

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2019] NZIACDT 41

Reference No: IACDT 030/17

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **IMMIGRATION NEW
ZEALAND (DARREN
CALDER)**
Complainant

AND **MARIA CHARINA (CHARIE)
SHEARER**
Adviser

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 19 June 2019

REPRESENTATION:

Registrar: Self-represented
Complainant: Self-represented
Adviser: S Laurent, counsel

PRELIMINARY

[1] Ms Shearer, the adviser, entered into an arrangement whereby the unlicensed staff of a recruiting business operating in Manila performed immigration work on her behalf that only a licensed adviser is allowed to perform. Nor did she have a written agreement directly with the clients and usually had no meaningful engagement with them at all. Ms Shearer admits multiple breaches of her professional obligations, but contends she was negligent rather than dishonest or misleading.

BACKGROUND

[2] Ms Maria Charina (Charie) Shearer was at the relevant time a licensed immigration adviser based in Auckland. She was the sole shareholder and director of a New Zealand company, Immigration Assist Ltd (Immigration Assist). As the Immigration Advisers Authority (the Authority) refused her a licence on 25 August 2017, Ms Shearer is no longer a licensed adviser.

[3] In mid-2015, Ms Shearer met (Ms C), a national of the Philippines, and agreed to help Ms C to get back into business by establishing a recruiting business. It was to operate under the legal entity of Ms Shearer's company, Immigration Assist. The trading name of the new business was IAL Employment Services (IAL Employment).¹ It specialised in the recruitment of migrant workers from the Philippines.

[4] A "Recruitment Agreement" was entered into on 23 November 2015 between IAL Employment and a New Zealand employer (the employer). The employer undertook to utilise the services of IAL Employment for the purpose of pre-selecting, recruiting, processing, documenting and deploying overseas workers. The employer would meet expenses of NZD 5,500 per candidate, which included an immigration application fee. Candidates would pay a bond of NZD 5,500 to be returned on successful completion of the employment contract. It was signed by Ms C on behalf of IAL Employment.

[5] In December 2015, Ms C and her associate, (Mr S), set up another company, [company]. The Companies Office registration shows its trading name to be IAL Employment Services NZ. It is not apparent to the Tribunal what involvement, if any, this company had in the matters giving rise to the complaint.

¹ The company registration of Immigration Assist Ltd shows it has a trading name of IAL Employment Services.

[6] Both Immigration Assist and IAL Employment operated in conjunction with (the training centre), which had been set up in the Philippines to provide training and other services to those who wished to migrate to New Zealand.

[7] It was Ms Shearer's understanding at the time IAL Employment was operating that it was her sole client, which she considered to be a trading entity in its own right. She believed that her company, Immigration Assist, was contracted by IAL Employment to provide immigration services. She did not believe that, as a licensed adviser, she had a direct client relationship with the visa applicants (who will be known in this decision as the drivers or the clients).

Visa applications lodged

[8] Between December 2015 and February 2016, Immigration New Zealand in Manila received the 22 applications for work visas lodged under Ms Shearer's licence which are the subject of this complaint.² Each client had been recruited by IAL Employment and had undergone driver training at the training centre. They had all been offered employment as truck drivers by the employer.

[9] Immigration Assist and IAL Employment used the training centre's office and its staff in the Philippines to receive documents and liaise with the clients. The staff obtained from the clients the documents required by Immigration New Zealand in accordance with a work visa checklist supplied by Ms Shearer. The documents were collated by the staff and then sent to Ms Shearer to assess eligibility. She would draft covering letters for each client to be sent to Immigration New Zealand. The applications were lodged with Immigration New Zealand by the staff in Manila.

[10] As Ms Shearer was not present in the Philippines, she authorised Petronilo Jun Balbin (Mr B), brother of Ms C, to sign the covering letters and visa application forms on her behalf. Once the applications were lodged with Immigration New Zealand by IAL Employment, Ms Shearer became the point of contact for official communication.

[11] A typical application was lodged on 21 December 2015 on behalf of one of the clients.³ Section B3 on the form identified Ms Shearer as the person for communications. It stated that she could be contacted at IAL Employment, care of the training centre, the Philippines street address of which was given. Ms Shearer's New Zealand email address (at Immigration Assist) and mobile telephone number were given. In section H,

² KN, FN, TC, NT, NC, ON, NF, BH, CN, BK, ST, PD, KB, UW, CQ, SS, KB, KO, XM, WT, (Mr GG) and (Mr BB).

³ Registrar's supporting documents at 7–14.

Ms Shearer's licence number, but not her name, was given in the place identifying the licensed adviser. In section I of the form, intended to be completed by the adviser or any person assisting the applicant by providing immigration advice, that person was identified as the same person described at B3. In other words, it was Ms Shearer. Also ticked was the box which stated that "I" have provided immigration advice and "my" details in section H are correct. Section I was not, however, signed by Ms Shearer or anyone else, as it should have been. Nor was it dated.

[12] Some of the cover letters to Immigration New Zealand were signed by Mr B and some by Ms Shearer herself. A typical cover letter to Immigration New Zealand enclosing a visa application concerns one client and is undated.⁴ It was on the letterhead of Immigration Assist and is signed by Mr B as the Manila extension office administrator "In behalf of Maria Shearer, Licensed Immigration Adviser, Licence No 200902211, Immigration Assist Limited". Another typical cover letter on the letterhead of Immigration Assist concerning a different client, dated 16 February 2016, was signed by Ms Shearer.⁵

[13] The clients were interviewed by Immigration New Zealand. A typical interview with one client was on 26 January 2016.⁶ He said he first approached the training centre to obtain a job. He told the immigration officer that the centre was connected to both "IAL" in New Zealand and the employer. He went to a company called Century Promotion for supporting documents. The training centre sent the documents to Century Promotion.

[14] The client said at the interview that he was assisted by a named person at the training centre to complete his visa application. At the centre, he received intensive driver training for 21 days. He paid the centre NZD 2,500 (PHP 80,000). Ms C, who worked at the centre, gave him a receipt. She arranged for the visa application through IAL Employment. He had given all his documents to her.

[15] According to the client, he did not talk to anyone at IAL Employment, nor anyone at the employer. The immigration "officer" was Ms Shearer. He had not spoken to her. The employer had shouldered the visa and medical fees. The client said he was an experienced truck driver and had previously worked for a Saudi company.

Immigration New Zealand raises concerns

[16] Immigration New Zealand became concerned about the applications. In February 2016, it sent similar letters to Ms Shearer regarding each of the 22 clients.

⁴ At 272–273.

⁵ At 293–294.

⁶ At 17–23.

[17] A typical letter relating to one client was dated 3 February 2016.⁷ It was noted that the visa application had stated Ms Shearer was the licensed immigration adviser, yet she had not signed the relevant section I of the form. Furthermore, the covering letter had been signed by Mr B, the Manila extension office administrator, on behalf of Ms Shearer. Immigration New Zealand had also noted that Ms C and Mr S had been corresponding with it regarding the application, but these people had not been declared on the form as persons to whom it could communicate.

[18] According to Immigration New Zealand, the client had said at the interview that he was unaware of the identity of the immigration adviser. The client had given the names of staff as the people with whom he had been in direct contact. There was a concern as to the risk to the integrity of the immigration system and the international reputation of New Zealand arising from the involvement of unlicensed advisers and the Philippines based agents who were not registered with the relevant Philippines government agency.

[19] The letter from Immigration New Zealand further recorded that Ms C had been taken to the Employment Relations Authority by former employees over unpaid wages. The Authority had ruled in six decisions that she had not complied with the terms of a settlement agreement reached in 2013, so had ordered her to pay the outstanding amounts.

[20] It was additionally noted by Immigration New Zealand in its letter of 3 February 2016 that the client had paid PHP 80,000 in training fees and PHP 40,000 in documentation fees to the training centre, money which he had borrowed. Immigration New Zealand was therefore unable to establish that the client's financial commitments would be sufficient to encourage his return to the Philippines after his intended stay in New Zealand.

[21] Immigration New Zealand also expressed concern that the job offer was not genuine. There were different names for the employer given in different places in the employment agreement. The client also declared in his interview that he had never been interviewed by the employer prior to the job offer. Immigration New Zealand had no response from the employer when contact was attempted. Given the differences in name, Immigration New Zealand could not be satisfied that the actual intended employer had attempted to recruit onshore. It had therefore not been established that the prospective employer had made genuine attempts to recruit New Zealand citizens or residents. The client's comments were invited.

⁷ At 74–78.

Ms Shearer responds to Immigration New Zealand's concerns

[22] On 5 February 2016, Ms Shearer wrote a letter to Immigration New Zealand responding to its concerns regarding 14 drivers. She explained that the employer had two different companies. It was the biggest client of IAL Employment, which she described as a recruitment agency based in New Zealand. IAL Employment was owned by Mr S who was its company director and managing director.

[23] According to Ms Shearer, the employer wanted the drivers to work as soon as they arrived in New Zealand, so Mr S supervised their training in the Philippines at the training centre. They were familiarised with the gearboxes used in New Zealand, about driving on the left side of the road and learned the New Zealand Road Code. She explained that Ms C worked for IAL Employment as a project director and was primarily tasked with client liaison, including managing the relationship with the New Zealand employer.

[24] In her letter to Immigration New Zealand, Ms Shearer said her own company, Immigration Assist, had been contracted by IAL Employment to provide immigration advice to ensure that the employer and IAL Employment met the requirements of the work visa applications. Immigration Assist was also responsible for lodging the applications and making sure that the required documentation was complete.

[25] Ms Shearer further noted in her letter of 5 February 2016 that it was a Philippines government requirement that recruitment be handled by an agency accredited by that government. IAL Employment had contracted with Century Promotion and [accredited agency], an accredited agency. IAL Employment advertised the jobs and directed applicants to that agency. Mr S personally met the selected candidates to explain the process and to ensure they met the criteria provided by the employer and Immigration Assist. The training centre then trained the selected drivers. Mr B worked alongside both Mr S and a trainer accredited by New Zealand's Transport Authority to ensure that the training was in accordance with the requirements.

[26] Once the clients were trained, the documentation from the drivers was passed to Ms Shearer to check, copy, authenticate and to prepare for the lodgement of their applications. She utilised the administrative staff of the training centre to help with this as she was based in New Zealand. It was her normal practice to have the client check the application form for corrections before it was signed. It was also her policy to be the last person to sign the immigration adviser's section of the form once the client had completed it. In this case, as she had to go back to New Zealand, she had authorised Mr B to sign on her behalf, including the covering letter.

[27] According to Ms Shearer, she had given strict instructions that if anything immigration related was needed, she had to be contacted immediately. No immigration advice was given to the drivers. When they applied for the job, all the requirements were already listed as part of the process checklist she had established. During the contract signing, they were passed information about the job, the training, the timeline and the employer. This was not immigration advice but part of an established process. There had been no breach of the licensing legislation, as her client was the employer who required her advice on process and best practice in order to facilitate the visa applications as a group. She had provided immigration advice to the employer as she was licensed to do.

[28] Mr B and his staff at the training centre had been acting under her direct instruction to submit the applications and to update the drivers. She had been in the Philippines in the period from 2 to 17 December 2015 to personally check that the process was working as designed, to oversee the applications and to carry out much of the processing work. The applications had been made with a sense of extreme urgency, as the employer had said he would terminate the contract if his deadline for the arrival of the first batch of truck drivers was not met.

[29] Ms Shearer explained that Ms C and Mr S were not correspondents for the drivers but liaised with the employer. In respect of the previous court case involving Ms C, Ms Shearer did not believe that her role was any threat to the New Zealand immigration system. Ms C was an employee of IAL Employment. The matter faced by her and her business had been settled and the issue had been resolved. She was performing her role liaising with the employer with integrity and professionalism.

[30] Ms Shearer informed Immigration New Zealand in her letter of 5 February 2016 that the job offers were genuine and there was a general shortage of truck drivers in New Zealand. While there had been inconsistency on the forms and some confusion with the letterheads, this had all been rectified and they were in the process of submitting the applications with amended contracts and forms.

[31] In respect of Immigration New Zealand's doubts regarding one of the clients because of the PHP 80,000 (NZD 2,580) he had paid, Ms Shearer advised that this had covered 21 days of live-in training, food and accommodation, as well as the salary of the licensed trainer from New Zealand. The training at the centre was necessary and crucial, as the employer required the drivers to be able to drive as soon as they arrived. They had signed contracts which would pay them NZD 18 per hour for 40-60 hours a week, which was the equivalent of NZD 720-1,080 per week, or PHP 145,000 a month. The drivers would have stable jobs and income and would be able to quickly repay their debts.

[32] In her letter, Ms Shearer then discussed specific concerns about certain drivers. In summary, according to Ms Shearer, this was the first time applications had been lodged by the joint partnership of Immigration Assist, IAL Employment, the training centre and the accredited agency. As a group, they would be honest and transparent with Immigration New Zealand. For her own part, she was learning the proper procedure and continuing to improve her knowledge of bulk applications. They were happy to be advised and corrected in any area where they had gone wrong.

Visa applications declined

[33] Immigration New Zealand declined all of the applications. A typical letter is that written on 17 February 2016 to Ms Shearer regarding one driver.⁸

[34] Immigration New Zealand expressed concern that there was a risk to the integrity of New Zealand's immigration system and international reputation, due to the involvement of IAL Employment (Ms C) and the training centre. This related to her involvement with the unpaid wages of those who had been the subject of six decisions of the Employment Relations Authority against Ms C. While the Employment Court had received a notice of discontinuance filed by the plaintiffs and the matter had been withdrawn, this did not alleviate the concern that there were six decisions of the Authority in relation to Ms C and her failure to meet the payment obligations.

[35] While not included in the reasons for the decline, Immigration New Zealand had identified concerns in relation to the offer of employment. The recruitment agreement between the employer and IAL Employment indicated that there was a bond arrangement of NZD 5,500, but this was not included in the individual employment agreement.

[36] In respect of some drivers, Immigration New Zealand also relied on other reasons to decline their applications, being specific to that driver. However, the primary reason given in respect of all drivers in the letters produced to the Tribunal was the risk to the integrity of New Zealand's immigration system due to the involvement of Ms C.

Meetings with Immigration New Zealand

[37] Ms Shearer, accompanied by Mr S, met with Immigration New Zealand in Manila on 24 February 2016. It has a record of the meeting. The meeting was requested by Ms Shearer to discuss the declined visa applications.

⁸ Registrar's supporting documents at 87–89.

[38] In relation to Ms C and the Employment Relations Authority decisions, Mr S said the outstanding debt had been paid in full. Immigration New Zealand responded that the workers in those cases had not been paid in full but had settled for an agreed amount.

[39] An explanation was given as to the roles of Ms C, Mr S and IAL Employment. Mr S said IAL Employment was a registered company, but he could not remember if he was a director or shareholder. He claimed not to be associated with the training centre, though used it to train recruits. Mr S denied numerous other allegations put to him. He was accused by Immigration New Zealand of being dishonest.

[40] On the following day, 25 February 2016, Ms Shearer met on her own with Immigration New Zealand. The following is a summary of its record of the meeting.

[41] Ms Shearer advised that she wanted to help Ms C to get back on her feet, so created IAL Employment. Given that Ms C was not a licensed adviser, it was agreed that IAL Employment would “piggy back” off Ms Shearer’s licence. According to Ms Shearer, IAL Employment belonged to Ms C and Mr S. Ms Shearer said she was not an adviser to the New Zealand employer, but did have a Skype meeting with him to discuss his attempts to hire New Zealanders. The training centre had a relationship with a Philippines government accredited agent.

[42] Ms Shearer said she travelled to the Philippines in December 2015 to check the papers for the drivers and to do some clerical work. She did not have a direct relationship with the clients and had never met or spoken with them. It was Ms C, Mr S and other staff who were in direct contact with them.

[43] Furthermore, Ms Shearer advised she did not sign the application forms due to concerns that her signature might be used for fraudulent purposes.

[44] Ms Shearer explained she did not have previous experience dealing with bulk applications, so saw it as an opportunity to gain experience in these areas. The New Zealand employer would pay IAL Employment NZD 1,500 for each driver and IAL Employment would in turn pay her NZD 500 for each driver. She trusted Ms C and thought the visa application process would be straightforward.

[45] According to Ms Shearer, the airfares and other fees were paid by the New Zealand employer and if the workers met the conditions of their contract, the NZD 5,500 bond they paid would be refunded. She did not know who would pay the bond back to the drivers.

Further explanation from Ms Shearer

[46] On 14 March 2016, Ms Shearer wrote to Immigration New Zealand concerning one driver, at the same time addressing its concern about her role.⁹ Similar letters were sent regarding other drivers. She noted that the training centre was not registered with the Philippines government as an accredited agency since it was not a recruiting agency. It had been created by IAL Employment to provide training and documentation to meet the New Zealand “work-ready” standard.

[47] Ms Shearer said she used the centre herself as her Manila extension office and received help from the staff in documentation and clerical work. When not in Manila, she corresponded with the centre’s staff to give instructions, which included signing section I of the form. No immigration advice had been given by any of the staff. She had now rectified the signing issue, so nobody signed section I on her behalf. She did it herself and had met each of the drivers at the centre and given general advice. A weekly Skype update had been set up between herself in New Zealand and the drivers who assembled at the centre.

[48] According to Ms Shearer’s letter, IAL Employment partnered with Century Promotion, an agency accredited with the Philippines government. On behalf of IAL Employment, the training centre contacted the drivers to collect the further documents she requested in order to meet immigration requirements. She advised that Ms C had now resigned from IAL Employment. The training fee of PHP 80,000 would be quickly recovered by the drivers and would not be a disincentive to their return to the Philippines at the expiry of their visas. Additionally, the employer had now decided to refund the training fee when the visa was granted. As for the bond of NZD 5,500, the employer had now decided not to require it. Their approach had been largely driven by the urgency of the situation, but they had since learned that their process was developed without due diligence. This had now been amended to meet the requirements of Immigration New Zealand and the Philippines government.

[49] Ms Shearer sent an email to Immigration New Zealand on 23 March 2016 in response to further decline letters. She wanted to remind it that at their meeting she had explained that Ms C started IAL Employment “piggy-back riding with my Immigration Assist”. Some of the information in Ms Shearer’s email is difficult to follow. She said she was no longer associated with IAL Employment which had ceased trading under her company registration. She only worked with them in the capacity of lodging the

⁹ At 97–100.

applications of their clients. She had severed her ties with Ms C and Mr S permanently because of business ethic differences.

COMPLAINT

[50] The complaint against Ms Shearer was lodged with the Authority by Immigration New Zealand (Mr Calder) on 13 April 2016. It identified 22 clients of Ms Shearer who had been offered employment with the employer.

[51] The complaint alleged that Ms Shearer had attempted to mislead Immigration New Zealand by purporting to be the immigration adviser for those clients despite being aware that she had not provided the majority of them with immigration advice and was relying on unlicensed individuals to communicate with them about their visa applications. It was declared on their application forms that she had provided advice to them. In reality, she had not signed 17 of the forms as she said she was concerned her signature could be used for fraud.

[52] According to the complaint, while Ms Shearer had communicated directly with Immigration New Zealand, it had become apparent that she had not met or spoken with the clients who were obtaining advice and guidance from unlicensed individuals. The clients had informed Immigration New Zealand during interviews that they had no direct contact with her. Instead, they had contact with a number of unlicensed individuals. Ms Shearer had told Immigration New Zealand on 25 February 2016 that she had allowed unlicensed advisers to “piggy back” off her licence. She had even said this in an email on 23 March 2016.

[53] Furthermore, there were six decisions of the Employment Relations Authority in relation to Ms C regarding the unpaid wages of migrant workers. Ms Shearer had been aware of the history of Ms C when she entered into the arrangement with her.

[54] Additionally, the agreement between IAL Employment and the employer indicated that the applicants would have to pay a bond of NZD 5,500, but that was not specified in their employment agreements and they were unaware of it. Given that the clients were indebted and were unaware that a financial bond would be required, Immigration New Zealand had concerns that they would be vulnerable to exploitation. Ms Shearer had enabled and facilitated the clients to be indebted and put them in a vulnerable position which might amount to negligence and incompetence. Ms Shearer also had a conflict of interest as she would be paid by IAL Employment NZD 500 for each client, but they were unaware of this financial benefit to her.

[55] The Authority formally wrote to Ms Shearer on 7 June 2017 setting out details of the complaint. Her comments were invited.

Response to complaint

[56] On 7 August 2017, Mr Laurent, counsel for Ms Shearer, replied on her behalf to the Authority's letter of 7 June 2017.

[57] Mr Laurent advised that Ms Shearer admitted many, but not all, of the breaches alleged in the complaint. Many of her problems stemmed from a misunderstanding of the requirement to establish a personal professional relationship with the drivers themselves, the people who were given immigration advice. Instead, she saw her sole client as IAL Employment.

[58] Ms Shearer had assisted Ms C to set up IAL Employment as a trading name (with its own GST number) under Ms Shearer's company, Immigration Assist. This was done to help Ms C who faced difficulties because of the decisions of the Employment Relations Authority. Ms Shearer allowed Ms C and her brother, Mr B, to represent her in filing applications and being the address for communications for each client. IAL Employment was not a proxy for Ms Shearer's own business, but was meant to be a trading entity in its own right, even though as a matter of law it was probably not.

[59] IAL Employment sourced the drivers and obtained the documents, following a visa checklist supplied by Ms Shearer. A standard set of documents for each driver was provided by IAL Employment to Ms Shearer to check if the driver was eligible for a visa. Following her advice, the application forms were then probably completed by the staff of IAL Employment for those who were eligible.

[60] As Ms Shearer was not in the Philippines most of the time, she authorised Mr B to sign the adviser page of the application forms "on behalf of Maria Shearer". She wanted the forms completed in this way to avoid someone forging her signature. It would appear that Mr B did not do so and "those forms which appear to have been signed by the adviser were not in fact individually signed by her at all".

[61] Similarly, Ms Shearer drafted covering letters for each application which she forwarded from New Zealand to be signed by Mr B "on behalf of Maria Shearer". While Mr B did sign letters drafted in this manner, some of the covering letters sent were not drafted by her.

[62] This was Ms Shearer's first dealing with a recruitment company which provided visa applicants for whom applications had to be filed. Her flawed perception of her duties

to the clients was due to her lack of experience in managing such a set of relationships, rather than designed to flout the licensing scheme.

[63] It was admitted that there were no written agreements with the drivers.

[64] Ms Shearer also admitted failing to sign the adviser section of the forms. She had given Mr B authority to sign on her behalf. This authority extended to signing the cover letters.

[65] According to Mr Laurent, it would appear that Mr B did not sign the forms, for whatever reason. The applications were lodged from the Philippines office of IAL Employment while Ms Shearer was in New Zealand, so she did not get to see them or have any input at the time of lodgement. This was something Ms Shearer allowed to get out of control. She was under the mistaken impression she could authorise someone else to sign section I on her behalf.

[66] It was agreed that the obligation to establish engagement with the client and provide immigration advice was personal to the adviser and could not be delegated. Ms Shearer had been under the impression that no immigration advice was being given to the drivers, as they were simply being asked to comply with a "process checklist" which had been provided to IAL Employment. This clearly did involve providing immigration advice.

[67] Ms Shearer further admitted that she had insufficient control to ensure that the drivers were being properly advised and that unlicensed activity was not taking place. However, she did not inform Immigration New Zealand that IAL Employment could "piggy back" off her licence. What she said was that it could piggy back off her company as a trading entity.

[68] Mr Laurent acknowledged that the Tribunal would find Ms Shearer's establishment and handling of the arrangements were negligent, since she had not ensured that the drivers received the standard of care expected of a licensed professional.

[69] However, it was not accepted that Ms Shearer had been dishonest or misleading. Her lack of direct communication or a contractual relationship with the drivers did not mean that no immigration advice was provided. The adviser's declaration on 20 of the application forms that she had provided immigration advice was correct and was not dishonest.

[70] The Authority had identified two applications in which Ms Shearer had declared she had only assisted in completing the forms. The drivers involved had advised Immigration New Zealand that they were unaware of Ms Shearer. These forms were not signed by Ms Shearer. She acknowledges that early in the relationship with Ms C, she had signed blank forms which would later be completed and lodged. She believes someone completed these two applications with copies of a form she had pre-signed.¹⁰ While allowing this situation to develop was a significant failure on her part, she was not consciously dishonest.

[71] Ms Shearer further accepted that her inability to produce the client files was a breach of her professional obligation to maintain file records. She had compiled hard copies of file documents and electronic copies of emailed documents. However, unknown to Ms Shearer, Ms C gave the files back to the drivers.

Complaint referred to Tribunal

[72] The Registrar of Immigration Advisers (the Registrar), the head of the Authority, filed a complaint with the Tribunal on 15 September 2017. The Registrar referred to the Tribunal the following possible statutory grounds of complaint and breaches of the Licensed Immigration Advisers Code of Conduct 2014 (the Code), some of which are advanced in the alternative:

- (1) failing to take personal responsibility for initiating and maintaining the client relationship in performing her services, instead allowing unlicensed individuals to do so on her behalf, thereby being negligent;
- (2) failing to personally obtain the lawful informed instructions of the clients, instead allowing unlicensed individuals to complete the client engagement process, in breach of cl 2(e);
- (3) maintaining business practices under which she relied on other unlicensed individuals to provide immigration advice and services, in breach of cl 3(c);
- (4) failing to confirm to the clients in writing when the applications were lodged and to make ongoing and timely updates, in breach of cl 26(b);
- (5) establishing and handling an arrangement with IAL Employment and the training centre in which the clients did not receive the expected standard of care, thereby being negligent or incompetent;

¹⁰ Registrar's supporting documents at 292 and 446.

- (6) failing to ensure that the clients were provided with a written agreement, in breach of cl 18(a);
- (7) pre-signing blank application forms (containing declarations that she had assisted completing the forms) which allowed others to complete those forms for two clients, Mr BB and Mr GG, thereby engaging in dishonest or misleading behaviour;
- (8) pre-signing blank application forms (containing declarations that she had assisted completing the forms) which allowed others to complete those forms for two clients, Mr BB and Mr GG, in breach of cls 1 and 10(b); and
- (9) failing to maintain each client file for no less than seven years and making those records available to the Authority for inspection, in breach of cl 26(e).

JURISDICTION AND PROCEDURE

[73] 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 Immigration Advisers Licensing Act 2007 (the Act):

- (a) negligence;
- (b) incompetence;
- (c) incapacity;
- (d) dishonest or misleading behaviour; and
- (e) a breach of the Code of Conduct.

[74] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.¹¹

[75] The Tribunal must hear complaints on the papers but may in its discretion request further information or any person to appear before the Tribunal.¹² It has been established to deal relatively summarily with complaints referred to it.¹³

¹¹ Immigration Advisers Licensing Act 2007, s 45(2) & (3).

¹² Section 49(3) & (4).

¹³ *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].

[76] 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.¹⁴

[77] The sanctions that may be imposed by the Tribunal are set out in the Act.¹⁵ It may also suspend a licence pending the outcome of a complaint.¹⁶

[78] 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.¹⁷

[79] The Tribunal has received from the Registrar the statement of complaint (15 September 2017) and supporting documents.

[80] The complainant sent a statement of reply (2 November 2017) with further documents.

[81] The Tribunal received from Mr Laurent a statement of reply (5 October 2017), a memorandum (20 October 2017) and an affidavit sworn by Ms Shearer (20 October 2017).

[82] Neither the complainant nor the adviser requests an oral hearing.

Counsel's memorandum

[83] Mr Laurent accepts that Ms Shearer's handling of the visa applications shows a lack of competence in multiple respects. This was her first foray into managing visa applications involving a group of clients from a recruitment agency.

[84] It is accepted that Ms Shearer did not bring to the enterprise the level of skill and experience that could be reasonably expected. However, this was not a situation where Ms Shearer exercised a lack of due care. For that finding, it would be necessary to show she knew what was required and overlooked doing it or was reckless about doing it. Whereas what happened here is that she strayed outside her field of actual day-to-day competence. Her incompetence is limited to her engagement in a scheme involving multiple visa applicants at a distance and using a third party to discharge her personal obligations.

¹⁴ Section 50.

¹⁵ Section 51(1).

¹⁶ Section 53(1).

¹⁷ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [101]–[102] & [112].

[85] It is not accepted that signing 20 applications in blank amounts to dishonest or misleading conduct. Ms Shearer's conduct demonstrates a lack of professionalism in managing the process, by delegating the completion of the forms to unlicensed individuals. However, the documentation establishes that she was identified on the record as the adviser. Furthermore, she did give immigration advice to the clients indirectly.

[86] As for the clients, Messrs BB and GG, dishonesty is imputed to the signing of blank application forms. Ms Shearer explains that she had pre-signed forms for use on applications where she had given immigration advice and wished this to be acknowledged on the form. She acknowledges it was improper to pre-sign the forms and counsel agrees this was unprofessional, but her signature was not dishonest or misleading. This is because the signatures related to applications in which she intended to be identified as the adviser. She did not tick the box stating that she had only helped record information on the form. That was done by whoever completed the form.

[87] Mr Laurent contends that it is far more credible to see the production of the forms for Mr BB and Mr GG as having resulted from Ms Shearer's loss of personal control of the process, than any deliberate intention to misrepresent.

Affidavit of Ms Shearer

[88] There is an affidavit from Ms Shearer, sworn on 20 October 2017. She records that she received no financial benefit from her involvement. The arrangement was that she would be paid NZD 500 per driver by IAL Employment for each successful application, but none were successful.

[89] It was acknowledged by Ms Shearer that she had failed to:

- (1) take instructions and give advice directly to the drivers;
- (2) enter an agreement with them;
- (3) confirm to them when their applications were lodged or provide updates;
and
- (4) notify them of the outcome of their applications.

[90] Ms Shearer says it was her view at the time that IAL Employment was her client. She now understands she must provide advice directly to the visa applicant.

[91] This had been her first time to handle overseas recruitment and group applications. She had believed she only needed to create the checklist of requirements and then represent them in their applications to Immigration New Zealand. It was her first time to trust people who had no hesitation in lying and breaking the law. She had previously been working as an adviser from home, handling an average of only two applications monthly. She had jumped into a situation out of her depth, but never gave up trying to correct it.

[92] According to Ms Shearer, when she received the first letters from Immigration New Zealand expressing concern, she had on her own initiative and at her own cost flown to Manila to seek a meeting with Immigration New Zealand. At that time, she had not understood the nature of the problem with the provision of immigration advice, or with the other grounds of decline.

[93] There were two meetings with Immigration New Zealand. The first was on 24 February 2016 when she went with Mr S who was grilled by the immigration officers. After that meeting, Immigration New Zealand asked her to come back the next day. It was made clear to her there were serious problems with the system she had adopted.

[94] As a result, Ms Shearer says she decided to set matters right as much as she could. She went to the training centre to meet with all the drivers and other candidates for immigration, about 60 of them. She spoke to them in four groups, explaining her role as a licensed adviser and Immigration New Zealand's requirement that she meet them in person. She told them about the immigration system and about New Zealand. She promised a regular Skype meeting when she got back to New Zealand, to be arranged by the training centre, at which she would give updates.

[95] Ms Shearer appreciates this does not cure her failure to engage at the outset, but wishes to record that her errors were due to a misunderstanding of her obligations and that it was always her intention to act in the interests of the clients.

[96] It was agreed by Ms Shearer that her process had led to unlicensed people giving immigration advice. That was never her intention, as she thought they would only gather and file information for clients for whom she was responsible. She saw her role as being an adviser to IAL Employment overseeing the handling of the applications. She thought the engagement with the client was via a recruiting contract through the training centre. She now knows this was wrong.

[97] Ms Shearer thought that the staff of the training centre were merely gathering for each client a standard set of documents as set out in checklists provided by her, emailing

those documents to her to assess whether they were suitable, then lodging the applications and documents with Immigration New Zealand on her behalf using the cover letter tailored to each client which had been prepared by her. The staff would also notify each client of the progress and outcome of their application. It was her role to identify suitable candidates, ensure they produced the appropriate documents, prepare the cover letters and respond to technical issues raised by Immigration New Zealand. She saw her work as immigration advice and that of the staff as clerical work. She now understands that the work of the staff amounted to immigration advice.

[98] According to Ms Shearer, she did not tell Immigration New Zealand that IAL Employment could piggy back off her licence. What she said was that it could use the registration of her company, Immigration Assist, in order to operate as an independent business.

[99] The cover letters she drafted ended with "Maria Shearer, Licensed Immigration Adviser". Mr B was instructed to sign "pp" on the letters, always with her knowledge and approval. She did not put "[Mr B] in behalf of Maria Shearer". These letters were not prepared by her.

[100] Ms Shearer says she did not intend to mislead Immigration New Zealand by not signing the 20 applications which did not carry her signature. At other places in those applications, she was identified as the adviser. Mr B was instructed to sign the forms, as she was not physically present. The immigration advice she gave was the assessment of the applications. The forms were completed and the applications were put together in the Philippines for lodging in that country while she was in New Zealand. She did not see the final version of the forms and was unaware section I was unsigned.

[101] In respect of the blank forms signed by her, Ms Shearer says she did not intend to mislead Immigration New Zealand. They were not to be filled out at the staff's discretion. They were for the use of named drivers whose documents she had screened and would represent. It is now understood this was not the correct way of doing things.

[102] As for Mr BB and Mr GG, Ms Shearer says she did not sign forms for those particular clients. Her signature on blank forms had been used without her knowledge and adopted for those applications. It was accepted she had allowed the situation to develop out of a lack of care.

[103] Ms Shearer acknowledges not taking due care to keep files relating to the clients. She had maintained hard copy files, including of electronic records, but Ms C gave them back to the clients unknown to her.

ASSESSMENT

[104] 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.

CLIENT CARE

2. A licensed immigration adviser must:

...

- e. obtain and carry out the informed lawful instructions of the client,

...

LEGISLATIVE REQUIREMENTS

3. A licensed immigration adviser must:

...

- c. whether in New Zealand or offshore, act in accordance with New Zealand immigration legislation, including the Immigration Act 2009, the Immigration Advisers Licensing Act 2007 and any applicable regulations.

PROFESSIONAL RELATIONSHIPS

10. A licensed immigration adviser must:

...

- b. comply with the operating requirements of Immigration New Zealand

...

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

...

FILE MANAGEMENT

26. A licensed immigration adviser must:

...

- b. confirm in writing to the client when applications have been lodged, and make on-going timely updates

...

- e. maintain each client file for a period of no less than 7 years from closing the file, and make those records available for inspection on request by the Immigration Advisers Authority, and

...

[105] The professional obligations of an adviser are personal to the adviser and cannot be delegated.¹⁸

[106] The first three heads of complaint are interconnected and will be reviewed together.

- (1) *Failing to take personal responsibility for initiating and maintaining the client relationship in performing her services, instead allowing unlicensed individuals to do so on her behalf, thereby being negligent*
- (2) *Failing to personally obtain the lawful informed instructions of the clients, instead allowing unlicensed individuals to complete the client engagement process, in breach of cl 2(e)*
- (3) *Maintaining business practices under which she relied on other unlicensed individuals to provide immigration advice and services, in breach of cl 3(c)*

[107] Ms Shearer promptly and candidly admitted that the staff of IAL Employment and the training centre were responsible for initiating and maintaining the relationship with the clients. She did not engage directly with the 22 clients, apart from two, of whom one said she provided no advice apart from directing him to be truthful.¹⁹

[108] The staff dealt with the clients in order to obtain and collate all the documents required by Immigration New Zealand. It may have been in accordance with a standard checklist compiled by her, but the staff would have had to discuss with each client numerous issues concerning Immigration New Zealand's documentary requirements. The staff would also have made many decisions for each client regarding as to whether the specific pieces of information and individual documents provided met Immigration

¹⁸ *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [29], [34] & [47].

¹⁹ Registrar's supporting documents at 278, 510–511.

New Zealand's requirements. It is also apparent the staff completed the visa application forms and lodged them themselves.

General principles

[109] The Tribunal has adversely commented in previous decisions on the practice which developed in the immigration advisory industry of what is known as “rubber stamping”.²⁰

[110] Typically, this occurs where a licensed immigration adviser uses agents or employees often in another country to recruit the clients, prepare the immigration applications and send them to the licensed adviser to sign off and sometimes also to file with Immigration New Zealand. There is little, if any, direct contact between the licensed adviser and the client.

[111] The practice is illegal. A person commits an offence under the Act if he or she provides “immigration advice” without being licensed or exempt from licensing.²¹ A person employing as an immigration adviser another person who is neither licensed nor exempt also commits an offence.²² A person may be charged with such an offence even where part or all of the actions occurred outside New Zealand.²³

[112] The statutory scope of “immigration advice” is very broad:²⁴

7 What constitutes immigration advice

- (1) In this Act, **immigration advice**—
- (a) means 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, whether directly or indirectly and whether or not for gain or reward; but
 - (b) does not include—
 - (i) providing information that is publicly available, or that is prepared or made available by the Department; or
 - (ii) directing a person to the Minister or the Department, or to an immigration officer or a refugee and protection officer (within the meaning of the Immigration Act 2009), or to a list of licensed immigration advisers; or

²⁰ *Stanimirovic v Levarko* [2018] NZIACDT 3 at [4], [36]–[38]; *Immigration New Zealand (Calder) v Soni* [2018] NZIACDT 6 at [4], [50]–[61].

²¹ Immigration Advisers Licensing Act 2007, s 63.

²² Section 68(1).

²³ Sections 8 & 73.

²⁴ Section 7.

- (iii) carrying out clerical work, translation or interpreting services, or settlement services.
- (2) To avoid doubt, a person is not considered to be providing immigration advice within the meaning of this Act if the person provides the advice in the course of acting under or pursuant to—
- (a) the Ombudsmen Act 1975; or
 - (b) any other enactment by which functions are conferred on Ombudsmen holding office under that Act.

[113] The exclusion from the scope of “immigration advice” potentially relevant here is subs (1)(b)(iii) concerning clerical work, translation or interpretation services.

[114] “Clerical work” is narrowly defined in the Act:²⁵

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

[115] The words “advise”, “advice” and “assist” are not to be given restrictive meanings.²⁶

[116] Persons who are not licensed (or exempt) are permitted to undertake clerical work only. In essence, such a person can do no more than retrieve and then record or organise information, enter data on a computer database or hard copy schedule, or record information on a form or other like document under the direction of another person, who must be a licensed adviser or a person exempt from licensing, or the client.

[117] Activities which do not meet the narrow definition of clerical work but which involve the use of immigration knowledge or experience to advise or assist another person on an immigration matter, “whether directly or indirectly”, amount to providing immigration advice. That is the exclusive domain of the licensed adviser.

²⁵ Section 5, “clerical work”.

²⁶ *Yang v Ministry of Business, Innovation and Employment* [2015] NZHC 1307 at [22]–[23]. While the Court was considering s 63(1)(a) of the Act, it is plain it also had in mind the use of the words in s 7(1).

Application of general principles to Ms Shearer's conduct

[118] Ms Shearer had an obligation to personally take charge of the entire visa process, from the moment the client first sought a visa until the end of the process. It is not a sufficient discharge of that obligation that she is engaged with the client's application at what she might regard as key stages.

[119] While Ms Shearer assessed eligibility, drafted covering letters and took responsibility for communications with Immigration New Zealand, that is not an adequate discharge of her cl 2(e) obligation to personally take and then carry out the client's instructions. Her responsibility to directly engage with the client and control the process spans its entire duration. Only clerical work, with its narrow scope, can be delegated to others.

[120] I appreciate that Ms Shearer eventually saw some or all of the 22 clients in groups in the Philippines, but this was only after their applications had been lodged and declined. Nor is it acceptable to see clients in batches to give them general advice. They are entitled to personal one-on-one contact with Ms Shearer with the advice tailored to their particular circumstances.

[121] The only reason the staff of IAL Employment and/or the training centre could undertake the unlawful immigration work they performed was because of Ms Shearer's licence. Without her name on the application forms, they would not have been accepted by Immigration New Zealand from IAL Employment and/or the training centre. Ms Shearer has therefore facilitated the unlawful conduct of the unlicensed staff. She is responsible, as all their immigration work on behalf of the clients was done in her name.

[122] The only real issue here is whether Ms Shearer has been dishonest or misleading, as alleged, or negligent as counsel contends.

[123] The preponderance of evidence before the Tribunal shows Ms Shearer to have been negligent, albeit at a high level, rather than dishonest or misleading.

[124] I will deal later specifically with the allegation of dishonesty or misleading behaviour in relation to pre-signing blank forms, but on an overview of all the evidence, I conclude Ms Shearer was naïve and out of her depth in taking on such a large volume of work from clients offshore in what was a relatively complex web of relationships, all under a sense of urgency. There were numerous parties involved in addition to Immigration Assist (Ms Shearer): the clients, IAL Employment, the training centre, the accredited agency, the employer and Immigration New Zealand.

[125] I agree with Mr Laurent that Ms Shearer's violation of the professional standards largely arises from one fundamental mistake, which is failing to recognise that her professional obligations were owed to each of the clients individually, not to IAL Employment and/or the employer. I see this ignorance as negligence and a lack of due care, not as dishonest or misleading behaviour.

[126] Counsel seeks to distinguish a lack of due care from the admitted lack of reasonable care, negligence or incompetence. It is contended that a lack of due care requires knowledge of wrongfulness or recklessness. I do not agree. A lack of due care is the same as a lack of reasonable care.

[127] Nor do I accept the submission, advanced somewhat tentatively, that the level of care to which an adviser is held is dependent on the adviser's level of experience in applications of the nature at issue. An adviser holding a full licence, as did Ms Shearer, will be held to the reasonable standard of care expected of an experienced professional adviser across all forms of immigration advice. This is because the client is not to know the adviser is inexperienced in certain types of applications, nor is the client expected to inquire. It is the responsibility of the adviser to decline to accept instructions in areas of practice in which he or she is not confident of meeting the expected professional standard.

[128] In respect of all 22 clients, I find Ms Shearer to have been negligent in allowing unlicensed individuals to initiate and maintain the relationship with the clients by performing services which amount to immigration advice, as defined. This ground of complaint under s 44(2) of the Act is made out.

[129] I also find that Ms Shearer failed to personally obtain the clients' instructions, in breach of cl 2(e) of the Code. I further find that Ms Shearer maintained a business practice in which she relied on unlicensed staff to provide immigration advice and services, which is contrary to the Act and therefore a breach of cl 3(c) of the Code.

(4) *Failing to confirm to the clients in writing when the applications were lodged and to make ongoing and timely updates, in breach of cl 26(b)*

[130] Ms Shearer admits she failed to communicate directly with the clients, including advising them when the applications were lodged and to make ongoing and timely updates, such as personally sending them the letters of concern sent by Immigration New Zealand or the outcomes of their applications. Such communications were left to the staff. I find Ms Shearer to be in breach of cl 26(b) of the Code.

- (5) *Establishing and handling an arrangement with IAL Employment and the training centre in which the clients did not receive the expected standard of care, thereby being negligent or incompetent*

[131] Ms Shearer accepts that her establishing and handling of the arrangements with all the parties involved was negligent and the clients had not received the standard of care expected of a licensed professional.

[132] The lack of the reasonable standard of knowledge and skill which a licensed professional should bring to a task amounts to negligence. Indeed, I find there is a high degree of negligence here. Ms Shearer misunderstood her legal relationship to IAL Employment (she appears to have effectively owned it in law, not Ms C or Mr S), her professional relationship to the clients (a fundamental mistake) and was extremely careless in pre-signing blank forms and authorising another person (Mr B) to sign other forms and also cover letters on her behalf (see later assessment).

[133] Mr Laurent submits that there may be little difference between negligence and incompetence. Alternatively, incompetence might be seen as a systemic lack of ability or negligence in multiple respects. Mr Laurent accepts that Ms Shearer has been negligent and lacked ability or competence in multiple respects. In other words, it is accepted Ms Shearer's negligence amounts to incompetence. It seems to me that is clear from the evidence. This does not mean Ms Shearer was generally incompetent as an adviser. But I would describe her performance in respect of the arrangement with IAL Employment and specifically those 22 clients as incompetent.

[134] I find that Ms Shearer's establishment and handling of the arrangements with all the parties, notably the clients and IAL Employment/the training centre, amounts to both negligence and incompetence. These grounds of complaint under s 44(2) of the Act are made out.

- (6) *Failing to ensure that the clients were provided with a written agreement, in breach of cl 18(a)*

[135] Ms Shearer admits failing to provide the clients, all 22 of them, with a written agreement. She did not understand that they were her clients, not IAL Employment and/or the employer. I find that Ms Shearer was in breach of cl 18(a) of the Code.

- (7) *Pre-signing blank application forms (containing declarations that she had assisted completing the forms) which allowed others to complete those forms for two clients, Mr BB and Mr GG, thereby engaging in dishonest or misleading behaviour*

- (8) *Pre-signing blank application forms (containing declarations that she had assisted completing the forms) which allowed others to complete those forms for two clients, Mr BB and Mr GG, in breach of cls 1 and 10(b)*

[136] Ms Shearer acknowledges she pre-signed some blank forms, though I have not been able to identify her signature in any of the applications produced to the Tribunal apart from those for Messrs BB and GG. All the others appear to be unsigned by the adviser.

[137] There is an explanation in Ms Shearer's affidavit. She says she did not intend to mislead Immigration New Zealand. The blank forms were pre-signed specifically for future use for the lodgement of named drivers whose documents she had screened and whom she intended to represent in dealing with Immigration New Zealand. These applications were physically lodged in Manila but she was by then back in New Zealand. I gather this was before Immigration New Zealand accepted online applications.

[138] As for Messrs BB and GG, she did not sign the forms for those particular clients. Her signatures on blank forms had been used without her knowledge or consent. Nor had she ticked the boxes when she put her signature on them. Mr Laurent says the forms were not marked at all at the time of her signature, apart from her signature.

[139] My understanding of Ms Shearer's evidence in respect of Messrs BB and GG is that she accepts it is her signature on those two forms, but says she did not authorise the pre-signed forms to be used for those two clients.

[140] What is not clear to me is whether Ms Shearer ever saw the documents for these two clients and advised on their eligibility. Ms Shearer does not expressly deal with this in her affidavit. Her signature on the cover letter indicates she saw the documents, if not approved eligibility, unless she is also contending that she did not sign those letters. Whether or not Ms Shearer advised on eligibility, I accept her statement she did not authorise her signature to be used for these two clients.

[141] On both those forms, section I bears Ms Shearer's signature and a date against her signature. The box ticked states, "I have assisted the applicant with recording information on the form". Left unticked is the box, "I have provided immigration advice...and my details in section H...are correct". The relevant detail in section H is Ms Shearer's licence number, identifying her as the licensed adviser. Also ticked in section I is the box stating that the person assisting the applicant was the person at B3. Section B3 identifies the person who is to be responsible for communications. The

details of Ms Shearer were given here. I note also that at B5, the box ticked states that immigration advice had been given.

[142] Section I in all the other applications is unsigned and undated. But the boxes ticked are those stating that immigration advice had been provided (and “my” details are in section H), as well as the box stating that the person assisting was the person at B3, namely Ms Shearer. In other words, section I in the other applications correctly identifies Ms Shearer as the adviser who provided immigration advice, though in each application it is unsigned by or on behalf of the adviser. Section H in the other applications records Ms Shearer’s licence number, as it does for Mr BB and Mr GG.

[143] Ms Shearer says she did not authorise the pre-signed forms to be used in the applications for Messrs BB and GG and that when she pre-signed forms she did not tick the box stating that she had merely recorded information, leaving unticked the immigration advice box.

[144] I accept Ms Shearer’s evidence, but I am not sure it even matters whether or not she intended the pre-signed forms to be used for Messrs BB and GG. There is no dishonesty or intent to mislead here. In respect of the two offending applications, Ms Shearer is clearly identified at section H as the licensed adviser. The form also identifies her at B3. While B3 is only an address for communications, that is also commonly the adviser’s address. Furthermore, at B5, it is stated that immigration advice had been given. The clear inference would be that it was the licensed adviser who gave such advice. Furthermore, the covering letters for Messrs BB and GG also identify Ms Shearer as the adviser. Indeed, they are signed by her, though I do not know whether that was with her authority.²⁷

[145] It is quite clear from the face of the forms and the covering letters that they were intended to say that Ms Shearer had given immigration advice. Whoever signed the forms and covering letters or was attributing her signature to these particular applications was not hiding this.

[146] I also accept Mr Laurent’s contention that Ms Shearer did in fact provide immigration advice by assessing the documents and eligibility of each client to whom she intended to represent on the pre-signed form (not being Mr BB or Mr GG). The defined term “immigration advice” under the Act is somewhat infelicitous. It is not necessary that “advice” be directly given to the client to amount to immigration advice,

²⁷ Registrar’s supporting documents at 294 & 448.

as defined. The statutory concept is more about providing immigration services or representing the client, including giving advice.

[147] It is also contended by the Registrar that merely pre-signing blank forms which could be completed and lodged with Immigration New Zealand by unlicensed persons may itself be dishonest or misleading. That is certainly a plausible and rational inference from her conduct. Ms Shearer's conduct is, on its face, suspicious. However, on the balance of probabilities I have concluded that Ms Shearer has been naïve and grossly negligent, rather than dishonest or consciously misleading. Ms Shearer trusted the others involved, such as Ms C, Mr B and Mr S. She did not exercise sound judgement in doing so, but people do make mistakes. I accept that is what happened here.

[148] I dismiss the seventh head of complaint.

[149] As for the eighth head of complaint, while not dishonest or misleading in this case, it is grossly unprofessional to pre-sign blank forms and leave it to others to 'populate', finalise and lodge the forms in her name. That is particularly so when those people were unlicensed, working in another country and not even her staff. This is self-evidently a breach of the obligation in cl 1 of the Code to be professional.

[150] The Registrar alleges this does not comply with the operating requirements of Immigration New Zealand, but does not identify those requirements. Nor does Immigration New Zealand in its complaint. As it is not apparent what operating requirements of Immigration New Zealand have been contravened, I decline to find a breach of cl 10(a).

(9) *Failing to maintain each client file for no less than seven years and making those records available to the Authority for inspection, in breach of cl 26(e)*

[151] Ms Shearer admits failing to retain the client files and then to make them available to the Authority. She had some documents for each client, but not complete files. It is no defence that she had compiled the records, but they were released by Ms C to the clients. The responsibility to retain them and then hand them over on request to the Authority is that of the adviser. I find a breach of cl 26(e) of the Code.

OUTCOME

[152] I have upheld all the heads of complaint, apart from the seventh one. Ms Shearer has been found to be negligent and incompetent in the system established for those 22 clients. She has breached cls 1, 2(e), 3(c), 18(a), 26(b) and (e) of the Code.

SUBMISSIONS ON SANCTIONS

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

[154] In determining the appropriate sanctions, the Tribunal will be mindful of the alternative and overlapping nature of the professional violations by Ms Shearer. Furthermore, many arise from one fundamental mistake, failing to recognise who her true clients were. There will be no double counting of sanctions.

[155] A timetable is set out below. Any request for repayment 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.

Timetable

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

- (1) The Authority, Immigration New Zealand and Ms Shearer are to make submissions by **10 July 2019**.
- (2) The Authority, Immigration New Zealand and Ms Shearer may reply to the submissions of any other party by **24 July 2019**.

ORDER FOR SUPPRESSION

[157] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.²⁸

[158] There is no public interest in knowing, and/or it would not be fair to disclose, the names of Ms Shearer's clients, the individuals associated with IAL Employment, the name of the training centre and the name of the accredited agency.

[159] The Tribunal orders that no information identifying those persons or entities is to be published other than to the parties.

D J Plunkett
Chair

²⁸ Immigration Advisers Licensing Act 2007, s 50A.