

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2022] NZIACDT 18

Reference No: IACDT 022/21

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

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

**BETWEEN** **TQ**  
Complainant

**AND** **SHARON ANNE GIBSON**  
Adviser

**SUBJECT TO SUPPRESSION ORDER**

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**DECISION**  
**Dated 25 July 2022**

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**REPRESENTATION:**

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

## **PRELIMINARY**

[1] Sharon Anne Gibson was engaged by TQ, the complainant, to seek residence. She duly made the application, but overlooked replying to a letter from Immigration New Zealand (Immigration NZ) which led to the decline of the application.

[2] A complaint by the complainant against Ms Gibson to the Immigration Advisers Authority (the Authority) has been referred by the Registrar of Immigration Advisers (the Registrar) to the Tribunal. It is alleged that she has been negligent and dishonest or misleading, grounds for complaint under the Immigration Advisers Licensing Act 2007 (the Act), and that she has breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

## **BACKGROUND**

[3] Ms Gibson is a licensed immigration adviser and director of Visas for NZ Ltd, Hamilton.

[4] The complainant, a national of India, sought residence under the skilled migrant category as a supply and distribution manager. He was working in New Zealand in such a position.

[5] On an unknown date, the complainant entered into a service agreement with an immigration consultancy known as the Immigration Centre Ltd (Immigration Centre) (agreement unseen by the Tribunal). A licensed immigration adviser at the Immigration Centre was named as his adviser.

[6] Immigration NZ issued the complainant with an invitation to apply for residence on 15 November 2018.

[7] On 4 March 2019, Immigration NZ received a residence visa application for the complainant from his then adviser (covering letter dated 26 February 2019).

[8] The complainant's service agreement with the Immigration Centre was varied on 4 September 2019 to name another licensed adviser who would undertake the work. The agreement was varied again on 23 September 2020 to name Ms Gibson as the complainant's adviser.

[9] Between 2019 and early 2021, there were ongoing communications between the various advisers, Immigration NZ and the complainant concerning the application.

[10] Ms Gibson bought the Immigration Centre business in January 2021.

[11] Immigration NZ sent a “PPI” (potentially prejudicial information) letter concerning the residence application to Ms Gibson by email on 26 February 2021. A number of issues had been identified which it was said could have a negative impact on the application. The deadline to respond was 12 March 2021.

[12] Ms Gibson renamed the business Visas for NZ Ltd and a further variation of the service agreement reflecting the change of company name was signed by the complainant on 4 March 2021 and by Ms Gibson on 9 March 2021.

[13] The complainant sent an email to Ms Gibson on 16 March 2021 seeking an update. He said his visa (presumably work visa) would expire in 10 days. She replied on the same day saying she was still waiting and would call them, adding that his visa would expire on 27 March 2021.

[14] Immigration NZ sent an email to Ms Gibson on 17 March 2021 noting that there had been no response to the PPI letter, so the residence application would be assessed based on the information on the file. Ms Gibson replied to the visa officer on the same day. She said the letter had been missed and sought further time. The extension was declined by the officer on 17 March 2021 (at 1:39 pm), though the officer advised she would accept further information that day.

[15] There was no reply from Ms Gibson to the PPI letter, so on 19 March 2021, the residence application was declined.

[16] The complainant sent an email to Ms Gibson on 22 March 2021 expressing concern about his visa status and asking if he could make another application (understood to be a reference to a work visa application). She did not reply. He then rang Immigration NZ, but it is not clear what he was told. He sent another email to her on 24 March 2021 expressing concern about his visa status and asking about the residence application. She did not reply. The complainant then re-forwarded the 24 March email to Ms Gibson on 25 March 2021. Again, there was no reply from Ms Gibson.

[17] On 26 March 2021, the complainant sent another email to Ms Gibson stating that his visa would expire the next day and also asking for an update on the residence application. Ms Gibson replied by email on 29 March 2021 stating that his essential skills work visa would be extended. The complainant rang Immigration NZ on 31 March 2021 and was provided with the “required information”.<sup>1</sup> Then on 6 April 2021, the complainant

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<sup>1</sup> Immigration NZ record 31 March 2021 (Registrar’s documents at 067).

asked Ms Gibson by email for an update on his residence application and also for the current status of his visa and that of his wife. She did not reply.

[18] Finally, on 12 April 2021, the complainant rang Immigration NZ and was informed that his residence application had been declined. A copy of the decline letter was sent to him. On the same day, the complainant sent an email to Immigration NZ stating that he had not been aware of the PPI letter or the decline. He had been trying to contact his adviser for two months, but she never replied to his emails or answered the calls. He asked to be given the chance to send the documents requested on 26 February. Immigration NZ replied to say that the decision was final.

## **COMPLAINT**

[19] On an unknown date, the complainant made a complaint against Ms Gibson to the Authority. He said she did not send the documents requested by Immigration NZ on 26 February 2021. Nor had she responded to his emails or given him the decision of 19 March 2021.

[20] The Authority formally advised Ms Gibson of the complaint on 12 October 2021 and set out the particulars. Her explanation was invited.

### *Explanation by Ms Gibson*

[21] Ms Gibson provided an explanation by letter to the Authority's investigator on 15 October 2021. She said she could not remember receiving the PPI letter of 26 February 2021. She did not inform the complainant, which was an oversight. As for the decline letter, Ms Gibson confirmed receiving it by email but had not seen it at the time. Once the complainant informed her, she found it in her email system.

[22] Ms Gibson said she had apologised to the complainant and his wife for the disruption and stress caused and offered to file for free a new skilled migrant application and temporary visa applications for the family. Furthermore, she had offered to pay for all future visa applications. The complainant had requested a refund of the service fees (\$10,000) paid to the previous owner of the Immigration Centre. She had done so.

[23] In her letter to the investigator, Ms Gibson said she had taken over the business in January 2021 and was under extreme pressure given the number of clients. She had limited resources as she was the only one in the business.

[24] Ms Gibson set out the improvements she had since made to her practice. She had employed another adviser as a contractor and had engaged a "virtual assistant" to

answer calls when she was not available. Ms Gibson had also created additional digital folders for correspondence. She regularly checked her junk mail. Changes had also been made to the way physical documentation was managed.

[25] It was accepted by Ms Gibson that her communication with the complainant had not been consistent or timely. She had acted unprofessionally at times. Her workload was very heavy and she missed some important correspondence, which resulted in the visa being declined. She had a high success rate and happy clients who return or refer others to her.

#### *Complaint referred to Tribunal*

[26] The Registrar filed a statement of complaint (11 November 2021) in the Tribunal alleging the following against Ms Gibson:

#### Negligence, or alternatively breaches of cls 1 and/or 26(b) of the Code

- (1) Failed to reply to Immigration NZ's letter of 26 February 2021 by the deadline.
- (2) Failed to promptly inform the complainant of the application outcome.
- (3) Failed to provide timely updates to the complainant.

#### Dishonest or misleading behaviour, or alternatively breach of cl 1 of the Code

- (4) Failed to inform the complainant of her oversight regarding the PPI letter and the subsequent decline of the application.

### **JURISDICTION AND PROCEDURE**

[27] 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.

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

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

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

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

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

[33] The Tribunal has received from the Registrar the statement of complaint (11 November 2021) and supporting documents.

[34] There are no statements of reply or submissions from the complainant or Ms Gibson. No party has sought an oral hearing.

## **ASSESSMENT**

[35] 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.

### **File management**

26. A licensed immigration adviser must:

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

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

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

<sup>5</sup> Section 50.

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

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

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

- b. confirm in writing to the client when applications have been lodged, and make on-going timely updates

...

*Negligence, or alternatively breaches of cls 1 and/or 26(b) of the Code*

(1) *Failed to reply to Immigration NZ's letter of 26 February 2021 by the deadline*

(2) *Failed to promptly inform the complainant of the application outcome*

(3) *Failed to provide timely updates to the complainant*

[36] Immigration NZ wrote to Ms Gibson on 26 February 2021 setting out some adverse factors identified in the residence application. The deadline to reply was 12 March 2021. Ms Gibson accepts she did not reply by the deadline and that as a result, the application was declined on 19 March 2021. The Registrar alleges this is a breach of cl 1.

[37] Ms Gibson has provided no denial or explanation to the Tribunal. In her explanation to the Authority, she does not deny receiving the letter. She overlooked it and as a result the application was declined. She was very busy at the time, being the only person in a new business she had taken over.

[38] While Ms Gibson's workload is a plausible reason, it is not a justification for her failure to attend to the complainant's matter. As a professional, she is responsible for regulating her workflow so all work can be attended to with diligence and due care.

[39] The failure to reply to the PPI letter shows a lack of professionalism, diligence and due care. This is compounded by Ms Gibson's apparent failure to substantively respond to Immigration NZ's reminder email of 17 March 2021. She made no effort to obtain urgent instructions to gather the information sought and respond. Her failure to reply to the PPI letter is a breach of cl 1 of the Code.

[40] The second head of complaint is that Ms Gibson did not promptly inform the complainant of the decline of the residence visa by Immigration NZ on 19 March 2021. Ms Gibson accepts this. She received the decline letter but did not become aware of it until the complainant later informed her, presumably on about 12 April 2021. The failure to review the decline letter at the time it was sent and therefore the failure to inform the complainant of the outcome is a breach of both cl 1 (a lack of professionalism, diligence and due care) and cl 26(b) (a failure to make a timely update).

[41] The third head of complaint is the failure of Ms Gibson to respond to the complainant's emails of 22, 24 March and 6 April 2021. Ms Gibson has not engaged with the Tribunal, but did accept in her explanation to the Authority that her communications had not been consistent, timely or professional.

[42] It is understandable that the complainant would be concerned by the imminent expiry of his work visa and the outcome of something as important as his application to reside permanently in New Zealand. It would have been frustrating and stressful to have been ignored, which is what her conduct would have appeared to him. It does not matter whether Ms Gibson did not see the emails (perhaps because they went to her junk folder) or she saw them but was too busy to answer. Her failure to reply on multiple occasions establishes a lack of professionalism, diligence and due care. She failed to keep the complainant updated about the status of his work visa and of his residence application. This is another breach of cls 1 and 26(b).

[43] The Tribunal has upheld the complaints concerning breaches of the Code, so the alternative complaint of negligence need not be considered.

*Dishonest or misleading behaviour, or alternatively breach of cl 1 of the Code*

*(4) Failed to inform the complainant of her oversight regarding the PPI letter and the subsequent decline of the application*

[44] The Registrar contends that Ms Gibson's failure to inform the complainant of her oversight regarding the PPI letter and of the subsequent decline of the residence application amount to dishonest or misleading behaviour.

[45] The sequence of events does not support the Registrar's allegation that Ms Gibson dishonestly withheld that information from the complainant. It is to be remembered that it was the complainant who first knew of the decline. Ms Gibson did not know of the decline and hence also that her failure to reply to the PPI letter had led to a decline, until the complainant told her sometime after learning it himself on 12 April 2021. The evidence does not therefore support the allegation that she deliberately withheld the adverse outcome and her part in it. Rather, she did not know.

[46] Once Ms Gibson did know of the decline, it would seem likely that she did tell the complainant of her oversight. She says she has apologised to him, offered free services and refunded his service fee. That being the case, she presumably acknowledged her fault, though whether that occurred promptly after he told her of the decline is not known.



[47] The Registrar's alternative allegation of a lack of due care (a breach of cl 1), in failing to disclose the outcome, duplicates the second head of complaint. The allegation of a lack of due care, in failing to inform the complainant of her oversight, adds little to the failure to disclose the outcome.

[48] The fourth head is dismissed.

## **OUTCOME**

[49] The first to third heads of complaint are upheld. Ms Gibson has breached cls 1 and 26(b) of the Code.

## **SUBMISSIONS ON SANCTIONS**

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

[51] A timetable is set out below. Any request that Ms Gibson 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.

### *Timetable*

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

- (1) The Registrar, the complainant and Ms Gibson are to make submissions by **16 August 2022**.
- (2) The Registrar, the complainant and Ms Gibson may reply to submissions of any other party by **30 August 2022**.

## **ORDER FOR SUPPRESSION**

[53] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.<sup>9</sup>

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

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<sup>9</sup> Immigration Advisers Licensing Act 2007, s 50A.

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

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D J Plunkett  
Chair