words in s 7(1).

[22] Section 5, definition of "clerical work".

(c) recording information on any form, application, request, or claim on behalf and under the direction of another person

[68] In *Immigration New Zealand (Calder) v Ahmed*, the Tribunal set out the principles applicable to distinguishing clerical work from immigration advice.[23]

[69] Persons who are not licensed (or exempt) are permitted to undertake clerical work only. In essence, such a person can do no more than retrieve and then record or organise information, enter data on a computer database or hard copy schedule, or record information on a form or other like document under the direction of another person, who must be a licensed adviser or a person exempt from licensing, or the client.

[70] Activities which do not meet the narrow definition of clerical work but which involve the use of immigration knowledge or experience to advise or assist another person on an immigration matter, "whether directly or indirectly", amount to providing immigration advice. That is the exclusive domain of the licensed adviser.

[71] The obligations set out in the Code are personal to the licensed immigration adviser and cannot be delegated.[24]

Application of general principles to Mr Chiv

[72] The Registrar alleges that the majority of the email communications to the clients use the email footer "Admin" or (*verbatim*) "The Administrator (in behalf of Kevin Chiv)" from the email address:

Kevin Chiv <nzsuccessimmigration@gmail.com>

[73] According to the Registrar, the email communications to the clients appear to show that unlicensed staff:

(1) advised on the type of supporting documents required, including new police or medical certificates;

(2) provided reasons for applications being declined;

(3) explained the conflict of interest permission letter, including advising the client not to date it; and

(4) explained the terms of the written agreement.

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[23] *Immigration New Zealand (Calder) v Ahmed* [2019] NZIACDT 18 at [55]–[59], [65]–[70].
[24] *Sparks*, above n 4, at [29], [34] & [47].

[74] Ms Ravindra submits that the information contained in the emails was guidance to the clients concerning information already publicly available and did not constitute immigration advice. Furthermore, the staff were simply relaying messages mainly for the collection of documentation, as well as informing the clients of the processing, outcomes and further information required. The staff always acted strictly in accordance with Mr Chiv's requests and never provided advice outside their field of expertise. Ms Nerida, in her submissions to the Authority, states that the emails were sent at the direction of Mr Chiv.

[75] Mr Chiv says that he also used the same email address, but he does not deny that it was the staff at "Admin" or "The Administrator" and not Mr Chiv himself who sent emails with that footer, using his email address. I note that they always refer to Mr Chiv in the third person.[25]

[76] There are so many of them that I do not accept that they were all sent at the specific direction of Mr Chiv, though no doubt the staff had general authority from him to deal with documentation and what he regarded as merely administrative matters.

[77] The documents relied on by the Registrar show that staff gave the following information to clients:

(1) a police certificate must be less than six months old;

(2) a chest x-ray must be urgently done, a medical certificate must be less than three years old and an x-ray no more than three months old;

(3) a birth certificate and other documents had to be provided and certain documents had to be printed and signed;

(4) a police certificate must be less than three months old;

(5) the identity of Immigration New Zealand's panel doctor/hospital;

(6) identifying Immigration New Zealand's reason for declining a visa;

(7) advising a client Mr Chiv needed permission from her to allow him to act on her behalf as the adviser, since he was also the employer;

(8) advising a client to sign a "Conflict of Interest Disclosure", send it back but not to date it; and

[25] Register's supporting documents at 90, 129, 143, 185, 186 and 359.

(9) advising the total fee and how to pay it.

[78] I find that the information above is either "clerical work" or is publicly available or, if "immigration advice", does not cross the threshold warranting disciplinary action. The number of examples of the latter are not so numerous as to require disciplinary action.

[79] Merely repeating or even summarising information given by Immigration New Zealand, such as the reason(s) for decline, does not cross the threshold. It is even doubtful it is immigration advice, though summarising reasons which are multiple and complex could be. The information as to reasons given by the staff here was merely "declined due to the Labour Market" or "declined … due to your Health Issue". It requires no judgement to repeat that in an email to the client, so is not immigration advice.

[80] I do not know the context of the advice to a client not to date a signature and the Registrar does not allege that it was suspicious. Nor do I consider that a communication requesting a signature on a conflict of interest document is immigration advice, though it would be if it had explained why such a document was required.

[81] I find there is insufficient evidence of a breach of cl 3(c) of the Code in respect of the emails from "Admin" or "The Administrator".

[82] In respect of one client, Mr Stevens of "International Agent for Laborers LTD, t/as IAL Employment Services NZ" advised a client of Mr Chiv's on 12 September 2016 that he had received her documents and that "we do the assessment".[26]

[83] There is evidence that Mr Stevens has undertaken some assessment work for this client's work visa application, even if only preliminary. On 7 September 2016, Mr Stevens sent an email to the client advising that she had no relevant experience as a nail technician and setting out "our" (meaning Immigration New Zealand's) requirements in terms of a trade qualification and as to the period of experience. The client then sent further information to Mr Stevens. He replied in an email to her on 8 September and asked her to send yet more documentation. She then asked him on 10 September whether he had the documents and this prompted the email of 12 September advising her that "we do the assessment". He does not appear to have been involved in her application, or at least communications with her, after 12 September.

[26] Registrar's supporting documents at 118–133.

[84] Mr Chiv and Ms Nerida both advised the Authority on 24 November 2017 that Mr Stevens merely helped with the collection of documents and that he only relayed Mr Chiv's "messages". Mr Chiv's immigration company and IAL Employment Services share premises and even one employee, not being Mr Stevens.

[85] Mr Chiv will be given the benefit of the doubt as to the nature of the work undertaken by his staff and Mr Stevens, as there is no direct evidence of any of them actually undertaking eligibility assessments for any client, beyond collecting documents. I will assume in Mr Chiv's favour that the 12 September 2016 email was an isolated miscommunication from Mr Stevens. As is the case for the staff, there is insufficient evidence of a breach of cl 3(c) of the Code in relation to Mr Steven's work.

[86] Turning now to the taking of client instructions, there is overwhelming evidence that the bulk of the communications between Mr Chiv's immigration company and the clients was undertaken by the staff, or even unlicensed people (Mr Stevens and one other) from IAL Employment Services. The evidence of personal engagement with clients by Mr Chiv is minimal. I can identify no email directly from him to a client, though I accept that the initial consultation by Skype or Viber was with him. All of the emails to clients from **Kevin Chiv** <nzsuccessimmigration@gmail.com> are from "Admin" / "The Administrator (in behalf of Kevin Chiv)" and none record Mr Chiv in the footer. I have already found they are all from the staff.

[87] It is apparent from the submission of Ms Nerida to the Authority on 24 July 2017 that both Mr Chiv and his counsel mistakenly thought that Mr Chiv could communicate through an intermediary where that was more convenient to the client. He cannot do so. The obligation to take instructions from each client is personal to Mr Chiv. He unlawfully delegated client engagement to his staff or the staff of another company. Delegation of the bulk of engagement is not permitted, irrespective of whether the work delegated amounts to immigration advice or is merely clerical work.

[88] An isolated incident of clerical work by the staff in the form of document collection from a client would not justify a disciplinary outcome, but the delegation of client communication to unlicensed people was systemic here. This is a breach of cl 2(e) of the Code. While such conduct is also unprofessional and a breach of cl 1, that adds little to the breach of cl 2(e). The sixth head of complaint is partially upheld.

[89] Given the breach of cls 1 and 2(e), there is no need to consider the alternative complaint of negligence.

(7) Emailing communications en masse to clients thereby failing to preserve their confidentiality, in breach of cl 4(a)(i)

[90] The staff of Mr Chiv had the unusual practice of communicating with clients *en masse* providing a range of information, including information specific to each client.

[91] For example, on 7 September 2016 one email was sent to nine clients advising them that their police certificates had to be no more than six months old.[27] It set out the full name and date of expiry of the certificate of each client. Then on 29 September 2016, also in one email, three clients were advised of the date and time of the interviews of each with an immigration officer.[28] On 22 February 2017, in one email, six clients were told that Mr Chiv would "re-do" their work visa applications, but he needed their permission to act as both their employer and adviser.[29] The permission letter, to be signed by each client, was attached to the email.

[92] This is obviously a breach of each client's confidentiality. Unless the clients all provided written consent to disclosures being made to other named clients, Mr Chiv is not even permitted to disclose to a client the name of any other client, let alone any details of their applications or circumstances.

[93] Ms Ravindra states in her submissions that "the method of notification was done with prior consent from the clients as they were all in one batch of lodgement". Furthermore, it was an effective practice and in the best interests of the clients.

[94] Counsel produces no evidence of written consent by each client of disclosure to every other named client. Mr Chiv was asked by the Tribunal to provide the written consents on 23 September 2019, but Ms Ravindra advised on 14 October 2019 they could not be located. Mr Chiv claims the clients provided verbal and written consent for group communication. I do not accept this. He has provided no evidence of consent from any of his clients.

[95] The fact they were all lodged at the same time or concerned the same employer is irrelevant. I accept that it is an efficient way to communicate the same information to multiple clients, but that is also irrelevant.

[96] Mr Chiv has breached a fundamental aspect of his professional obligations to each client. They are entitled to expect their circumstances will be kept strictly confidential, disclosure to Immigration New Zealand excepted. The exception permitted

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[27] At 68.
[28] At 81.
[29] At 90.

in cl 4(a)(i) of the Code is not established. This is a breach of cl 4(a) of the Code. The seventh head of complaint is upheld.

(8) Failing to confirm in writing to clients all material discussions, in breach of cl 26(c)

(9) Failing to provide a complete copy of the client files for inspection, in breach of cl 26(e)

[97] Mr Chiv's client files for the seven clients contain handwritten notes, presumably authored by Mr Chiv, of the initial consultations with the clients.[30] These notes record that Mr Chiv discussed important issues with them, particularly conflict of interest (since Mr Chiv was both the employer and the adviser). It is highly likely Mr Chiv advised them they were eligible for a visa at or about the time of the initial consultation, as they must have asked that question and would not have otherwise instructed him to go ahead with their applications. The notes also briefly record and date certain subsequent events in the processing of their visa applications.

[98] No written records (of the advice given at these discussions) in communications to the clients, were contained in any of Mr Chiv's files for these seven clients.

[99] Ms Ravindra submits that the file notes themselves suffice to meet the requirement to maintain written records of discussions. Furthermore, Mr Chiv's clients were "responsive over chats and emails, particularly, Viber and Skype" so the discussions were mainly through *(verbatim)* "these app". Mr Chiv told the Authority that he used Skype and Viber as a convenient, efficient and effective means of communicating.[31]

[100] The Code requires Mr Chiv not only to have file notes of material oral communications, but to confirm them in writing to the client.[32] Advice as to eligibility and any conflict of interest is material. Mr Chiv can send that written confirmation to the client by hard copy letter, or electronically by email or text. Those written communications to the client can be kept on the file in hard copy, or in an electronic file.

[101] It is the written confirmation of the material advice given in the initial consultation which is missing here. Mr Chiv has not provided to the Authority or the Tribunal evidence of any such written communications to his clients relating to the initial consultation, or other oral discussions or chats by Viber and Skype.

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[30] At 438–444.
[31] Letter to Authority 24 November 2017, Registrar's supporting documents at 445–446.
[32] Code of Conduct 2014, cls 26(a)(iii) & (c).

[102] If the Authority requires Mr Chiv's file pursuant to its statutory powers, he must hand over a complete file. If the record is electronic, he must either make available a copy of the electronic record, or print it out in hard copy.

[103] Mr Chiv was required by the Authority on 24 April 2017 to provide his complete files concerning these seven clients. The absence of evidence of written communications confirming the oral discussions establishes a breach of cl 26(c) of the Code. I consider it more likely that these written communications never existed, than they existed but were not produced to the Authority. The breach of cl 26(e) is not established.

[104] The eighth head of complaint is upheld.

OUTCOME

[105] The second, fourth, sixth, seventh and eighth heads of complaint are wholly or partially upheld. Mr Chiv has breached cls 1, 2(e), 4(a) and 26(c) of the Code.

SUBMISSIONS ON SANCTIONS

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

[107] A timetable is set out below. Any request that Mr Chiv undergo training should specify the course. Any requests 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

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

(1) The Registrar, the complainant and Mr Chiv are to make submissions by **12 November 2019**.

(2) The Registrar, the complainant and Mr Chiv may reply to submissions of any other party by **26 November 2019.**

ORDER FOR SUPPRESSION

[109] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.[33]

[110] There is no public interest in knowing the name of Mr Chiv's clients.

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

D J Plunkett
Chair

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