

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2022] NZIACDT 19

Reference No: IACDT 03/22

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **TA**
Complainant

AND **YING TIAN (aka TINA QIN)**
Adviser

SUBJECT TO SUPPRESSION ORDER

**DECISION
(Sanctions)
Dated 25 July 2022**

REPRESENTATION:

Registrar: L Lim, counsel
Complainant: R Sathiyathan, K L Chiu, counsel
Adviser: Self-represented

INTRODUCTION

[1] Ms Ying Tian (aka Tina Qin), the adviser, acted for TA, the complainant, on numerous unsuccessful applications. She did not tell him of the outcome of the applications and largely had no instructions from him to make them. For a prolonged period, she pretended to be acting for him but was not actually undertaking any work on his behalf.

[2] A complaint against Ms Tian 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 27 April 2022 in *TA v Tian*.¹ Ms Tian was found to have been dishonest on multiple occasions and to have breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

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

BACKGROUND

[4] The narrative leading to the complaint is set out in the decision of the Tribunal upholding the complaint and will only be briefly summarised here.

[5] Ms Tian was at the relevant time a licensed immigration adviser and director of Abstract Solution Ltd, of Auckland. The Tribunal suspended her licence on 3 November 2020 in response to another complaint.²

[6] The complainant, a national of China, arrived in New Zealand in 2014. He was then 18 years of age.

[7] The complainant and his mother engaged the services of Ms Tian to assist with the complainant's immigration status. Following a number of successful student and visitor visa applications, a student visa application lodged on 11 October 2016 was unsuccessful. Ms Tian did not inform the complainant of the decline. She then lodged student visa applications and s 61 requests from 24 November 2016 until 1 March 2017, all without instructions from the complainant or his mother and without telling them of the outcome of any application.

[8] On 8 June 2017, Ms Tian filed an expression of interest on behalf of the complainant, his mother and two others, seeking residence. Immigration New Zealand (Immigration NZ) advised that it would not issue an invitation to apply for residence, but Ms Tian did not inform the complainant of the decline. Nor did she make any further

¹ *TA v Tian* [2022] NZIACDT 7.

² *IK v Tian* [2020] NZIACDT 47.

applications or requests to Immigration NZ, yet she led him and his mother to believe that she was still representing him in negotiating with Immigration NZ and that there was a live application before the government agency. Ms Tian maintained this façade until about January 2021 when the complainant found out from Immigration NZ his actual immigration status.

Decision of the Tribunal

[9] The Tribunal found 16 breaches of the Code by Ms Tian:

- (1) Failing to address all of Immigration NZ's concerns in relation to an application, in breach of cl 1.
- (2) Failing to inform the complainant or his mother of a "PPI" letter from Immigration NZ in relation to an application, in breach of cl 1.
- (3) Filing four applications which had little chance of success, in breach of cl 9.
- (4) Failing to provide a sufficient explanation to Immigration NZ regarding the source of the complainant's funds, in breach of cl 1.
- (5) Failing to inform the complainant or his mother of the outcome of six applications, in breach of cl 1.
- (6) Failing to file a mandatory medical certificate, in breach of cl 1.
- (7) Failing to have a written agreement with the complainant or his mother, in breach of cl 18(a).
- (8) Failing to maintain a client file in breach of cl 26(a).
- (9) Failing to inform the complainant of her suspension, in breach of cl 29(a).

[10] The Tribunal also found that Ms Tian had been dishonest in the following ways:

- (10) Falsely advising the complainant's mother on 26 April 2017 that she had been in contact with Immigration NZ and written a note.
- (11) Falsely advising the complainant on 11 February 2019 that she would ask the polytechnic for a refund.
- (12) Falsely advising the complainant's mother on 2 March 2019 that she would solve the mother's fear that she and the complainant were on Immigration NZ's blacklist.

- (13) Falsely advising the complainant's mother on 29 March 2019 that she would update her concerning the endless waiting from Immigration NZ.
- (14) Falsely advising the complainant's mother on 16 April 2019 that she had contacted the immigration officer who asked her to contact him in the evening.
- (15) Falsely advising the complainant's mother that she would contact Immigration NZ on 26 April 2019.
- (16) Falsely giving excuses throughout 2020 to the complainant and his mother for not being able to update them.
- (17) Falsely representing to the complainant and his mother over three years that she was assisting them and dealing with Immigration NZ.

[11] The Tribunal found Ms Tian's conduct to be deliberately misleading and dishonest throughout a prolonged period. She was consciously leading the complainant to believe that there was an extant application before Immigration NZ.

SUBMISSIONS

Submissions from the Registrar

[12] The Registrar is represented by Ms Lim, counsel. In her submissions (19 May 2022), counsel notes that the Tribunal found a pattern of conduct with Ms Tian failing to advise the complainant of applications. Those failures were found to be deliberate and not the result of any lack of due care.

[13] It is submitted that Ms Tian's conduct is at the high end of gravity of misconduct. There are no mitigating factors. Counsel identifies certain aggravating features:

- (1) Dishonest and deceptive conduct over a prolonged period of more than three years.
- (2) The continuing failure to update the complainant being deliberate.
- (3) The conduct was extensive as reflected by 24 grounds of complaint being upheld.
- (4) The conduct having detrimental consequences for the complainant, who was led to believe that his application for a student visa was being progressed during this time.

[14] According to counsel, there are further aggravating factors relevant to Ms Tian:

- (1) This is her fourth appearance before the Tribunal in the last five years. All four cases have similarities in that they feature unprofessional conduct and a failure to comply with the fundamental obligations of an immigration adviser.
- (2) The present conduct occurred while Ms Tian was suspended from acting as an adviser.
- (3) Ms Tian completed four papers in the course previously ordered by the Tribunal and passed one of the papers. Her conduct, while suspended, combined with her course results, shows a concerning lack of understanding of her professional obligations.
- (4) Ms Tian failed to meaningfully engage in the proceedings, despite the serious allegations of dishonesty and misleading conduct. She has not admitted any wrongdoing or shown any remorse.

[15] It is submitted by Ms Lim that the appropriate sanctions would be:

- (1) Cancellation of licence.
- (2) A fine of \$8,000.

Submissions from the complainant

[16] In a letter to the Tribunal on 18 May 2022, the complainant questions how anyone can compensate him for losing four years of his life and for his serious stress and depression, as well as “still being unlawful today”. No penalty payment would be near enough, but he would have some sense of justice and understanding if the Tribunal decided on the maximum amount. He would also appreciate some compensation for the legal fees the family had to pay to obtain justice and for him to have the chance to study again. Ms Tian had deliberately deceived him over and over again. She had not taken any responsibility or apologised to him for what she had done.

[17] In the complainant’s view, Ms Tian’s licence should be cancelled for as long as possible to protect others. She has now been found guilty of serious misconduct four times. Her character has not changed. It is not safe for her to be licensed. All migrants coming to a new country should be able to depend on licensed advisers so their confidence in the system is maintained.

[18] Furthermore, the complainant requests the Tribunal to recommend that Immigration NZ review his situation, with a view to granting a student visa.

[19] The complainant sought compensation and provided a bundle of documents containing a bank statement and miscellaneous invoices and receipts.

[20] The complainant's counsel replied on 1 June 2022 to Ms Tian's email of 9 May 2022 to the Tribunal. It was noted that the complainant's study was terminated because Ms Tian did not correctly address Immigration NZ's concerns. Her character had not changed. She continued to avoid responsibility by dishonestly shifting the blame to others.

[21] At the request of the Tribunal, additional information and documents supporting the claim for compensation were provided in further submissions from counsel (dated 23 June 2022). The total compensation sought was \$89,484.37. Counsel also submitted that Ms Tian's licence should be cancelled and that there should be a penalty of \$10,000.

Submissions from Ms Tian

[22] Ms Tian sent a brief email to the Tribunal on 9 May 2022. She expresses sincere apologies for not responding to the previous emails. She says she is a good friend of the complainant's mother and had monitored him as a student for a long time. He was a nice boy, but made no progress. He could not obtain the English standard of IELTS 5.0. That is not an excuse for her failure to obtain a student visa, but "he needs to carry on the communication with us". He relies totally on his mother and girlfriend. Ms Tian accepts she should take responsibility for the mistakes, but otherwise has no comment.

[23] On 12 July 2022, Ms Tian advised she would not make any further submissions. She agreed "all the penalty I need to take" and apologised for her past behaviour. She had no intention to do such things, but it was out of her control sometimes. Ms Tian said she was being treated by a psychologist. No psychological evidence was sent to the Tribunal.

JURISDICTION

[24] 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

³ Immigration Advisers Licensing Act 2007.

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.

[25] 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.

[26] 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.

[27] 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.

...

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.

[28] 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

[29] 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

[30] 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;

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

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].

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

DISCUSSION

[31] The misconduct found by the Tribunal is particularly serious. Ms Lim accurately characterises it at the high end of misconduct. There are, as the complainant says, multiple instances of deceit over a period of three years. Ms Tian pretended to be actively representing him, but was largely doing nothing. She pretended there was a live application before Immigration NZ when there was none. She had earlier made numerous applications without authority and without telling the complainant either of the existence of the applications or their outcomes. All of them were unsuccessful and most were futile.

[32] In addition to the deceit, there are 16 breaches by Ms Tian of her professional obligations, including failing to advise the complainant of the outcome of six applications and filing four futile applications. The breaches included such significant obligations as having a written client agreement and maintaining a client file. These are not minor 'paper shuffling' obligations, but important protections for the client.

[33] Ms Lim identifies numerous aggravating features of Ms Tian's conduct, relating to the complaint or her disciplinary history. In particular, the consequences for the complainant were grave. As his mother points out, the complainant was robbed of critical years in his life waiting for the student visa he was led to believe was being sought for him.⁸ The complainant's immigration status became unlawful for a long period, without his knowledge. The longer he remained unlawful in New Zealand, the more difficult it became to regularise his immigration status.

[34] Unfortunately, it would appear the complainant remains unlawfully in New Zealand to this day. But Ms Tian is not responsible for the complainant staying in this country knowing of his unlawful status. The proper course of action now would be for him to depart New Zealand and seek a new visa from offshore. The complainant

⁸ See *TA v Tian*, above n 1 at [21].

requests that the Tribunal recommend to Immigration NZ that it grant him a student visa. The grant of visas is for Immigration NZ and not this Tribunal, but the complainant may wish to draw to the attention of Immigration NZ the decisions of the Tribunal showing that he was a victim of Ms Tian's unprofessional and deceitful conduct.

Ms Tian's previous disciplinary record

[35] In assessing sanctions, the Tribunal must take into account Ms Tian's poor disciplinary record. This is the fourth complaint which has been upheld by the Tribunal.

[36] In *Xu v Tian*,⁹ decisions issued by the Tribunal on 26 October and 10 December 2018, Ms Tian was found to have been negligent and/or to have breached the Code in the following respects:

- (1) twice failing to inform the client of the decline of a work visa;
- (2) failing to inform the client of the grant of a visitor's visa;
- (3) failing to inform the client of Immigration NZ's notification that she was unlawfully in New Zealand;
- (4) failing to obtain the client's express instructions to lodge an application pursuant to a statutory discretion; and
- (5) failing to have a written record of telephone conversations with the client on 9 July and 7 August 2015 and of meetings on 28 April and 12 August 2015.

[37] Ms Tian was found to have been negligent and to have breached cl 26(a)(iii) of the Code. The conduct, the subject of that complaint, was between about 10 April and 12 August 2015. Ms Tian was censured and ordered to enrol and complete the New Zealand Immigration Advice Refresher Course provided by Toi-Ohomai Institute of Technology at its next intake (which was then scheduled for February 2019).

[38] In *Y(O)R v Tian*,¹⁰ decisions issued on 8 June and 7 August 2020, Ms Tian was found to have breached the Code in the following respects:

- (1) failed to disclose in writing a conflict of interest (commissions from schools) and failed to obtain the client's written consent to continue representing her and her family;

⁹ *Xu v Tian* [2018] NZIACDT 42 & 49.

¹⁰ *Y(O)R v Tian* [2020] NZIACDT 23 & 36.

- (2) failed to provide the client with written client agreements;
- (3) failed to provide the client with invoices for fees and disbursements;
- (4) failed to confirm in writing to the client when applications were lodged and to make ongoing timely updates; and
- (5) failed to maintain a well-managed filing system (including copies of all written communications and records of material oral communications) and to confirm material discussions to the client in writing.

[39] Ms Tian was found to have breached cls 5, 6, 18(a), 22, 26(a)(iii), (b), (c) and (d) of the Code. The unprofessional conduct was between August 2015 and April 2017.

[40] The Tribunal noted in the sanctions decision in the *Y(O)R* complaint that Ms Tian appeared to have learned nothing from the previous complaint. The lodging of the complaint had not led to any change in her unprofessional practices. In setting sanctions, the Tribunal censured Ms Tian, directed her to enrol and complete the LAWS7015 (Professional Practice) paper from Toi-Ohomai at its next available intake and ordered her to immediately pay to the Registrar a financial penalty of \$3,500.

[41] The unprofessional conduct at issue in the third complaint against Ms Tian, *IK v Tian*, occurred between about February or April 2017 and about January 2019.¹¹ She had breached cls 18(a), 22, 23, 26(a)(iii), (b) and (d). She had given vague and evasive answers to queries from her client as to the status of his visa application. The same point made in the *Y(O)R* sanctions decision was made, being that neither the first or second complaints made any impression on Ms Tian. Her approach to communications with her client evident in the earlier complaints and her poor record-keeping had continued in the third complaint. Ms Tian was censured, directed to undertake a graduate diploma and to pay a penalty of \$3,000. In addition, her licence was suspended and she was prevented from reapplying for a licence until she had successfully completed the graduate diploma.

[42] As found in *IK*, Ms Tian has a casual, if not cavalier, attitude to her clients. There is a pattern of making applications without instructions, as well as of failing to keep clients informed. She deceives clients about the status of their visa applications. She has been doing this for many years. Multiple clients have been victims of her deceit. This is aggravated by Ms Tian's contempt for the disciplinary process. She chooses not to engage with the disciplinary process in any meaningful way.¹² This is despite the serious

¹¹ *IK v Tian* [2020] NZIACDT 39 & 47.

¹² See also *IK v Tian* [2020] NZIACDT 39 at [3], [2020] NZIACDT 47 at [44]–[45]. .

nature of the complaints against her. She chose not to explain her conduct on the current complaint to either the Authority or the Tribunal.

[43] Ms Tian does not apologise to her victims or express remorse.¹³ In this case, her apologies to the Tribunal in the emails of 9 May and 12 July 2022 are neither fulsome nor sincere. Moreover, they are not made to the complainant. She says she takes responsibility for her mistakes, but the Tribunal does not accept this. Ms Tian's failure to apologise to the complainant, the lack of engagement with the disciplinary bodies and her failure to advise what steps she has or will take now (if she was able to recover her licence) to prevent a repeat of her wrongdoing, all point to no genuine acknowledgment of wrongdoing.

[44] The Tribunal will now consider the sanctions that might be relevant.

Caution or censure

[45] Ms Tian is censured. A caution would not reflect the Tribunal's disapproval of her conduct.

Cancellation of licence

[46] The Registrar and the complainant seek cancellation of Ms Tian's licence. Cancellation of the licence of a professional is a sanction of last resort, as it deprives a person of their livelihood.

[47] In the circumstances of this complaint, having regard to Ms Tian's record, her attitude to clients and to the disciplinary process, cancellation of her licence is an appropriate step. It is not opposed by Ms Tian who was notified this sanction would be considered.¹⁴ The public must be protected. Further comprehensive retraining would not be an adequate protection. There is no evidence the retraining directed in the earlier sanctions decisions has remedied her lack of professionalism. Cancellation is appropriate, not just to protect the public, but also to punish Ms Tian for her wrongdoing.

Preventing reapplication

[48] In order to protect the public for as long as the statute permits, Ms Tian will be prevented from reapplying for any licence for the maximum period of two years. It is highly unlikely that a shorter period of reflection and punishment would lead to a greater degree of professionalism on re-entering the profession.

¹³ See also *IK v Tian* [2020] NZIACDT 47 at [46].

¹⁴ *TA v Tian*, above n 1 at [110].

Financial penalty

[49] The Registrar submits that \$8,000 would be an appropriate penalty. The complainant seeks the maximum penalty of \$10,000. There are no submissions from Ms Tian.

[50] Ms Tian has previously been ordered to pay financial penalties of \$3,500 and \$3,000.

[51] While the maximum penalty has been sought, Ms Tian's misconduct is not the worst seen by the Tribunal. There was no pecuniary gain to her and no fraudulent immigration applications. Having regard to the totality of the misconduct here and her disciplinary history, the fine will be \$8,000.

Refund or compensation

[52] Ms Tian did not charge any fees and appears to have paid the application fees of Immigration NZ herself. Accordingly, there is nothing to refund.

[53] The complainant seeks compensation in the sum of \$89,484.37, a significant amount. Ms Tian has not responded to the claim for compensation.

[54] The Tribunal can award modest sums where losses or expenses arise from or are caused by an adviser's professional violations.¹⁵ The losses must relate to the wrongdoing upheld. However, the Tribunal is not the appropriate forum for the award of large sums of money, for which a civil action for breach of contract or tort is available in the general courts. The primary purpose of disciplinary processes is the protection of the public, not compensation for wrongdoing.

[55] The Tribunal made the following observations in *Zhang v Chen*:¹⁶

[67] ... For such a large sum of money, the complainants have to prove, on the balance of probabilities, that their losses of an ascertained or ascertainable amount were caused by Ms Chen's incompetence. They would have to prove an orthodox cause of action in contract or tort and set about proving the loss in the normal way. The incompetence (or breach of the Code) would have to amount to a legally recognised cause of action. The Tribunal's power to award reasonable compensation could not circumvent the usual criteria for civil claims for a claim of such magnitude.

[68] Indeed, I doubt that Parliament had in mind that the Tribunal should assess such significant civil claims in the context of a disciplinary process. It seems to me that s 51(1)(i) has in mind modest and more easily assessed claims for compensation only. It is intended to provide an expedient remedy for such

¹⁵ *Zhang v Chen* [2019] NZIACDT 11 at [68], *KIT v Zhu* [2019] NZIACDT 46 at [35], *NLT v Coetzee* [2020] NZIACDT 7 at [47].

¹⁶ *Zhang v Chen*, above n 15.

claims when the Tribunal is seized of the relevant facts, rather than compel complainants to mount a second set of proceedings in a general court.¹⁸

¹⁸ *Eppanapally v Zhou* [2015] NZIACDT 84 at [14].

[56] Turning now to the claim made here, the following costs are sought:

Polytechnic fees	3/8/2016	\$20,955.00
Immigration consultancy	10/4/2021	\$ 1,150.00
Legal fees	28/1/2021 – 27/4/2022	\$32,669.37
Second immigration consultancy	30/8 – 16/12/2021	\$28,750.00
Translation fees for second immigration consultancy	1/9 & 15/10/2021	\$ 960.00
Emotional distress		\$ 5,000.00
		\$89,484.37

[57] While Ms Tian has made no submissions opposing the claim for compensation, this does not of itself give the Tribunal jurisdiction to award the whole sum. The Tribunal must therefore assess which heads are appropriate, though in doing so it will have regard to Ms Tian's failure to contest the claim.

[58] The first item is the \$20,955 paid by the complainant's mother to Ms Tian for a polytechnic course. In enrolling, the complainant relied on Ms Tian's advice that he had a valid student permit. His place on the course was prematurely terminated by the polytechnic when it discovered he no longer had a student visa. No refund was made by the polytechnic. The Tribunal accepts this fee was wasted as a result of Ms Tian's professional wrongdoing and this head of claim will be awarded.

[59] The second item claimed is the fee of \$1,150 charged by an immigration consultancy to regularise the complainant's immigration status (a request for a visa under s 61 of the Immigration Act 2009 for a person unlawfully in New Zealand). The outcome of the request is not known. This payment was made in April 2021, not long after he had discovered Ms Tian's deceit and his unlawful status. A s 61 request was appropriate. It is accepted that this fee was paid as a result of Ms Tian's professional wrongdoing and this head of claim will be awarded.

[60] The third head of claim is \$32,669.37 paid to a law firm for legal advice in prosecuting the complaint against Ms Tian. There is no provision in the Act for the award of such costs by the Tribunal. This head of claim is disallowed.

[61] Even if the Tribunal could award such costs, it would not do so in this case. The total compensation which is to be awarded to the complainant is \$27,145. That is a fair and reasonable amount, given not just the wrongdoing but also having regard to what was a free service from Ms Tian. She charged no fee. While that does not lessen her

professional obligations to her client, it is a factor in setting reasonable compensation. A client cannot expect to recover substantial compensation, approximately \$90,000 being sought here, for an unprofessional service that has been provided for free.

[62] The fourth and fifth heads of claim, \$28,750 and \$960 respectively, are for the fees of a second immigration consultancy (including translation expenses) to advise the complainant on his immigration matters and regularise his status.

[63] The Tribunal accepts that the payment to the first immigration consultancy shortly after discovering his unlawful status was reasonable and arose from Ms Tian's wrongdoing. However, there is an issue as to whether the large sum paid later in 2021 to the second consultancy can be said to arise from Ms Tian's wrongdoing.

[64] The outcome of the s 61 request made in about April 2021 is unknown, but whatever it was, the Tribunal is not persuaded that Ms Tian is responsible for the complainant's immigration status after that first immigration procedure. Even if the student visa application made in October 2016 had been competently managed by Ms Tian and been successful, it is probable it would have only been for one year since he had enrolled in a certificate course. While Ms Tian was deceitful for a prolonged period subsequently, there is no evidence that the complainant had good prospects to remain in New Zealand beyond the period for which the visa had been sought in October 2016.

[65] The complainant has not established that, had it not been for Ms Tian's lack of professionalism, he had good prospects for remaining in New Zealand. It is understandable that the complainant and his mother spent a considerable sum of money to achieve a successful immigration outcome for him, but it is not established that such expenditure arose from Ms Tian's wrongdoing (beyond the first attempt to regularise his position). The fourth and fifth items are disallowed.

[66] The final head of claim is for \$5,000 for emotional distress. The Tribunal awards modest sums in appropriate cases for the anguish and distress of serious wrongdoing by an adviser.¹⁷

[67] The complainant says he experienced stress and depression upon discovering the actual state of his immigration status and the sense of betrayal on learning that Ms Tian, whom he had trusted, had been lying to him.¹⁸ He had a fear of being arrested and deported through no fault of his own, which caused immense anxiety. In his letter

¹⁷ *Ikbarieh v Hammadieh* [2014] NZIACDT 111 at [41]–[42], *Unnikrishnan v Goldsmith* [2017] NZIACDT 22 at [30]–[31], *DKD v Smith* [2020] NZIACDT 9 at [45]–[46].

¹⁸ See, for example, the text the complainant sent on 18 January 2021 to Ms Tian; *TA v Tian*, above n 1 at [19].

to the Tribunal (18 May 2022), the complainant asks rhetorically how anyone could compensate him for losing four years of his life.

[68] The anguish of the complainant's mother, who was also her client and was responsible for engaging Ms Tian on behalf of her son, can be seen from some of the mother's communications with Ms Tian.¹⁹

[69] The total compensation that will be awarded is:

Polytechnic fees	\$20,995
Immigration consultancy	\$ 1,150
Emotional distress	\$ 5,000
	<u>\$27,145</u>

[70] The Tribunal's award of a total of \$27,145 is fair and reasonable. The award of only some of the compensation sought would not oust the jurisdiction of the Disputes Tribunal or general courts to award further compensation based on an orthodox cause of action in breach of contract and/or tort. The Tribunal has not considered or ruled on any such legal remedy.

OUTCOME

[71] Ms Tian's licence is cancelled with immediate effect and she is:

- (1) Censured.
- (2) Prevented from reapplying for any licence for two years from today's date.
- (3) Ordered to immediately pay to the Registrar \$8,000.
- (4) Ordered to immediately pay to the complainant \$27,145.

ORDER FOR SUPPRESSION

[72] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.²⁰

[73] There is no public interest in knowing the name of Ms Tian's client, the complainant.

¹⁹ See, for example, the text (19 March 2021); *TA v Tian*, above n 1 at [21].

²⁰ Immigration Advisers Licensing Act 2007, s 50A.

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

D J Plunkett
Chair