IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2022] NZIACDT 16

Reference No: IACDT 004/22

IN THE MATTER	of an appeal against a decision of the Registrar under s 54 of the Immigration Advisers Licensing Act 2007
BY	**GZ** Appellant
AND	**THE REGISTRAR OF IMMIGRATION ADVISERS** Registrar

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 5 July 2022

REPRESENTATION:

Appellant:	Self-represented
Registrar:	L Lim, counsel

INTRODUCTION

[1] This is an appeal against the decision of 27 January 2022 made by the Registrar of Immigration Advisers (the Registrar) not to pursue a complaint made by GZ (the appellant) against a licensed immigration adviser, DX (the adviser).

[2] The appellant engaged the adviser to undertake tax services as a precursor to immigration services. A dispute arose largely over the fee after the tax services had been performed and before the immigration services had been undertaken. While the Registrar found that the adviser had potentially breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code), he considered that it disclosed only a trivial or inconsequential matter. The appellant has appealed the Registrar's decision.

BACKGROUND

[3] The adviser is a director of [Consulting company], of [City]. This company appears to the Tribunal to be an immigration consultancy. The adviser also appears to have a relationship with [Accounting company], which performs accounting and taxation services, and with [Finance company], presumably a finance company.

[4] The appellant, a national of China, was living and working in New Zealand.

[5] In November 2019, the appellant requested advice from the adviser about using tax residence to qualify for permanent residence in New Zealand. The adviser provided general information about achieving tax residence status.

[6] On 14 November 2019, the appellant gave written authority (expressed to be under the "Privacy / Official Information Acts") to [Accounting company] to act on his behalf in relation to tax matters.

[7] In a text on the same day, the appellant asked the adviser if he could pay him in person as he was not comfortable with a direct transfer.

[8] On 15 November 2019, the appellant signed an agreement with the adviser of "[The adviser] of [Consulting company] and [Accounting company]" to apply for a "permanent return visa".[1]

[9] The fee set by the agreement was calculated by reference to the tax work:

1.	Signing contract	$2,670
2.	First confirmation tax residence	$2,670

[1] English translation of agreement, exhibit "C" to Registrar's submissions (29 April 2022).

3.	Second confirmation tax residence	$2,660
		$8,000

[10] Additionally, if the appellant was not in New Zealand at the time of the second confirmation, another $1,000 was payable. The agreement also stated that if the visa was rejected, the adviser would refund $8,000.

[11] On 2 December 2019, the appellant paid the adviser $5,340 in cash. The adviser says he provided the appellant with both an invoice and a receipt for this amount in the name of [Accounting company]. The adviser says he also provided information about his professional responsibilities and internal complaints procedure.

[12] The adviser then worked with the appellant to confirm his tax residence status. He obtained for the appellant a tax resident certificate from the IRD for the period from 28 December 2018 to 2 December 2019.

[13] There were texts in June 2020 between the adviser and the appellant concerning the number of days he was spending in New Zealand.

[14] The appellant, who was back in China, then sought assistance from the adviser to apply for a variation of the travel conditions for his intended residence visa application. The appellant and the adviser (who described himself as from [Finance company]) signed an "Immigration Agency Agreement" concerning the variation application on 1 March 2021. The agreement provided for a fee of $500 payable once the variation had been sought. The appellant acknowledged in the agreement being provided with the Code and the complaints procedure of [Finance company], which the agreement also recorded had been explained to him.

[15] The adviser lodged the variation application with Immigration New Zealand (Immigration NZ) and it was approved on 24 March 2021. The visa start date was 17 March 2021 and the appellant had until 17 March 2022 to enter New Zealand.

Variation of fee

[16] On 29 March 2021, the adviser sent a text to the appellant proposing to vary the November 2019 agreement. He would increase the fees by $6,500 on receipt of the second tax residence confirmation, if the appellant was not in New Zealand at the time the second tax application was made. Together with the original third payment of $2,660 and also $500, the adviser would file the application for a permanent resident visa. If the application failed, he would return all the service fee.

[17] The appellant responded on 30 March 2021 noting that in their agreement, he only had to pay $1,000, not an additional $6,500. He would agree provided this was all the money he would have to pay to obtain permanent residence.

[18] The adviser replied that was no problem. He would therefore state in the new contract that the appellant would pay after confirmation of tax residence. Furthermore, if the residence visa failed, the adviser would refund the fee.

[19] The appellant replied "OK".

[20] The adviser sent an email to the appellant on 15 April 2021 asking him to sign an agreement bearing the date 26 March 2021 and to pay $200.

[21] The Immigration Agency Agreement, dated 26 March 2021, sent to the appellant was expressed to be between the adviser of [Consulting company] and the appellant. The copy sent to the Tribunal has been signed by the adviser only. It stated that the appellant appointed the adviser "under the Privacy Act 1993 in respect of his/her permanent residence visa application". There was a fee of $200 on signing the agreement.

[22] The appellant sent a text to the adviser on 15 April 2021 stating that he had to verify whether the documents sent were valid. While the adviser had said on the phone that he could pay after receiving the permanent resident visa, the adviser was now requiring payment after confirmation of tax residence and before filing the visa application. The appellant said he would agree but he needed to check the validity of the documents.

[23] The adviser in the meantime had continued processing the appellant's tax resident confirmation application made to the IRD. The final confirmation was approved on 16 April 2021. It recorded that the appellant had been tax resident in New Zealand from 16 April 2019 to 16 April 2021.

Complaint to adviser

[24] On 19 April 2021, the appellant sent an email to the adviser complaining about the services provided. He had consulted a lawyer about signing "the document" (understood to be the agreement of 26 March 2021) and the requirement to pay $9,660 and obtained "awful feedback". It was noted that it mentioned only $200, not the fee of $9,660.

[25] According to the appellant, he had been required to pay $5,340 ($2,670 x 2) in cash in December 2019. The adviser had refused to provide an invoice. The adviser had then required an additional $6,500, breaking the agreement signed. He had promised to charge all the remaining fees after the application was successfully approved by Immigration NZ, but in a telephone call on 16 April 2021, the adviser had required payment before filing the application. The adviser had refused to file the application before payment of the $9,660. The appellant said he had lost trust in the adviser's services. The appellant required the adviser to stop his services and to refund $5,340.

[26] The adviser replied in detail to the appellant's complaint on 25 April 2021. He stated that the agreement of November 2019 was to provide professional accounting services and to assist the appellant to obtain confirmation of tax residence, before assistance with immigration applications. They had provided professional accounting services to research and study tax residence cases to find a pathway for the appellant to obtain tax residence confirmation. This had been successful. Separate immigration agency agreements, such as that on 1 March 2021, had been provided for immigration work done.

[27] The fee of $5,340 which the adviser asked the appellant to pay had been accompanied by a printed invoice and receipt. The adviser had asked him to pay by bank transfer, but the appellant had requested payment by cash.

[28] The extra charges of $6,500 had been requested due to COVID-19 making the work much more complex and time consuming than originally quoted. The appellant was eligible to return to New Zealand and had he come back, the extra fee would not have been charged. The adviser had recommended that he come back, but the appellant decided otherwise. The extra fee had been discussed with the appellant and he had agreed to it in writing by text. The appellant had requested a "full contract" and this had been provided. The fees were due when the adviser obtained tax residence confirmation. The adviser had never promised to charge only after Immigration NZ had given its approval.

[29] The adviser attached an invoice (25 April 2021) from [Accounting company] for $9,160 for the amount owing for his services:

Professional services	$8,960
Reimbursement	$ 200
	$9,160

[30] [Accounting company] lodged a claim against the appellant in the Disputes Tribunal for the outstanding amount of $9,160. On 13 July 2021, the Disputes Tribunal issued an order directing the appellant to pay this amount, based on the agreement of 15 November 2019 (as varied on 29 and 30 March 2021):

Original fee	$8,000
+ variation	$6,500
- paid	$5,340
	$9,160

[31] The appellant applied to the Disputes Tribunal for a rehearing of the claim, as he said he was not in New Zealand and was not aware of the hearing. The outcome of any rehearing is not known to the Tribunal.

Complaint to the Authority

[32] On 16 September 2021, the appellant made a complaint to the Authority against the adviser contending:

1. He was asked to sign misleading and invalid agreements. Immigration services were provided from 14 November 2019 to 19 April 2021 without a valid written agreement.

2. The professional responsibilities and internal complaints procedure were never disclosed to him. The former was not explained to him. He was never advised about the Code.

3. He was asked to pay an additional $7,000, a total of $15,000, or else the adviser would not proceed. The new contract sent on 15 April 2021 was for an additional "$500", not $7,000 as the adviser had asked. It did not guarantee that the adviser would not charge more again.

4. He was required to pay in cash and invoices were refused. The amount of $3,660 ($2,660 + $1,000) to pay under the agreement became $9,160.

5. On 16 April 2021, the adviser required payment of the third instalment before filing the residence application, not when he had successfully obtained permanent residence.

[33] The appellant said that as a result of the adviser's dishonest actions, he had lost trust in him.

[34] On 16 December 2021, the Authority wrote to the adviser and sent a copy of the complaint. The adviser was informed that, as a result of the information gathered, the Registrar had determined that certain grounds of complaint (particularised in the letter) had been disclosed. An explanation was invited.

Explanation from adviser

[35] The adviser sent a lengthy email to the Authority's investigator on 10 January 2022, replying to the letter of 16 December 2021. He said the complaint was without merit and the accusations completely false, the sole purpose being to avoid payment of a Disputes Tribunal order in his favour.

[36] According to the adviser, no issues had been raised throughout the process and it was only after completing the complex tax residence portion of the work and requesting payment on 16 April 2021 that issues arose.

[37] The adviser had successfully obtained tax residence for the appellant and there was no issue with the quality of the work performed. The appellant had come to them wanting to obtain a permanent residence visa with the least time spent in New Zealand. He sought tax consulting services to find a pathway for tax residence confirmation from the IRD. The agreement was for the provision of professional accounting and taxation services by [Accounting company]. This was very clearly the job of a tax agent. It was completely different from immigration advisory work, as it had nothing to do with preparing or filing visas or liaising with Immigration NZ at that stage. The reason a standard immigration agency agreement was not signed then was that there was no guarantee tax residence confirmation would be granted by the IRD.

[38] The appellant had requested that the work be done on a 'no success, no fee' basis, as it was not guaranteed that tax residence confirmation would be obtained. This meant that the adviser had to take the risk that if the appellant was not successful, he would not receive any fees. A full refund of all fees would be made if the appellant was not ultimately successful in obtaining permanent residence. However, he never got to do the immigration part as his services were terminated once tax residence confirmation was obtained.

[39] According to the adviser, the appellant was advised that he needed two years of tax residence status and once obtained, permanent residence was straightforward. That was the total extent of immigration advice given, prior to the "initial summary contract" being signed. The taxation and accounting work was then done by [Accounting

company]. Once tax residence confirmation was obtained, [Consulting company] would undertake the visa application.

[40] The adviser strongly believed that it was the appellant who was deceptive and misleading, so the work would be done but he would not pay for it. It was the appellant who wanted to pay the fee in cash. The adviser said he had asked for payment by bank transfer. The invoice and receipt had already been prepared and were handed over immediately on payment.

[41] The immigration adviser's professional responsibilities summary and internal complaints procedure were handed over to the appellant on 2 December 2019. The "one page agreement" (understood to be that of 15 November 2019) was an "overall summary contract for the provision of taxation services", to assist the appellant to obtain tax residence confirmations from the IRD. This involved researching suitable pathways to obtain tax residence. It included accompanying the appellant to a meeting with the IRD. These services had nothing to do with immigration services.

[42] In view of the 'no success, no fee' structure, the adviser said he had to link the tax consulting work to the immigration work that might be done later if tax residence was obtained. This was how he ended up with an overall summary contract, involving tax residence work and associated payment milestones, with references to permanent residence and a full refund if the residence visa was not ultimately successful.

[43] It was explained to the appellant that [Accounting company] would provide taxation services and he would need to sign immigration agency agreements for immigration work in the future, once he met the tax residence requirements.

[44] As for the alleged additional $7,000, the adviser said he requested a variation of $6,500 due to COVID-19 lockdowns and border issues relating to the tax residence work. The appellant was overseas and the work became more difficult. This was explained to the appellant and he was told that if he came back to New Zealand, the extra work would not be required and he would not be charged the extra fee. He decided not to come back.

Registrar dismisses complaint

[45] On 27 January 2022, the Registrar wrote to the appellant concluding that the complaint disclosed only a trivial or inconsequential matter and would not be pursued. The Registrar acknowledged though that there were potential breaches of clauses 1, 17, 18(b), 18(m) and 19(n) of the Code.

[46] It was found that the adviser had worked on obtaining tax residence confirmation for the purpose of a permanent residence application, but failed to recognise that the agreement on 15 November 2019 was for immigration advice and should have complied with the Code. The adviser had not then explained his professional responsibilities and internal complaints procedure, nor significant matters in the agreement, nor ensured that a record of his professional responsibilities and complaints procedure had been provided to the appellant.

[47] The Registrar found that the potential breaches were, however, diminished by a number of matters:

1. The adviser was genuinely of the view that the agreement signed on 15 November 2019 was not primarily for immigration services. He believed that it involved tax residence consulting "with references to the PRV and a full refund of all fees if the client's PRV [was] not ultimately successful".

2. The adviser had discussed this with the appellant and advised him that there would be a further specific immigration agreement relating to the permanent residence application. The appellant was aware of this and signed such an agreement on 1 March 2021 concerning a variation of the travel conditions.

3. The adviser admitted in hindsight the agreements he provided required review to reflect the work done.

4. Although the adviser did not provide the appellant with his professional responsibilities and internal complaints process when the agreement was signed on 15 November 2019, he did so two weeks later on 2 December 2019.

5. As for the outstanding fees claimed by [Accounting company], the matter was before the Disputes Tribunal. This was a contractual dispute which could be resolved by other bodies such as the Disputes Tribunal.

6. The adviser provided the appellant with adequate advice and service concerning his tax residence and the potential breaches did not have any adverse consequences.

[48] A similar letter was written by the Registrar to the adviser on the same day. The adviser was reminded that written agreements complying with the Code had to be

provided to clients, including when the services related indirectly to an immigration matter.

JURISDICTION AND PROCEDURE

[49] The grounds for a complaint against a licensed adviser are listed in s 44(2) of the Immigration Advisers Licensing Act 2007 (the Act):

(a) negligence;

(b) incompetence;

(c) incapacity;

(d) dishonest or misleading behaviour; and

(e) a breach of the Code.

[50] Section 45(1) provides that on receipt of a complaint, the Registrar may:

(a) determine that the complaint does not meet the criteria set out in section 44(3), and reject it accordingly;

(b) determine that the complaint does not disclose any of the grounds of complaint listed in section 44(2), and reject it accordingly;

(c) determine that the complaint discloses only a trivial or inconsequential matter, and for this reason need not be pursued; or

(d) request the complainant to consider whether or not the matter could be best settled by the complainant using the immigration adviser's own complaints procedure.

[51] In accordance with s 54 of the Act, a complainant may appeal to the Tribunal against a determination of the Registrar to reject or not pursue a complaint under s 45(1)(b) or (c).

[52] After considering the appeal, the Tribunal may:[2]

(a) reject the appeal; or

[2] Immigration Advisers Licensing Act, s 54(3).

(b) determine that the decision of the Registrar was incorrect, but nevertheless reject the complaint upon another ground; or

(c) determine that it should hear the complaint, and direct the Registrar to prepare the complaint for filing with the Tribunal; or

(d) determine that the Registrar should make a request under section 45(1)(d).

[53] The adviser against whom the complaint is made is not a party to the appeal and has not been served. The appeal itself cannot result in the Tribunal upholding the complaint against the adviser.

[54] The Tribunal issued directions on 15 March 2022 concerning the process and setting a timetable for submissions and evidence.

Submissions from the appellant

[55] It is contended by the appellant that the Registrar's decision is not properly made. The appellant states that the key points in his complaint are:

1. From 14 November 2019 until 19 April 2021, the adviser provided immigration services under no valid agreement.

2. The adviser asked him to sign a fraudulent agreement (the agreement sent on 15 April 2021). The service fee of $200 was far from what the adviser had requested and there was no term to ensure that the adviser would not charge more. Furthermore, the agreement violated various provisions of the Code.

3. The appellant was faced with the risk of failing his residence application and he could not get the service fee returned.

4. The adviser's unprofessional and dishonest actions led to a break in cooperation.

[56] According to the appellant, the adviser was not entitled to increase the service fee on 26 March 2021, from $3,660 to $9,160. Instead of agreeing to the adviser's proposal, the appellant insisted on a written agreement to be signed by both sides. The conduct of the adviser in suggesting confirmation of an agreement by online chatting app violated the Code and is not a valid agreement.

[57] During “that time” (which appears to be a reference to 15 April 2021), the appellant was out of New Zealand and it was near the deadline for filing his application for a permanent resident visa. The break in cooperation with the adviser due to his unprofessional and dishonest conduct, put the appellant at a huge risk of failing to obtain permanent residence. The deadline for filing the application for a permanent resident visa was 16 April 2021.

[58] The appellant says he was not provided with the professional responsibilities summary and internal complaints procedure on 2 December 2019.

[59] On 9 May 2022, the appellant replied to the Registrar’s submissions. He disagrees with the Registrar’s contention that the agreement of 15 November 2019 was for tax consulting work. It was for immigration services. It is very clear to the appellant that he hired an immigration service company on 15 November 2019, with the adviser to be his immigration adviser.

Submissions of the Registrar

[60] Counsel for the Registrar, Ms Lim, produced submissions on 29 April 2022. Counsel traverses the chronology of the adviser’s work and the complaint made by the appellant. It is submitted that the Registrar’s approach, having taken into consideration all the available documents, was open to him. The appellant terminated the adviser’s services after receiving tax residence confirmation and without receiving any services in relation to his permanent residence application. The adviser provided his professional responsibilities and internal complaints process to the appellant on 2 December 2019, and during this period his services were limited to assisting the appellant with his tax residence status.

[61] Furthermore, in March 2021, the appellant received services in relation to a separate immigration issue, the variation of his travel conditions, for which the adviser provided an immigration agency agreement compliant with the Code. The appellant does not have any complaints in relation to this aspect of the adviser’s services.

[62] Counsel submits that the potential breaches by the adviser were not intentional and he understood his obligations under the Code. It is noted that the appellant’s complaint substantially concerns a fee dispute, which has been dealt with in the Disputes Tribunal. Moreover, the appellant did not appear to have suffered any adverse consequences as a result of the adviser’s conduct in relation to any immigration services that were provided or the delay in providing the appellant with information concerning his professional responsibilities and internal complaints procedure.

ASSESSMENT

[63] The Registrar found that the adviser had potentially failed to recognise that the agreement of 15 November 2019 was for immigration services, this being a failure to exercise due care and professionalism and therefore a breach of cl 1 of the Code. Furthermore, that failure to recognise he had entered into an immigration services agreement led to the adviser not performing all of his obligations in the Code prior to entering into that agreement:

1. Provide and explain to the client a summary of the adviser's professional responsibilities, advise the client how to access the Code, and provide and notify the client of the adviser's internal complaints procedure (cl 17).

2. Explain all significant matters in the agreement to the client before it is accepted (cl 18(b)).

3. Record in the agreement that the summary of professional responsibilities has been provided and explained (cl 19(m)).

4. Record in the agreement that the internal complaints procedure has been provided (cl 19(n)).

[64] The Tribunal agrees with the Registrar. There is evidence of breaches of these obligations in the Code.

[65] The appellant is correct in contending that the agreement of 15 November 2019, while intended by the adviser to concern tax services, was in reality the first stage of an immigration visa. That was the objective of the taxation services and ultimately of the agreement. That much is plain from the face of the agreement. It is therefore clearly within the regulated services captured by the statutory definition of "immigration advice".[3] The adviser was accordingly required to comply with all the Code obligations relating to entering into agreements for immigration services.

[66] Before assessing whether the Registrar correctly exercised his discretion against referring these (potential) breaches to the Tribunal, it is necessary to consider whether the other allegations of the appellant should be referred to the Tribunal.

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[3] Immigration Advisers Licensing Act 2007, s 7; *Ekanayake v Registrar of Immigration Advisers* [2015] NZIACDT 67 at [21], [28]–[31]; *Immigration New Zealand (Calder) v Cleland* [2019] NZIACDT 25 at [78].

No valid agreement

[67] The appellant says the adviser was performing work without a valid agreement. This is not correct. While the adviser's contractual documentation could only be described as a confused 'mess', there is no doubt that the adviser personally and one or more of what appear to be his companies did have lawful agreements with the appellant (variously [Consulting company], [Accounting company], and [Finance company]).

[68] There is no reason to regard the agreements of 15 November 2019 (later varied in respect of the fee, as the Disputes Tribunal found) and 1 March 2021 as not binding the adviser and the respective contracting company. Indeed, the adviser appears to the Tribunal to have personally contracted with the appellant in both the 15 November 2019 and 1 March 2021 agreements.

[69] What the appellant really means is that the agreement of 15 November 2019 violated the Code. However, the Registrar had accepted that, nonetheless concluding that a formal disciplinary process was not warranted. The Tribunal will assess shortly whether that was the correct outcome.

[70] The appellant further states that confirmation of an agreement by online chatting app violates the Code and is not a valid agreement. This is a reference to the exchange on 29 to 30 March 2021. It was only a variation of the fee that was agreed by text. It is not unprofessional or invalid to vary a fee by written texts.

[71] In any event, so far as the adviser's professional obligations are concerned, they are imposed by the Act and/or the Code irrespective of the validity of an agreement.

Proposed agreement of 26 March 2021 fraudulent

[72] The appellant contends that the agreement of 26 March 2021, sent by the adviser on 15 April 2021 and unsigned by the appellant, is fraudulent. He says it is fraudulent because the fee was only $200 and because there was no term that the adviser would not charge even more.

[73] It is true the proposed agreement refers only to an additional fee of $200, not the $6,500 agreed on 29 and 30 March 2021 (as found by the Disputes Tribunal). It is not known why. Perhaps, the adviser failed to update a revision he made on 26 March 2021 to the agreement of 15 November 2019 but did not send to the appellant until 15 April. It does not matter why he did not incorporate the $6,500 fee. There is no evidence that omission is fraudulent. Had the appellant actually signed it, the adviser arguably would only have been entitled to charge an additional $200, not $6,500.

[74] The appellant also alleges it is fraudulent because there was no term in the agreement that he would not be charged more. In the Tribunal's view, such an express provision would be unusual. The adviser was undertaking the work of tax residence and later permanent residence for a specific fee (as itemised in instalments on 15 November 2019 and then varied by agreement on 29 – 30 March 2021) and would not have been able to charge more for that work without the appellant's further agreement. There was no need for the term suggested by the appellant. A maximum fee had already been agreed.

Impending deadline

[75] The appellant says he was at risk of the residence application being declined because there was a deadline of 16 April 2021 when he received the proposed agreement (of 26 March 2021) on 15 April 2021. There is no evidence, apart from the appellant's contention, of a deadline of 16 April 2021 for a residence application. Furthermore, it was in reality the appellant's refusal to pay the agreed fee before the visa application was made that was holding up that application (see later).

Fees

[76] The appellant says the adviser required payment of the third instalment (of the fee set out in the 15 November 2019 agreement) and the additional fees before filing the residence application, not after he had successfully obtained residence. This is alleged to be unprofessional and dishonest.

[77] It is correct that the adviser required payment of the balance of the agreed fees after the second tax confirmation was obtained, but this is what the agreement of 15 November 2019 clearly envisaged. The adviser had also made it clear in the text on 29 March 2021, to which the appellant had agreed on 30 March. The adviser was therefore entitled to insist on payment before filing the residence visa application.

[78] The appellant also asserts that he could not get the service fee returned. In other words, he says there was no provision in the proposed agreement of 26 March 2021 for a full refund in the event his residence visa application was unsuccessful.

[79] While the proposed agreement of 26 March does not refer to such a refund, it is noted that that agreement only added an additional fee of $200. However, the original agreement of 15 November 2019 did provide a "Refund Guarantee". It stated that if the visa was rejected, the adviser would refund $8,000. The adviser had confirmed this in

the text exchanges of 29 and 30 March 2021 varying the fee. The adviser correctly asserts that he had agreed to a 'no success, no fee' arrangement.

[80] The appellant also accuses the adviser of insisting on being paid in cash on 2 December 2019 and says that no invoice was provided. The adviser, on the other hand, says he had sought payment by bank transfer and that it was the appellant who wanted to pay in cash. Furthermore, he says he did provide an invoice and receipt.

[81] It is apparent from the appellant's text of 14 November 2019 that it was the appellant himself who sought to pay in cash. Furthermore, the Tribunal has been provided with an invoice (dated 2 December 2019), though not a receipt. The adviser's version of the dispute regarding the mode of payment is to be preferred.

Not provided with summary and complaints procedure

[82] The appellant says he was not provided with the summary of professional responsibilities and internal complaints procedure on 2 December 2019, or at any time. The adviser says he was provided with them on 2 December 2019. It is noted that the appellant acknowledged being provided with the procedure (of [Finance company]) in the agreement of 1 March 2021.

[83] In any event, the Registrar acknowledges that the appellant was not provided with them on 15 November 2019 as the Code obliged the adviser to do. Even if the appellant is correct and he was never provided with them, that would not justify a formal disciplinary process in the circumstances here.

Registrar's discretion not to pursue complaint

[84] This brings the Tribunal to the Registrar's decision not to pursue the complaint, notwithstanding the evidence of breaches. The Registrar has a statutory discretion not to pursue a complaint if he regards it as a minor matter, notwithstanding evidence of wrongdoing.[4] There is a well established principle in disciplinary jurisprudence that misconduct must reach a certain threshold, albeit not high, to warrant a formal disciplinary process.[5]

[85] The Registrar found certain factors mitigated the adviser's potential wrongdoing, as listed in the letter of 27 January 2022. The Tribunal finds that exercise by the Registrar of his statutory discretion to be reasonable and lawful.

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[4] Immigration Advisers Licensing Act 2007, s 45(1)(c).
[5] *Immigration New Zealand (Calder) v Ahmed* [2019] NZIACDT 18 at [60].

OUTCOME

[86] The appeal is rejected.

ORDER FOR SUPPRESSION

[87] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.[6]

[88] There is no public interest in knowing the name of the adviser against whom the complaint is made. Nor is there any public interest in knowing the identity of the appellant.

[89] The Tribunal orders that no information identifying the adviser or appellant is to be published other than to Immigration NZ.

D J Plunkett
Chair

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