

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2023] NZIACDT [1]

Reference No: IACDT 023/21

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **NI**
Complainant

AND **CLEMENT CHUN WANG
CHAK**
Adviser

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 05 January 2023

REPRESENTATION:

Registrar: Self-represented
Complainant: P Y Liu, counsel
Adviser: J Wedlake, B M Russell, counsel

PRELIMINARY

[1] The complainant, NI, paid a substantial fee to the adviser, Clement Chun Wang Chak, for a residence (entrepreneur) application which was declined. A reconsideration of the decline was also unsuccessful, but Mr Chak did not inform the complainant of the unsuccessful reconsideration. He says he was not aware of it.

[2] A complaint against Mr Chak to the Immigration Advisers Authority (the Authority) has been referred by the Registrar of Immigration Advisers (the Registrar) to the Tribunal. It is alleged that Mr Chak has been dishonest or misleading, or alternatively negligent, these being grounds for complaint under the Immigration Advisers Licensing Act 2007 (the Act). It is further alleged that he has breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

BACKGROUND

[3] The complainant is a national of China.

[4] Mr Chak, a licensed immigration adviser, is a director of CWC Migration & Education Ltd, of Auckland.

[5] From about 16 August 2016, Mr Chak communicated with the complainant's husband through the 'WeChat' messaging service. There are numerous messages. The husband enquired about immigration requirements in relation to a business sending students from China to New Zealand for short-term study at schools. Mr Chak answered his queries. It was agreed that the complainant would be the principal applicant. Mr Chak advised on 7 September that the complainant's resumé showed she had enough business background. There was an exchange about the criteria and what needed to be proven.

[6] Mr Chak appears to have sent an unsigned service contract to the complainant by email on 20 September 2016. He was in China and asked the husband in a text on that date if he should come to see them in Dalian. He asked for his air ticket to be paid. The husband replied on the same day stating that "those fees and air tickets and everything no problem to me!"

[7] Mr Chak duly travelled to Dalian and met the complainant and her husband on 26 September 2016. Immediately prior to the meeting, Mr Chak had sent four documents by email to the couple and asked for them to be printed out and brought to the meeting.

[8] The complainant and Mr Chak signed the service contract on 27 and 28 September 2016 respectively. Mr Chak agreed to prepare and file work visa and residence visa applications in the entrepreneur category. The fee was \$60,000, payable in three instalments of \$20,000. It expressly included the preparation of a business plan and the time spent visiting the complainant in Dalian. The final instalment of \$20,000 was only payable upon the approval of the residence visa.

[9] Mr Chak requested payment of the first instalment of his fee on 27 September 2016. The complainant duly paid Mr Chak about one day later the amounts of RMB 97,182 (\$20,000) and the cost of the Dalian flight (RMB 737), a total of RMB 97,919. Mr Chak confirmed its receipt by text on 30 September.

[10] The exchange of texts continued through October and November 2016, as Mr Chak compiled the information and documents needed for the immigration applications. From 27 September, the exchange seems to have been between Mr Chak and the complainant. There were many texts and there appear to have been emails as well. At about this time, Mr Chak sent to the complainant a list of the documents that would have to be produced to Immigration NZ.

[11] The Chinese yen equivalent of the second instalment of \$20,000, together with the fee of Immigration New Zealand (Immigration NZ) and a small courier fee, a total of \$23,389.50 (RMB 114,368), was paid by the complainant to Mr Chak on 7 December 2016. It had been requested by Mr Chak on 29 November 2016.

[12] On 9 December 2016, Mr Chak sent the draft work visa application and supporting business plan to the complainant for her review. He also confirmed receipt of the second payment.

[13] The complainant and her husband arrived in New Zealand on 11 January 2017. They had a meeting with Mr Chak on about 24 January.

[14] The application for a work visa and work to residence visa in the entrepreneur category was filed with Immigration New Zealand (Immigration NZ) on 2 February 2017. It included the complainant and her young son. Immigration NZ acknowledged receipt on 21 February.

[15] The texts and voice messages between Mr Chak and the complainant concerning the business and other immigration requirements continued through 2017. The texts appear to show that Mr Chak was assisting the complainant to establish her business in New Zealand. They appear to have met for meals together as well.

Work visa declined and complainant raises possible refund

[16] Immigration NZ declined the application on 8 January 2018. The visa officer was not satisfied the complainant would contribute to economic growth by establishing a business that was high growth, innovative or with export potential. There was a detailed analysis of the business by the officer.

[17] In an exchange of texts between the complainant and Mr Chak on 9 January 2018, the complainant agreed to seek reconsideration of the decline. She asked him if he would refund in full if she failed again. Mr Chak replied that he would refund in accordance with the contract.

Reconsideration requested and declined

[18] A request for a reconsideration was lodged by Mr Chak on 23 January 2018. It was declined by Immigration NZ on 24 March 2018, since the complainant had not demonstrated how the proposed business would contribute to economic growth.

[19] On 8 April 2018, the complainant asked Mr Chak by text if there was any update on the reconsideration application. He replied on the same day that he would "go to ask".

[20] The complainant asked again by text on 21 June 2018 about the progress of the reconsideration, as nearly two months had passed. Mr Chak responded the next day stating that they had not replied. He would go to the office to see whether there was any mail from Immigration NZ.

[21] Then on 5 July 2018, the complainant asked Mr Chak once more for an update on the reconsideration. She repeated the query about obtaining a full refund if the reconsideration failed. He replied the next day saying that he had not received a letter from Immigration NZ, but he would ask again. Mr Chak also asked the complainant whether she would consider reapplying based on one of his client's fish exporting businesses. She declined.

[22] The complainant reminded Mr Chak on 16 October 2018 that three months had passed. She requested a discussion about a refund. He replied that he would ask Immigration NZ again the next day for the result and, if declined, he would refund in accordance with the contract.

[23] The complainant sent another text to Mr Chak on 14 November 2018 asking if Immigration NZ had replied. She had called the government agency a number of times

to push them. He responded on the same day to say he believed they had started processing. He would call them in a couple of days.

[24] The complainant asked Mr Chak by text on 28 November 2018 as to when she would receive a refund. There was no reply. Then on 4 April 2019 she asked whether Immigration NZ had replied to the reconsideration application and also sought a refund. Mr Chak did not reply.

[25] The complainant asked Mr Chak again on 29 May 2019 about the reconsideration and a refund, adding that she would complain to the Authority. Mr Chak replied on the same day. He apologised and said he would finalise the matter by the end of June. Irrespective of the outcome of the reconsideration, he would refund in accordance with the contract. The complainant responded immediately to say he had delayed too long and she would give him until 7 June.

[26] The exchange of texts started again on 6 June 2019 and appears to have continued until 21 June 2019. The complainant sought a refund and Mr Chak said he would do so by 30 June in accordance with the contract. On 16 June, the complainant asked Mr Chak for all the emails from Immigration NZ. She wanted to know whether the government agency had answered his email requests. He did not reply.

[27] On 21 June 2019, the complainant said she had visited his office in the city, but his business was not at that address. She accused him of being a fraudster. He replied to say the office was subleased and there was no sign. He was at level 26. Mr Chak eventually said that he had consulted a lawyer and he had no obligation to refund under the contract. The last text was from the complainant on the same day confirming that there was no clause in the contract, but stating that he had promised a full refund if the application was not successful.

Complainant demands refund

[28] On 31 January 2020, the complainant's solicitor sent a letter to Mr Chak demanding a refund.

[29] It was alleged that Mr Chak's fee of \$60,000 was excessive and unreasonable. The complainant had paid him a total of RMB 210,000 (approximately \$46,600 on the then exchange rate).

[30] According to the solicitor, the first payment of \$20,000 was excessive given the scope of work. It included time spent in Dalian to inspect documents and for a discussion with the complainant over lunch. It was the first time she had met him and she had not

by then engaged his services. It was unreasonable to charge his marketing time on that trip. He had included an explanation of adviser licensing, the code and complaints procedure, as well as his terms of engagement. It was unreasonable to charge for such regulatory requirements. The solicitor estimated that the initial meeting and assessment were worth \$2,000. A refund of \$18,000 was therefore required.

[31] As for the second payment of \$20,000, the solicitor estimated that the cost of preparing the application and detailed business plan was \$13,000. An additional refund of \$7,000 was therefore sought.

[32] The solicitor stated that no invoices or receipts had been provided for the RMB 210,000 paid.

[33] Mr Chak had also been dishonest or misleading. He continued to mislead the complainant by informing her he was chasing Immigration NZ, when in fact the reconsideration application had been declined in March 2018. It was highly unlikely that he continued to engage with Immigration NZ about the status of that application.

[34] The complainant therefore required a refund of \$25,000 (\$18,000 + \$7,000), as well as the difference in the exchange rate of \$6,600 and compensation of \$6,239.90 (being the solicitor's fee), a total of \$37,839.90. The solicitor noted that Mr Chak had failed to promptly refund the fees, as he had agreed to do.

COMPLAINT

[35] On about 11 February 2020, the complainant made a complaint to the Authority against Mr Chak. She had been told that his fee of \$60,000 for an entrepreneur application was unreasonable. He had failed to provide invoices and receipts. He had failed to promptly refund the fees paid. It was also alleged that Mr Chak had been dishonest and misleading. He did not advise her that the reconsideration application had been declined, but misled her by saying that he was chasing Immigration NZ. This led her to believe her application was still being processed when in fact it had been declined.

Mr Chak's solicitor responds to the complainant's solicitor

[36] On 6 April 2020, Mr Chak's solicitor responded to the letter of demand of 31 January 2020 from the complainant's solicitor.¹ The allegations were denied.

¹ A second identical copy of this letter (dated 25 May 2021) has been sent to the Tribunal. It is assumed it was merely reprinted on this date for the purpose of sending it to the Authority.

[37] According to Mr Chak's solicitor, the two payments of \$20,000 were made in accordance with the contract. Mr Chak denied that the fees were unreasonable, having regard to his experience and ability. Entrepreneur applications were complex and required high skill. They took time to process. Mr Chak also had to cover his business costs. The fee was agreed by the complainant.

[38] As for a refund, Mr Chak had reviewed the contract and did not consider a refund was required. The complainant had received what she had contracted for and more.

[39] The solicitor sent to the complainant's solicitor a "Tax Invoice/Receipt" for each of the two payments (backdated to 30 September and 9 December 2016). It was noted that the additional \$3,378 and \$11.50 paid were the fees of Immigration NZ and a courier fee respectively.

[40] As for the reconsideration application made on 22 January 2018, Mr Chak's solicitor recorded that Mr Chak did not receive any calls or correspondence from Immigration NZ. He did not receive the letter of 24 March 2018. Due to the complainant's requests, he used the direct line for advisers and lawyers to contact Immigration NZ but he did not receive any information. Furthermore, it was noted that the processing time for review by Immigration NZ was not particularly fast. After all, it had taken one year for the visa application to be decided.

Authority requires Mr Chak's file

[41] On an unknown date, the Authority wrote to Mr Chak requiring the production of the complainant's file. He replied on 25 May 2021, apparently with four emails attaching four sets of documents.

[42] The Authority wrote to Mr Chak on 16 August 2021, giving details of the complaint and inviting his explanation. It was noted that he had previously said he did not receive the decline letter and that he had sought updates by telephoning Immigration NZ. However, Immigration NZ's notes recorded that the reconsideration decline letter was sent both by email on 24 March 2018 and by tracked courier two days later on 26 March.

Explanation to Authority from Mr Chak

[43] Mr Chak's solicitor replied to the Authority on 1 September 2021. The grounds of complaint were rejected.

[44] As for the reconsideration letter, it was not received electronically or by post. Mr Chak had made attempts to obtain information on the progress of the reconsideration application by telephone using the direct line available for immigration advisers and lawyers, but he did not receive any update. He was unable to reach anybody at Immigration NZ.

[45] In respect of the Dalian consultation on 26 September 2016, this was one of several initial consultations, but it was not the first. Mr Chak had already met with the complainant's husband (representing himself and his wife) in Auckland free of charge. In any event, the fact that written consent was not obtained prior to the Dalian meeting was trivial and inconsequential. It did not need to be pursued. The complainant chose to proceed with the formal engagement of Mr Chak and agreed to make the payment, including the time spent in Dalian.

[46] As for the invoices, the complainant did not raise the lack of formal invoices until four years after she had paid. Furthermore, Mr Chak was travelling when they were payable so he did not provide formal invoices at that time. However, backdated invoices had been provided to the complainant's lawyer when the matter was raised in 2020. Mr Chak had complied with the purpose of the requirement, which was to ensure that an adviser remained accountable for the fees and disbursements charged. Additionally, the fact that invoices were not issued at the time the amounts were payable was trivial and inconsequential. It did not need to be pursued.

[47] As for the requirement to maintain a hard copy or electronic file, there had been compliance with this obligation. Mr Chak's hard copy file had the contract, applications and invoice/receipts. His 'WeChat' conversations with the complainant were in an electronic record. They were not provided to the Authority when the request was made as they were not in hard copy. They could be provided on request.

Complaint filed in the Tribunal

[48] On 20 December 2021, the Registrar referred the complaint to the Tribunal alleging against Mr Chak:

Dishonest or misleading behaviour

1. Leading the complainant to believe that her reconsideration application was still being assessed.

Breach of the Code

2. Failing to obtain the complainant's written consent for the fees accrued prior to signing the written agreement, in breach of cl 16(a).
3. Failing to provide the complainant with invoices containing a full description of the services prior to receiving payment, in breach of cl 22.
4. Failing to maintain a hard copy and/or electronic file including copies of the contract and written communications (such as file notes of oral communications), in breach of cl 26(a)(ii) and (iii).

JURISDICTION AND PROCEDURE

[49] 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.

[50] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.²

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

[52] 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.⁵

² Immigration Advisers Licensing Act 2007, s 45(2) & (3).

³ Section 49(3) & (4).

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

⁵ Section 50.

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

[54] 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.⁸

[55] The Tribunal has received from the Registrar the statement of complaint (20 December 2021), with supporting documents. At the Tribunal's request, the Registrar provided further information on 21 September and 6 October 2022.

[56] On 21 February 2022, the complainant filed a statement of reply (17 February 2022) and a response (21 February 2022) to Mr Chak's statement of reply, with supporting documents.

[57] Mr Chak has filed a statement of reply (4 February 2022), with submissions and supporting documents. He filed further submissions (8 March 2022) in reply to the complainant's response to his statement of reply.

[58] In response to a request from the Tribunal, Mr Chak filed an affirmation (sworn 4 November 2022). In his affirmation, Mr Chak clarifies certain matters:

1. His office premises are serviced offices operated by an office sharing company. They changed from level 27 to level 26 of 188 Quay Street as from 31 May 2019.
2. Mr Chak says he made several business trips to Asia during 2018. He was kept up to date on parcel/courier deliveries by the building's receptionist. When he was in New Zealand, he also went to the office. There was no update in respect of any letter from Immigration NZ for the complainant. If he had known of the decline, he would have advised her straight away.
3. He made a number of phone calls to Immigration NZ's 0800 general enquiry line during 2018, enquiring about the status of the reconsideration application. As he could not give the name of the assigned officer, the

⁶ Section 51(1).

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

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

operators spoken to were unable to assist. He could not send an email enquiry for the same reason.

ASSESSMENT

[59] The Tribunal will consider the heads of complaint separately.

Dishonest or misleading behaviour

1. *Leading the complainant to believe that her reconsideration application was still being assessed*

[60] The most serious allegation made against Mr Chak concerns the reconsideration application made on 23 January 2018, which was declined on 24 March 2018. It is common ground Mr Chak did not inform the complainant of the decline at any time. It is alleged that, in answering her various requests for updates, he dishonestly led her to believe that the application was still being processed by Immigration NZ.

[61] The requests made by the complainant of Mr Chak started on 8 April 2018. He replied that he would ask. She made a further request on 21 June. He responded on 22 June to say there had been no reply, but he would need to go to his office to check if there was any mail from Immigration NZ. She asked again on 5 July. His reply the next day stated that he had not received a letter, but he would ask again.

[62] The complainant then made a further request on 16 October 2018. He responded that he would ask Immigration NZ the following day. She asked again on 14 November. In his response, Mr Chak said that he believed Immigration NZ had started processing the application, adding he would call them in a couple of days. He did not reply to her requests on 28 November 2018 or 4 April 2019. She threatened to complain to the Authority on 29 May. He replied the next day. His reply is not relevant.

[63] There is no doubt Mr Chak's replies would have led the complainant to believe Immigration NZ was still processing her application, yet it had been declined as early as 24 March 2018.

[64] Mr Chak says he did not know about the decline, as he did not receive Immigration NZ's decline letter. It is his position that he did not receive any electronic copy of the letter and the hard copy was sent to the wrong address. It is also Mr Chak's evidence that he made enquiries of Immigration NZ using the 0800 telephone line available for advisers and lawyers, but he did not receive any useful information as he could not give the name of the case officer.

[65] Immigration NZ's file notes state that the decline letter was sent by email and by tracked courier. As for the email version, Immigration NZ's current file does not record the email address. Hence, it is not known what address it went to. Mr Chak's assertion that it was not sent to him by email will be accepted in the absence of evidence it was sent to the correct address.

[66] The hard copy version was sent to level 27 at 188 Quay St, Auckland Central, apparently by tracked courier. Immigration NZ no longer has any tracking information, but it was the correct street address at the time. Mr Chak says he did not receive it. His solicitor, in her statement of reply (4 February 2022), attributes this to a move to level 26, but this cannot be the explanation as the move did not occur until one year later.

[67] In his affirmation, Mr Chak says that if he had received the decline letter, he would have straight away told the complainant. Mr Chak appears not to have his own staff at the office, as he uses shared office space. It is conceivable the letter was either not delivered, or was delivered and went astray. There is no reason to disbelieve Mr Chak's statement that if he had known of the decline, he would have immediately notified the complainant.

[68] While Mr Chak's replies would have misled the complainant, there is no evidence he was dishonest or deliberately misleading in advising her that he had received no decision.

[69] In the alternative, the Registrar alleges Mr Chak was negligent by failing to advise the complainant in a timely manner that her reconsideration had been declined. Given that Mr Chak did not know of the decline, this allegation must fail.

[70] The first head of complaint is dismissed.

Breach of the Code

2. Failing to obtain the complainant's written consent for the fees accrued prior to signing the written agreement, in breach of cl 16(a)

[71] The Registrar relies on cl 16(a) of the Code:

Initial consultations

16. A licensed immigration adviser:

- a. must, if charging a fee for an initial consultation, before the initial consultation, obtain the client's written consent to the fee and the payment terms and conditions for that fee, and

...

[72] It is alleged by the Registrar that Mr Chak charged for his initial consultation, said to have been in Dalian. Certainly, Mr Chak charged for the meeting in Dalian which seems to have been on 26 September 2016. Yet the contract setting out Mr Chak's fees for the application and all ancillary work was not signed by the complainant until the following day. The Registrar therefore says Mr Chak did not notify the complainant before the meeting (for which he charged) of his fees and obtain her consent.

[73] Mr Chak says the contract signed by the complainant on 27 September was identical to one he had sent the complainant's husband on 20 September, before the meeting.⁹ This had been after the early communications with him and one or two meetings in Auckland.¹⁰

[74] The Dalian meeting was not the first communication between Mr Chak and the couple, as his solicitor points out. He had exchanged a number of texts with the husband commencing on 16 August 2016, though there is no evidence in the texts of any early meeting in Auckland. These texts were all before the Dalian meeting. It is apparent from these communications that Mr Chak gave substantive immigration advice.

[75] Furthermore, Mr Chak appears to be correct in asserting that he sent the contract to the husband on 20 September.¹¹

[76] It is submitted on behalf of Mr Chak that cl 16(a) refers only to *the* initial consultation, which he says was the meeting (or meetings) in Auckland.

[77] The Tribunal finds that the initial consultation contemplated by cl 16(a) need not be an in-person meeting. It could be a videoconference or other mode of communication, including an exchange of texts. Nor is it necessarily a single event. An exchange of texts could amount to an initial consultation.

[78] A critical pre-condition of charging for an initial consultation set by cl 16(a) is disclosure by the adviser of his or her fee or fee structure or how the fee is calculated (for example, the hourly rate and what activities are charged). Clause 16(a) requires not just disclosure, but also written consent to the fee and the payment terms. What cl 16(a) is designed to prevent is a client being ambushed by a surprise bill following the initial contact and probably some preliminary advice.

[79] The Tribunal accepts the submission by Ms Wedlake that cl 16(a) refers only to the initial consultation and that the Dalian meeting is not the initial consultation. It may

⁹ Statement of reply (4 February 2022) at [17](c).

¹⁰ Letter from Mr Chak's solicitor to the Authority (1 September 2021) at [13](a).

¹¹ Text Mr Chak to the complainant's husband (20 September 2016), at 080 of the Registrar's bundle.

have been the first communication directly with the complainant and possibly the first in-person meeting with either of them, but it was not the initial consultation envisaged by cl 16(a). That had occurred earlier in the exchange of texts and emails with the husband, who was communicating with Mr Chak on behalf of both of them. Mr Chak does not appear to have charged, at least expressly, for the exchanges which had occurred before the Dalian meeting.

[80] As the Dalian meeting was not the initial consultation and as Mr Chak did not charge for the earlier text exchange, which was the initial consultation, there has been no breach of cl 16(a). The second head is dismissed.

3. *Failing to provide the complainant with invoices containing a full description of the services prior to receiving payment, in breach of cl 22*

[81] The Registrar relies on cl 22 of the Code:

Invoices

22. A licensed immigration adviser must, each time a fee and/or disbursement is payable, provide the client with an invoice containing a full description of the services the fee relates to and/or disbursements that the invoice relates to.

[82] In accordance with the services contract and at Mr Chak's request, the complainant transferred into Mr Chak's bank account on 28 September 2016 the sum of RMB 97,919, being RMB 97,182 for the first instalment and also the cost of a flight. In a text on 30 September 2016, Mr Chak confirmed receiving the money.

[83] Mr Chak requested payment of the second instalment on 29 November 2016. The complainant paid \$23,389.50 (\$20,000 + \$3,378 + \$11.50), the equivalent of RMB 114,368, on 7 December 2016. Mr Chak notified the complainant of its receipt on 9 December 2016.

[84] Mr Chak did not send invoices to the complainant prior to or at the time these amounts were payable. He says this was because he was travelling. That is not a valid reason. He should have provided invoices prior to travelling or delayed requesting payment until he had first complied with his obligation to send an invoice. He belatedly provided tax invoice/receipts (retrospectively dated) through his solicitor some years later on 6 April 2020, after the complaint had been made to the Authority.

[85] In his submissions to the Tribunal, counsel submits that Mr Chak "effectively sent invoices" by sending the complainant the contract, text messages and screenshots which

contain a full description of the services, disbursements and fees and confirmed receipt of the fees.

[86] Counsel's interpretation of the requirement for an "invoice" is strained beyond the plain English requirement set out in cl 22. A document containing certain information known universally as an invoice must be provided before or at the time of payment. This is in addition to the contract, which will often set out the same information, and any detailed description or helpful reminder or confirmation of payment from the adviser in correspondence. The reason for this is as clear as the obligation itself. It is to ensure that the client can see unequivocally, in one document, how much to pay, what it is for and when to pay. It is also to provide a paper trail for the Authority's investigator concerning payment when a complaint is made. Neither the client nor the investigator should be required to reconstruct this information from multiple documents created over a period of time.

[87] Counsel also notes that on 6 April 2020, Mr Chak's then solicitor provided two invoices to the complainant's solicitor (backdated to 30 September and 9 December 2016). The sending of such belated invoices more than three years later is, self-evidently, not compliance with the obligation to provide the invoices at the time the fee is payable. Indeed, they are a recognition of the breach of the obligation.

[88] Mr Chak breached cl 22 of the Code on about 28 September and again on about 7 December 2016. The obligation to provide invoices is an important form of record-keeping and transparency in the use of other people's money. The breach on two occasions is not trivial. The third head of complaint is upheld.

4. *Failing to maintain a hard copy and/or electronic file including copies of the contract and written communications (such as file notes of oral communications), in breach of cl 26(a)(ii) and (iii)*

[89] The Registrar relies on cl 26(a)(ii) and (iii) of the Code:

File management

26. A licensed immigration adviser must:

- a. maintain a hard copy and/or electronic file for each client, which must include:

...

- 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

...

[90] The Registrar contends that Mr Chak's file did not contain any form of notes, records of electronic communications or other relevant correspondence. For example, according to the Registrar, Mr Chak had to ask the complainant for a copy of the service contract.

[91] In his submissions to the Tribunal, counsel repeats the explanation given to the Authority. Mr Chak confirms that he did maintain a hard copy file, which included the contract. His material written communications were all kept in the hard copy file or as an electronic file of WeChat communications. As for the request that the complainant provide a copy of the contract, Mr Chak's solicitor says that Mr Chak was travelling at the time and did not have a hard copy handy.

[92] It is unclear to the Tribunal what communications are alleged to be missing from Mr Chak's hard copy or electronic files. Mr Chak provided a copy of his hard copy file to the Authority electronically (by scanning the file and then sending it by email on 25 May 2021).

[93] The Registrar does not identify in the supporting documents what came from Mr Chak and what came from the complainant and therefore what is missing from Mr Chak's file. It does though appear to the Tribunal that the electronic exchange of texts (between Mr Chak and the complainant or her husband) in the supporting documents came from the complainant. Mr Chak's solicitor said to the Authority on 1 September 2021 he could provide the texts on request, as Mr Chak had done in respect of the conversations about the payments and trip to Dalian. It is not known whether they were subsequently requested from him.

[94] As for Mr Chak's request to the complainant to bring a copy of the contract to the meeting in Dalian, Mr Chak was travelling. His failure to have it handy is not evidence he did not have a hard copy in his file in Auckland.

[95] Missing, however, from Mr Chak's records are notes of his meetings with the complainant and/or her husband. There are no notes of the meeting in Dalian, nor of those in New Zealand. There was at least one meeting in New Zealand on about 24 January 2017. His solicitor says there was a meeting or meetings in Auckland before the meeting in Dalian. It is inconceivable that, at both the Dalian meeting and the first

post-Dalian meeting in New Zealand, there were no material communications concerning the immigration criteria or the necessary documents.

[96] However, the absence of any notes of the meetings is not a breach of cl 26(a)(iii) of the Code as cited by the Registrar, but of cl 26(c) which has not been cited.¹² Clause 26(a) concerns file maintenance and integrity (of documents which have been created) and does not oblige advisers to create documents. As it is not established what is missing from Mr Chak's files, the fourth head of complaint is not upheld.

OUTCOME

[97] The complaint is partially upheld. Mr Chak has breached cl 22 of the Code.

SUBMISSIONS ON SANCTIONS

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

[99] A timetable is set out below.

Timetable

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

- (1) The Registrar, the complainant and Mr Chak are to make submissions by **3 February 2023**.
- (2) The Registrar, the complainant and Mr Chak may reply to submissions of any other party by **17 February 2023**.

ORDER FOR SUPPRESSION

[101] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.¹³

[102] There is no public interest in knowing the name of Mr Chak's client.

¹² The Tribunal has no power to amend the statement of complaint; see *Mizoguchi v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 3198 at [45].

¹³ Immigration Advisers Licensing Act 2007, s 50A.

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

D J Plunkett
Chair