

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2019] NZIACDT 20

Reference No: IACDT 009/17

**IN THE MATTER** of a referral under s 48 of  
the Immigration Advisers  
Licensing Act 2007

**BY** **THE REGISTRAR OF  
IMMIGRATION ADVISERS**  
Registrar

**BETWEEN** **MG**  
Complainant

**AND** **JEAN XIUJING HU**  
Adviser

**SUBJECT TO SUPPRESSION ORDER**

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**DECISION**  
**Dated 10 April 2019**

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**REPRESENTATION:**

Registrar: Self-represented  
Complainant: Self-represented  
Adviser: P Moses, counsel

## PRELIMINARY

[1] Ms Jean Xiujing Hu, the adviser, entered into an agreement with the complainant, MG, to provide services in relation to a work visa application. The complainant had contracted to buy a business from Ms H. It was Ms H who had arranged for Ms Hu to assist the complainant with her visa and who paid her fee.

[2] Ms Hu duly prepared and represented the complainant on the application made to Immigration New Zealand, but communications with the complainant were largely through Ms H. The complainant eventually terminated the agreement with Ms Hu, but successfully pursued the visa application using another immigration adviser.

[3] The complaint referred to the Tribunal concerns Ms Hu's failure to engage with the complainant and her failure to deal appropriately with Ms H's conflict of interest. Ms Hu largely admits the professional errors in managing the relationship with the complainant.

## BACKGROUND

[4] Ms Hu is a licensed immigration adviser. Her companies are Leader Investor Group Ltd and New Zealand Ideal Immigration Consultants Ltd, of which she is a director.

[5] In about 2012, the complainant decided to migrate to New Zealand with her family. She decided to purchase from Ms H a fast food business for NZ\$300,000. The complainant and Ms H entered into some form of conditional contract in about April 2012 (unseen by the Tribunal). It was agreed between the complainant and Ms H that the latter would be responsible for ensuring that the complainant's Long-Term Business Visa (LTBV) was obtained and for paying the fee of the immigration adviser.

[6] In mid-2012, Ms H first contacted Ms Hu. Formal instructions to Ms Hu came from the complainant in December 2012, with Ms H acting as the intermediary between the complainant and Ms Hu.

[7] Ms Hu's written agreement for the supply of professional services to the complainant was emailed by her to Ms H on 10 December 2012. Ms Hu had signed it that day. The other party was the complainant, but the copy provided to the Tribunal is unsigned by her. However, a largely illegible page attached to an email of 8 January 2013 from Ms H to Ms Hu apparently shows the signatures of both parties on the signing page of the agreement.<sup>1</sup> If so, the complainant's signature was on 5 January 2013. The

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<sup>1</sup> Complaint supporting documents at 374.

complainant certainly believes she signed the agreement.<sup>2</sup> The total fee was NZ\$8,000, excluding disbursements and Immigration New Zealand's fees. It was payable for a work visa application in the LTBV category.

[8] There were numerous emails between January and April 2013 from Ms H to Ms Hu raising questions about the visa application and supporting documents, with emailed replies from Ms Hu.

[9] On 15 April 2013, the complainant signed the contract to purchase the business from Ms H and paid a deposit.

[10] On 21 April 2013, Ms Hu telephoned the complainant to confirm some information before submitting the visa application. This was the first time Ms Hu had direct contact with the complainant.

[11] The LTBV application was lodged by Ms Hu with Immigration New Zealand on 22 April 2013. It had been signed by the complainant on 5 March 2013 and by Ms Hu on 18 April 2013. The business plan was based on the fast food business being bought from Ms H.

[12] The complainant sent an email to Ms Hu on 21 June 2013 introducing herself and asking whether an immigration officer had been assigned. Ms Hu responded on 27 June 2013. Following this, there were a small number of emails between the two of them in the period from July to September 2013 concerning the processing of the application by Immigration New Zealand.

[13] On 27 September 2013, the complainant sent an email to Ms Hu stating that she wanted to cancel the deal with Ms H and submit another business plan to Immigration New Zealand. Ms Hu replied that the complainant's contract with Ms H could be terminated. Ms Hu confirmed she could represent the complainant at the complainant's cost on the basis of a new business plan. On 2 October 2013, she advised that the fee for lodging a new business proposal would be NZ\$3,000.

[14] Ms Hu submitted the new business plan to Immigration New Zealand on 4 November 2013. It was based on starting a retail stationery and office supply business.

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<sup>2</sup> Email to the Immigration Advisers Authority from the complainant's second adviser, dated 10 September 2014.

[15] The complainant then terminated the agreement with Ms Hu and instructed a new licensed immigration adviser.

[16] On 19 November 2013, the complainant's new immigration adviser advised Immigration New Zealand that the application for an LTBV previously filed may have contained some incorrect information. He therefore requested all the documents that had earlier been provided.

[17] On 21 February 2014, the new adviser wrote to Immigration New Zealand stating that the complainant had never seen the first business proposal prior to its submission. She had been advised by Ms Hu that she only needed to sign at the end of the application form and that other documents could be signed by the intermediary. None of the information on the form was translated or explained to the complainant. The complainant merely signed the form and sent the requested documents.

[18] According to the new adviser, the complainant said that her medical report had been altered, her resumé had incorrectly listed previous experience at a hotel (said to be on the advice of Ms Hu) and the figures in the financial statements for the complainant's company had been altered and artificially inflated.

[19] Immigration New Zealand was told that once the disagreement over the purchase price of Ms H's business had arisen, Ms Hu advanced a proposal for the purchase of an office supplies business. The complainant found that the figures for rent written by Ms Hu were wildly inaccurate and discovered that it was inappropriate for Ms Hu to be finding that type of information. Nonetheless, the complainant instructed Ms Hu to submit the new business proposal.

[20] The new adviser further stated that the complainant acknowledged that she was not completely innocent in the process but explained that she was acting in good faith by trusting Ms Hu. The complainant would be making a formal complaint against Ms Hu. She continued to want to pursue her dream of moving to New Zealand and was currently undertaking her own business research.

[21] The new adviser provided to Immigration New Zealand a statutory declaration from the complainant (dated 18 February 2014). She set out a detailed narrative as to how she came to meet Ms H and through her, Ms Hu, how Ms H introduced the idea of purchasing her shop and why that arrangement did not proceed, and how Ms Hu helped her find a business in stationery and office supplies.

[22] The new adviser lodged another revised business plan with Immigration New Zealand on 21 March 2014, based on establishing a meat export business in this country.

[23] Immigration New Zealand approved an LTBV for the complainant and her family on 13 June 2014.

[24] On 12 September 2014, Ms Hu sent the following text to the complainant presumably in response to the formal complaint made the previous month (*verbatim*):

You are really dirty enough... your business dealing with [Ms H] is none of my business... you both came to me for immigration application after you had settled the price... all the documents were prepared by yourself... I had never got involved... I don't know whatever fake documents you have provided... when you and [Ms H] fell out, I tried my best to save your application... you are not at all grateful; instead you do this to me. I don't know for what sake you drag me into the dealings of you two and invert the right and wrong... the heavens will see what you are doing and will deliver punishment.

## **COMPLAINT**

### *Complaint to Authority*

[25] On 25 August 2014, the complainant made a formal complaint against Ms Hu to the Immigration Advisers Authority (the Authority). According to the complainant, Ms Hu had spoken to her only once before filing the application and that was on 21 April 2013. She did not provide an authoritative explanation of the LTBV.

[26] The Authority wrote to Ms Hu on 17 January 2016 formally advising her of the complaint and summarising the details. The Registrar of Immigration Advisers (the Registrar), the head of the Authority, had determined that grounds of complaint had been disclosed, namely breaches of certain specified clauses of the Code of Conduct 2010 (the Code), as well as negligence and dishonest or misleading behaviour.

[27] The complainant had alleged that the services agreement was not explained to her and nor were immigration matters discussed with her. The Authority found no evidence of any communications with the complainant before 21 April 2013. The email sent on 10 December 2012 with the written agreement had been sent to Ms H and not the complainant. The signed agreement had been sent back by Ms H to Ms Hu. According to the complainant, she had signed and returned the forms without any knowledge of the first business proposal.

[28] The Authority considered that proper client engagement was not carried out. It was not until September 2013 that Ms Hu began working directly with the complainant. The business proposals were created without the complainant's knowledge, which might amount to negligence and/or dishonest or misleading behaviour.

[29] According to the Authority, Immigration New Zealand had also been provided with false information concerning the complainant's medical examination, employment background and her company's financial statements. The information provided by the complainant showed that Ms Hu was aware of this. This could also amount to dishonest or misleading behaviour.

[30] In addition, the complainant had provided a screen shot of a text message written on about 12 September 2014 by Ms Hu which did not meet the professional standard required from a licensed adviser.

[31] Ms Hu was given an opportunity to provide a written explanation in relation to the complaint.

#### *Response to the complaint*

[32] Counsel for Ms Hu, Mr Moses, replied to the Authority on 17 March 2017. Counsel stated that Ms Hu acknowledged having made errors in the services provided to the complainant, which might amount to a breach of the Code. However, Ms Hu rejected the allegation that she had counselled the complainant to provide false information or to fabricate documents, or that she falsified them herself. The professional violations acknowledged were:

- (1) not recognising the conflict of interest between the complainant as the intending purchaser of the business and Ms H as the vendor, who was then authorised by the complainant to act as her agent or intermediary in the immigration application;
- (2) flaws in the engagement process relating to explaining obligations arising from the Code and effectively confirming the complainant's instructions;
- (3) failure to keep adequate records of material discussions with the complainant or the intermediary; and
- (4) inadequate communication with the complainant.

[33] Counsel contended that the errors by Ms Hu, while not trivial, were not at the high end of the spectrum and would not call into question Ms Hu's fitness to hold a licence. It was accepted that Ms Hu's text message to the complainant was overly emotional and unwise. It expressed Ms Hu's frustration. However, it could not be categorised as threatening and did not amount to a disciplinary offence.

[34] A detailed explanation concerning the alleged falsification of information and documents was provided by counsel and also by Ms Hu in a statutory declaration, but as that is not pursued by the Authority in the complaint before the Tribunal, I will not consider this further.

*Statutory declaration of Ms Hu*

[35] Counsel provided a statutory declaration from Ms Hu (16 March 2017). She set out a narrative of the events in chronological order. She accepted that she did not recognise the potential conflict of interest between Ms H as the vendor of the business and the complainant as the intended purchaser. Many of the problems with the complainant's immigration application arose when this potential conflict became an actual conflict.

[36] At the beginning, stated Ms Hu, everyone believed that the parties' interests were aligned. The complainant had never expressed any desire to contact Ms Hu directly until June 2013 and it was not until September 2013 that she expressed dissatisfaction with Ms Hu's role. It was accepted by Ms Hu that she should have insisted on receiving a written authorisation from the complainant directly. Had the potential for a conflict between the vendor and purchaser been recognised by Ms Hu, she would not have agreed to communicate with the complainant through Ms H. Even though it was authorised by the complainant, she recognised that it was unwise.

[37] Ms Hu accepted she made errors in the client engagement process. She acknowledged that the services agreement was sent to the complainant through Ms H and that she did not have a conversation with the complainant to explain its content. However, she had sent Ms H copies of the agreement in both English and Chinese. Ms Hu does not believe the complainant can claim to have not understood the nature or terms of the agreement, as there was a version in Chinese.

[38] It was accepted by Ms Hu that she did not explain to the complainant the adviser's obligations under the Code, nor did she ensure that she had a written authorisation from the complainant for Ms H to be the intermediary. Ms Hu can see now that it was unwise to have had Ms H involved in the relationship with the complainant. She accepted she

did not obtain the complainant's informed instructions, though had believed she had received them through Ms H.

[39] According to Ms Hu, her client engagement process had changed significantly since 2013. She now provided a Chinese language copy of the Code and ensured that she spoke directly to the client before advising them on any immigration matter.

[40] In her declaration, Ms Hu stated that it was not until September 2013 that the complainant revoked the authority given to Ms H to deal with Ms Hu and she immediately agreed to that request. She accepted a possible breach of the Code in not recording or confirming in writing all material discussions with the complainant and Ms H.

[41] As for the complainant's allegation that she did not know what the first business proposal contained, Ms Hu stated that Ms H frequently relayed to her questions from the complainant, to which she responded. Ms Hu had every reason to believe that Ms H and the complainant were discussing the business proposal and that the complainant was fully informed. However, based on what was now known, Ms Hu accepted that the complainant was not given sufficient information about the first business proposal submitted to Immigration New Zealand. That had been due to Ms H not forwarding to the complainant information which had been provided by Ms Hu.

[42] Ms Hu recorded in her declaration that the business plan had been prepared by Ms Z who had experience in accounting and small business management in both China and New Zealand. She was a contractor to Ms Hu's company. The plan had been prepared based on information received from Ms H. Ms Z had raised numerous queries which had been referred to Ms H, who was expected to discuss them with the complainant. Ms Hu did not know that Ms H was not always sharing the information and obtaining feedback from the complainant. As for the second business proposal, Ms Hu noted that the desire to start or purchase a stationery business had come from the complainant.

[43] As for the 12 September 2014 text message, Ms Hu acknowledged in her declaration that it was more emotional than wise. It was an expression of her frustration. It was not intended to be interpreted as threatening.

[44] Ms Hu concluded her declaration by acknowledging that her errors, which were due to a lack of communication between herself and the complainant, could amount to breaches of the Code or even negligence. However, everything had been done in good faith. Her conduct was not dishonest or misleading.



*Complaint referred to Tribunal*

[45] The Registrar filed a statement of complaint (dated 26 May 2017) with the Tribunal. He refers to the Tribunal the following possible breaches of the Code:

- (1) failing to make the client aware in writing and in plain language of the terms of the agreement and all significant matters relating to it, in breach of cl 1.5(a);
- (2) representing a client with a potential conflict of interest with another client, without disclosing that to the client and obtaining her written agreement, in breach of cl 6(a);
- (3) failing to deal directly with the complainant for a period of about nine months until specifically requested to do so, thereby failing to carry out her lawful informed instructions, in breach of cl 1.1(b);
- (4) relying on Ms H, who is unlicensed, to communicate and deliver immigration advice to the complainant, thereby not acting in accordance with immigration legislation, in breach of cl 2.1(b);
- (5) failing to confirm in writing to the complainant when her applications were lodged and to provide ongoing timely updates, in breach of cl 3(a); and
- (6) failing to perform her services with respect and professionalism by sending an unprofessional message on 12 September 2014, in breach of cl 1.1(a).

**JURISDICTION AND PROCEDURE**

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

- (a) negligence;
- (b) incompetence;
- (c) incapacity;
- (d) dishonest or misleading behaviour; and
- (e) a breach of the Code of Conduct.

[47] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.<sup>3</sup>

[48] The Tribunal must hear complaints on the papers, but may in its discretion request further information or any person to appear before the Tribunal.<sup>4</sup> It has been established to deal relatively summarily with complaints referred to it.<sup>5</sup>

[49] 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.<sup>6</sup>

[50] The sanctions that may be imposed by the Tribunal are set out in the Act.<sup>7</sup> It may also suspend a licence pending the outcome of a complaint.<sup>8</sup>

[51] 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.<sup>9</sup>

[52] The Tribunal has received a statement of complaint (26 May 2017) from the Registrar, with supporting documents. There is also a statement of reply (16 June 2017) from Mr Moses. Ms Hu does not seek an oral hearing.

## ASSESSMENT

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

### 1. Obligations to clients

#### 1.1 Care, respect, diligence and professionalism:

A licensed immigration adviser must, with due care, diligence, respect and professionalism:

- a) perform his or her services; and
- b) carry out the lawful informed instructions of clients; and

...

<sup>3</sup> Immigration Advisers Licensing Act 2007, s 45(2) & (3).

<sup>4</sup> Section 49(3) & (4).

<sup>5</sup> *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].

<sup>6</sup> Section 50 of the Act.

<sup>7</sup> Section 51(1).

<sup>8</sup> Section 53(1).

<sup>9</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [101]–[102] & [112].

### 1.5 Written agreements

A licensed immigration adviser must ensure that:

- a) before any agreement is entered into, clients are made aware, in writing and in plain language, of the terms of the agreement and all significant matters relating to it; and

...

## 2. Obligations to the Minister of Immigration, the Department handling immigration matters, the Immigration Advisers Authority and the Immigration and Protection Tribunal

### 2.1 Legislation and operating requirements

A licensed immigration adviser must, at all times:

...

- b) act in accordance with immigration legislation, including the Immigration Act 2009 and regulations made under it, the Immigration Advisers Licensing Act 2007, and applicable international obligations; and

...

## 3. Business management

A licensed immigration adviser must maintain professional business practices relating to finances, records, documents, contracts and staff management, including:

- a) confirming in writing to clients when applications have been lodged, with ongoing timely updates; and

...

## 6. Conflicts of Interest

Unless the client agrees in writing to representation or the arrangement subsequent to the adviser disclosing the potential conflict, a licensed immigration adviser, in relation to immigration matters, must not:

- a) represent a client who has potentially conflicting interests with another client of the adviser; or

...

[54] First, Ms H's conflict of interest. I would have thought it readily apparent that Ms H, as the vendor of the business on which the complainant's visa depended, had a clear conflict of interest in also performing the role of intermediary or agent on behalf of the purchaser in immigration matters.

[55] Aside from the dispute over the purchase price, the business appears to have been unsuitable in terms of the immigration criteria as it did not match the complainant's business background. The potential for such matters to be manipulated by Ms H is apparent. It must be remembered that the complainant, residing in China and having no

knowledge of New Zealand business or immigration, was vulnerable. Ms Hu should have recognised this.

[56] Mr Moses submits that Ms Hu's key failure was accepting a conflicted intermediary. I respectfully disagree. The critical failure was accepting an intermediary and not engaging personally with the complainant. That failure was aggravated by Ms Hu's inability to recognise the conflict.

[57] The following heads of complaint will be considered together. They all arise from that one fundamental error by Ms Hu, namely failing to personally engage with her client throughout the earlier period in which she provided immigration services.

- (1) *Failing to make the client aware in writing and in plain language of the terms of the agreement and all significant matters relating to it, in breach of cl 1.5(a)*
- (3) *Failing to deal directly with the complainant for a period of about nine months until specifically requested to do so, thereby failing to carry out her lawful informed instructions, in breach of cl 1.1(b)*
- (4) *Relying on Ms H, who is unlicensed, to communicate and deliver immigration advice to the complainant, thereby not acting in accordance with immigration legislation, in breach of cl 2.1(b)*
- (5) *Failing to confirm in writing to the complainant when her applications were lodged and to provide ongoing timely updates, in breach of cl 3(a)*

[58] Advisers have a professional obligation to carry out the client's instructions with due care, diligence and professionalism.<sup>10</sup> This necessarily requires obtaining the instructions, without which the adviser cannot know the instructions to be carried out. An adviser is not acting with due care, diligence and professionalism in carrying out instructions which the adviser does not know have come from the client.

[59] This obligation, like all other Code obligations, must be personally performed by the adviser and cannot be delegated.<sup>11</sup>

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<sup>10</sup> Code of Conduct 2010, cl 1.1(b).

<sup>11</sup> *Sparks*, above n5, at [29], [32], [34] & [37].

[60] In other words, the adviser must personally take charge of client engagement and then undertake the services in accordance with the instructions the adviser knows have come from the client. Neither obtaining instructions nor carrying them out can be delegated to an intermediary, except to the extent of “clerical work” or translation and interpretation services.<sup>12</sup> Nor can an adviser excuse the lack of engagement by claiming the client consented or even proposed communication through an intermediary. It is the adviser, not the client, who has the obligation under the Code to personally engage the other. There can be no waiver of that obligation by the client.

[61] Aside from one telephone discussion in April 2013 and a limited exchange of emails from June to September 2013, Ms Hu had no engagement with the complainant before September 2013. Ms Hu concedes what is somewhat self-evident, that she did not adequately engage with the complainant until September 2013 when the complainant terminated the relationship with Ms H. There was no engagement at all when the agreement for services was entered into in January 2013 and only one brief discussion before the visa application was lodged in April 2013. Irrespective of any conflict, Ms Hu was not entitled to rely on Ms H to obtain the complainant’s instructions.

[62] Turning now to the specific heads of complaint.

[63] This lack of engagement meant that Ms Hu did not, before the services agreement was entered into, ensure the complainant was aware in writing of the terms of the agreement and all significant matters. Ms Hu provided the English and Chinese versions of the agreement by email to Ms H, but there is no evidence Ms H provided the full versions to the complainant. All that seems to be available in response to Ms Hu sending the different versions to Ms H is the illegible signature page of the English version emailed by Ms H to Ms Hu on 8 May 2013. Nor was there any discussion between Ms Hu and the complainant at which the agreement was explained.

[64] The first head of complaint is upheld. Ms Hu is in breach of cl 1.5(a) of the Code.

[65] Ms Hu’s failure to deal directly with the complainant for about nine months, bar one telephone discussion and a limited email exchange from June 2013, means that she did not know what the complainant’s instructions were. Ms Hu cannot assert compliance with an obligation to carry out the complainant’s instructions if she does not know what they are.

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<sup>12</sup> Immigration Advisers Licensing Act 2007, ss 6 & 7(1).

[66] Nor does Ms Hu know that any instructions she received through Ms H were “informed” instructions of the complainant, as cl 1.1(b) requires. Ms Hu was not entitled to assume that Ms H was faithfully relaying all the information to the complainant in order to obtain informed instructions and was then faithfully passing those instructions on to Ms Hu. Indeed, the evidence tends to show that this was not occurring, as Ms Hu accepts.<sup>13</sup>

[67] The complainant alleges that the first business plan was created and lodged without her knowledge. Clearly, the complainant knew the basis of the plan, which was Ms H’s fast food business. However, the plan is much more than that. It is a detailed document. It went through so many revisions that the complainant’s consent to all of them should not have been assumed, even putting to one side Ms H having her own interest as the vendor of the business. This plan was a critical document in the application. Ms Hu should have dealt directly with the complainant on it.

[68] Surprisingly, Ms Hu obtained the complainant’s signature on the LTBV application as early as 5 March 2013, which was well before the business plan was finalised and the application was lodged on 22 April 2013. The early signature is yet more evidence that Ms Hu should not have been confident that the complainant had approved the application and its supporting documents, as lodged.

[69] The third head of complaint is upheld. Ms Hu is in breach of cl 1.1(b) of the Code.

[70] The failure to engage directly with the complainant also means that Ms Hu failed to confirm in writing to the complainant when the application was lodged. Probably Ms Hu provided that advice to Ms H, but Ms Hu does not know what, if anything, Ms H then passed on to the complainant. Ms Hu had a personal obligation to communicate such advice directly to the complainant.

[71] However, I do not find that Ms Hu failed to give timely updates. There was a limited exchange of emails between Ms Hu and the complainant from late June to September 2013, prior to the removal of Ms H from the relationship. Those emails did concern Immigration New Zealand’s processing of the application.

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<sup>13</sup> Statutory declaration of Ms Hu, 16 March 2017, at [31]–[32].

[72] The fifth head of complaint is upheld. Ms Hu is in breach of cl 3(a) of the Code.

[73] The fourth head of complaint is more problematic. Indeed, there is no evidence that Ms H, who is not a licensed adviser, provided immigration advice to the complainant. I appreciate that it is not known what Ms H told the complainant. Conceivably Ms H might have paraphrased Ms Hu's advice and added to it or modified it, even in good faith. This would amount to giving immigration advice, which would be contrary to the Act. On the other hand, if Ms H did nothing more than accurately repeat or copy to the complainant the advice of Ms Hu, there would be no breach of cl 2.1(b) of the Code.

[74] As there is no evidence of any specific incident of Ms H giving immigration advice that has not come from Ms Hu, the fourth head of complaint is unproven. It is dismissed on that basis.

(2) *Representing a client with a potential conflict of interest with another client, without disclosing that to the client and obtaining her written agreement, in breach of cl 6(a)*

[75] The Registrar relies on cl 6(a) of the Code set out above. This is narrowly defined as it is confined to conflicts between the client and "another client of the adviser".

[76] Ms H certainly had a conflict of interest in her relationship with the complainant, but it is not obvious that Ms H was also a client of the adviser. It is noted she paid Ms Hu's fee, but that was on behalf of the complainant. The services agreement was between Ms Hu and the complainant. Ms H was not seeking any immigration services for herself from Ms Hu. The sale of the business was not being undertaken through Ms Hu.

[77] I find that Ms H was an agent or intermediary of a client and not a client of Ms Hu's herself.

[78] The second head of complaint is dismissed.

[79] In my view, Ms Hu breached cl 1.1(a) of the Code in accepting instructions from the complainant through a conflicted intermediary. She has not acted with due care and professionalism. However, no such breach is the subject of the complaint.

(6) *Failing to perform her services with respect and professionalism by sending an unprofessional message on 12 September 2014, in breach of cl 1.1(a)*

[80] Ms Hu accepts the text of 12 September 2014 sent to the complainant was overly emotional and unwise. It was an expression of her frustration. Ms Hu denies it was threatening and I agree.

[81] It appears to be an isolated incident of misjudged communication made on the spur of the moment. It is unprofessional, but on its own is insufficient to warrant disciplinary action.

[82] I decline to uphold the sixth head of complaint.

## **OUTCOME**

[83] I have upheld the first, third and fifth heads of complaint. Ms Hu is in breach of cls 1.1(b), 1.5(a) and 3(a) of the Code.

## **SUBMISSIONS ON SANCTIONS**

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

[85] Mr Moses accepts that Ms Hu's errors relate to important aspects of compliance with the Code, but describes them as technical in nature and not at the high end of the spectrum. He submits they were inadvertent and do not represent conduct deliberately in breach of Ms Hu's legal and ethical obligations.

[86] While I would not describe the failure to engage with the complainant as technical, I largely agree with Mr Moses. Personal client engagement is a fundamental obligation of an adviser. Clients are entitled to expect they will deal directly with a licensed person, which provides an assurance of knowledge and being subject to a professional code.

[87] The sanctions will reflect the importance of the obligations which Ms Hu has failed to comply with. In saying that, I accept Ms Hu did not set out deliberately or in some cavalier way to avoid her professional obligations to the complainant. I accept she believed Ms H was faithfully relaying information between the complainant and herself. Furthermore, there was really just one overarching failure here and that was the lack of personal engagement with the complainant. There will be no double



counting of the breaches of multiple Code provisions arising from that one overarching violation.

[88] A timetable is set below. Any requests that Ms Hu 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*

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

- (1) The Registrar, the complainant and Ms Hu are to make submissions by **2 May 2019**.
- (2) The Registrar, the complainant and Ms Hu may reply to the submissions of any other party by **16 May 2019**.

**ORDER FOR SUPPRESSION**

[90] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.<sup>14</sup>

[91] There is no public interest in knowing the name of Ms Hu's client, the complainant.

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

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D J Plunkett  
Chair

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<sup>14</sup> Immigration Advisers Licensing Act 2007, s 50A.