

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2022] NZIACDT 7

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**

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**DECISION**  
Dated 27 April 2022

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**REPRESENTATION:**

Registrar: Self-represented

Complainant: R Sathiyathan, counsel

Adviser: No appearance

## PRELIMINARY

[1] The complainant is TA, who engaged the services of Ying Tian (aka Tina Qin). Ms Tian made numerous applications on behalf of the complainant which were unsuccessful. For a prolonged period, she pretended to be acting for him but was not actually undertaking any work on his behalf. As a result of her conduct, the complainant's immigration status became unlawful.

[2] A complaint was made to the Immigration Advisers Authority (the Authority), which has been referred by the Registrar of Immigration Advisers (the Registrar) to the Tribunal. It alleges negligence, breaches of the Licensed Immigration Advisers Code of Conduct 2014 (the Code) and dishonest or misleading behaviour, grounds for complaint under the Immigration Advisers Licensing Act 2007 (the Act).

## BACKGROUND

[3] Ms Tian was at the relevant time a licensed immigration adviser. She is a director of Abstract Solution Ltd, of Auckland. The Tribunal suspended her licence on 3 November 2020 in response to another complaint.<sup>1</sup>

[4] The complainant, a national of China, arrived in New Zealand in 2014. He was 18 years of age. At some point, he and his mother engaged the services of Ms Tian to assist with his immigration status.

[5] Between April 2015 and August 2016, Ms Tian lodged various student and visitor visa applications with Immigration New Zealand (Immigration NZ) for the complainant which were successful.

[6] On 11 October 2016, Ms Tian lodged a student visa application (application 1). Immigration NZ wrote a "PPI letter" (a letter setting out potentially prejudicial information) to Ms Tian on 27 October 2016. One of the concerns related to whether the complainant had sufficient funds for his maintenance and as to the source of his funds. Ms Tian's reply of the same date was inadequate. She said to the visa officer she would provide updated information, but despite a reminder on 7 November 2016, she did not do so. The application was declined on 11 November 2016. Ms Tian did not inform the complainant of the decline.

[7] A further student visa application (application 2) was lodged on 24 November 2016 by Ms Tian. This was done without the complainant's authority. Immigration NZ

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<sup>1</sup> *IK v Tian* [2020] NZIACDT 47.

informed Ms Tian on 25 November that it was incomplete and set out the documents required, including an explanation of each bank deposit of more than \$1,000. It wrote a PPI letter to her on 2 December setting out the information required, notably the source of the complainant's funds. Ms Tian failed to address this concern, so the application was declined on 12 December 2016. The complainant was not informed of the outcome.

[8] On 14 December 2016, Ms Tian lodged a request (application 3) under s 61 of the Immigration Act 2009 for a discretionary student visa (available for persons unlawfully in New Zealand). This was done without the complainant's authority. A letter to the visa officer on 13 December 2016 purportedly from the complainant was provided in support and gave some information about where his funds came from. The letter apologised for his carelessness and not paying attention to the visa process. The request was declined on 13 January 2017. The complainant was not informed of the outcome.

[9] Another request (application 4) under s 61 for a temporary student visa was lodged by Ms Tian on 31 January 2017 (letter dated 25 January 2017), again without the complainant's authority. There is a supporting statement (26 January 2017) purportedly from the complainant. The request was refused by Immigration NZ on 15 February 2017. He was not informed of the outcome.

[10] Ms Tian lodged a further student visa application (application 5) on 24 February 2017. It was declined on 28 February 2017, as not all the requisite documents were provided. This was done without the complainant's authority and he was not informed of the outcome.

[11] Then another s 61 request for a student visa (application 6) was filed by Ms Tian on 1 March 2017 (covering letter dated 23 February 2017), which Immigration NZ "Refused to consider" for an unknown reason on 16 March 2017.<sup>2</sup> It was made without the complainant's authority. He was not informed of the outcome.

[12] A letter (23 February 2017) purportedly from the complainant was provided to Immigration NZ in support of the request. It stated that his visa had been declined because of his "living expense problem".<sup>3</sup> It is difficult to follow the explanation. The letter went on to say that the complainant was a good student, but he could not take up the place offered at the polytechnic, as he could not obtain a visa on time. It was not his intention to overstay, but he was lazy in responding to all the mail and providing all the documents.

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<sup>2</sup> Registrar's bundle of documents at 190 & 223.

<sup>3</sup> Registrar's bundle at 222.

[13] Finally, on 8 June 2017, Ms Tian filed an expression of interest (application 7) on behalf of the complainant, his mother and two others, seeking residence in the investor category. Immigration NZ advised Ms Tian on 8 June 2017 that the expression had passed the threshold and had been entered in the pool. However, on 16 June 2017 Immigration NZ advised Ms Tian that the claims made as to the source of the funds were not credible. Furthermore, certain information was missing. It would not issue an invitation to apply for residence. She did not inform the complainant or his mother of the decline.

[14] Ms Tian did not file any further applications or requests with Immigration NZ on behalf of the complainant after the failure of the expression. Yet, according to the complainant, she led him and his mother to believe she was still representing him and negotiating with Immigration NZ.<sup>4</sup>

[15] The complainant's solicitor has produced a lengthy schedule of translations of WeChat text messages between Ms Tian, and the complainant or his mother.<sup>5</sup> It is apparent that Ms Tian was communicating in the period after June 2017 as if she was representing the complainant and remaining in contact with Immigration NZ. The complainant says he thought Ms Tian had control of his visa status. He understood she was working on another student visa application.

[16] The following are examples of the text messages from Ms Tian to either the complainant or his mother, replying to their requests for updates (these replies are in the context of there being no live application before Immigration NZ):

11/2/2019	"I will ask for you this afternoon."
2/3/2019	"I will solve for you this week." "Do not worry."
8/3/2019	"Can be done"  "Yes, you will be able to apply, please come and find me next Wednesday."
19/3/2019	"I will go and enquire..."
16/4/2019	"I contacted [the immigration officer], he asked me to contact him in the evening, he said he will approve [the visa] shortly."

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<sup>4</sup> Letter (5 March 2021) from the complainant's solicitor to the Registrar – Registrar's bundle at 7.

<sup>5</sup> Undated, but provided to Authority on 22 September 2021 – Registrar's bundle at 40-62.

[17] On 4 July 2019, the complainant's mother sent an email to Ms Tian. She said that the complainant had wasted three of his prime years and yet there was still no timeframe for him to go back to school. Ms Tian was instructed to hand over to her all correspondence with Immigration NZ concerning the complainant. She would instruct a solicitor to file a complaint. It was truly unforgiveable to waste a child's livelihood. The immigration officer in charge would have to give her an explanation and apology. It was agonising being bullied in this manner. As Ms Tian had a lot of things going on, the mother thought she would be able to solve the issue herself.

[18] Ms Tian's response to the email of 4 July 2019 is not known. Her texts to the complainant and her mother continued (examples given only):

2/8/2019	"I will contact you when I am at the office, then you can come."
19/11/2019	"I have not scheduled a time yet with [Immigration NZ]."
20/11/2019	"[Ms Tian sets out in a series of texts what she advises should be the contents of a personal statement from the complainant to be given to Immigration NZ]"
17/12/2019	"Let me prepare [the statement] for you first."
6/8/2020	"I'm in a meeting. I'll get back to you asap..." "I have still not had the chance to do anything. Give me a little bit of time."
14/10/2020	"He [the immigration officer] asked me to contact him tomorrow."
6/11/2020	"[Immigration NZ] will work overtime this weekend, should be able to get this done."
25/11/2020	"I have just argued with [the immigration officer]."
2/12/2020	"I am waiting for the [immigration] manager's call, called him twice but nobody picked up the phone."
10/12/2020	"[Immigration NZ] called me this morning and said will do [visa] today or tomorrow."
11/12/2020	"[The immigration officer] Called me just now." "[The visa is] Almost done." "[The complainant] Won't [be deported]."
13/1/2021	"I'm in a meeting, I'll get back to you ASAP." "I am on the phone. I will give you a call shortly."
14/1/2021	"I am asking [the immigration officer] to send it to me."

[19] On 18 January 2021, the complainant sent the following text to Ms Tian:<sup>6</sup>

It is difficult for me to accept that I have been waiting for four years for no progress. Now even I ask for the most basic information from you ... you evade my requests ... I truly feel I have lost trust and confidence in you. Perhaps there might not even be an application number at all ... I have decided that if I do not receive the information from immigration by tomorrow 4 pm then I will no longer waste any more of my time with you.

[20] Ms Tian replied by text on 19 January 2021 to say she would get back to him. The complainant then told her the next day by text that he had been contacted by Immigration NZ enquiring whether he had paid the fee. They had rung Ms Tian's office, but nobody had answered the call. She replied to the complainant on 22 January 2021 to say she would ask on his behalf. This appears to have been Ms Tian's last communication with the complainant or his mother.

[21] Having already made a complaint to the Authority, the complainant's mother sent the following text to Ms Tian on 19 March 2021:

... It was in 2017, the visa application had been refused, and you didn't tell me in time. Why the agreed student visa application changed to a visitor visa application!! What is the reason? If he is your child will you let him miss out the best period of his life? You just keep putting us off again and again!!! Actually since 2017 after the visitor visa expired, there has been no visa application for [the complainant] in INZ, but in the following years, you told me it was in processing, almost done etc. I heard these for so many years!! It doesn't matter if you can't make it, but I can't accept you didn't tell me the truth in time!!

## COMPLAINT

[22] On 5 March 2021, the complainant's solicitor made a complaint to the Authority on his behalf.

[23] The solicitor set out at length the history of communications between the complainant and Ms Tian, as summarised above. In addition, the solicitor stated that during 2019, Ms Tian informed the complainant that her solicitor would assist him to obtain a visa. She asked him to provide a statement for Immigration NZ. She told him she had filed it and it was to be processed with his application. But another half year passed with no news. The complainant became stressed about this. Ms Tian largely avoided communicating with him, making excuses about her unavailability.

[24] According to the solicitor, at the beginning of 2021, Ms Tian pretended to call Immigration NZ in the presence of the complainant. Some days later, a person rang the

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<sup>6</sup> Registrar's bundle at 60.

complainant claiming to be a visa officer and asked him some basic questions. The complainant believes Ms Tian arranged for this call to be staged.

[25] The complainant approached another immigration adviser in January 2021. He found out then that no applications had been lodged since 2017 and that Ms Tian had been suspended. Due to Ms Tian's active deceit, he had spent four years waiting to be granted a visa. He was prevented from obtaining a tertiary education. She had effectively stolen four years of his life.

[26] The complainant's primary focus was rectifying his unlawful status.

#### *Complainant's statement*

[27] A statement (22 September 2021) was provided by the complainant to the Authority.

[28] In his statement, the complainant said that he was not aware of any services agreement being signed with Ms Tian. They did not pay any fee as they understood she would get a commission from the education provider. The early student visa applications she made were successful and he trusted that she had everything under control.

[29] Ms Tian told him that his student visa application of 11 October 2016 was being processed by Immigration NZ and to continue studying. It was the polytechnic which told him he only had a visitor visa, not a student visa. Ms Tian blamed the visa officer whom she said granted the wrong visa.

[30] The complainant said that he was not informed by Ms Tian that Immigration NZ required further information for the 11 October 2016 application. When his mother made enquiries over the following months regarding progress, Ms Tian made a lot of different excuses (an x-ray had been provided, she did not have time to ask, there was a new offer from the polytechnic, he had to sign school documents, she was sick, her children were sick and her parents were sick).

[31] According to the complainant's statement, Ms Tian did not tell him that the visa was declined on 11 November 2016. He repeatedly asked her and she said it was being processed, or was under control, or was almost approved. She blamed Immigration NZ. He was not aware that he had become unlawful.

[32] The complainant said he was not told about the other applications or requests for student visas. The signatures on the applications are not his and he assumes she forged them.

[33] When his mother later asked Ms Tian about the best options for him, she advised that his mother was eligible for an investor category residence visa and he would get a residence visa that way. His mother agreed to pay \$50,000 if it was granted. The complainant said he was aware that the expression was filed, but he continued to believe that his student visa application was still being processed. She said the applications would be processed together. Ms Tian informed his mother that the expression had been selected, but this was not true. It had been declined, though they did not find that out until the beginning of 2021. She told them it was very complex and she was working hard on it.

[34] The complainant stated that by active deception, Ms Tian convinced them for three years that the residence and student visa applications were being processed. Whenever he enquired about progress, she did something to make him believe Immigration NZ doubted the application and more evidence would be required. She discouraged him from contacting Immigration NZ directly, as she said it would be detrimental to the application.

[35] After the mother's email of 4 July 2019, Ms Tian agreed to arrange a meeting with a solicitor she said was experienced in arguing with Immigration NZ. This meeting took place, but he believes the person was an imposter. He was not presented with a business card, was not given the surname of the solicitor and there was no communication from him.

[36] In November 2019, Ms Tian advised the complainant that he needed to make a personal statement for an interview with Immigration NZ she was arranging. That interview never took place. In February 2020, she asked him to transfer funds into his ANZ account for his living expenses, adding that he should not transfer them from his mother's account as Immigration NZ questioned any transfers from her account.

[37] They found out on 16 December 2020 that Ms Tian's licence had been suspended in November. On the following day, Ms Tian told him a visa officer would call him at 11 am at her office. The call took place. He was asked some questions about his current situation and future studies. He believed at the time that the person was a visa officer, but it seemed weird to him that after such lengthy processing by Immigration NZ he had only been asked some general questions.

[38] In his statement, the complainant said that, in January 2021, he asked Ms Tian for his visa application number but she refused to provide it. It was then recommended to him that he see another immigration adviser and a solicitor.



*Authority seeks explanation from Ms Tian*

[39] On 23 November 2021, the Authority formally wrote to Ms Tian setting out the particulars of the complaint and requesting her explanation. Ms Tian asked for an extension to reply which was granted. Despite further communications from the Authority's investigator, there was no substantive response from Ms Tian.

*Reference to the Tribunal*

[40] The Registrar filed a statement of complaint (1 February 2022) with the Tribunal, together with a paginated bundle of supporting documents. The following heads of complaint are referred to the Tribunal:

Negligence, or alternatively breach of the specified provisions of the Code

- (1) In relation to application 1, failing to address all of Immigration NZ's concerns, in breach of cl 1.
- (2) In relation to application 1, failing to inform the complainant or his mother of Immigration NZ's PPI letter or of the outcome, in breach of cl 1.
- (3) In relation to application 2, filing it when it had little chance of success, in breach of cl 9.
- (4) In relation to application 2, failing to provide a sufficient explanation regarding the source of the funds, in breach of cl 1.
- (5) In relation to application 2, failing to inform the complainant or his mother of the outcome, in breach of cl 1.
- (6) In relation to application 3, filing a futile application, in breach of cl 9.
- (7) In relation to application 3, failing to inform the complainant or his mother of the outcome, in breach of cl 1.
- (8) In relation to application 4, filing a futile application, in breach of cl 9.
- (9) In relation to application 4, failing to inform the complainant or his mother of the outcome, in breach of cl 1.
- (10) In relation to application 5, failing to provide a mandatory medical certificate, in breach of cl 1.

- (11) In relation to application 6, filing it when it had little chance of success, in breach of cl 9.
- (12) In relation to application 6, failing to inform the complainant or his mother of the outcome, in breach of cl 1.
- (13) In relation to application 7, failing to inform the complainant or his mother of the outcome, in breach of cl 1.
- (14) Failing to have a written agreement with the complainant or his mother, in breach of cl 18(a).
- (15) Failing to maintain a client file, in breach of cl 26(a).
- (16) Failing to inform the complainant of her suspension, in breach of cl 29(a).

#### Dishonest or misleading behaviour

- (17) Falsely advising the complainant's mother on 26 April 2017 that she had been in contact with Immigration NZ and written a note.
- (18) Falsely advising the complainant on 11 February 2019 that she would ask the polytechnic for a refund.
- (19) 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.
- (20) Falsely advising the complainant's mother on 29 March 2019 that she would update her concerning the endless waiting from Immigration NZ.
- (21) 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.
- (22) Falsely advising the complainant's mother that she would contact Immigration NZ on 26 April 2019.
- (23) Falsely giving excuses throughout 2020 to the complainant and his mother for not being able to update them.
- (24) Falsely representing to the complainant and his mother in the last three years that she was assisting them and dealing with Immigration NZ.

## JURISDICTION AND PROCEDURE

[41] 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.

[42] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.<sup>7</sup>

[43] 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>8</sup> It has been established to deal relatively summarily with complaints referred to it.<sup>9</sup>

[44] 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>10</sup>

[45] The sanctions that may be imposed by the Tribunal are set out in the Act.<sup>11</sup> The focus of professional disciplinary proceedings is not punishment but the protection of the public.<sup>12</sup>

[46] 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>13</sup>

[47] The Tribunal has received the statement of complaint (1 February 2022) and supporting documents from the Registrar.

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<sup>7</sup> Immigration Advisers Licensing Act 2007, s 45(2) & (3).

<sup>8</sup> Section 49(3) & (4).

<sup>9</sup> *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].

<sup>10</sup> Section 50.

<sup>11</sup> Section 51(1).

<sup>12</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151].

<sup>13</sup> *Z v Dental Complaints Assessment Committee*, above n 12, at [97], [101]–[102] & [112].

[48] There are no submissions from the complainant.

[49] Ms Tian sought an extension of time to file a statement of reply, but no reply or submissions were received.

## **ASSESSMENT**

[50] The Tribunal will first analyse the alternative breaches of the Code, rather than negligence. As will be seen in the second part of this assessment, the Tribunal finds Ms Tian's conduct to be dishonest and deceptive. It is not the result of any lack of due care. In reaching that conclusion, the Tribunal takes into account Ms Tian's failure to respond to the complaint, notably to the allegation of dishonest or misleading behaviour. She has offered no rebuttal or explanation for such a serious charge. A professional person has a duty to respond to complaint and disciplinary processes.<sup>14</sup> The Tribunal will draw an adverse inference from her refusal to do so.

[51] 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.

### **Futile immigration matters**

9. If a proposed application, appeal, request or claim is futile, grossly unfounded, or has little or no hope of success, a licensed immigration adviser must:
  - a. advise the client in writing that, in the adviser's opinion, the immigration matter is futile, grossly unfounded or has little or no hope of success, and
  - b. if the client still wishes to make or lodge the immigration matter, obtain written acknowledgement from the client that they have been advised of the risks.

### **Written agreements**

18. A licensed immigration adviser must ensure that:
  - a. when they and the client decide to proceed, they provide the client with a written agreement
  - ...

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<sup>14</sup> *KX v Ji* [2020] NZIACDT 43 at [54].

### **File management**

26. A licensed immigration adviser must:
- a. maintain a hard copy and/or electronic file for each client, which must include:
    - i. a full copy of the client's application or other immigration matter
    - ii. copies of all written agreements and any changes to them
    - iii. copies of all written communications (including any file notes recording material oral communications and any electronic communications) between the adviser, the client and any other person or organisation
    - iv. copies of all invoices and receipts relating to the client
    - v. copies of all personal documents relating to the client supplied to the adviser, and
    - vi. evidence of the safe return of the client's original documents

...

### **Advisers**

29. A licensed immigration adviser must not misrepresent or promote in a false, fraudulent or deceptive manner:
- a. themselves, including their qualifications or their licence status or type

...

### *Negligence, or alternatively breach of the specified provisions of the Code*

- (1) *In relation to application 1, failing to address all of Immigration NZ's concerns, in breach of cl 1*
- (2) *In relation to application 1, failing to inform the complainant or his mother of Immigration NZ's PPI letter or of the outcome, in breach of cl 1*

[52] Ms Tian lodged application 1 (for a student visa) on 11 October 2016. It did not contain sufficient information and supporting documents. A PPI letter was issued by Immigration NZ on 27 October 2016. Ms Tian replied the same day. She was aware further information was required, but failed to provide it, so the visa was declined on 11 November 2016.

[53] Ms Tian's failure to address all of Immigration NZ's concerns is unprofessional and shows a lack of due care, in breach of cl 1 of the Code.

[54] The failure to inform the complainant or his mother of either the PPI letter or the decline is also unprofessional, in breach of cl 1. Given the pattern of conduct here, including the failure to advise the complainant or his mother of subsequent applications, the Tribunal finds the failure to inform them of the outcome of the applications to be deliberate and not to be the result of any lack of due care or diligence.

[55] Ms Tian's multiple failures to advise the complainant or his mother of the outcome of the first and subsequent applications are also breaches of cl 26(b), but the Registrar has not relied on this provision so the Tribunal will not enter any formal finding of such breaches.

[56] The first and second heads of complaint are upheld.

(3) *In relation to application 2, filing it when it had little chance of success, in breach of cl 9*

(4) *In relation to application 2, failing to provide a sufficient explanation regarding the source of the funds, in breach of cl 1*

(5) *In relation to application 2, failing to inform the complainant or his mother of the outcome, in breach of cl 1*

[57] Ms Tian lodged application 2 (for a student visa) on 24 November 2016. A PPI letter from Immigration NZ on 2 December 2016 raised the same concern regarding the source of the complainant's funds, as had been identified on application 1. Ms Tian did not address this. It was declined on 12 December 2016 on this ground, which had been one of the grounds on which application 1 was declined.

[58] Having failed to address one of the grounds on which the earlier application was declined, it is clear the application had little chance of success. Ms Tian has provided no evidence that she gave the complainant written advice to this effect and obtained his written acknowledgment. This is a breach of cl 9.

[59] The failure to provide a sufficient explanation to Immigration NZ as to funding is unprofessional and shows a lack of due care, in breach of cl 1.

[60] The failure to inform the complainant or his mother of the outcome of application 2 is unprofessional, in breach of cl 1.

[61] The third, fourth and fifth heads of complaint are upheld.

(6) *In relation to application 3, filing a futile application, in breach of cl 9*

(7) *In relation to application 3, failing to inform the complainant or his mother of the outcome, in breach of cl 1*

[62] Ms Tian lodged application 3 (request for a student visa under s 61) on 14 December 2016. She attempted to address the concern about the source of the funds in a brief letter purportedly from the complainant. It is wholly inadequate, failing to identify and explain specific deposits and withdrawals. Nor did it explain the source of his mother's funds. The visa was declined on 13 January 2017.

[63] The letter declining the request has not been provided to the Tribunal, so the reason for the decline is not known, but her failure to adequately address the ground on which the two previous applications had failed is obvious.<sup>15</sup> In addition, Ms Tian has chosen not to answer the Registrar's allegation that the request was futile. The Tribunal finds it to be futile. Ms Tian has provided no evidence that she gave the complainant written advice as to the request's futility and obtained his written acknowledgment. This is a breach of cl 9.

[64] And again, Ms Tian has provided no record of informing the complainant or his mother of the decline. This is unprofessional and a breach of cl 1.

[65] The sixth and seventh heads of complaint are upheld.

(8) *In relation to application 4, filing a futile application, in breach of cl 9*

(9) *In relation to application 4, failing to inform the complainant or his mother of the outcome, in breach of cl 1*

[66] Ms Tian lodged application 4 (request for a temporary student visa under s 61) on 31 January 2017. The supporting letter purportedly from the complainant did not properly address Immigration NZ's concern regarding the funds. It was refused on 15 February 2017, for an unknown reason.

[67] Ms Tian has chosen not to answer the Registrar's allegation that the request was futile. The Tribunal finds it to be futile. Ms Tian has produced no evidence of written advice to the complainant of this, or of his acknowledgment. This is a breach of cl 9.

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<sup>15</sup> Such letters do not require a reason in any event – see Immigration Act 2009, ss 11(1)(c)(i), 61(2).

[68] Nor has Ms Tian provided any record of informing the complainant or his mother of the decline. This is unprofessional and a breach of cl 1.

[69] The eighth and ninth heads of complaint are upheld.

*(10) In relation to application 5, failing to provide a mandatory medical certificate, in breach of cl 1*

[70] Ms Tian lodged application 5 (for a student visa) on 24 February 2017. It was declined on 28 February 2017, due to the failure to file a mandatory chest x-ray certificate.

[71] The failure to supply a mandatory lodgement document is unprofessional and shows a lack of diligence and due care, in breach of cl 1.

[72] The 10th head of complaint is upheld.

*(11) In relation to application 6, filing it when it had little chance of success, in breach of cl 9*

*(12) In relation to application 6, failing to inform the complainant or his mother of the outcome, in breach of cl 1*

[73] Ms Tian lodged application 6 (request for a temporary student visa under s 61) on 1 March 2017. Immigration NZ refused to consider it on 16 March 2017. The reason is not known.

[74] Ms Tian has chosen not to answer the Registrar's allegation that the request had little chance of success. There is evidence providing some justification for the allegation. The letter of 23 February 2017 from Ms Tian filed with the request shows that the complainant and his mother had sufficient funds to support him, but it contains no explanation of the source of his funds, which had been the concern of Immigration NZ on previous applications.

[75] It is found that the request had little chance of success. Ms Tian provides no evidence of such written advice to the complainant or of his acknowledgment. This is a breach of cl 9.

[76] Ms Tian produces no evidence of advising the complainant or his mother of the outcome. The failure to advise them of the outcome is unprofessional and a breach of cl 1.



[77] The 11th and 12th heads of complaint are upheld.

*(13) In relation to application 7, failing to inform the complainant or his mother of the outcome, in breach of cl 1*

[78] Ms Tian filed an expression of interest for residence on 8 June 2017. It was declined on 16 June 2017.

[79] Ms Tian has not produced any evidence of notifying the complainant's mother, or the complainant for that matter, of the outcome. This is unprofessional and a breach of cl 1.

[80] The 13th head of complaint is upheld.

*(14) Failing to have a written agreement with the complainant or his mother, in breach of cl 18(a)*

[81] The complainant says in his statement (22 September 2021) that he is not aware of any services agreement signed with Ms Tian. She has not provided any evidence of such a written agreement with either the complainant or his mother concerning the expression or the applications made for the complainant. This is a breach of cl 18(a).

[82] The 14th head of complaint is upheld.

*(15) Failing to maintain a client file, in breach of cl 26(a)*

[83] Ms Tian was required by the Authority to provide her client file in respect of the complainant, by email dated 16 March 2021. A reminder was sent to her on 24 March 2021. She did not produce a client file to the Authority. She has provided no evidence of such a file. The failure to maintain a client file is a breach of cl 26(a).

[84] The 15th head of complaint is upheld.

*(16) Failing to inform the complainant of her suspension, in breach of cl 29(a)*

[85] Ms Tian's licence to practice as an immigration adviser was suspended by the Tribunal on 3 November 2020. It is clear from her communications with the complainant and his mother after this date that she did not tell them of her change of status. She continued to pretend she was dealing with Immigration NZ on their behalf. It is equally obvious they would not have continued instructing her, if they had known of her

suspension. Ms Tian's deception in hiding her licence status was a gross breach of trust and a breach of cl 29(a).

[86] The 16th head of complaint is upheld.

[87] Since the Tribunal has found breaches of the Code for all 16 heads of complaint, there is no need to consider whether they amount to negligence.

*Dishonest or misleading behaviour*

*(17) Falsely advising the complainant's mother on 26 April 2017 that she had been in contact with Immigration NZ and written a note*

[88] In answer to a text from the complainant's mother on 26 April 2017 for an update regarding the complainant's school (since his study was being delayed), Ms Tian texted in reply on the same day:

I have already been in contact and written a note.

It will be fine

[89] According to the Registrar, Immigration NZ has no record of receiving any such note. Ms Tian has not produced any evidence of contact or a note. Her text to the mother is false. This is part of her pretence to be actively assisting the complainant, when in fact there was no application before Immigration NZ at the time. The Tribunal finds the text is deliberately misleading and hence dishonest.

[90] The 17th head of complaint is upheld.

*(18) Falsely advising the complainant on 11 February 2019 that she would ask the polytechnic for a refund*

[91] In response to the complainant asking Ms Tian for an update concerning a refund from the polytechnic, she replied by text on 11 February 2019:

I will ask for you this afternoon.

[92] Ms Tian has produced no evidence that she sought a refund from the polytechnic at this or any other time. Her text is false. It is part of her sustained pretence at helping. The Tribunal finds the text is deliberately misleading and hence dishonest.

[93] The 18th head of complaint is upheld.

(19) *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*

[94] In response to the mother's text on 2 March 2019 expressing concern that she and the complainant were on Immigration NZ's blacklist, Ms Tian sent two successive texts on the same day:

I will solve it for you this week.

Do not worry

[95] Ms Tian has produced no evidence that she contacted Immigration NZ. Her texts are false, being part of her sustained pretence at assisting them. The texts are found to be deliberately misleading and dishonest.

[96] The 19th head of complaint is upheld.

(20) *Falsely advising the complainant's mother on 29 March 2019 that she would update her concerning the endless waiting from Immigration NZ*

[97] In response to a text from the mother on 29 March 2019 expressing frustration about the endless waiting for Immigration NZ's decision, Ms Tian replied by text on the same day:

Just wait, and will update you soon

[98] Ms Tian's reply is false. There was no live application with Immigration NZ and she was not dealing with them in relation to the complainant or his mother. The Tribunal finds that Ms Tian's text is deliberately misleading and dishonest.

[99] The 20th head of complaint is upheld.

(21) *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*

(22) *Falsely advising the complainant's mother that she would contact Immigration NZ on 26 April 2019*

(23) *Falsely giving excuses throughout 2020 to the complainant and his mother for not being able to update them*

(24) *Falsely representing to the complainant and his mother in the last three years that she was assisting them and dealing with Immigration NZ*

[100] In response to the mother's text on 16 April 2019 asking for the whereabouts of "the visa", Ms Tian replied by text on the same day:

I contacted [the immigration officer], he asked me to contact him in the evening, he said he will approve [the visa] shortly

[101] In responding to a text from the mother on 26 April 2019 asking what to do about the visa, Ms Tian texted on the same day:

I will contact [them] in the afternoon.

...

I call you later

[102] In the period from 1 to 6 August 2020, there was an exchange of texts between the complainant and Ms Tian. The complainant was trying to meet her concerning a signature on a letter. She replied in multiple texts providing numerous reasons why she could not meet him:

I'm in a meeting. I'll get back to you ASAP

I'll call you back

Wait for me for a minute. I will come downstairs

I'm in a meeting. I'll get back to you asap. Meeting. What is the matter?

I have still not had the chance to do anything. Give me a little bit of time.

[103] In response to a text from the complainant on 18 January 2021 pointing out that he had been waiting for four years with no progress and that he had lost trust and confidence in her, Ms Tian replies by text the next day:

I'm in a meeting. I'll get back to you ASAP

[104] These texts from Ms Tian are all false. There was no live application with Immigration NZ at the time. She was consciously leading the complainant to believe that there were extant applications before Immigration NZ. This pretence went on for more than three years. On 16 April 2019, she even falsely claimed that a visa was to be approved. Her conduct is disgraceful. The Tribunal finds that Ms Tian was deliberately misleading and hence dishonest on many occasions throughout this prolonged period.

[105] The 21st to 24th heads of complaint are upheld.

[106] According to the complainant, Ms Tian duped him by staging a telephone call with a person she said was an immigration officer, who later rang the complainant. He believes this person was an imposter. He says she forged his signature on statements and applications made to Immigration NZ. Notwithstanding the absence of any explanation from Ms Tian in the face of those allegations, they are not the subject of the complaint referred to the Tribunal, so it will not assess them.

## **OUTCOME**

[107] I uphold all 24 heads of complaint. Ms Tian has breached cls 1, 9, 18(a), 26(a) and 29(a) of the Code. More seriously, she has been found to be dishonest on multiple occasions.

## **SUBMISSIONS ON SANCTIONS**

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

[109] A timetable is set out below. Any request for the refund 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.

[110] This is the fourth complaint upheld against Ms Tian. Her licence is currently suspended. Given such a history and the serious nature of the wrongdoing upheld here, the Tribunal will consider cancelling her licence. The parties are asked to address this in their submissions.

### *Timetable*

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

- (1) The Registrar, the complainant and Ms Tian are to make submissions by **19 May 2022**.
- (2) The Registrar, the complainant and Ms Tian may reply to submissions of any other party by **2 June 2022**.

**ORDER FOR SUPPRESSION**

[112] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.<sup>16</sup>

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

[114] 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

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<sup>16</sup> Immigration Advisers Licensing Act 2007, s 50A.