

**BEFORE THE IMMIGRATION ADVISERS
COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2015] NZIACDT 91

Reference No: IACDT 010/15

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Alexandre Matheis

Complainant

AND

Hong Ling

Adviser

DECISION

REPRESENTATION:

Registrar: Mr Dumbleton, lawyer, Ministry of Business, Innovation and Employment

Complainant: In person

Adviser: Mr S Laurent, lawyer, Laurent Law, Auckland.

Date Issued: 8 October 2015

DECISION

Preliminary

- [1] Ms Ling is a licensed immigration adviser, she works in a practice where her husband, Mr Li, is the director of the company that operates the practice, but he is not a licensed immigration adviser. There are also other licensed immigration advisers in the practice.
- [2] The parties largely agree on the general background:
 - [2.1] The complainant came to the practice, and had a meeting with a licensed immigration adviser.
 - [2.2] That licensed immigration adviser referred the client to Ms Ling, who could not see him at the time. He returned, and met with Mr Li.
 - [2.3] Ms Ling had either no contact or limited contact with the complainant. Mr Li gathered information, and undertook the client engagement process.
 - [2.4] Ms Ling used the information Mr Li gathered from the complainant to progress his immigration request.
 - [2.5] When the Registrar received this complaint, she requested that Ms Ling provide a copy of her client file. Ms Ling provided only part of it and then provided file notes pertinent to the complaint after the Registrar disclosed the grounds of complaint.
- [3] The first issue involves ascertaining what professional services Ms Ling and Mr Li, respectively, provided to the complainant. There is a critical factual dispute. The complainant says he never met Ms Ling, and Ms Ling says she did briefly meet the complainant. After I have made a factual finding on that issue, the question is then whether Ms Ling met her obligations to ensure only a licensed immigration adviser provided professional services.
- [4] The second issue is whether Ms Ling failed to comply with the Registrar's request to provide her client file and, if so, the circumstances surrounding such a failure.
- [5] Each issue requires an examination of the facts, and then a consideration of the professional obligations of Ms Ling.
- [6] The Tribunal has determined Ms Ling failed to meet her obligation to ensure only a licensed immigration adviser provide professional services, and she failed to comply with the Registrar's requirement that she provide her client file.

The Complaint

- [7] The Registrar filed a statement of complaint. The foundation of the complaint is an allegation by the complainant that:
 - [7.1] On 6 August 2014, Immigration New Zealand declined the complainant's application for a work visa, and the following day declined his application for residence.
 - [7.2] Ms Ling is a licensed immigration adviser; her practice is within the operations of Leader Investment Group Ltd (the company). The complainant consulted that practice and Mr Gao, a licensed immigration adviser, told him he could lodge an application for a visa under section 61 of the Immigration Act 2009. He told the complainant to return to consult with Mr Li. Mr Li is not a licensed immigration adviser, but he controls the company and is Ms Ling's husband.
 - [7.3] On 12 August 2014, the complainant returned and met with Mr Li. He entered into a written agreement to apply for a visa under section 61, and paid Mr Li \$500. The complainant says Ms Ling had signed this agreement before Mr Li presented it to him. On 13 August 2014, the complainant again met with Mr Li. Mr Li advised the complainant he could not appeal the decline of his work visa application, or write to the Minister; he provided a list of documents required for the section 61 request.

- [7.4] On 27 August 2014, Ms Ling submitted a section 61 request. Immigration New Zealand refused the request on 22 September 2014, and Mr Li notified the complainant. On 26 September 2014, the complainant telephoned Mr Li who advised him there was nothing he could do to assist the complainant.
- [7.5] On 29 September 2014, the complainant engaged a new immigration adviser.
- [7.6] On 28 October 2014, the Immigration Advisers Authority requested that Ms Ling provide a copy of her client file for inspection. She provided some material. After the Immigration Advisers Authority provided more information concerning the grounds of complaint, Ms Ling's counsel provided information purporting to come from Ms Ling's client file, which she had not provided when requested by the Authority.
- [8] The Registrar identified two potential grounds of complaint which she considered the complaint potentially disclosed. These were particularised as:
- [8.1] Ms Ling breached clauses 2(e) and 3(c) of the Licensed Immigration Advisers Code of Conduct 2014 (the 2014 Code). The first of these two provisions required that Ms Ling obtain and carry out the informed lawful instructions of her client. The second required her to act in accordance with New Zealand immigration legislation, including the Immigration Act 2009, and the Immigration Advisers Licensing Act 2007.
- [8.2] The Registrar provided the following particulars:
- [8.2.1] The complainant believed Mr Li was his adviser; he did not know Mr Li was not a licensed immigration adviser.
- [8.2.2] The complainant never met or spoke with Ms Ling; she was neither present at any meetings, nor provided any advice.
- [8.2.3] Mr Li is not a licensed immigration adviser and not exempt.
- [8.2.4] Mr Li interviewed the complainant and Ms Ling relied on the information obtained in that way to assess immigration options and carry out instructions; whereas she was required to obtain and carry out the complainant's lawful informed instruction.
- [8.3] Ms Ling breached clause 26(e) of the 2014 Code, which required that she make client files available for inspection on request by the Immigration Advisers Authority.
- [9] The Registrar provided the following particulars:
- [9.1] Ms Ling did not provide her full client file when the Authority requested that she do so, in the course of investigating this complaint.
- [9.2] When provided with further particulars of the complaint, Ms Ling provided further records purporting to be additional parts of her client file.

Ms Ling's response to the Statement of Complaint

- [10] Ms Ling's response to the Registrar's Statement of Complaint was in the form of a memorandum of counsel. Ms Ling earlier provided affidavits in support of her position.
- [11] In relation to the allegation concerning Ms Ling allowing an unlicensed person to carry out some of her responsibilities, the memorandum referred to information the complainant himself supplied in response to the complaint. It appeared that information was potentially an admission Ms Ling did breach the 2014 Code. Certainly, the Registrar adopted that approach in the Statement of Complaint. However, the memorandum contended there was insufficient information to establish that an unlicensed person did provide immigration advice.
- [12] The memorandum contended that Ms Ling made a mistake thinking that her client file only related to communications with Immigration New Zealand, so was not intentionally deficient in complying with the Registrar's request for her client file.

The Tribunal's request that Ms Ling appear before it

- [13] The Tribunal found Ms Ling's response problematic. It issued directions inviting Ms Ling to appear before the Tribunal and provided an opportunity for the Registrar and the complainant to provide any further evidence. The Tribunal identified its concerns as follows:

Unlicensed immigration advice

- [13.1] The memorandum stated Ms Ling says she arranged for the complainant to "visit our office on Monday and that he should see [Mr Li (the unlicensed person)] who could collect as much as possible of information, document or evidence from the Complainant".
- [13.2] This appeared to be an admission that the work Ms Ling entrusted to an unlicensed person was the essential function of taking instructions, which requires a professional person to make proper inquiries of their client. That is a necessary and important part of providing professional immigration services. Furthermore, Ms Ling was required to provide initial advice to her client, so she could gain lawful and informed instructions. It did not appear she did so before this point.
- [13.3] The Immigration Advisers Licensing Act 2007 appeared to make it a criminal offence for an unlicensed person to take instructions for the purpose of a licensed immigration adviser preparing an application.

Failure to provide the full client file

- [13.4] The memorandum claimed "[T]here is insufficient probative evidence" to establish Mr Li provided advice.
- [13.5] While that approach may be appropriate in a criminal prosecution, it is not appropriate in relation to a professional conduct hearing before a disciplinary Tribunal.
- [13.6] Professional people often undertake complex technical work where there is an inevitable risk of an adverse outcome. If they have no obligation to account for their conduct, in many cases it would be impossible to ascertain whether they were at fault. Accordingly, disciplinary Tribunals typically have an inquisitorial function, exercised in the public interest. This Tribunal's inquisitorial powers include section 49(4), which provides the power to request further information and to request that a person appear before the Tribunal.
- [13.7] The Tribunal expected Ms Ling to identify in the memorandum what she knew at the time, and what she has since ascertained. The memorandum Ms Ling filed left the impression the Tribunal may not be informed of Ms Ling's full understanding of matters.

The Complainant did not respond

- [14] The complainant did not respond to the Statement of Complaint.

Oral hearing

- [15] Ms Ling appeared before the Tribunal, and in addition to Ms Ling's own evidence, Mr Li and Mr Gao also gave evidence. The Registrar appeared at the hearing through counsel, who explained that the complainant was no longer in New Zealand and took no role in the hearing. Counsel for the Registrar cross-examined the witnesses, and provided submissions.
- [16] While the Tribunal hears complaints on the papers where possible, where there is oral evidence the Tribunal gives it the weight appropriate for sworn testimony tested by cross-examination. I treat the evidence Ms Ling provided in response to the complaint accordingly.

The issues

- [17] Ms Ling accepted the essential narrative set out in the Registrar's Statement of Complaint. However, there were some critical differences.
- [18] Ms Ling contended the account of meetings the complainant attended, as documented in the statement of complaint, are incorrect. Her position is that:
- [18.1] There were two meetings in person between the complainant and Mr Li, not one.
- [18.2] The first of those meetings occurred on 11 August 2014. In that meeting, Mr Li took an immigration history from the complainant.
- [18.3] Ms Ling says the meeting on 11 August 2014 resulted in her assessing the complainant's immigration circumstances, relying on the information Mr Li gathered. She communicated her assessment to Mr Li.
- [18.4] Mr Li then met with the complainant the following day, which was 12 August 2014. Ms Ling had prepared an agreement for the provision of professional services. She attended that meeting, but only briefly as she was engaged with another client at the time. Mr Li told the complainant what documents he had to provide.
- [18.5] The complainant delivered the documents the next day, 13 August 2014. Ms Ling then undertook the work to lodge the section 61 application.
- [19] On Ms Ling's account, she engaged personally with the complainant for a few minutes; on the complainant's account she did not engage with him at all. It is necessary to determine what the factual position is, and then determine whether Ms Ling did fulfil her obligations under clauses 2(e) and 3(c) of the 2014 Code in relation to her engagement with her client.
- [20] The second issue includes the delivery of the client file. Ms Ling says she made a mistake and did not deliver the complete client file; she had understood the Registrar's request only extended to what she sent to Immigration New Zealand. The Registrar says the request was clear; Ms Ling failed to comply, deliberately making a tactical response to the Registrar's investigation. When given more information, Ms Ling responded with additional information, including file notes, which the Registrar characterised as suspicious.

Discussion

The standard of proof

- [21] The Tribunal determines facts on the balance of probabilities; however, the test must be applied with regard to the gravity of the finding: *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [55].

Failure to provide complete client file

- [22] Ms Ling's failure to provide her full client file to the Immigration Advisers Authority has a bearing on the evidence she provided to support her claims relating to giving unlicensed advice. Accordingly, I will address that issue first.
- [23] The Registrar receives complaints, evaluates them on their face, and requests a copy of the licensed immigration adviser's file if the complaint warrants such a step. The Registrar does not disclose the nature of the complaint when requesting the file. That is what occurred in this case. In a letter dated 28 October 2014, the Registrar informed Ms Ling of a complaint against her, and issued a formal demand under section 57(1)(c) and (d) of the Immigration Advisers Licensing Act 2007 (the Act). The notice warned Ms Ling it was an offence to fail to comply "in any respect". The notice required that she "produce for inspection the full client file" relating to the complainant.

- [24] The wording appears unambiguous. Ms Ling contended that when she received the request she thought the “full client file” was only the documents submitted to Immigration New Zealand, and did not include file notes, the service agreement, invoices and the like.
- [25] Her counsel submitted that the absence of this whole body of information was so conspicuous the Registrar would obviously have noticed; and this demonstrated that Ms Ling’s non-compliance was an innocent mistake.
- [26] The Registrar’s approach of not providing particulars of a complaint when requesting a file provides an important protection for licensed immigration advisers. Generally, it will then be impossible that file notes, and other documents produced without notice of the particulars of the complaint, could be fabricated in response to the complaint. Among the documents Ms Ling produced after she found out the details of the complaint, but not before, was a set of file notes. Unsurprisingly, the Registrar characterised the file notes as “suspicious”. They could be a dishonest fabrication to answer the complaint; and the suspicion they were so is given substance by the fact Ms Ling failed to produce them earlier when required to do so.
- [27] I found Ms Ling’s explanation that she misunderstood the Registrar’s formal demand under the Act, implausible and I reject it. Ms Ling is required to have a high level of understanding regarding the Act and the Code, and on a day-to-day basis to deal with complex statutory processes. The words “full client file” are unambiguous. Mr Gao, who gave evidence, had no difficulty comprehending what the term meant. The Registrar included careful warnings in the notice regarding the fact it was a criminal offence not to comply in any respect.
- [28] The submission that the Registrar could see the file was incomplete is a pointer to innocent misunderstanding, is unpersuasive. Far more plausible is the explanation that Ms Ling intentionally complied with the request partly and selectively, preserving the opportunity to tailor her response as the Registrar’s investigation progressed. She had no sensible explanation for failing to understand the plain wording of the Registrar’s notice and the serious warnings contained in it. Ms Ling had to demonstrate an ability to understand legal processes of this kind to gain a licence as a licensed immigration adviser.
- [29] I have determined this issue on the balance of probabilities, but at the higher end of the sliding scale given the gravity of the finding. I am sure the evidence establishes Ms Ling deliberately made an incomplete response to the statutory request for her file, and accordingly breached clause 26(e) of the 2014 Code. That provision required that Ms Ling “make [her] records available for inspection on request by the Immigration Advisers Authority”. Instead, she failed to comply with a proper and specific request.

Professional services delivered by an unlicensed person

- [30] Ms Ling relied heavily on a handwritten document titled a “Liaison Record”; on its face it is a series of file notes. This is the document the Registrar found suspicious, when Ms Ling produced it after becoming aware of the grounds of complaint. When questioned in the course of her evidence, Ms Ling said she and others in the practice created the key parts of the document days after the events; she was not specific regarding the timing. Mr Gao and Mr Li also agreed they made their entries in the document and they said they were created shortly after the events.
- [31] The Registrar’s characterisation of this document as suspicious arose not only from the failure to produce it when required, but also from the surprising entry Ms Ling made in it. The entry was lengthy and set out a range of issues relating to the information required to proceed with an application under section 61. Purportedly, the entry recorded Ms Ling’s instructions to Mr Li regarding the information she sought when he interviewed the complainant. However, given that Ms Ling says she created the file note after Mr Li had already gathered the information described in the note, it makes little sense she would write out this level of detail. It would have made far more sense to set out for her client the information now held, and her evaluation of it.
- [32] The complainant is clear he never met Ms Ling. He swore a statutory declaration to that effect; however, for understandable reasons he was not available for cross-examination. That leaves me with a concern. Ms Ling claims she attended a meeting with the complainant very briefly while attending to another client. Without cross-examination, I am not willing to exclude the possibility of confusion. I can only speculate as to what the complainant would say if asked whether he is sure nobody came into one of his meetings for a few minutes, and if so whether

it could have been Ms Ling. Given the gravity of an adverse finding on this issue, I will accept the file notes are probably accurate records of what transpired, on the basis they are relatively contemporaneous written records.

- [33] Those records, and the evidence given by Ms Ling , Mr Li and Mr Gao, establish that:
- [33.1] Mr Gao had an initial meeting with the complainant on 9 August 2014. He identified that if the complainant was to obtain a visa, an application under section 61 was his only option. He referred the complainant to Ms Ling.
- [33.2] Next, Mr Li met with the complainant on 11 August 2014. He gathered some information regarding the complainant's circumstances.
- [33.3] Ms Ling, without any contact with the complainant, later that day evaluated the complainant's immigration prospects, determined the reasons for the complainant's failed immigration application, and ascertained what information was required to pursue a request under section 61. She also prepared an agreement for the provision of professional services.
- [33.4] The following day, Mr Li met with the complainant, and Ms Ling joined that meeting for a few minutes – interrupting the meeting she was having with another client to do so.
- [33.5] The complainant subsequently provided the necessary documents and Ms Ling proceeded with the section 61 request.
- [34] To evaluate whether, on those facts, Ms Ling met her professional obligations it is necessary to consider and apply the Act to what occurred. The Act was, among other things, intended to put an end to a history of a small minority of advisers exploiting vulnerable migrants. The background to the Act, reflected in section 3, is discussed in *ZW v Immigration Advisers Authority* [2012] NZHC 1069.
- [35] It is evident the legislative scheme has been constructed in a manner designed to exclude unlicensed people being engaged in the delivery of professional services, to a degree that is exceptional in the regulation of professional service delivery. It was foreseeable that some people, who had formerly provided immigration services and failed to gain a licence, would seek to have a licensed person purportedly supervising them and, in fact, “rubber stamping” their actions. Unfortunately, this Tribunal's work and criminal prosecutions under the Act demonstrate this was a well-founded apprehension.
- [36] Against that background, the policy behind the Act's stringent restrictions on unlicensed persons providing immigration services is evident. Section 63 of the Act provides that a person commits an offence if they provide “immigration advice”, without being either licensed or exempt from the requirement to be licensed.
- [37] Section 7 defines the scope of “immigration advice” very broadly. It includes:
- “using, or purporting to use, knowledge of or experience in immigration to advise, direct, assist, or represent another person in regard to an immigration matter relating to New Zealand ...”
- [38] The expansive nature of the definition of “immigration advice” leaves no doubt that Mr Li did provide immigration advice as defined. He had knowledge and experience in immigration matters. He was an active participant in the process of engaging the complainant as a client and gathering the information required.
- [39] In the Tribunal's decision *JM v DTM* [2011] NZIACDT 1, the Tribunal emphasised these aspects of professional responsibility:
- [38] It is evident a key element of the mechanism in the Act is that licensed immigration advisers are clearly identified; client relationships commence with the Adviser identifying their standing, and providing of a copy of the Code (Code clause 1.4). The scope of section 6 is wide, and one no doubt intended to ensure licensed advisers are not able to be used as a “front” for unlicensed operators. The legislation is structured to effect functional

exclusion from the professional relationship of any person who is not either licensed or exempt.

- [40] Despite the very wide scope of section 7, there are exceptions. Section 7 provides that the definition does not include “clerical work, translation or interpreting services”. Accordingly, the question arises as to whether the work Mr Li undertook came within that exception.
- [41] The scope of “clerical work” is important, as otherwise the very wide definition of immigration advice would likely preclude any non-licence holder working in an immigration practice in any capacity.
- [42] “Clerical work” is defined in section 5 of the Act in the following manner:
- clerical work** means the provision of services in relation to an immigration matter, or to matters concerning sponsors, employers, and education providers, in which the main tasks involve all or any combination of the following:
- (a) the recording, organising, storing, or retrieving of information:
 - (b) computing or data entry:
 - (c) recording information on any form, application, request, or claim on behalf and under the direction of another person
- [43] The definition is directed to administrative tasks, such as keeping business and financial records and the like. The definition of “clerical work” deals specifically with the role a non-licensed person may have in the process of preparing applications for visas. They may record information “on any form, application, request, or claim on behalf and under the direction of another person”. The natural meaning of those words is that the unlicensed person relying on the “clerical work” exception may type or write out what another person dictates. That other person may properly be the person who is making the application, a licensed immigration adviser, or a person who is exempt from being licensed. The person typing or writing out the form, in those circumstances, is not giving immigration advice.
- [44] The definition does not give any authority for the unlicensed person to make inquiries and determine what is to be recorded on the form. Under the definition they must do nothing more than “record” information as directed. This is the role of a word processor operator, not an author. Assisting a person to fill in a form by telling them what is required, or seeking the relevant information, does not come within the exception.
- [45] The other potential exception in section 7 is that immigration advice does not include “providing information that is publicly available, or that is prepared or made available by the Department”. All immigration law and practice is publicly available, and Immigration New Zealand publishes information providing guidance. This exception allows no more than the supply of the published information; it does not allow the provision of advice, informing, directing, or the like, using that information.
- [46] The straightforward implications of the legislation are that only licensed and exempt persons can engage with clients, other than in respect of truly clerical matters.
- [47] These boundaries are critical for licensed immigration advisers. Section 63 provides that a person commits an offence if they provide immigration advice without being licensed to do so, or they are exempt from holding a licence, knowing that they are required to be licensed or exempt. It is also an offence for that conduct, where the person does so without knowledge of the Act’s terms.
- [48] The range of penalties for a breach of section 63 is imprisonment for up to 7 years, a fine of \$100,000 or both for knowing offending, and a fine of up to \$100,000 if the knowledge element is absent. The Courts have treated the offending as having a gravity that reflects the range of penalties. In *Hakaoro v R* [2014] NZCA 310 the Court of Appeal dealt with an appeal against a

sentence of one year and eight months' imprisonment on charges under the Act. Mr Hakaoro's appeal was unsuccessful, as was his application for leave to appeal to the Supreme Court.¹

- [49] If a licensed immigration adviser is a party to an unlicensed person providing immigration advice, this involves serious criminal offending against their client. The criminalisation of unlicensed persons providing immigration services categorically excludes unlicensed persons from providing immigration services, whether operating under the umbrella of a licence holder or otherwise. The profession is well aware of this restriction and the consequences of such breaches, which are a recurring issue in complaints before this Tribunal.
- [50] A person seeking a licence under the Act is required to demonstrate that they understand the essential principles of immigration practice before they obtain a licence. There are numerous decisions of this Tribunal addressing licensed immigration advisers being a party to unlicensed persons providing immigration advice. The *ZW* case (above) affirmed the relevant principles, and recent criminal sentencing decisions further affirm the effect of the Act. Since the Act has regulated the profession, the Immigration Advisers Authority has publicised these obligations and the decisions of the Tribunal and the courts relating to the issue.
- [51] The consequences of a professional person allowing or facilitating serious criminal offending to occur in their practice, are obvious.
- [52] What occurred in this case was a systematic breach of the Act. Mr Gao only provided a referral, he did not provide any substantial advice and he did not undertake the client engagement process. Mr Li took the complainant's instructions, gathered the information regarding his circumstances, and undertook the client engagement process.
- [53] The work Mr Li performed is at the heart of the work a licensed immigration adviser must undertake personally. Ms Ling only engaged with the complainant for a few minutes, and relied on the information Mr Li gathered. One of the requirements to be a licensed immigration adviser is to have a high standard of skill in the English language. Mr Li interviewed the complainant using the English language. The complainant is a national of Brazil and, presumably, his first language is Portuguese. Mr Li required an interpreter to give evidence before the Tribunal, as his first language is Mandarin. Ms Ling could have no confidence Mr Li was effective in interviewing the complainant, both because of potential communication issues giving rise to client care concerns, and because she could not be satisfied Mr Li had the knowledge required to communicate the technical information necessary to gain informed instructions.
- [54] Regardless, an unlicensed person could not perform the processes that were legally required to be undertaken by a licensed immigration adviser, and Ms Ling could not have performed them in the course of the few minutes she spent with the complainant. The process Mr Li undertook required him to:
- [54.1] Engage with the complainant and ascertain his immigration history, including the reasons he was in New Zealand unlawfully without a visa.
- [54.2] Ascertain the information required to determine whether other information might cause Immigration New Zealand to take a different view, given that the complainant's immigration history included a failed application.
- [54.3] Undertake the process of client engagement, which includes those steps mandated by the 2014 Code. The licensed immigration adviser must:
- [54.3.1] ascertain any client care obligations that may arise (clause 2 of the 2014 Code). That includes gaining informed instructions, which will involve an evaluation of the client's immigration prospects and explaining the relevant matters to the client;
- [54.3.2] ascertain any legislative obligations that may arise (clause 3 of the 2014 Code);
- [54.3.3] provide evidence of being licensed (clause 14 of the 2014 Code);

¹ [2014] NZSC 169.

[54.3.4] explain the summary of their professional responsibilities (clause 17 of the 2014 Code); and

[54.3.5] before entering into a written agreement, explain all significant matters in the written agreement (clause 18 of the Code). This includes their evaluation of immigration prospects so the client can evaluate the merits of giving their informed instructions, and an explanation of the key effects of the agreement.

[55] Each of these matters is immigration advice, as they all involve “using, or purporting to use, knowledge of or experience in immigration to advise, direct, assist, or represent another person in regard to an immigration matter”. They are not clerical matters. They all require serious application of judgment and skill. A licensed immigration adviser cannot lawfully delegate the taking of instructions, and client engagement, to an unlicensed person.

[56] The allegations against Ms Ling are that:

[56.1] she failed to obtain and carry out the lawful informed instructions of her client, in breach of clause 2(e) of the 2014 Code; and

[56.2] she failed to act in accordance with the Act, as she had an unlicensed person interview the complainant, assess his immigration options, and obtain and carry out his instructions in breach of clause 3(c) of the 2014 Code.

[57] I am satisfied Ms Ling did not have lawful informed instructions. She failed to engage with her client and inform him, and her instructions were not lawful as she also failed to undertake the necessary client engagement process mandated by the Code. The few minutes she spent with the complainant gave no opportunity for compliance.

[58] I am also satisfied Ms Ling knowingly breached the Act. She delegated important elements of taking instructions and gaining instructions to Mr Li; she knew doing so was a criminal offence. The breach was not slight or technical; it involved a fundamental disregard for the boundaries mandated by the Act.

Decision

[59] The Tribunal upholds the complaint pursuant to section 50 of the Act.

[60] The adviser breached the Code of Conduct in the respects identified; namely clauses 2(e), 3(c) and 26(e). They are grounds for complaint pursuant to section 44(2)(e) of the Act.

[61] The complainant had advanced wider grounds than those included in the Statement of Complaint, the Tribunal dismisses those additional grounds of complaint.

Submissions on Sanctions

[62] As the Tribunal has upheld the complaint, pursuant to section 51 of the Act it may impose sanctions.

[63] The Authority and the complainant have the opportunity to provide submissions on the appropriate sanctions, including potential orders for costs, refund of fees and compensation. Whether they do so or not, the adviser is entitled to make submissions and respond to any submissions from the other parties.

[64] Any application for an order for the payment of costs or expenses under section 51(1)(g) should be accompanied by a schedule particularising the amounts and basis for the claim.

Timetable

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

[65.1] The Authority and the complainant are to make any submissions within 10 working days of the issue of this decision.

- [65.2] The Adviser is to make any further submissions (whether or not the Authority or the complainant make submissions) within 15 working days of the issue of this decision.
- [65.3] The Authority and the complainant may reply to any submissions made by the adviser within 5 working days of her filing and serving those submissions.

DATED at WELLINGTON this 9th day of October 2015.

G D Pearson
Chair