IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2020] NZIACDT 46

Reference No: IACDT 010/19

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

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 19 October 2020

REPRESENTATION:

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

PRELIMINARY

[1] Ms ZG, the complainant, engaged the services of Mr Damon Parker, the adviser, for several immigration matters. The complainant was employed by a company (the employer) controlled by Mr Parker's father-in-law (the director). She also has a family relationship with the director. Furthermore, Mr Parker has in the past been a director of the employer and continued to be engaged in work for the employer.

[2] The complainant says that she largely dealt with Ms Jessie Cheng, Mr Parker's wife, and other unlicensed staff on her immigration matters, rather than with Mr Parker.

[3] The complaint made by the complainant to the Immigration Advisers Authority (the Authority) has been referred to the Tribunal by the Registrar of Immigration Advisers (the Registrar). It is alleged by the Registrar that Mr Parker permitted unlicensed employees, including his wife, to perform immigration work which can only be undertaken by a licensed adviser. It is also alleged that as a result of a conflict of interest (his family and business relationship with the employer and director), he should have declined to act notwithstanding that he disclosed the conflict to the complainant. Such matters would be contrary to the Immigration Advisers Act 2007 (the Act) and breach the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

[4] Mr Parker accepts that his wife and other unlicensed staff communicated with the complainant, but says this was on isolated occasions and he did not structure his practice to rely on unlicensed people. As for the conflict, he acknowledges the existence of one, but contends it did not prevent him from giving objective advice to the complainant.

BACKGROUND

[5] Mr Parker is a licensed immigration adviser based in Auckland. At the material time, he was a director and shareholder of Swiftvisa Limited (Swiftvisa), but is now formally listed on the Authority's register as an employee. His wife, Ms Cheng, is a former director and shareholder of Swiftvisa. Both of them have described themselves in the past as managing directors of Swiftvisa.[1] Ms Cheng has never been licensed.

[6] In addition to Ms Cheng, a number of other unlicensed employees of Swiftvisa were engaged with the complainant's immigration matters, being David and Wendy.[2]

[7] The employer is a farm owning company. Both Mr Parker and Ms Cheng are former directors of the employer. Mr Parker continued to undertake contract work for the

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[1] *NT v Parker* [2019] NZIACDT 62 at [4].
[2] These are not their real names.

employer while acting for the complainant. Ms Cheng also continued to be involved in the operation of the employer at that time.

[8] The complainant has a family relationship with the director.[3] She has been described by the director as the niece of his aunt and uncle.[4] It is not known whether the complainant is therefore a cousin (of some degree) to Ms Cheng. I note that the complainant has also been described as the niece of a close friend of the director.[5]

The complainant engages Mr Parker

[9] In 2015, Mr Parker assisted the complainant, who was then unlawfully in New Zealand, to obtain a work visa.

[10] In 2017, the complainant sought Mr Parker's assistance again. She and her partner attended a consultation with him on 2 March 2017.[6] He filed with Immigration New Zealand an application to vary the conditions of her work visa, based on a new offer of employment.

[11] The complainant, her partner and Mr Parker met again on 16 March 2017 to discuss her immigration situation and particularly whether a partnership application could be made. He assessed her eligibility for residence and advised she would not be eligible under the partnership category, but that consideration should be given to applying under the skilled migrant category 12 months later.

[12] On the same day, the complainant signed Swiftvisa's terms of engagement. Swiftvisa would assist her to file an application to vary the conditions of her visa, followed by an expression of interest (EOI) and a residence application under the skilled migrant policy. The fee was $8,500 and a deposit of $2,500 was payable.

[13] An offer of employment was made to the complainant by the employer on about 16 March 2017.

Conflict of interest disclosure

[14] On 17 March 2017, the complainant and Mr Parker met again. She informed him that she would accept an offer of employment from the employer. He disclosed a conflict of interest. Both of them signed a "Conflict of interest" disclosure document, formally

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[3] Conflict of interest disclosure (17 March 2017); Registrar's documents at 174.
[4] Director's text to the complainant (2 May 2018); Registrar's documents at 94.
[5] Mr Parker's affirmation (30 May 2019) at [41].
[6] Mr Parker says the file note is wrongly dated 5 March 2017; statement of Mr Parker (11 September 2020) at [6].

acknowledging that Mr Parker had disclosed a "personal and familial relationship" with the employer, as well as his voluntary work there as the payroll officer.

[15] The disclosure document went on to state:

> As a result, by acting on your behalf in relation to any visa application, a conflict of interest arises which may impact on my ability to act impartially on your behalf. For example, I will not be able to disclose financial information to you that has been provided by the employer and will not be able to advise you if your employment is sustainable.

[16] The document further recorded the complainant's own relationship with the director, as well as certain advice given to her by Mr Parker concerning the conflict (*verbatim*):

> You have also advised that you have a familial relationship with the Director of [the employer]. You acknowledge that I have advised you against engaging my services due to this conflict of interest and also that any services provided to you in relation to temporary visa applications supported by [the employer] is provided free of charge however the arrangement is still subject to any terms and conditions provided to you and the obligations of both parties in respect of any agreement therein remain in force.

[17] The document went on to record the complainant's acknowledgement that she had been encouraged to seek independent legal advice, but had consented to Mr Parker acting for her on any application made to Immigration New Zealand.

[18] The complainant instructed Swiftvisa's staff on 20 March 2017 to withdraw the application to vary the visa conditions that had been made, as she had accepted the employer's offer.

Application to vary work visa to work for employer

[19] On 30 March 2017, Mr Parker filed with Immigration New Zealand an application for a variation of the conditions of the complainant's work visa, so she could work as a business development manager at the employer.

[20] The variation was approved by the agency on 20 April 2017.

[21] The staff then went ahead with preparing the complainant's EOI for residence.

[22] There were text exchanges on WeChat, a Chinese language communications app, between the complainant and Ms Cheng or David:[7]

[7] The original text exchanges produced to the Tribunal are in either English or Chinese. This decision therefore sets out a mix of original English texts and English translations of original Chinese texts.

(9 October 2017)

Ms Cheng: Your Facebook should not say 'single'. Need to have [name deleted] photo

Complainant: [emoji] [okay]

Ms Cheng: Just don't write it down, or don't show it to people who aren't your friends. There is a client from another agent today. Co saw (one's) Facebook and ask why is this person single but under a partnership work visa. PPI[8]

Complainant: So their Facebook was checked?

(24 October 2017)

Complainant: Hi [David], when can I submit the EOI? Could you reply me?

David: Hi, the deadline is next Wednesday. I will try to sort it out by this week and let you know, don't worry

Complainant: [emoji]

David: There is no need to be rush

Complainant: OK, thanks

David: The reason is the next selection date is next Wednesday. The INZ will only select it on next Wednesday whenever no matter when you submit it

Complainant: OK

[23] At the request of David, the complainant texted information to him on 31 October 2017 about her travel history and her parents.

Expression of interest for residence filed

[24] An EOI for residence was filed by Mr Parker on behalf of the complainant on 1 November 2017. It was based on her sales and marketing management role at the employer.

[25] There was a text exchange between the complainant and David:

(1 November 2017)

David: What's up?

Complainant: Chasing my EOI

[8] CO or Co is a common acronym for an immigration officer (or case officer). PPI, or potentially prejudicial information, is a common acronym for a letter from Immigration New Zealand seeking comment on adverse information.

David: Don't worry, you will be selected…

[26] Immigration New Zealand issued the complainant with an invitation to apply for residence on 6 November 2017.

[27] The complainant attended a consultation with Mr Parker on 18 January 2018 regarding the renewal of her work visa. A few days later, on 24 January 2018, she signed SwiftVisa's terms of engagement, as did Mr Parker. It covered the preparation and filing of a work visa.

Application for a work visa

[28] On 25 January 2018, Mr Parker filed an essential skills work visa application for the complainant, again based on her position as a business development manager at the employer.

[29] This was followed by text exchanges between the complainant and Ms Cheng or the staff:

(2 February 2018)

Complainant: Hi [Wendy], could you check my visa progress? My previous visa has expired, thanks

Wendy: Now you are still in the queue. It is too soon to be allocated to a case officer

Complainant: [emoji] OK

Wendy: Although we submitted earlier, we just received INZ application confirmation email yesterday

Complainant: OK [emoji]

Wendy: According to INZ website, normally it takes 23 working days, we still have to wait. Sometimes no update is good, which means case officer has no concern

Complainant: OK

(12 February 2018)

Complainant: Hi [Wendy], could you check my visa progress? Thanks

Wendy: I ask that on Friday and your case is still not be allocated to a case officer

Complainant: [emoji] It seems that INZ has given me an interim visa

Wendy: Yes. Interim visa is automatically issued by INZ

Complainant: OK. Can I work when I hold interim visa? No, I can't. I have seen that

Wendy: You can work. Because you job title and employer is the same

Complainant: It is said that I can't work

Wendy: If you have the same job title and same employer, you can work. Where did you check that?

Complainant: I check from the interim visa INZ sent

Wendy: photo (screenshot from INZ interim visa website) attach link (INZ official website for interim visa condition)

Complainant: Oh, I looked mistakenly …

(25 February 2018)

Ms Cheng: List your friends' name, contact method, how long have you know each other, how did you know each other, make a list. [David] will prepare for you

Complainant: Oh Yes!! Thank you boss!!

(6 March 2018)

David: Then I will prepare no criminal record for you again. Wrong. Resubmit EOI. Is that OK?

Complainant: OK thank you

David: It's election day tomorrow, we will just leave it. Let's go with the EOI election after two weeks

Complainant: Alright

[30] Immigration New Zealand wrote to the complainant on 7 March 2018 outlining issues which could have a negative impact on the outcome of the work visa application (a PPI letter). In particular, the visa officer was not satisfied that the offer of employment was genuine and sustainable. The employer appeared to be operating from a residential address, the position description had been directly copied from ANZSCO and there was no information regarding the employer's business activities. A list of documents and other information to be produced was set out, including evidence demonstrating that the complainant undertook the tasks in the position description, PAYE records and employer monthly schedules for the last 12 months, evidence of recent contracts or customers, an organisation chart, evidence of marketing and the like.

[31] The complainant had a consultation with Mr Parker about this letter on the same day, 7 March 2018. According to Mr Parker's file note:[9]

[9] Registrar's documents at 198.

> … The case officer has also asked for financial documents from the employer however this does not appear to be relevant to the concerns raised. Advised the client that the employer is unwilling to provide any financial information to INZ as he is funding the company out of his own pocket. If he were to provide that information to INZ it would likely result in a decision to decline the application based on sustainability, this would also impact her ability to apply for residence later. Alternatively I suggest that we provide her full payroll records to show that the employer is paying her wages consistently and on-time which INZ must consider in relation to sustainability concerns.

[32] Mr Parker recommended to the complainant that they provide the information "above" and certain other information, including the payroll records for all employees for 12 months as requested, an updated company structure, information about on-going projects the complainant was in charge of, photographs and evidence of income derived from the business ("if possible").

[33] On 14 March 2018, Wendy replied on Mr Parker's behalf to Immigration New Zealand's PPI letter of 7 March 2018. The agency was advised that Mr Parker was reviewing the additional evidence sent to him, but was unable to provide a response.

[34] According to Wendy, Mr Parker had noted discrepancies between the information provided earlier and the officer's statements. It was unclear to him how the employer's bank statements and PAYE records sought by the agency had any relevance to the concern raised, which appeared to be whether the complainant was undertaking the tasks outlined in the employment agreement. There did not appear to be any reason for the officer to raise concerns about the employer's ability to meet the terms of the employment agreement. They would be uploading some additional documents to the agency, including an updated job description, PAYE records for the past 12 months, an organisation chart and company photos.

[35] The officer replied by email on 15 March 2018. The letter sent outlined concerns regarding the genuine and sustainable nature of the employment, which required an explanation. The deadline had passed and a decision could be made.

[36] Mr Parker then responded himself with an email to the officer about one hour later stating that the letter of 7 March 2018 was rejected. A decision could not be made, as the officer had not provided any reasons for the concerns expressed. He had complained many times about the failure to identify evidence and specific concerns. If the application was declined without giving an adequate opportunity to respond to reasoned and evidenced concerns, he would make a complaint.

Work visa declined

[37] On 16 March 2018, Immigration New Zealand declined the complainant's further visa to work at the employer. It was not satisfied the offer of employment was genuine

and sustainable. The employment address was a farm and the agency was not satisfied there were genuine business activities being carried out there.

[38] It was also noted by Immigration New Zealand that the payroll contact for the employer was Mr Parker, the adviser. Furthermore, he had been a director. He had not declared a conflict of interest on the application. It appeared that material information had been withheld on the application. This led to concerns about the credibility of the information supplied. The evidence provided had not demonstrated that the complainant genuinely undertook the tasks of the position description.

Complaint to Immigration New Zealand

[39] On the same day, 16 March 2018, Mr Parker spoke to the complainant using Ms Cheng as an interpreter. He advised her that he would be making a complaint to Immigration New Zealand on behalf of the employer and himself. He regarded the letter as defamatory of himself. Furthermore, there were issues with the way the information from the employer had been considered.

[40] Mr Parker told the complainant that if she wanted to be included in the complaint, he would not charge a fee. The application had caused him a great deal of stress as he was representing both parties and was not comfortable representing her further. He recommended that she seek independent advice as "there is a conflict of interest" if he was to represent her in relation to the complaint. He was not confident that the complaint would succeed. In reply to the complainant's question as to whether she had any other options, he advised her to seek a visa under s 61 of the Immigration Act 2009.

[41] Also, on 16 March 2018, the complainant and Mr Parker again signed Swiftvisa's terms of engagement. For no fee, Mr Parker would prepare and file a complaint regarding the decline of the work visa.

[42] A complaint was sent to Immigration New Zealand by Mr Parker on 27 March 2018. He outlined numerous criticisms of the decision, alleging significant bias and an irrational thought process. According to Mr Parker, no concerns had earlier been raised about the sustainability of the business, only about the genuineness of the employment. He stated that the agency was only required to assess whether the employment was sustainable, not whether the business was sustainable, which was a significant error.

[43] There were further criticisms by Mr Parker of the officer's assessment of the complainant's job description and remuneration. The officer's broad dismissal of the evidence appeared to be primarily because the evidence was provided by him, but Immigration New Zealand had no legitimate interest in his personal affairs. The officer

had been unprofessional and disrespectful, which he would raise in a separate complaint. He requested that the complainant be granted a work visa.

[44] Mr Parker and the complainant exchanged text messages on 20 April 2018 about the complaint (with Mr Parker using his wife's phone).

[45] The complaint was dismissed by Immigration New Zealand on 30 April 2018. The manager accepted that the case officer's comments regarding Mr Parker were not appropriate, for which he apologised. The officer's concern, as to whether the employment was genuine and sustainable, was clearly set out in the letter of 7 March 2018. The application was declined on that ground. It was the responsibility of the complainant to provide all the information to satisfy the officer. The complaints process did not include addressing the merits of the decision.

[46] The complainant sent the following text to Ms Cheng:

> (2 May 2018)
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> Complainant: Jessie, you did not make appeal for me? The complaint result released on 11th April, and you told me on 27th (April) that there were no 'appeal' result. [David] told me on 20th that (I) will be fine during complaint. You call me when you free

[47] Mr Parker told the complainant of the response to the complaint on 2 May 2018. He advised her that any appeal to the Immigration and Protection Tribunal would fail. They also had a text exchange that day concerning the complaint and any effect it would have on her work visa application.

Invitation to seek residence lapses

[48] As no residence application was received from the complainant, Immigration New Zealand's invitation to apply (issued 6 November 2017) lapsed on 14 May 2018.

COMPLAINT

[49] On about 3 July 2018, the complainant made a complaint against Mr Parker to the Authority. It was supported by considerable documentary evidence. There were numerous allegations against Mr Parker and Ms Cheng, but I will only review those referred by the Authority to the Tribunal.

[50] The complainant alleges that Mr Parker maintained a business practice which relied on unlicensed people, including his wife, to provide immigration advice to her. Ms Cheng and the staff often communicated with her on immigration matters. Furthermore, he had a potential conflict of interest as the director of her employer was

his father-in-law. Mr Parker had also previously been a director of the employer and continued to work for that company. He had a vested interest in the employer. The complainant requested compensation for the difficulties she faced as a result of Mr Parker's actions.

Explanation from Mr Parker

[51] Mr Moses, counsel for Mr Parker, made initial submissions to the Authority on 31 July 2018. He noted Mr Parker's rejection of the allegation that the complainant's employment was not legitimate. The allegations appeared to be the result of a falling out between Mr Parker's father-in-law and the complainant, which had led to an employment dispute. Counsel further contended that the complainant's various complaints were an elaborate construct to support her otherwise precarious immigration situation by shifting responsibility for her overstaying to Mr Parker and his wife.

[52] In his submissions, Mr Moses observed that Mr Parker had acted in various immigration applications for the complainant. A recent file review had alerted Mr Parker to a number of deficiencies in those matters. His services to the complainant may have fallen short of the standard expected. This included the extent of staff involvement in the EOI, as well as the manner in which he dealt with the conflict of interest arising from his familial relationship with the director. He had therefore transferred the total fee of $2,500 back into his client funds, pending a decision on whether a refund was required.

[53] The Authority wrote to Mr Parker on 11 April 2019 formally advising him of the details of the complaint and inviting his explanation.

[54] Mr Moses provided comprehensive submissions to the Authority on 31 May 2019. It was noted that in a supporting affirmation, Mr Parker deposed that he did not rely on his wife or other unlicensed staff to provide illegal advice to his clients. He structured his practice so that only he gave advice to his clients.

[55] It was acknowledged, however, that there were eight instances of possible immigration advice being given by Mr Parker's wife and two by the staff members, Wendy and David. Mr Parker opined that his wife may have thought she would be able to discuss these matters in communications which were informal or in a family context. David's communications were unwise and either crossed the line into giving immigration advice, or were at least uncomfortably close. David may have felt he was simply repeating Mr Parker's views. Any contravention of the Act was inadvertent.

Affirmation of Mr Parker

[56] An affirmation from Mr Parker (30 May 2019) was produced to the Authority. He accepted that he may have made mistakes and his conduct may have fallen short of the expected standard.

[57] Mr Parker stated that he obtained a Graduate Certificate in New Zealand Immigration Advice in 2012 and had been a licensed adviser since January 2013. He immediately commenced working at Swiftvisa. At the time of his affirmation, he was the sole director there. He owned the bulk of the shares, the other shareholders being his children. Swiftvisa employed six staff, one of whom was provisionally licensed in 2019, with another two studying to become licensed.

[58] According to Mr Parker, Swiftvisa had been established in 2005 by him and his wife. She had been conducting immigration work prior to the licensing regime. Once he became licensed, Ms Cheng stepped back from the immigration business and her management role and he ran the company. As most of the clients were Chinese nationals and his Chinese language ability was limited, she did the social media posts and the staff interpreted and translated for him. Ms Cheng did not have a formal role with Swiftvisa, though she was occasionally paid commission for referring clients.

[59] Mr Parker said that his father-in-law established the employer to operate a business. His father-in-law was the only director and shareholder. Mr Parker helped him incorporate the company and was its first director until March 2015. He was not paid to do this. The business grew mushrooms and other produce for supply to retailers and restaurants. He continued to contribute by establishing the HR policies, employment contracts and the payroll system. It had employed nine different people over the years, peaking at four employees. It had no employees at the time of his affirmation.

[60] The complainant was the niece of a close friend of Mr Parker's father-in-law. She had a master's degree in management from New Zealand. There was a vacant general manager position. She was to be employed as Mr Parker and his wife had no desire to be involved. The complainant would ensure the farming operation would be profitable and professionally managed. It was a real job with actual tasks.

[61] At the time Mr Parker was first instructed by the complainant in 2015, she was unlawfully in New Zealand. He assisted her to obtain a work visa. Then in March 2017, she sought his assistance to apply for a variation of her work visa to work for a different company. This application was withdrawn. As his father-in-law's company was then seeking a business development manager and the complainant was suitably qualified, a variation of her visa was sought so she could work for the employer.

[62] However, the relationship between the complainant and the employer soured. Mr Parker set out in his affirmation certain allegations concerning the complainant's work (which are not relevant to assessing this complaint against him).

[63] Mr Parker said he disclosed his potential conflict of interest to the complainant, but it did not undermine his ability to give her objective advice. He did not then consider that the conflict went so far as to prevent him from acting. He could see though that he had unnecessarily created the impression that the potential conflict was worse than it objectively was. Out of an abundance of caution, the disclosure document signed by himself and the complainant was stronger than was necessary.

[64] According to Mr Parker, the complainant's visa application was unsuccessful because Immigration New Zealand incorrectly found the employment to be neither genuine nor sustainable. However, it was practically impossible to challenge such a decision concerning a temporary permit.

[65] As for the sustainability issue, Mr Parker said he had no reason to be concerned about the employer's ability to pay its salaries. In addition, Immigration New Zealand had previously accepted that the employment offered to other applicants was sustainable.

[66] It was accepted by Mr Parker that some of his wife's communications could be criticised for being unlicensed advice. If she went further than was acceptable, it was inadvertent.

[67] Mr Parker stated in his affirmation that he did not arrange matters at Swiftvisa in such a way as to enable Ms Cheng or the staff to give immigration advice. He fully understood the Act and the Code. The processes at Swiftvisa were designed to avoid the risk of staff straying into giving immigration advice. He had discussed with Ms Cheng the limitations around clerical work. It was accepted that the Registrar had identified instances of staff straying close to the line or crossing it. He had re-issued the instructions to his staff.

[68] In conclusion, Mr Parker said the complaint had been a learning experience for him. He may have failed to meet the expected standard. It had been difficult to manage the risk of staff straying over the line. As he did not speak Chinese, clients contacted staff in the first instance. He had decided that it was best to ensure that more staff were licensed.

Complaint filed in Tribunal

[69] The Registrar filed a statement of complaint in the Tribunal on 16 July 2019. It alleges Mr Parker breached the Code in the following respects:

(1) relied on unlicensed persons to communicate with the complainant and enabled the provision of unlicensed advice, thereby conducting his work in an unprofessional manner and failing to exercise due care and diligence, in breach of cl 1;

(2) failed to personally communicate with the complainant and obtain her lawful instructions regarding the submission of the EOI, in breach of cl 2(e);

(3) enabled the provision of immigration advice by unlicensed persons, contrary to the Act, in breach of cl 3(c); and

(4) continued to act for the complainant when he could not objectively represent her or give objective advice, in breach of cls 2(a) and 7(a).

JURISDICTION AND PROCEDURE

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

(a) negligence;

(b) incompetence;

(c) incapacity;

(d) dishonest or misleading behaviour; and

(e) a breach of the code of conduct.

[71] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.[10]

[72] The Tribunal must hear complaints on the papers, but may in its discretion request further information or any person to appear before the Tribunal.[11] It has been established to deal relatively summarily with complaints referred to it.[12]

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[10] Immigration Advisers Licensing Act 2007, s 45(2) & (3).
[11] Section 49(3) & (4).
[12] *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].

[73] 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.[13]

[74] The sanctions that may be imposed by the Tribunal are set out in the Act.[14] The focus of professional disciplinary proceedings is not punishment but the protection of the public.[15]

[75] 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.[16]

[76] The Tribunal has received a statement of complaint (16 July 2019) and supporting documents from the Registrar.

Submissions from the complainant

[77] There is a statement of reply (29 August 2019) from the complainant. She agrees with the facts and breaches set out in the Registrar's statement of complaint.

[78] The complainant does not accept Mr Parker's contention that his communications do not cross the disciplinary threshold. It is submitted that the exchanges identified by the Registrar demonstrate unlicensed persons providing immigration advice.

[79] There is no evidential foundation for the contention that the exchanges were simply advice given by Mr Parker. Poor management enabled unlicensed persons to give advice. Mr Parker enabled his staff to operate outside the boundaries of the Act. The exchanges are not *de minimis*. As for the conflict of interest, its existence does not absolve an adviser from acting in the client's interests, rather than those of the adviser.

Submissions from Mr Parker

[80] Mr Moses, in his submissions and statement of reply of 15 August 2019, notes Mr Parker's acknowledgement in his affirmation that unlicensed advice was given. His wife and staff crossed the line on a small number of occasions, eight such occasions being relied on by the Registrar.

[81] It is contended that what occurred did not amount to rubber stamping or enabling unlicensed advice. The isolated instances of unlicensed persons giving immigration

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[13] Section 50.
[14] Section 51(1).
[15] *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citation omitted).
[16] *Z v Dental Complaints Assessment Committee*, above n 15, at [97], [101]–[102] & [112].

advice occurred without Mr Parker's knowledge and despite his reasonable efforts to prevent it from happening. He did not structure his practice in such a way as to rely on unlicensed advisers. Nor was it inevitable that this would occur.

[82] According to Mr Moses, what happened here can be distinguished from the Tribunal's *Ahmed* decision, since Mr Parker did not use his employees to recruit the clients, prepare the applications for him, then as the licensed person merely sign off and file them with Immigration New Zealand.[17] Mr Parker met with the complainant, undertook the engagement process with her and was fully responsible for the application process. He did rely on staff to communicate with the complainant and prepare some documents for his review (based on his "script"), but this was subject to his direction (given both orally and in his Customer Service Manual) that only he (being the sole licensed adviser then) could give immigration advice.

[83] Mr Moses submits that isolated examples of work going beyond the strict limit of clerical work do not amount to rubber stamping. The Tribunal recognises that isolated instances of staff crossing the threshold may not require a disciplinary sanction.[18] What is required in order to establish a breach is either the adviser's knowledge of the staff exceeding the permissible limits or wilful blindness to what was occurring or would inevitably occur.

[84] Counsel says that Mr Parker has made strenuous efforts by giving oral and written instructions to ensure the staff, including his wife, understood and complied with the legislative prohibition against giving unlicensed advice.

[85] As for the allegation that Mr Parker relied heavily on unlicensed persons to communicate with the complainant, the Registrar refers to 13 examples. However, a majority of these are legitimate. They include instances of documents being emailed to the complainant, with Mr Parker copied into the communication. Other instances expressly refer to Mr Parker checking documents, making clear that the staff were conduits only.

[86] Some of the exchanges between the staff and the complainant, while not ideal, consist of staff merely repeating to her instructions or advice given by Mr Parker and do not cross the threshold requiring a disciplinary consequence. They are *de minimis*.

[87] If the Tribunal finds a breach of the Code, it is submitted that the seriousness of the breach is mitigated, not only by the clear instructions to staff to prevent this from happening, but also by the changes Mr Parker has made to his business practice. Two

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[17] *Immigration New Zealand (Calder) v Ahmed* [2019] NZIACDT 18 at [48] & [55].
[18] *Ahmed* at [65].

of his staff have undergone training and become provisionally licensed and a third employee is in training. He has proactively taken steps to avoid a repetition of this type of event.

[88] Mr Moses notes that in relation to the conflict of interest, Mr Parker maintains that he was not conflicted to such an extent that he could no longer provide objective advice. The conflict had been explained to the complainant and she had validly consented to him representing her.

[89] Mr Parker accepts that he has a familial and personal relationship with the owner of the employer and the owner's daughter, his wife. He was involved in aspects of the employer's business, albeit for personal, rather than business reasons. It is therefore accepted that there was potential for a conflict of interest. However, there was no actual conflict.

[90] It is alleged against Mr Parker that the conflict arose as Immigration New Zealand determined that the employment was not sustainable. Mr Parker's communications with the complainant contributed to the Authority's concerns, in that he arguably overstated the extent of the conflict by stating that it might impact on his ability to act impartially. This led the Authority to conclude that there was an actual conflict and to consider his objectivity to be compromised. This was not, however, the case.

[91] There was no real problem with sustainability, as the adviser knew that the complainant's employment was sustainable. The employer had adequate funds to pay for her employment and had been doing so for nine months when the work visa application was filed in January 2018. Immigration New Zealand's decision in March 2018 to decline the work visa on this basis did not have an adequate evidential foundation. There is no breach of cl 7 of the Code as there is no evidence Mr Parker's objectivity was compromised. The wording of the disclosure could have been better but it was not so inadequate as to vitiate the complainant's consent to him acting.

[92] If the Tribunal upholds the infringement in relation to the conflict, it is pointed out in mitigation that Mr Parker took great care to ensure compliance with the Code. His failure was an error of judgement, rather than deliberate contravention of his duties. The complaint had also led him to now be more risk averse in dealing with potential conflicts. They are a difficult issue and even experienced and careful professionals can be mistaken in their assessment.

[93] It is further contended that even if the complaint is upheld, there is no need for any disciplinary sanction. Mr Parker has taken legal advice and evinced a mature attitude by making improvements to his practice. A disciplinary sanction is not required.

Indeed, even if Mr Parker's conduct fell below the expected standard, the breaches may be such that the complaint could be dismissed. The Tribunal has long recognised that a mere error does not require a sanction. The complaint has had the effect of alerting Mr Parker to deficiencies and enabled him to avoid them in the future.

Affirmation from Mr Parker

[94] There is an affirmation from Mr Parker in support (dated 14 August 2019).

[95] Mr Parker records his understanding that his wife and David went further than is permissible in communicating with the complainant. But he contests the allegation that he enabled them to do so. He had no knowledge that it was happening. He could not foresee this would happen and he made reasonable efforts to prevent it from occurring.

[96] According to Mr Parker, he had discussed with his wife the limits of what was permissible. She had agreed not to give unlicensed advice to clients. He was not aware of his wife discussing with the complainant her Facebook profile.

[97] It was in February 2015 that he prepared the first version of the Swiftvisa Customer Service Manual, which was updated in June 2019. It sets out the company's expectation of everyone including himself. At the material time, their internal rules stated:

> Ensure all immigration advice comes from the licensed advisor.
>
> Ensure all the communications are traceable.

[98] The obligation to ensure that only the licensed adviser gives immigration advice is real. It was not inserted only for the purpose of limiting liability while being aware of a different practice.

[99] Moreover, according to Mr Parker, he discussed with the staff during their induction and in the course of their work, the limits of what they could do. The position description of Wendy clearly stated that the statutory limits of clerical work had to be observed. Her induction checklist included an instruction to use the communications log. This enabled him to be aware of communications between the staff and clients. While David commenced work at Swiftvisa prior to the manual and did not go through a formal induction process, Mr Parker says he made David aware of the rules and their application to him.

[100] The updated induction checklist (April 2019) requires familiarisation with the definition of clerical work. His email to staff at that time referred to key findings of the Tribunal in two decisions.

[101] In his affirmation, Mr Parker states that he thought staff would not give unlicensed advice. He considers what his wife and the staff did in this case to be exceptional.

[102] Mr Parker says he now realises that the complainant regarded his wife as a family friend. His wife may have let her guard down. The complainant had also become friendly with the staff, who wanted to assist her.

[103] Following receipt of the present complaint, Mr Parker concluded that the prohibition against giving unlicensed advice had been insufficient to prevent staff from straying, so three of them are now provisionally licensed under his supervision. This will ensure, as much as practically possible, that there is no inadvertent breach. All three were given paid leave to prepare for the Graduate Diploma in New Zealand Immigration Advice. The staff also have in their employment contracts an entitlement to be reimbursed up to $2,000 for professional development.

[104] Mr Parker states that he has himself completed continuing professional development (CPD) courses relating to these issues to ensure that he fulfils his obligations. He frequently reviews decisions of the Tribunal and has attended various seminars. He does not view CPD as a burden but as something that makes his work interesting.

[105] As for the conflict of interest, with the benefit of hindsight, he would reword the communications with his wife, her father and his own involvement with his father-in-law's company. They overstated the extent of the conflict by suggesting there was an actual conflict. He did what in substance the Code required him to do. He identified the conflict, communicated it to the client and continued when she gave her consent.

[106] It is alleged he lost his objectivity in relation to the sustainability of the complainant's employment and should not have acted for her. It is further alleged that because he was so badly conflicted, it could not be waived by her. In answer to this, he says that at the time there was no reason to believe that the sustainability could not be documented. The employment was sustainable by a considerable margin. There was a potential conflict, but not an actual one. Immigration New Zealand's decision to decline the application on the basis of sustainability and the company having no website, was incorrect.

[107] Mr Parker does not believe that his objectivity was compromised. That said, in future he will be more hesitant about acting where the regulator may be inclined to find that his objectivity was undermined.

[108] At the request of the Tribunal, Mr Parker produced a statement on 11 September 2020 setting out his direct contact with the complainant. He had meetings, telephone

discussions or text exchanges with her on 2, 16, 17 March 2017, 18 January, 7 and 16 March, 20 April and 2 May 2018.

[109] No party has requested an oral hearing.

ASSESSMENT

[110] 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:
>
> a. maintain a relationship of confidence and trust with the client and provide objective advice
>
> …
>
> 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.
>
> **Conflicts of interest**
>
> 7. A licensed immigration adviser must not in any circumstances represent or continue to represent the client where they are aware that there is an actual conflict of interest that means:
>
> a. the adviser's objectivity or the relationship of confidence and trust between the adviser and the client would be compromised, or
>
> …

(1) Relied on unlicensed persons to communicate with the complainant and enabled the provision of unlicensed advice, thereby conducting his work in an unprofessional manner and failing to exercise due care and diligence, in breach of cl 1

(2) Failed to personally communicate with the complainant and obtain her lawful instructions regarding the submission of the EOI, in breach of cl 2(e)

(3) Enabled the provision of immigration advice by unlicensed persons, contrary to the Act, in breach of cl 3(c)

Immigration advice, the exclusive work of licensed advisers

[111] 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".[19] This occurs where the licensed adviser becomes the ostensibly legitimate front for unlicensed individuals who provide the bulk of the immigration services.

[112] Typically, this occurs where a licensed immigration adviser uses agents, often offshore, 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.

[113] The practice is plainly unlawful. A person commits an offence under the Act if he or she provides "immigration advice" without being licensed or exempt from licensing.[20] A person employing as an immigration adviser another person who is neither licensed nor exempt also commits an offence.[21] A person may be charged with such an offence even where part or all of the conduct occurred outside New Zealand.[22]

[114] The statutory scope of "immigration advice" is very broad:[23]

> **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

[19] *Stanimirovic v Levarko* [2018] NZIACDT 3 at [4], [36]–[38]; *Immigration New Zealand (Calder) v Soni* [2018] NZIACDT 6 at [4], [50]–[61]; *The Registrar of Immigration Advisers v Niland* [2018] NZIACDT 52 at [72]–[79].
[20] Immigration Advisers Licensing Act 2007, ss 6 & 63.
[21] Section 68(1).
[22] Sections 8 & 73.
[23] Section 7.

> (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.

[115] The exclusion from the scope of "immigration advice" relevant here is subs (1)(b)(iii) concerning clerical work, translation or interpretation services. Ms Cheng and the staff are only permitted to perform clerical work or translation/interpretation services.

[116] "Clerical work" is narrowly defined in the Act:[24]

> **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

[117] At the relevant time, Mr Parker was the only person who could provide immigration advice. In other words, he was the only person who could use any knowledge or experience in immigration to advise, assist or represent any client, whether directly or indirectly. Ms Cheng and the staff were confined to merely retrieving, organising and recording information, in addition to data entry. If they were recording the information on a visa application form, it had to be done under the direction of Mr Parker or the client.

[118] In order to comply with this statutory requirement, the Code imposes an obligation on an adviser to act in accordance with New Zealand immigration legislation (cl 3(c)). It also requires an adviser to engage directly with his or her client (cl 2(e)). These obligations are personal to the licensed immigration adviser and cannot be delegated.[25]

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[24] Section 5, definition of "clerical work".
[25] *Sparks*, above n 12, at [29], [34] & [47].

Application of law to Mr Parker

[119] Mr Parker admits his wife and staff "crossed the line" in that, as unlicensed persons, they gave information to the complainant or otherwise assisted her in a way that would amount to an activity within the definition of immigration advice under the Act. He says it was *de minimis* and/or inadvertent, that he did all that he reasonably could to ensure that they did not and that he did not set up his practice in such a way as to rely on unlicensed persons. To the extent that both clients and he himself relied on the staff to communicate with each other, it was because of his limited Chinese language ability.

[120] As for the need to communicate in Chinese, Mr Parker does not expressly use this as an excuse for the staff communicating with the complainant and nor could he. She has a master's degree from a New Zealand university and some of her communications with the staff and Mr Parker are in English.

[121] Nonetheless, I accept Mr Moses' submission that this is not a classic 'rubber stamping' scenario, where the adviser sets up a business structure using staff to recruit clients, engage with the clients and prepare the applications, with the adviser doing little more than filing the application and corresponding with Immigration New Zealand. Mr Moses says that Mr Parker met with the complainant, undertook the engagement process with her and was fully responsible for the application process. There is certainly evidence in the file of Mr Parker personally meeting and communicating with the complainant on multiple occasions, a matter to which I will return. It is less clear who actually prepared and completed the immigration application.

[122] This brings me to the individual occasions relied on by the Registrar in which Ms Cheng or the other staff may have given immigration advice to the complainant:

(1) 9 October 2017 – There is no doubt Ms Cheng was giving immigration advice. Mr Parker accepts this.

(2) 24 October 2017 – As publicly available information, this is not immigration advice.

(3) 1 November 2017 – I do not regard the comment, "Don't worry, you will be selected…", without giving reasons, as reaching a disciplinary threshold, even if it is immigration advice. I accept Mr Parker's description of this comment as a courtesy, intended to reassure an anxious client.[26]

(4) 2 February 2018 – I do not consider information as to the status of an application to be immigration advice. The number of working days

[26] Affirmation Mr Parker (30 May 2019) at [68].

expected appears to be publicly available information. The information about the reality of 'no update' is conjecture of no real value.

(5) 12 February 2018 – The information as to whether the complainant could work on an interim visa is clearly immigration advice. Mr Parker concedes that it crosses the line.[27] I note, though, that according to the exchange, the information was available on the agency's website, so it would appear to be publicly available. Mr Parker also says he had earlier given the same advice to the complainant. To the extent it is immigration advice, I do not regard it as crossing the disciplinary threshold.

(6) 25 February 2018 – Mr Parker says that he in fact authored this message on his wife's phone. I note that the message was originally in Chinese characters.[28] I am not sure whether WeChat can automatically convert English to Chinese, or Mr Parker is saying that he gave the reply to his wife to send. There is evidence that Mr Parker did send text messages (in English) using his wife's phone.[29] I will take him at his word. If the information came from Mr Parker, there is no unlicensed advice here.

(7) 6 March 2018 – Mr Parker says he discussed this with David.[30] If so, it is not unlicensed advice.

(8) 2 May 2018 – The advice given earlier by David that the complaint outcome would be "fine", without reasons, is immigration advice but does not cross the disciplinary threshold. It is nothing more than a casual comforting view which could not be relied on. Mr Parker had already advised the complainant on 16 March 2018 that he was not confident the complaint would succeed, so the actual value of David's comment is dubious.

[123] While there are some instances of Ms Cheng or the staff giving immigration advice, I do not regard those isolated occasions as warranting disciplinary action in the circumstances here. I have already accepted Mr Parker's evidence that he did not set up his business structure to rely on unlicensed persons.[31]

[124] The Registrar's allegation that Mr Parker enabled the provision of immigration advice by unlicensed persons in breach of cls 1 and 3(c) of the Code is unproven. The

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[27] At [70].
[28] Registrar's documents at 89.
[29] Complaint (3 July 2018) at [4.1(t)], Mr Parker's statement (11 September 2020) at [19].
[30] At [73].
[31] Nor have I overlooked the earlier complaint against Mr Parker upheld by the Tribunal (see n 1), or the allegations made in a further complaint yet to be determined.

first head of complaint (as to enabling unlicensed advice) and the third head are dismissed.

[125] There is also the allegation that Mr Parker relied on unlicensed persons to communicate with the complainant (balance of the first head of complaint) and failed to personally communicate with her regarding the submission of the EOI (second head).

[126] There is evidence of Mr Parker meeting or communicating with the complainant in relation to her relevant instructions (those commencing in 2017), on 2, 16 and 17 March 2017, 18 January, 7 and 16 March, 20 April and 2 May 2018.

[127] However, there is no evidence of any engagement by Mr Parker directly with the complainant in the period during which the EOI was prepared and filed, from about 20 April to 1 November 2017.

[128] Yet there is considerable information in the EOI.[32] Some of that information would have been sitting on Swiftvisa's file concerning the complainant. But not all of it. There is evidence of the staff obtaining information directly from her on, for example, 31 October 2017.[33] There is also a great deal of evidence of the staff communicating with the complainant on matters other than the EOI.[34] Mr Parker certainly did not obtain information for the EOI from the complainant. He accepts that the involvement of the staff in the EOI may have breached the Code.[35]

[129] There is no evidence that Mr Parker expressly directed the staff to obtain from her specific information needed for the EOI, but even if he did, that does not excuse him from the obligation to personally control the relationship and undertake the bulk of the communications with her. She could communicate in English so he did not need the staff to assist him with communication. There could be no objection to the staff dealing with the complainant on isolated occasions, particularly in gathering information. That is the practical reality of an immigration consultancy. But the adviser cannot delegate to the staff the whole engagement with the client for an immigration application.

[130] The first head of complaint (as to relying on unlicensed persons to communicate) and the second head are upheld. Under the first head, the breach is of the obligation in cl 1 to be professional, rather than as failing to exercise due care and diligence. Mr Parker may not have known the staff were occasionally giving immigration advice to the complainant, but he knew they were communicating with her. His failure to engage with her is not one of carelessness. Under cl 2(e), the subject of the second head,

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[32] See copy EOI in Registrar's documents at 317–329.
[33] Registrar's documents at 107.
[34] Registrar's documents at 111–135, 211, 216–217.
[35] Mr Moses' submissions to Authority (31 July 2018) at [16].

Mr Parker failed to personally obtain the complainant's instructions. I note also the obvious duplication between the breach of cl 1 and that of cl 2(e). Mr Parker will not be sanctioned twice for the same misconduct.

(4) Continued to act for the complainant when he could not objectively represent her or give objective advice, in breach of cls 2(a) and 7(a)

[131] Mr Parker accepts the existence of what he regards as only a potential, not actual, conflict of interest. It arises from his familial and business relationship with the complainant's employer and its director.

[132] It is not material to this complaint what was discussed between them in 2015, when he first did work for the complainant. It was before her employment with the employer.

[133] In submissions to the Tribunal, Mr Moses contends that the conflict was overstated by Mr Parker at the time and that it was only a potential one, not an actual conflict. The disclosure document signed by both the complainant and Mr Parker on 17 March 2017 speaks of a conflict which "arises" (and which "may" impact on his ability to act impartially). That document, I find, correctly records the existence of an actual conflict.

[134] In my view, it is self-evident that Mr Parker was conflicted and therefore compromised. He had a family relationship with the employer's director (his father-in-law), had been intimately involved in the past in the employer's business activities (as the first director), and continued to undertake work for the employer. While there is no evidence that he received any financial benefit from that relationship, it gave rise to an actual conflict for the very reason he identified in the disclosure document. Despite his knowledge of the employer's financial situation and therefore the sustainability of the complainant's employment, he could not disclose full (or even adequate) financial information to her or to Immigration New Zealand on her behalf.

[135] The inability to disclose such information was always going to be a problem for the complainant's work visa. An essential criterion was the sustainability of her employment. This was a small company, essentially only a farm. It had few employees then (and none now). The complainant was not, in any way, involved in hands-on-farming. She has no farming background or experience.

[136] Immigration New Zealand was also going to be suspicious of such a company, a modest farming business, needing a fulltime business development manager. Mr Parker's claim made in his complaint to Immigration New Zealand on 27 March 2018

that the agency was only required to assess whether the employment was sustainable (by proving payment to the complainant and other staff of their salaries for 12 months), not whether the business was sustainable, is wrong. If the business was not sustainable, then self-evidently the employment of the complainant and others was not sustainable.

[137] While Mr Parker will not concede sustainability now, his candid admission to the complainant on 7 March 2018 is telling. He said then that if the true source of the employer's funds (the director's own pocket) was disclosed to the agency, the application would be declined based on sustainability. This was a business which could not generate sufficient income to meet the salaries and other outgoings. In other words, it was not sustainable.

[138] I regard the decision of Immigration New Zealand to decline the visa on the ground that the complainant's employment was not sustainable, as correct. The agency therefore correctly declined the visa on the very ground that Mr Parker had, also correctly, identified in the disclosure document as the area where he had a conflict of interest. He did not, as he says now, overstate the position when he signed that document. He knew when he accepted the instructions that a fundamental problem was going to be sustainability. But he was never going to be able to provide adequate disclosure, because it would have shown that his father-in-law was financing the business from his own funds. That would have been fatal to the visa application, absent perhaps a credible plan to increase the revenue through the employment of the complainant.

[139] In other words, Mr Parker had a conflict of interest. He was not able to provide objective advice, at the time the complainant was offered the position on about 16 March 2017 and again on receipt of Immigration New Zealand's PPI letter of 7 March 2018, as to the sustainability of the position and hence the financial information required. If Mr Parker could not give that advice and provide better financial information, he should have declined to act.

[140] I accept the Authority's guidance given to advisers in the Code of Conduct Toolkit (at 37):

> If an adviser finds that an actual conflict of interest would mean that their objectivity would be compromised or that the relationship of confidence and trust with the client would be compromised, then the adviser has a choice, either:
>
> - to find a way to manage or remove the conflict so that this situation does not arise, or
> - not to act or continue to act for the client.

[141] As the Tribunal has stated before, the disclosure of a conflict of interest and consent from the client does not absolve the adviser from the overarching obligation to act professionally in accordance with the Code.[36]

[142] In conclusion, Mr Parker's objectivity was compromised. If the complainant wished to pursue the application, Mr Parker should have terminated the engagement and sent her to another adviser to get objective advice, independent of his relationship with the employer and its director. Mr Parker has breached cls 2(a) and 7(a) of the Code. The fourth head of complaint is upheld.

Should the complaint be dismissed, notwithstanding the breaches?

[143] Finally, Mr Moses submits that this may be a case where the various breaches are not of such severity as to require the complaint to be upheld. Mr Parker has been alerted to his deficiencies and taken steps to avoid them in the future.

[144] It is correct that not every lapse by a professional warrants a complaint being upheld, let alone a sanction. However, the breaches here were not minor or inadvertent. The obligation to personally engage with a client is important. Furthermore, a complaint against Mr Parker for using unlicensed staff to communicate has been upheld before.[37] As for the conflict, there were serious consequences for the complainant, as the lack of financial information establishing sustainability was the primary reason for the decline. In saying that, I do not find that the conflict itself caused the decline, as evidence establishing sustainability did not exist. Mr Parker cannot be blamed for the decline, only for failing to advise the complainant of this material risk or terminating the engagement.

OUTCOME

[145] Mr Parker relied on unlicensed staff to communicate with the complainant and failed to directly engage with her in the submission of the EOI, in breach of cls 1 and 2(e) of the Code. It is further found that Mr Parker had a conflict of interest which prevented him from providing objective advice to the complainant. He has breached cls 2(a) and 7(a) of the Code.

SUBMISSIONS ON SANCTIONS

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

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[36] *MSC v Scholes* [2013] NZIACDT 58 at [122].
[37] *NT v Parker*, n 1.

[147] A timetable is set out below. Any request that Mr Parker undertake training should specify the precise course suggested. Any requests for repayment of fees or the payment of costs or expenses or for compensation must be accompanied by a schedule particularising the amounts and basis of the claim. In assessing the sanctions, the Tribunal will take into account the previous complaint upheld against Mr Parker, including the sanctions.[38]

Timetable

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

(1) The Registrar, the complainant and Mr Parker are to make submissions by **10 November 2020**.

(2) The Registrar, the complainant and Mr Parker may reply to submissions of any other party by **24 November 2020.**

ORDER FOR SUPPRESSION

[149] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.[39]

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

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

D J Plunkett
Chair

[38] *NT v Parker* [2019] NZIACDT 62 & 71.
[39] Immigration Advisers Licensing Act 2007, s 50A.