

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2021] NZIACDT 1

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
(Sanctions)
Dated 15 January 2021**

REPRESENTATION:

Registrar: Self-represented

Complainant: Self-represented

Adviser: Self-represented

INTRODUCTION

[1] Mr Inderpal Singh, the adviser, acted for HQT, the complainant, and his partner. The complainant sought to bring his partner to New Zealand. Mr Singh did not engage with the complainant or his partner, but left it to his staff to communicate with them.

[2] A complaint to the Immigration Advisers Authority (the Authority) was referred by the Registrar of Immigration Advisers (the Registrar) to the Tribunal. It was upheld in a decision issued on 19 November 2020 in *HQT v Singh*.¹ Mr Singh was found to have breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

[3] It is now for the Tribunal to determine the appropriate sanctions.

BACKGROUND

[4] The narrative leading to the complaint is set out in the earlier decision of the Tribunal and will only be briefly summarised here.

[5] Mr Singh is a licensed immigration adviser and director of Immigration NZ Services Limited, trading as Professional Visa Solutions or Provisas, of Auckland.

[6] The complainant and his partner are nationals of India. The complainant lives and works in New Zealand and instructed Mr Singh to obtain a visa to bring his partner here.

[7] The complainant's initial consultation on 14 February 2019 was with two unlicensed employees of Provisas. Throughout the period of engagement, the complainant and his partner dealt with unlicensed employees. Mr Singh communicated with the complainant only for the purpose of obtaining their signatures for the client agreement, billing and later when the complainant raised a complaint. All communications concerning preparation of the proposed visa application were with the employees.

[8] The complainant terminated Provisas' services on 4 May 2019, at the same time criticising the firm's service. He said he had not received progress updates and it was not easy to contact the adviser.

[9] On 13 May 2019, the complainant made a complaint to the Authority against Mr Singh. This was referred to the Tribunal.

¹ *HQT v Singh* [2020] NZIACDT 49.

Decision of the Tribunal

[10] The Tribunal accepted that Mr Singh had from time to time been engaged in the substantive immigration work for the complainant's partner, but found that he had not engaged directly with the complainant in respect of that work. He had never met or spoken to the complainant (or his partner). He had only once communicated in writing with the complainant in relation to the proposed visa application. This was a breach of cl 2(e) of the Code, since he had failed to personally obtain instructions from the complainant.

SUBMISSIONS*Submissions from the Registrar*

[11] The Registrar, in his submissions of 9 December 2020, observes that this is Mr Singh's first appearance before the Tribunal. He had been awarded the Graduate Certificate in New Zealand Immigration Advice in 2013, so further training was not warranted. The Registrar contends that the appropriate sanctions would be:

- (1) censure; and
- (2) an order for payment of a penalty in the vicinity of \$1,000.

Submissions from the complainant

[12] The complainant advised the Tribunal on 8 December 2020 that he wished to withdraw the complaint and not proceed further. He was informed by the Tribunal's case manager on 10 December 2020 that the complaint could not be withdrawn by him and in any event, it was too late to do so as it had already been upheld.

Submissions from Mr Singh

[13] In his submissions of 22 December 2020, Mr Singh acknowledges the decision but does not accept that a blatant disregard of cl 2(e) occurred. However, he respected the decision and regarded it as highlighting the need for him to improve his standards in handling client matters.

[14] According to Mr Singh, from the earliest stage of the complaint, he had seen it as an opportunity to explore avenues for improving their client handling service. He had taken a broad approach and ensured that all staff were fully aware of their roles and obligations. With the help of an experienced professional, potential client complaint

matters had been identified. Mr Singh had developed an effective client management document, had refined the client service agreement and had developed rigorous process checks to ensure all clients received a level of interaction befitting their expectations. This had included implementing a client relationship management software system. He was committed to improving compliance not only with cl 2(e) but his professional responsibilities as a whole.

[15] Mr Singh pointed out that he had been practising since 2014 and had developed a successful, sustainable and expanding business. He employed New Zealanders and contributed to the wider industry by speaking at cultural events. He had an excellent overall reputation for dedicated client care, a good working relationship with the relevant government bodies and a high success rate. This was the first complaint which had been upheld against him.

JURISDICTION

[16] The Tribunal's jurisdiction to impose sanctions is set out in the Immigration Advisers Licensing Act 2007 (the Act). Having heard a complaint, the Tribunal may take the following action:²

50 Determination of complaint by Tribunal

After hearing a complaint, the Tribunal may—

- (a) determine to dismiss the complaint:
- (b) uphold the complaint but determine to take no further action:
- (c) uphold the complaint and impose on the licensed immigration adviser or former licensed immigration adviser any 1 or more of the sanctions set out in section 51.

[17] The sanctions that may be imposed are set out at s 51(1) of the Act:

51 Disciplinary sanctions

(1) The sanctions that the Tribunal may impose are—

- (a) caution or censure:
- (b) a requirement to undertake specified training or otherwise remedy any deficiency within a specified period:
- (c) suspension of licence for the unexpired period of the licence, or until the person meets specified conditions:
- (d) cancellation of licence:

² Immigration Advisers Licensing Act 2007.

- (e) an order preventing the person from reapplying for a licence for a period not exceeding 2 years, or until the person meets specified conditions:
- (f) an order for the payment of a penalty not exceeding \$10,000:
- (g) an order for the payment of all or any of the costs or expenses of the investigation, inquiry, or hearing, or any related prosecution:
- (h) an order directing the licensed immigration adviser or former licensed immigration adviser to refund all or any part of fees or expenses paid by the complainant or another person to the licensed immigration adviser or former licensed immigration adviser:
- (i) an order directing the licensed immigration adviser or former licensed immigration adviser to pay reasonable compensation to the complainant or other person.

[18] In determining the appropriate sanction, it is relevant to note the purpose of the Act:

3 Purpose and scheme of Act

The purpose of this Act is to promote and protect the interests of consumers receiving immigration advice, and to enhance the reputation of New Zealand as a migration destination, by providing for the regulation of persons who give immigration advice.

[19] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:³

...It is well established that professional disciplinary proceedings are civil and not criminal in nature. That is because the purpose of statutory disciplinary proceedings for various occupations is not to punish the practitioner for misbehaviour, although it may have that effect, but to ensure that appropriate standards of conduct are maintained in the occupation concerned.

...

The purpose of disciplinary proceedings is materially different to that of a criminal trial. It is to ascertain whether a practitioner has met appropriate standards of conduct in the occupation concerned and what may be required to ensure that, in the public interest, such standards are met in the future. The protection of the public is the central focus.

...

Lord Diplock pointed out in *Ziderman v General Dental Council* that the purpose of disciplinary proceedings is to protect the public who may come to a practitioner and to maintain the high standards and good reputation of an honourable profession.

³ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citations omitted).

[20] Professional conduct schemes, with their attached compliance regimes, exist to maintain high standards of propriety and professional conduct not just for the public good, but also to protect the profession itself.⁴

[21] While protection of the public and the profession is the focus, the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty.⁵

[22] The most appropriate penalty is that which:⁶

- (a) most appropriately protects the public and deters others;
- (b) facilitates the Tribunal's important role in setting professional standards;
- (c) punishes the practitioner;
- (d) allows for the rehabilitation of the practitioner;
- (e) promotes consistency with penalties in similar cases;
- (f) reflects the seriousness of the misconduct;
- (g) is the least restrictive penalty appropriate in the circumstances; and
- (h) looked at overall, is the penalty which is fair, reasonable and proportionate in the circumstances.

DISCUSSION

[23] The starting point is the seriousness of the breach of the obligation to personally engage with clients. It is a fundamental obligation of licensed advisers to engage directly with the substantive immigration work and with the client as well. Clients are entitled to deal directly with licensed advisers who are knowledgeable and subject to a professional code.

⁴ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Z v Dental Complaints Assessment Committee*, above n 3, at [151].

⁵ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28].

⁶ *Liston v Director of Proceedings* [2018] NZHC 2981 at [34], citing *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354 at [44]–[51] and *Katamat v Professional Conduct Committee* [2012] NZHC 1633, [2013] NZAR 320 at [49].

[24] The complaint concerns only one client. Mr Singh has taken a responsible approach to the complaint. While he is somewhat equivocal about expressly accepting the Code was breached, at least “blatantly”, he nonetheless has made a considerable effort to learn from the experience and improve his company’s business practices. This is Mr Singh’s first appearance before the Tribunal. I take into account also that the complainant does not seek any sanctions.

Caution or censure

[25] I agree with the Registrar that Mr Singh should be censured. A caution would not reflect the seriousness of the breach.

Training

[26] I also agree with the Registrar that this sole instance of a failure to engage directly with a client does not warrant any direction concerning training. There is no reason to believe that Mr Singh has not learned a lesson or that there are wider problems with his business.

Financial penalty

[27] The Registrar submits that the penalty imposed against Mr Singh should be in the vicinity of \$1,000. There is a brief discussion of penalties for this type of misconduct in *Hill*.⁷ Again, I concur with the Registrar that the penalty should be \$1,000.

OUTCOME

[28] Mr Singh is:

- (1) censured; and
- (2) ordered to immediately pay to the Registrar the sum of \$1,000.

ORDER FOR SUPPRESSION

[29] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.⁸

⁷ *XA v Hill* [2020] NZIACDT 28 at [60]–[62].

⁸ Immigration Advisers Licensing Act 2007, s 50A.

[30] There is no public interest in knowing the name of Mr Singh's client or his partner. The Tribunal orders that no information identifying the complainant or his partner is to be published other than to Immigration New Zealand.

[31] Mr Singh requests the suppression of his company's name, contending that there is a real possibility of perceived disrepute impacting on the livelihood of other employed licensed immigration advisers. However, the public are entitled to know the names of advisers who breach professional standards and where they are employed. It is very rare for such details to be suppressed and it is usually done only for medical reasons relating to the adviser. Given Mr Singh's isolated misconduct and his professional response to the Tribunal's decision, it is somewhat unlikely that this complaint will have a serious impact on Provisas' business. In any event, the request is declined.

D J Plunkett
Chair