

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2020] NZIACDT 49

Reference No: IACDT 021/19

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **HQT**
Complainant

AND **INDERPAL SINGH**
Adviser

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 19 November 2020

REPRESENTATION:

Registrar: Self-represented
Complainant: Self-represented
Adviser: Self-represented

PRELIMINARY

[1] Mr Inderpal Singh, the adviser, acted for HQT, the complainant, and KWU, the complainant's partner. The complainant sought to bring his partner to New Zealand.

[2] A complaint was made by the complainant to the Immigration Advisers Authority (the Authority). The Registrar of Immigration Advisers (the Registrar) has referred it to the Tribunal. It is alleged that Mr Singh failed to personally engage with the complainant or his partner and relied on unlicensed persons to perform immigration services for them. The Registrar contends that he was therefore negligent, a ground of complaint under the Immigration Advisers Licensing Act 2007 (the Act), or alternatively he breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

[3] The essential issue to consider is whether Mr Singh has personally undertaken and controlled communications with the complainant.

BACKGROUND

[4] Mr Singh is a licensed immigration adviser. He is a director of ImmigrationNZ Services Limited, trading as Professional Visa Solutions or Provisas, of Auckland.

[5] The complainant is an Indian national with an open work visa in New Zealand. He contacted Provisas on 13 February 2019 for a free consultation. He wanted to discuss pathways to bring his partner, also a national of India, to New Zealand. He spoke to an employee and an in-person interview was arranged.

[6] The free interview took place on the following day, 14 February 2019. The complainant saw Kevin and Colin, both unlicensed employees.¹ The meeting lasted 45 minutes or just under 1.5 hours.² The Internal Case and Activity Log (activity log) of Provisas states that the interview was "conducted under the guidance of the LIA [licensed immigration adviser]", though Mr Singh was not present.³ The complainant told the staff that he had lived with his partner for two years before coming to New Zealand.

[7] The activity log further states that Mr Singh suggested they wait for more information from the complainant before recommending the best pathway, but it would most likely be a partnership-based visitor visa or a general visitor visa. The time recorded for Mr Singh's suggestion shows the complainant had left by then.

¹ These are not their real names.

² See Provisas file activity log and evidence from both the complainant and Mr Singh; Registrar's documents at 22, complainant's statement of reply (19 December 2019) at first attached page, Mr Singh's further statement of reply (30 January 2020) at [6.4]–[6.7].

³ Registrar's documents at 21–26.

[8] On the same day, 14 February 2019, Colin sent an email to the complainant referring to the meeting that day and attaching the Client Evaluation Form to be completed and returned. He advised they would then analyse a suitable visa option, most likely a visitor visa for partners. If that was not applicable, they suggested a general visitor visa. He set out the fees, confirming the initial deposit of \$200, out of \$862.50.

[9] Provisas sent an email to the complainant's partner on 16 February 2019 sending an invoice for \$1,525. The email was in the name of Mr Singh.

[10] The complainant duly paid the remaining amount of the first half of the fee, on 17 February 2019. He returned the evaluation form on 18 February 2019.

[11] On that day, 18 February 2019, Mr Singh sent a template email to the complainant's partner welcoming her as a client and attaching a client agreement for signature, his assessment notes, his complaints process and the Code.⁴ The activity log shows that he reviewed the completed evaluation form then.

Client agreement signed

[12] The signed client agreement was dated 18 February 2019. This was presumably the date it was printed off, as it was not the date it was validly signed (see below). It was on the letterhead of Provisas, but the parties were expressed to be Mr Singh and Ms Liu of Provisas, both licensed, and the complainant and his partner. It was signed by Mr Singh, the complainant and his partner. It provided that "we" (presumably the two contracting advisers) would apply for a visitor visa for the partner of a work visa holder. The fee was \$1,500 (excl GST), plus \$500 (excl GST) if successful, a total of \$2,300 (incl GST).

[13] The signed agreement was returned to Provisas on the same day.

[14] Mr Singh reviewed the agreement, but found the signature was "not compatible". Colin tried to ring the complainant but he could not make contact.

[15] There is in the documentation sent to the Tribunal by Mr Singh a "Checklist" in the name of the complainant's partner. It was sent to the complainant on 18 February 2019. The checklist comprehensively lists the documents needed for a partnership application, together with explanatory notes. There is a column for "Status" which is largely blank, but which does show that some documents had already been provided. While a generic list, there are some comments specific to the complainant's partner.

⁴ Statement Mr Singh (12 November 2020) at 2 & 9.

[16] On the following day or days, 19 and/or 20 February 2019, an employee in the name of Mr Singh again sent the template email to the complainant's partner welcoming her as a client and attaching the client agreement for signature. Colin twice rang the complainant on 19 February but was not able to make contact.

[17] Colin sent an email to the complainant on 19 February 2019 stating that the agreement had not been signed digitally and requesting a signature on the agreement. The signed agreement was duly received later that day (as noted above, the copy agreement produced to the Tribunal bears the date 18 February 2019).

[18] The complainant sent supporting documents to Provisas on 19 February 2019. He asked for templates for the letters to be obtained from family and friends.

[19] Colin sent an email to the complainant on 20 February 2019 stating that certain documents sent electronically could not be opened.

[20] Mr Singh sent an email on the same day to the complainant's partner sending a receipt and notifying her that the outstanding amount was \$862.50.

[21] Colin advised the complainant by email on 21 February 2019 as to Immigration New Zealand's fee.

[22] The complainant sent documents to Provisas on 24 and 25 February 2019.

[23] Colin rang the complainant on 25 February 2019 to obtain an update as to progress. Colin sent the complainant's partner an email on the same day referring to their earlier discussion and seeking a copy of her passport. He added that he would send sample reference letters. She responded forwarding the passport to Colin.

[24] The activity log shows that on that day Mr Singh reviewed the complainant's documents, made some recommendations and created an updated checklist for the complainant. He recorded spending more than one hour on the file.

[25] An email was sent by Kevin ("Head of Legal Team") to the complainant and his partner, also on 25 February 2019. He stated that a preliminary review of their documents had been completed, so he was attaching a checklist (unseen by the Tribunal). Kevin also attached sample reference letters to be signed by their parents and friends.

[26] Colin spoke to the complainant on 26 February 2019 about the content and instructions in the checklist.

Preparation of online application commences

[27] Also on that day, Mr Singh started the on-line partnership-based visitor visa application.

[28] According to the activity log, on 27 February 2019, Colin rang the complainant regarding a query on further documentation requested by Mr Singh.

[29] Further documents were sent by the complainant to Provisas on 27 February and 5 March 2019.

[30] The complainant sent an email to Provisas on 11 March 2019 asking whether what he had sent was acceptable, whether anything further was required and seeking an updated checklist. Colin replied on the same day thanking him for the friend's letter and advising that an updated checklist would be sent shortly.

[31] Mr Singh reviewed the documents on 13 March 2019, made some recommendations and created a second updated checklist.

[32] An employee, describing herself as the practice manager, sent the checklist (unseen by the Tribunal) to the complainant on the same day. She said she would be handling all the documentation. The manager rang the complainant the following day about the checklist.

[33] On 20 March 2019, Colin rang the complainant seeking more information and evidence.

[34] In the period from 21 March to 4 April 2019, the complainant sent support documents to Provisas.

[35] On 6 April 2019, Mr Singh sent the complainant by email an invoice for \$1,525.

[36] Mr Singh conducted another review of the documents on 9 April 2019. The activity log records his view that the evidence was not compelling enough for a partnership-based visitor visa. He wanted to know if the couple intended to get married.

[37] On 10 April 2019, the practice manager sent a text to the complainant telling him "the advisor" would like to speak to him, so he was asked to ring back. On the next day, the manager sent him a text referring him to a government website concerning marriage ceremonies.

[38] An employee tried to call the complainant on 11 April 2019 to arrange for him to discuss the proposed marriage with Mr Singh, but he could not connect with him. When

the complainant rang back, Mr Singh was in a meeting so Kevin spoke to him. According to the activity log, the complainant was invited to meet Mr Singh in person at the office, but declined because of his work commitments. The complainant says it was Kevin he was invited to see. The log further states that Kevin explained their approach, with the complainant replying that he understood. He advised his intention to get married.

[39] Mr Singh sent a text to the complainant on the same day regarding the process of obtaining a marriage licence, though he did not identify himself as the author of the email.

[40] Mr Singh rang the complainant on 12 April 2019, but he was not available. When the complainant rang back, Mr Singh was not available. The complainant spoke to an employee about obtaining a marriage licence and progressing the visa application. The activity log records that Mr Singh instructed the administration team to explain the process. It further states that the complainant declined a meeting at Provisas' office with Mr Singh.

[41] An employee called the complainant on 17 April 2019 to obtain an update on the marriage licence. The reply of the complainant is not recorded in the activity log.

[42] The complainant rang on 24 and then 30 April 2019 and spoke to an employee about a marriage venue.

Complainant terminates Mr Singh's services

[43] On 4 May 2019, the complainant sent an email to Provisas ("Dear Sir/Ma'am") requesting termination of its services and seeking a refund of \$812.50 paid. He had not received progress updates and it was not easy to contact the consultant over the phone. Provisas could deduct the initial evaluation undertaken and refund the balance from the \$812.50 paid in advance. Mr Singh spoke to the complainant by telephone that day.

[44] Mr Singh rang the complainant on 7 May 2019 to understand his concerns. He explained that the deposit was not refundable under the agreement and that considerable progress had been made on the application.

[45] The complainant sent an email to Mr Singh on 7 May 2019. He was concerned that he had not seen any update of his application and was not able to contact his consultant, Kevin. On 12 April, he had been advised by an employee that it was only possible to bring his partner in for one month on a visitor visa. He was not happy about this. He was only able to speak with his consultant, Kevin, twice. His partner's case had been changed at least twice between the employee and Colin. He had never been

contacted by Mr Singh before. Now he was not sure who his consultant was. The only choice he had been given was to apply for a marriage certificate. He wanted to know why he had been charged \$812.50.

[46] The complainant sent an email on the same day requesting a breakdown of the progress.

[47] Mr Singh responded by email, also on 7 May 2019. He acknowledged that the complainant was disappointed at not being able to speak to him every time he wanted. It was impractical for him to get to the phone every time. He would not list the number of times the complainant's concerns had been addressed over the phone. Mr Singh accepted that the complainant no longer wished to be represented by them and would soon send a letter of termination. The initial deposit was not refundable due to the considerable progress on the application. He would be willing not to charge him for the balance.

[48] In a further email on 8 May 2019, Mr Singh provided considerable detail about the work done. He explained that all applications were reviewed by him, including that of the complainant's partner. Although he endeavoured to speak to all clients personally, that was often difficult given his tight schedule. To make sure that all client queries were attended to and that meaningful progress was made on applications, he entrusted some of the communicating to the staff. Although he had not been able to speak to the complainant personally in some instances, he had been continually updated by the team of progress on his partner's application. Most of the important communications were through emails which he monitored closely. He was attaching documents to show the substantial work done, which was far beyond the initial deposit of \$812.50 paid.

[49] The complainant replied to Mr Singh by email also on 8 May 2019. He had not been able to contact Kevin, who had been introduced to him as the person who would take his case and as his senior consultant.

[50] The complainant said in his email that he was never told Kevin represented Mr Singh. The first time that Mr Singh had contacted him was when he sought to cancel the contract. Mr Singh had never been referred to by name at any instance in the past. The only contact from Mr Singh had been on 7 May 2019. An employee had contacted him on 11 April, but he was not given the option of meeting Mr Singh, only of meeting Kevin. He was not sure who his consultant was. When he sent documents, he got no response or guidance, something he had been assured he would get when he signed the contract. He had had to request checklists (of outstanding documents) to make sure

the documents sent were acceptable, since he received no response when documents were sent.

[51] A full response was given to the complainant by Mr Singh on 9 May 2019. He apologised if the overall process and identity of the consultant had not been made clear. Mr Singh put on the record that he was the consultant. Kevin was the head of the legal team. They all worked under his supervision to pass on information and communicate on his behalf. The complainant's calls had been answered by the administration team almost every time. They worked as a team, with advice passed on by him after reviewing the information sent by the client.

[52] Mr Singh informed the complainant that he got involved from time to time and made calls when needed to clear issues, but he had been informed that the complainant had been able to understand the recommendations given by the administration team. It was Mr Singh's understanding that the complainant was receiving guidance from the administration team, but had been reluctant to organise the suggested evidence due to the time and cost involved. The meeting the complainant had been offered was with Mr Singh personally.

[53] As for the refund requested, Mr Singh stated that pursuant to the agreement the fee was non-refundable. Furthermore, the complainant had failed to acknowledge the work done to date. No refund was warranted.

COMPLAINT

[54] On 13 May 2019, the complainant made a complaint to the Authority against Mr Singh. The complainant sent considerable documentation to the Authority, but does not appear to have described the complaint. He wanted a refund.

[55] The Authority formally wrote to Mr Singh on 19 September 2019 setting out details of the complaint and inviting his explanation. The Registrar had determined that grounds of complaint had been made out, namely that Mr Singh had negligently failed to take personal responsibility for the client relationship, instead allowing unlicensed persons to do so. He had failed to obtain instructions from the client himself and had maintained a business practice under which he relied on unlicensed persons to provide immigration services.

Explanation from Mr Singh

[56] Mr Singh's then solicitor, Mr Logan, replied to the Authority on 11 October 2019. He advised that the Internal Case and Activity Log captured the chronology which

corroborated Mr Singh's involvement in each step. He denied negligence and maintained that the complainant had received the expected care of a licensed professional. Mr Singh communicated with the complainant on a number of occasions through emails and texts. Two attempts were also made to arrange face-to-face meetings, but the complainant declined.

[57] According to Mr Logan, the unlicensed staff did not overstep the boundary of permissible clerical work. All the work constituting immigration advice was undertaken by Mr Singh only. All the communications sent to the complainant by unlicensed staff were closely monitored by Mr Singh. Those communications were in accordance with strict instructions and guidance from Mr Singh, including a standard list of questions and a checklist compiled by him. The engagement by the staff followed up outstanding information or repeated information already provided by Mr Singh. The activity log showed that he reviewed and assessed information and documents.

[58] Mr Logan acknowledged that Mr Singh had not met the complainant in person nor spoken to him on the phone, but he did not fail to engage with him. He did not offload to the staff the critical task of engaging with the complainant. He was actively involved in the work of advising him on eligibility, gathering the information and assessing it. The emails were not copied to Mr Singh, but they were sent from a general email account to which he had access. His office is open plan, enabling him to give direct verbal instruction to staff who are under his constant and direct supervision. Mr Singh did not delegate the bulk of engagement to the staff.

[59] It was noted by Mr Logan that Mr Singh had recently adopted a procedural manual with guidelines for unlicensed staff to better understand their role in engagement with clients, as well as managing the flow of information. He had also restructured his business into teams, whereby the four licensed advisers (including himself) were primarily responsible for communicating with their respective clients. He had therefore put in place new procedures to address any risk of unlicensed staff being responsible for substantive communications with clients. In recognition of the seriousness of the issues raised by the Authority, Mr Singh had sought legal advice both in regard to the complaint and also more generally as to how he should conduct his business.

Complaint referred to Tribunal

[60] On 21 October 2019, the Registrar referred the complaint to the Tribunal. It is alleged that:

- Mr Singh failed to personally engage with the complainant and maintained a business practice which relied on unlicensed persons to provide immigration advice. He has therefore been negligent, a ground of complaint under the Act, or alternatively breached certain provisions of the Code, being cls 1 (as to a lack of due care), 2(e) and 3(c).

JURISDICTION AND PROCEDURE

[61] 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.

[62] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.⁵

[63] The Tribunal must hear complaints on the papers, but may in its discretion request further information or any person to appear before the Tribunal.⁶ It has been established to deal relatively summarily with complaints referred to it.⁷

[64] 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.⁸

[65] The sanctions that may be imposed by the Tribunal are set out in the Act.⁹ The focus of professional disciplinary proceedings is not punishment but the protection of the public.¹⁰

⁵ Immigration Advisers Licensing Act 2007, s 45(2) & (3).

⁶ Section 49(3) & (4).

⁷ *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].

⁸ Section 50.

⁹ Section 51(1).

¹⁰ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citation omitted).

[66] 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.¹¹

Submissions from the Registrar

[67] The Tribunal has received the statement of complaint (dated 21 October 2019) with a file of paginated support documents from the Registrar.

Submissions from the complainant

[68] The complainant produced a statement of reply (dated 19 December 2019), with support documents. He states that he met Colin and Kevin on 13 February 2019 (actually 14 February) and was told Kevin would be his consultant. He was not told he could meet Mr Singh that day. He was there for about 1.5 hours. The only communications throughout the engagement were from the staff of Provisas. Mr Singh now says he was his consultant, but Mr Singh never contacted him.

[69] The complainant says he did not receive feedback on the documents he sent to Provisas. He was not told whether they were acceptable or not. According to the complainant, he has now been separated from his partner for two years. He sends her money every month for support. If he had received proper guidance, they would be together now.

Submissions from Mr Singh

[70] Mr Singh provided a statement of reply (dated 22 November 2019), with support documents. He provided further submissions on 30 January 2020, with additional support documents. Mr Singh denies breaching any professional obligation. He takes his professional responsibilities very seriously.

[71] In Mr Singh's view, the complaint stemmed from a disgruntled individual who failed to act on evidence given or to comply with requests made by himself and his staff (directed by him) for evidence. He unfairly demanded a refund of the initial deposit.

[72] Mr Singh says he has developed strong systems, with ongoing refinement, so that any risk of advice being given by support staff is mitigated to the point of non-occurrence. He has a well-documented client file containing detailed and regular record keeping. He has induction and ongoing training for staff and has checks in place to

¹¹ *Z v Dental Complaints Assessment Committee*, above n 10, at [97], [101]–[102] & [112].

ensure that unlicensed staff know the boundary of their clerical role. This is regularly enforced by him.

[73] According to Mr Singh, the open-plan office environment allows him to directly supervise all the staff. In liaising with clients, they are directed by him to ask for specific information. In this case, his considered judgement was employed to ensure the clerical work boundary was not overstepped. This is necessary to effectively and efficiently manage the business. He is always “vigilantly present” when interactions with clients happen, as was the case with the complainant, particularly the verbal interactions. As for the written communications, he monitors them prior to release. The emails were not copied to him, but they come from a generic account to which he has constant access. The entries in the activity log show that he was overseeing the correspondence.

[74] Mr Singh points out that in five years of practice, he has not had any prior complaints. Due to his commitment to lawful practice, there would be no reason to risk censure through wrongdoing.

[75] The complaint centres around a lack of communication, but the chronology does not reveal any unwarranted gaps in the professional relationship. At the key stages of determining which immigration avenue was best suited to the complainant, Mr Singh says he conducted a review to determine if sufficient evidence was available. He personally determined the outstanding information required to meet the immigration criteria. He sought further documents as to the intended marriage as a result and was waiting for that evidence.

[76] Mr Singh monitors closely all incoming and outgoing communication through the electronic portal, though the complainant did not accept the invitation to join the system. He acknowledges never meeting the complainant, but he did communicate with him on a number of occasions, particularly via email and text. Face to face engagement is no longer the norm in the immigration industry. He made reasonable efforts, balanced with time limitations. There was no reliance on staff as the only form of contact or to provide advice. He did not delegate bulk engagement to his staff.

[77] Mr Singh says the professional advisory role was conducted solely by him, as was all immigration advice work. Client engagement, managing communication and seeking documents were conducted by the unlicensed staff within the boundaries of their defined roles and as specifically directed by him. He acknowledges delegating to the clerical staff specific instructions to enquire of the complainant regarding the intended marriage. A staff member informed the complainant about where to obtain information concerning marriage licences. This is publicly available information and therefore

clerical. They undertook all viable means of ensuring good communication, including attempts to arrange meetings which were not accepted. Mr Singh says he personally followed up with the complainant checking progress in obtaining information from him.

[78] Any staff communication with the complainant was in accordance with Mr Singh's instructions and guidance, such as standard lists of questions and checklists. Staff are used for information gathering.

[79] Mr Singh contends that in order to find him negligent, it would be necessary to show that he knew what was required and overlooked it or was reckless doing it, "therefore not providing a duty of care in following the complainant's informed lawful instruction".¹²

[80] The considerable attention and resources given to the complainant's matter do not support the notion that a professional breach has occurred.

[81] As Mr Singh takes the matter seriously, he has proactively ensured the refinement of his processes by adopting a procedural manual with guidelines for licensed and unlicensed staff, so they further understand their role. He has also implemented a structured approach to the business to ensure smoother functionality, particularly with interactions between a client and their adviser. While he does not accept that his behaviour was unprofessional, he has taken the initiative to improve their business practice. There is no risk of staff going beyond the realm of clerical work.

[82] Numerous letters of reference from satisfied customers were produced by Mr Singh to the Tribunal. They are all in the same form. All state they were seen personally by him and he communicated personally with him.

[83] A "Workflow Process for Processing Teams" document was also produced by Mr Singh.

[84] Mr Singh filed further submissions on 30 January 2020 in response to the complainant's reply of 19 December 2019.

[85] According to Mr Singh, the usual internal business practice is for administrative staff to complete the necessary paperwork, collect and receipt the fee and confirm the scope of the work as clarified by him. The unlicensed staff relay information *verbatim*. This is what occurred on 14 February 2019. He is fully aware of their role when dealing directly with clients as they are within earshot. However, on this occasion, he was not present either at the meeting or even in the office. He confirms that the complainant

¹² Statement of reply (22 November 2019) at [5.18].

requested his attendance, but he was delayed getting to the office due to traffic congestion. The complainant waited for him, but then had to leave before his arrival. The complainant was offered another appointment but had an appointment elsewhere.

[86] Mr Singh senses that the complainant had an expectation that he would handle all matters, immigration related or otherwise. This is an unrealistic business model in the industry. The complainant had a perception that the staff were knowledgeable in immigration, but this was not the case and went against the principles instilled in them and their defined role.

[87] The complainant was given sufficient help to collect the required documents. He was sent an initial checklist and later a tailored internally designed partnership checklist.

[88] Mr Singh says he made numerous attempts to establish contact with the complainant, mostly by telephone, and his staff unsuccessfully tried to make calls on his behalf and in his presence.

[89] Mr Singh was involved in all matters deemed necessary in an advisory capacity. He was aware of all matters associated with the case and stepped in where deemed necessary. He has direct access to all client management systems. In an open plan office, he has direct oversight of all client-based activities.

[90] In the view of Mr Singh, a fee refund is the driving factor towards this complaint. In conclusion, there has been no wrongdoing on his part or that of his staff.

[91] The checklist of required documents sent to the complainant (dated 18 February 2019) was produced by Mr Singh. It marks the documents already provided by the complainant and those outstanding. It bears the same date as the other checklist sent to the Tribunal, but has additional commentary.

[92] Mr Singh also produced an EzyMigrate online file activity log showing the following action by him personally:

1. 14/2/19 – invoice
2. 16/2/19 – invoice updated and email
3. 18/2/19 – client information updated
4. 20/2/19 – payment and email with receipt
5. 21/2/19 – client information updated

6. 19/3/19 – client information updated
7. 31/5/19 – invoice updated
8. “04/10/19” – file note regarding fees, and an entry by Mr Singh stating he rang the client twice but there was no response.¹³

[93] At the Tribunal’s request, Mr Singh provided a further statement dated 12 November 2020, identifying all his meetings and other communications with the complainant, with supporting documents. In summary, he states that the evidence demonstrates that reasonable attempts at engagement with the complainant were made throughout the period of instructions. This involved Mr Singh’s direct input and interaction where deemed necessary, and his direction of employees to relay information where allowed by the Code. He provided a reasonable level of service and dedication to the case of the complainant and his partner. He and his staff made every effort to liaise with him. The complainant’s concern at an inability to connect is not justified. Often calls to him went unanswered, so Mr Singh ensured written follow-up communications.

Hearing

[94] No party has requested an oral hearing.

ASSESSMENT

[95] The Registrar relies on the following provisions of the Code:

General

1. A licensed immigration adviser must be honest, professional, diligent and respectful and conduct themselves with due care and in a timely manner.

Client Care

2. A licensed immigration adviser must:

...

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

...

Legislative requirements

3. A licensed immigration adviser must:

¹³ Presumably 10 April 2019.

...

- 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.
- *Mr Singh failed to personally engage with the complainant and maintained a business practice which relied on unlicensed persons to provide immigration advice. He has therefore been negligent, a ground of complaint under the Act, or alternatively breached certain provisions of the Code, being cls 1 (as to a lack of due care), 2(e) and 3(c)*

[96] The allegation by the Registrar against Mr Singh is that he maintains a business practice which is known in the industry as ‘rubber stamping’.

[97] In order to understand the seriousness of the allegation regarding unlicensed staff, it is necessary set out the statutory law governing the work of advisers.

Immigration advice, the exclusive work of licensed advisers

[98] The Tribunal has adversely commented in previous decisions on the practice of rubber stamping.¹⁴ This occurs where the licensed adviser becomes the ostensibly legitimate front for unlicensed individuals who provide the bulk of the immigration services.

[99] Typically, this occurs where a licensed immigration adviser uses agents, who are often offshore, 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, or between the adviser and the application.

[100] The practice is plainly unlawful. A person commits an offence under the Act if he or she provides “immigration advice” without being licensed or exempt from licensing.¹⁵ A person employing as an immigration adviser another person who is neither licensed nor exempt also commits an offence.¹⁶ A person may be charged with such an offence even where part or all of the conduct occurred outside New Zealand.¹⁷

¹⁴ *Stanimirovic v Levarko* [2018] NZIACDT 3 at [4], [36]–[38]; *Immigration New Zealand (Calder) v Soni* [2018] NZIACDT 6 at [4], [50]–[61]; *The Registrar of Immigration Advisers v Niland* [2018] NZIACDT 52 at [72]–[79].

¹⁵ Immigration Advisers Licensing Act 2007, ss 6 & 63.

¹⁶ Section 68(1).

¹⁷ Sections 8 & 73.

[101] The statutory scope of “immigration advice” is very broad:¹⁸

7 What constitutes immigration advice

- (1) In this Act, immigration advice—
- (a) means using, or purporting to use, knowledge of or experience in immigration to advise, direct, assist, or represent another person in regard to an immigration matter relating to New Zealand, whether directly or indirectly and whether or not for gain or reward; but
 - (b) does not include—
 - (i) providing information that is publicly available, or that is prepared or made available by the Department; or
 - (ii) directing a person to the Minister or the Department, or to an immigration officer or a refugee and protection officer (within the meaning of the Immigration Act 2009), or to a list of licensed immigration advisers; or
 - (iii) carrying out clerical work, translation or interpreting services, or settlement services.
- (2) To avoid doubt, a person is not considered to be providing immigration advice within the meaning of this Act if the person provides the advice in the course of acting under or pursuant to—
- (a) the Ombudsmen Act 1975; or
 - (b) any other enactment by which functions are conferred on Ombudsmen holding office under that Act.

[102] The exclusion from the scope of “immigration advice” relevant here is subs (1)(b)(iii) concerning clerical work, translation or interpretation services. The staff are only permitted to perform clerical work or translation/interpretation services.

[103] “Clerical work” is narrowly defined in the Act:¹⁹

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

¹⁸ Immigration Advisers Licensing Act 2007, s 7.

¹⁹ Section 5, definition of “clerical work”.

[104] In *Immigration New Zealand (Calder) v Ahmed*, the Tribunal set out the principles applicable to distinguishing clerical work from immigration advice.²⁰

[105] Mr Singh is the only person who can provide immigration advice. In other words, he is the only person who can use any knowledge or experience in immigration to advise, assist or represent the clients, whether directly or indirectly. The staff are confined to merely retrieving, organising and recording information, in addition to data entry. If they are recording the information on a visa application form, it must be done under the direction of Mr Singh or the client.

[106] In order to comply with this statutory requirement, the Code imposes an obligation on the adviser to act in accordance with New Zealand immigration legislation, being cl 3(c). It also imposes an obligation to take instructions from the client and then to carry them out, being cl 2(e). These obligations are personal to the licensed immigration adviser and cannot be delegated.²¹

Application of principles to Mr Singh

[107] The complaint is couched in terms of Mr Singh's business practice, but it solely concerns the management of the complainant's immigration matter, not those of other clients. Accordingly, it is only the procedure adopted for the complainant that I will assess. This complaint does not involve any review of Mr Singh's business practices generally, though it may well be that his procedure for the complainant is the same as that for all clients. However, that is outside the scope of this complaint.

[108] I do not see any evidence of carelessness or a lack of reasonable or due care on the part of Mr Singh in dealing with the complainant or with his partner's intended visa application. That is not the issue. The inquiry here is as to whether Mr Singh breached his professional obligations to personally and directly engage with both the complainant (and/or his partner) and with his partner's application, as required by cls 2(e) and 3(c) of the Code respectively. I therefore dismiss the complaint of negligence and a breach of the obligation to exercise due care in cl 1 of the Code.

[109] This brings me to the alternative complaint of a breach of cls 2(e) and 3(c).

Whether breach of cl 3(c)

²⁰ *Immigration New Zealand (Calder) v Ahmed* [2019] NZIACDT 18 at [55]–[59], [65]–[70].

²¹ *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [29], [34] & [47].

[110] I will start with the obligation in cl 3(c) to act in accordance with New Zealand immigration legislation, including the Act. The question here is whether Mr Singh permitted his unlicensed staff to perform work for the complainant falling within the statutory definition of 'immigration advice'. In other words, who was responsible for the substantive immigration advice given to the complainant and for completing any immigration application? It is about who assessed the evidence and formulated the advice, not who actually communicated the advice to the complainant or directly asked him or his partner for further information.

[111] The first substantive contact with the complainant was the meeting at Provisas' office on 14 February 2019 attended by the staff only. Mr Singh says this was predominantly an information gathering exercise by the staff. There can be no doubt that the staff would have identified some immigration options, but it must be borne in mind the meeting was free so the advice would have been broad and equivocal. Indeed, the complainant may have been given little more than generalised publicly available information at that early free stage of the process.

[112] While I do not accept the statement in Mr Singh's activity log that the interview was conducted under his guidance, since he was not at the interview or even present in the office, there is no evidence of any tailored or detailed advice by the staff. This interview was not a breach of his professional obligation under cl 3(c).

[113] Later that same day, the staff did send an email to the complainant with what could be regarded as immigration advice, but the activity log shows Mr Singh had become involved by then. I accept that he personally chose the option of a partner's visitor visa which the staff advised in an email to the complainant.

[114] There followed a fairly prolonged and extensive exchange between the complainant and the staff, as the latter gathered the information and documents necessary for a visa application. This was done largely by email but also by telephone. The actual mechanical requests for information/documents and the receipt of what was provided by the client are merely clerical activities, but such an exercise also involves determining at multiple steps in the process what information/documents are necessary and remain outstanding. This includes assessing from time to time whether sufficient evidence of relevant immigration criteria has been provided. Such assessments are plainly immigration advice work and must be performed by the licensed adviser.

[115] What happened in this case is that the staff sent the complainant a client evaluation form to complete, followed by a checklist which appears to have been updated at least once as information and documents were provided or an update (as to what was

outstanding) was requested by the complainant. I accept that Mr Singh would have created the template form and checklist. There is evidence also that he reviewed from time to time the information gathered (14, 18, 25 and 27 February, 13 March, 9 and 11 April 2019). He appears to have personally conducted the 'immigration advice' work required. The evidence shows that Mr Singh did not delegate to the staff the assessment as to the adequacy of the information gathered.

[116] The activity log also shows that it was Mr Singh and not the staff who commenced the on-line visa application on 26 February 2019.

[117] I find that Mr Singh did not delegate to the staff work that could be regarded as immigration advice within the statutory definition. The complaint concerning cl 3(c) is dismissed.

Whether breach of cl 2(e)

[118] There are two obligations in cl 2(e). The first is to "obtain" instructions and the second is to "carry out" those instructions. The latter overlaps the cl 3(c) obligation to comply with New Zealand immigration law by not using unlicensed staff for substantive immigration work. I have already dismissed that aspect of the complaint. The focus under cl 2(e) in relation to Mr Singh is whether he personally obtained the complainant's instructions.

[119] While the Tribunal has clearly found that Mr Singh was sufficiently involved 'behind the scene' in directing the substantive immigration work, who was primarily engaged in communicating with the complainant? In other words, did Mr Singh directly give the substantive advice to the complainant and obtain his instructions, as required by cl 2(e) of the Code? While cl 3(c) is about who was engaged substantively with the application, the cl 2(e) obligation to obtain instructions is about who was engaged substantially with the client.

[120] Mr Singh was absent from the initial consultation. As found above, that is acceptable in this case in terms of the obligation to perform the substantive immigration work. But it is not acceptable in terms of the obligation to personally engage with the complainant from the beginning to the end of the client relationship in order to obtain instructions. Mr Singh dismisses the first meeting as an information gathering exercise only. It is more than that. It is about establishing the relationship at the commencement of the instructions. It is Mr Singh, not Provisas, with the obligation under the Code to obtain the client's instructions throughout the period of engagement.

[121] Following the first meeting, Mr Singh left it to the staff to communicate with the complainant about the information and documents needed. Again, that was acceptable in terms of cl 3(c), as he was controlling the quality of the information in the background, but it was not acceptable in terms of his obligation under cl 2(e) to directly communicate with his client. There can be no objection to staff communicating on isolated occasions with a client as information is gathered, which is inevitable in a busy office, but what occurred here is that Mr Singh absented himself completely from the client relationship concerning the substantive immigration work.

[122] It was because of Mr Singh's absence from that first meeting and subsequent communications that the complainant believed that the unlicensed Kevin was his adviser or consultant. I accept the complainant's contention that, despite the client agreement naming Mr Singh and another licensed adviser, it was not made clear to him at any time that Mr Singh was the responsible adviser. It is self-evident that the complainant did not know Mr Singh was the real adviser, since if he had known, he would have insisted on dealing with Mr Singh personally. He would not have been content to be left exclusively with the staff if he knew it was Mr Singh who was actually the knowledgeable consultant.

[123] At no time did Mr Singh meet with the complainant. There was no telephone discussion until the threatened termination. Mr Singh's direct written communication with the complainant and/or his partner involved only the formalities of the client agreement, fees and towards the end, the complaint and threatened termination of the relationship. They did not involve the substantive immigration application.

[124] It is not enough that Mr Singh belatedly (almost two months after first contact) made an effort to directly engage the complainant on about 10 or 11 April and then again on 12 April 2019 for the first time on the application itself (as to the supporting evidence of marriage). He sent then his solitary communication, a text, about obtaining a marriage document needed for the application. It is not material that telephone contact could not be made then through no fault of Mr Singh. This attempt at direct communication was 'too little too late'. Nor did Mr Singh make any effort to follow up his failure to make contact by trying again a few days later or at any time before the complainant sought termination of the relationship. It was not until the threatened termination that Mr Singh directly engaged and took control of the relationship, something that should have occurred on 14 February 2019.

[125] In the period from about 10 to 12 April 2019, the complainant was offered a meeting with Mr Singh. Apparently, he declined because of his work commitments. It would appear that he did not know that it was Mr Singh with whom he would meet. He says he thought it was Kevin. This very late and isolated offer of a meeting was not an

adequate discharge of Mr Singh's obligation to personally engage with the complainant and/or his partner on the partner's immigration application.

[126] Mr Singh admits that the complainant's calls were answered ("entertained") by the administration team almost every time.²² It is not enough, in order to satisfy cl 2(e), that the staff work under his supervision or within his earshot, that he is continually updated by them as to progress and that he monitors their emails. That may satisfy the obligation in cl 3(c), but it does not satisfy the obligation to personally undertake the client engagement process.

[127] It is not material that the complainant declined an invitation to participate in an online portal ("Google Hangouts"), which included Mr Singh. It is Mr Singh's obligation to personally communicate with the complainant in a way that is convenient and comfortable to the complainant.

[128] It is irrelevant that Mr Singh's "tight schedule" makes it difficult to speak to all clients personally.²³ Mr Singh will have to employ more licensed advisers or limit the workload of his firm, so that he and the other licensed advisers can personally take instructions from Provisas' clients.

[129] I find Mr Singh has breached cl 2(e) of the Code. He failed to personally obtain instructions from the complainant.

OUTCOME

[130] The complaint is partially upheld. Mr Singh has breached cl 2(e) of the Code.

SUBMISSIONS ON SANCTIONS

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

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

²² Mr Singh's email to complainant (9 May 2019); Registrar's documents at 76.

²³ Mr Singh's email to complainant (8 May 2019); Registrar's documents at 70.

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

- (1) The Registrar, the complainant and Mr Singh are to make submissions by **9 December 2020**.
- (2) The Registrar, the complainant and Mr Singh may reply to submissions of any other party by **23 December 2020**.

ORDER FOR SUPPRESSION

[134] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.²⁴

[135] There is no public interest in knowing the name of Mr Singh's client or his partner.

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

D J Plunkett
Chair

²⁴ Immigration Advisers Licensing Act 2007, s 50A.