

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2022] NZIACDT 4

Reference No: IACDT 015/21

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **ZI**
Complainant

AND **JIALE WILLIAM WAN**
Adviser

SUBJECT TO SUPPRESSION ORDER

**DECISION
(Sanctions)
Dated 3 March 2022**

REPRESENTATION:

Registrar: In person
Complainant: B So, counsel
Adviser: S Laurent, counsel

INTRODUCTION

[1] Mr Jiale William Wan acted for Ms ZI (the complainant). The complainant was in New Zealand on a visitor visa granted on the basis of guardianship of her younger son, who was here on a student visa. This required her to remain in New Zealand while her son was here. In breach of her visa, the complainant twice travelled to China without her son. Mr Wan did not adequately advise her and neglected to make an application to Immigration New Zealand (Immigration NZ) to vary her visa conditions.

[2] A complaint 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 19 January 2022 in *ZI v Wan*.¹ Mr Wan 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 concerning Mr Wan and will only be briefly summarised here.

[5] Mr Wan, a licensed immigration adviser, is a director of P J Education & Immigration Services Ltd, of Auckland.

[6] The complainant, a national of China, was in New Zealand, having been issued with a visitor visa as a guardian on 12 March 2019. It was a condition that she lived with her son, resident in New Zealand on a student visa.

[7] The complainant left New Zealand on 20 March 2019 without her son, returning on 9 April 2019. The complainant had received a phone call to say that her mother-in-law was close to death and she died during the complainant's absence.

[8] An immigration officer raised the complainant's departure with Mr Wan on the day she left New Zealand. There followed an exchange of emails. Mr Wan explained the reason for the departure.

[9] On 28 May 2019, Mr Wan asked the immigration officer whether the complainant needed to apply for a temporary exemption, in order to travel to Beijing to retrieve

¹ *ZI v Wan* [2022] NZIACDT 1.

documents needed for her residence application. The variation was refused on 4 June 2019. Mr Wan did not inform the complainant of the refusal.

[10] The complainant accordingly went again to China on 9 June 2019 without her son, to gather the information required by Immigration NZ. She returned to New Zealand on 27 June 2019.

[11] Mr Wan filed a guardian visitor visa application on behalf of the complainant on 28 January 2020. Immigration NZ declined the visa on 7 August 2020. One of the reasons given was that the complainant had twice left New Zealand without her son and without obtaining a variation of her visa conditions. The complainant's immigration status then became unlawful in New Zealand on about 30 August 2020.

Decision of the Tribunal

[12] It was found by the Tribunal that Mr Wan had:

- (1) Failed to inform and explain to the complainant Immigration NZ's decision to reject the exemption made for the trip to China on 9 June 2019. He had neither been diligent nor exercised due care, in breach of cl 1 of the Code.
- (2) Failed to lodge a separate variation application for the complainant's first trip to China. His conduct was not diligent and nor did he exercise due care, in breach of cl 1 of the Code.

SUBMISSIONS

Submissions from the Registrar

[13] In his submissions of 11 February 2022, Mr Connor, the Registrar, acknowledges that Mr Wan readily admitted his failures at the first opportunity and has accepted the breaches of cl 1. It is further noted that these breaches occurred before the Tribunal's decision in the previous complaint upheld against Mr Wan (see later). The Registrar did not seek specified retraining, after taking into account the remorse shown and the settlement agreement.

[14] The Registrar submits that the appropriate sanctions would be:

- (1) Censure.
- (2) A financial penalty in the vicinity of \$2,000.

Submissions from the complainant

[15] Mr So is counsel for the complainant. In his submissions of 9 February 2022, Mr So contends that as a minimum, Mr Wan should be censured and ordered to undertake further professional training.

Submissions from Mr Wan

[16] In his submissions of 3 February 2022, Mr Laurent, counsel for Mr Wan, records that the Tribunal's findings of breaches of cl 1 of the Code align with Mr Wan's own written submissions to the Authority and the Tribunal. They were engrossed in the settlement agreement between him and the complainant.

[17] It is acknowledged that censure is an almost invariable outcome of a breach of professional standards.

[18] As there was no indication in the evidence that Mr Wan was generally unfamiliar with policy requirements or the steps to be taken to secure the complainant's interests, retraining was not required. In respect of the earlier complaint against Mr Wan, the Tribunal had noted that he had taken responsibility for the breaches and found retraining was not warranted. It was seen as an isolated incident in an otherwise unblemished record. While it is therefore open to the Tribunal to consider a different approach this time, it is observed that both complaints concern events more than two years ago and no other complaints against Mr Wan have been filed since. There is no pattern of behaviour requiring the Tribunal to intervene.

[19] As for the imposition of a fine, Mr Wan had admitted fault and had not opposed the grounds of complaint referred by the Authority so a modest fine, if any, might be commensurate with the breaches.

[20] As for compensation and a refund of the fees, the settlement agreement states that Mr Wan's payment of \$30,000 was in full and final settlement of all civil claims. This does not prevent the Tribunal from requiring that compensation be paid, but it would be up to the complainant to make an evidence-based petition for the award of further compensation.

JURISDICTION

[21] 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.

[22] 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.

² Immigration Advisers Licensing Act 2007.

[23] 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.

[24] 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.

[25] 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

[26] 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

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

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].

[27] 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

[28] Mr Wan has appeared before the Tribunal previously. A complaint was upheld on 19 May 2021 in *YC v Wan*,⁷ with a penalty decision issued on 29 June 2021 in *YC v Wan*.⁸ It concerned conduct between June and August 2019. It was found that Mr Wan had:

- (1) Failed to respond to a letter from Immigration NZ, in breach of cl 1.
- (2) Failed to maintain a relationship of confidence and trust with his client or provide her with advice, in breach of cl 2(a).
- (3) Failed to obtain and carry out the client's instructions, in breach of cl 2(e).
- (4) Failed to ensure that the written client agreement contained the name and licence number of a provisionally licensed adviser who worked on the file, in breach of cl 19(a).

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].

⁷ *YC v Wan* [2021] NZIACDT 10.

⁸ *YC v Wan* [2021] NZIACDT 14.

- (5) Failed to insert into the written agreement the required details of the other adviser, in breach of cl 19(c).
- (6) Failed to update the client about a letter from Immigration NZ or an extension granted, in breach of cl 26(b).
- (7) Failed to provide the client's newly instructed immigration adviser with a copy of the full file on request, in breach of cl 26(f).

[29] In that earlier complaint, the Tribunal censured Mr Wan and ordered him to pay a financial penalty of \$1,000. He was also ordered to pay \$4,355 to his client, being a refund of fees of \$1,995 and compensation of \$2,360.

[30] Turning now to this complaint, Mr Wan was found to have lacked diligence and not to have exercised due care in his advice and the steps taken by him concerning the complainant's two trips to China. The trips were in breach of a visa condition requiring her to stay in New Zealand with her son when he was here. Mr Wan failed to lodge a variation application for the first trip and did not advise the complainant of Immigration NZ's refusal of the second trip and the consequences of that.

Caution or censure

[31] Given the potentially serious consequences for the complainant arising from Mr Wan's failures, he will be censured.

Training

[32] The Tribunal agrees with the Registrar and Mr Laurent that no retraining is justified. Mr So does not identify what further professional training is required.

Financial penalty

[33] The Registrar submits that a financial penalty in the vicinity of \$2,000 would be appropriate. Mr Laurent submits that a modest fine, if any, would be commensurate with the breaches.

[34] The Tribunal agrees with both representatives. The financial penalty will be \$2,000.

Refund and compensation

[35] The complainant does not seek any refund or compensation, no doubt because that has already been attended to in the settlement agreement.

OUTCOME

[36] Mr Wan is:

- (1) censured, and
- (2) ordered to immediately pay to the Registrar \$2,000.

ORDER FOR SUPPRESSION

[37] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.⁹ There is no public interest in knowing the name of Mr Wan's client, the complainant. The Tribunal orders that no information identifying the complainant is to be published other than to Immigration NZ.

D J Plunkett
Chair

⁹ Immigration Advisers Licensing Act 2007, s 50A.