

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2021] NZIACDT 18

Reference No: IACDT 06/21

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **CL**
Complainant

AND **APURVA KHETARPAL**
Adviser

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 10 August 2021

REPRESENTATION:

Registrar: Self-represented
Complainant: No appearance
Adviser: No appearance

PRELIMINARY

[1] The complainant, CL, was in New Zealand on a visitor visa and instructed the adviser, Ms Apurva Khetarpal, to file further visa applications. The adviser committed numerous breaches of her professional obligations, including providing dishonest and/or misleading information to both the complainant and to Immigration New Zealand (Immigration NZ).

[2] A complaint by the complainant against Ms Khetarpal to the Immigration Advisers Authority (the Authority) has been referred by the Registrar of Immigration Advisers (the Registrar) to the Tribunal. It is alleged that she has breached the Immigration Advisers Licensing Act 2007 (the Act) and the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

[3] Ms Khetarpal has refused to engage with the disciplinary process.

BACKGROUND

[4] The complainant, a national of India, was in New Zealand on a visitor visa, with her husband and daughter.

[5] Ms Khetarpal, a licensed immigration adviser, was a director of Ivisas Ltd, of Auckland. Her licence had been cancelled on 16 February 2016. On appeal to the District Court, it issued an interim order on 22 March 2016 allowing her to practice subject to supervision, including a condition that she inform her clients that she was providing advice pursuant to an interim order. That interim order ceased to have effect on 31 January 2020.

[6] The complainant had previously engaged Ms Khetarpal to obtain a renewal of a visitor visa, which was successfully extended to 1 February 2019.

[7] The complainant then instructed Ms Khetarpal in early 2019 to file a student visa application with Immigration NZ. The application was filed on 1 February 2019, along with a visitor visa application for the complainant's husband.

[8] Immigration NZ sent a letter to Ms Khetarpal on 20 June 2019 regarding the complainant's application, as the offer of a place at the education institution was no longer valid. The deadline to reply was 25 June 2019.

[9] Ms Khetarpal did not inform the complainant of the letter, or reply to it.

[10] On 19 July 2019, the complainant obtained an offer of place from another tertiary institution and forwarded it to Ms Khetarpal on the same day.

[11] On 20 August 2019, Immigration NZ sent a letter to Ms Khetarpal declining the complainant's student visa application, as there had been no response to its letter and no updated offer had been provided. She was advised that her interim visa had expired on 2 August 2019 and she became unlawful in New Zealand after that. The complainant was told to leave New Zealand immediately.

[12] Ms Khetarpal did not inform the complainant of the decline of her visa application.

[13] On 21 August 2019, after Immigration NZ had declined the complainant's student visa, Ms Khetarpal told her that the agency had requested further information, being bank statements showing she had sufficient funds to support herself in New Zealand.

[14] Ms Khetarpal prepared a statement in English for the complainant's husband to sign. However, the information was written in the first person as if it was from the complainant. It stated that "I" (being the husband) had filed "my" (being the complainant) offer of place with Immigration NZ on 22 July 2019, along with a receipt from the institution confirming payment of the fee.

[15] On 22 August 2019, Ms Khetarpal took the husband to a solicitor to declare the statement to be true, despite it being untrue. He could not read or write English and was told by Ms Khetarpal that the statement related to the couple's funds. Confusingly, the Tribunal notes that the statement (purporting to be from the husband) was also signed by the complainant, though she made no declaration.

[16] On 8 November 2019, the complainant was contacted by Immigration NZ and told she was unlawfully in New Zealand. At the time, she had thought that a student visa application was still in progress. The immigration officer told her this had been declined.

[17] The complainant then contacted Ms Khetarpal who denied that the application had been declined and explained that the complainant must have misunderstood what the officer had said. Ms Khetarpal advised the complainant she would contact the officer and resolve the issue.

[18] On 26 November 2019, unbeknown to the complainant, Ms Khetarpal filed a request for a discretionary visa for the complainant and her husband under s 61 of the Immigration Act 2009. The "statutory declaration" of the husband (22 August 2019) was sent with it. Ms Khetarpal stated in the request that the husband had dropped off the declaration and a fee receipt to the Hamilton branch.

[19] At some point, the complainant came to know from the immigration officer that a s 61 request had been made. When she contacted Ms Khetarpal, she was again told that “her application” had not been declined, but that “INZ did not want to grant the visa”.¹ Ms Khetarpal added that because of this, “there was an automatic process to become a s 61 request”. Furthermore, the complainant was advised not to pick up any phone calls from Immigration NZ, as Ms Khetarpal would deal directly with the officers.

[20] The s 61 request was refused by Immigration NZ on 30 November 2019. The complainant was told of this by the immigration officer.

[21] The complainant says she verbally terminated Ms Khetarpal’s services on about 21 January 2020.

[22] On 28 January 2020, Ms Khetarpal filed a request for Ministerial intervention on behalf of the complainant and her husband, without their instructions. She sent the husband’s statement (22 August 2019) to the Minister. In the request, she said that the husband had dropped the documents off with the Hamilton branch.

[23] On 20 February 2020, the complainant’s newly instructed solicitors, Vallant Hooker & Partners, wrote to Ms Khetarpal stating that she had filed a request for Ministerial intervention unilaterally and without consent. The solicitors requested a copy of the request filed with the Minister. Ms Khetarpal was advised that she was no longer instructed by the complainant.

[24] The copy request was not sent to the solicitors.

[25] The complainant paid Ms Khetarpal a total of \$3,000 for her services in four instalments between 29 March and 4 November 2019, as well as \$246 for Immigration NZ fees.

COMPLAINT

[26] On about 15 September 2020, the complainant’s solicitors made a complaint against Ms Khetarpal to the Authority. They alleged negligence, incompetence, dishonest or misleading behaviour and breaches of the Code.

[27] The solicitors sent to the Authority a statutory declaration (8 September 2020) from the complainant’s husband. He declared that on 21 August 2019, Ms Khetarpal contacted them and said that Immigration NZ had requested further information about their funds for the purpose of the complainant’s student visa application. When they

¹ Letter from the complainant’s solicitors to the Registrar (15 September 2020) at [20].

went to her office on 22 August, she gave him a document in English to sign in front of a solicitor. The words were translated by Ms Khetarpal. She said it concerned their funds. He now knows the true content. It is not correct. The complainant actually emailed the offer of place to Ms Khetarpal on about 19 July 2019.

[28] On 7 October 2020, the Authority forwarded a copy of the complaint to Ms Khetarpal and required the production of her client file. There was no response, so a reminder was sent on 23 October 2020. Ms Khetarpal then sought an extension on 27 October 2020, but failed to send her file despite reminders on 30 November 2020 and 25 January 2021.

[29] On 3 March 2021, the Authority formally advised Ms Khetarpal of the details of the complaint and invited her explanation. She sent an email on 18 March 2021 stating that she had sent her response by courier, but no response was received by the Authority.

[30] The complainant sent two emails to the Authority on 9 April 2021 advising, amongst other things, that Ms Khetarpal did not give her any information about the visa declined on 21 August 2019.

Complaint filed in Tribunal

[31] The Registrar filed a complaint (18 May 2021) in the Tribunal alleging the following:

Dishonest or misleading behaviour, or alternatively breaches of the identified provisions of the Code:

- (1) failing to advise the complainant that she had received a letter from Immigration NZ and later that the student visa application had been declined, instead misleading the complainant into thinking that the application was still being considered by Immigration NZ, in breach of cl 1;
- (2) preparing a false declaration for the complainant's husband to sign (stating that he had personally filed the complainant's updated offer with Immigration NZ's Hamilton office) and relying on the false declaration by providing it to Immigration NZ in support of the s61 request and the Ministerial intervention, in breach of cl 31(a);
- (3) misrepresenting her licence status by failing to disclose that she was not a fully licensed adviser but a provisional adviser who had a supervisor, nor

did she advise the complainant of the interim order, in breach of cl 29(a);
and

- (4) misleading Immigration NZ into believing that she was still authorised to act for the complainant when she lodged the request for Ministerial intervention, in breach of cl 29(a).

Negligence, or alternatively breaches of the identified provisions of the Code:

- (5) failing to provide a written agreement for all applications made, in breach of cl 18(a);
- (6) failing to issue any invoice to the complainant, in breach of cl 22;
- (7) failing to send an updated offer of place to Immigration NZ in a timely manner, in breach of cl 1;
- (8) failing to inform the complainant of Immigration NZ's letters of 20 June and 20 August 2019, in breach of cl 26(b);
- (9) failing to confirm in writing to the complainant the termination of her services on about 21 January 2020, instead continuing to act without authorisation, in breach of cl 28(a);
- (10) failing to inform Immigration NZ that she was no longer representing the complainant and acting for the complainant without authorisation, in breach of cls 2(e) and 28(b);
- (11) failing to advise the complainant that she was a provisional licence holder who was subject to a court order, in breach of cl 8(c);
- (12) failing to maintain and provide the Authority with her client file, in breach of cl 26(a) and (e); and
- (13) failing to respond to the complainant's solicitors' letter of 20 February 2020 or to provide a client file, in breach of cl 26(f).

JURISDICTION AND PROCEDURE

[32] 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.

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

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

[35] After hearing a complaint, the Tribunal may dismiss it, uphold it but take no further action or uphold it and impose one or more sanctions.⁵

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

[37] It is the civil standard of proof, the balance of probabilities, that is applicable in professional disciplinary proceedings. However, the quality of the evidence required to meet that standard may differ in cogency, depending on the gravity of the charges.⁸

[38] The Tribunal has received from the Registrar the statement of complaint (18 May 2021), with supporting documents.

[39] There are no submissions from either the complainant or Ms Khetarpal.

ASSESSMENT

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

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

³ Section 49(3) & (4).

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

⁵ Section 50.

⁶ Section 51(1).

⁷ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151].

⁸ *Z v Dental Complaints Assessment Committee*, above n 7, at [97], [101]–[102] & [112].

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

...

Work within limits of knowledge and skills

8. A licensed immigration adviser must:

...

- c. if a provisional licence holder, explain to the client that a provisional licence requires them to work under the direct supervision of a full licence holder, and they must seek advice from the supervisor whenever necessary.

Written agreements

18. A licensed immigration adviser must ensure that:

- a. when they and the client decide to proceed, they provide the client with a written agreement

...

Invoices

22. A licensed immigration adviser must, each time a fee and/or disbursement is payable, provide the client with an invoice containing a full description of the services the fee relates to and/or disbursements that the invoice relates to.

File management

26. A licensed immigration adviser must:

- a. maintain a hard copy and/or electronic file for each client, which must include:
 - i. a full copy of the client's application or other immigration matter
 - ii. copies of all written agreements and any changes to them
 - iii. copies of all written communications (including any file notes recording material oral communications and any electronic

communications) between the adviser, the client and any other person or organisation

- iv. copies of all invoices and receipts relating to the client
 - v. copies of all personal documents relating to the client supplied to the adviser, and
 - vi. evidence of the safe return of the client's original documents
- b. confirm in writing to the client when applications have been lodged, and make on-going timely updates
- ...
- e. maintain each client file for a period of no less than 7 years from closing the file, and make those records available for inspection on request by the Immigration Advisers Authority, and
 - f. when requested by the client or their new licensed or exempt immigration adviser, release a copy of all applications lodged on behalf of the client and all correspondence relating to the client.

Termination of services

28. A licensed immigration adviser must ensure that:
- a. the termination of services, for any reason, is confirmed to the client in writing
 - b. where they cease to act for the client for any reason other than the completion of agreed services, they inform Immigration New Zealand or the Immigration and Protection Tribunal, as appropriate, that they are no longer representing the client, and
- ...

Advisers

29. A licensed immigration adviser must not misrepresent or promote in a false, fraudulent or deceptive manner:
- a. themselves, including their qualifications or their licence status or type
- ...

Applications

31. A licensed immigration adviser must:
- a. not deliberately or negligently provide false or misleading documentation to, or deliberately or negligently conceal relevant information from, the decision maker in regard to any immigration matter they are representing, and
- ...

Dishonest or misleading behaviour, or alternatively breaches of the identified provisions of the Code:

- (1) *failing to advise the complainant that she had received a letter from Immigration NZ and later that the student visa application had been declined, instead misleading the complainant into thinking that the application was still being considered by Immigration NZ, in breach of cl 1;*
- (2) *preparing a false declaration for the complainant's husband to sign (stating that he had personally filed the complainant's updated offer with Immigration NZ's Hamilton office) and relying on the false declaration by providing it to Immigration NZ in support of the s 61 request and the Ministerial intervention, in breach of cl 31(a);*
- (3) *misrepresenting her licence status by failing to disclose that she was not a fully licensed adviser but a provisional adviser who had a supervisor, nor did she advise the complainant of the interim order, in breach of cl 29(a); and*
- (4) *misleading Immigration NZ into believing that she was still authorised to act for the complainant when she lodged the request for Ministerial intervention, in breach of cl 29(a)*

[41] Turning to the first head of complaint, it is the complainant's evidence that she was not told by Ms Khetarpal of Immigration NZ's letter (20 June 2019) identifying a problem with the student visa application, nor of the agency's decline (20 August 2019).

[42] When the complainant found out about the decline from an immigration officer on 8 November 2019, she contacted Ms Khetarpal who told her she must have misunderstood the officer as it had not been declined. Ms Khetarpal later again confirmed it had not been declined, but added that Immigration NZ did not want to grant it. According to her, this automatically led to a s 61 request. Ms Khetarpal further advised the complainant that she should not accept any phone calls from the agency.

[43] The complainant's evidence is not contested by Ms Khetarpal. She has chosen not to answer the allegations put to her by the Authority and then by the Tribunal. She has an obligation to do so.⁹ The Tribunal draws an adverse inference from her silence.

⁹ *KX v Ji* [2020] NZIACDT 43 at [54], *TI v Malcolm* [2021] NZIACDT 13 at [42].

[44] While Ms Khetarpal may have innocently overlooked the 20 June letter, I find that she was dishonest in failing to advise the complainant of the visa decline, later denying it had been declined and falsely advising that the s 61 request was automatic. Her advice to the complainant not to speak to Immigration NZ was part of this deception. Ms Khetarpal was deceiving the complainant into believing that the visa application was still being processed.

[45] In respect of the second head of complaint, it is the uncontested evidence of the complainant and her husband that he made a false declaration on 22 August 2019 which had been prepared by Ms Khetarpal and deliberately mistranslated by her. He declared he had filed documents with Immigration NZ, which was not true, having been told by Ms Khetarpal that the declaration concerned the couple's funds. The complainant's solicitors speculate, with some foundation, that having failed to send the documents to Immigration NZ, she made up the story about the documents being filed in person, in the hope that a s 61 visa would be issued.

[46] I find that Ms Khetarpal was dishonest in preparing the husband's statement and then mistranslating it to him. She then relied on the declaration in support of the s 61 and Ministerial requests to falsely contend to Immigration NZ that certain documents had been produced to it, when they had not. This amounts to dishonest behaviour.

[47] In respect of the third head of complaint, it is the complainant's uncontested evidence that Ms Khetarpal failed to tell her that she was only a provisional licence holder.¹⁰ This was likely deliberate. It is part of a pattern of dishonest or misleading behaviour. While she probably did not also disclose the interim court order, that is not expressly alleged by the complainant, so I cannot make any such finding.

[48] In respect of the fourth head of complaint, it is the complainant's uncontested evidence that she verbally told Ms Khetarpal of the termination of her engagement on about 21 January 2020.¹¹ Despite this, she filed the Ministerial request on 28 January 2020. By doing so, she misled Immigration NZ into believing she was still authorised to act for the complainant.

[49] Since it is found that Ms Khetarpal has engaged in dishonest or misleading behaviour in respect of each head of complaint, there is no need to assess the alternative breaches of the Code.

¹⁰ The solicitor's letter to the Registrar (15 September 2020) at [34](c).

¹¹ At [34](h); complainant's email to the Authority (9 April 2021) at 99 of the Registrar's supporting documents.

Negligence, or alternatively breaches of the identified provisions of the Code:

- (5) *failing to provide a written agreement for all applications made, in breach of cl 18(a);*
- (6) *failing to issue any invoice to the complainant, in breach of cl 22;*
- (7) *failing to send an updated offer of place to Immigration NZ in a timely manner, in breach of cl 1;*
- (8) *failing to inform the complainant of Immigration NZ's letters of 20 June and 20 August 2019, in breach of cl 26(b);*
- (9) *failing to confirm in writing to the complainant the termination of her services on about 21 January 2020, instead continuing to act without authorisation, in breach of cl 28(a);*
- (10) *failing to inform Immigration NZ that she was no longer representing the complainant and acting for the complainant without authorisation, in breach of cls 2(e) and 28(b);*
- (11) *failing to advise the complainant that she was a provisional licence holder who was subject to a court order, in breach of cl 8(c);*
- (12) *failing to maintain and provide the Authority with her client file, in breach of cl 26(a) and (e); and*
- (13) *failing to respond to the complainant's solicitors' letter of 20 February 2020 or to provide a client file, in breach of cl 26(f)*

[50] In respect of the fifth head of complaint, it is the uncontested evidence of the complainant that Ms Khetarpal did not provide any written agreement covering her services.¹² This is a breach of cl 18(a) of the Code.

¹² At [34](a) & (d).

[51] In respect of the sixth head of complaint, it is the uncontested evidence of the complainant that Ms Khetarpal did not provide any invoice to the complainant or her husband for the fees of \$3,000 charged.¹³ This is a breach of cl 22.

[52] In respect of the seventh head of complaint, it is the uncontested evidence of the complainant and her husband that the offer of place of 19 July 2019 was given to Ms Khetarpal on about the same day.¹⁴ She did not provide it to Immigration NZ until the s 61 request was made on 26 November 2019. This was after the student visa application had been declined. Ms Khetarpal did not provide the offer to Immigration NZ in a timely manner. This is a breach of cl 1.

[53] In respect of the eighth head of complaint, it is the uncontested evidence of the complainant that she was not informed by Ms Khetarpal of Immigration NZ's letter of 20 June 2019 or the decline letter of 20 August 2019.¹⁵ This is a breach of cl 26(b).

[54] In respect of the ninth head of complaint, it is the uncontested evidence of the complainant that she told Ms Khetarpal verbally of the termination of her services on about 21 January 2020.¹⁶ Ms Khetarpal did not confirm that in writing with the complainant. This is a breach of cl 28(a).

[55] In respect of the tenth head of complaint, it has already been noted that it is the uncontested evidence of the complainant that she verbally told Ms Khetarpal of the termination of her services on about 21 January 2020. Ms Khetarpal was required to immediately inform Immigration NZ. Not only did she fail to do so, but she subsequently filed a Ministerial request on 28 January 2020. Such conduct is a breach of cl 28(b). The failure to inform Immigration NZ is also a breach of cl 2(e), having failed to carry out the complainant's instructions. Filing the Ministerial request is also a breach of cl 2(e), as Ms Khetarpal did not obtain instructions for this.

[56] In respect of the eleventh head of complaint, this overlaps with and essentially duplicates the third head of complaint. It is the uncontested evidence of the complainant that she was not informed by Ms Khetarpal that the latter was only a provisional licence holder subject to supervision.¹⁷ This is a breach of cl 8(c). It is also a breach of the interim order.

¹³ At [34](e).

¹⁴ At [9] & [29]; statutory declaration of husband (8 September 2020) at [11].

¹⁵ At [12], [17], [28], [33(a) & (d)].

¹⁶ At n 11 above.

¹⁷ At n 10 above.

[57] In respect of the twelfth head of complaint, the Authority required Ms Khetarpal to provide her file on 7 October 2020, with reminders on 23 October and 30 November 2020 and again on 25 January 2021. The file was not sent. This is a breach of cl 26(e). Ms Khetarpal has chosen not to respond to the allegation that she did not maintain a complete file. I will draw an adverse inference. She is in breach of cl 26(a).

[58] In respect of the thirteenth head of complaint, the complainant's solicitors advised the Authority on 15 September 2020 (at [24] & [34](g)) that their request for Ms Khetarpal's file in their letter to her of 20 February 2020 went unanswered. This is a breach of cl 26(f).

[59] Having determined a breach of the Code in respect of all these heads of complaint, there is no need to assess whether they are instances of negligence.

OUTCOME

[60] I uphold the complaint. Ms Khetarpal has engaged in dishonest or misleading behaviour. Additionally, she has breached cls 1, 2(e), 8(c), 18(a), 22, 26(a), (b), (e) and (f), 28(a) and (b) of the Code.

SUBMISSIONS ON SANCTIONS

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

[62] A timetable is set out below. As the Tribunal has found Ms Khetarpal's behaviour to be dishonest or misleading, it will consider whether she should be prevented from reapplying for a licence for a period. The parties are asked to specifically address this. Any request for repayment of fees or the payment of costs or expenses or for compensation must be accompanied by a schedule particularising the amounts and basis of the claim.

Timetable

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

- (1) The Registrar, the complainant and Ms Khetarpal are to make submissions by **1 September 2021**.
- (2) The Registrar, the complainant and Ms Khetarpal may reply to submissions of any other party by **15 September 2021**.

ORDER FOR SUPPRESSION

[64] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.¹⁸

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

[66] The Tribunal orders that no information identifying the complainant is to be published other than to Immigration NZ.

D J Plunkett
Chair

¹⁸ Immigration Advisers Licensing Act 2007, s 50A.