IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2022] NZIACDT 10

Reference No: IACDT 010 & 013/21

IN THE MATTER	of a referral under s 48 of the Immigration Advisers Licensing Act 2007
BY	**THE REGISTRAR OF IMMIGRATION ADVISERS** Registrar
BETWEEN	**BC** Complainant
AND	**JOHN DESMOND LAWLOR** Adviser

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 18 May 2022

REPRESENTATION:

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

PRELIMINARY

[1] BC (the complainant) made two complaints to the Immigration Advisers Authority (the Authority) against John Desmond Lawlor concerning work done for her brother-in-law and father.

[2] The Registrar of Immigration Advisers (the Registrar) has referred the complaints to the Tribunal, alleging negligence, a ground of complaint under the Immigration Advisers Licensing Act 2007 (the Act). Alternatively, numerous breaches of the Licensed Immigration Advisers Code of Conduct 2014 (the Code) are alleged.

[3] Mr Lawlor accepts his work amounts to negligence and/or breaches of the Code. His explanation relating to his health will be relevant to the next stage of the disciplinary process when the Tribunal assesses sanctions.

BACKGROUND

[4] Mr Lawlor is a licensed immigration adviser and director of Lawlor & Associates, of Thames.

[5] The complainant is from [Country]. She is resident in New Zealand. Mr Lawlor had successfully acted for the family for some years. The complainant's brother-in-law and father are both nationals of [Country].

The brother-in-law

[6] In the period from 2014 until early 2016, Mr Lawlor was successful in obtaining visas for the brother-in-law and his family. The brother-in-law had two food and beverage qualifications from [Country]. He worked as a chef in New Zealand.

[7] On 8 April 2016, Mr Lawlor filed a 'work to residence' visa application for the brother-in-law and his family (using the occupation of chef in the Long-Term Skill Shortage List).

[8] Immigration New Zealand (Immigration NZ) wrote to Mr Lawlor on 15 April 2016 advising that the brother-in-law did not meet the specific requirements on the list for a chef. He did not hold a requisite New Zealand qualification (at level 4) or an overseas one that had been assessed as equivalent by the New Zealand Qualifications Authority (NZQA). Nor did his work experience meet the requirement of two years as a *chef de partie* or higher.

[9] Mr Lawlor sent an email to the visa officer on 20 April 2016 stating that the executive chef position was more senior than *chef de partie*, so the brother-in-law's experience was sufficient. The need for an assessment by NZQA was accepted and it was proposed that the brother-in-law be granted an essential skills work visa while the assessment was obtained. He would then apply again for the work to residence visa.

[10] Immigration NZ approved the proposal and granted the work visa suggested on 17 May 2016, with an expiry date of 17 May 2019.

[11] On 16 April 2019, NZQA assessed the brother-in-law's [Country] qualifications at level 3. The assessment stated they did not meet the requirements of a *chef de partie* under the Long-Term Skill Shortage List.

[12] On 17 May 2019, Mr Lawlor filed another work to residence application for the brother-in-law, his wife and dependent children.[1]

[13] Immigration NZ issued the brother-in-law (through Mr Lawlor) with an interim visa on 18 May 2019. He was advised that the interim visa would expire when the visa sought had been approved, or within 21 days of it being declined, or in six months if no decision had been made.

[14] On 23 July 2019, Immigration NZ sent a letter to Mr Lawlor raising concerns about the work to residence application, including that the brother-in-law did not have the required qualification or experience. NZQA had assessed the qualification at level 3. As for the offshore experience, it could not be assessed as genuine as no tax records had been provided. Furthermore, his New Zealand employer was not guaranteeing at least 30 hours of work weekly. Mr Lawlor had until 30 July 2019 to respond.

[15] On the same day, 23 July 2019, Mr Lawlor asked the visa officer to change the long-term visa application to an essential skills one. The officer immediately declined to do so, as the concerns raised in the letter sent that day remained.

[16] On 30 July 2019, Mr Lawlor sought an extension to respond to Immigration NZ's letter. The officer gave him an extension until 9 August 2019.

[17] Immigration NZ wrote to Mr Lawlor on 27 August 2019 declining the work to residence visa, as the brother-in-law did not meet the specific requirements in terms of qualification and experience. Nor was the officer satisfied that his employment was genuine and full-time. No new comments or evidence had been received from Mr Lawlor.

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[1] According to the Registrar, the covering letter was erroneously dated 17 January 2018 (at 059 of the bundle of documents).

The decision applied to all family members. The brother-in-law's interim visa would expire on 17 September 2019 and if he remained, he would be unlawful and liable for deportation. That could mean being prohibited from returning to New Zealand.

[18] Mr Lawlor replied to the officer on the same day advising that he would be applying for reconsideration of the officer's decision.

[19] The reconsideration application was filed by Mr Lawlor on 10 September 2019. He asked that it be reconsidered as an essential skills application. He set out his firm's credit card details for the fee.

[20] The interim visas of the brother-in-law and his family expired on 17 September 2019 and their immigration status became unlawful.

[21] The visa officer contacted Mr Lawlor on 24 September 2019 to seek confirmation of the payment details. Mr Lawlor provided the confirmation and asked her to take payment at midday. She sought payment in the afternoon but it was declined. She then rang him and left a message stating that if the payment was not successful that day, the application would be returned. Another attempt at payment was made by the officer on 25 September, but it was unsuccessful.

[22] On 26 September 2019, Immigration NZ sent a letter to the brother-in-law (through Mr Lawlor) advising that the family's applications received on 10 September 2019 were not accepted as they were incomplete. The fees had not been paid.

[23] In a text sent to Mr Lawlor by the complainant that day, she asked him to explain why they had applied for that type of visa as it required a level 4 qualification. She also offered to use her own card for payment. She emailed the card details to him.

[24] The next step taken by Mr Lawlor was to request Immigration NZ on 26 February 2020 to issue the brother-in-law with a work visa under s 61, as well as relevant visas for the other family members.[2] The family had unlawful status. He said that the decline letter had been in his office in early December, but he was not aware where it was in the interim. He referred to issues with courier deliveries in the past.

[25] Immigration NZ declined the s 61 request for the family on 14 March 2020. No reason was given and none was required to be given.

[2] Immigration Act 2009, s 61 (discretionary visa for a person unlawfully in New Zealand).

[26] On 11 August 2020, Mr Lawlor again requested s 61 visas for the family. He explained that they were caught in a severe dilemma, as the whole family was in New Zealand. The previous s 61 request was before lockdown and consideration should be given to allowing them to stay so the adults could apply for work visas and the children could resume schooling. COVID-19 was causing massive disruption worldwide and the availability of documents from [Country] was a major issue, as the government had closed its administrative functions. The family had worked hard building a life in New Zealand and had suffered severe stress owing to both COVID-19 and their situation.

[27] Immigration NZ refused the s 61 request for the family on 8 September 2020. No reason was given.

[28] The family engaged a new licensed adviser.

[29] On 15 October 2020, Mr Lawlor wrote to Immigration NZ at the request of the new adviser. He acknowledged the error he made in relation to NZQA's assessment. He thought that a level 3 vocational qualification was the same as a level 4 academic one. When he realised the error, he asked the visa officer to convert the application to an essential skills one, but the officer refused to do that. This led to the family becoming unlawful. His attempts to address this through s 61 requests were unsuccessful. He had discussed this with the new adviser and hoped that his acknowledgment would assist the brother-in-law.

The father

[30] The father's wife had died in an accident and he had no family in [Country]. He lived with the complainant in New Zealand. He had sought residence under the parent category of Immigration NZ's immigration instructions, but such applications had been suspended.

[31] On 10 January 2019, Mr Lawlor filed a parent/grandparent visitor visa (PGVV) application for the father. He changed this to a general visitor visa (GVV) on 26 March 2019, following advice from a visa officer that the PGVV was applicable only to offshore applicants. A GVV was approved by Immigration NZ for the father on 26 March 2019, valid until 1 July 2019.

[32] On 1 July 2019, Mr Lawlor filed an application for another GVV for the father. It was declined by immigration NZ on 6 August 2019, as the father had been in New Zealand for too long on a visitor visa.

[33] Mr Lawlor sought reconsideration by Immigration NZ of the decline of the visitor visa for the father, on 20 August 2019. The father was then on an interim visitor visa. On 27 November 2019, Immigration NZ declined to reconsider the application. The father had been in New Zealand on a visitor visa for too long. The father's immigration status then became unlawful.

[34] On 11 August 2020, Mr Lawlor wrote to Immigration NZ making a s 61 request for the father. It was refused by Immigration NZ on 8 September 2020. No reason was given.

COMPLAINTS

Complaint concerning the brother-in-law

[35] On about 21 October 2020, the complainant made a complaint to the Authority against Mr Lawlor concerning his representation of her brother-in-law. Mr Lawlor's errors led to the family's unlawful status. According to her, he had been dishonest.

[36] The Authority wrote to Mr Lawlor on 11 May 2021 summarising the complaint and seeking his explanation.

[37] Mr Moses, counsel for Mr Lawlor, sent an explanation on 25 June 2021. It was accepted that Mr Lawlor's conduct fell below that expected of a licensed adviser. Breaches of the Code were conceded. Mr Lawlor was experiencing health and personal issues at the time. He failed to attend to the matter during 2020 and this led to more serious breaches which prejudiced the brother-in-law's position. In the end, the matter "had truly gone off the rails". This was not a defence, but it might be a mitigating factor before the Tribunal.

[38] In particular, Mr Lawlor accepted:

(1) He ought to have recognised and discussed the specific provisions of the long-term skills shortage list. The prejudice to the brother-in-law was exacerbated by Immigration NZ not being prepared to determine the application under a parallel category.

(2) The lack of a formal response to the letter of 23 July 2019 from Immigration NZ was a breach of the due diligence obligation.

(3) He did not advise the brother-in-law of his unlawful status as early as necessary. He should have been advised in September 2019. Mr Lawlor was surprised to learn though that the brother-in-law said he only found out

about his unlawful status in August 2020, because the first s 61 request was filed in February 2020 with the brother-in-law's knowledge.

(4) He should have ensured the successful filing of the reconsideration application. While the fee was to be paid with his business credit card, it was linked to a client account and required funds from the client. When the officer told him payment could not be made, he rang the complainant and she confirmed it would happen. Nonetheless, he should have followed it up.

(5) The brother-in-law was not advised of the outcome of the first s 61 request with the required urgency.

(6) There were unjustified delays in filing the s 61 requests in February and August 2020.

(7) Communications with the brother-in-law and/or the complainant were not adequately recorded in writing.

[39] It was accepted by Mr Lawlor that the breaches cumulatively amounted to negligence.

[40] Counsel sent another letter to the Authority on 22 July 2021. As for the reconsideration application (10 September 2019) failing the lodgement requirements, so far as he can recall, the fee was to be paid by the complainant. He was unaware that the reconsideration application had failed until a long time later.

Complaint concerning the father

[41] On about 19 January 2021, the complainant made a complaint to the Authority against Mr Lawlor concerning his representation of her father. It was alleged that he had been dishonest or misleading.

[42] The complainant said Mr Lawlor did not file anything on behalf of her father for more than 10 months, but blamed Immigration NZ for not providing information. In August 2020, he admitted a decline letter had gone to his old office and promised to tell Immigration NZ, but in filing a s 61 request, he made no mention of his mistakes. That request was planned for filing in November 2019, but it was not filed until August 2020. Furthermore, he filed a PGVV visa while her father was in New Zealand, but that visa required the applicant to be overseas.

[43] The Authority wrote to Mr Lawlor on 11 May 2021 setting out a summary of the complaint concerning the father and seeking an explanation.

[44] Mr Moses replied to the Authority on behalf of Mr Lawlor on 17 June 2021. It was accepted that Mr Lawlor's conduct fell below the standard expected of an adviser. Breaches of the Code were conceded. It cumulatively amounted to negligence. Mr Lawlor had acted successfully for the family over some years. He then did work for the father, who had arrived in New Zealand following his wife's tragic death. This was done *pro bono*, given his straightened financial circumstances.

[45] Mr Lawlor had instructed that he was aware of the requirement to file a PGVV from offshore and had discussed it with the complainant. He was told the father wanted it filed, but Mr Lawlor accepted he should have discussed with him the likely difficulty. The delay in pursuing the s 61 request and the omission to refer to his own role in the delay were also acknowledged. Nor did Mr Lawlor obtain express consent for changing the type of visitor visa application.

[46] It was further accepted that that the lack of a written agreement was a breach of the Code. This arose from the nature of the *pro bono* work, which was an explanation but not a defence. Mr Lawlor also acknowledged that his reporting to the father was inadequate.

[47] At the time, Mr Lawlor was experiencing health and personal issues. While not a defence, they were a mitigating factor before the Tribunal.

Referral to Tribunal

[48] The Registrar filed a statement of complaint (24 June 2021) with the Tribunal, together with a paginated bundle of support documents. It concerned Mr Lawlor's work for the father. The following heads of complaint against him are referred to the Tribunal:

<u>Negligence, or alternatively breach of the specified provisions of the Code</u>

(1) Failure to take care filing a PGVV for the father when he was not eligible, in breach of cl 1.

(2) Failure to file a s 61 request in a timely manner and failure to acknowledge his role in the delay, in breach of cl 1.

(3) Failure to have a written agreement with the father before he provided immigration advice, in breach of cl 18(a).

(4) Failure to obtain the father's approval to change the PGVV to a GVV, in breach of cl 2(e).

(5) Failure to file a s 61 request when requested to do so, in breach of cl 2(e).

(6) Failure to provide the complainant or her father with ongoing timely updates regarding his applications, in breach of cl 26(b).

[49] The Registrar filed a second statement of complaint (30 July 2021) with the Tribunal, together with another paginated bundle of support documents. It concerned Mr Lawlor's work for the brother-in-law. The following heads of complaint against him are referred to the Tribunal:

Negligence, or alternatively breach of the specified provisions of the Code

(7) Failure to exercise due care and diligence by not recognising that the brother-in-law's qualifications did not meet the immigration instructions, in breach of cl 1.

(8) Failure to exercise due care and diligence by not responding to a letter from Immigration NZ, in breach of cl 1.

(9) Failure to exercise due care and diligence by not informing the brother-in-law and his family of their unlawful status and explaining that, in breach of cl 1.

(10) Failure to exercise due care and diligence by not ensuring payment was made for reconsideration of the visa resulting in return of the application, in breach of cl 1.

(11) Failure to advise the brother-in-law in a timely manner of the outcome of a s 61 request, in breach of cl 1.

(12) Failure to file s 61 requests in a timely manner, in breach of cl 1.

(13) Failure to provide timely updates on visa applications, in breach of cl 26(b).

(14) Failure to maintain a client file, in breach of cl 26(a)(iii).

(15) Failure to confirm in writing to the brother-in-law the details of material discussions, in breach of cl 26(c).

JURISDICTION AND PROCEDURE

[50] 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.

[51] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.[3]

[52] The Tribunal must hear complaints on the papers, but may in its discretion request further information or any person to appear before the Tribunal.[4] It has been established to deal relatively summarily with complaints referred to it.[5]

[53] 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.[6]

[54] The sanctions that may be imposed by the Tribunal are set out in the Act.[7] The focus of professional disciplinary proceedings is not punishment but the protection of the public.[8]

[55] 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.[9]

From the Registrar

[56] The Tribunal has received from the Registrar the statements of complaint (24 June and 30 July 2021) and bundles of supporting documents.

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[3] Immigration Advisers Licensing Act 2007, s 45(2) & (3).
[4] Section 49(3) & (4).
[5] *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].
[6] Section 50.
[7] Section 51(1).
[8] *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151].
[9] *Z v Dental Complaints Assessment Committee*, above n 8, at [97], [101]–[102] & [112].

From the complainant

[57] There are no submissions from the complainant, or from her father or brother-in-law.

From the adviser

[58] There is a memorandum (30 August 2021) from Mr Moses. It is supported by a statement from Mr Lawlor (30 August 2021).

[59] According to Mr Moses, it is acknowledged by Mr Lawlor that he lacked professionalism in his services for the complainant's father and "brother" (understood by the Tribunal to be her brother-in-law). The disciplinary misconduct largely occurred against a backdrop of serious health issues, personal emotional stress and frail mental health. These matters are not a defence and it is conceded that both complaints will be upheld by the Tribunal. The Code breaches have already been conceded in responding to the Authority. The failures can be characterised as either negligence or breaches of the Code.

[60] As for the work done for the father, Mr Lawlor's explanation is candid and plausible. He acknowledges making significant errors and that his standard of representation was below that expected. It was a *pro bono* matter. That does not lower the standard or change the nature of the breaches. It does show that the misconduct was not the result of avarice. The explanation is not a lack of competence or integrity, but the specific health and personal difficulties at the time.

[61] In respect of the work for the brother-in-law, there are significant departures from professional standards, particularly the failure to file the necessary s 61 requests. Mr Lawlor was experiencing poor health.

[62] Mr Moses says that Mr Lawlor understands that he ought to have ceased representing the family when he was no longer able to do so adequately. Counsel is instructed that Mr Lawlor has sought professional help and is able to adjust his workload to his personal situation. He remains an experienced adviser with the knowledge and skills to advance and protect his clients' interests. Medical and psychological reports will be provided at the sanctions stage.

[63] In his statement, Mr Lawlor sets out his experience and qualifications. He says he takes his professional obligations very seriously and aims to provide an outstanding service to his clients. He accepts not meeting his own standards in relation to these matters. He breached the Code in the way set out by the Registrar.

[64] Mr Lawlor says he first started working for the complainant's family in 2014 and was successful. He successfully made a request under s 61 for the father in 2015. He then assisted the father on a no fee basis. Due to the *ad hoc* nature of his work for the father, he did not engage in an appropriate manner. The position of both the father and the brother-in-law was prejudiced by the unacceptable lapse in his role.

[65] It was from late 2019, states Mr Lawlor, that his health deteriorated. He sets out the details, starting in December 2019. There was extreme stress as his income collapsed due to lockdown. They (presumably Mr Lawlor and his wife) were in the middle of building a home which stalled during the lockdown. After the lockdown, he had to close his Auckland office and move out of the city as he could not afford to live there. He was alone in rental accommodation as his wife travelled to a new job elsewhere. There was a long-term medical condition and additional stress. There was a serious deterioration in his mental health and he was often unable to respond effectively in any way. A gradual recovery started after Christmas 2020. Following the complaint, he sought legal advice in 2021 and then professional help from a psychologist. He will file letters from his doctor and psychologist.

[66] Mr Lawlor appreciates that the Tribunal must uphold the complaints. He is aware of the need to be very careful not to practise as an adviser when he is not in a position to do so. He has now recovered his equilibrium and will make sure he does not take on more than he can cope with. He has learned from the experience. These were the only matters in which he "dropped the ball". He is most upset by his own inadequate conduct and appreciates how frustrating and concerning this was for the complainant and her family.

ASSESSMENT

[67] Mr Lawlor has taken a professional approach to these complaints and has admitted the lapses in his usual professional standards. He has provided an explanation involving his health. I agree with Mr Moses that it is candid and plausible. I note that the medical reports to be produced have not yet been filed. However, the explanation and therefore the reports are not material at this stage of the disciplinary process. Mr Moses correctly points out that Mr Lawlor's unfortunate deteriorating health at the time is immaterial to liability, but it will be addressed at the sanctions stage.

[68] I will assess the referral to the Tribunal concerning the father first.

Negligence, or alternatively breach of the specified provisions of the Code

(1) Failure to take care filing a PGVV for the father when he was not eligible, in breach of cl 1

(2) Failure to file a s 61 request in a timely manner and failure to acknowledge his role in the delay, in breach of cl 1

(3) Failure to have a written agreement with the father before he provided immigration advice, in breach of cl 18(a)

(4) Failure to obtain the father's approval to change the PGVV to a GVV, in breach of cl 2(e)

(5) Failure to file a s 61 request when requested to do so, in breach of cl 2(e)

(6) Failure to provide the complainant or her father with ongoing timely updates regarding his applications, in breach of cl 26(b)

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

> **General**
>
> 1. A licensed immigration adviser must be honest, professional, diligent and respectful and conduct themselves with due care and in a timely manner.
>
> **Client Care**
>
> 2. A licensed immigration adviser must:
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> …
>
> e. obtain and carry out the informed lawful instructions of the client, and
>
> …
>
> **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
>
> **File management**
>
> 26. A licensed immigration adviser must:
>
> a. maintain a hard copy and/or electronic file for each client, which must include:

> …
>
> 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
>
> …
>
> b. confirm in writing to the client when applications have been lodged, and make on-going timely updates
>
> c. confirm in writing to the client the details of all material discussions with the client
>
> …

[70] The first and fourth heads of complaint concern the application for a PGVV on 10 January 2019. Mr Lawlor acknowledges that the father was not entitled to such a visa, as it requires the applicant to be offshore. He says he discussed it with the complainant, but acknowledges he should have talked about the difficulty in filing such an application. The failure to take due care is a breach of cl 1 and is admitted.

[71] Mr Lawlor changed the visa type to a GVV on 26 March 2019, but he did not get consent from the father and/or the complainant to do so. He accepts not doing so. This failure to obtain instructions is a breach of cl 2(e).

[72] The second and fifth heads of complaint concern a s 61 request. The father's immigration status had become unlawful in November 2019. Such a request was first discussed with the complainant and/or her father in December 2019 and Mr Lawlor was asked to go ahead, but he did not make the request until August 2020.

[73] Mr Lawlor accepts there was a delay in filing and that he did not acknowledge his own difficulties and responsibility for the delay in explaining the father's circumstances to Immigration NZ. Both the failure to make a timely application and the failure to properly explain the lateness of the request are breaches of cl 1 (the latter is a breach of the obligation to be professional). The failure to file the request when asked to do so is a breach of cl 2(e). These breaches are admitted.

[74] In respect of the third head of complaint, Mr Lawlor accepts he did not have a written agreement with the father before providing services for him. This is a breach of cl 18(a).

[75] In respect of the sixth head of complaint, Mr Lawlor accepts that he did not provide the complainant or her father with ongoing timely updates regarding the various immigration applications or requests concerning the father. This is a breach of cl 26(b).

[76] I will now consider the complaint in relation to the work for the brother-in-law.

Negligence, or alternatively breach of the specified provisions of the Code

(7) Failure to exercise due care and diligence by not recognising that the brother-in-law's qualifications did not meet the immigration instructions, in breach of cl 1

[77] Mr Lawlor filed work to residence applications for the brother-in-law and his family on 8 April 2016 and 17 May 2019, based on his occupation of chef. The assessment of the brother-in-law's qualifications by NZQA on 16 April 2019 made it clear he did not meet the criteria in the immigration instructions. Mr Lawlor accepts he failed to exercise due care and diligence, in breach of cl 1.

(8) Failure to exercise due care and diligence by not responding to a letter from Immigration NZ, in breach of cl 1

[78] Immigration NZ sent Mr Lawlor a letter on 23 July 2019 setting out concerns in relation to the work to residence application of 17 May 2019. As he did not substantively respond, the application was declined on 27 August 2019. Mr Lawlor accepts he failed to exercise due care and diligence, in breach of cl 1.

(9) Failure to exercise due care and diligence by not informing the brother-in-law and his family of their unlawful status and explaining that, in breach of cl 1

[79] The immigration status of the brother-in-law and his family became unlawful on 17 September 2019 when their interim visas expired. Mr Lawlor knew when their visas expired. Yet, he did not inform them at the time or explain the consequences. He informed them of their unlawful status on 28 February 2020, when he made the first s 61 request for them.[10] However, he gave no advice as to the consequences. This failure to exercise due care and diligence, accepted by Mr Lawlor, is another breach of cl 1.

(10) Failure to exercise due care and diligence by not ensuring payment was made for reconsideration of the visa resulting in return of the application, in breach of cl 1

[80] A reconsideration of the decline of the second work to residence application was sought by Mr Lawlor on 10 September 2019. He disclosed his firm's credit card details for payment of the fees. There followed at least two attempts by the visa officer to obtain payment, but there were insufficient funds in the account. The officer informed Mr Lawlor. He says he told the complainant and expected her to deposit the funds into

[10] Email Mr Lawlor to complainant (28 February 2020), bundle of documents at 56–58.

the account. That does not appear to have been her understanding. Text messages around 26 September 2019 show that the complainant was expecting to use her own card to pay the fee and she offered to send him her card details.[11]

[81] Mr Lawlor is responsible for any confusion as to who should pay. He should have followed up with the complainant and/or the visa officer to make sure the payment was made. This is another failure to exercise due care and diligence, in breach of cl 1, as Mr Lawlor accepts.

(11) Failure to advise the brother-in-law in a timely manner of the outcome of a s 61 request, in breach of cl 1

[82] Mr Lawlor made a s 61 request on behalf of the brother-in-law and his family on 26 February 2020. It was declined on 14 March 2020. It is not known when he informed the family of the decline, but he accepts that he did not notify them "with the required urgency".[12] The failure to advise them in a timely manner, in breach of cl 1, is admitted.

(12) Failure to file s 61 requests in a timely manner, in breach of cl 1

[83] Mr Lawlor filed s 61 requests for the brother-in-law and his family on 26 February 2020 and 11 August 2020. They had all been unlawful since 17 September 2019. Mr Lawlor accepts there were unjustified delays in filing both s 61 requests. The delays are a breach of cl 1.

(13) Failure to provide timely updates on visa applications, in breach of cl 26(b)

[84] Mr Lawlor made multiple visa applications or s 61 requests for the brother-in-law and his family – work to residence (twice) and reconsideration applications, and s 61 requests (two). Without assessing all communications between Mr Lawlor and the brother-in-law or the complainant, it is apparent that generally his communications with them (regarding progress of the applications/requests, their outcomes and his exchanges with the visa officers) was poor. He did not keep them up to date, except on isolated occasions.

[85] The Registrar sets out in the statement of complaint instances of contact the complainant or her brother-in-law had with Immigration NZ's contact centre, where it was clear they were seeking information concerning the status of applications. Plainly, Mr Lawlor had not informed them. On at least one occasion, they told the officer they

[11] Bundle of documents at 9.
[12] Mr Moses (25 June 2021) at [5].

could not get hold of Mr Lawlor. The Registrar also identifies communications from the brother-in-law to Mr Lawlor seeking updates, in respect of which there was no record of a reply from him.

[86] Mr Lawlor accepts he did not adequately communicate in writing, either to the brother-in-law or the complainant, information about the brother-in-law's immigration matters. Like much of his professional misconduct, the explanation lies in his personal and health situation, which will be addressed at the sanctions stage. Mr Lawlor accepts the breach of cl 26(b).

(14) Failure to maintain a client file, in breach of cl 26(a)(iii)

(15) Failure to confirm in writing to the brother-in-law the details of material discussions, in breach of cl 26(c)

[87] These heads of complaint appear to overlap. There are almost no written communications from Mr Lawlor to the brother-in-law or the complainant, recording the advice he gave them concerning the immigration status of the brother-in-law and his family and his recommendations concerning what applications to make. Mr Lawlor acknowledges this. The failure to confirm in writing to one or both of them the details of such discussions is a breach of cl 26(c).

[88] However, the failure to write to either of them confirming the advice given is not a breach of cl 26(a)(iii). This provision requires Mr Lawlor to maintain a file of such written communications as he did have, not to create written communications. The Registrar does not identify any communication, known to exist, which was not on Mr Lawlor's file. It is really the lack of such written communications which is the professional violation here.

Conclusion

[89] The specific breaches of the Code are alternatives to a general complaint of negligence. It is plain that these breaches also amount to negligence. Mr Lawlor accepts this. The alternative complaint of negligence will therefore be upheld. In terms of sanctions, this will not be relevant. There will be no double counting of the Code breaches and negligence. They are not cumulative.

OUTCOME

[90] I uphold all the heads of complaint, except the 14th. Mr Lawlor is in breach of cls 1, 2(e), 18(a) and 26(b) and (c) of the Code.

SUBMISSIONS ON SANCTIONS

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

[92] A timetable is set out below. Any request that Mr Lawlor undertake training should specify the precise course suggested. 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. Mr Lawlor is invited to file any medical or psychological evidence he wants the Tribunal to consider.

Timetable

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

(1) The Registrar, the complainant and Mr Lawlor are to make submissions by **10 June 2022**.

(2) The Registrar, the complainant and Mr Lawlor may reply to submissions of any other party by **24 June 2022.**

ORDER FOR SUPPRESSION

[94] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.[13]

[95] There is no public interest in knowing the name of Mr Lawlor's clients, being the complainant, her brother-in-law or her father.

[96] The Tribunal orders that no information identifying the complainant, her brother-in-law or her father is to be published other than to Immigration NZ.

D J Plunkett
Chair

[13] Immigration Advisers Licensing Act 2007, s 50A.