

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2020] NZIACDT 34

Reference No: IACDT 031/18

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

**BY** **THE REGISTRAR OF  
IMMIGRATION ADVISERS**  
Registrar

**BETWEEN** **ZT**  
Complainant

**AND** **MAIO (LIZ) LI**  
Adviser

**HEARING:** 20 July 2020

**SUBJECT TO SUPPRESSION ORDER**

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**DECISION**  
**Dated 5 August 2020**

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**REPRESENTATION:**

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

## PRELIMINARY

[1] ZT, the complainant, engaged Ms Maio (Liz) Li, the adviser, to seek residence under the investor category. It was declined by Immigration New Zealand, as the complainant did not invest his funds by the deadline. The complainant blames Ms Li. She admits negligence, since she overlooked the deadline and failed to remind him to invest as it approached.

[2] The complainant made a complaint to the Immigration Advisers Authority (the Authority) under the Immigration Advisers Licensing Act 2007 (the Act). The Registrar of Immigration Advisers (the Registrar), the head of the Authority, has referred the complaint to the Tribunal alleging not just negligence, but also dishonest or misleading behaviour. These are grounds of complaint under the Act, as well as breaches of the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

[3] The essential issue to consider is whether there is sufficient evidence to establish that Ms Li's conduct was dishonest or misleading in the way alleged by the Registrar.

## BACKGROUND

[4] Ms Li is a licensed immigration adviser. She is a director of Ampass Consultants Company Ltd, of Auckland.

[5] The complainant, a national of China, engaged Ms Li to obtain residence in New Zealand. They both signed Ms Li's immigration agency agreement on 13 January 2014.

[6] On 27 May 2014, Ms Li filed the complainant's residence application under the investor 2 category with Immigration New Zealand. It included his wife. He claimed 10 points for \$1.5M in investment funds.

### *Approval in principle from Immigration New Zealand*

[7] In a letter to the complainant and Ms Li, Immigration New Zealand gave approval in principle for residence on 27 July 2015.<sup>1</sup> A breakdown of the complainant's accepted nominated funds, a total of \$3,129,879.46 (of which \$1.5M attracted points), was set out in the letter. It specified that he was given 12 months to transfer his nominated funds to New Zealand and place them into acceptable investments. If he was unable to do that, he could request a further six months.

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<sup>1</sup> The same letter was sent again to the complainant and Ms Li on 14 October 2015, with minor details amended.

[8] Ms Li sent an email to the complainant on 28 July 2015. She said that his application had been approved and he would have a work visa for one year. The assets listed in the approval letter would be used as the investment funds. He could realise the \$1.5M asset and transfer the money to New Zealand using the banking system. Ms Li added that when Immigration New Zealand approved the fund transfer, it would grant him a “conditional resident visa”. The condition would be removed when the investment funds were in place and had been transferred and invested in approved projects in New Zealand for four years. Provided he met the minimum living period in New Zealand, he would then be granted an unconditional residence visa.

[9] In an exchange of texts with the complainant on 5 December 2015, Ms Li advised him that he needed to transfer \$1.5M into investment items, not merely a bank account. This would occur before he applied for conditional residence.

[10] In January 2016, Ms Li introduced the complainant to Dr Su, a financial adviser. It was his role to advise the complainant on investments acceptable for immigration purposes. Ms Li took him to meet Dr Su. They discussed the approved methods for transferring the funds to New Zealand and the option to invest after the transfer had been approved by Immigration New Zealand. The three of them agreed at this meeting that approval of the transfer should be sought before investment.

*Ms Li seeks approval of the funds transfer*

[11] On 22 February 2016, Ms Li sent the transfer documents to Immigration New Zealand and requested confirmation that the funds had been correctly transferred. She advised that the complainant had transferred \$1.65M to his bank account in New Zealand. Once the agency had confirmed the transfer, the complainant would invest the fund in acceptable investment items.

[12] Dr Su discussed the application by telephone with Ms Li on 7 April 2016.<sup>2</sup> Ms Li advised him not to invest yet. She said the immigration policy required the funds to be invested first, before filing the documents. She noted, however, that Dr Su had said they needed to make sure Immigration New Zealand accepted the transfer. Ms Li asked him whether his company had experience regarding when to submit the investment documents. Dr Su replied that they normally submit the transfer documents for assessment first, before investment, as there can be problems with the transfer. This could cause “much trouble”. He added that, if the time was not sufficient, they needed to invest. As the deadline approached, it “must be invested”. Dr Su stated that Ms Li was the agent and would need to look after it.

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<sup>2</sup> Registrar’s supporting documents at 181.

[13] On 29 June 2016, Ms Li sent an email to an immigration officer seeking an extension of six months “allowing [the complainant] to transfer funds if [the] assessment result [was] not favourable”.

*Deadline set for fund transfer and investment*

[14] The extension was granted by email on 6 July 2016, with the new deadline being 27 January 2017 for the “transfer and investment of funds to NZ”.

[15] Immigration New Zealand advised Ms Li on 16 September 2016 that the transfer of funds through the banking system might not have occurred correctly. Further information was invited.

[16] In an exchange of emails on 23 September 2016 between Ms Li and the immigration officer, Ms Li advised that the complainant had contacted the Bank of China to transfer funds through an acceptable “QBII” product. The email is unclear, but she appears to say the investment will be in November 2016. Ms Li noted that this was within the investment period. The officer said that was fine and the evidence could be provided in November 2016.

[17] On 9 November 2016, Dr Su advised Ms Li by phone that the complainant had said all of his funds were now in the bank in New Zealand. He asked whether the method of transfer had been assessed by Immigration New Zealand. If it had been, he could make the investment. If not, she should check on the assessment.

[18] Ms Li replied in the phone call that the assessment had not been completed. Approximately \$1.2M had been accepted but \$300,000 had not been. The immigration officer had confirmed that if the complainant could transfer a further \$300,000 using an acceptable method, such as QDII products from the Bank of China, then it would all be accepted. The complainant had asked her whether \$1.3M could be sent to him (Dr Su) for investment, but she had told the complainant it was better to wait until the transfer of the \$0.3M was accepted, then the investment could be made together.

[19] On 5 January 2017, an immigration officer sent an email to Ms Li advising that he was having difficulty understanding the complex fund transfer. He noted that the “final deadline for completion of the funds transfer and investment” was 27 January 2017. He did not think he would be able to deal with the case by then. He pointed out that the complainant had “to ensure that he complete[d] all his investments by 27 January 2017 or [the agency would] be unable to consider approving his application”.

[20] Ms Li replied immediately, asking whether she could call him the following week to discuss it.

[21] On the following day, the officer responded to say there appeared to be several issues with the transfer and he needed to go through the paperwork. He would not be in a position to discuss it until around 20 January.

[22] Ms Li sent an email to the officer on 8 January 2017 with information she hoped would assist his understanding. She set out the history since approval in principle. The only issue that had been raised by a former officer concerned the transfer of funds using a family member's quota. She fully understood that the complainant was given only one year "for transferring fund" and it could be extended by only six months. It was partly because of the agency's lengthy processing time that he had been put in an awkward situation. She was expecting a clear decision, so the complainant could make a decision to apply for other visas, liquidate any nominated fund or sell his house, and move back to China. She wanted to know the officer's general concerns before 15 January.

[23] At 5:48 pm on 9 January 2017, the complainant sent a text to Ms Li asking her to call the officer and check on progress as he was anxious.

[24] Ms Li promptly responded by telephoning the complainant at 6:05 pm. She said that the officer had already told her that his case had some problem and the officer did not know when the review would be finished. According to Ms Li, the officer said that because "the deadline for the transfer of your investment funds is 27/01/2017", the complainant "should guarantee before January 27 to transfer all the funds as required". She explained that the agency had delayed his case over one and a half years, but there was still no way to know if he met the requirements. Ms Li advised that she had asked the officer to give an answer that week.

[25] At about 6:11 pm, the complainant replied that the explanation was difficult to understand. Every time there was a new manager, the case was again assessed from the beginning. He asked what was meant by "the transfer should be completed by 27 January", as all of his money (\$1.5M) was already in New Zealand. The complainant asked whether he should provide to the immigration officer proof of his transfer, or put all of the money with Dr Su to purchase the funds and bonds. He was not clear about this.

[26] On 13 January 2017, Ms Li sent an email to an immigration manager setting out some history of the application. It had been approved in principle in July 2015. The complainant had completed the transfer of the funds in February 2016. An earlier officer had advised there was an issue concerning the transfer of \$320,000. It took until October 2016 for the officer to advise that it had not been transferred legally. In December 2016, the complainant finally completed the process of buying QDII products and again requested an assessment.

[27] According to Ms Li's email, as (*verbatim*) "the final date for transferring fund would be the end of January 2017", she had worked overtime to collect the evidence and prepare the documentation, and had lodged a further urgent request with an immigration officer. That officer had responded that he thought the case was complicated and he needed more time, so he expected to reply after 20 January 2017.

[28] Ms Li further advised the immigration manager that it was her understanding that the complainant had provided the documents in a timely manner and she expected Immigration New Zealand to assess the application. The period of (*verbatim*) "1.5 years given to client for transferring fund is reasonable", on condition that the agency assessed the application in a timely manner. As the application had a very strict timeframe, she believed both parties (the client/adviser and Immigration New Zealand) should work efficiently. She sought a special consideration and the grant of a further time extension for the application. Her client was genuine and met all the relevant requirements.

*Deadline passes without investment*

[29] The transfer and investment deadline of 27 January 2017 passed without any investment being made.

[30] The immigration manager to whom the 13 January 2017 email had been addressed replied on 8 February 2017, apologising for the delay and advising that he would respond shortly.

[31] On 22 February 2017, yet another immigration officer sent an email to Ms Li advising that a previous officer had completed the assessment and it was only the funds transferred through the QDII channel that needed to be considered.<sup>3</sup> The officer allocated was currently experiencing a high workload, so a new officer would be allocated.

[32] The officer noted in his email that Ms Li had expressed concern about the time required to complete the transfer and investment assessment. The time for "transfer and investment" was set by the instructions and was outside the timeframes for assessment. Any processing delays would be a factor in considering whether to grant further time within the instructions. The instructions though were strict and there was no ability to grant further time to complete "the transfer and investment" that was not provided for in the instructions.

[33] Ms Rebecca Zhu, then a specialist business immigration officer, was allocated the applicant's file on 22 February 2017.

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<sup>3</sup> At 309–310 of the Registrar's supporting documents.

[34] Ms Zhu sent an email to Ms Li on 27 February 2017 raising “potential issues” concerning the complainant’s funds. Certain funds did not appear to meet Immigration New Zealand’s requirements.

[35] Ms Zhu sent an email to Ms Li on 9 June 2017 advising that she was consolidating all the documents and writing up her assessment. She was prioritising the generation of a full chronology and once that was done, any potential loopholes would be addressed. No further documents were needed.

[36] On 12 June 2017, Immigration New Zealand (Ms Zhu) wrote to Ms Li advising that it appeared the complainant had lost ownership of his nominated real estate property. Further information was invited.

[37] Ms Li responded to Immigration New Zealand’s letter by email on 14 June 2017. An explanation was provided regarding the sale of the complainant’s house in China and how the purchaser had paid (the house being among the complainant’s nominated assets). Ms Li asserted that there was no breach of the instructions.

[38] On 17 July 2017, Ms Li asked Ms Zhu to advise progress on the decision.

[39] On 24 August 2017, there was an exchange of emails between Ms Zhu and Ms Li. The latter confirmed that the complainant had invested only \$322,245.41 in the QDII product. Ms Zhu noted that he was \$1.2M short of the required investment.

*Ms Zhu telephones the complainant and Ms Li to notify a failure to invest*

[40] Ms Zhu phoned the complainant on the same day, 24 August 2017. She told him that he had not completed his investments by the deadline. According to her file note of the conversation, he “appeared shocked” and said that he never knew this. Ms Li had not told him, nor had she explained the procedure or copied to him the approval in principle letter. Ms Zhu informed him that the onus was on him to ensure that he met Immigration New Zealand’s requirements. The complainant said that he was waiting to be issued residence before deciding to invest in New Zealand, as instructed by Ms Li. He told Ms Zhu that his funds had been ready for investment since the beginning of 2016 and he was just waiting to be approved before investing. The complainant advised Ms Zhu later that he had his funds in a named bank in New Zealand.

[41] Also on 24 August 2017, Ms Zhu and Ms Li had a telephone discussion. According to Ms Zhu’s file note, Ms Li claimed to have no knowledge of the need for the complainant to invest in New Zealand before the deadline and thought that the investments should be completed only after he had received residence. Ms Zhu responded that all the correspondence made it clear that the investment had to be

completed, which was the crucial basis of the investor category. Ms Li repeated that she had no knowledge of this requirement. She thought the complainant only needed to transfer his funds onshore by the deadline.

[42] Ms Li had a discussion with the complainant on the same day. According to a transcript of a recording provided by the complainant, she told him it was her understanding that he had to finish the transfer and not invest the fund. She admitted to “some negligence here, was careless”.

[43] On the following day, 25 August 2017, Ms Li told the complainant (according to his recording) that everyone makes mistakes and she had not made it clear to him. He could blame her.

[44] Also, on 25 August 2017, Immigration New Zealand (Ms Zhu) wrote to Ms Li and the complainant stating that the investments had not been completed before the deadline of 27 January 2017. The total investments in New Zealand were only \$322,245.41. Their comments were invited.

[45] At 12:02 pm that day, Ms Zhu sent an email to Ms Li setting out her understanding of the situation. The complainant had told her that he was not aware of either the deadline or the investment period throughout the whole process. He did not know that both the transfer and investment had to occur before 27 January 2017. He believed that he should invest in New Zealand only after Immigration New Zealand had approved the transfer. His nominated funds were sitting in a bank in Hong Kong and had not been transferred to New Zealand. Ms Li had received the emails regarding the deadline, but interpreted the deadline to relate only to the transfer.

[46] According to Ms Zhu’s email, the situation then was that the transfer and investment period had lapsed on 27 January 2017. Her colleague’s email of 5 January 2017 was unambiguous as to the need to complete the investment by 27 January. All the official correspondence had made this clear. Ms Zhu expressed surprise at Ms Li’s interpretation of the Immigration Instructions, being that only the transfer was required before the deadline. The outcome of the application was unlikely to be positive. Ms Zhu did not have the authority to waive the requirements.

[47] At 3:55 pm on 25 August 2017, Dr Su sent an email to Ms Zhu introducing himself and advising that the complainant had opened a securities account with a bank in New Zealand in January 2016. He could have started his investment at any time after February 2016. However, Ms Li was over cautious about approval of the “fund transaction”, so they waited for the result from Immigration New Zealand. It took too long

to get the “fund transaction record approved” which misled both the complainant and Ms Li.

[48] In another discussion with the complainant on 27 August 2017, Ms Li accepted she had not explained the immigration officer’s words correctly to him, but the officer had some fault as well. Ms Li said to the complainant that she would not charge him more.

[49] Then one day later, on 28 August 2017, Ms Li informed the complainant that Dr Su had told her many times to make the investment and she should have advised him to invest. She did not look at the instructions. She was confused and careless and just did what Immigration New Zealand asked her to do.

[50] On 29 August 2017, Ms Zhu sent an email to Ms Li noting there had been no acknowledgement of the letter of 25 August 2017. She asked whether Ms Li had discussed the matter with the complainant. She requested statutory declarations from him and Ms Li confirming what they had said on the phone. Ms Li might wish to record her genuine belief that under the investor policy, it was only necessary to transfer the funds “during the assessment stage”, with the investments to be completed after residence was received. She could add to her declaration that this was the advice she had given the complainant. The complainant should confirm this in his declaration.

[51] No statutory declarations were provided to Immigration New Zealand.

*Ms Li complains to manager*

[52] Ms Li sent an email to an immigration manager on 30 August 2017. She set out the chronology since the application had been made in May 2014. Five immigration officers had been assigned over that time and there had been more than 100 emails. In the previous week, she had received an urgent notice from Ms Zhu stating that only \$0.3M had been put into an acceptable investment, with the due date being 27 January 2017. The application had therefore lapsed. Ms Li urgently requested an extension of the due date to enable the complainant to complete the investment.

[53] Attached to Ms Li’s email was a chronology of communications between her and Immigration New Zealand and an undated letter to the agency. An explanation of what had happened was provided. She said that due to the complexity of the application, neither she nor the officers had realised the date for completing the investment was 27 January. The current officer who had been appointed in February 2017, had taken six months to point this out. The focus of Ms Li and the officer had been the legality of the transfer of the funds from China to New Zealand. Her feeling was that the officers had wanted to clarify the legality of the transfer first. She believed that if the funds had

not been transferred in an acceptable manner, then there would be no acceptable investment.

[54] Furthermore, according to Ms Li's letter, the complainant could no longer apply under the old policy. The new policy required \$3M, as against \$1.5M for the old policy. The last opportunity to invest by the due date had been missed. The complainant had moved his family to New Zealand and was very well settled. His intention to invest was genuine, and he had moved \$1.3M to a New Zealand bank 18 months previously.

[55] On 31 August 2017, Ms Zhu responded to Ms Li's email and letter to the manager sent the day before. Ms Li was accused of omitting to refer to Ms Zhu's replies in the letter sent to the manager. Ms Li's timeline was presented in such a way as to make it appear that Ms Zhu had never communicated until the letter in June. Ms Zhu concluded that she needed to consult internally on whether an extension was appropriate.

[56] There was a long series of texts between the complainant and Ms Li on 31 August 2017. It was largely about what they regarded as Ms Zhu's faults. Ms Li explained that she never said to the officer that she did not understand the instructions. Ms Zhu was trying to put all the blame on her. Ms Li told the complainant she would write to the manager seeking a special extension. The complainant said he had received a call from Ms Zhu who advised him that he could complain about Ms Li to the Authority or he could appeal to the Immigration and Protection Tribunal (IPT).

[57] By 1 September 2017, the complainant had engaged a new licensed immigration adviser, Mr Steven Ji.

[58] Also on 1 September 2017, Ms Zhu made file notes of her telephone discussions on 24 August 2017 with the complainant and Ms Li.

#### *Residence application declined*

[59] On 10 October 2017, Immigration New Zealand (Ms Zhu) advised the complainant and his new adviser that the residence application had been declined because he had not completed the investment in New Zealand of \$1.5M by 27 January 2017, having invested only \$322,245.41 in a QDII fund. His former immigration adviser had admitted that she had not been aware of the requirement to complete both the transfer and investment within the set timeframe.

[60] The complainant appealed the decline of residence to the IPT. He was represented by a lawyer, not his present counsel. In a decision issued on 30 May 2018, it was found that Immigration New Zealand's decision was correct. The complainant's transfer of the funds to New Zealand met the instructions. However, he had failed to

make the investment because of incorrect advice from his then adviser that investment was not necessary until approval of the transfer. While the lengthy processing of the application by the agency left much to be desired, this did not prejudice the application. As a result of incorrect advice from his adviser, the complainant had not appreciated that the investment had to be made in acceptable investments before the deadline.

[61] The IPT agreed that the complainant did not satisfy the immigration instructions, but found that there were special circumstances. A recommendation was made to the Minister of Immigration that the complainant be granted residence, as an exception to the instructions.

#### *Residence granted*

[62] The Minister of Immigration granted residence to the complainant and his wife on 2 August 2018. Resident visas were issued to them on 24 September 2018.

### **COMPLAINT**

[63] On about 13 March 2018, the complainant made a complaint against Ms Li to the Authority. Ms Reed, counsel, was then acting for him. It was alleged that Ms Li was negligent and incompetent. She had not advised him that he had to both transfer and invest the funds by the stipulated deadline.

[64] The complainant said he had relied on Ms Li's translation and explanation in Chinese. Indeed, she had continued to advise both himself and Dr Su not to begin the investment until Immigration New Zealand had approved the fund transfer.

[65] The complainant alleged that as a result of Ms Li's negligence, he was declined residence and had incurred the losses outlined in a table provided.

[66] On 30 July 2018, the Authority formally advised Ms Li of the details of the complaint and requested her explanation.

#### *Submissions on behalf of Ms Li*

[67] Ms Lee, then counsel for Ms Li, replied to the Authority on 20 August 2018. While Ms Li conceded making a mistake by missing the deadline, all the allegations of professional misconduct and breaches were denied.

[68] Counsel first dealt with the allegation by the Authority that Ms Li had been dishonest or misleading in advising Immigration New Zealand on 24 and 30 August 2017 (a telephone discussion and email respectively) that she was unaware of the requirement

to complete the investment by the deadline. This was denied. Ms Li was aware of the need to invest, and not just transfer, before the deadline. Her correspondence with Immigration New Zealand, the complainant and Dr Su confirmed this.

[69] As for Ms Zhu's notes of the conversation on 24 August, they were inaccurate and self-serving. They were made on 1 September, eight days after the conversation, which raised a concern. By the time the file note was made, Ms Li had sent an email to the manager on 30 August which had prompted Ms Zhu to email Ms Li on the following day to admonish her for misleading the manager about Ms Zhu's failure to respond to Ms Li. Ms Zhu had perceived the email to the manager as a personal attack, which prompted the inaccurate summary of the telephone discussion.

[70] Furthermore, according to counsel, the file note was only a summary of the discussion and not a *verbatim* transcript. It was self-serving, depicting Ms Zhu's attempt to protect her own position and that of Immigration New Zealand. Ms Zhu was concerned that the complainant might make a complaint against her.

[71] Counsel then dealt with the email to the manager on 30 August 2017. Taken in isolation, there was one sentence which reasonably led to the view that Ms Li was not aware that the investment had to be completed before the deadline:

... neither us nor the immigration officers realized the due date for completing the investment was on 27 January 2017...

[72] Counsel contended that Ms Li had simply failed to properly articulate in English what she intended to portray. If the email was considered as a whole, it was clear that Ms Li intended to say that the deadline had been missed by both her and the officers, as they were too focused on resolving whether the funds had been transferred correctly. The focus of the email had been the inordinate delay to the process caused by Immigration New Zealand, which could not come to terms with whether the funds had been transferred correctly. It was not focused on Ms Li being unaware of the investment deadline. Ms Li would have known that her own failure could not have been an excuse to gain an extension for her client.

[73] Next counsel responded to the allegation by Immigration New Zealand that Ms Li had either been negligent, or had failed to exercise diligence and due care, in not recognising that the investments needed to be completed by the deadline. Counsel contended that it was not correct that Ms Li did not know that the investments, as well as the transfer, had to be completed by the deadline. She knew this, but was waiting for Immigration New Zealand to approve the transfer. The complainant had been told that he needed to transfer and invest before the deadline. Unfortunately though, Ms Li missed the impending January 2017 deadline by mistake.

[74] Counsel also explained the alleged negligence in failing to ensure that the investments were completed by the deadline. Ms Li had taken every step she could to ensure that the investments were completed by the deadline. Contrary to her advice, the complainant transferred his nominated funds to New Zealand using a controversial family quota scheme, which Immigration New Zealand had not consistently approved. Ms Li therefore focused on obtaining the agency's approval of the transfer. All agreed this was the safest option before the complainant committed any funds to acceptable investments.

[75] This resulted in an extremely lengthy consideration by Immigration New Zealand of the transfer. During this time, from February 2016, Ms Li made determined attempts to secure approval of the transfer method, so that the complainant could place acceptable funds into acceptable investments.

[76] Counsel then sets out in her letter a timeline from July 2015 to 19 January 2017 showing numerous communications from Ms Li to the complainant, Dr Su or Immigration New Zealand. Even after the 27 January 2017 deadline, she had continued until September 2017 with her attempts to obtain approval of the transfer, so the complainant could place accepted funds with acceptable investments. However, the transfer method was not confirmed and was still being assessed at the time of the deadline. There were plausible reasons why Ms Li was eager to get official approval of the transfer before the deadline.

[77] It was contended that, even if the investments had been made before the deadline, the outcome may not have been different. This was because the complainant needed to meet both the transfer and investment requirements in order to be granted residence.

[78] According to counsel, Ms Li took adequate steps to ensure the transfer and investment could be completed by the deadline, "with the exception only of her failing to reconfirm the requirement to the complainant once again before the impending deadline in January 2017". Her conduct was exemplary, apart from this unfortunate error in alerting him and also in letting the final investment deadline lapse. Despite this concession, counsel submits that it would be unduly harsh to find Ms Li had acted negligently by failing to ensure that the investments were completed by the deadline, given the circumstances (being the complainant's decision contrary to her advice to transfer using a risky method, her continuous efforts to get the transfer approved and the agency's delays).

[79] In conclusion, it was submitted that the complaint should be dismissed.

*Affirmation from Ms Li*

[80] Ms Li swore an affirmation in support of counsel's submissions (affirmed 15 August 2018). She stated that she had been a licensed adviser since 2010 and had received no other complaints in that time. Ms Li denied not knowing that the investment, as well as the transfer, needed to be completed by the deadline. She had not been dishonest nor misled Immigration New Zealand, as she had not actually said to the officer that she did not know.

[81] Ms Li confirmed the facts stated in counsel's submissions. Ms Zhu's file note of the conversation with her (Ms Li) on 24 August 2017 was self-serving. Ms Zhu had formed a biased view, as she was angry Ms Li had complained about her in the email and attached letter to the manager on 30 August 2017. This was shown by the officer's disgruntled email to Ms Li on 31 August, following which the record of the 24 August discussion was created on 1 September.

[82] As for the email and letter sent to the manager on 30 August, Ms Li accepted that the wording did suggest she was not aware of the need to invest before the deadline, but when the letter was considered as a whole, it was clear she was not pretending to not know something she actually did know. Ms Li identified quotes from the letter showing that she was aware of the need to invest by the deadline. She had intended to state that the investment deadline had been overlooked, but failed to articulate that properly.

[83] According to Ms Li, she did know of the need to invest before the deadline. She had acted for another investor in the same category before the deadline had arisen for the complainant. That client had been granted residence in November 2016.

[84] Ms Li asserted that the correspondence she had with Immigration New Zealand, the complainant and Dr Su from the moment approval in principle was given showed that she was aware of the requirement.

[85] Ms Li conceded that she told the complainant to make the investment only after the transfer was accepted by Immigration New Zealand. It had been agreed between her, the complainant and Dr Su that he would not invest until the transfer was approved. She sought approval on 22 February 2016, well before the original deadline to invest (subsequently extended by six months).

[86] As for the allegation of negligence and failure to act diligently or with due care, Ms Li said that the steps she took from July 2015 to September 2017 showed that she was conscientious and attentive in managing the application. She made consistent attempts to ensure that the transfer was accepted before the investment deadline. She

set out her communications in the affirmation. According to Ms Li, she had recommended a method of transfer to the complainant which would have resulted in the transfer and investment occurring at the same time and which was likely to have been approved.

[87] In her affirmation, Ms Li stated that she sought approval from Immigration New Zealand for the transfer on 22 February 2016, prior to the initial investment deadline in July 2016. Due to the agency's delays, an extension of the period until 27 January 2017 was obtained. However, in September 2016, the agency raised two issues concerning the transfer. Ms Li advised the agency of their rectification on 20 December 2016. She then sent further documents to the agency on 4 January 2017 and continued communicating with the officer through that month.

[88] Ms Li noted that on 9 January 2017 the complainant expressed confusion as to whether the transfer had to be completed by 27 January, or whether he was required to buy the funds and bonds by that deadline. She regretted failing to clarify the position with him.

[89] It was noted by Ms Li in her affirmation that she sent an email to the immigration manager on 13 January 2017 complaining about the extraordinarily lengthy time it had taken the agency to make a decision on the single issue of the transfer. Her email emphasised the term "transfer" rather than stated "transfer and investment", but she was aware both needed to be completed by the deadline.

[90] Unfortunately, according to Ms Li's affirmation, the investment deadline of 27 January 2017 lapsed unnoticed by her.

[91] But, according to Ms Li, she continued to follow up the application with the new officer, Ms Zhu, who had been assigned on 27 February 2017. Further delays occurred. It appeared to Ms Li that Ms Zhu did not realise that the investment period had lapsed until about 24 August. Like Ms Li, the officer had overlooked the lapse. There followed the request from Ms Zhu for a false declaration, which would not, in any event, have resulted in the grant of a further extension of time or a favourable outcome.

[92] Ms Li accepted that she should have alerted the complainant on 9 January 2017 to the need to complete the investment before the due date, having managed to advise him only of the need to transfer by then. This omission may have been due to a year of vigorous advocacy in order to achieve acceptance of the fund transfer. It had become the primary focus, but was being continually frustrated by inordinate delays and multiple changes in staff.

[93] According to Ms Li, other than the failure to reconfirm the requirement to the complainant in January 2017, she acted diligently to ensure that the fund transfer was accepted by Immigration New Zealand, before those funds could be placed in an acceptable investment. She was, however, aware of the need to invest before the deadline and reminded the complainant of this on multiple occasions throughout the period of 18 months.

#### *Complaint filed in Tribunal*

[94] The Registrar referred the complaint to the Tribunal on 11 October 2018, alleging Ms Li's conduct breached the Act or the Code in the following respects:

- (1) failing to ensure the investments were completed by the deadline, thereby being negligent; and
- (2) falsely claiming to Immigration New Zealand that she was unaware of the need to complete the investments by the deadline, in an attempt to gain an extension and remedy her mistake, thereby being dishonest or misleading; or
- (3) alternatively, falsely claiming to Immigration New Zealand that she was unaware of the need to complete the investments by the deadline, in an attempt to gain an extension and remedy her mistake, in breach of the cl 1 obligation to be honest.

#### **JURISDICTION AND PROCEDURE**

[95] 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.

[96] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.<sup>4</sup>

[97] The Tribunal must hear complaints on the papers, but may in its discretion request further information or any person to appear before the Tribunal.<sup>5</sup> It has been established to deal relatively summarily with complaints referred to it.<sup>6</sup>

[98] 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.<sup>7</sup>

[99] The sanctions that may be imposed by the Tribunal are set out in the Act.<sup>8</sup> The focus of professional disciplinary proceedings is not punishment but the protection of the public.<sup>9</sup>

[100] 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.<sup>10</sup>

[101] The Tribunal has received from the Registrar the statement of complaint (11 October 2018) and paginated supporting documents.

[102] No statement of reply was filed by the complainant.

[103] Ms Lee, on behalf of Ms Li, has produced a statement of reply (9 November 2018) and a memorandum (12 November 2018), with supporting IPT decisions. At the request of the Tribunal, Ms Li's new counsel, Mr Laurent, provided further submissions and evidence on 21 and 26 May 2020.

[104] In light of the credibility concerns arising out of Ms Li's affirmation produced to the Authority, where she denied not knowing of the requirement to invest by the deadline, a Minute was issued on 28 May 2020 ordering a hearing and giving other directions. The hearing would be confined to the second and third heads of complaint.

[105] This prompted Mr Gray, the Registrar's counsel, to file further documents from Immigration New Zealand's records, retrieved at the request of Mr Laurent.

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<sup>4</sup> Immigration Advisers Licensing Act 2007, s 45(2) & (3).

<sup>5</sup> Section 49(3) & (4).

<sup>6</sup> *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].

<sup>7</sup> Section 50.

<sup>8</sup> Section 51(1).

<sup>9</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citation omitted).

<sup>10</sup> *Z*, above n 9, at [97], [101]–[102] & [112].

[106] Prior to the hearing, the Tribunal received opening submissions from Mr Gray (13 July 2020), including a statement from Ms Rebecca Zhu (13 July 2020).

[107] Mr Laurent filed a pre-hearing memorandum (13 July 2020) and a written statement from Mr Zhongyang (Sean) Meng (12 July 2020).

[108] At the hearing, the complainant represented himself. He had not produced any written submissions or witness statement prior to the hearing. Evidence was given by three witnesses in the order set out below. An additional document was handed up by Mr Laurent. Both counsel made closing submissions, as did the complainant briefly.

*Ms Li*

[109] Ms Li accepts that many of her communications with both the complainant and the immigration officers mention a deadline for the transfer of funds only, not for both transfer and investment. This was because in her mind, transfer and investment should occur at the same time. She had recommended such a product (QDII) to the complainant, though he did not use it.

[110] Despite referring only to the transfer, Ms Li says she was always aware of the need for both to occur before the deadline, noting:

- (1) On 5 December 2015, she sent a text message to the complainant advising him to place the fund into investment items before applying for conditional residence.
- (2) On 23 September 2016, she sent an email to the immigration officer stating that the complainant had contacted the bank to transfer the funds into a QDII product by November 2016, within the “investment period until February 2017”.

[111] While knowing of the need to invest before the deadline, Ms Li says she lost sight of the requirement for investment in the period leading up to the deadline of 27 January 2017, with the focus then on getting approval for the transfer.

[112] Ms Li told the Tribunal that the only part of Ms Zhu’s record of the telephone discussion on 24 August 2017 contested by her, is the allegation that she said to Ms Zhu that she never knew of the requirement to invest. Nor did she tell Ms Zhu that she thought investments should be completed only after the client had received the residence “label” (conditional visa). According to Ms Li, she told Ms Zhu that she was not aware of the deadline (overlooked the deadline), not that she misunderstood the instructions and was not aware of the need to invest before the deadline.

[113] It was possible that Ms Zhu misheard her as she (Ms Li) was a passenger in a car at the time of the discussion and there was background noise.

[114] Despite disputing part of Ms Zhu's record of their discussion, as set out in the email of 25 August 2017, Ms Li did not immediately contest it in her reply to Ms Zhu. This was because she thought it would cause a problem for the complainant, since Ms Zhu had not at that time made a decision on the extension sought or on the application. Her objection to the record did not relate to the substance of the application, so Ms Li kept silent. Her silence did not mean agreement to what Ms Zhu claimed Ms Li had said.

[115] It is accepted by Ms Li that she advised the complainant to wait for approval of the transfer first, before investing the fund. She does not know why she did not respond to his question on 9 January 2017. She had lots of conversations every day and may have overlooked it.

[116] It is Ms Li's belief that Ms Zhu made a false record of the telephone discussion because of the complaint about Ms Zhu (which Ms Li says was not actually a complaint) set out in the email to the immigration manager on 30 August 2017.

[117] Ms Li accepts that, despite her general understanding of the immigration instructions, she overlooked investment by the complainant before the deadline.

[118] Ms Li points out that she had acted on two other investment applications either prior to or at the same time as that of the complainant. Both were successful. The complainant's application was the first one where investment was not completed on time.

#### *Ms Zhu*

[119] There is a statement from Ms Rebecca Zhu (13 July 2020) setting out the chronology from the time of her assignment to the complainant's application on 22 February 2017. She is no longer an immigration officer.

[120] Ms Zhu advised that almost all her interactions with the complainant were in Chinese, whereas with Ms Li they were in English.

[121] The conversation with Ms Li on 24 August 2017 was clear. Any background noise did not interfere with her understanding. Ms Li clearly said she did not know, and never knew, of the need to invest. She thought only that the transfer of the funds was required. Ms Zhu was surprised by this, as she knew it was not Ms Li's first investment application.

[122] Ms Zhu agreed it was sensible for Ms Li to seek approval for the transfer first (but not then to overlook investment by the deadline).

[123] Even though the deadline for investment had passed by the time Ms Zhu was assigned to the application, they always started their work on the file “from the top”. In other words, she had to first look at whether the transfers were valid. If she had jumped immediately to looking at the investments, that would still require looking at where those investments had come from (that is, the transfer). Hence, her email of 9 June 2017 to Ms Li.

[124] Ms Zhu accepts that she did not realise all the investments had been made by the deadline until she sent the email to Ms Li on 24 August 2017 about the shortfall in the QDII product. Even though that was six months after her assignment, it could generally take one to two years at that time to process these types of applications. She was aware at the start that the complainant had made some investments that were fine and assumed all of them would be, but they needed to be analysed starting with the transfers.

[125] Ms Zhu explained how she came to create the file note of the 24 August discussion some days later, on 1 September. At that time, the system did not allow the simultaneous creation of a record of a discussion in Immigration New Zealand’s database. She made her own notes outside the database and then ‘copy and pasted’ them to the database later. The record on 1 September was based on notes she had made on the day of the conversation. She was not angry at Ms Li for making a complaint against her and had no personal vendetta.

### *Mr Meng*

[126] There is a witness statement from Mr Zhongyang (Sean) Meng (12 July 2020). Mr Meng is a licensed immigration adviser and chartered accountant. He has previously assisted Ms Li with entrepreneur visa applications.

[127] At an Immigration New Zealand roadshow seminar in January 2017, Mr Meng approached an immigration manager, at Ms Li’s request, enquiring about three delayed applications, including that of the complainant. It was an enquiry as to whether faster processing was possible. He had not previously assisted on any of those applications. Then in August 2017, Mr Meng assisted Ms Li with the drafting of the email of 30 August 2017 to the immigration manager. She asked him to help because of his better command of English. Ms Li told him that the purpose of the email was to seek from the manager an extension of time for the investment to be completed.

[128] It was Mr Meng's understanding that Ms Li completely overlooked the deadline, rather than misunderstood whether the instructions required investment by the deadline.

## **ASSESSMENT**

[129] The Registrar relies on cl 1 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.

[130] It is necessary to determine the second and third heads of complaint first.

(2) *Falsely claiming to Immigration New Zealand that she was unaware of the need to complete the investments by the deadline, in an attempt to gain an extension and remedy her mistake, thereby being dishonest or misleading; or*

(3) *Alternatively, falsely claiming to Immigration New Zealand that she was unaware of the need to complete the investments by the deadline, in an attempt to gain an extension and remedy her mistake, in breach of the cl 1 obligation to be honest*

[131] The Registrar alleges that Ms Li's assertion to Immigration New Zealand that she was unaware that the complainant had to complete the investment by 27 January 2017 and not just the transfer, was false. This was done in an attempt to gain an extension of time for the complainant and thereby remedy her own mistake in overlooking to ensure the investment was completed by the due date. The proof that her ignorance was false is said to be Ms Li's affirmation produced to the Authority where she stated that she was indeed aware of the investment requirement, but overlooked it as the deadline loomed since she was too focused on obtaining approval for the transfer.

[132] Ms Li, in defence of the charge that she falsely claimed to be ignorant, acknowledges that she was aware that the deadline required investment, but says she never asserted to Ms Zhu that she was not aware. Ms Zhu's record of the telephone discussion during which she allegedly made this admission is said by Ms Li to be false and self-serving. It was created by an officer angry at Ms Li because of the complaint to the manager about Ms Zhu's delays and belated recognition of the lapse of the deadline.

[133] The evidence relied on by the Registrar to show that Ms Li claimed not to know that the deadline required investment, is:

- (1) Ms Zhu's record of the telephone discussion with Ms Li on 24 August 2017;  
and

(2) Ms Li's email and letter to the manager about a week later on 30 August.

[134] I will deal with the record of the telephone discussion first. Ms Zhu recorded in her file note that Ms Li claimed to have no knowledge of the need to invest before the deadline and thought that investments only needed to be completed after the complainant received his residence visa.

[135] Ms Li contends this record is false. It was made on 1 September, about a week after the discussion, and only after Ms Li had sent an email to Ms Zhu's manager which Ms Zhu regarded as a complaint against her.

[136] It is correct that the record was made one week later and I accept that it was probably created for the file because of the complaint. However, on 25 August, the day following the telephone call and prior to Ms Li's complaint to the manager, Ms Zhu had set out Ms Li's admission in an email to her. The officer expressly recorded in her email that Ms Li had said she was unaware that both the transfer and investment needed to be completed by the deadline, having thought that the deadline related only to the transfer. Ms Zhu repeated this on 29 August when she sought a statutory declaration from Ms Li stating the same.

[137] It is plain that Ms Zhu did not invent Ms Li's admission (that she did not know that the deadline included investment) only after the complaint to the manager. Ms Zhu had attributed it to Ms Li before the latter's complaint.

[138] Following Ms Li's complaint of 30 August 2017, Ms Zhu did then somewhat grumpily and defensively write to Ms Li on 31 August, but that hardly justifies a charge of a false record, for two reasons:

- (1) Ms Zhu had already set out a record of what Ms Li said on 25 and 29 August, before the complaint of 30 August; and
- (2) while it is arguable that Ms Zhu may have been dilatory in overlooking the failure to invest by the deadline of 27 January 2017, she was never going to be blamed by the management of Immigration New Zealand for contributing to the failure of the complainant's application. This was because she was not allocated the application until almost a month after the deadline, by which time it was already doomed.

[139] I dismiss the attack on Ms Zhu's motivation for the emails of 25 and 29 August, as well as the file note of 1 September. Those documents truthfully set out Ms Zhu's understanding of the 24 August discussion with Ms Li.

[140] In proving the Registrar's allegation that Ms Li claimed to be unaware of the need to invest before the deadline, he also relies on Ms Li's email and attached letter to the manager on 30 August 2017. Ms Li was seeking a second extension of time to complete the investment, and in doing so complained about Immigration New Zealand's delays. In the attached undated letter, Ms Li said (*verbatim*):<sup>11</sup>

The second point we want to make is that, due to the [complexity] of this application, neither us nor the immigration officers realized the due date for completing the investment was on 27 January 2017.

... The due date for completing the investment have been missed by both us and the immigration officers.

[141] I find these sentences ambiguous. There is some merit to the explanation given to the Authority stating that Ms Li did not express herself well. The statements in the letter do not necessarily mean that Ms Li did not know that investment had to be completed before the deadline. She may have just been saying that she had completely forgotten the deadline as it loomed, due to her focus on getting the transfer approved. This was certainly Mr Meng's understanding of what had happened. Ms Li was not necessarily making a statement about what the deadline entailed.

[142] I do not therefore find this email to be evidence of Ms Li claiming to be ignorant of the full requirements of the deadline (both transfer and investment), only evidence she overlooked a deadline of which she had been made aware.

[143] Returning then to Ms Zhu's record of what Ms Li had said on 24 August, I have dismissed the attack on Ms Zhu's *bona fides*. This does not, however, mean that Ms Zhu accurately heard what was said. Ms Zhu told the Tribunal it was clear to her what Ms Li said, but Ms Li points out she was a passenger in a car at the time and alleges there was background noise.

[144] It is therefore possible that, even if Ms Li did know of the requirement to invest, Ms Zhu misheard her admission to the contrary. A statement by Ms Li along the lines, "I overlooked investment by the deadline" might have been heard as, "I did not know about investment by the deadline", and, "I told [the complainant] to wait to invest until the transfer was approved" became, "I told [the complainant] to wait to invest until the visa [or application] was approved".

[145] There is a further problem with the Registrar's allegation that Ms Li falsely claimed ignorance of the investment requirement. Not only may Ms Zhu have misheard what was said, but I am not even persuaded that Ms Li did know of the investment requirement, despite asserting now that she did.

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<sup>11</sup> Registrar's supporting documents at 143.

[146] The contemporary evidence (as to Ms Li's understanding of the immigration instructions), surrounding the discussion with Ms Zhu on 24 August 2017, is not consistent as to whether Ms Li did know about the need to invest by the deadline or did not. It does not all point one way. While much of it does suggest that she did know of the need to invest, there are also multiple occasions where it appears she did not know.

[147] In reviewing the contemporary evidence, I will start with Ms Li's email to the complainant on 28 July 2015. This immediately followed the approval in principle letter. She appears to inform him that he could realise the assets (the sources of the investment) and transfer them to New Zealand. Ms Li went on to say that when Immigration New Zealand approved the transfer, he would be granted a conditional visa, with the condition being removed when he made the approved investments. This is consistent with Ms Zhu's record of what Ms Li said to her, namely that the deadline did not require investment.

[148] On the other hand, on 5 December 2015, Ms Li advised the complainant that he needed to transfer \$1.5M into investment funds, not merely a bank account, before he applied for conditional residence.

[149] This was followed by Ms Li's discussion on 7 April 2016 with Dr Su. She expressed her understanding that the instructions required investment before submitting the documents to Immigration New Zealand, but asked Dr Su about his experience of when to submit the documents. The focus of the discussion was when to produce the documents to Immigration New Zealand for approval, rather than what was required to be done before the deadline. At the end of the discussion, Ms Li appears to accept that investment needed to occur before the deadline.

[150] Then on 29 June 2016, Ms Li sent an email to Immigration New Zealand applying for an extension of six months, "allowing [the complainant] to transfer funds", in the event of an unfavourable assessment of the transfer. She made no mention of investment before the deadline.

[151] But on 23 September 2016, Ms Li informed the immigration officer that the complainant had been advised to transfer the fund through an acceptable QDII product, which would be put into an investment fund before "his investment period until February 2017" (actually, 27 January 2017).

[152] In an email to an officer on 8 January 2017, Ms Li refers to the extension of time for "transferring fund".

[153] On the next day, Ms Li told the complainant that "the deadline for the transfer of your investment funds is 27/01/2017" and that he "should guarantee before January 27 to

transfer all the funds as required". Once again, no mention was made of the need to invest.

[154] A few days later, on 13 January 2017, Ms Li sent an email to an immigration manager referring to the final date "for transferring fund" being the end of January 2017.

[155] Finally, in a number of recorded telephone discussions with the complainant between 25 and 28 August 2017, after the decline of the application, Ms Li admitted that she thought the time period was for finishing the transfer and not the investment. She accepted she might have been negligent. She acknowledged that she did not want the complainant to invest before the visa was granted, which was a misunderstanding. He could blame her.

[156] The contemporary evidence does not unequivocally establish whether Ms Li did, or did not, know that the deadline required investment. I note her explanation given to the Tribunal for those statements she made apparently referring only to the transfer before the deadline, being that in her mind the two events should occur at the same time using her preferred mode of transfer. This is plausible. If so, it explains the evidence which on its face shows that she was ignorant of the need to invest.

[157] But, it is also conceivable Ms Li did not know of the requirement to invest and her evidence to the Authority and the Tribunal, claiming to have always known, is false. But, even if so (of which I make no finding), that is not the dishonesty she has been charged with in this complaint.

*Conclusion on second and third heads of complaint*

[158] Proof of dishonesty requires cogent evidence.<sup>12</sup> That is absent here. The evidence does not establish that, as alleged by the Registrar, Ms Li did know of the investment requirement and lied to Ms Zhu when she said she did not, in order to obtain an extension of time for the complainant. The evidence does not establish that Ms Li did know of the requirement, nor that Ms Zhu was able to accurately hear what Ms Li said.

[159] I therefore dismiss the second and third heads of complaint.

*(1) Failing to ensure the investments were completed by the deadline, thereby being negligent*

[160] The Registrar alleges that Ms Li's failure to ensure that the investments were completed by the deadline amounts to negligence, a statutory ground of complaint.

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<sup>12</sup> Z, above n 10.

[161] Whether or not Ms Li knew that the complainant had to complete the investments before the deadline, she was negligent in missing the investment deadline. Given that both the approval in principle letter (sent twice) and the instructions themselves make that clear, her failure to advise the complainant to invest before 27 January 2017 shows a lack of reasonable care.

[162] On her own evidence, Ms Li accepts making two mistakes:<sup>13</sup>

- (1) Missing the deadline; and
- (2) Failing to remind the complainant that he had to invest the funds anyway, despite receiving no approval from Immigration New Zealand for the transfer method.

[163] As for the second mistake, the evidence shows that the complainant believed he only needed to transfer the funds onshore by the deadline, or at the very least was confused about this.<sup>14</sup>

[164] Ms Li has always accepted these two mistakes, though until the complaint was filed in the Tribunal, she did not accept that her mistakes amounted to negligence or breached any professional obligation. Nonetheless, counsel on her behalf, now concedes that this amounts to negligence and a breach of the Code.<sup>15</sup>

[165] Ms Li failed to do precisely what Dr Su warned her to do in their discussion on 7 April 2016. It will be recalled that, in January 2016, they had both agreed that she should seek approval for the transfer first. The complainant had accepted this. The approach was clearly sensible, since if the transfer was unacceptable to Immigration New Zealand, that would jeopardise any subsequent investment using those transferred funds. Dr Su, however, had added a warning in the discussion on 7 April with Ms Li. He said to her that if the deadline approached, then the funds would have to be invested.

[166] With 27 January 2017 approaching, Ms Li should have advised the complainant to invest, or at least let him make that choice (and succeed in obtaining residence provided the agency did not find the transfer to be invalid) or to continue waiting for approval of the transfer before investing (which was always going to be fatal to the application as no further extension to the deadline in order to invest was possible under the instructions). It was Ms Li, not Dr Su, who was the professional responsible for the

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<sup>13</sup> Affirmation (15 August 2018) at [76]; Memorandum of counsel (12 November 2018) at [2.8] & [4.1].

<sup>14</sup> See telephone discussion with Ms Li (9 January 2017).

<sup>15</sup> Memorandum of Ms Lee (12 November 2018) at [2.11]–[2.12] & [4.1].

immigration application and ensuring that the complainant was aware of Immigration New Zealand's requirements.

[167] Ms Li's mistake is all the more surprising and careless in light of the express warning she received from Immigration New Zealand on 5 January 2017, about three weeks before the deadline, that the complainant had to complete his investments before 27 January 2017. Even the complainant had specifically asked her on 9 January 2017 whether he needed to invest, drawing the issue again to her attention.

[168] It will be remembered that the complainant had all his funds in New Zealand. He could have invested at any time. Ms Li knew this.

#### *Conclusion on first head of complaint*

[169] Ms Li worked energetically and conscientiously to obtain approval from the dilatory agency regarding the transfer. However, I agree with the IPT that the extraordinary delays by Immigration New Zealand did not cause the failure of the application. Given those delays, Ms Li should have advised the complainant sometime in January 2017 to invest his funds anyway. In common parlance, Ms Li 'took her eye off the ball'. She accepts that she was focused solely on the transfer and not also on the equally critical investment by the deadline.

[170] I find that Ms Li's conduct, in missing the deadline and failing to advise the complainant of the need to invest, amounts to negligence. There is a high degree of negligence here. Her mistake could not be described as mere momentary inadvertence, or excusable human error. She failed to note the criteria set out in the approval in principle letter (sent to her twice), the multiple warnings from Immigration New Zealand and Dr Su, as well as the query from the complainant, many of which were close to the deadline.

[171] The first head of complaint is upheld.

#### **OUTCOME**

[172] The first head of complaint is upheld. Ms Li has been negligent. This is a ground of complaint under s 44(2)(a) of the Act.

#### **SUBMISSIONS ON SANCTIONS**

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

[174] It is submitted by Ms Lee in her memorandum produced to the Tribunal that it may determine to take no further action, pursuant to s 50(b) of the Act. While this option remains, it would not appear to be appropriate in light of the high degree of carelessness and the serious consequences of Ms Li's negligence for the complainant. It led to the decline of what would appear to the Tribunal to have been a meritorious application with a good chance of approval. Fortunately for the complainant, he ultimately achieved residence due to the assistance of other professionals.

[175] A timetable is set out below. Any request that Ms Li 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. I note in this regard the Table of Losses (amounting to \$100,964) annexed to Ms Reed's letter to the Authority on 13 March 2018.<sup>16</sup>

#### *Timetable*

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

- (1) The Registrar, the complainant and Ms Li are to make submissions by **27 August 2020**.
- (2) The Registrar, the complainant and Ms Li may reply to submissions of any other party by **10 September 2020**.

#### **ORDER FOR SUPPRESSION**

[177] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.<sup>17</sup>

[178] There is no public interest in knowing the name of Ms Li's client.

[179] The Tribunal orders that no information identifying the complainant is to be published other than to Immigration New Zealand.

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D J Plunkett  
Chair

<sup>16</sup> Registrar's supporting documents at 21.

<sup>17</sup> Immigration Advisers Licensing Act 2007, s 50A.