

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2020] NZIACDT 17

Reference No: IACDT 029/18

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

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

**BETWEEN** **XA**  
Complainant

**AND** **JENNIFER ANN HILL**  
Adviser

**HEARING:** 19 & 20 February 2020

**SUBJECT TO SUPPRESSION ORDER**

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**DECISION**  
**Dated 10 March 2020**

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**REPRESENTATION:**

Registrar: T Thompson, counsel  
Complainant: R Reed, counsel  
Adviser: G Jenkin, counsel

## **PRELIMINARY**

[1] It is alleged that Ms Hill, the adviser, used an unlicensed employee within her office, her life partner, to engage with her client, the complainant, and also to do immigration work that only a licensed adviser is allowed to perform. Furthermore, that she was negligent in permitting incorrect information regarding the complainant's work experience to be provided to Immigration New Zealand.

[2] The essential issue to consider is one of credibility, being whether Ms Hill was the effective author of all the texts her life partner sent to the complainant and whether she was present at meetings her partner had with the complainant.

## **BACKGROUND**

[3] Ms Jennifer Ann Hill is a licensed immigration adviser. At the relevant time, she held a provisional licence. She obtained that licence on 10 March 2016, with a full licence being issued on 11 March 2018.

[4] At the time Ms Hill was representing the complainant, she described herself to the Immigration Advisers Authority (the Authority) as a partner in Xin Cheng International Company Ltd (Xin Cheng). She now describes herself as a volunteer, as she says she is not regularly paid a salary. Xin Cheng is owned by Ms Xuefen Mo, the mother of Ms Hill's life partner, Mr Wen (Gary) Gu. Nothing turns on Ms Hill's title or the extent to which she is paid by Ms Mo.

[5] It is relevant to note that both Ms Hill and Mr Gu are ethnic Chinese and were born in China.

[6] The complainant, [XA], a national of China, held a work visa allowing her to be employed as an administrator for a dental company at a clinic in Auckland.

[7] On 9 September 2016, the complainant contacted Xin Cheng using the Chinese language messaging application "WeChat" enquiring about applying for permanent residence. She had been referred to Mr Gu by a friend. The enquiry was not directed to anyone in particular at Xin Cheng, though the WeChat account is identified with Mr Gu as "guwennz".

[8] The initiating text was sent by the complainant to a mobile phone number owned by Xin Cheng. The phone itself was a company phone. It was usually held by Ms Hill, though Mr Gu took it if he left the office on his own on company business. Xin Cheng is a small company with its office in Ms Mo's house where Ms Hill and Mr Gu lived. Ms Hill

and Mr Gu had desks next to each other. Text messages to the company's number simultaneously came through on both the phone and the company's computer.

[9] I will deal later with Ms Hill's explanation as to who was the real author of Mr Gu's text messages to the complainant. It is not disputed that it was Mr Gu who physically sent all messages, which were in Chinese, to the complainant. He largely typed those messages on the computer, rather than the mobile phone.

[10] The Tribunal has been provided with a transcription of numerous texts in Chinese between the complainant and Mr Gu. It is not a complete record of their text messages. Most, but not all, are translated into English.

[11] Mr Gu immediately replied to the complainant's first text. He sought more information about her. He told the complainant she could not use her work title of administrator, asking whether it was possible for her to be called a manager.

[12] The exchange on WeChat between them continued on 23 September 2016. The complainant provided information about herself in response to Mr Gu's questions. Mr Gu advised regarding the fees.

[13] On 29 September 2016, Mr Gu told the complainant that he had basically prepared all the materials. The most important was the job description. He said that "Helen" would change the job description. While not explained in the texts produced to the Tribunal, Helen is a friend of Ms Hill and Mr Gu who previously worked at Immigration New Zealand and on the "odd occasion" provided practical help to Ms Hill.<sup>1</sup>

[14] The exchange of messages continued in early October, including as to the fees to be charged. Mr Gu told the complainant that he had discussed "it" with Helen. He said it would surely be approved. The complainant informed Mr Gu that she had a history of being declined visas by other countries, which had probably not been disclosed to Immigration New Zealand by those previously representing her. Mr Gu asked for more details. The complainant said this was the one thing she was relatively worried about. She told him that she was filling out some of the Expression of Interest (expression) form.

[15] The complainant asked Mr Gu on 4 October 2016 whether "we" have to sign a contract. Mr Gu replied to her that there was a contract. He advised that if there was some problem, they would tell her in advance that they were not confident. She would then have to decide herself. There was a further exchange about the payment of fees and other necessary documentation.

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<sup>1</sup> Ms Hill's statement of response (5 October 2018) at [7].

[16] On the same day, Mr Gu and the complainant met in the food court at what is now called West City Mall in Henderson. He went to collect her employment contract. With him was Helen and Helen's children.

[17] On the following day, 5 October 2016, there was a text exchange between the complainant and Mr Gu about obtaining a variation of the conditions of her work visa due to the change in her position title to manager. Mr Gu told the complainant on 7 October that Helen was revising the job description.

[18] On 10 October 2016, Mr Gu met the complainant at her place of work to drop off one or more documents. He says he left with her Xin Cheng's client service agreement. The complainant cannot remember what documents were left with her, but she told the Tribunal she does not believe it was the client agreement.

*Variation of condition sought*

[19] On the same day, 10 October 2016, Ms Hill applied to Immigration New Zealand to vary the conditions of the complainant's work visa. It was explained that the complainant had been offered the role of dental practice manager at the Auckland clinic.

[20] Mr Gu sent a series of texts to the complainant on 11 October 2016 setting out the points that could be claimed by her under the then applicable policy. He said that her points total was above the threshold for selection. On the same day the policy changed, increasing the threshold to a level at which the complainant was not eligible. Mr Gu went on to say in the texts that he had read the new policy and believed Immigration New Zealand would drop the points threshold to a level which the complainant could meet.

[21] The variation of condition was approved by Immigration New Zealand on 15 October 2016, changing the complainant's approved position to practice manager.

[22] On about 17 October 2016, the complainant signed an employment contract with the dental company to work in Auckland as a dental practice manager commencing on the same day.

[23] Mr Gu again saw the complainant at her workplace on 30 October 2016 in order to return her passport. Ms Hill says she was present and spoke to the complainant. The complainant accepts she could have been present, but denies knowing she was the licensed adviser behind Mr Gu's text advice and denies talking to her. I will assess that conflict of evidence later.

[24] The complainant informed Mr Gu by text on 5 January 2017 that the dental company wanted to send her to a new branch to be opened in a provincial city and asked whether this would help with her migration. He replied that it would, as she would get extra points for working outside Auckland.

[25] Mr Gu again met the complainant at her workplace on 24 January 2017 in order to pick up some documents. Ms Hill says she was there. The complainant accepts that Ms Hill may have come twice to her workplace with Mr Gu. I will assess later what role, if any, was played by Ms Hill at these meetings.

[26] On about 31 March 2017, the complainant signed an employment agreement with the dental company to work as a dental practice manager at a new clinic which was under construction in a provincial city. The commencement date was expressed to be 3 April 2017.

[27] There were further WeChat exchanges between the complainant and Mr Gu in early April 2017. He told her that there would be a new policy in May, but he did not know the impact. She told him to lodge the application first. She did not know whether her previous visa declines had been declared, but thought they had not. There was an exchange about this. The complainant appears to ask him on 18 April whether she needed to prove she was in the provincial city. The answer, as translated, was, "Temporarily, it is not required". She reminded him that she did not know whether her previous decline history had been declared.

[28] The texts continued on 24 April and into 25 April 2017, the latter being the date the expression was lodged online with Immigration New Zealand. Mr Gu, Ms Hill and the complainant all had access to the online template form.

[29] The text exchange between the complainant and Mr Gu was occurring at the same time that the complainant was online completing the form. She asked Mr Gu questions as she entered information on the form. In the texts, the complainant gave details of the decline of previous visa applications she had made to other countries. She disclosed on 25 April that she had not yet gone to the provincial city, as the branch had not opened. Mr Gu told her not to worry about that.

*Expression of interest lodged with Immigration New Zealand*

[30] On 25 April 2017, the complainant's expression (in the skilled migrant category of residence) was lodged with Immigration New Zealand. Much of the form had initially been filled out online by Ms Hill and/or Mr Gu (the evidence is not clear as to who). The complainant then completed it and was responsible for 'pushing send'.

[31] The expression stated that the complainant had skilled work experience as a health practice manager for the dental company in the provincial city from 1 April 2015 to 25 April 2017. There is a dispute about whether the complainant or Ms Hill (or her partner) actually inserted this information on the online form. The evidence as to who is unclear.

[32] The application claimed 190 points for the complainant, at a time when the minimum for selection was 160 points. Neither the total points nor a breakdown of the points claimed is on the form.

[33] The text exchanges between the complainant and Mr Gu continued on 26 April and 5 May 2017.

*Invitation to apply for residence*

[34] On 6 May 2017, Immigration New Zealand issued the complainant with an invitation to apply for residence under the skilled migrant category.

[35] There were further text exchanges between the complainant and Mr Gu following the issue of the invitation.

[36] Mr Gu sent a text to the complainant on 15 June 2017 stating that he would have a discussion with Helen the following day to see if she had “something to rectify”. This appears to be a reference to the draft letter of support from the complainant’s general manager (see below). Mr Gu advised on 16 June that the draft letter was very good. He said that the delay in moving to the provincial city was “OK”.

[37] On 19 June 2017, the complainant went to Xin Cheng’s offices. She dropped off the new employment contract for the role in the provincial city. In view of the complainant’s concern about her failure to disclose previous declined visa applications, she was asked to sign Xin Cheng’s “Client Authorisation Form”. The form identified Ms Hill as the “agent”. Ms Hill was authorised to act as the complainant’s agent in matters relating to her “visa and school application” and to request information relevant to “the application”. Ms Hill says she was present. The complainant rejects this.

[38] On the same day, Ms Hill sent an email to Immigration New Zealand seeking copies of the various applications previously made by the complainant.

*Residence application lodged*

[39] The complainant’s application for residence was filed by Ms Hill on 26 June 2017. It again recited that the complainant had “recognised” work experience as a practice

manager for the dental company in the provincial city from 1 April 2015 to 25 April 2017. She claimed 190 points on the form, though there is no breakdown of that total.

[40] In support of the application for residence was a letter dated 18 June 2017 from the general manager of the dental company advising that the plan had been to open the new provincial clinic in May 2017, but that was delayed until August 2017. The complainant would continue to work in Auckland until the new clinic was ready.

[41] The complainant went to Xin Cheng's offices on 9 July 2017 to pick up her passport for a second time and also other original documents that had been returned by Immigration New Zealand. Ms Hill says she was present but the complainant denies this.

[42] There was an exchange of texts between the complainant and Mr Gu on 7 August 2017 concerning the impact of the complainant's pregnancy on her visa application. Mr Gu advised it would have no impact.

[43] The complainant went to Xin Cheng's office yet again on 7 September 2017. Ms Hill said she was present, but the complainant denies this.

*Immigration New Zealand advises concern*

[44] Immigration New Zealand sent a letter to Ms Hill on 31 October 2017 identifying a concern about the complainant's residence application. The agency advised that the complainant had provided two employment contracts, one as a practice manager in Auckland (signed 17 October 2016 and starting on the same day) and one as the manager of a provincial clinic (signed 31 March 2017 and starting 3 April 2017). She had claimed 30 points for skilled employment outside Auckland and 60 points for skilled employment of 12 months or more. Her expression had claimed she had worked at the provincial clinic from 1 April 2015 to 25 April 2017.

[45] According to the immigration officer, after speaking to both the complainant and the general manager, it had been established that the former had not worked in the provincial clinic, as it had not opened. Furthermore, the approval to work as a practice manager had not been given until October 2016, so at 25 April 2017 when the expression was lodged, she only had six months skilled employment. It appeared that the complainant had provided false or misleading information in both the expression and residence applications.

[46] The complainant sent a series of long WeChat texts to Mr Gu on 31 October and 1 November 2017. She said that both she and her manager had received calls from an

immigration officer. They had explained to the officer that the complainant had always worked in Auckland but had been planning to go to the provincial city. She had been working on preparatory work for the new branch and had been there once for a meeting. However, the complainant would not go there now as she was pregnant. The officer had accused the complainant of giving the wrong information, as the application said she had been working in the new branch since 2015. A lawyer friend of the complainant's manager had said Immigration New Zealand should have been informed she was not in the provincial city. The complainant asked for Mr Gu's help. She wanted to know if her status was very bad.

[47] Mr Gu sent two short text replies to the complainant on the same day. He said he had "re-organised everything". On 2 November 2017, he said in a text to her that the letter of explanation had been basically completed. He added that he would meet Helen after he had met the complainant.

[48] On 9 November 2017, Ms Hill replied to Immigration New Zealand's letter stating that they had not misled Immigration New Zealand as the provincial clinic had been due to open in May 2017, but there had been delays with completion of the building work. The expression was lodged in late April 2017, but as the clinic was due to open in May 2017 they used that clinic's address. When the residence application was lodged in June 2017, it was known the clinic was not ready, but as it was going to open in the near future, they continued to use its address.

[49] Ms Hill acknowledged that the work visa was linked to Auckland, but they had intended to seek a variation once the new clinic opened. While that could be December 2017 or January 2018, the complainant was now pregnant and wished to stay in Auckland.

[50] It was further asserted by Ms Hill that the complainant's previous work experience as an administrator should be recognised as skilled employment. Additionally, even if the complainant did not work in the provincial city, she was still entitled to 160 points:

Relevant work experience	60
Relevant qualifications	50
Work experience: 2 years (since April 2015)	10
NZ work experience: 1 year	10
Age	30
	<b>160</b>

[51] At the same time, Ms Hill sent Immigration New Zealand a letter from the general manager of the dental company (2 November 2017). The general manager stated that



the complainant had been the practice manager at an Auckland branch since October 2016. She was described in positive terms. A contract as the provincial clinic's manager had been signed in March 2017, to start when the branch opened. This had been delayed by the building consent process, though they hoped to open it by Christmas.

*Immigration New Zealand decline residence*

[52] Immigration New Zealand declined the application for residence on 11 January 2018.

[53] According to the agency, the complainant had claimed in her expression 30 points for working in a provincial city. However, she had never worked there. Furthermore, while 60 points had been claimed for working in skilled employment for 12 months or more as a practice manager from 1 April 2015 to 25 April 2017, such work had not been approved until October 2016. At the time she lodged the expression on 25 April 2017, she therefore had only six months skilled employment.

[54] Immigration New Zealand found that the information as to the complainant working from 1 April 2015 to 25 April 2017 as the practice manager in the provincial city, was false. It was not credible that she was planning to take up that role at the time the expression was lodged, since there was no clinic at the time she had signed the employment contract to work there. Indeed, there was still no building and the employer could not advise the date of the opening.

[55] The agency stated that, as the complainant could not receive 30 points for working outside of Auckland and was only entitled to 50 points for skilled employment, her total entitlement was only 150 points, which did not meet the requirement of 160 points.

[56] Immigration New Zealand concluded that the complainant had provided false and misleading information in both the expression and residence applications.

[57] It would appear that neither the complainant nor Ms Hill received the decline letter on 11 January 2018, so the complainant sent a text to Mr Gu the next day asking if he knew the reason for the decline. She asked him again on 15 January if he had received the "materials". His reply was (*verbatim*):

I have. I would scan and send it to you later one. I would also discuss with Helen and my Teacher.

[58] Later that day, Mr Gu advised the complainant by text that he and Helen had made the decision to appeal. He said that her best option was to go to the provincial

city. She replied that someone else had been sent. Mr Gu then said that if she went, once she had been there for six months, “the result would come out”. To this, the complainant said the main problem was that the exact opening of the branch was not confirmed. Finally, on 18 January 2018, the complainant asked Mr Gu for a copy of the letter of explanation.

*Complaint made to Xin Cheng International*

[59] The complainant then made a complaint to Xin Cheng by email on 18 January 2018. She said she had never met Ms Hill and did not have a written agreement. The contact person throughout the whole time had been Mr Gu. Both Ms Hill and Helen had given incorrect advice regarding the complainant’s workplace and job title in both the expression and in responding to Immigration New Zealand’s concerns. The complainant requested NZD 10,000 compensation “for pursuing further legal service to remedy this situation”.

[60] On 23 January 2018, Xin Cheng replied to the complainant’s email of 18 January. No author was identified. The email recorded that they had tried to contact her on 20 January but she had refused to discuss the matter. It stated that the complainant had met Ms Hill more than three times in the office and twice at the dental clinic. Furthermore, the written agreement had been provided for her to sign, however it had not been enforced “due to emotional and friendship involvement”. A mistake had been made in their internal procedures in engaging before the complainant had signed the agreement.

[61] According to Xin Cheng’s email, Mr Gu was employed on an internship and prepared all the documentation, as instructed by the adviser. They did not employ anybody by the name of Helen. The complainant’s workplace and job title had been provided to them on the employment contract and they did not alter any client information. They had always acted in a professional, diligent and respectful manner.

[62] It was noted in the email that in four of the complainant’s previous visa applications lodged with Immigration New Zealand, she had not disclosed being declined visas by Australia and the United States.

[63] There was a further email from Ms Mo to the complainant on the same day. It set out the four principal grounds of the complaint and repeated that they had tried to contact the complainant to discuss them but she had refused, preferring a reply by email.

[64] The complainant and her husband then met Ms Mo, Xin Cheng’s director, on 26 January 2018.

[65] The complainant subsequently sent an email to Xin Cheng on 27 January 2018 expressing thanks for the meeting. She had decided to accept NZD 10,000 in compensation and an official apology letter for the unprofessional practice. She would not raise a complaint with the Authority if the compensation and letter were received not later than 2 February 2018.

[66] This led to an exchange of texts between the director and the complainant. The complainant was offered NZD 10,000 in final settlement, provided she agreed to take no legal action. It ended with the complainant refusing to accept a phone call from the director's solicitor, then sending a text to the director stating that communication was pointless and they did not want a private settlement.

#### *Residence decline appealed*

[67] The complainant appealed the decline of her residence application by Immigration New Zealand to the Immigration and Protection Tribunal (IPT) on 12 February 2018. She was represented by another licensed immigration adviser, Ms Janelle Han.

[68] The letter to the IPT (12 February 2018) stated that the complainant agreed the decision of Immigration New Zealand was correct, but it was submitted that there existed special circumstances which should be considered by the Minister of Immigration. It was contended that the complainant had never been introduced to Ms Hill, but had only communicated with an unlicensed employee, Mr Gu.

[69] According to the appeal, the complainant had advised Mr Gu on 18, 21 and 25 April 2017 that the provincial clinic had not opened and she had not been there. The false and misleading information had been provided to Immigration New Zealand by Xin Cheng, not the complainant.

#### *Complainant's further work visa declined*

[70] Immigration New Zealand declined a work visa for the complainant on 26 April 2018, on the basis that she had provided false and misleading information in applying for residence.

#### *Appeal declined by IPT*

[71] On [date], the IPT dismissed the appeal against the decline of residence. It was found that the complainant had provided false and misleading information to Immigration New Zealand, namely that she had been working in the provincial city since 2015. It did

not accept her explanation that it was Mr Gu, an unlicensed immigration adviser, who was responsible for giving that information to Immigration New Zealand.

## **COMPLAINT**

[72] A complaint against Ms Hill had earlier been lodged with the Authority by the complainant on 14 February 2018. It was alleged that Ms Hill had not provided any signed agreement with the complainant and had not talked to or communicated with her regarding the expression or visa application. It was only Ms Hill's unlicensed partner with whom she had consulted throughout the process and who provided immigration advice.

[73] The Authority wrote to Ms Hill on 19 July 2018 formally notifying her of the complaint, setting out the details and seeking her explanation.

### *Response to complaint of Ms Hill's counsel*

[74] Counsel for Ms Hill, Mr Jenkin, responded to the Authority's notification of the complaint on 15 August 2018.

[75] In his submissions, Mr Jenkin contended that it was not correct that the complainant had not met Ms Hill. They met on a total of five occasions. In addition to those meetings, Ms Hill had communicated by the text messaging app WeChat. The communications were in the name of the company, Xin Cheng, and counsel had advised Ms Hill to make the electronic change necessary to identify herself as the author.

[76] According to Mr Jenkin, all the advice had come directly from Ms Hill, but because of the superior skills in the Chinese language of Mr Gu, he actually typed and sent the messages as a clerical worker. She had dictated that advice. It was accepted there were two occasions when her partner met with the complainant. These were either to collect documents from her or to hand to her the client agreement which had been signed by Ms Hill. On neither occasion did he discuss the merits of the immigration matter or provide immigration advice.

[77] It was the evidence of Ms Hill that she was the person who had advised the complainant to upgrade her job description to practice manager, since being an administrator did not qualify under the skilled migrant category.

[78] Mr Jenkin stated that it was also the evidence of Ms Hill that she had completed the form accurately with the information provided by the complainant. However, the complainant, who had possession of the access code, had been left to check the form

online and submit it to Immigration New Zealand herself. The only explanation that Ms Hill could give was that the expression had been changed by the complainant. When Immigration New Zealand invited the complainant to submit the residence form, Ms Hill signed the form and lodged it, not realising it had been altered.

[79] Ms Hill accepted that the complainant never signed the agreement sent to her, but suggested this was a deliberate ploy to avoid paying the fees. Although a copy of the agreement was delivered personally to the complainant, she never signed it. It was of incidental relevance that the complainant never paid a fee for the services rendered by Ms Hill.

[80] It was Mr Jenkin's contention to the Authority that the complainant had tried unsuccessfully to extract NZD 10,000, blackmailing Ms Hill in return for not complaining. Such conduct went to the honesty and credibility of the complainant.

#### *Affidavit of Ms Hill*

[81] An affidavit from Ms Hill sworn on 15 August 2018 was provided to the Authority.

[82] Ms Hill explained that she was an employee of Xin Cheng, though she owned five shares in the company as did her life partner. She was born in China but moved to Australia when she was 12, and then came to New Zealand in 2015. Her English was very good and she could speak Chinese Mandarin, but her writing skills in Chinese characters were quite poor.

[83] Ms Hill said she was the only licensed immigration adviser employed by the company. Her partner was the office manager. He had come to New Zealand from China in 2002, so spoke and wrote Chinese fluently. One of his important roles was to type her WeChat messages in Chinese to her clients.

[84] All communications with the complainant were either by WeChat or personal attendances. According to Ms Hill, she met with the complainant personally on five occasions:

- (1) 30 October 2016 – Ms Hill and her partner met the complainant at the dental clinic in order to return her passport. The complainant asked her some questions regarding her residence application and Ms Hill told her she had insufficient points.
- (2) 24 January 2017 – she met the complainant at the dental clinic when she and her partner picked up some relevant documents.

- (3) 19 June 2017 – the complainant came to Ms Hill’s office to drop off a second signed employment contract. Because she had failed to disclose three previous declines of visa applications by Australia or the United States, Ms Hill asked her to sign an authority to enable the uplift of the entire Immigration New Zealand file.
- (4) 9 July 2017 – the complainant came to the office to pick up her passport again and other original documents that had been returned by Immigration New Zealand.
- (5) 7 September 2017 – the complainant visited the office again.

[85] Ms Hill stated in her affidavit that the allegation that she had never met the complainant was completely false. It was also false that she had never talked with the complainant regarding her visa application. She and her partner sat together in their office which operated from their home, so both of them had access to the personal computer at which the text messages to the company appeared at the same time as they came onto her mobile phone. The responses to the complainant had come directly from her. Because of his superior skills in texting Chinese characters, her partner would text the message as dictated by her. The complainant directed her text messages to her partner because he was the first person to meet her.

[86] According to Ms Hill, she was informed by the complainant in January 2017 of the offer of manager at a new provincial branch. She advised the complainant that the offer of skilled experience outside Auckland was worth an extra 30 points. The complainant then dropped off the second employment contract, which confirmed her move to that city by 3 April 2017.

[87] The expression was lodged on 25 April 2017 and it was Ms Hill’s view that the complainant qualified for sufficient points as follows:

1	Current skilled employment in New Zealand for less than 12 months	50
2	Work experience: 2 years	10
3	Bonus points for offer of employment outside Auckland	30
4	Bonus points if work experience in New Zealand: 2 years	10
5	Qualifications	50
6	Age: 20 – 29	30

**180**

[88] The expression form was completed online and the complainant had access with a unique identity user code. The complainant had in fact completed part of the form and Ms Hill finalised the form and then sent it to her for final checking and submission to Immigration New Zealand.

[89] Ms Hill does not recall completing that part of the form with respect to the skilled work experience between 1 April 2015 and 25 April 2017 as a practice manager in the provincial city. Ms Hill had been told that the provincial position was only an offer. Neither Ms Hill nor her partner had put that information in the application. She was unable to save a copy of the expression form sent to the complainant and did not print it off. It was her view that the complainant changed the form herself and included the false information.

[90] Once the complainant was invited to submit the residence visa, the process was to resubmit the expression as a residence form accompanied by supporting information. On that occasion, Ms Hill signed the residence form and submitted it herself to Immigration New Zealand. She assumed that the expression was in the same form as it was when the document had been completed for the complainant. She had no idea that the details had been changed.

[91] In her affidavit, Ms Hill said she now doubted the complainant's honesty for three reasons:

1. In four previous New Zealand visa applications, the complainant had failed to disclose she had been declined visa applications by Australia (once) and by the United States (twice);
2. She tried to extort NZD 10,000 in return for making no complaint; and
3. She failed to return the client agreement to avoid paying fees.

[92] As for the client agreement, Ms Hill stated this had been prepared in early October 2016 and signed by her. On 10 October, her partner delivered a copy of the signed agreement to the complainant at her workplace. Later on, Ms Hill met the complainant and asked for the agreement, but the complainant said she did not have it with her. Ms Hill believed the complainant deliberately refused to sign the agreement in order to avoid paying the fee. It was accepted she should have not continued to represent the complainant without a signed written agreement, however she had naively believed that the complainant needed time to read the agreement and ask questions.

*Affidavit of Mr Gu*

[93] An affidavit from Mr Gu, sworn on 15 August 2018, was also produced to the Authority. He said he was employed by Xin Cheng as the office manager providing general assistance to Ms Hill. One of his family members was the sole director and majority shareholder of the company. He worked alongside Ms Hill and their desks were side-by-side, as were their computers.

[94] Mr Gu's evidence as to the meetings and communications with the complainant mirrors that of Ms Hill. In particular, he was fluent in written Chinese, so one of his important functions was assisting her with WeChat messages. He never gave advice but typed dictated advice from her. Neither he nor Ms Hill completed the incorrect provincial work experience. It was presumably changed by the complainant. Mr Gu confirmed leaving with the complainant a copy of the client agreement on 10 October 2016.

*Complaint referred to Tribunal*

[95] The Registrar of Immigration Advisers (the Registrar), the head of the Authority, filed a statement of complaint with the Tribunal dated 18 September 2018. He has referred to the Tribunal the following possible breaches by Ms Hill of the Licenced Immigration Advisers Code of Conduct 2014 (the Code):

- (1) Relying on an unlicensed individual, Mr Gu, to be the point of contact with the complainant and limiting her involvement to lodging applications and replying to Immigration New Zealand's letter of concern, thereby conducting herself unprofessionally and with a lack of diligence, in breach of cl 1;
- (2) Failing to engage personally with the complainant to obtain her lawful instructions, in breach of cl 2(e);
- (3) Facilitating the provision of immigration advice to the complainant by an unlicensed individual, Mr Gu, in breach of cl 3(c);
- (4) Relying on the complainant to make changes to the expression of interest and lodge it with Immigration New Zealand and failing to ensure that the work experience details on both the expression form and the application for residence were correct at the time of lodging with Immigration New Zealand, thereby being negligent, or alternatively failing to exercise diligence and due care in breach of cl 1; and



- (5) Failing to ensure that the complainant signed the written agreement or confirmed in writing her acceptance, in breach of cl 18(c).

## JURISDICTION AND PROCEDURE

[96] 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.

[97] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.<sup>2</sup>

[98] 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>3</sup> It has been established to deal relatively summarily with complaints referred to it.<sup>4</sup>

[99] 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>5</sup>

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

[101] 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>8</sup>

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

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

<sup>4</sup> *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].

<sup>5</sup> Section 50.

<sup>6</sup> Section 51(1).

<sup>7</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citation omitted).

<sup>8</sup> *Z*, above n 7, at [97], [101]–[102] & [112].

[102] The Tribunal has received from the Registrar the statement of complaint (18 September 2018), together with supporting documents.

*Complainant's statement of reply*

[103] The complainant filed a statement of reply (2 October 2018), with supporting documents. She notes that Ms Hill maintains that she (the complainant) inserted the incorrect information as to the length of work experience in the expression, yet in replying to Immigration New Zealand on 9 November 2017, Ms Hill did not correct this. Instead of showing contrition for her unprofessional advice, Ms Hill has made baseless claims against her.

[104] In her reply, the complainant questioned the level of involvement of Helen on multiple occasions, when she was neither a licensed adviser nor an employee.

[105] The complainant categorically rejects the claim that she tried to extort NZD 10,000 in return for not making a complaint. Following her complaint of 18 January 2018, Ms Mo requested a meeting with her and her husband. At the meeting, Ms Mo agreed to pay compensation of NZD 10,000 provided the complainant signed an agreement not to take legal action or mention the incident to anyone. Ms Mo sent a WeChat text to her confirming this, which was produced to the Tribunal by the complainant.

[106] According to the complainant, on no occasion did she meet Ms Hill, whether face-to-face or by way of phone calls or WeChat texts. It was only Mr Gu whom she met and dealt with.

*Ms Hill's reply*

[107] Ms Hill has produced a statement of reply (28 September 2018), with a supporting document, along with a response (5 October 2018) to the complainant's statement of reply.

[108] It is contended by Ms Hill that the complainant altered the work experience details on the online form, before submitting it to Immigration New Zealand. She accepts seeking practical help from Helen, a friend of Ms Hill and her partner, who previously worked for Immigration New Zealand. Helen was not an employee of Xin Cheng and did not give any advice to the complainant.

[109] Ms Hill maintains that the complainant tried to extort NZD 10,000 from her in return for not making a formal complaint. Compensation of this amount had first been raised by the complainant on 18 January 2018, then on 27 January the complainant linked it to not making a complaint. Ms Mo's text of 31 January 2018 had come after the complainant's email of 27 January.

#### *Hearing*

[110] In light of the credibility concerns arising out of the statements sent to the Tribunal, a Minute was issued on 27 June 2019 directing a hearing.

[111] Prior to the hearing, the Tribunal received submissions from the Registrar (30 October 2019), submissions from Ms Reed for the complainant (23 October 2019) and submissions from Mr Jenkin (23 October 2019). Additional documents were produced by the Registrar and the complainant.

[112] At the hearing, evidence was given by four witnesses, in the order set out below. Additional documents were handed up by both the complainant and Ms Hill during the hearing.

#### *Evidence of the complainant's husband*

[113] In addition to giving oral evidence, the complainant's husband, [witness A], produced a statement (23 October 2019).

[114] The complainant's husband confirmed that he had not seen the client services agreement before. Such an agreement had been sought by them, but it was not provided by Ms Hill or Mr Gu.

[115] According to the husband, they had not met Ms Hill. The first time he had seen her was at the hearing. He went to one or two of the meetings at Xi Cheng's office, but Ms Hill was not present. Indeed, Mr Gu never mentioned her. The husband advised that he was not at the meetings at his wife's workplace.

#### *Evidence of the complainant*

[116] The complainant says she can understand and speak both Chinese Mandarin and English. She has no preference. She could have consulted with Ms Hill in English, if she knew Ms Hill was the person she should be dealing with. The Tribunal records that the complainant largely gave evidence in English.

[117] The complainant says she was referred to Mr Gu by a friend, who told her that he was reliable and professional. She thought he was the agent. The complainant said she had no concept of a licensed immigration adviser. She did not know she needed one, until after the decline of the residence application and she was told she should have used a licensed person. It was at that time that she found out Mr Gu was not licensed.

[118] The complainant asked Mr Gu for a client agreement, but it was never provided. Mr Gu did drop off documents at her workplace, but she is pretty sure he did not bring the client agreement.

[119] Mr Gu told her about Helen, an immigration officer who could help. He never mentioned Ms Hill. However, it was possible Ms Hill came twice to her workplace with Mr Gu. She did not talk to Ms Hill. The only person she dealt with on her case was Mr Gu.

[120] At the time she signed the Client Authorisation Form on 19 June 2017, she did not meet Ms Hill. She thought the form merely set out the company's details and that it was Mr Gu who was her agent.

#### *Evidence of Ms Hill*

[121] Ms Hill said that she was the author of all the texts sent by her partner to the complainant. In particular, she was the author of the text sent on 15 January 2018 referring to the discussion with Helen and "my Teacher". This was a reference to her supervisor, required by the Authority as she then had only a provisional licence.

[122] Ms Hill confirmed that she was slow to write Chinese characters. Her native language was Chinese Cantonese and her Chinese Mandarin was not the best. She accepted she could have used the voice service on WeChat to communicate with the complainant.

[123] According to Ms Hill, she prepared a client services agreement and it was dropped off with the complainant, who tried to take advantage by not signing it.

[124] Ms Hill accepted that she had no proper consultations with the complainant, though they did meet at Xin Cheng's office, including on 7 September 2017. She spoke to the complainant when she twice visited the complainant's workplace, but acknowledged that there was no time then for a proper consultation. According to Ms Hill, the consultations and advice were all by WeChat.

[125] It was Ms Hill's usual practice to leave it to the client to lodge forms online, as she did not have the client's credit card information to pay the fee to Immigration New Zealand.

[126] It was the complainant who submitted the expression online to Immigration New Zealand. At the last minute, while the complainant was filling in the remaining information, she was texting Mr Gu about certain details to add. Mr Gu was replying, but Ms Hill said she was present as well while that was going on.

[127] As for the move to the provincial clinic, which the complainant had made clear had not happened, Ms Hill said she relied on this prospect in the expression and residence applications as the extra points were available for what was an offer of employment only. At no time did the complainant say she would not go there, so Ms Hill continued to claim the points for the offer to go to the provincial clinic.

#### *Evidence of Mr Gu*

[128] Mr Gu says Xin Cheng is his mother's business and while he helps his mother, his main job is to look after Ms Hill. He does "everything", including marketing, typing Ms Hill's WeChat messages, fetching and delivering documents, as well as working as an education agent. He describes himself as the office manager and "office boy". It does not appear to the Tribunal to be a fulltime job, as he said he also works in a wholesale company.

[129] Xin Cheng is a small business, so they have only one company phone. There were only four people at the company, being Ms Mo, Ms Hill, himself and another person identified on the website as the office manager but who had left. Helen is identified on the website. Their "business strategy" is to refer cases to her. She is a friend, not an employee, but Mr Gu considers her part of the team.

[130] According to Mr Gu, his role in relation to the complainant was just to type Ms Hill's messages. Her Chinese typing is "really slow", but most clients are Chinese. He did not identify Ms Hill in the texts as the person to whom he had referred the complainant's questions or as the source of the advice, since that would have been a waste of time. This, he appreciates, was a mistake.

[131] Mr Gu could not remember what was said in the messages. He could not remember helping the complainant as she filled out the expression online. This is because he was just the typist.

[132] Mr Gu could not remember Helen being involved. While she is referred to in the texts, he merely typed Ms Hill's messages and did not use his brain. It was Ms Hill who contacted Helen. Eventually Mr Gu conceded in cross-examination that Helen did help the complainant and he took Helen to meet her.

[133] At the first meeting, Mr Gu went to see the complainant at West City Mall, near her workplace, to collect her documents. He also asked Helen to meet him at the mall, as her office was nearby. The complainant met Helen on that occasion. Ms Hill did not go, as the meeting was merely to collect documents and also because the complainant had not signed the client agreement with Xin Cheng at that point. At that first meeting, he told the complainant that Ms Hill was the adviser, not him. He said to her she could contact Ms Hill by WeChat, adding that Ms Hill had good English, but not Chinese, so he typed for her.

[134] Mr Gu could not remember whether he helped Ms Hill prepare the documents for the complainant.

#### *Closing submissions*

[135] Following the hearing, the Tribunal received a memorandum from Ms Thompson (3 March 2020) and closing submissions from Ms Reed (5 March 2020) and Mr Jenkin (6 March 2020).

## **ASSESSMENT**

#### *Preliminary*

[136] I note, as a preliminary point, that there is evidence before the Tribunal of breaches of the Code by Ms Hill which are not the subject of the Registrar's statement of complaint. They cannot be assessed by the Tribunal.<sup>9</sup>

[137] Another issue arose at the hearing involving a conflict of evidence, which I decline to assess. It concerns the money offered by Ms Mo ("compensation" according to the complainant) or demanded by the complainant ("extortion" according to Ms Hill), if the complaint was to be withdrawn. It is not the subject of the statement of complaint. Nor do I regard it as material to my decision on the complaint to determine precisely who said what and the sequence regarding that exchange. It does not raise any general honesty

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<sup>9</sup> *Mizoguchi v Registrar of Immigration Advisers* [2017] NZHC 3198 at [45].

or credibility issue. I regard the complaint as genuine, though this does not necessarily mean I must accept all the complainant's allegations.

*Relevant Code provisions*

[138] 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.
  - ...

**Written Agreements**

18. A licensed immigration adviser must ensure that:
  - ...
  - c. all parties to a written agreement sign it, or confirm in writing that they accept it, and
  - ...

(1) *Relying on an unlicensed individual, Mr Gu, to be the point of contact with the complainant and limiting her involvement to lodging applications and replying to Immigration New Zealand's letter of concern, thereby conducting herself unprofessionally and with a lack of diligence, in breach of cl 1*

- (2) *Failing to engage personally with the complainant to obtain her lawful instructions, in breach of cl 2(e)*
- (3) *Facilitating the provision of immigration advice to the complainant by an unlicensed individual, Mr Gu, in breach of cl 3(c)*

[139] The first three heads of complaint will be assessed together. Since the first head is entirely dependent on the outcome of the second and third heads and, if upheld, would add nothing to the sanctions, I will not consider it further.

[140] I will consider the second and third heads of complaint in reverse order. This is because the credibility issues, as to who was behind the texts and also regarding Ms Hill's presence and role at the meetings, must be assessed first.

[141] It is not disputed that it was Mr Gu who physically sent the texts, of which there were many, to the complainant. It is self-evident that they contain "immigration advice" (see below). If it was Mr Gu who was responsible for the texts, then Ms Hill is guilty of facilitating immigration advice by an unlicensed person. However, if Ms Hill truly dictated the texts to Mr Gu, who was merely an amanuensis or performing "clerical work" (see below), then the texts do not disclose any impermissible immigration advice.

[142] In order to understand why this factual issue is so important, I will set out the relevant law.

#### *General principles*

[143] 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".<sup>10</sup>

[144] 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.

[145] 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.<sup>11</sup> A person employing as an immigration adviser another person who is neither licensed nor

<sup>10</sup> *Stanimirovic v Levarko* [2018] NZIACDT 3 at [4], [36]–[38]; *Immigration New Zealand (Calder) v Soni* [2018] NZIACDT 6 at [4], [50]–[61].

<sup>11</sup> Immigration Advisers Licensing Act 2007, s 63.



exempt also commits an offence.<sup>12</sup> A person may be charged with such an offence even where part or all of the actions occurred outside New Zealand.<sup>13</sup>

[146] The statutory scope of “immigration advice” is very broad:<sup>14</sup>

## 7 What constitutes immigration advice

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

[147] The words “advise”, “advice” and “assist” are not to be given restrictive meanings.<sup>15</sup>

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

[149] “Clerical work” is narrowly defined in the Act:<sup>16</sup>

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<sup>12</sup> Section 68(1).

<sup>13</sup> Sections 8 & 73.

<sup>14</sup> Section 7.

<sup>15</sup> *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).

<sup>16</sup> Section 5, definition of “clerical work”.

**clerical work** means the provision of services in relation to an immigration matter, or to matters concerning sponsors, employers, and education providers, in which the main tasks involve all or any combination of the following:

- (a) the recording, organising, storing, or retrieving of information:
- (b) computing or data entry:
- (c) recording information on any form, application, request, or claim on behalf and under the direction of another person

[150] In *Immigration New Zealand (Calder) v Ahmed*, the Tribunal set out the principles applicable to distinguishing clerical work from immigration advice.<sup>17</sup>

[151] 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.

[152] 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.

[153] The obligations set out in the Code are personal to the licensed immigration adviser and cannot be delegated.<sup>18</sup>

*Was Ms Hill behind the texts?*

[154] The circumstances alleged by Ms Hill in defence, that she was actually the author of the communications sent to the client by her unlicensed partner due to a language barrier, are unusual, but not unique. The Tribunal has encountered this before.<sup>19</sup>

[155] Ms Reed, rightly, characterises it as strange that Ms Hill is completely missing from the texts. It is as if she never existed. Mr Gu mentions Helen a number of times as a person from whom advice is being sought on the complainant’s application, but never Ms Hill. It is contended by Ms Reed that if Ms Hill was truly providing the advice by authoring the texts, then Mr Gu would say from time to time that he had referred the complainant’s question to Ms Hill or the answer had come from her.

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<sup>17</sup> *Immigration New Zealand (Calder) v Ahmed* [2019] NZIACDT 18 at [55]–[59], [65]–[70].

<sup>18</sup> *Sparks*, above n 4, at [29], [34] & [47].

<sup>19</sup> *NT v Parker* [2019] NZIACDT 62.

[156] I will start by accepting what I regard as clear. This is that the complainant had no idea that Ms Hill was the licensed professional ultimately responsible for her application and the real author of the texts, with Mr Gu merely typing what Ms Hill had dictated.

[157] It is inconceivable that the complainant, if she had known of Ms Hill's role, would not at some point, if not often, have asked Mr Gu to refer some of the important issues to Ms Hill. If the complainant had known that Ms Hill was a licensed adviser, that Mr Gu was not licensed and that it was Ms Hill who was really responsible for her applications, she would have insisted on certain issues being answered by Ms Hill. This would have included the non-disclosure of the visa declines by other countries, her points total and therefore her eligibility.

[158] The complainant's texts were not addressed anonymously to the company. The complainant was not sending them to the company as such. She was sending them to Mr Gu.

[159] The texts were going to the company's account in the name of Mr Gu ("guwennz"). Some were even specifically addressed by the complainant to Mr Gu. For example, on 12 January 2018, she asked him by name if he knew the reason for the decline of her application.<sup>20</sup> She would not have asked him something so critical to her then, if she knew of Ms Hill. It was Mr Gu's email address at Xin Cheng the complainant was given and the password for online access to the draft application was in his name. The complainant was led to believe that Mr Gu was the person responsible for her application.

[160] I believe the evidence of the complainant and her husband on the issue of whether the complainant was told Ms Hill was the licensed professional responsible for her application. She was not. Their evidence is consistent with the documentary record, namely the complete absence of Ms Hill from the written communications with the complainant.

[161] The evidence of Ms Hill and Mr Gu, as to what the complainant was told about the existence of Ms Hill, is implausible. I disbelieve Mr Gu's evidence as to what he told the complainant at the first meeting on 4 October 2016.

[162] Nor do I believe their evidence as to the meeting on 19 June 2017 at Xin Cheng's office regarding the Client Authorisation Form. I find that Ms Hill was not present and her role as the adviser was not then or at any time explained to the complainant.

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<sup>20</sup> Registrar's supporting documents at 160.

Following that meeting, the complainant would have referred to Ms Hill from time to time in the texts if she had known of her existence as the licensed adviser.

[163] It is submitted by Mr Jenkin that Ms Hill's handwritten schedule of activity on Xin Cheng's file is contemporary written evidence of personal contact between Ms Hill and the complainant.<sup>21</sup> It is not. It merely records activity on the file, including meetings with Mr Gu at which Ms Hill was not present even on her own evidence (such as that on 4 October 2016). An entry on the schedule in Ms Hill's handwriting does not mean that she personally undertook the activity.

[164] As for the meeting on 19 June 2017, Ms Hill's presence is not mentioned in the entry for "19/06" or indeed any other entry. The entry merely reads, "[The complainant] drop her documents to office". The entry is more consistent with the complainant's evidence as to documents being dropped off by her and a form being signed, with Mr Gu attending to this, than to Ms Hill's evidence as to a discussion with her about the non-disclosure of declined visas.

[165] It is not just that the evidence of Ms Hill and Mr Gu (that the complainant had met Ms Hill), is inconsistent with the absence of Ms Hill from the written record. I find that the complainant would not have dealt with Mr Gu at all if she had known about the licensing regime and the existence of Ms Hill.

[166] It is to be remembered that the complainant speaks good English. She can also read and write English.<sup>22</sup> There was no need for her to communicate in Chinese with "the typist", as Mr Gu describes himself. As the complainant told the Tribunal, she could have communicated with Ms Hill in English. For that matter, she could have communicated with Ms Hill in Chinese as well. Communication with Mr Gu is explicable only on the basis that the complainant thought Mr Gu was her immigration agent (as noted already, she did not even know of the concept of licensed immigration advisers until about January 2018 when her residence application was declined).

[167] As to those meetings with the complainant Ms Hill alleges she was present at, any such meetings were casual. The complainant accepts Ms Hill may have been present twice at her workplace. Ms Hill concedes that they would not have been formal consultations. I do not accept that Ms Hill was present at any meeting at Xin Cheng. The schedule of activity does not expressly identify any meeting at which Ms Hill was present. It does not even mention any activity on 24 January 2017, 9 July 2017 or 7 September 2017, which Ms Hill asserts were days they met. If she had been present

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<sup>21</sup> Registrar's supporting documents at 191.

<sup>22</sup> See IELTS test certificate, Registrar's supporting documents at 243.

and formally introduced as the adviser, the complainant would have insisted on dealing with her on substantive matters and not Mr Gu.

[168] It is submitted by Mr Jenkin that Xin Cheng's website, which identifies Ms Hill as the only licensed adviser at the company, graphically illustrates her presence there, as does her licence hanging on the wall of the office. The complainant and her husband say they did not visit the website and did not see the licence when at Xin Cheng's office. Their evidence is plausible.

[169] Furthermore, it is submitted, the draft client agreement left with the complainant on 10 October 2016 identifies Ms Hill as the adviser. The complainant denies receiving the agreement. I find later that it was not left with the complainant.

[170] I find that the complainant was not told about Ms Hill as a licensed adviser.

[171] However, the fact that the complainant was unaware of Ms Hill does not mean she was not behind the texts. After all, it is equally apparent that Ms Hill was engaged with the complainant's applications. Xin Cheng's schedule of activity on the file was in Ms Hill's handwriting.<sup>23</sup> It is not disputed she was the author of the correspondence with Immigration New Zealand, nor that she personally submitted the residence application online with Immigration New Zealand.

[172] There is one telling text which can only be explained on the basis that Ms Hill was the real author of that text. It is the message sent on 15 January 2018 to the complainant stating:

... I would also discuss with Helen and my Teacher.

[173] While Mr Gu might well consult Helen, he did not have a teacher. But Ms Hill did have a teacher. She had a provisional license and had a supervisor. It is to be remembered that in October 2016, Ms Hill had held a provisional licence for only seven months. It would be another 18 months before she would get a full licence. It makes sense for Ms Hill to have consulted a teacher or supervisor, not for Mr Gu to have done so.

[174] The text was written in the first person. It states that "I" will discuss the matter (Immigration New Zealand's decline letter) with "my" teacher. Mr Gu cannot be the person referred to as "I" since he had no teacher. Nor does Mr Gu, the person who physically wrote the text, state that Ms Hill will discuss it with her teacher. This shows that the real author of that message ("I") was Ms Hill.

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<sup>23</sup> Registrar's supporting documents at 191.

[175] Ms Reed misunderstands the import of Ms Hill's defence. According to Ms Reed, the "I" used from time to time by Mr Gu is a clear reference to himself. It is not. Mr Gu is using "I" as an interpreter or translator would. It is the real author of the text referring to herself and Mr Gu merely typing that.

[176] If Ms Hill is the real author of that communication, the next question is whether there is any reason not to accept that she was the author of the other texts.

[177] Ms Reed says the timing of the replies from Mr Gu to the complainant's text messages was virtually simultaneous, therefore ruling out the intervention of Ms Hill.

[178] However, the texts largely do not on their face show the timing of the reply. I am asked to infer that if the replies do not carry a precise time recorded by the WeChat software, then it must have been almost instantaneous. It is contended that a time lag will be recorded. The contention is logical though there is no technical evidence before me of how the WeChat software operates. But there is a more compelling reason not to make this assumption. It would not take long for Ms Hill, sitting next to Mr Gu and possibly reading the incoming message at the same time as Mr Gu, to dictate an answer. Most of the texts are quite short.

[179] Ms Reed also observes that none of the texts state that the particular question has been referred to Ms Hill, as would be expected if Mr Gu was asking her to provide the answer. I agree that that is what would normally be expected and that her absence from the record is suspicious. But the absence of Ms Hill is also consistent with Mr Gu merely being the typist. I have already noted that he uses the first person of the real author. That is certainly how I read the 15 January 2018 text.

[180] The scenario plainly is unusual. Ms Hill is a silent partner in the relationship with the complainant. But it is plausible. Indeed, having regard to the text of 15 January, it is the most likely scenario as to what was occurring here.

[181] Having found that Ms Hill was behind the texts, it follows that the texts sent by Mr Gu do not provide evidence of unlicensed advice. He was performing clerical work in sending the texts.

*Did Mr Gu give immigration advice outside the texts?*

[182] There were also a number of meetings between the complainant and Mr Gu, at the complainant's workplace and at the office of Xin Cheng. I have accepted that Ms Hill may have been present at the casual meetings at the complainant's workplace, though I find she played no meaningful role. Most, if not all, of the meetings at the complainant's

workplace or Xin Cheng were primarily to collect, drop off or sign documents. The question arising from the meetings, particularly those at Xin Cheng's office, is whether Mr Gu gave any unlicensed advice on those occasions.

[183] There is no direct evidence of Mr Gu giving substantive immigration advice at any meeting. Indeed, one of the complainant's criticisms of Ms Hill is that at no time was she given a proper face-to-face consultation at which her prospects were discussed, since all the advice came by text. Notwithstanding that, there must have been some discussion with Mr Gu about the non-disclosure of declined visa applications at the meeting on 19 June 2017. However, I do not know how substantive that discussion really was, as that topic is referred to many times in the texts. Even if Mr Gu gave "immigration advice" (as defined) at that meeting, as I suspect he did, that would be an isolated occasion and would not meet the disciplinary threshold.<sup>24</sup>

[184] There is little evidence before me of Mr Gu giving immigration advice, outside the texts which I have already found were authored by Ms Hill.

*Conclusion on whether Ms Hill facilitated the provision of unlicensed immigration advice*

[185] I dismiss the third head of complaint. The evidence shows the true author of the texts was Ms Hill. There is insufficient evidence of advice from Mr Gu outside the texts.

[186] I will now turn to the second head of complaint.

*Did Ms Hill engage with the complainant?*

[187] Ms Hill is required to personally consult with her clients. I have already found that Ms Hill personally took charge of the file in that she was responsible for the written text advice and the applications (though I do not know whether it was Ms Hill or Mr Gu who actually compiled the applications). But she was also required to personally take charge of the communications and engagement with the complainant.

[188] The communications were all through Mr Gu. It is said he was the intermediary because Ms Hill's Chinese typing was slow, not because Ms Hill and the complainant could not otherwise communicate with each other. An adviser is entitled to work through an interpreter or a person who facilitates communication with a client by reason of disability or the like. But that was not the reality here. It was not necessary for communication to be through Mr Gu at all. The complainant could have communicated with Ms Hill in oral and written English, or even in Chinese. Mr Gu was present as a

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<sup>24</sup> *Ahmed*, above n 17, at [60] & [65].

matter of convenience only, largely the convenience of Ms Hill rather than the complainant.

[189] Ms Hill may have met the complainant informally on a couple of occasions, but she did not take instructions or give advice at those meetings. The complainant did not know Ms Hill was the licensed adviser responsible for her applications.

*Conclusion on whether Ms Hill personally engaged with the complainant*

[190] I find that Ms Hill did not take charge of engagement with the complainant. She left that to Mr Gu. She was absent from the relationship in any meaningful way. The second head of complaint is upheld. Ms Hill has breached cl 2(e) of the Code.

- (4) *Relying on the complainant to make changes to the expression of interest and lodge it with Immigration New Zealand and failing to ensure that the work experience details on both the expression form and the application for residence were correct at the time of lodging with Immigration New Zealand, thereby being negligent, or alternatively failing to exercise diligence and due care in breach of cl 1*

[191] There were two errors in the expression of interest and residence application forms. The first was claiming 30 points for the provincial clinic. The second was claiming 60 points for having 12 months or more of skilled employment experience at the time of lodging the expression, instead of 50 points for skilled employment of less than 12 months.

[192] As for the first error, the two applications claimed 30 points for the provincial offer. Ms Hill says the points were available for merely an offer. The skilled migrant instructions did not then require that the complainant had actually started at the provincial clinic. The employer's offer to work in the new clinic was countersigned by the complainant on about 31 March 2017, with a scheduled commencement date only a few days later on 3 April 2017.

[193] The expression was lodged with Immigration New Zealand on 25 April 2017, supported by the employment agreement stating that the commencement date at the provincial clinic was 3 April. The expression form provided incorrect information to Immigration New Zealand as to the clinic at which she worked. The agency was being led to believe that the complainant had already started in the provincial clinic.



[194] Ms Hill was aware that the complainant was not at the provincial clinic. She says the complainant was, however, entitled to claim those points in the expression for the offer, as the clinic was expected to open in May 2017.<sup>25</sup>

[195] When the residence application was filed in late June 2017 by Ms Hill herself, the complainant was still not in the provincial clinic. Yet the points for the offer were still being claimed. Ms Hill's later explanation to Immigration New Zealand was that she continued to rely on the offer as the clinic was expected to open in "the near future".<sup>26</sup>

[196] The information in the residence application form, being the same as that in the expression, was incorrect. Ms Hill knew the complainant was still in Auckland. She knew the information given to Immigration New Zealand on the form, that the complainant had commenced in the new clinic on 3 April 2017, was incorrect. I do not accept that the complainant was entitled to rely on the offer by the time of the residence application, given the continuing delays to the opening of the clinic (with no firm date in the future). The form should have accurately specified her Auckland location and the claim for 30 points dropped.

[197] I would observe though that, contrary to the conclusion reached by Immigration New Zealand, it was not being deliberately misled. The supporting documents, notably the general manager's letter, made it clear the new clinic had been delayed and the complainant had remained in Auckland. Immigration New Zealand was wrong to turn incorrect information on the form into an honesty issue.

[198] The second item of incorrect information was the date the complainant had commenced the skilled position of practice manager. The statement made in both the expression and residence application was that the complainant had been working as a practice manager since 1 April 2015. A claim was therefore made for an additional 10 points available for 12 months or more skilled work experience. She claimed 60 points, instead of the 50 points to which she was entitled for her actual skilled work experience of less than 12 months.

[199] The complainant had only worked as a practice manager since October 2016, which is when Immigration New Zealand had approved the variation of condition. At April 2017, when the expression was filed, she had only some six to seven months of experience. Even at the time of the residence application in June 2017, she did not have 12 months experience as a practice manager.

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<sup>25</sup> See Ms Hill's letter to Immigration New Zealand, 9 November 2017.

<sup>26</sup> *Idem*.

[200] The complainant and Ms Hill blame each other for the insertion of this wrong information on the form. The IPT found that the complainant herself entered the wrong information but, contrary to Mr Jenkin's submission, I am not bound by the IPT's finding. It was an appeal on the papers only. There is no estoppel.<sup>27</sup>

[201] In any event, it does not matter who actually entered the incorrect work information on the expression form, since Ms Hill was responsible for checking it at the time she lodged the residence application.

[202] Ms Hill was not entitled to rely on what the complainant inserted into the form at the expression stage. It is to be borne in mind that Ms Hill knew from the text messaging that the complainant was adding information to the online expression form. A diligent adviser exercising due care will check information given by a client.<sup>28</sup> Another way of describing that obligation is that a professional adviser exercising reasonable care, and knowing the client has added details, will check the accuracy of the form before lodging it with Immigration New Zealand.

[203] A great deal of information is required by Immigration New Zealand and it is easy to make a mistake. Clients will not appreciate the delay that this can lead to and even worse, the alacrity with which Immigration New Zealand will accuse clients of a lack of *bona fides* where wrong information is produced. Incorrect information can have serious and long-lasting immigration consequences for visa applicants. Advisers know that.

[204] The wrongful conduct of Ms Hill was not so much permitting her client to lodge the expression herself or even to add details online, but in failing to check those details were correct at the time Ms Hill lodged the residence application.

[205] I find that Ms Hill failed to ensure that the claimed work experience details, both as to the location of the complainant's employment and the period of skilled employment, were correct at the time of lodging the residence application. This amounts to a failure to exercise diligence and due care, in breach of cl 1 of the Code.

(5) *Failing to ensure that the complainant signed the written agreement or confirmed in writing her acceptance, in breach of cl 18(c)*

[206] In her complaint, the complainant alleges that Ms Hill never provided or signed any written agreement.

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<sup>27</sup> Mr Jenkin relies on *Shiels v Blakeley* [1986] 2 NZLR 262 (CA), but the requirements set out at 266 (lines 23–29) are not satisfied.

<sup>28</sup> *Immigration New Zealand (Calder) v Chiv* [2019] NZIACDT 73 at [51] & [55], *KX BK v GVH* [2019] NZIACDT 74 at [70].

[207] According to the affidavits of Ms Hill and Mr Gu, the latter gave a signed agreement to the complainant in person on 10 October 2016. Attached to Ms Hill's affidavit is a copy of an undated client agreement bearing Ms Hill's signature. Mr Gu gave the same oral evidence to the Tribunal.

[208] In her statement of reply to the Tribunal, the complainant says the document was never provided to her. In her oral evidence, she said she could not remember what document(s) Mr Gu dropped off that day, but was pretty sure it was not the client agreement.

[209] I do not accept that Mr Gu left a draft agreement with the complainant. It is not mentioned in the schedule of activity on the file. Even the clear identification of Ms Hill in the agreement is another reason to believe it was never given to the complainant, since if it had the complainant would have dealt with Ms Hill, not Mr Gu.

[210] Irrespective of whether the client was given the agreement to sign, it is the adviser's responsibility to ensure the agreement is signed by all the parties. If the complainant did not return it, signed by her, Ms Hill should have waited until she did before commencing work or even declined to act if the complainant refused to do so. There was no urgency. I find a breach of cl 18(c) of the Code. Ms Hill accepts this.

## **OUTCOME**

[211] I uphold the second, fourth and fifth heads of complaint against Ms Hill. Clauses 1, 2(e) and 18(c) of the Code have been breached.

## **SUBMISSIONS ON SANCTIONS**

[212] A timetable is set out below. Any requests that Ms Hill undertake training should specify the precise course suggested. The Tribunal has already received a claim for compensation, which Ms Hill should now respond to.

### *Timetable*

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

- (1) The Registrar, the complainant and Ms Hill are to make submissions by **15 April 2020**.
- (2) The Registrar, the complainant and Ms Hill may reply to submissions of any other party by **30 April 2020**.

**ORDER FOR SUPPRESSION**

[214] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.<sup>29</sup>

[215] There is no public interest in knowing the name of Ms Hill's client.

[216] The Tribunal orders that no information identifying the complainant or her husband is to be published other than to Immigration New Zealand.

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D J Plunkett  
Chair

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<sup>29</sup> Immigration Advisers Licensing Act 2007, s 50A.