

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2022] NZIACDT 23

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

**DECISION
(Sanctions)
Dated 7 September 2022**

REPRESENTATION:

Registrar: Self-represented

Complainant: Self-represented

Adviser: Self-represented

INTRODUCTION

[1] Sharon Anne Gibson, a licensed immigration adviser, 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 against Ms Gibson 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 25 July 2022 in *TQ v Gibson*.¹ Ms Gibson was found 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 earlier decision of the Tribunal and will only be briefly summarised here.

[5] Ms Gibson is a director of Visas for NZ Ltd, of Hamilton.

[6] The complainant, a national of India, sought residence under the skilled migrant category. He entered into a service agreement with an immigration consultancy, Immigration Centre Ltd (Immigration Centre) on an unknown date.

[7] On 4 March 2019, Immigration NZ received a residence visa application for the complainant from his then adviser at the Immigration Centre.

[8] The service agreement was varied on 23 September 2020 to name Ms Gibson as the complainant's adviser. Ms Gibson then bought the Immigration Centre business in January 2021 and renamed it Visas for NZ Ltd.

[9] On 26 February 2021, Immigration NZ sent a "PPI" (potentially prejudicial information) letter concerning the residence application to Ms Gibson by email. She did not respond by the deadline. Immigration NZ then sent an email to her on 17 March 2021 noting that there had been no response, so the residence application would be assessed based on the information on the file. She replied on the same day seeking further time. While the visa officer declined an extension, the officer advised that she would accept further information sent on that day.

¹ *TQ v Gibson* [2022] NZIACDT 18.

[10] As there was no reply from Ms Gibson to the PPI letter, Immigration NZ declined the residence application on 19 March 2021.

Decision of the Tribunal

[11] The Tribunal upheld the complaint and found Ms Gibson to be in breach of the Code as follows:

- (1) Failed to reply to Immigration NZ's letter of 26 February 2021, in breach of the obligation in cl 1 to be professional, diligent and to exercise due care.
- (2) Failed to properly inform the complainant of the application outcome, in breach of cl 26(b).
- (3) Failed to provide timely updates to the complainant, in breach of cls 1 and 26(b).

SUBMISSIONS

Submissions from the Registrar

[12] In submissions (15 August 2022) from Ms Issar, on behalf of the Registrar, it is contended that the appropriate sanctions would be:

- (1) Caution.
- (2) An order for payment of a penalty in the vicinity of \$1,000.

[13] It is submitted that Ms Gibson's conduct shows an oversight in maintaining professional standards, though it is accepted that the conduct is at the lower end of the scale in terms of seriousness. It is her first appearance in front of the Tribunal. It is noted that Ms Gibson accepted that her communications with the complainant had not been consistent or timely, that she had acted unprofessionally at times and that she had missed important correspondence which resulted in the visa being declined.

Submissions from the complainant

[14] In an email to the Tribunal (15 August 2022), the complainant and his wife state that they had always wanted to live peacefully and lawfully in New Zealand and they had trusted their adviser as to the manner of communicating with Immigration NZ. But they

found this was not happening at all and they suffered a lot after the residence visa was declined.

[15] The complainant and his wife state they were saddened, shaken and shocked. The wife says she is sensitive and became mentally shocked and depressed. They were not sleeping or eating properly and were not talking to anyone. They were having panic attacks and crying at any time. They had no family with them in New Zealand. The complainant says it was a very hard time for him to deal with and to take care of his wife as well. He was mentally broken and stressed thinking about his wife's health. They did not like to face their friends or talk to anyone and they locked themselves in their home. Their family in India were also shocked and stressed. They could not get mental help from their family. It took them many months to recover.

[16] According to the complainant, when he heard about the decline from Immigration NZ, he called Ms Gibson. She confessed to the mistake, apologised and offered to file their application at no cost. He requested a refund and a full repayment of \$10,000 was eventually made. The complainant asks for compensation of \$2,500 for their distressed situation, caused by Ms Gibson's negligence.

Submissions from Ms Gibson

[17] In her submissions (16 August 2022), Ms Gibson says she felt very sorry for the stress and disruption that her actions had caused the complainant so she had refunded the full fee, which had been paid in 2019 to the previous owner of the business. This had therefore come at a great expense to her business.

[18] Ms Gibson drew attention to the following factors:

- (1) This was her first appearance before the Tribunal.
- (2) She had apologised to the complainant.
- (3) She had offered to provide further visa applications at no charge.
- (4) She had made a full refund of the residence application fee.
- (5) She had improved her business practices and engaged the services of a business coach.
- (6) She had taken on another two immigration advisers as contractors to help when the workload was high. She had also employed the services of a virtual assistant who answered the phone when she was not available.

- (7) Her business will be further financially impacted due to the exposure of this complaint in the community.
- (8) She had several hundred applications successfully approved and received very positive feedback from her clients. A number of positive testimonials were quoted by Ms Gibson in her submissions.

[19] Ms Gibson submits that the appropriate sanction would be a caution only as there had already been a large financial cost to her business.

JURISDICTION

[20] 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:²

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.

[21] 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:

² Immigration Advisers Licensing Act 2007.

- (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.

[22] 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.

[23] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:³

...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.

³ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151].

[24] 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.⁴

[25] 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.⁵

[26] The most appropriate penalty is that which:⁶

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

DISCUSSION

[27] This is Ms Gibson's first appearance before the Tribunal. Her misconduct was overlooking Immigration NZ's PPI letter and thereby failing to respond by the deadline. This lack of diligence and due care was compounded by her failure to provide a substantive response to the visa officer in the half day given to her on 17 March 2021. Nonetheless, it can be seen as an isolated occasion of wrongdoing in an otherwise successful practice.

⁴ *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 3, at [151].

⁵ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28].

⁶ *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].

[28] In some respects, it might be seen as a slip up that any person could make, but it nonetheless had serious consequences for the complainant and his wife in that their residence application was declined. In saying that, however, there is no evidence before the Tribunal that the application would otherwise have been granted. The strength of the application is not known.

[29] Once the application was declined, Ms Gibson immediately acknowledged her mistake and apologised. She offered to file an appropriate immigration application at no cost to the complainant. She refunded the fees paid, even though they had not been paid to her.

[30] Ms Gibson is to be commended in setting about to improve her business practices, so that the risk of repeating her mistake is reduced. She has also addressed her high personal workload by the engagement of others.

Caution or censure

[31] The Tribunal agrees with the Registrar that Ms Gibson's conduct warrants a caution, rather than censure.

Financial penalty

[32] The Registrar contends that the financial penalty should be \$1,000. Ms Gibson says there should be no such penalty.

[33] The Tribunal agrees that a modest penalty in the sum of \$1,000 is appropriate to mark the Tribunal's disapproval of Ms Gibson's carelessness in missing the deadline, not once, but in reality twice. It is also relevant to have regard to the serious consequence for the complainant in that his residence application was declined. This was plainly a severe blow to the couple.

Compensation

[34] The Tribunal awards modest sums in appropriate cases for the anguish and distress of wrongdoing by an adviser which has serious consequences.⁷

[35] This is such a case. It is understandable that the complainant and his wife, both of whom can be regarded as Ms Gibson's clients, should have been distressed by their

⁷ *Ikbarieh v Hammadih* [2014] NZIACDT 111 at [41]–[42], *Unnikrishnan v Goldsmith* [2017] NZIACDT 22 at [30]–[31], *DKD v Smith* [2020] NZIACDT 9 at [44]–[46].

failure to obtain residence because their professional adviser had not answered a letter. In addition, Ms Gibson's communications with them were wholly inadequate.

[36] The complainant seeks \$2,500. Having regard to the full refund made and the other financial consequences for Ms Gibson of the complaint being upheld, including the fine of \$1,000, the total damages for distress to both the complainant and his wife will be \$2,000.

OUTCOME

[37] Ms Gibson is:

- (1) Cautioned.
- (2) Ordered to immediately pay to the Registrar \$1,000.
- (3) Ordered to immediately pay to the complainant \$2,000.

ORDER FOR SUPPRESSION

[38] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.⁸

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

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

D J Plunkett
Chair

⁸ Immigration Advisers Licensing Act 2007, s 50A.