

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2019] NZIACDT 50

Reference No: IACDT 033/17

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 **YAN (RYAN) JI**
Adviser

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 19 July 2019

REPRESENTATION:

Registrar: Self-represented

Complainant: Self-represented

Adviser: Self-represented

PRELIMINARY

[1] It is alleged that Mr Ji, the adviser, permitted unlicensed staff to engage and communicate with his clients, with Mr Ji having no contact with them. It is further alleged that this resulted in false documents being filed with Immigration New Zealand, so it is said he has also been negligent.

[2] Additionally, Mr Ji declared on a number of application forms that he had “assisted the applicant with recording information on the form”, but as he did not directly work with the clients, it is contended the declaration was dishonest or misleading.

[3] Mr Ji admits this conduct and therefore breaching his professional obligations. Nonetheless, there remains an issue as to whether he has actually been dishonest or misleading.

BACKGROUND

[4] Mr Yan (Ryan) Ji is a licensed immigration adviser. At the relevant time, he was an employee of NZ Business Migration and based in Auckland. This company worked with an entity in China known as Globe Group or Globe Visa (Globe). Mr Ji is now a partner in his own firm, NZ Immigration Consulting and has no connection with Globe.

[5] The complaint concerns six clients of Mr Ji who made visa applications to Immigration New Zealand. They were all Chinese nationals residing in China.

(Ms T)

[6] On 3 November 2015, Immigration New Zealand received an entrepreneur work visa application from Ms T. Mr Ji was identified as the immigration adviser responsible for the application in sections Q and R of the form.

[7] In section R, signed by Mr Ji and dated 23 October 2015, he made the following template statements (the last two by ticking the relevant boxes):

I certify that the applicant asked me to help them complete this form and any additional forms. I certify that the applicant agreed that the information provided was correct before signing the declaration.

I have **assisted** the applicant with recording information on the form.

I have **provided immigration advice** (as defined in the Immigration Advisers Licensing Act 2007) and my details in Section Q: Immigration adviser’s details are correct.

[8] Section R contains the following introductory explanation:

This section must be completed and signed by the applicant's immigration adviser, or by any person who has assisted the applicant by providing immigration advice, explaining, translating, or recording information on the form for the applicant. If the applicant does not have an immigration adviser, and no one helped the applicant to fill in this form, this section does not have to be completed.

[9] On 14 March 2016, Immigration New Zealand wrote to Ms T, care of Mr Ji, advising that it was apparent from an initial assessment that she may not meet the character requirements for a visa. In particular, a letter claiming to be written by a New Zealand based company filed in support of her application was fraudulent. Her comments were invited.

[10] In response to the letter of 14 March 2016, which had been sent to two other clients as well, Mr Ji sent an email to Immigration New Zealand on 29 March 2016 advising that it was highly likely the letters were forged. He added that the clients were innocent.

[11] Mr Ji also wrote an undated letter to Immigration New Zealand in relation to these three clients, being Ms T, Ms D and Ms Z (both identified later in this decision). He sought a character waiver for each of them. According to Mr Ji, the supporting letters had been obtained from a partner company of Globe. He explained that Globe was the Chinese immigration consultancy with whom his company contracted.

[12] Mr Ji advised that immigration advice was provided to the clients through Globe. His company guided Globe to prepare documents for clients. All the information and documents from Globe were passed to Immigration New Zealand after his company had compiled them. The clients did not know about the letters. They should not be punished for what the partner company had done.

[13] On 5 April 2016, Immigration New Zealand wrote to Ms T, care of Mr Ji, declining her application for a work visa. One of the reasons given was that she had provided evidence that was false, misleading and forged. The evidence was not identified. While Ms T had said that the documentation was likely fraudulent, that a third party had been authorised to provide it and that she was innocent of the forgery, she had provided no evidence in support of such claims. Nor had any evidence been provided that she did not intend to deceive Immigration New Zealand.

(Ms D)

[14] On 16 October 2015, Immigration New Zealand received an entrepreneur work visa application from Ms D. In sections B and Q of the form, Mr Ji identified himself as the immigration adviser responsible for the application. In section R, Mr Ji identified himself as the person who assisted the applicant, but he did not sign or date this section. Also at Section R, someone, presumably Mr Ji, ticked the boxes which state:

I have **assisted** the applicant with recording information on the form.

I have **provided immigration advice** (as defined in the Immigration Advisers Licensing Act 2007) and my details in Section Q: Immigration adviser's details are correct.

[15] Immigration New Zealand wrote to Ms D, care of Mr Ji, on 14 March 2016 advising that it appeared she may not meet the character requirements for a visa. One of her supporting letters was fraudulent. Her comments were invited.

[16] The file of Immigration New Zealand has a note of a telephone conversation on 21 March 2016 between Mr Ji and an immigration officer. It concerned three unnamed applicants, though it is apparent from the application number recorded that one of them was Ms D.

[17] The file note recorded that Mr Ji admitted that the letters from New Zealand companies were probably fraudulent. A third party, Globe, had produced them. Mr Ji said this company referred clients to him. He said that Globe had provided the responses to Immigration New Zealand's letters of concern and he had forwarded the material without checking it. He admitted having "little" contact with his clients as Globe acted as the main contact.

[18] On 31 March 2016, Immigration New Zealand wrote to Ms D, care of Mr Ji, advising that the application had been declined. One of the reasons given was that she had provided false, misleading or forged evidence. The evidence was not identified. While Ms D had said that the documentation was likely fraudulent, that a third party had been authorised to collect it and that she was innocent of forgery, no evidence had been provided to support these claims. Nor had any evidence been provided that she did not intend to deceive Immigration New Zealand.

(Ms Z)

[19] On 10 November 2015, Immigration New Zealand received an entrepreneur work visa application from Ms Z. Mr Ji was identified as the responsible immigration adviser in sections B, Q and R of the form. In section R of the form, signed by Mr Ji and dated 10 November 2015, he made the same statements as set out above in relation to Ms T.

[20] Immigration New Zealand wrote to Ms Z on 14 March 2016 advising that it appeared she may not meet the character criteria, as a letter written by a New Zealand company was fraudulent. Her comments were invited.

[21] On 4 April 2016, Immigration New Zealand wrote to Ms Z declining the application. One of the grounds of decline was that she had given false, misleading and forged evidence. The evidence was not identified. In response to a letter expressing concern, Immigration New Zealand had been advised that the documentation was likely to be fraudulent, that a third party had been authorised to collect it and that Ms Z was innocent of the forgery. No evidence had been provided to support these claims. Nor had any evidence been provided that she did not intend to deceive Immigration New Zealand.

(Mr W)

[22] On 13 May 2015, Immigration New Zealand received an investor category residence application for Mr W, filed by Mr Ji who identified himself in sections B and P. Section P is identical to section R of the entrepreneur form, so the statements made by Mr Ji are the same. He has signed and dated it 8 May 2015.

[23] On 29 April 2016, Immigration New Zealand wrote to Mr W, care of Mr Ji, advising that there were discrepancies in the documentation. He had claimed to be a procurement manager with a monthly pre-tax salary of RMB 14,000, but the documentation showed he had a non-management position in the procurement department with pay of RMB 5,700. There were serious concerns as to the genuineness of his claimed business experience. He was referred to the character requirements of Immigration instructions.

[24] Mr Ji replied on 19 May 2016. Mr W's employer advised that the information provided was not accurate. He apologised for the mistake and misunderstanding.

[25] On 24 May 2016, Mr Ji sent a number of documents to Immigration New Zealand, including:

- (1) A letter of explanation from Mr W, dated 16 May 2016. He said he worked as the purchasing manager from 2011 to 2013 before leaving the company in early 2014. According to him, Immigration New Zealand could not express suspicions based on one phone call from an ordinary staff member. It was irresponsible of the staff member to give a hasty answer about his previous position without seeking authorisation from a leader. The former employer had been absorbed by another company, so it could not present proof of his position and income three years previously. It was hoped that the immigration officer could check his background from the incumbent manager of the procurement department, whose contact details were given.
- (2) A letter of certification, dated 17 May 2016, was provided by a company with a commercial relationship with Mr W's former employer, which stated that he had been the purchasing manager from 2011 to 2013.
- (3) An explanation letter from Mr W's former employer, dated 13 May 2016. It recorded that the human resources department had received a telephone call from Immigration New Zealand concerning Mr W. The previous information provided was not correct and it apologised for the mistake.

[26] On 2 June 2016, Immigration New Zealand declined Mr W's application. He had not been able to demonstrate that he had acquired management level experience. The response to Immigration New Zealand's concerns was not convincing or reliable. Mr W had expressed a concern as to whether the employer's officer would know his previous employment information, given that the officer had joined the company after he had left. However, that person was a human resources salary specialist, so was the best person to know his position and salary. Furthermore, the information provided to Immigration New Zealand was computer based, so it was not relevant when the officer had joined the company. Another human resources employee had also confirmed the information.

(Ms L)

[27] On 27 April 2016, Immigration New Zealand received an entrepreneur work visa application from Ms L. Mr Ji was identified as the responsible immigration adviser in sections B, Q and R of the form. In section R, Mr Ji made the same statements as set out above. It was signed by him and dated 27 April 2016.

[28] On 6 May 2016, Immigration New Zealand wrote to Ms L, care of Mr Ji, advising that it was not satisfied that she could be awarded all the points claimed. Furthermore, there were issues in relation to her nominated funds, the business plan and other matters.

[29] In an email to Immigration New Zealand on 20 May 2016, Mr Ji said (*verbatim*):

...What actually happened to this application is the PPI [Potentially Prejudicial Information] was not passed to the applicant only until today. This application is processing by us, but we do not contact client directly, we contact client through another agent in China. The agent based in China did not pass the PPI letter to the client at an appropriate time manner. Therefore, the client was not effectively given sufficient time to prepare the response.

[30] In reply to the immigration officer's further email that day asking Mr Ji to advise as to the responsibilities of the agent in China and how this was managed by him, he replied (*verbatim*):

We contract with the China agent and the agent is our client. The agent is the bridge between us and applicant, the agent passes our advice to the applicant and collects documents from the applicant. We are contacted by the agent.

[31] Later that day Mr Ji sent another email (*verbatim*):

Apparently it is impossible for me to **make sure** the applicant **receives** the correspondence of INZ as I could not contact with the client without contact the client (agent in China). However I have made my efforts to ensure the client receives the email. I emailed the PPI letter to the client on the day the PPI was received and I reminded the client that further discussion was needed 5 days later.

[32] There followed a telephone discussion between Mr Ji and the immigration officer on the same day. The officer then wrote to Mr Ji, also on 20 May 2016, confirming the conversation (*verbatim*):

- You outlined that you forwarded the PPI letter to your agents in China on 06 May.
- Your agent in China confirmed that they had no concerns/questions regarding the PPI.
- You sent a reminder to the agents on 11 May.
- The agent in China was supposed to provide you with the response/requested documents by the morning of 20 May.
- You would normally collate the PPI response on the day the documents are received/the due date of the PPI.
- Today, the agent in China advised you they had not received the PPI.
- You have provided evidence of you contacting the agent in China.

- You are unable to confirm when the client received the PPI as you cannot contact the client directly.

[33] Mr Ji replied, also on 20 May 2016, to each item in the officer's record of the conversation (*verbatim*):

- Yes
- No. They did not response to the PPI
- Yes
- Yes
- Yes
- Yes
- Yes
- Yes

[34] Mr Ji then advised the immigration officer on 24 May 2016 of certain industry enquiries Ms L had made in New Zealand.

[35] On 25 May 2016, Immigration New Zealand declined the application from Ms L. It was not satisfied that she had legally acquired the nominated funds or that the business plan met its requirements, nor had she sufficient knowledge of the New Zealand business environment or of her proposed business.

(Ms X)

[36] On 28 April 2016, Immigration New Zealand received an investor category application for residence from Ms X. Mr Ji was identified as the responsible immigration adviser in sections B and P of the form. In section P, signed by Mr Ji and dated 22 April 2016, he made the same statements set out above.

[37] Immigration New Zealand sent an email to Mr Ji on 25 May 2016 identifying certain basic information that was missing from the application. He was advised that it was not acceptable to lodge an application without a reasonable attempt to provide evidence in support.

[38] On 26 May 2016, Immigration New Zealand wrote to Ms X, care of Mr Ji, identifying numerous items of missing or insufficient information. She was given an opportunity to respond.

[39] On 16 June 2016, Immigration New Zealand wrote to Ms L, care of Mr Ji, confirming that she had withdrawn her application.

Information warning concerning Mr Ji

[40] Immigration New Zealand advised Mr Ji on 4 April 2016 that it was considering adding an information warning on its computerised information system relating to his provision of false information for three clients (Ms D, Ms T and Ms Z).

[41] On 14 April 2016, Mr Ji's then counsel (Mr Laurent) replied to Immigration New Zealand. He advised that Mr Ji did not know at the time he filed the documents that they were false. As for the relationship with Globe, Mr Ji had processed 81 investor applications and 45 entrepreneur applications where Globe had provided support. He had come to trust the quality of their assistance through an extensive course of dealings. He was unaware at the time that Globe contracted a "partner company" in China to communicate with clients and to obtain evidence.

[42] According to Mr Laurent, the provision of false information was not through recklessness or ill-intent on the part of Mr Ji. However, the incident had been a significant wake-up call to Mr Ji and as a result he had initiated changes in the working relationship with Globe. It was contended that filing a warning would be a disproportionate and unfair response.

[43] Immigration New Zealand replied to Mr Laurent on 19 April 2016. It agreed there was no evidence confirming Mr Ji knew the information was false when it was lodged, but he had confirmed that the documentation was likely to be fraudulent. As he had provided false information on behalf of clients, a warning would be placed on its information system so that officers would ensure appropriate verification of documents submitted by him. It would be effective for 12 months.

COMPLAINT

[44] A complaint against Mr Ji was lodged with the Immigration Advisers Authority (Authority) by Immigration New Zealand (Mr Darren Calder) on 22 June 2016. It was alleged that Mr Ji had breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code) and that he had been incompetent, as well as dishonest or misleading. Documents he had provided on behalf of clients were found to be fraudulent. Furthermore, he had accepted applications while having no real involvement in providing advice.

[45] The Authority advised Mr Ji of the complaint on 31 August 2016 and required him to produce the files for the six clients. He duly provided the files.

[46] The Authority asked Mr Ji by email on 20 July 2017 whether the six files he had provided were the full files. No copies of the client agreements had been provided and the only communications were between him and either Globe or Immigration New Zealand.

Mr Ji explains his business practice

[47] Mr Ji sent an email to the Authority on 27 July 2017 explaining the business practice at NZ Business Migration. The written agreements were between NZ Business Migration and the client, but he was always identified in the agreement as the immigration adviser. This arrangement was, however, complicated by the intermediary, Globe, which wanted to protect its clients from going directly to NZ Business Migration.

[48] Mr Ji acknowledged understanding that the Code required him to explain all significant matters in the agreement to the client, but due to the commercial arrangement between NZ Business Migration and Globe, “we” often explained the significant matters to Globe who then related them to the client.

[49] Mr Ji advised that he now ran his own immigration firm, as he realised the practice at NZ Business Migration was not perfectly robust and he could not influence it. He now strictly complied with the Code obligations.

[50] In another email on 27 July 2017 to the Authority, Mr Ji again provided the six client files sought. He said they were without the client agreements as these were held by his former employer. As for communications, he had provided those available to him. The legislation compelled him to provide all communications within his control, but under his previous employment, all communication between himself and the client was done through intermediaries. If he needed to ask a question, he would draft the question, send it to an employee of NZ Business Migration who would bring it to the attention of Globe which would then refer it to the client.

[51] The Authority formally notified Mr Ji of the details of the complaint on 30 August 2017.

Mr Ji responds to formal notification of the complaint

[52] Mr Ji replied to the Authority by letter on the following day, 31 August 2017. He candidly admitted the business practice of NZ Business Migration was wholly non-

compliant with the Code. Mr Ji agreed that he had breached the obligation to have a written agreement with each client, that unlicensed immigration advice had been given and that he had breached the obligation “not to misrepresent ... declarations on the visa application forms”. However, he denied providing any false or misleading documents to Immigration New Zealand.

[53] Mr Ji accepted that the business practice of NZ Business Migration did not comply with the Code. He described his employment there as “toxic”, in terms of his ability to comply with his professional obligations. He now recognised that he had the responsibility under the Code towards the individual. On recognising this, he had promptly left NZ Business Migration and established his own company, where he could maintain files in strict compliance with the Code. He no longer engaged with any third parties who referred clients to him but only took clients directly as a result of his own advertising efforts. He appreciated the substantial risk that intermediaries posed in terms of compliance and was aware that it was inappropriate not to have direct contact with the client.

[54] In his letter, Mr Ji strongly refuted the allegation that he had knowingly provided fraudulent documents to Immigration New Zealand. Any such conclusion would be harsh, given that he was relying on Globe. As soon as he had been approached by Immigration New Zealand as to their concerns with the legitimacy of any document, he had quickly investigated and where the information was found to be potentially fraudulent, he had disclosed this to Immigration New Zealand.

[55] In relation to the declarations made on the forms, Mr Ji said he had filled these out in accordance with instructions and information provided by the client to the intermediary. In saying that, he did not wish the explanation to be seen as an excuse.

[56] Since leaving NZ Business Migration and commencing NZ Immigration Consulting with a business partner, he has benefited from his partner’s tuition. The partner had a law degree and was studying towards the Graduate Diploma in New Zealand Immigration Advice from Toi-Ohomai. He saw this as a great benefit to him, being one of the “old school” advisers who had not been required to complete a course to obtain a licence. However, there would be benefit in requiring him to undertake the paper, LAWS 6015, offered by Toi-Ohomai.

[57] Mr Ji also pointed out that he had become a director of the New Zealand Association for Migration and Investment and was heavily engaged with the association. He wanted to make sure he did not repeat the same mistakes. He recognised that, as a

director, he needed to hold himself to an even higher standard than that of a licensed adviser.

[58] It was emphasised by Mr Ji that the mistakes made had been admitted without reservation. He regarded them as a good opportunity to review his practice with an eye to continuous improvement.

Complaint referred to Tribunal

[59] The Registrar of Immigration Advisers (the Registrar), the head of the Authority, filed a statement of complaint with the Tribunal on 16 October 2017. He has referred to the Tribunal the following possible statutory grounds of complaint and breaches of the Code:

- (1) failing to ensure that a written agreement was provided to the clients once they decided to proceed, in breach of cl 18(a);
- (2) failing to take personal responsibility for client engagement, obtaining instructions or establishing the client relationship, and allowing unlicensed individuals to provide immigration services, in breach of cls 1, 2(e) and 3(c);
- (3) providing information to Immigration New Zealand which was false, misleading or forged on behalf of four clients, thereby being negligent or alternatively being in breach of cls 1 and 31(a); and
- (4) engaging in dishonest or misleading behaviour by falsely declaring that he had assisted the clients with recording information on the form when he had not done so, thereby being dishonest or misleading or alternatively being in breach of cl 1 requiring advisers to be honest, professional and to conduct themselves with due care.

JURISDICTION AND PROCEDURE

[60] 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.

[61] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.¹

[62] The Tribunal must hear complaints on the papers, but may in its discretion request further information or any person to appear before the Tribunal.² It has been established to deal relatively summarily with complaints referred to it.³

[63] 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.⁴

[64] The sanctions that may be imposed by the Tribunal are set out in the Act.⁵ The focus of professional disciplinary proceedings is not punishment but the protection of the public.⁶

[65] 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.⁷

[66] The Tribunal has received from the Registrar a statement of complaint, dated 16 October 2017, together with supporting documents.

[67] There is a statement of reply, dated 26 October 2017, from Mr Ji. He agrees with the breaches and apologises to both the Registrar and the Tribunal.

ASSESSMENT

[68] 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.

¹ Immigration Advisers Licensing Act 2007, s 45(2) & (3).

² Section 49(3) & (4).

³ *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].

⁴ Section 50.

⁵ Section 51(1).

⁶ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citation omitted).

⁷ At [97], [101]–[102] & [112].

Client Care

2. A licensed immigration adviser must:

...

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

...

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.

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.

...

Applications

31. A licensed immigration adviser must:

- a. not deliberately or negligently provide false or misleading documentation to, or deliberately or negligently conceal relevant information from, the decision maker in regard to any immigration matter they are representing, and

...

(1) *Failing to ensure that a written agreement was provided to the clients once they decided to proceed in breach of cl 18(a)*

[69] This head of complaint concerns all six clients. It is alleged by the Registrar that cl 18(a) of the Code requires a written agreement between the licensed adviser and the client. However, the agreements here, which were not produced to the Authority by Mr Ji, were between NZ Business Migration and the client.

[70] Clause 18(a) does not require that the written agreement be between the licensed adviser and the client, only that there exists a written agreement and that all the parties

sign it.⁸ The agreement can be between the company employing the adviser and the client, though the adviser must be named.⁹ It should also be signed by the adviser, since the professional obligations are personal to the adviser, but that is a matter of best practice.

[71] The adviser must also have a written authority from the client to act on his or her behalf, an authority which must be in the agreement.¹⁰

[72] According to Mr Ji, there were agreements between NZ Business Migration and each client, but he could not provide them as he had left its employ. The obligation to produce documents to the Authority is confined to those in the adviser's possession or control at the time of the Authority's demand.¹¹ It appears that Mr Ji had not left NZ Business Migration at the time of the Authority's demand, but as the Registrar has not made a complaint under cl 26(e) concerning the failure to produce the agreements, this cannot be taken any further. I am aware from another complaint against Mr Ji that NZ Business Migration generally did have client agreements which named Mr Ji as the immigration adviser.

[73] The failure of Mr Ji to either be a party or to sign the client agreements is not a breach of the Code. While Mr Ji has admitted breaching cl 18(a) of the Code, this will be in reliance on the Registrar's mistaken view that he must be a party. This head of complaint is dismissed.

(2) *Failing to take personal responsibility for client engagement, obtaining instructions or establishing the client relationship, and allowing unlicensed individuals to provide immigration services, in breach of cls 1, 2(e) and 3(c)*

[74] The head of complaint also concerns all six clients. Mr Ji accepts he had no direct engagement with the clients, as that was all done through an intermediary company in China. The practice is known in the immigration advisory industry as "rubber stamping".¹²

General principles

[75] Typically, rubber stamping occurs where a licensed immigration adviser uses agents or employees often in another country to recruit the clients, prepare the

⁸ *HES v Parekh (Singh)* [2019] NZIACDT 36 at [39]–[42].

⁹ Licensed Immigration Advisers Code of Conduct 2014, cl 19(a).

¹⁰ Clause 19(b).

¹¹ *WQ v Emberson* [2019] NZIACDT 28 at [63].

¹² *Stanimirovic v Levarko* [2018] NZIACDT 3 at [4], [36]–[38]; *Immigration New Zealand (Calder) v Soni* [2018] NZIACDT 6 at [4], [50]–[61].

immigration applications and send them to the licensed adviser to sign off and sometimes also to file with Immigration New Zealand. The adviser usually deals with Immigration New Zealand, but there is little, if any, direct contact between the licensed adviser and the client.

[76] 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.¹³ A person employing as an immigration adviser another person who is neither licensed nor exempt also commits an offence.¹⁴ A person may be charged with such an offence even where part or all of the actions occurred outside New Zealand.¹⁵

[77] The statutory scope of “immigration advice” is very broad:¹⁶

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
 - (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.

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

¹³ Immigration Advisers Licensing Act 2007, s 63.

¹⁴ Section 68(1).

¹⁵ Sections 8 & 73.

¹⁶ Section 7.

[79] “Clerical work” is narrowly defined in the Act:¹⁷

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

[80] The words “advise”, “advice” and “assist” are not to be given restrictive meanings.¹⁸

[81] 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.

[82] 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.

[83] As Mr Ji had no direct contact with the clients in China, he has failed to obtain instructions from them, as required by cl 2(e) of the Code. The obligations of an adviser under the Code are personal and cannot be delegated to the unlicensed staff of NZ Business Migration, Globe or any other company or person.¹⁹

[84] It is apparent that unlicensed people were working with the clients to obtain the information and documents necessary to complete and support their respective visa applications. Additionally, someone advised the clients what type of visa application could be made, given the client’s personal and business circumstances. It clearly was not Mr Ji doing that.

¹⁷ Section 5, definition of “clerical work”.

¹⁸ *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).

¹⁹ *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [29], [34] & [47].

[85] Mr Ji has therefore permitted unlicensed people to provide services which satisfy the definition of immigration advice under the Act. The work of the staff goes well beyond clerical work. All this has been done in the name of Mr Ji, the only person who can file the applications with Immigration New Zealand.

[86] Mr Ji has not therefore conducted himself in accordance with the Act. This is a breach of cl 3(c) of the Code.

[87] While it adds nothing to the breach of cls 2(e) and 3(c), I find also that he has been unprofessional and therefore breached cl 1 in facilitating the unlawful conduct of the staff.

(3) *Providing information to Immigration New Zealand which was false, misleading or forged on behalf of four clients, thereby being negligent or alternatively being in breach of cls 1 and 31(a)*

[88] This head of complaint concerns four clients, being Ms T, Ms D, Ms Z and Mr W.

[89] It is common ground that documents supplied by Mr Ji on behalf of those four clients were false.

[90] Again, Mr Ji admits this breach of his professional obligations. It is accepted by Immigration New Zealand, and by the Tribunal, that Mr Ji did not know at the time he provided the documents to the agency that they were false.

[91] Clause 1 of the Code requires an adviser to be professional and diligent, and to conduct him or herself with due care. Mr Ji's mode of conducting his practice significantly elevated the risk of fraud. He offloaded all client contact and the bulk of the preparatory work to others. They were unlicensed. They were not even colleagues in his company. They were the staff of companies located in another country. These people in turn then used a "partner company" to obtain some of the documentation. I do not know whether Mr Ji even knew the name of this company or the employees involved. This was a recipe for fraud.

[92] A professional adviser, being diligent and exercising due care, knowing the obvious risk of fraud, which is common in immigration, will not work in such a fashion. He or she must warn the client against fraud and take reasonable steps to safeguard the integrity of the immigration system by dealing directly with the client and those providing documentation.

[93] Mr Ji has not been professional or diligent, nor has he conducted himself with due care. He has therefore breached cl 1 of the Code. As Mr Ji has not exercised the care expected of a reasonable professional adviser, he has also been negligent in providing false documentation to Immigration New Zealand. Not only is this a breach of cl 31(a) of the Code, but negligence is also a separate statutory ground of complaint.

(4) *Engaging in dishonest or misleading behaviour by falsely declaring that he had assisted the clients with recording information on the form when he had not done so, thereby being dishonest or misleading or alternatively being in breach of cl 1 requiring advisers to be honest, professional and to conduct themselves with due care*

[94] The template statements (declarations) made by Mr Ji on each application form were:²⁰

I certify that the applicant asked me to help them complete this form and any additional forms. I certify that the applicant agreed that the information provided was correct before signing the declaration.

I have **assisted** the applicant with recording information on the form.

I have **provided immigration advice** (as defined in the Immigration Advisers Licensing Act 2007) and my details in Section Q: Immigration adviser's details are correct.

[95] According to the Registrar, Mr Ji did not directly engage with any of his clients, so he was not in a position to assist them with recording information on the form. Moreover, Mr Ji has admitted this ground of complaint.

[96] It seems to me that both the Registrar and Mr Ji have misunderstood the template statements. In my view, the statements, on their own, are saying nothing about whether Mr Ji engaged directly with the clients. That is conflating the statements with an adviser's professional obligation under the Act and the Code to engage directly with the client.

[97] It is easiest to see the ambit of the statements by starting with the third statement, that Mr Ji "provided immigration advice" as defined in the Act.

[98] The definition of "immigration advice" is set out above.²¹ It is somewhat unhappily labelled "advice" when that is really just a part of the activities covered. It would be more appropriately labelled "services". It clearly covers a broad range of immigration work.

²⁰ The first statement cannot be attributed to Mr Ji in respect of Ms D's application.

²¹ At [76].

[99] Many of those services will not be done in the presence of the client or while in communication with the client. For example, lodging the application with Immigration New Zealand or corresponding with the agency. That is somewhat obvious.

[100] It is therefore apparent that some immigration services can be provided without directly engaging with the client. The undertaking of any service on behalf of a client which amounts to “immigration advice” (as defined) satisfies the statement, “I have **provided immigration advice**”, whether or not that was done by directly communicating with the client. It may be a breach of another professional obligation of the adviser to do certain work without engaging the client, but that personal contact is not required by the statement on the form.

[101] The second statement, the declaration by Mr Ji that he assisted the client by recording information on the form, is no different. There is no reason why recording information on a form has to be done in the presence of the client or in direct contact with the client, whether at the time of recording or earlier. The statement on the form is saying nothing about where the information came from or how it was received by the adviser. Recording information on a client’s form is providing assistance to the client, irrespective of how the adviser acquired the information.

[102] So far as I know, it was Mr Ji who recorded information on the form. The Registrar does not allege otherwise.

[103] The fourth head of complaint is dismissed.

OUTCOME

[104] The second and third heads of complaint against Mr Ji are upheld. He has breached cls 1, 2(e), 3(c), and 31(a) of the Code. He has also been negligent, a statutory ground of complaint.

SUBMISSIONS ON SANCTIONS

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

[106] A timetable is set out below. Any requests that Mr Ji undertake training should specify the precise course suggested. 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

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

- (1) The Registrar, the complainant and Mr Ji are to make submissions by **13 August 2019**.
- (2) The Registrar, the complainant and Mr Ji may reply to submissions of any other party by **27 August 2019**.

ORDER FOR SUPPRESSION

[108] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.²²

[109] There is no public interest in knowing the names of Mr Ji's clients.

[110] The Tribunal orders that no information identifying the clients is to be published other than to the parties.

D J Plunkett
Chair

²² Immigration Advisers Licensing Act 2007, s 50A.