

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2021] NZIACDT 25

Reference No: IACDT 012/21

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

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

**BETWEEN** **RH**  
Complainant

**AND** **YAN RYAN JI**  
Adviser

**SUBJECT TO SUPPRESSION ORDER**

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**DECISION**  
**Dated 8 November 2021**

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**REPRESENTATION:**

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

## PRELIMINARY

[1] The complainant is RH. She was in New Zealand on a visitor visa, but in obtaining that visa had misrepresented her marital/partnership status. She had claimed to be single, but was actually the partner of a person in New Zealand. This was discovered by Immigration New Zealand (Immigration NZ) when the complainant applied for a work visa. She then sought advice from Yan Ryan Ji, the adviser.

[2] Mr Ji accepted instructions despite having a conflict of interest. Furthermore, the explanation he gave Immigration NZ was misleading. Nor did he comply with his professional obligations concerning information disclosure at the time he entered into an agreement for professional services with the complainant.

[3] The Registrar of Immigration Advisers (the Registrar) has referred a complaint against Mr Ji to the Tribunal, alleging negligence and also dishonest or misleading behaviour, grounds for complaint under the Immigration Advisers Licensing Act 2007 (the Act). The Registrar also alleges breaches of the Licensed Immigration Advisers Code of Conduct 2010 (the Code).

[4] Mr Ji does not deny the complaint. Indeed, he has not engaged with the Tribunal at all.

## BACKGROUND

[5] Mr Ji was at the relevant time a licensed immigration adviser. He was a director and shareholder in Ryan and Samuel Ltd, trading as NZ Immigration Consulting of Auckland. His licence was suspended by the Tribunal on 2 December 2020 and cancelled on 12 April 2021 on unrelated matters.

[6] On 9 April 2019, the complainant, a citizen of China, applied from China for a visitor visa. It was processed for her by [Company], a group of companies in China and New Zealand. Mr A, whom the complainant describes as the founding and key employee of [Company] in New Zealand, was consulted. The complainant had informed [Company] that she had a life partner studying in New Zealand, Ms Z, but Mr A advised her by text on 8 April 2019 to select single rather than partnership status on the visa application.<sup>1</sup>

[7] The visitor's visa was approved by Immigration New Zealand (Immigration NZ) on 24 April 2019.

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<sup>1</sup> Complaint letter from the complainant (undated but filed with Authority on 18 August 2020) at 5–6 of the Registrar's bundle.

[8] After the complainant's arrival in New Zealand, she and Ms Z married on 12 June 2019.

[9] A work visa application was made by the complainant in July 2019. It had been prepared by [Company]. It was based on her partnership (and by then marriage) with Ms Z.

[10] Immigration NZ wrote to the complainant on 30 September 2019 stating that it appeared she and her partner had provided false information in their respective visitor and student visa applications. They had both declared they were single, but in her current application she had said they had been in a relationship since December 2014. The conflicting information provided raised concerns about the credibility of the claimed partnership. Nor had she provided sufficient information of a shared life together, financial interdependence or of a genuine and stable relationship.

[11] On 2 October 2019, Mr A sent a text to Mr Ji asking him to have a look at Immigration NZ's letter. Mr Ji agreed to do so.

[12] Mr A advised the complainant about Immigration NZ's letter on 4 October 2019. He told her by WeChat that he would ask his "colleague" and "co-counsel" to give her a call as the inquiry had to be taken very seriously.

[13] Mr Ji duly rang the complainant that day.

[14] On 7 October 2019, Mr A sent another text to the complainant. He said his team was not qualified to reply to Immigration NZ's letter and he had to ask a lawyer or licensed consultant to reply. He added that Mr Ji and his team of lawyers were "our partner companies". Mr A later told her the cost would be \$2,000. He sent the complainant Mr Ji's written agreement on 7 October 2019, which she signed on 8 October. She paid the fee to Mr A who passed it on to Mr Ji.

[15] Mr Ji signed the signature page of the agreement (the same page signed by the complainant) on 9 October 2019, but he fixed it to a version of the agreement containing a different fee structure (the fee being \$3,450, not \$2,000). That version was sent to the complainant by Mr Ji's office manager on the same day.

[16] On 10 October 2019, Mr Ji sent an email to Immigration NZ stating that the complainant had previously worked with an unlicensed adviser in China and after receipt of the letter of 30 September she had engaged him.

[17] The complainant then worked with Mr Ji to collate the documents for the reply to Immigration NZ.

[18] On 20 October 2019, Mr Ji sent a letter to Immigration NZ comprehensively replying to its letter of 30 September 2019. He did not provide a copy to the complainant.

[19] In December 2019, Mr Ji corresponded with Immigration NZ several times providing more documents and information, and seeking an update on the status of the work visa application.

[20] Immigration NZ wrote to Mr Ji on 27 May 2020 stating that it appeared the complainant may not meet either the good character or partnership requirements of the immigration criteria. Her comments were invited.

[21] Mr Ji sent the 27 May letter to the complainant on 4 June 2020. She informed him that she had not seen Immigration NZ's letter of 30 September 2019, so he sent it to her along with his reply of 20 October 2019.

[22] The complainant sent a lengthy complaint by email to Mr Ji's office manager on 21 June 2020. The manager replied by undated letter (emailed 22 July 2020) and also by interspersing comments underneath those of the complainant on a copy of the complainant's email. The manager said the service provided was professional and accurate and the complaint was nonsense.

## **COMPLAINT**

[23] On 18 August 2020, the complainant made a complaint to the Authority against Mr Ji and others (including Mr A and his company, [Company]).

[24] In respect of Mr Ji, the complainant said that he cooperated with [Company], concealing Mr A's unlicensed status and Mr Ji's own conflict of interest (as he received clients from Mr A).

[25] The complainant acknowledged that her visitor visa application (of 9 April 2019) listed her marital status as "single", but she had informed the staff at [Company] that she had a partner. She had requested, before the application was made, that her status be listed as "partnership" and had emphasised that was important to her. It was Mr A who advised her by email on 8 April to select single.

[26] When the staff of [Company] referred her to Mr Ji, she was informed he was a lawyer and colleague of Mr A. It was Mr A who told her Mr Ji's fee was \$2,000, but when she got the completed agreement the stated fee was \$3,450. Nor did Mr Ji carry out the required professional acts before she signed the agreement.

[27] According to the complainant, Mr Ji did not disclose to her his partnership with [Company]. He obtained clients from [Company]. His best opportunity was working with an illegal agency to get a steady stream of clients. Nor did he tell her that Mr A was an unlicensed immigration adviser. She believed he deliberately withheld this information.

[28] The complainant stated that Mr Ji's letter of 20 October 2019 to Immigration NZ had "a mass of unprofessional and false statements". He did not check the accuracy of the facts with her. He did not give her enough advice about the evidence that needed to be provided. She told him that it was Mr A who had advised her to describe her marital status as single. Mr Ji falsely stated to Immigration NZ that the unlicensed adviser or his staff erroneously ticked single.

[29] In her complaint, the complainant sought a substantial sum for compensation, including a refund for fees paid to [Company] or NZ Immigration Consulting, legal fees and lost income while she was waiting for her visa.

[30] The Authority formally advised Mr Ji of the complaint on 25 February 2021 and sought his explanation.

#### *Explanation from Mr Ji*

[31] On 25 March 2021, Mr Ji responded to the Authority. He denied providing unprofessional service (but admitted breaching some of the Code obligations pre-agreement), denied the conflict of interest (claiming no connection with [Company]'s business in China) and denied being dishonest (claiming not to know that it was Mr A who had given the unlicensed advice).

[32] The Registrar filed a statement of complaint (dated 30 June 2021) with the Tribunal alleging the following against Mr Ji:

#### Negligence, or alternatively breaches of the Code:

- (1)(i) failing to provide to the complainant a draft of the letter to Immigration NZ (20 October 2019) before sending it, in breach of cl 1;
- (ii) failing to provide to the complainant a copy of the same letter after sending it until seven months later, in breach of cl 1;
- (iii) providing to Immigration NZ with the same letter a financial support letter from the partner's sister without proper explanation, resulting in possible harm to the complainant and the partner, in breach of cl 1;

- (2) failing to provide the complainant with a summary of his professional responsibilities before providing her with a written agreement, in breach of cl 17(a);
- (3) failing to explain to the complainant the summary of responsibilities and to advise her how to access the Code before providing her with a written agreement, in breach of cl 17(b);
- (4) failing to advise the complainant of his internal complaints procedure and provide her with a copy before entering into the written agreement with her, in breach of cl 17(c);
- (5) failing to provide the complainant with a written agreement, in breach of cl 18(a);
- (6) failing to explain to the complainant all significant matters in the written agreement, in breach of cl 18(b);
- (7) failing to record in the written agreement that a summary of his professional responsibilities had been provided and explained to the complainant, in breach of cl 19(m);
- (8) failing to record in the written agreement that the internal complaints procedure had been provided to the complainant, in breach of cl 19(n);  
and
- (9) failing to provide the complainant with an invoice, in breach of cl 22.

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

- (10) misrepresenting himself and the complainant in a false and deceptive manner to Immigration New Zealand, in breach of cls 1, 29(a), 29(d) and 31(a);
- (11) deliberately or negligently providing to Immigration NZ and the Authority false or misleading documentation or deliberately concealing relevant information, in breach of cls 1 and 31(a);
- (12) not disclosing to the complainant a potential or actual conflict of interest given his connection with Mr A, in breach of cl 5;
- (13) continuing to represent the complainant when he was aware that there was an actual conflict of interest (his connection with Mr A) which

compromised his objectivity and relationship of trust with the complainant, in breach of cl 7(a);

- (14) failing to record in the written agreement a potential or actual conflict of interest, in breach of cl 19(l); and
- (15) failing to disclose to Immigration NZ and the Authority the unlawful activities of Mr A and [Company] (giving immigration advice) and continuing to work with people like them to gain clients, in breach of cl 1.

## **JURISDICTION AND PROCEDURE**

[33] 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.

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

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

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

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

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

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

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

<sup>5</sup> Section 50.

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

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

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

[39] The Tribunal has received from the Registrar the statement of complaint (30 June 2021) and a paginated file of supporting documents.

[40] There are no submissions from the complainant.

[41] There is no statement of reply or submissions from Mr Ji. He has not requested an oral hearing.

## **ASSESSMENT**

[42] The Registrar relies on the statutory grounds of complaint of negligence and of dishonest or misleading behaviour, or in the alternative the breach of specific obligations in the Code.

[43] There is ample evidence of the breach of numerous provisions of the Code, so I will assess the complaint in terms of the Code.

[44] As for the statutory ground of negligence, I do not see Mr Ji's failure to comply with his pre-agreement and 'paperwork' obligations in terms of carelessness or a lack of reasonable care (except as to certain heads of complaint, as identified later). I see it as deliberate. It was the way he chose to deal with the complainant.

[45] As for the dishonesty ground, despite Mr Ji choosing not to defend the complaint in the Tribunal and even noting his poor disciplinary record (of which more will be said in a later sanctions decision), care must be taken in making a broad finding of dishonesty. Those aspects of his conduct in relation to the complainant which are dishonest are captured in the breaches of the Code alleged.

[46] The statutory grounds need not be assessed.

[47] 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.

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



### Conflicts of interest

5. Where a licensed immigration adviser is aware that there is a potential or actual conflict of interest relating to the client, including the existence of any financial or non-financial benefit the adviser will receive as a result of the relationship with the client, the adviser must disclose the potential or actual conflict to the client in writing.

...

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

...

### Code and complaint documents

17. Before entering into a written agreement with the client, a licensed immigration adviser must:

- a. provide the client with the summary of licensed immigration advisers' professional responsibilities, as published by the Registrar of Immigration Advisers
- b. explain the summary of licensed immigration advisers' professional responsibilities to the client and advise them how to access a full copy of this code of conduct, and
- c. advise the client that they have an internal complaints procedure and provide them with a copy of it.

### 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
- b. before any written agreement is accepted, they explain all significant matters in the written agreement to the client

...

19. A licensed immigration adviser must ensure that a written agreement contains:

...

- l. if applicable, a record of any potential or actual conflict of interest relating to the client, including the existence of any financial or non-financial benefit the adviser will receive as a result of the relationship with the client
- m. a record that a copy of the summary of licensed immigration advisers' professional responsibilities has been provided and explained to the client, and

- n. a record that a copy of the adviser's internal complaints procedure has been provided to the client.

### **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.

### **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
  - ...
  - d. the client
  - ...

### **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
  - ...

*(1)(i) Failing to provide to the complainant a draft of the letter to Immigration NZ (20 October 2019) before sending it, in breach of cl 1*

*(ii) Failing to provide to the complainant a copy of the same letter after sending it until seven months later, in breach of cl 1*

*(iii) Providing to Immigration NZ with the same letter a financial support letter from the partner's sister without proper explanation, resulting in possible harm to the complainant and the partner, in breach of cl 1*

[48] It is alleged by the Registrar that Mr Ji was unprofessional and lacked diligence and due care in preparing the response on 20 October 2019 to Immigration NZ's first letter.

[49] The complainant's evidence supports this allegation. She says she was not given a draft copy before it was sent. According to her, it contains numerous factual errors.

Indeed, the complainant alleges some were deliberate, an allegation which is assessed later.<sup>9</sup> It is not necessary to assess the accuracy of the other statements the complainant asserts are erroneous.

[50] Mr Ji accepts that he did not provide the reply letter in draft form to the complainant before sending it to Immigration NZ.<sup>10</sup> He told the Authority the letter was processed under urgency and he called her the day before to go through it with her. He also says he progressively provided to her the proposed response as it was being prepared.

[51] Mr Ji was instructed on 9 October 2019 and had until 21 October to send the letter. He had time to send it to her for approval. He could have even waited another day as the deadline was 21 October. It is implausible that he went through the letter (of 78 paragraphs in length) with her in any detail in a phone call. Nor is it sufficient that some parts of the response were, he says, checked with her as it was being prepared.

[52] In assessing the credibility of Mr Ji's explanation, I take into account that he has chosen not to defend the complaint in the Tribunal. The first part of the first head of complaint is upheld. He was neither professional nor diligent in failing to send this important and lengthy letter, in full and in the form in which it was to be sent, to the complainant to check before sending it to Immigration NZ. This is a breach of cl 1 of the Code.

[53] It is also alleged by the Registrar that Mr Ji did not send to the complainant a copy of that reply letter (of 20 October 2019), until about 25 May or 4 June 2020.

[54] The allegation is supported by the complainant's evidence.<sup>11</sup> It was put to Mr Ji by the Authority in its letter to him on 25 February 2021, but he did not reply in his response on 25 March 2021.

[55] I take into account that Mr Ji has chosen not to defend the complaint in the Tribunal. He should have copied the letter to her immediately after it was sent to Immigration NZ. The second part of the first head of complaint is upheld. Mr Ji was neither professional nor diligent in failing to send a copy of the letter of 20 October 2019 to the complainant that day or the following day. This is a breach of cl 1.

[56] The third part of this head of complaint is the Registrar's allegation that Mr Ji sent to Immigration NZ a letter from the sister of the complainant's partner without explaining its relevance resulting in possible harm to the complainant and her partner.

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<sup>9</sup> Complaint letter at 9–10 of the bundle.

<sup>10</sup> Letter Mr Ji to the Authority (25 March 2021) at 265 of the bundle.

<sup>11</sup> Complaint letter at 9 of the bundle.

[57] Mr Ji sent to Immigration NZ with the letter of 20 October 2019 a letter from the partner's sister (the sister's letter has not been sent to the Tribunal). In his letter to Immigration NZ, Mr Ji said that the sister had made a substantial financial contribution towards the partner's studies in New Zealand. When Immigration NZ rang the sister to confirm that financial support, the sister duly confirmed supporting the partner but denied knowledge of the partner's marriage or relationship to the complainant. This was regarded by Immigration NZ as an adverse matter which was put to the complainant for explanation in the second letter from the government agency on 27 May 2020.

[58] The complainant's evidence is that Mr Ji knew that the sister was supporting the partner only since none of the partner's family had been told of the marriage (being a same sex marriage, it had been hidden from their respective families). The complainant has provided a translation of an email she sent to Mr Ji on 19 October 2019 telling him that the sister did not know about the relationship and could not provide a support letter.<sup>12</sup>

[59] In his letter to the Authority on 25 March 2021, Mr Ji says the statement about the sister made in the letter to Immigration NZ on 20 October 2019 was "genuine". He has missed the point. He was correct in his letter about the sister's financial support of the partner, but he should never have relied on the sister's letter as she did not know about the relationship with the complainant, something which he had been told. This was not only harmful to the complainant's immigration prospects, but also to the partner's relationship with her birth family (the disclosure to the family of the marriage by an immigration officer and not by the partner herself).

[60] Mr Ji has chosen not to defend the complaint in the Tribunal. The third part of the first head of complaint is upheld. Mr Ji did not exercise due care in relying on the letter from the partner's sister in his letter to Immigration NZ. This is a breach of cl 1.

(2) *Failing to provide the complainant with a summary of his professional responsibilities before providing her with a written agreement, in breach of cl 17(a)*

[61] The Registrar alleges that Mr Ji did not provide the complainant with a copy of the summary of his professional responsibilities before she signed the agreement.

[62] There is supporting evidence from the complainant.<sup>13</sup> This allegation was not put to Mr Ji in the Authority's letter of 22 February 2021 to him, so it is not dealt with in his response to the Authority of 25 March 2021.

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<sup>12</sup> Bundle at 21 & 210.

<sup>13</sup> Complaint letter at 9 of the bundle.

[63] Mr Ji has chosen not to engage with the Tribunal. He does not deny the complainant's allegation. This head of complaint is upheld. Mr Ji has breached cl 17(a) of the Code.

(3) *Failing to explain to the complainant the summary of responsibilities and to advise her how to access the Code before providing her with a written agreement, in breach of cl 17(b)*

[64] The Registrar alleges that Mr Ji did not explain to the complainant the summary of his professional responsibilities or advise her how to access the Code, before she signed the agreement.

[65] The complainant provides evidence in support.<sup>14</sup> This was put to Mr Ji by the Authority in its letter of 25 February 2021, but he did not answer it in his response.

[66] Mr Ji has chosen not to engage with the Tribunal. He does not deny the complainant's allegation. This head of complaint is upheld. Mr Ji has breached cl 17(b) of the Code.

(4) *Failing to advise the complainant of his internal complaints procedure and provide her with a copy before entering into the written agreement with her, in breach of cl 17(c)*

[67] The Registrar alleges Mr Ji did not advise the complainant of his internal complaints procedure or provide a copy of it before entering into the agreement.

[68] There is evidence from the complainant supporting the allegation. She said in her letter of complaint to the Authority that before she signed the agreement, he did not advise her that he had an internal complaints procedure and did not send it to her.<sup>15</sup>

[69] The complainant also points to a text she sent to Mr Ji on 16 June 2020 asking him for a copy of the internal complaints procedure.<sup>16</sup> An exchange of texts followed. When she asked him whether the provision in the agreement was false (the provision stating that it had been provided to her), he replied that she already had the procedure. I regard these texts as evidence supporting the complainant's contention that she was not given the procedure, since there would otherwise be no reason for her to ask for it. Mr Ji's text saying that she already had the complaints procedure was self-serving. He knew by then of the risk of a formal complaint to the Authority.

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<sup>14</sup> As above n 13.

<sup>15</sup> As above n 13.

<sup>16</sup> Exchange of texts at 22 of the bundle.

[70] The allegation that Mr Ji did not provide the complainant with a copy of his complaints procedure, was put to him in the Authority's letter of 25 February 2021. He did not answer it in his response.

[71] I find that Mr Ji did not mention the procedure or give the complainant a copy pre-contract. In assessing Mr Ji's statement in the text that he had done so, I take into account that he has chosen not to engage with the Tribunal. He has not denied the complainant's allegation in the Tribunal.

[72] This head of complaint is upheld. Mr Ji has breached cl 17(c) of the Code.

(5) *Failing to provide the complainant with a written agreement, in breach of cl 18(a)*

[73] The Registrar's allegation is that Mr Ji did not personally provide the complainant with the written agreement, instead he allowed Mr A to do so.

[74] Clause 18(a) of the Code requires the adviser to provide the written agreement, but that obligation could be satisfied through a staff member or other agent. The issue with the agreement given to the complainant lies in its terms as to the fees, not whether she was given an agreement. There is no breach of cl 18(a).

(6) *Failing to explain to the complainant all significant matters in the written agreement, in breach of cl 18(b)*

[75] The Registrar alleges that Mr Ji did not explain to the complainant, before she signed the agreement, all significant matters in the agreement.

[76] There is evidence in support from the complainant in her complaint.<sup>17</sup> This was put to Mr Ji by the Authority and he said in answer on 25 March 2021 that he did explain such matters to her in their telephone discussion on 4 October 2019 (before she signed the agreement on 8 October).

[77] It is inherently improbable that in the discussion on 4 October, Mr Ji went through the important terms of an agreement which at that point had not even been sent to the complainant. The purpose of the phone call was to discuss her problem, with a view to deciding whether he could help her. He says his fee was discussed and that is likely. I find the evidence of the complainant, that Mr Ji did not inform her of the significant terms of the agreement, to be consistent with his cavalier approach to the required paperwork in his dealings with the complainant. Her version of the events is more probable.

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<sup>17</sup> As above n 13.

[78] In assessing Mr Ji's explanation, I have taken into account that he has chosen not to engage with the Tribunal. He has not denied the allegation in the Tribunal. This head of complaint is upheld. Mr Ji has breached cl 18(b) of the Code.

(7) *Failing to record in the written agreement that a summary of his professional responsibilities had been provided and explained to the complainant, in breach of cl 19(m)*

[79] It is alleged by the Registrar that the agreement did not record that the summary of professional responsibilities had been provided to the complainant and explained to her.

[80] This is not correct. The agreement does say that.<sup>18</sup> It was not a truthful statement, but it is there in the agreement. The seventh head of complaint is dismissed. There is no breach of cl 19(m) of the Code.

(8) *Failing to record in the written agreement that the internal complaints procedure had been provided to the complainant, in breach of cl 19(n)*

[81] It is alleged by the Registrar that the agreement did not record that Mr Ji's internal complaints procedure had been provided to the complainant.

[82] That is not correct. The agreement does say that.<sup>19</sup> It was not a truthful statement, but it is there in the agreement. The eighth head of complaint is dismissed. There is no breach of cl 19(n) of the Code.

(9) *Failing to provide the complainant with an invoice, in breach of cl 22*

[83] It is alleged by the Registrar and acknowledged by Mr Ji that he did not provide the complainant with an invoice.<sup>20</sup>

[84] Mr Ji provided an explanation in his letter to the Authority. He says it was not intentional, but a genuine mistake by the office manager. He apologises.

[85] The explanation by Mr Ji is plausible. I accept the breach was unintentional. The ninth head of complaint is upheld. Mr Ji has breached cl 22 of the Code.

(10) *Misrepresenting himself and the complainant in a false and deceptive manner to Immigration New Zealand, in breach of cls 1, 29(a), 29(d) and 31(a)*

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<sup>18</sup> See Registrar's bundle at 192.

<sup>19</sup> As above n 13.

<sup>20</sup> Letter to the Authority (25 March 2021) at 265 of the bundle.

(11) *Deliberately or negligently providing to Immigration NZ and the Authority false or misleading documentation or deliberately concealing relevant information, in breach of cls 1 and 31(a)*

[86] It is alleged by the Registrar that Mr Ji represented himself and the complainant in a false and deceptive manner, in his correspondence with Immigration NZ and the Authority.

[87] In his letter of 20 October 2019 to the government agency, Mr Ji blamed the advice given to the complainant (that she should claim to be single) as coming from an unknown unlicensed adviser in China. Furthermore, he claimed in the letter that the question “whether they were married or not ... [was] translated [by] the adviser ...erroneously ticking single” on the complainant’s visitor visa application form (there being no question about partnership status). According to him, it was a misunderstanding.

[88] Whereas, the Registrar says, Mr Ji knew the advice that the complainant should claim to be single came from Mr A and also knew that such status was deliberately chosen.

[89] The complainant says she told Mr Ji the advice to claim single status came from Mr A and that at the time Mr A knew she had a partner.<sup>21</sup> She had informed him in an email on 5 October 2019.<sup>22</sup>

[90] In his explanation to the Authority on 25 March 2021, Mr Ji said that he did not know that Mr A, an unlicensed person, had provided immigration advice. He did not realise that the “Teacher [A]” referred to by the complainant in her email of 5 October 2019 was Mr A. The person referred to by the complainant was in China, but Mr A was in New Zealand. Mr Ji said he had not known about Mr A’s business in China.

[91] I do not believe Mr Ji’s evidence. I find that he knew the advice as to the complainant’s partnership status came from the unlicensed Mr A. Not only had he been told this by the complainant, but he would have known how Mr A operated due to his business relationship with him and his company. He would have known about Mr A’s China business.

[92] There is considerable evidence establishing a business relationship between Mr Ji and Mr A:

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<sup>21</sup> Complaint at 5–6 & 41 of the bundle.

<sup>22</sup> At 282 of the bundle.



- (i) The texts Mr A sent to the complainant in October 2019 describing Mr Ji or his company as “colleague”, “co-counsel” and “partner companies”.<sup>23</sup>
- (ii) Mr A discussed Mr Ji’s fees with the complainant, though Mr Ji ultimately did not accept the fee set by Mr A.
- (iii) Mr Ji used Mr A to send his services agreement to the complainant and to collect his fee.
- (iv) Both Mr Ji and the lawyer used by Mr Ji in his work (and who is a professional partner in Mr Ji’s company) are advertised in Chinese social media as working with Mr A’s company, [Company].<sup>24</sup>
- (v) Mr Ji accepts that he and Mr A referred clients to each other.<sup>25</sup>
- (vi) Mr Ji obtained documents concerning the complainant directly from Mr A.<sup>26</sup>

[93] I find that Mr Ji deliberately mislead Immigration NZ and the Authority. He knew about Mr A’s business in China and would have known that it assisted clients to obtain visas for New Zealand, despite neither Mr A nor any staff being licensed. The deception was two-fold:

- (i) The source of the unlicensed advice. Mr Ji blamed an unnamed adviser in China. In fact, it was Mr A in New Zealand.
- (ii) The nature of the wrongful advice. Mr Ji said essentially that the question of marital status was erroneously answered as single. This happened as the couple was not then married and there was no partnership question on the form. In fact though, it was not an unwitting error. As Mr Ji knew, Mr A had advised the complainant to claim single status despite knowing of the partnership.

[94] According to the Registrar, Mr Ji misrepresented both himself (“as not knowing the unlicensed adviser”) and the complainant (“as being apologetic that she had used unlicensed advisers”).<sup>27</sup> I do not see Mr Ji’s false statements as a misrepresentation of Mr Ji himself or of the complainant, in the way described by the Registrar. That is, however, of no moment. The facts outlined by the Registrar amount to a deliberate

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<sup>23</sup> Bundle at 277.

<sup>24</sup> Bundle at 24.

<sup>25</sup> Letter to Authority (25 March 2021) at [21], at 267 of the bundle.

<sup>26</sup> The Authority’s letter to Mr Ji (25 February 2021) at 260 of the bundle.

<sup>27</sup> Statement of complaint (30 June 2021) at 11.

misleading of both Immigration NZ (on 20 October 2019) and the Authority (on 25 March 2021), the deceptions being as described above and not as described by the Registrar.

[95] Mr Ji's motive for his dishonesty in hiding Mr A's role in the complainant's predicament is apparent. He was not prepared to 'dob in' the person providing him with clients (bearing in mind that the provision of unlicensed advice is a criminal offence).

[96] In assessing the veracity of Mr Ji's evidence to the Authority, I have taken into account that he has chosen not to engage with the Tribunal or defend the complaint in the Tribunal.

[97] The 11th head of complaint is upheld. This head better describes Mr Ji's conduct than the 10<sup>th</sup> head, which will be dismissed. I find that Mr Ji deliberately provided false and misleading information to Immigration NZ and the Authority. He has breached cls 1 (as to the obligation to be honest) and 31(a) of the Code.

(12) *Not disclosing to the complainant a potential or actual conflict of interest given his connection with Mr A, in breach of cl 5*

(13) *Continuing to represent the complainant when he was aware that there was an actual conflict of interest (his connection with Mr A) which compromised his objectivity and relationship of trust with the complainant, in breach of cl 7(a)*

(14) *Failing to record in the written agreement a potential or actual conflict of interest, in breach of cl 19(l)*

[98] The Registrar alleges that Mr Ji did not disclose to the complainant a potential or actual conflict of interest, being his connection with Mr A. Nor should he have represented her knowing of this conflict which compromised his objectivity and his relationship of trust with her. Furthermore, Mr Ji was obliged to record this conflict in the agreement.

[99] As noted above, there is considerable evidence of a business relationship between Mr Ji and Mr A, including Mr Ji's own admission that they mutually referred clients to each other. Hence, he was, or should have been, aware from 5 October 2019 (when he received the email telling him that it was Mr A who advised the complainant to claim to be single) that there was a conflict of interest.

[100] At that point, Mr Ji had a choice. The best course would have been to decline instructions. However, he could also have disclosed the conflict to the complainant in

writing, obtained her written consent to act and then recorded the conflict in the agreement.

[101] Mr Ji chose neither course of action. He decided to act for her without disclosing the conflict.

[102] In his letter of explanation to the Authority (25 March 2021), Mr Ji acknowledged only the mutual referral of clients. He denied knowledge of Mr A's immigration business in China or any connection with it. He did not answer the allegation in the Registrar's letter of 25 February 2021 that he may have had a conflict of interest given his connection to Mr A. Mr Ji may have misunderstood the allegation, as he stated to the Authority that he did not know that the complainant may have had a potential conflict with Mr A. Presumably though, he would say that there was no conflict or that he did not know about it, as he did not make the connection between "Teacher [A]" (named by the complainant in her email of 5 October 2019) and Mr A.

[103] I have already rejected Mr Ji's denial of knowledge of Mr A's business activities in China and found that he did have a business relationship with Mr A. He received a financial benefit from that relationship in the fees generated. Furthermore, he would have known from the complainant's email that Mr A had unlawfully given her the advice to claim to be single. That being the case, he had an actual conflict of interest. He was aware of that before he accepted the instructions on 9 October 2019. His objectivity in being able to explain the complainant's predicament to Immigration NZ was compromised from the start.

[104] Mr Ji should not have accepted instructions from the complainant. However, he did not follow the other course open to him either. He did not disclose the conflict of interest to her, let alone in writing. Having failed to disclose it, Mr Ji did not obtain the complainant's consent to nonetheless act. He did not record the conflict in the agreement. Instead, he accepted the instructions while hiding the conflict from her.

[105] I uphold the 12th, 13th and 14th heads of complaint. Mr Ji has breached cls 5, 7(a) and 19(l) of the Code.

(15) *Failing to disclose to Immigration NZ and the Authority the unlawful activities of Mr A and [Company] (giving immigration advice) and continuing to work with people like them to gain clients, in breach of cl 1*

[106] It is alleged by the Registrar that Mr Ji breached the obligation in cl 1 of the Code to be honest and diligent by failing to disclose to Immigration NZ and the Authority the unlawful conduct of Mr A and his company. He did not himself make a complaint about

them to the Authority. Additionally, he breached that obligation by working with people like them to gain clients.

[107] The obligation on Mr Ji to disclose to Immigration NZ and the Authority the true circumstances behind the complainant's claim to Immigration NZ to be single, has been dealt with in the specific charges above. To the extent that he misled Immigration NZ and the Authority in failing to disclose his connection with and knowledge of Mr A and [Company], in the context of explaining the complainant's situation, that has also been dealt with above.

[108] Whether Mr Ji has a wider obligation as a professional adviser, outside of resolving his client's situation, to disclose to the relevant authorities wrongdoing of which he is aware, I decline to assess. The Registrar has not addressed this wider question in his statement of complaint. There are no submissions from the Registrar or indeed any other party. Given the outcome of the Tribunal's assessment of the specific complaint concerning the complainant, there is no need to address the wider question. It is not critical to disposing of the more serious aspects of the complaint here.

[109] The Registrar has put no evidence before the Tribunal on this complaint of Mr Ji working with any other clients of Mr A in any unlawful or unprofessional manner, nor of him working with other unlicensed immigration advisers. The Registrar's suspicions may be justified, but the evidence is lacking.

[110] The 15th head of complaint is dismissed.

## **OUTCOME**

[111] The 1st, 2nd, 3rd, 4th, 6th, 9th, 11th, 12th, 13th and 14th heads of complaint are upheld. Mr Ji has breached cls 1, 5, 7(a), 17(a), 17(b), 17(c), 18(b), 19(l), 22 and 31(a) of the Code.

## **SUBMISSIONS ON SANCTIONS**

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

[113] As Mr Ji has been found to be dishonest and has an unsatisfactory disciplinary history, the Tribunal will consider whether he should be prevented from reapplying for a licence. The parties are asked to address this in their submissions. Additionally, 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.

[114] A timetable is set out below.

*Timetable*

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

- (1) The Registrar, the complainant and Mr Ji are to make submissions by **30 November 2021**.
- (2) The Registrar, the complainant and Mr Ji may reply to submissions of any other party by **14 December 2021**.

**ORDER FOR SUPPRESSION**

[116] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.<sup>28</sup>

[117] There is no public interest in knowing the name of Mr Ji's client or that of Mr A.

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

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D J Plunkett  
Chair

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<sup>28</sup> Immigration Advisers Licensing Act 2007, s 50A.