

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2021] NZIACDT 11

Reference No: IACDT 02/21

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

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

**BETWEEN** **YC**  
Complainant

**AND** **YUJUAN JANELLE HAN**  
Adviser

**SUBJECT TO SUPPRESSION ORDER**

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**DECISION**  
**Dated 19 May 2021**

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**REPRESENTATION:**

Registrar: Self-represented  
Complainant: H Gu, immigration adviser  
Adviser: Self-represented

## **PRELIMINARY**

[1] Ms Yujuan Janelle Han, the adviser, advised Ms YC, the complainant, who was seeking a work visa. However, Ms Han was not named in the agreement with the client as an adviser who could assist her. At the time, Ms Han held a provisional licence and was supervised by Mr Jiale William Wan. Due to the failure of Ms Han and/or Mr Wan to reply to a letter from Immigration New Zealand, the complainant's visa application was unsuccessful.

[2] A complaint to the Immigration Advisers Authority (the Authority) against Ms Han and Mr Wan has been referred to the Tribunal by the Registrar of Immigration Advisers (the Registrar). It alleges multiple breaches of the Licensed Immigration Advisers Code of Conduct 2014 (the Code). Separate decisions will be issued by the Tribunal for Ms Han and Mr Wan.

[3] Both Ms Han and Mr Wan admit breaching their professional obligations.

## **BACKGROUND**

[4] Ms Han is employed by PJ Education & Immigration Services Ltd (the consultancy), of Auckland. At the relevant time she was provisionally licensed, but now she holds a full licence.

[5] The narrative is more fully set out in the Tribunal's decision concerning Mr Wan issued on the same day.

[6] The complainant is a national of China. In early June 2019, she contacted Ms Han in order to apply for an essential skills work visa, as her then current visa was due to expire on 29 June 2019.

[7] On 10 June 2019, an immigration services agreement was entered into between Mr Wan and the complainant. The agreement did not name Ms Han as an adviser. However, it was Ms Han who worked exclusively with the complainant to prepare the visa application, which was filed by Ms Han on 28 June 2019.

[8] On 31 July 2019, Immigration New Zealand wrote to Ms Han and the complainant identifying a number of issues which could have a negative impact on the outcome of the application. Their comments by 7 August 2019 were invited.

[9] Ms Han wrote to Immigration New Zealand on both 6 and 7 August 2019 seeking an extension of two weeks until 21 August 2019 to reply to the letter of 31 July 2019. On 7 August 2019, Immigration New Zealand sent her an email advising that an extension until 15 August 2019 had been granted. As this was Ms Han's first or second day of maternity leave, she did not check her emails and was not aware of the extension. She had been told by Mr Wan that her emails would be redirected to him, but this arrangement was not activated until one week later. Accordingly, Mr Wan was not notified of the extension either.

[10] Since there was no reply to Immigration New Zealand's letter of 31 July 2019, the agency declined the visa application on 21 August 2019. It was found that the applicant did not meet the requirements of the immigration instructions.

[11] Mr Wan met with the complainant on 22 August 2019 to advise her of the decline. This was the first time she was aware of Immigration New Zealand's letter of 31 July 2019 or of the extension granted to reply. Shortly afterwards, she instructed Mr Harris Gu, another licensed immigration adviser.

## **COMPLAINT**

[12] Mr Gu, on behalf of the complainant, made a complaint against Ms Han and Mr Wan to the Authority on 7 November 2019. It was alleged that Ms Han did not have a written agreement with the complainant. Nor did she forward to the complainant, or respond to, Immigration New Zealand's letter of 31 July 2019. Numerous breaches of the Code were alleged against both of them. The complainant sought a refund of the professional fees paid and reasonable compensation.

[13] On 12 November 2020, the Authority wrote to Ms Han formally informing her of the details of the complaint and requesting her explanation.

### *Explanation from Ms Han and Mr Wan*

[14] Mr Turner of Laurent Law wrote to the Authority on 18 December 2020, on behalf of Ms Han and Mr Wan, replying to its letter of 12 November 2020. Statements from the two advisers were sent with his letter.

[15] According to Mr Turner, both Ms Han and Mr Wan admitted most (but not all) of the breaches of the Code alleged. He set out their various explanations. They had acknowledged them early in the process. Ms Han and Mr Wan apologised for their breaches.

[16] They had both learned as a result of the complaint, changing some of their business processes. In particular, there was now a service agreement to be used by Ms Han as a provisional licence holder. They had also adopted a task management system. These matters might not influence the Tribunal in relation to liability, but they would be relevant in determining sanctions.

[17] Mr Turner also stated that the complainant may have damaged her own position, as she did not provide Mr Wan with any instructions when he met her on 22 August 2019. At that time, her interim visa had not expired. Mr Wan had offered to seek a reconsideration and later a s 61 request, without charge. This amounted to a failure to mitigate some of the losses she might otherwise claim.

[18] In her “affidavit” (actually a witnessed statement) of 17 December 2020, Ms Han provided her comments to each of the professional breaches alleged by the Registrar, admitting breaches of cls 1, 18(a) and 19(c), but not cl 26(b). To the extent relevant to this decision, her explanations will be reviewed later. It is noted that she stated that she did not check her emails after 7 August 2019, while on leave, as she had understood they were being redirected to Mr Wan.

[19] In his affidavit (statement) of 17 December 2020, Mr Wan said that on 6 August 2019, when Ms Han went on leave, he instructed the consultancy’s IT person to arrange for her emails to be forwarded to him. However, this was only implemented one week later. He was therefore unaware of the new deadline granted by Immigration New Zealand. Mr Wan also stated that when the complainant’s lawyers were sent the files on 29 August 2019, she still had until 4 September 2019 to file a reconsideration request.

#### *Complaint referred to Tribunal*

[20] The Registrar referred the complaint to the Tribunal on 29 January 2021. It alleges the following against Ms Han:

- (1) failure to ensure that measures were in place regarding communication relating to the complainant’s visa application and thereby failing to respond to Immigration New Zealand’s letter, in breach of cl 1;
- (2) failure to ensure that she had a written agreement with the complainant before providing immigration advice, in breach of cl 18(a);
- (3) failure to ensure that the written agreement contained the details relating to her being a provisional licence holder, in breach of cl 19(c); and

- (4) failure to confirm in writing to the complainant when her application was filed with Immigration New Zealand and to provide ongoing timely updates, including Immigration New Zealand's letter, in breach of cl 26(b).

## JURISDICTION AND PROCEDURE

[21] The grounds for a complaint to the Registrar made against an immigration adviser or former immigration adviser are set out in s 44(2) of the Immigration Advisers Licensing Act 2007 (the Act):

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

[22] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.<sup>1</sup>

[23] 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>2</sup> It has been established to deal relatively summarily with complaints referred to it.<sup>3</sup>

[24] 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>4</sup>

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

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<sup>1</sup> Immigration Advisers Licensing Act 2007, s 45(2) & (3).

<sup>2</sup> Section 49(3) & (4).

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

<sup>4</sup> Section 50.

<sup>5</sup> Section 51(1).

<sup>6</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151].

[26] 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>7</sup>

[27] The Registrar has filed the statement of complaint (29 January 2021) with supporting documents.

[28] The Tribunal has received a letter of explanation (2 March 2021) jointly from Ms Han and Mr Wan. Ms Wan admits breaching cls 1, 18(a), 19(c) and 26(b). She relies on the explanations for the breaches set out in her earlier statement. The advisers identify what they see as two issues:

- (1) The service agreement was not proper. It should have been signed by both of them.
- (2) When Ms Han went on leave, Immigration New Zealand was not clearly informed that further correspondence should be directed to Mr Wan. The arrangement would have been better if Ms Han had done so, or the IT person redirected Ms Han's emails on time or Mr Wan had followed up with Immigration New Zealand.

[29] Ms Han and Mr Wan sincerely apologise for the breaches. It was not a deliberate failure, but they feel responsible for the decline of the complainant's application. They have made changes and improvements to their business processes as a result.

[30] Mr Gu has filed a notice of authority to act (12 March 2021) on behalf of the complainant.

[31] No party has requested an oral hearing.

## **ASSESSMENT**

[32] 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.

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<sup>7</sup> *Z v Dental Complaints Assessment Committee*, above n 6, at [97], [101]–[102] & [112].

**Written agreements**

18. A licensed immigration adviser must ensure that:
- a. when they and the client decide to proceed, they provide the client with a written agreement

**Written agreements**

19. A licensed immigration adviser must ensure that a written agreement contains:
- ...
- c. if the adviser holds a provisional licence:
    - i. a record that a provisional licence requires them to work under the direct supervision of a full licence holder, and that they must seek advice from the supervisor whenever necessary
    - ii. the name and licence number of their supervisor, and
    - iii. a record that they will disclose the client's personal information to their supervisor who is obliged to keep that information confidential
- ...

**File management**

26. A licensed immigration adviser must:
- ...
- b. confirm in writing to the client when applications have been lodged, and make on-going timely updates
- ...

(1) *Failure to ensure that measures were in place regarding communication relating to the complainant's visa application and thereby failing to respond to Immigration New Zealand's letter, in breach of cl 1*

[33] The Registrar notes that it is not disputed that Ms Han did not reply to Immigration New Zealand's letter of 31 July 2019. Furthermore, notes the Registrar, Ms Han says that when she went on leave, the application was reassigned to Mr Wan and she was told that emails to her would be redirected to him. Hence, she did not respond to emails from 7 August (indeed, she says she did not even check emails from this date).

[34] However, according to the Registrar, Ms Han did not inform Immigration New Zealand that she was going on leave or ask the agency to reply to Mr Wan's email address. It is contended that a professional and diligent adviser would have followed

through to ensure that the measures she was relying on were actually in place. Immigration New Zealand's letter was critical and was time sensitive.

[35] Ms Han admits she was in breach of cl 1 of the Code, which requires her to be professional and diligent. My view is that Ms Han is being somewhat hard on herself in admitting this breach. She took the proper steps of arranging for a replacement licensed adviser to immediately take over the file and had briefed him on the state of the file. Mr Wan had been informed of the deadline and the request for an extension. More importantly, he knew Immigration New Zealand's letter had to be answered, irrespective of his knowledge of the date of the deadline. Ms Han had been told by Mr Wan, her supervisor and employer, that the emails would be redirected, but he was tardy in making sure this was attended to.

[36] It was Mr Wan's fault there was no reply to Immigration New Zealand's letter by 15 August, not that of Ms Han. She was on leave. While Ms Han could usefully have informed Immigration New Zealand on 6 and 7 August that she was going on leave and it should reply to Mr Wan's email address, her failure to do that was not the cause of the declined visa. Nor do I see it as a breach of any professional obligation. This head of complaint is dismissed.

(2) *Failure to ensure that she had a written agreement with the complainant before providing immigration advice, in breach of cl 18(a)*

[37] The Code mandates a written client agreement, but does not require the existence of a separate agreement with each adviser in the same company.<sup>8</sup>

[38] While Ms Han has admitted breaching cl 18(a), I find no breach. She is in breach of cl 19(a), not 18(a). This head of complaint is dismissed.

(3) *Failure to ensure that the written agreement contained the details relating to her being a provisional licence holder, in breach of cl 19(c)*

[39] Ms Han admits that the client agreement did not name her or confirm any of the details required to be set out for a provisional licence holder. She is as much responsible for this breach as Mr Wan. I find Ms Han in breach of cl 19(c). This head of complaint is upheld.

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<sup>8</sup> Code of Conduct 2014, cl 19(a); *Registrar of Immigration Advisers v Ho* [2019] NZIACDT 54 at [76].

- (4) *Failure to confirm in writing to the complainant when her application was filed with Immigration New Zealand and to provide ongoing timely updates, including Immigration New Zealand's letter, in breach of cl 26(b)*

[40] It is alleged by the Registrar that Ms Han failed to advise the complainant about Immigration New Zealand's letter of 31 July 2019 or the request for an extension.

[41] The explanation from Ms Han is that the consultancy had an internal process of discussing such letters and planning the action, before informing the client. But due to her workload and then leave, she did not update the complainant before going on leave.

[42] While it is appropriate for an adviser to be able to tell the client of the solution to the problem raised, at the same time as informing the client of the letter received from the agency, that must be done in a timely manner. Ms Han had a week to advise the complainant of the letter from Immigration New Zealand and the request for an extension, before going on leave. Irrespective of her workload, she should have done so. It would not have taken long. Ms Han admits breaching cl 26(b) of the Code. I uphold this head of complaint.

## **OUTCOME**

[43] I uphold the complaint. Ms Han had breached cls 19(c) and 26(b) of the Code.

## **SUBMISSIONS ON SANCTIONS**

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

[45] A timetable is set out below. Any request that Ms Han 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. Any claim for compensation must arise from the breaches of the Code upheld by the Tribunal.

### *Timetable*

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

- (1) The Registrar, the complainant and Ms Han are to make submissions by **10 June 2021**.

- (2) The Registrar, the complainant and Ms Han may reply to submissions of any other party by **24 June 2021**.

### **ORDER FOR SUPPRESSION**

[47] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.<sup>9</sup>

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

[49] 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

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<sup>9</sup> Immigration Advisers Licensing Act 2007, s 50A.