

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2019] NZIACDT 53

Reference No: IACDT 037/17

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
(JOCK GILRAY)**
Complainant

AND **HARINDER (HARRY) SINGH**
Adviser

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 29 July 2019

REPRESENTATION:

Registrar: Self-represented
Complainant: Self-represented
Adviser: P Moses, counsel

PRELIMINARY

[1] Mr Singh, the adviser, is based in Auckland. The complaint concerns three clients based in the Philippines.¹ Mr Singh had no contact with them, but dealt with them through a consultancy in the Philippines. The primary allegation is that Mr Singh delegated immigration work to the unlicensed staff of another company in a different country, contrary to the Immigration Advisers Licensing Act 2007 (the Act) and the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

BACKGROUND

[2] Mr Harinder (Harry) Singh is a licensed immigration adviser. He is an employee of Eagle Migration Services Ltd (Eagle Migration).

[3] In February 2016, an Auckland automotive company (the employer) approached Eagle Migration for assistance in organising visas for automotive technicians to be recruited from the Philippines.

[4] On 15 March 2016, Eagle Migration sent a standard checklist to the employer, advising that the questions needed to be answered and signed by each client.

[5] Between March and April 2016, the three clients each signed a contract with Eagle Migration for a work visa application. Mr Singh signed on behalf of Eagle Migration and was identified as a licensed immigration adviser.

[6] A client agreement between Eagle Migration and the employer was signed by Mr Singh and the employer on 6 May 2016.

[7] The work visa applications were lodged with Immigration New Zealand by Mr Singh in May 2016.

[8] On 24 May 2016, Immigration New Zealand interviewed the clients. They all stated that they had never met with or spoken to Mr Singh. They were all given the visa application form by (Ms G), from a Philippines recruitment company (the consultancy). Once signed, it was handed back to her. She explained the visa process and gave them the checklist. Ms G assisted in the preparation of the documents. All the supporting documents were given to her. If they had any questions about the visa process, they would contact her by cellphone or email.

[9] Immigration New Zealand approved the work visas for the clients in June 2016.

¹ DBV, BF, JFM.

Immigration New Zealand issues information warning against Mr Singh

[10] On 10 May 2017, Immigration New Zealand wrote to Mr Singh advising that it was considering adding an information warning on its electronic management system concerning his conduct as a licensed adviser. It appeared that he was associated with an unlicensed person, Ms G, who was providing immigration advice to his clients. They said they had never spoken to him. It was concerned that he may not be meeting his professional obligations under the Code due to his lack of direct communication with the clients. His comments were invited.

[11] On 10 May 2017, Eagle Migration sent an email to Ms G asking her to confirm that she had never provided immigration advice, but had only collected and forwarded documents for assessment by Eagle Migration. In a brief email on the same day, Ms G confirmed this.

[12] Mr Singh replied on 11 May 2017 by letter to Immigration New Zealand. He said he had never provided false or misleading information to Immigration New Zealand. Eagle Migration had been contacted by the employer which was accredited with Immigration New Zealand. The law stated that the employer was his "main client". The human resources manager at the employer had signed the client agreement in line with the Code.

[13] Mr Singh explained that pursuant to the instructions received from the client employer, Eagle Migration emailed the employment agreement, the Code and Eagle Migration's visa checklist for the collection of the clients' information so that their eligibility for a work visa could be assessed. He does not identify to whom these documents were emailed. According to Mr Singh, the checklist was very detailed and covered every aspect of immigration advice, including health, character, current employment and other matters. All three clients had answered the questions themselves, signed the checklist and then supplied it to the consultancy.

[14] In his letter, Mr Singh said that Ms G had been instructed by the employer to assist with the administrative requirements, such as the collection of information. She only collected the documents in accordance with the checklist and then forwarded them to him to assess their eligibility and complete the applications. They had been assured that no immigration advice was ever provided by Ms G.

[15] Immigration New Zealand was told by Mr Singh that in this way he successfully obtained the required information and provided immigration advice to the three clients.

[16] Mr Singh said it was true that he may not have spoken to the clients in person since they were based overseas and in a different time zone, but he had provided them with written immigration advice which they had fully understood. It was not always possible to talk to the clients directly, but questions could be asked in writing in the form of a visa checklist.

COMPLAINT

[17] Immigration New Zealand (Jock Gilray) made a complaint to the Immigration Advisers Authority (the Authority), headed by the Registrar of Immigration Advisers (the Registrar), on 31 May 2017. It concerned three clients of Mr Singh who had said they had never spoken or met with him in the course of their respective visa applications. They had received ongoing advice and information about their visa applications from Ms G, a Philippines-based agent. Mr Singh had attempted to mislead Immigration New Zealand by relying on unlicensed persons to provide advice to his clients and having no relationship with them himself.

[18] In response to queries from the Authority, Mr Singh advised it on 21 August 2017 that Eagle Migration's fees were all paid by the employer. Eagle Migration had no formal relationship with the consultancy, but was instructed by the employer to liaise with it. He had not previously used the consultancy.

[19] The Authority formally advised Mr Singh of the complaint on 31 August 2017 and invited his comments.

Mr Singh's explanation to the Authority

[20] Counsel for Mr Singh, Mr Moses, wrote to the Authority on 4 October 2017. Mr Singh accepted that he had made a number of mistakes in acting for the three clients. He acknowledged that his conduct fell short of the standard expected of him by the Code. However, there was no evidence of any dishonest or misleading behaviour, as alleged.

[21] Mr Moses contended that the specific breaches of the Code were of a more technical nature. There was no evidence that the consultancy had actually provided unlicensed advice to the client. It was accepted though that the staff of the consultancy were constantly at risk of providing unlicensed immigration advice. If Mr Singh's conduct breached cl 1 of the Code, which was accepted, then he had also acted in breach of cl 3(c). He had not exercised due care. This was an inadvertent breach. His conduct was not a deliberate violation of the professional standards. He had made simple mistakes.

[22] In relation to cl 2(e), Mr Moses noted that no evidence had been obtained of the clients' instructions. They had not complained that their interests or instructions were being ignored. This was another matter where it could be said there was a risk of this happening, rather than it actually having occurred. Mr Singh's conduct had fallen short of best practice, but there was insufficient evidence of an actual breach. There would need to be a complaint or testimony from the clients to establish the breach of cl 2(e).

[23] As for cls 18(b) and 19(e), Mr Singh accepted that his engagement process fell short of what was required by the Code. This was the first time he had dealt with a situation of this nature, whereby the employer was based in New Zealand and the overseas-based clients were recruited directly by the employer via the employer's recruitment agent. He now accepted the need to be in direct contact with a client. In assessing the severity of the flaws in the engagement process, there was no blatant disregard by Mr Singh of his professional obligations. Instead, he had made a genuine mistake based on a failure to comprehend all aspects of a somewhat complex tripartite arrangement.

[24] As for cl 26(b), Mr Singh acknowledged that he had failed to report to the clients with the same regularity that he reported to the employer. He had treated the fee paying employer as his main client. This was an easily understandable error. Nevertheless, Mr Singh now realised that the Code required him to report to his clients and he would change the way he practised in the future.

[25] It was noted by counsel in mitigation that there had been no prejudice to the clients who had made no complaint. There was no suggestion that they did not read English and understand both the documentation and Mr Singh's role. Mr Singh was entitled to rely on his clients reading the contractual documentation before each of them signed it.

[26] Furthermore, there was an absence of avarice on the part of Mr Singh. The clients were not charged at all and the employer was only charged a very modest fee of \$1,000 plus GST for each visa.

[27] In conclusion, Mr Moses contended these were genuine errors by Mr Singh. There was no intentional flouting of the professional standards. Mr Singh had also responded maturely to the complaint and was willing to learn from his mistakes. It was submitted that the overall severity of the breaches was relatively low. The matter did not require a formal sanction by the Tribunal. Mr Singh had been alerted to his deficiencies and had remedied them.

[28] A statement by Mr Singh, dated 2 October 2017, was sent by counsel to the Authority. Mr Singh confirmed counsel's submissions. He had reflected on the matter and had the benefit of legal advice. He accepted that he had made mistakes in the way he had conducted himself. However, he had not been dishonest or misleading.

[29] Mr Singh accepted that he had failed to understand the complexities arising in the tripartite contractual relationship. The employer was an existing commercial client of Eagle Migration from whom it received repeat instructions. The clients had already been selected and the consultancy in the Philippines appointed by the employer as its agent. The employer had asked him to contact the clients through the consultancy and this seemed the most practical way of pursuing the matter. He provided all the contractual documents and checklists for the clients through the consultancy and relied on the latter to collate the information and return it to him.

[30] Mr Singh said he recognised that the consultancy's staff had been put constantly at risk of providing non-licensed immigration advice. He had not guarded against that risk as required by his professional obligations. He accepted that he had not acted with due care ensuring that unlicensed immigration advice was not given to the clients. This was a potential breach of cl 1 of the Code. It had not occurred to him at the time that there was any such risk, as he had provided written documents, including a detailed checklist and had then received the information from the clients through the consultancy.

[31] It was now understood by Mr Singh that there was a risk that the clients, rather than contacting him, would seek answers to their questions from the staff at the consultancy. However, he did not believe there was clear evidence that the clients received unlicensed immigration advice. The consultancy's staff had confirmed in writing that they understood they were not permitted to do so and that they had not given immigration advice to the clients.

[32] According to Mr Singh, any breach of cl 1 was inadvertent. Having accepted a lack of due care in regard to cl 1, Mr Singh also acknowledged that this could amount to a failure to act in accordance with the licensing legislation.

[33] As for cl 2(e), Mr Singh accepted that by not having direct contact with the clients he was at risk of not receiving their informed instructions. However, he was not sure there was any clear indication of a failure to receive the clients' informed instructions. They had not complained about any aspect of the service and all three visa applications had been approved. Notwithstanding this, Mr Singh recognised the need in the future to ensure that he had a direct line of communication with the clients and there was no risk

of an intermediary being placed in a position where unlicensed immigration advice was given.

[34] Furthermore, with the benefit of hindsight, Mr Singh acknowledged that his engagement process breached cls 18(b) and 19(e) of the Code. He had assumed that the agreements were clear and that he did not need to do anything further to ensure compliance with the Code. He assumed that if the clients had questions, they would contact him. It was accepted that, having viewed the contracts, they were unclear as to who was paying Eagle Migration's fee. There was never an expectation that it would be paid by the clients but that should have been clarified by the contract. It was also recognised that the agreement was overly economical in identifying the client's instructions. It was appreciated that the tailoring of the agreement fell short of what was required by cl 19(e).

[35] Mr Singh accepted that he had treated the employer as his main client, with whom he was in regular contact. He accepted that he had erred in not providing the same updates to the clients themselves.

[36] Having recognised his shortcomings and expressed regret, Mr Singh said they were relatively easily fixed going forward. He would be in direct contact with his clients. This protected both the client and himself from the risk of an overseas agent providing unlicensed advice. He would also ensure that an adequate explanation was provided in the client agreement as to the engagement process.

[37] Mr Singh believed that the substance of his immigration work for the clients and the employer was very solid. Two of the three clients had subsequently instructed Eagle Migration to represent them in residence applications.

[38] A letter from Ms G to Eagle Migration dated 7 July 2017 was provided to the Authority. She described herself as a documentation specialist from a recruitment agency accredited by the Philippines government. She said the agency assisted employers and principals, especially from Australia and New Zealand, to recruit skilled workers. As a documentation specialist, she collated documents based on visa checklists given by the migration agents. She never gave immigration advice to the clients.

[39] The Registrar referred the complaint to the Tribunal on 21 November 2017. It alleges that Mr Singh breached the Code in the following respects:

- (1) failed to conduct himself with due care in ensuring that unlicensed individuals were not giving immigration advice to the clients, in breach of cl 1;
- (2) failed to personally engage with the clients to obtain their lawful instructions, in breach of cl 2(e);
- (3) relied on unlicensed individuals to assist the clients with their visa applications, including providing coaching for the Immigration New Zealand interviews and being the sole point of contact for the clients, in breach of cl 3(c);
- (4) failed to explain all significant matters in the written agreement to the clients, such as fees, in breach of cl 18(b);
- (5) did not tailor the agreement to the clients, in breach of cl 19(e); and
- (6) failed to confirm in writing to the clients when their applications were lodged and to provide ongoing timely updates, in breach of cl 26(b).

JURISDICTION AND PROCEDURE

[40] The grounds for a complaint to the Registrar made against an immigration adviser or former immigration adviser are set out in s 44(2) of the Act:

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

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

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

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

[43] After hearing a complaint, the Tribunal may dismiss it, uphold it but take no further action or uphold it and impose one or more sanctions.⁵

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

[45] It is the civil standard of proof, the balance of probabilities, that is applicable in professional disciplinary proceedings. However, the quality of the evidence required to meet that standard may differ in cogency, depending on the gravity of the charges.⁸

[46] The Tribunal has received from the Registrar the statement of complaint, dated 21 November 2017, together with supporting documents.

[47] There are no submissions from the complainant.

[48] There is a statement of reply, dated 21 December 2017, from Mr Moses on behalf of Mr Singh. His submissions are considered later.

[49] Since the Registrar is not pursuing the allegation of dishonest or misleading conduct, Mr Singh does not seek an oral hearing.

ASSESSMENT

[50] 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.

³ Section 49(3) & (4).

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

⁵ Section 50.

⁶ Section 51(1).

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

⁸ *Z v Dental Complaints Assessment Committee*, above n 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:

...

- b. before any written is accepted, they explain all significant matters in the written agreement to the client

...

19. A licensed immigration adviser must ensure that a written agreement contains:

...

- e. a full description of the services to be provided by the adviser, which must be tailored to the individual client.

...

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

...

[51] The first three heads of complaint are inter-connected and will be assessed together.

- (1) *Failed to conduct himself with due care in ensuring that unlicensed individuals were not giving immigration advice to the clients, in breach of cl 1*
- (2) *Failed to personally engage with the clients to obtain their lawful instructions, in breach of cl 2(e)*
- (3) *Relied on unlicensed individuals to assist the clients with their visa applications, including providing coaching for the Immigration New Zealand interviews and being the sole point of contact for the clients, in breach of cl 3(c)*

General principles

[52] 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”.⁹

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

[54] 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.¹⁰ A person employing as an immigration adviser another person who is neither licensed nor exempt also commits an offence.¹¹ A person may be charged with such an offence even where part or all of the actions occurred outside New Zealand.¹²

[55] The statutory scope of “immigration advice” is very broad:¹³

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

⁹ *Stanimirovic v Levarko* [2018] NZIACDT 3 at [4], [36]–[38]; *Immigration New Zealand (Calder) v Soni* [2018] NZIACDT 6 at [4], [50]–[61].

¹⁰ Immigration Advisers Licensing Act 2007, s 63.

¹¹ Section 68(1).

¹² Sections 8 & 73.

¹³ Section 7.

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.

[56] The words “advise”, “advice” and “assist” are not to be given restrictive meanings.¹⁴

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

[58] “Clerical work” is narrowly defined in the Act:¹⁵

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

[59] In *Immigration New Zealand (Calder) v Ahmed*, the Tribunal set out the principles applicable to distinguishing clerical work from immigration advice.¹⁶

¹⁴ *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).

¹⁵ Section 5, definition of “clerical work”.

¹⁶ *Immigration New Zealand (Calder) v Ahmed* [2019] NZIACDT 18 at [55]–[59], [65]–[70].

[60] 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.

[61] 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.

[62] The obligations set out in the Code are personal to the licensed immigration adviser and cannot be delegated.¹⁷

Application of general principles to Mr Singh

[63] Neither Mr Singh nor Eagle Migration set out to recruit offshore clients, since the clients were presented to them by the employer. However, once that occurred, the pattern of typical rubber stamping was followed by Mr Singh.

[64] Mr Singh had no direct engagement with any of the clients at all. While they knew his name from the client agreement each of them signed, they were not given his contact details. The agreements set out the “admin” email address (of a named office manager) and the email address of Eagle Migration’s director (also a licensed immigration adviser, but not the named adviser for these applications). The telephone number of the director was also given.

[65] As Mr Singh acknowledges, there was a risk that in the absence of an ability to communicate directly with him, the clients would deal with Ms G on all immigration matters. Indeed, that was encouraged as that was her role. There was more than just a risk of Ms G giving unlicensed advice. It was inevitable.

[66] I do not accept the submission that there was only a risk of services amounting to immigration advice (as defined) being performed by an unlicensed person, but no evidence of actual advice by Ms G. The evidence of unlicensed advice lies in the interviews of all three clients with Immigration New Zealand. The only person they dealt with throughout the immigration process was Ms G. She told them about the process and managed all the documents.

¹⁷ *Sparks*, above n 4, at [29], [34] & [47].

[67] It is implausible that all three clients would not have asked questions of Ms G concerning their visa applications, the extensive information and documentation required by Immigration New Zealand and their own prospects. Prospective migrants have many questions. Eagle Migration's checklist is quite brief. There is a list of documents to provide, some information about the process and the fees, and eight questions to answer. It contains little information for the clients.

[68] There can be no doubt that all three clients would have asked Ms G about their prospects of converting the work visas to residence visas. That would have been the longer term goal of all of them. At least two of them have now sought residence. Two of them are married and are likely to have asked about the prospects of getting their families to New Zealand.

[69] I also regard it as highly likely that issues will have arisen in relation to one or more documents for one or more of these clients. Immigration New Zealand's requirements are strict and satisfying the agency is not as straightforward as simply producing documents matching a checklist.

[70] Turning now to the specific heads of complaint, the assessment of the first head is dependent on the outcome of the second and third, so I will deal with them first.

[71] In respect of the second head of complaint, Mr Singh admits he did not have direct contact with the clients. This is a breach of cl 2(e) in failing to obtain the clients' informed instructions. He cannot delegate that responsibility to another person, as the obligation to obtain instructions is personal to him. Nor can he rely solely on what Ms G tells him and/or the answers on the checklists as he does not know what advice Ms G was giving them which led to those answers. In the absence of direct engagement with the clients, Mr Singh does not know whether the information he was being given by Ms G (the instructions) was "informed". The Code obligation is not merely to obtain instructions, but to obtain informed instructions.

[72] I discount the letter from Ms G asserting that she did not provide immigration advice. Apart from its self-serving nature, there is no evidence Eagle Migration's director or Mr Singh explained to her that broad statutory definition and the narrow clerical work exclusion. She will not know what amounts to immigration advice under the Act. It is not even confined to advice given to the clients, since it embraces all immigration work performed on their behalf. Plainly, she was performing immigration services as she was collating the information and documents for forwarding to Mr Singh.

[73] As for the third head of complaint, I find Mr Singh has relied on unlicensed people to assist all three clients. It is clear from their interviews with Immigration New Zealand that all three relied on Ms G for information about their visa applications. There is no evidence of Ms G providing “coaching” in preparing them for their interviews, but there can be no doubt they would have been anxious and would have had questions for Ms G beyond Mr Singh’s list of possible topics given to Ms G.¹⁸ Indeed, Mr Singh asked Ms G to assist them with their preparation.¹⁹

[74] The conduct of Ms G is in breach of the Act. This has been facilitated by Mr Singh. All her immigration work is being done in his name. The clients are only dealing with Ms G because Mr Singh can file the visa applications on their behalf. That is not something Ms G can do in her own name or in the name of the consultancy. Mr Singh’s conduct is therefore also contrary to the Act. He is in breach of cl 3(c) of the Code.

[75] Returning to the first head of complaint, it adds little to the breaches by Mr Singh of cls 2(e) and 3(c) to find, as I do, that he was unprofessional and failed to exercise due care in permitting an unlicensed person to provide immigration services that only a licensed person is permitted to do. Mr Singh accepts this breach. I find Mr Singh breached cl 1 of the Code.

[76] Mr Singh’s conduct is properly classed as a lack of due care, as there is no evidence of any dishonest or misleading conduct by him. I accept Mr Moses’ contention that Mr Singh did not consciously flout his professional obligations. I also accept counsel’s submission that the complaint essentially relates to what he describes as one composite error of judgement.

[77] The breaches of the Code have arisen from one critical mistake Mr Singh made. He thought the employer was his “main client”. That will be correct in commercial terms. But it is not correct in terms of his professional responsibilities under the Act and the Code. The three visa applicants were his true immigration clients, to whom he owed his obligations under the Code. He overlooked that. The mistake was inadvertent, but fundamental.

[78] Mr Moses urges the Tribunal to dismiss the complaint on the basis that Mr Singh has acknowledged his errors and confirmed that the procedural deficiencies will not be repeated in the future. Counsel points out that the clients have not been prejudiced (they were all successful) and have not complained, there was an absence of avarice on the

¹⁸ Registrar’s supporting documents at 77, 79.

¹⁹ At 79.

part of Mr Singh and Eagle Migration (no fee was charged to the clients and the employer only paid \$1,000 per client) and Mr Singh did not set out to intentionally flout the standards.

[79] While Mr Moses had identified strong mitigation, the gravamen of the complaint upheld is serious. Mr Singh has facilitated, albeit unintentionally, the potentially illegal conduct of Ms G, aside from his own potentially illegal conduct. It is not my role to assess any possible criminal conduct, but the potential for this shows just how serious is this type of unprofessional behaviour. Mr Singh has deprived the clients of the protection to which they are entitled by having a qualified and knowledgeable person directly engaged with them and their applications throughout the entire process. It turns out that these clients were not prejudiced, but that is no defence.

[80] The behaviour of Mr Singh crosses the disciplinary threshold by a demonstrable margin. The complaint will be upheld.

(4) Failed to explain all significant matters in the written agreement to the clients, such as fees, in breach of cl 18(b)

[81] Mr Singh accepts that, as he had no contact with the clients, he did not explain to them all significant matters in the agreement. In particular, he did not explain the fees and who was to pay them. Mr Singh breached cl 18(b) of the Code.

(5) Did not tailor the agreement to the clients, in breach of cl 19(e)

[82] Clause 19(e) of the Code requires that the client agreement contain a full description of the services to be provided by the adviser, tailored to the individual client. The Registrar alleges that the agreements and visa checklists cover many possible immigration situations.

[83] The template agreement lists many different visa types and fees. While Schedules 1 and 3 to the agreement do list multiple visa types and fees, Mr Singh has in respect of all three clients circled the "Work Visa Application" and "NZ\$1,000 plus GST" options, and also entered "1" against the "Work Visa" box at the same time leaving the other visa boxes blank.

[84] An adviser is entitled to have a standard client agreement covering different types of clients, provided those parts relevant to the client and those parts that are not are clearly indicated. Anyone reading this agreement will be clear what services are being specified for each of these three clients.

[85] The visa checklist is not relevant to the cl 19(e) obligation.

[86] I decline to uphold any breach of cl 19(e).

(6) *Failed to confirm in writing to the clients when their applications were lodged and to provide ongoing timely updates, in breach of cl 26(b)*

[87] Mr Singh admits failing to personally advise his clients when the applications were lodged or of updating them as to their progress or the outcome. He is in breach of cl 26(b) of the Code.

OUTCOME

[88] I uphold the complaint. Mr Singh is in breach of cls 1, 2(e), 3(c), 18(b) and 26(b) of the Code.

SUBMISSIONS ON SANCTIONS

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

[90] I have already accepted the submission of Mr Moses that the breaches arose from one underlying mistake and that there is overlap between them. There will be no double counting of violations in determining the sanctions.

[91] 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

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

- (1) The Registrar, the complainant and Mr Singh are to make submissions by **19 August 2019**.
- (2) The Registrar, the complainant and Mr Singh may reply to the submissions of any other party by **2 September 2019**.

ORDER FOR SUPPRESSION

[93] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.²⁰

[94] There is no public interest in knowing the name of Mr Singh's clients, Ms G or the consultancy.

[95] The Tribunal orders that no information identifying the clients, Ms G or the consultancy is to be published other than to the parties.

D J Plunkett
Chair

²⁰ Immigration Advisers Licensing Act 2007, s 50A.