

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2021] NZIACDT 26

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

**DECISION
(Sanctions)
Dated 23 December 2021**

REPRESENTATION:

Registrar: Self-represented

Complainant: Self-represented

Adviser: Self-represented

INTRODUCTION

[1] Mr Ji, the adviser, was recommended to the complainant by an unlicensed immigration adviser when Immigration New Zealand (Immigration NZ) raised an issue as to whether she had provided false information on a visa application. He accepted instructions despite having a conflict of interest. He also gave a misleading explanation to Immigration NZ. Nor did he comply with numerous professional obligations regulating his engagement with the complainant.

[2] A complaint to the Immigration Advisers Authority (the Authority) was referred by the Registrar of Immigration Advisers (the Registrar) to the Tribunal. It was upheld in a decision issued on 8 November 2021 in *RH v Ji*.¹ In addition to having a conflict of interest, Mr Ji was found to have provided false and misleading information to Immigration NZ and the Authority and to have breached numerous obligations set out in the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

[3] An unusual feature of the circumstances is that Mr Ji has a poor disciplinary history. More details are given later.

[4] It is now for the Tribunal to determine the appropriate sanctions.

BACKGROUND

[5] The narrative leading to the complaint is set out in the earlier decision and will only be briefly summarised here.

[6] Mr Yan Ryan Ji is a former licensed immigration adviser. At the relevant time, he held a licence. He was a director of Ryan and Samuel Ltd, trading as NZ Immigration Consulting of Auckland. His licence was cancelled on 12 April 2021.

[7] The complainant is RH, a citizen of China. She applied for a visitor visa using [Company], a group of companies in China and New Zealand. Mr A of [Company], based in New Zealand, assisted her. Despite having a life partner, she notified Immigration NZ that she was single. This was on the advice of Mr A. The visa was granted and the complainant arrived in New Zealand.

[8] The complainant next made a work visa application, which had also been prepared by [Company]. It was then that Immigration NZ discovered that she was not single. It wrote to her on 30 September 2019 stating that she had provided false

¹ *RH v Ji* [2021] NZIACDT 25.

information in her visitor visa application. Mr A then asked Mr Ji to assist. He agreed and spoke to the complainant.

[9] On 20 October 2019, Mr Ji sent a letter to Immigration NZ comprehensively replying to the letter of 30 September 2019. He had further correspondence with Immigration NZ in December 2019. The government agency wrote to Mr Ji on 27 May 2020 stating that it appeared that the complainant may not meet the good character or partnership criteria. The complainant's comments were invited.

[10] This prompted the complainant to make a complaint to Mr Ji and then a formal complaint to the Authority.

Decision of the Tribunal

[11] It was found by the Tribunal in its decision of 8 November 2021 that Mr Ji:

- (1) Was neither professional nor diligent in failing to provide a draft of the letter of 20 October 2019 to the complainant before sending it, in breach of cl 1 of the Code.
- (2) Was neither professional nor diligent in failing to send to the complainant a copy of the letter of 20 October 2019 that day or the following day, in breach of cl 1.
- (3) Did not exercise due care in relying on a letter from the partner's sister in his letter to Immigration NZ, in breach of cl 1.
- (4) Did not provide to the complainant a copy of the summary of his professional responsibilities before she signed Mr Ji's services agreement, in breach of cl 17(a).
- (5) Did not explain to the complainant the summary of responsibilities or advise her how to access the Code before she signed the agreement, in breach of cl 17(b).
- (6) Did not advise the complainant of his internal complaints procedure or provide a copy of it before she entered into the agreement, in breach of cl 17(c).
- (7) Did not explain to the complainant all significant matters in the agreement before she signed it, in breach of cl 18(b).

- (8) Did not provide the complainant with an invoice, in breach of cl 22.
- (9) Deliberately misled Immigration NZ and the Authority, in breach of the obligation to be honest in cls 1 and 31(a), as to:
 - (i) The source of the unlicensed advice, blaming an unnamed adviser in China when it was Mr A in New Zealand.
 - (ii) The nature of the wrongful advice, stating that the question of marital status was erroneously answered as single (an unwitting error) when he knew that Mr A had advised the complainant to claim single status despite knowing of the partnership.
- (10) Did not disclose to the complainant a conflict of interest (that he had a business relationship with Mr A, the person who had advised the complainant to claim to be single), in breach of cl 5.
- (11) Continued to represent the complainant when he was aware of a conflict of interest which compromised his objectivity, in breach of cl 7(a).
- (12) Failed to record in the agreement the conflict of interest, in breach of cl 19(l).

SUBMISSIONS

Submissions from the Registrar

[12] In his submissions (30 November 2021), Mr Connor, the Registrar, notes that this is the fourth complaint upheld against Mr Ji for similar serious breaches.

[13] In the third complaint, the Tribunal suspended Mr Ji's licence while he completed some retraining. It was felt that cancellation of his licence was not warranted as the wrongdoing concerned only one client, did not involve dishonest financial gain and did not lead to a fraudulently obtained visa. Subsequently, the Tribunal cancelled his licence, even though the conduct did not warrant cancellation, so Mr Ji could apply for a provisional licence. He has not made such an application.

[14] It is noted that in the Tribunal's *Aiolupotea* decisions, the adviser had been found to be dishonest and had not engaged with the Tribunal.² The adviser was ordered to

² *BV v Aiolupotea* [2020] NZIACDT 32 & 42, *RV v Aiolupotea* [2020] NZIACDT 33 & 43.

pay a fine of \$7,000 and prohibited from applying for a licence for two years. Compensation to the clients was also directed.

[15] Mr Connor submits that in circumstances where an adviser does not engage with the Tribunal, it is not always possible to address the sufficiency of alternative disciplinary sanctions or the prospects of rehabilitation.

[16] Mr Ji has been the subject of a previous finding of dishonesty. He has also committed other professional breaches, including rubber stamping (the use of unlicensed advisers). The Tribunal has in the past stopped short of cancelling his licence and endeavoured to impose sanctions in order to educate and deter him from committing further breaches.

[17] It is apparent that Mr Ji has not learned from his previous appearances. He has previously been ordered to complete training, so a further order would have no effect.

[18] Mr Ji no longer holds a licence. While depriving a person of their livelihood is a sanction of last resort, the public should be protected from a dishonest adviser who does not admit his wrongdoing, provide an explanation or show remorse.

[19] It is submitted that the appropriate sanctions would be:

- (1) Censure.
- (2) Prevention from applying for a licence for a period of two years.
- (3) Payment of a penalty in the vicinity of \$5,000.

Submissions from the complainant

[20] There are submissions (23 November 2021) from the complainant. She expresses doubts about Mr Ji's credibility. He has been dishonest, unprofessional, disrespectful and has lacked diligence and due care since October 2014, given his disciplinary history. Seven years later, he continues to deceive clients, the Registrar and the Tribunal. There is no repentance. The Tribunal should safeguard the public interest. She does not want anyone to be the next victim of Mr Ji.

[21] The complainant demands a refund of the \$2,000 paid to Mr Ji through [Company]. In addition, she demands compensation:

Legal fees	\$9,372.50
Further legal fees	\$625.03

Labour costs	\$5,670.00
Lost wages	\$45,745.00
Lost reputation/credibility with Immigration NZ	\$5,000.00

[22] An explanation for these losses and expenses was provided by the complainant:

- (1) The legal fees of \$9,372.50 were for the appeal against Immigration NZ's letter of 27 May 2020 questioning her credibility.
- (2) The further legal fees of \$625.03 were for consultations regarding the investigation of Mr Ji.
- (3) The labour costs of \$5,670 were for the time of the complainant and her partner to investigate Mr Ji and compile the complaint against him.
- (4) The complainant's lost wages of \$45,745 were from 9 October 2019 (date of agreement with Mr Ji) until 17 July 2020 (reply to Immigration NZ's letter of 27 May 2020). Immigration NZ granted her a work visa, based on her partnership, on 1 September 2020. She obtained a job offer on 3 September and started working on 9 September. The complainant says she waited more than nine months without income because of Mr Ji's deliberate deception and concealment.

[23] The complainant also demands compensation of \$10,000 (\$5,000 each for herself and her partner) for mental damage. Mr Ji provided a financial support letter to Immigration NZ from the sister of her partner without proper explanation causing serious mental damage to the couple and her partner's family. Mr Ji would have clearly understood the miserable result of their parents knowing of their lesbian relationship. The complainant and her partner were very outraged and fearful. They shook uncontrollably when they knew of the conversation between the sister and the immigration officer. They were not only afraid they might be separated, but also that the family would be broken. They were nervous for a few months until they realised the sister was not going to mention it.

[24] In addition to the \$10,000, the complainant demands \$3,000 mental compensation for the second letter from Immigration NZ (of 27 May 2020). Mr Ji told her she faced a very serious problem, as Immigration NZ was questioning her character. He was trying to deceive her and make her pay more. The complainant says she became manic, sensitive, irritable and suffered from insomnia and cried inexplicably. She could not provide the relevant certificates because she could not afford to see a psychologist.

[25] The total compensation claimed is therefore \$79,412.53.

[26] According to the complainant, none of the above would have happened if Mr Ji had abided by the Code.

[27] There is another submission (14 December 2021) from the complainant. She repeats that Mr Ji deceives his clients and Immigration NZ. He has never learned from his behaviour and never improved his practices. His behaviour is strong evidence that a fine has no effect on him, as he repeatedly violates discipline. Mr Ji repeatedly deceived Immigration NZ and concealed an unlicensed adviser with whom he had an interest. This may constitute a criminal offence.

Submissions from Mr Ji

[28] In his submissions (30 November 2021), Mr Ji states that he did not receive the notice from the Tribunal that the complaint had been referred to it. This was why he did not engage with the Tribunal. Mr Ji thanked the Tribunal for its time. He would set out his defence and comments, hoping this would lead to a fair and justified sanctions decision.

[29] As for the breaches upheld (using the same numbering as [11] above), Mr Ji:

- (1) Admits not providing the draft letter and breaching cl 1. He did not do so because the application was urgent and the complainant knew its contents as it was based on her evidence. He does not accept he could have waited another day, given the urgency.
- (2) Admits he did not send a copy of the letter to the complainant after it was sent to Immigration NZ and that this breached cl 1. This was due to his negligence and cavalier approach to paperwork.
- (3) Does not accept any failure to exercise due care in relying on the sister's letter. The letter was a financial support letter, not a relationship letter. He had to demonstrate the financial interdependence of the complainant and her partner, an adverse matter which had to be addressed. The officer contacted the sister and confirmed the credibility of the financial support. Immigration NZ would in any event have contacted the family to verify the relationship. While the complainant did tell him that the sister did not know of the relationship, this merely told him she could not get a relationship supporting letter from the sister.

- (4) Admits he did not provide the complainant with a summary of his responsibilities. This was unprofessional and negligent.
- (5) Admits he did not explain the summary to the complainant, though he did provide her with a Chinese version. This was unprofessional and negligent. He notes that he did state in his agreement that information about the complaints process can be found on the Authority's website, the address of which was given.
- (6) Admits he did not provide a copy of his internal complaints procedure to the complainant before entering into the agreement. This was unprofessional and negligent. He did, however, give her the contact for making a complaint immediately after she engaged him. Her complaint did later come through and they responded.
- (7) Disagrees with the finding that he did not explain all significant matters to the complainant. He "could" discuss the service agreement with the complainant and a general consultation "could" include the fees, what service would be provided, who would represent her and his refund policy. The complainant has not specified what significant information he failed to explain. Notwithstanding this, he realises it is important to keep a written record in order to protect his practice.
- (8) Admits he did not provide the complainant with an invoice.
- (9) Does not agree that he misled Immigration NZ or the Authority. Mr Ji's explanation is set out in the 'Discussion' section below.

(10)/(11)/(12)

Does not agree he had a conflict of interest. He did not know that Mr A had given immigration advice to the complainant. He did not know that it was Mr A who the complainant referred to as "Teacher [A]" in her email to him of 5 October 2019.

[30] In his submissions, Mr Ji sincerely apologises to the complainant, the Authority and the Tribunal for his breaches of the Code. He should have kept a tighter paper record. He understood that his poor practice had a bad effect on the public's confidence in the immigration adviser industry.

[31] The complaint had sparked self-examination. His client paperwork and management knowledge were poor.

[32] Mr Ji accepts that he has an unsatisfactory disciplinary history. However, he has never repeated any misconduct. The first misconduct involved rubber stamping and the second involved dishonesty to the client. He had learned from this and improved his practice. He had passed the paper previously ordered by the Tribunal. The current misconduct was before he had undertaken the paper. He has now learned about business practice, professional skills, ethical considerations and communication skills.

[33] It is submitted by Mr Ji that the appropriate sanctions would be:

- (1) Censure.
- (2) Preventing him from holding a full licence for at least one year, but that he be allowed to hold a provisional licence for that time and therefore supervised by a fully licensed adviser.

[34] There are further submissions (14 December 2021) from Mr Ji replying to those of the complainant of 23 November 2021.

[35] In reply to the claim for a refund and compensation, Mr Ji says:

- (1) According to the service agreement, he does not refund fees for work already done. Nonetheless, the complainant would not have had to make a complaint and bear stress if he had been professional, so he would like to refund half of his fees by “giving a holistic consideration to [his] financial position”.
- (2) The second letter from Immigration NZ, which raised a concern about the complainant’s character and the credibility of the relationship with her partner, was not the result of the misconduct found by the Tribunal. According to Mr Ji, the phone interview transcript shows that Immigration NZ did not disclose the relationship to the sister. Furthermore, the complainant provided Immigration NZ with tourist photos showing the couple with their families, giving the impression they knew of the relationship. Immigration NZ’s interview gave a contrary impression, hence the question about the credibility of the relationship. Since the complainant and her partner concealed their relationship from Immigration NZ, it would be common for it to request further information.
- (3) The labour costs claimed were caused by the engagement of unlicensed immigration advisers, not his misconduct.

- (4) The legal costs were not directly caused by his misconduct, but by the engaging of unlicensed advisers.
- (5) There is no evidence to support the requests for mental compensation or for reputation damage.
- (6) It is alleged that he knew that Mr A had provided unlawful immigration advice, but this remains unknown.
- (7) Mr Ji accepts he had a cavalier approach to paperwork and engaged in unprofessional practice. He accepts a penalty for this, but not for misrepresentation as there was none.

[36] Mr Ji acknowledges there should be a financial penalty. He asks that his financial position be taken into account. His business made a loss of \$79,166 in the last financial year and the loss could be more this financial year. Mr Ji attaches his 2021 financial report.

[37] Mr Ji expresses the wish that he be allowed to continue practising. He admits that his practice has been flawed. However, the polytechnic paper had improved his professional practice. He had learned lessons from the earlier complaints. He has not repeated any unprofessional practice. It is contended this complaint is an isolated incident, not a systemic practice. He loves helping migrants to come to New Zealand and views his clients' successes over the money earned.

JURISDICTION

[38] The Tribunal's jurisdiction to impose sanctions is set out in the Immigration Advisers Licensing Act 2007 (the Act). Having heard a complaint, the Tribunal may take the following action:³

50 Determination of complaint by Tribunal

After hearing a complaint, the Tribunal may—

- (a) determine to dismiss the complaint:
- (b) uphold the complaint but determine to take no further action:
- (c) uphold the complaint and impose on the licensed immigration adviser or former licensed immigration adviser any 1 or more of the sanctions set out in section 51.

³ Immigration Advisers Licensing Act 2007.

[39] The sanctions that may be imposed are set out at s 51(1) of the Act:

51 Disciplinary sanctions

- (1) The sanctions that the Tribunal may impose are—
- (a) caution or censure:
 - (b) a requirement to undertake specified training or otherwise remedy any deficiency within a specified period:
 - (c) suspension of licence for the unexpired period of the licence, or until the person meets specified conditions:
 - (d) cancellation of licence:
 - (e) an order preventing the person from reapplying for a licence for a period not exceeding 2 years, or until the person meets specified conditions:
 - (f) an order for the payment of a penalty not exceeding \$10,000:
 - (g) an order for the payment of all or any of the costs or expenses of the investigation, inquiry, or hearing, or any related prosecution:
 - (h) an order directing the licensed immigration adviser or former licensed immigration adviser to refund all or any part of fees or expenses paid by the complainant or another person to the licensed immigration adviser or former licensed immigration adviser:
 - (i) an order directing the licensed immigration adviser or former licensed immigration adviser to pay reasonable compensation to the complainant or other person.

[40] In determining the appropriate sanction, it is relevant to note the purpose of the Act:

3 Purpose and scheme of Act

The purpose of this Act is to promote and protect the interests of consumers receiving immigration advice, and to enhance the reputation of New Zealand as a migration destination, by providing for the regulation of persons who give immigration advice.

[41] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:⁴

...It is well established that professional disciplinary proceedings are civil and not criminal in nature. That is because the purpose of statutory disciplinary proceedings for various occupations is not to punish the practitioner for misbehaviour, although it may have that effect, but to ensure that appropriate standards of conduct are maintained in the occupation concerned.

⁴ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151].

...

The purpose of disciplinary proceedings is materially different to that of a criminal trial. It is to ascertain whether a practitioner has met appropriate standards of conduct in the occupation concerned and what may be required to ensure that, in the public interest, such standards are met in the future. The protection of the public is the central focus.

...

Lord Diplock pointed out in *Ziderman v General Dental Council* that the purpose of disciplinary proceedings is to protect the public who may come to a practitioner and to maintain the high standards and good reputation of an honourable profession.

[42] Professional conduct schemes, with their attached compliance regimes, exist to maintain high standards of propriety and professional conduct not just for the public good, but also to protect the collective reputation and public confidence in the profession itself.⁵

[43] While protection of the public and the profession is the focus, the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty.⁶

[44] The most appropriate penalty is that which:⁷

- (a) most appropriately protects the public and deters others;
- (b) facilitates the Tribunal's important role in setting professional standards;
- (c) punishes the practitioner;
- (d) allows for the rehabilitation of the practitioner;
- (e) promotes consistency with penalties in similar cases;
- (f) reflects the seriousness of the misconduct;
- (g) is the least restrictive penalty appropriate in the circumstances; and

⁵ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Bolton v Law Society* [1994] 2 All ER 486 (EWCA) at 492; *Z v Dental Complaints Assessment Committee*, above n 4, at [151].

⁶ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28].

⁷ *Liston v Director of Proceedings* [2018] NZHC 2981 at [34], citing *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354 at [44]–[51] and *Katamat v Professional Conduct Committee* [2012] NZHC 1633, [2013] NZAR 320 at [49].

- (h) looked at overall, is the penalty which is fair, reasonable and proportionate in the circumstances.

DISCUSSION

[45] The starting point is the gravity of the finding that Mr Ji deliberately misled Immigration NZ and the Authority as to the source and nature of the wrong advice given to the complainant (concerning what partnership status should be claimed). There were numerous other breaches of his professional obligations, but this was by far the most serious.

[46] Mr Ji challenges this finding. He says he was unaware that the complaint had been filed in the Tribunal and hence he did not provide any explanation. There are two matters to note:

- (1) The email address used by the Tribunal to notify him on 7 July 2021 of the complaint and invite his response is correct. It remains the same address currently used by him. The Tribunal received no 'failure to deliver' notification.
- (2) Mr Ji has previously failed to respond to a complaint referred to the Tribunal, except at the sanctions stage.⁸

[47] The Tribunal does not therefore accept that Mr Ji had no notice of the referral of the complaint to it. He chose to provide no response or explanation to the Tribunal, as he has done before.

[48] Nonetheless the Tribunal will set out his explanation for the information (as to the complainant's relationship status) provided to Immigration NZ and later the Authority, found (wrongly he says) to be deceptive. Mr Ji states that he did not know that Mr A was the person who had advised the complainant. He was not aware that the person referred to by the complainant in her email of 5 October 2019 to him ("Teacher [A]") was Mr A. This was because the person referred to by the complainant was in China, but Mr A was in New Zealand and he had not known about Mr A's business in China. Furthermore, he knew only Mr A's first name in English, not his legal family name in Chinese ("A"). According to Mr Ji, his professional relationship with Mr A was very limited, both of them having referred only two clients to each other.

⁸ *KX v Ji* [2020] NZIACDT 43 at [52], [2020] NZIACDT 50 at [21] & [46].

[49] This was the explanation Mr Ji had given the Authority in answer to the complaint, with the addition of the factors that he did not know Mr A's family name and his business relationship with Mr A was very limited. The explanation was considered and rejected by the Tribunal in the earlier decision.⁹ For the same reasons given in that decision, it is not accepted that Mr Ji did not know Mr A's family name or that his relationship was as limited as he now says.

[50] In his submissions to the Tribunal, Mr Ji uses the same explanation for the conflict of interest found by the Tribunal. He says he did not know that Mr A had given the advice to the complainant, as his business connections with Mr A were very limited. Again, the explanation that he did not know it was Mr A was dealt with by the Tribunal in assessing whether there was a conflict.¹⁰

[51] In addition to the serious dishonesty and conflict of interest wrongdoing, Mr Ji was found to have committed numerous other breaches of the professional rules, largely in relation to pre-contractual paperwork and information for the complainant. This is not pedantic bureaucracy. These documents and information are an important part of the consumer protection goal of the licensing regime.

[52] The Registrar draws the Tribunal's attention to its two decisions in *Aiolupotea*.¹¹ The adviser there had acted for two brothers. The complaints upheld were essentially the same in relation to each brother. Mr Aiolupotea had dishonestly failed to inform his clients that they were not eligible for citizenship and dishonestly accepted money for applications for which no work was done. There were certain other breaches of the Code and negligence. These were the adviser's first appearances before the Tribunal. As the Registrar notes, Mr Aiolupotea had not engaged with the Tribunal, which was also the case with Mr Ji at the time of the Registrar's submissions.

[53] The sanctions imposed by the Tribunal against Mr Aiolupotea were:

- (1) Censure.
- (2) Prevention from reapplying for a licence for two years.
- (3) A financial penalty of \$7,000.
- (4) Compensation to the client of \$5,150.

⁹ *RH v Ji* [2021] NZIACDT 25 at [91]–[92].

¹⁰ At [102]–[103].

¹¹ Above n 2.

Mr Ji's disciplinary history

[54] The assessment of the appropriate sanctions for this complaint must take account of Mr Ji's poor disciplinary record.

[55] The Tribunal issued two decisions on 19 July 2019 concerning two complaints against Mr Ji.

[56] In the *Calder* decision, it was found that in the period from about May 2015 to June 2016, Mr Ji had:¹²

- (1) Permitted unlicensed people to provide services exclusively reserved under the Act to him as a licensed adviser, and had also failed to personally obtain instructions from his clients since he left that to the unlicensed staff. The complaint concerned six clients. He had breached cls 1, 2(e) and 3(c) of the Code.
- (2) Operated in a business structure which was not professional or diligent and lacked due care. He had breached cls 1 and 31(a).

[57] In the *XN* decision, it was found that in the period from September 2014 to about July 2016, Mr Ji had:¹³

- (1) Permitted unlicensed staff to undertake work falling within the statutory definition of immigration advice. He had also failed to obtain instructions directly from his client. He had breached cls 1, 2(e) and 3(c).

[58] In the *Calder* decision, the sanctions imposed by the Tribunal were:¹⁴

- (1) Censure.
- (2) A financial penalty of \$7,000.

[59] In the *XN* decision, the sanctions imposed by the Tribunal were:¹⁵

- (1) Censure.
- (2) A financial penalty of \$3,000.

¹² *Immigration NZ (Calder) v Ji* [2019] NZIACDT 50.

¹³ *XN v Ji* [2019] NZIACDT 49.

¹⁴ *Immigration NZ (Calder) v Ji* [2019] NZIACDT 68.

¹⁵ *XN v Ji* [2019] NZIACDT 67.

[60] The third complaint against Mr Ji referred to the Tribunal led to the *KX* decision on 5 October 2020.¹⁶ It was found that in the period from November 2017 to June 2019, Mr Ji had:

- (1) Been dishonest in his communications with the client concerning the status of her visa application. His conduct was found to be deliberately deceptive. He had breached cl 1.
- (2) Failed to engage with the client and take her instructions, a breach of cl 2(e).
- (3) Failed to communicate with his client, in breach of cl 26(b).

[61] The sanctions imposed in *KX* were:¹⁷

- (1) Censure.
- (2) Completion of a professional practice paper at a polytechnic.
- (3) Suspension of Mr Ji's full licence.
- (4) A financial penalty of \$4,000.

[62] The sanctions in the *KX* complaint were revised by consent of all parties on 12 April 2021.¹⁸ It was acknowledged that Mr Ji's conduct did not warrant cancellation of his full licence, but it was being cancelled so he could apply for a provisional licence while undertaking the paper at the polytechnic.

[63] The Tribunal will now assess the sanctions to be imposed on Mr Ji.

Caution or censure

[64] The only appropriate sanction to mark the Tribunal's condemnation of Mr Ji's conduct is censure.

Training

[65] The Tribunal agrees with the Registrar that Mr Ji has not learned from his previous appearances. It can also be seen from all four complaints that his professional

¹⁶ Above n 8.

¹⁷ Above n 8.

¹⁸ *KX v Ji* [2021] NZIACDT 8.

failings are widespread. It would not be worthwhile requiring him to undertake any further training.

Preventing licence reapplication

[66] Mr Ji currently holds no licence.

[67] The Registrar contends that Mr Ji should be prevented from reapplying for a licence for the entire two years available as a sanction. Mr Ji accepts he should not hold a full licence for one year, but requests that he be allowed to hold a provisional licence while supervised by another full licensee.

[68] The depriving of a professional person of the ability to practice in their chosen area is a sanction of last resort. All lesser forms of sanction and the prospect of rehabilitation by training and/or supervision should be explored first.

[69] Mr Ji has already been given a chance. This is not the first dishonest misconduct by him upheld by the Tribunal. He was earlier found to have deceived a client. The Tribunal considered whether he should be removed from the profession, but it did not. Instead, he was directed to undertake some training and his full licence was suspended while he did so. It was intended this would enable him to hold a provisional licence while studying. As this proved legally impossible, his full licence was cancelled by consent so that he could apply for a provisional licence. However, he did not do so.

[70] As the Registrar points out, the earlier complaints to the Authority and even the upholding of the first two complaints and the sanctioning of Mr Ji by the Tribunal have not led to any greater degree of professionalism. His conduct the subject of this complaint occurred from about 4 October 2019 until about June 2020. This was after all three previous complaints had been made to the Authority (22 June 2016, 11 May 2017 and 20 August 2019), of which he would have been aware. It was even after the Tribunal's decisions upholding the first two complaints on 19 July 2019 and the sanctions decisions on 1 October 2019.

[71] Mr Ji's conduct is also aggravated by his lack of engagement with the Tribunal until the sanctions stage of the process, something he has done before. Nor does he accept the more serious findings of the Tribunal on this complaint. His respect for the disciplinary process, like the professional rules, is limited.

[72] Mr Ji contends his misconduct is isolated, not systemic. That is plainly incorrect.

[73] Mr Ji says he has learned from the polytechnic paper, but the Tribunal cannot be confident given the widespread nature of his misconduct over such a prolonged period of time (September 2014 to June 2020) involving nine clients. He says he has learned ethical considerations, but being truthful is not something that should require any formal instruction.

[74] Consumers should be protected from Mr Ji. The Tribunal does not find that the public would be adequately protected by Mr Ji's proposal of supervision pursuant to a provisional licence. A supervisor cannot vet every activity by an adviser. Mr Ji's failings are too serious and too widespread to believe that supervision would be sufficient protection.

[75] Mr Ji will be prevented from reapplying for any licence for the maximum period of two years.

Financial penalty

[76] The Registrar submits that there should be a penalty in the vicinity of \$5,000. Mr Ji accepts there should be a penalty, but he asks that the Tribunal take account of the financial position of his loss-making business due to the current COVID-19 restrictions on immigration.

[77] The Tribunal has previously imposed financial penalties of \$7,000, \$3,000 and \$4,000. The misconduct upheld on this complaint is serious and would be expected to attract a penalty of at least \$7,000. Indeed, given Mr Ji's disciplinary history, a penalty higher than \$7,000 would ordinarily be appropriate. However, there are two reasons why a lower penalty should be considered:

- (1) Mr Ji currently does not have a licence and is to be prevented from seeking one for two years. While the Tribunal has no knowledge of his personal financial circumstances, he will not be able to earn an income from his usual business. His cash reserves may be limited due to the loss-making nature of his business in the current pandemic (though it is not clear how his business could be operating given his lack of a licence).
- (2) Some priority should be given to the payment of \$2,000 to the complainant (see below).

[78] The Tribunal accepts the submission of the Registrar that an appropriate penalty would be \$5,000.

Refund

[79] Mr Ji's fee was \$2,000. The Tribunal agrees with him that there is no justification for a refund, as it is apparent that he did considerable work compiling the lengthy letter of 20 October 2019 to Immigration NZ, with its numerous enclosures. As will be seen in the analysis in the next section, Mr Ji was not the cause of the complainant's problem with Immigration NZ. However, Mr Ji has offered to refund half his fee, so this will be directed.

Compensation

[80] The Tribunal can order an adviser to pay a complainant reasonable compensation attributable to misconduct.¹⁹ The loss or expense must be caused by or relate to or arise from the wrongdoing found by the Tribunal.

[81] Mr Ji correctly points out that none of the losses or expenses claimed by the complainant arise from the misconduct upheld by the Tribunal. The complainant's predicament was caused by two inter-related factors:

- (1) The concealment by her of the relationship with her partner.
- (2) Relying on unlicensed immigration advice, from Mr A and possibly others.

[82] The complainant says it was Mr A who advised her to claim to Immigration NZ that she was single. That is the cause of Immigration NZ's character concern and doubt as to the veracity of the relationship when it was disclosed later in support of the work visa application. Mr Ji is not responsible for Immigration NZ's doubts regarding the veracity of statements made by the complainant, her character or the genuineness of the relationship with the partner.

[83] The Tribunal declines to award labour costs for compiling the complaint. The complainant certainly put forward a well-researched complaint. While this would have been helpful to the Registrar, he does have available to him his own investigators. It is not clear that the Tribunal has the power to award such costs. No party has addressed the legal basis of any such award.

[84] As for the sister's financial support letter, which forms the basis of part of the claim for compensation for mental stress, Mr Ji now says a transcript of the immigration officer's interview with the sister shows that the officer did not disclose the relationship.²⁰

¹⁹ *NLT v Coetzee* [2020] NZIACDT 7 at [47].

²⁰ Submissions (14 December 2021) at [13].

He has not said this before. Nor has he sent the transcript. It is even contrary to Mr Ji's first submission on sanctions.²¹ The Tribunal does not accept this. Nor is it accepted that Immigration NZ would, in any event, have contacted the family to verify the relationship. Verification could have occurred without reference to the family. No doubt the tourist photos sent to Immigration NZ did give the impression that the families knew of the relationship, but that is not a justification for relying on the sister's letter having been expressly told the sister was not aware of the relationship.

[85] While the interview arising from the sister's letter exacerbated the officer's concerns about the veracity of the relationship, it was not the cause of the officer's doubts. It was the complainant's concealment of the relationship which caused that. Mr Ji had no responsibility for that.

[86] The claim for compensation is dismissed, bar one item. It must be true that the complainant was distressed by Mr Ji's reliance on the letter, which led to the disclosure of the relationship to at least one member of the partner's family. It will be recalled that Mr Ji had been told the sister did not know of the relationship and he must have known himself, having come to New Zealand from China, that same sex relationships are not widely acceptable there. That being the case, some general damages for mental stress are appropriate.

[87] The Tribunal awards only modest sums for such a head of damage.²² In the circumstances here, the sum awarded will be \$1,000 in respect of the complainant only. There is no evidence from the partner as to her reaction on hearing of her sister's knowledge of the relationship.

OUTCOME

[88] Mr Ji is:

- (1) Censured.
- (2) Prevented from reapplying for a licence for two years from today's date.
- (3) Ordered to pay to the Registrar \$5,000 within 14 days.
- (4) Ordered to pay to the complainant \$2,000 within 14 days.

²¹ Submissions (30 November 2021) at [19].

²² *Ikbarieh v Hammadih* [2014] NZIACDT 111 at [41]–[42], *Unnikrishnan v Goldsmith* [2017] NZIACDT 22 at [30]–[31].

ORDER FOR SUPPRESSION

[89] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.²³

[90] There is no public interest in knowing the name of Mr Ji's client, the complainant.

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

D J Plunkett
Chair

²³ Immigration Advisers Licensing Act 2007, s 50A.