

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2021] NZIACDT 04

Reference No: IACDT 024/19

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

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

**BETWEEN** **SL**  
Complainant

**AND** **ANGELINA GABRIELLA  
MACKINTOSH**  
Adviser

**SUBJECT TO SUPPRESSION ORDER**

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**DECISION**  
**Dated 4 March 2021**

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**REPRESENTATION:**

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

## **PRELIMINARY**

[1] Ms Angelina Gabriella Mackintosh, the adviser, acted for SL, the complainant, on a visa application, but concealed from her the decline of the application and the real reason for the decline. Nor did Ms Mackintosh make a reconsideration application she had been instructed to make, yet she falsely inferred that it had been filed.

[2] A complaint to the Immigration Advisers Authority (the Authority) against Ms Mackintosh by the complainant was referred to the Tribunal by the Registrar of Immigration Advisers (the Registrar). It alleges negligence and/or dishonest or misleading behaviour, grounds for complaint under the Immigration Advisers Licensing Act 2007 (the Act), or alternatively breaches of the Licensed Immigration Advisers Code of Conduct 2010 (the Code).

[3] Ms Mackintosh explains her circumstances at the time, but admits her misconduct.

## **BACKGROUND**

[4] Ms Mackintosh, a licensed immigration adviser, is a director of Care Immigration Ltd, of Auckland.

[5] The complainant is a national of India. She arrived in New Zealand in about March 2015 and at various times held student, work search and graduate work experience visas. She had a Bachelor of Dental Surgery from India and obtained a Diploma in Health Services Management in New Zealand.

[6] The complainant was issued with a work visa by Immigration New Zealand on 6 March 2017, to work as a practice co-ordinator at a professional firm. The visa was due to expire on 6 March 2019.

[7] On 19 July 2018, Ms Mackintosh and the complainant entered into a client agreement providing for a work visa to be filed. The professional fee was \$1,150.00, which the complainant paid on signing the agreement. Ms Mackintosh wrote to the complainant on the same day listing the documentation needed.

### *Work visa application filed 2 August 2018*

[8] A work visa application for the complainant was filed by Ms Mackintosh on 2 August 2018, based on further fulltime employment with the same employer.

[9] Immigration New Zealand wrote to the complainant (care of Ms Mackintosh) on 12 September 2018. She was advised that her application did not meet certain criteria and was given until 20 September 2018 to provide further information.

[10] The complainant asked Ms Mackintosh by email on 24 September 2018 about the status of her application.

[11] As Ms Mackintosh did not respond to the complainant's email of 24 September, the complainant sent another email on 25 September 2018 asking her to reply. Ms Mackintosh responded that day to say that Immigration New Zealand's processing time was about two months. She was out of the office that day, but she would check it out shortly and get back to her.

*Visa application of 2 August 2018 declined*

[12] On the same day, 25 September 2018, Immigration New Zealand wrote to the complainant (care of Ms Mackintosh) advising that her application had been declined. She did not meet the immigration criteria. The government agency said it had written to her on 12 September, but there had been no response. She could apply for a reconsideration if she was lawfully in New Zealand and made the request within 14 days. Her visa would expire on 6 March 2019.

[13] The complainant was not then informed by Ms Mackintosh of the decline of her visa application.

[14] On 5 October 2018, the complainant again sent an email to Ms Mackintosh seeking an update. The latter replied that day to say the processing time was about 80 days. She would check and get back to her shortly. The complainant responded to say she was worried, as it was taking so long. Ms Mackintosh replied stating that Immigration New Zealand were taking quite a while, but she should not worry as it would all be fine. A further email from the complainant, also on 5 October, asked whether a case officer had been assigned, to which Ms Mackintosh immediately replied that there was no case officer.

[15] Then on 10 October 2018, Ms Mackintosh sent an email to the complainant stating that Immigration New Zealand had asked for a further explanation from the employer regarding his various companies and their names. It is not known if the complainant replied.

[16] On 23 October 2018, the complainant sent another email to Ms Mackintosh asking if there had been any update. She sent the same email two days later and again on 2 November 2018. Ms Mackintosh replied on 2 November to say there was nothing, but she was following it up.

[17] On 8 November 2018, Ms Mackintosh advised the complainant by email that the application had been declined as her position did not match that of a practice manager. She explained that Immigration New Zealand had been through a really tough phase. It had taken on a lot of new staff and re-jigged the work. This had led to long delays, inconsistent decisions and many declines. Ms Mackintosh thought the complainant should try again by seeking reconsideration. She would not be charged, except for Immigration New Zealand's fee. The application could be filed that week. The complainant was advised that her then current visa remained valid.

[18] The complainant confirmed the same day that Ms Mackintosh should proceed. There was a further exchange of emails that day between them about the new application, its expected processing time and the consequences of any decline.

[19] The complainant asked Ms Mackintosh on 9 November 2018 for a copy of Immigration New Zealand's decision.

[20] Ms Mackintosh replied on 13 November 2018 to say she was outside Auckland and to ask whether the complainant wanted her to file the new application. She apologised for not phoning, as she had been swamped with calls.

[21] The complainant replied on the same day, asking her to file the application, and expressing shock at Immigration New Zealand's decision. She wanted to know exactly what the visa officer was not satisfied with. The complainant asked to see the decision letter and wanted a reconsideration filed as soon as possible, given that the decision had been made one week previously. She hoped she would not have to wait another three months for a decision.

[22] On the following day, 14 November 2018, Ms Mackintosh sent an email to the complainant saying she was out of the office that week and did not have her files. She said the case manager was not satisfied there was a substantial match with the position of a practice manager. They were unfortunately caught by the changes at Immigration New Zealand. Many applications were caught with delays and new case managers. The government agency had become more concerned with the criteria and whether employers were genuine.

[23] Later that day, 14 November 2018, Ms Mackintosh asked the complainant to provide a support letter from her employer containing the information listed by Ms Mackintosh in her email.

[24] The complainant asked Ms Mackintosh on 16 November 2018 to advise when she would be applying for reconsideration.

[25] Ms Mackintosh sent an invoice to the complainant on 21 November 2018 for \$220, being Immigration New Zealand's reconsideration fee. It was paid on the same day.

[26] No reconsideration application was made.

[27] On 10 December 2018, the complainant asked for an update. As there was no reply, the complainant asked again on 11 December. Ms Mackintosh replied that day to say she would get back to her soon.

[28] The complainant asked Ms Mackintosh for an update on 17 and 27 December 2018.

[29] Ms Mackintosh sent an email to the complainant on 31 December 2018 advising that Immigration New Zealand would re-open on 3 January and she would be in touch with it then.

[30] On 17 January 2019, Ms Mackintosh advised the complainant that she had talked to an immigration officer asking for the application to be expedited. The officer had asked for further information, which Ms Mackintosh set out in her email.

#### *Work visa application 24 January 2019*

[31] Ms Mackintosh made a work visa application for the complainant on 24 January 2019. It was in the essential skills category for the position of practice co-ordinator. The complainant was not told about the application.

[32] On 4 February 2019, the complainant (who had in mind the reconsideration application that was supposed to have been made in late 2018) asked again for an update.

[33] Then on 11 February 2019, the complainant sent a text to Ms Mackintosh asking whether she would be able to work on an interim visa. Ms Mackintosh replied the same day to say "yes".

[34] The complainant asked again on 26 February 2019 whether there was any response to the application. Ms Mackintosh replied immediately to say there was not, but she would contact the agency that afternoon. The complainant urged her to do so, pointing out that the application for reconsideration had been made in November and she was really worried. Ms Mackintosh said she would do so. On the next day, the complainant asked her whether she had followed up, as her visa was about to expire. Ms Mackintosh replied stating that she had followed up and was waiting for the officer to get back to her. An anxious complainant asked Ms Mackintosh again on 28 February, but there was no reply.

[35] The complainant's work visa expired on 6 March 2019, but she had been automatically granted an interim visa (visitor category) pending the decision on her work visa application of 24 January 2019.

[36] The complainant continued to seek updates. Ms Mackintosh either did not respond or said she would get back to her or she had followed up and was still waiting for the officer to reply.

[37] On 21 March 2019, Immigration New Zealand wrote to the complainant (care of Ms Mackintosh) advising that there were issues which could have a negative impact on the application. She was given until 1 April 2019 to provide further information.

[38] The complainant was informed of Immigration New Zealand's letter and on 28 March 2019, Ms Mackintosh sent a letter to the agency with additional information.

*Visa application of 24 January 2019 declined*

[39] On 16 April 2019, Immigration New Zealand declined the complainant's work visa application made on 24 January 2019, in a letter addressed to Ms Mackintosh. It did not comply with the criteria. The letter stated that the interim visa would expire on 7 May 2019. A reconsideration could be requested within 14 days if a valid visa was held.

[40] The labour inspectorate visited the complainant's employer on 17 April 2019 and found her working while on the interim visitor visa.

[41] On 18 April 2019, Ms Mackintosh advised the complainant by email that the decision was not positive. She had asked Immigration New Zealand for the decline letter to be sent to her. She would call her soon.

[42] Ms Mackintosh emailed the decline letter to the complainant on the following day. She explained at length how she could make an exceptionally strong argument that their

information had not been considered. The email discussed evidence of advertising (which Ms Mackintosh had contacted the immigration officer about on multiple occasions) and the employment agreement. According to Ms Mackintosh, trying to work with the officer was impossible. With the complainant's agreement, she would file a complaint, supported by new information as set out in the email. The complaint would be looked at by a senior immigration officer. The senior officer would not be happy with the lack of liaison. The complainant was advised that her interim visa was still valid through to 7 May.

[43] On 23 April 2019, the complainant asked Ms Mackintosh to advise the date to which she could work and what her status would be after 7 May. Ms Mackintosh replied the same day advising that she would have no visa status after 7 May, but she could make a "Section 61" application for reinstatement of her visa.<sup>1</sup>

[44] On 29 April 2019, Ms Mackintosh advised the complainant that she would file the reconsideration application that day.

*Reconsideration of 24 January 2019 application filed 30 April 2019*

[45] On 30 April 2019, Ms Mackintosh filed a request for a reconsideration of the decline of work visa application made on 24 January 2019 (covering letter of request dated 24 April 2019). Further evidence was filed with the request.

[46] The complainant's immigration status became unlawful on 9 May 2019, following the expiry of her interim visa on 7 May.

[47] Additional evidence for the reconsideration application was filed on 9 May 2019. On the next day, the complainant asked Ms Mackintosh whether she had filed the partnership documentation and the complaint. Ms Mackintosh was reminded that the complainant had not received the first decline letter.

[48] Ms Mackintosh advised the complainant on 11 May 2019 that she had filed the relationship evidence and would ensure that the first decline letter was sent immediately. Ms Mackintosh further advised the complainant that day that she was on a valid visa when the reconsideration was accepted, so she was "OK" (not liable for deportation). In answer to the complainant's question as to whether the s 61 request had been made, Ms Mackintosh confirmed that it had.

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<sup>1</sup> Immigration Act 2009, s 61 (discretionary visa for those unlawfully in New Zealand).

*Section 61 application filed 14 May 2019*

[49] A s 61 request was made by Ms Mackintosh on behalf of the complainant on 14 May 2019.<sup>2</sup> However, Immigration New Zealand informed her it could not be processed, as a reconsideration application had already been made.

[50] The complainant asked for an update on the application on 20 May 2019. She again asked for the decline letter to be sent that day.

[51] On 23 May 2019, Ms Mackintosh sent an email to the complainant telling her that she had been checking in twice weekly with the reconsideration team. It had been 30 days since filing, but the general timeframe was 66 days. She had asked for it to be expedited. Furthermore, the s 61 application was in.

[52] According to the complainant, she finally received the first decline letter on the same day, 23 May 2019.<sup>3</sup>

[53] On 28 May 2019, Ms Mackintosh advised the complainant that there was no online checking of the reconsideration or s 61 applications. Updates could be obtained only by calling Immigration New Zealand. She would do so that morning and let the complainant know any news.

*Reconsideration of 24 January 2019 application declined*

[54] On 31 May 2019, Immigration New Zealand wrote to the complainant to advise that the reconsideration sought on 30 April 2019 was declined, for the reasons given in the original decision. Additionally, it was noted that she had been caught by the labour inspectorate working while on an interim visitor visa. This new concern should be addressed in any future s 61 application. The complainant was notified that the expiry date of her visa was 7 May 2019 and she would be unlawful on the second day after this date. She would have to leave New Zealand immediately.

[55] On 6 June 2019, the complainant asked Ms Mackintosh for a copy of her whole file, including the s 61 request and the conversations with immigration officers. She wanted it as soon as possible, as she did not have any patience to wait.

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<sup>2</sup> See Ms Mackintosh's statement (9 December 2019) at [49]–[50] (s 61 request unseen by the Tribunal).

<sup>3</sup> See Complaint (8 June 2019), section 3.

[56] The complainant asked Ms Mackintosh on 8 June 2019 for the application number and Immigration New Zealand's email confirming receipt of the s 61 request.

[57] On 10 June 2019 (at 10:11 am), Ms Mackintosh sent an email to the complainant advising that the s 61 request had been added to the reconsideration file, but it had not been looked at while the reconsideration application was being processed. She would now resubmit all the information in one package.

[58] Further documents were sent by the complainant to Ms Mackintosh by email on the same day at 2:48 pm, with a plea to file the s 61 request as soon as possible.

*Section 61 application filed 10 June 2019*

[59] On the same day, 10 June 2019, Ms Mackintosh made another application to Immigration New Zealand on behalf of the complainant under s 61 for a discretionary visa, as the complainant was unlawfully in New Zealand.

[60] Ms Mackintosh explained at length certain issues raised by the government agency. The complainant had continued to work on her interim visitor visa, in accordance with Ms Mackintosh's advice. She had ceased working when the interim visa expired. Ms Mackintosh admitted her responsibility and apologised. The complainant never intended to breach any law of New Zealand. The letter added that the complainant was a trained dentist who was in the final stages of seeking residence in Canada.

[61] Attached to the s 61 request was a handwritten letter from the complainant explaining her situation. Her adviser had told her she could work while on the interim visa.

[62] On 11 June 2019, Ms Mackintosh sent two emails to the complainant. She said she had resubmitted everything. She confirmed that the s 61 request had been made.

[63] Ms Mackintosh wrote to the complainant on 25 June 2019, following receipt of the complaint against her made to the Authority, stating that it would be unwise for her to continue to act. She gave the name of an immigration lawyer the complainant could instruct and was willing to deposit \$1,000 with the lawyer to help. Ms Mackintosh accepted that she had made mistakes in representing the complainant and sincerely regretted not providing the service wanted. The fee of \$1,150 would be repaid, so the complainant was asked to provide her banking details.

[64] The complainant responded on 27 June 2019 to say she was not satisfied with the compensation. Her whole career in New Zealand had almost ended. It had been very stressful for nine months. She would wait for the decision from the Authority.

[65] On 2 July 2019, Immigration New Zealand granted the complainant a visitor visa valid until 22 November 2019, in response to the s 61 request of 10 June 2019.

## **COMPLAINT**

[66] The complainant made a complaint against Ms Mackintosh to the Authority on about 8 June 2019. It was alleged that Ms Mackintosh had lied to her and had been negligent.

[67] According to the complainant, an application for a visa had been made on 2 August 2018 and despite requesting updates, she was always told there was no update. She asked for the decline letter, but Ms Mackintosh always gave excuses why it could not be provided. When an interim visa was issued, Ms Mackintosh advised the complainant that she could work. After a visit from labour inspectors, the visa was declined again. This time Ms Mackintosh did send her the decline letter and she was “broken” when she read it.

[68] The complainant said that she then asked for the first decline letter again and received it on 23 May 2019 with an apology for the delay. She was shocked to see the letter. It was dated 25 September 2018, but she had not been told about it until 8 November, 1.5 months later. The letter stated that Ms Mackintosh had been contacted on 12 September, but had not replied. The complainant expressed disappointment that Ms Mackintosh did not reply and did not tell her about the decline in a timely way. When she met Ms Mackintosh on 5 June 2019, she was given another decline letter. The points were the same except for the addition of being caught working while holding an interim visa. Having been cautious and seeking advice from Ms Mackintosh, she was being blamed for the false allegation of working.

[69] In the complaint, the complainant said her trust in Ms Mackintosh had been completely broken, as she had lied on so many things. The complainant had suffered mental and financial stress. She would like the false allegation of working on an interim visa removed from her immigration record, as it was a hinderance to her career. She also sought compensation for eight to nine months of stress.

[70] The Authority wrote to Ms Mackintosh on 8 November 2019 formally notifying her of the complaint and setting out the details. She was invited to provide an explanation.

*Explanation from Ms Mackintosh*

[71] Mr Moses, counsel for Ms Mackintosh, sent an email to the Authority on 9 December 2019 attaching a statement from Ms Mackintosh, also dated 9 December 2019. Mr Moses stated that Ms Mackintosh had IT problems which led to her not being aware of the 12 September 2018 letter. These issues were resolved in early 2019. They did not amount to a defence to the complaint, but they showed where the matter had started to go awry. Ms Mackintosh was fully participating in the complaint, understood the significance of her conduct and was contrite.

[72] In her statement, Ms Mackintosh acknowledged making serious mistakes. As for the 12 September letter, this was missed because of computer problems at the time and also she was under significant personal pressure. She did not just ignore the correspondence. When she realized on 10 October 2018 that her mistakes had led to the application being declined, she was very upset and embarrassed. She then behaved in a state of panic, as she was anxious about her oversights being known. Ms Mackintosh said she tried to fix her errors by achieving a positive outcome for the complainant without telling her what had gone wrong.

[73] According to Ms Mackintosh, it was only after emailing the complainant on 10 October 2018 seeking information for a reconsideration that she realized it was too late for such an application.

[74] Ms Mackintosh admitted that in her anxiety she acted unprofessionally and provided false and misleading information to the complainant. She realized she should have just owned up to her mistake and discussed a fix with her, if she had been allowed to continue. Ms Mackintosh acknowledged being misguided in thinking that if she could get the complainant a work visa, there would be no disadvantage from the oversights.

[75] By the time the complainant's second application was filed, everything was done in a timely manner. Ultimately, she obtained a s 61 visa for her. It was understood this did not excuse her dishonesty about what had happened. The most serious of her failures was misleading the complainant about the outcome of the first visa application.

[76] Ms Mackintosh referred to having previously made an offer to the complainant to refund the fees and to pay compensation for reasonable professional or legal fees incurred by the complainant as a result of her failures. The offer still stood.

[77] It was accepted by Ms Mackintosh that she had breached cls 1, 2(e) and 26(b) of the Code. These were serious breaches and there was no excuse.

[78] It was further accepted by Ms Mackintosh that she was mistaken in the view that the complainant could work while holding an interim visa. This advice was negligent.

[79] Ms Mackintosh also accepted that she acted dishonestly in providing false and misleading information to the complainant, in an attempt to buy time so she could fix her oversights in relation to the 12 September 2018 letter and the first decline on 25 September. She was very ashamed and embarrassed. Her behaviour was stupid. Instead, she could have resolved the problem by being straight with the complainant in September 2018. The complainant still had six months then to run on her visa.

[80] As for her circumstances at the time, Ms Mackintosh said she had worked in the immigration industry for 12 years. Throughout that time, she had worked alone building a relatively small but successful practice. Her clients had been referred through word of mouth by happy past clients. She was proud of what she had achieved professionally.

[81] The year 2018 was incredibly stressful. She and her husband had finally been able to secure funding to build a home. This had occurred through 2018. The completion date was 21 September 2018. This had distracted her. She had not anticipated the stress of the deadline, final payment, mortgage finalisation, the certificate of completion and moving.

[82] Following the move, Ms Mackintosh worked often from her home which was well outside Auckland. There were computer problems, but she could not afford to fix them until February 2019.

[83] Ms Mackintosh fully understood that her circumstances did not justify her behaviour, but they were the backdrop to what happened.

[84] In conclusion, Ms Mackintosh stated that she understood her responsibilities and had always made professional standards part of her working life. She could not say why she did not just tell the complainant what happened and accept responsibility at the start. There was so much going on that she totally panicked trying to make it right. This was wrong.

[85] Attached to Ms Mackintosh's statement were emails from an IT contractor confirming that at an undisclosed time, Ms Mackintosh had IT problems which he resolved. Her computer was very slow. She had real difficulty working with her emails. A job sheet and invoice (dated February 2019) from the contractor were provided. There was also documentation from Noel Leeming concerning a repair job in January 2019.

[86] The Registrar referred the complaint to the Tribunal on 18 December 2019. It alleges the following against Ms Mackintosh:

- (1) Negligence, or alternatively breach of cls 1, 2(e) & 26(b) of the Code —
  1. Failing to exercise due care in providing the complainant with ongoing updates;
  2. Failing to respond to Immigration New Zealand regarding the letter of 12 September 2018;
  3. Failing to obtain the complainant's instructions; and
  4. Providing erroneous advice to the complainant regarding working while on the interim visa.
  
- (2) Dishonest or misleading behaviour, or alternatively breach of cl 1 of the Code (lack of due care and failing to be honest, professional and diligent) —
  1. Not informing the complainant of Immigration New Zealand's letters dated 12 and 25 September 2018;
  2. Providing false and misleading information to the complainant about Immigration New Zealand's letters, including that there would be an application for reconsideration of the essential skills work visa application lodged in August 2018; and
  3. Providing false and misleading updates to the complainant on 5 and 10 October, 2, 8 and 14 November 2018.

## **JURISDICTION AND PROCEDURE**

[87] 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.

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

[89] 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>

[90] 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>

[91] 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>

[92] 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>

[93] The Tribunal has received the statement of complaint (18 December 2019) and supporting documents from the Registrar.

[94] There were no submissions from the complainant. She sent to the Tribunal on 26 February 2021, copies of certain email communications, at the Tribunal's request.

[95] Mr Moses has filed a memorandum (17 February 2020) and relies on the earlier statement from Ms Mackintosh (9 December 2019) now sworn in an affidavit from her. At the Tribunal's request, additional documents were filed by Mr Moses on 24 February 2021.

[96] No party requests an oral hearing.

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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 v Dental Complaints Assessment Committee*, above n 9, at [97], [101]–[102] & [112].

## ASSESSMENT

[97] 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

...

### 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

...

[98] I will deal with the dishonesty allegations first.

(2) *Dishonest or misleading behaviour, or alternatively breach of cl 1 of the Code (lack of due care and failing to be honest, professional and diligent) —*

1. *Not informing the complainant of Immigration New Zealand's letters dated 12 and 25 September 2018;*
2. *Providing false and misleading information to the complainant about Immigration New Zealand's letters, including that there would be an application for reconsideration of the essential skills work visa application lodged in August 2018; and*
3. *Providing false and misleading updates to the complainant on 5 and 10 October, 2, 8 and 14 November 2018.*

[99] In brief, Ms Mackintosh was sent a letter from Immigration New Zealand on 12 September 2018 identifying problems with the work visa application and seeking further information. She did not send it to the complainant, nor did she respond to

Immigration New Zealand. The agency then declined the application in a letter to Ms Mackintosh on 25 September, but she did not inform the complainant.

[100] On 5 October 2018, Ms Mackintosh inferred in her email to the complainant that the decision had not been made because of long processing times but she would shortly check with the agency. She said there was no case officer. In another email that day, Ms Mackintosh said it would be “fine”. I will deal shortly with Ms Mackintosh’s explanation for her conduct, but she states that it was not until 10 October that she knew of her mistakes and presumably of the decline of the application. The obfuscation in answering the complainant’s requests for updates then started.

[101] On 10 October 2018, Ms Mackintosh sought further information from the complainant, alleging it had been requested by Immigration New Zealand. In her email to the complainant on 2 November, Ms Mackintosh claimed nothing had been heard from the agency but she would follow it up.

[102] Then on 8 November 2018, Ms Mackintosh finally notified the complainant of the decline, but inferred it was wrong due to new staff at the agency making inconsistent decisions. She said nothing of the real reason being her own mistake in not replying to the agency’s letter of 12 September. This false explanation was repeated on 14 November, with new case managers and a greater concern with criteria being blamed.

[103] None of the above was true. The visa application was declined because Ms Mackintosh did not establish that the criteria had been satisfied, having failed to respond to Immigration New Zealand’s letter of 12 September 2018 (though I cannot conclusively say the complainant did comply with the criteria and would have succeeded in obtaining a visa if there had been a reply). Ms Mackintosh never told the complainant about the 12 September letter and never owned up to her mistake about the September 2018 correspondence (until the complaint was made against her in June 2019).

[104] Having finally informed the complainant of the decline on 8 November 2018 (but not of the real reason), Ms Mackintosh would not send her a copy of Immigration New Zealand’s letter. She would make excuses, or simply ignore the requests for it. It was not given to the complainant until 23 May 2019, eight months later.

[105] When notifying the complainant of the decline on 8 November 2018, Ms Mackintosh advised her to request a reconsideration. The complainant instructed her to proceed on the same day. Ms Mackintosh then sent an invoice to the complainant on 21 November for Immigration New Zealand’s reconsideration fee.

[106] On 17 January 2019, Ms Mackintosh inferred in an email to the complainant that the application had been made as she said she had spoken to an officer to expedite it. She claimed the officer had asked for further information. In fact, no such application was made as Ms Mackintosh had already missed the deadline for a reconsideration well before 8 November 2018.

[107] Ms Mackintosh did make a new work visa application on 24 January 2019, but she did not seek instructions or inform the complainant about this application (instead allowing the complainant to think a reconsideration application had been made much earlier).

[108] Ms Mackintosh admits her dishonesty in communications with the complainant and misleading her. She explains her conduct in terms of real but innocent failures at the start (not receiving the 12 September 2018 letter and hence failing to reply, not receiving the decline on 25 September and hence failing to inform the complainant), which cascaded once she realised her earlier mistakes as she tried to fix the problem herself.

[109] The early failures were due to computer problems combined with personal pressures (settling and moving into a new home in September 2018 which was incredibly stressful). She realised the mistake on 10 October, but was upset, ashamed and embarrassed, which led to her panicking. She then tried to put it right on her own.

[110] Ms Mackintosh realises this was stupid and she should have immediately told the complainant, owned the mistake and worked with her to resolve the situation, if the complainant was prepared to do so.

[111] I accept the explanation given by Ms Mackintosh. It is not a defence to the professional misconduct and nor is it advanced as such. It will, however, be relevant to the sanctions stage of this complaint.

[112] I uphold the complaint of dishonest or misleading behaviour. It is clear Ms Mackintosh was both. She lied to the complainant in some communications and misled her in others. The overall conduct was dishonest. Specifically, she dishonestly:

- (1) withheld notifying the first decline for the period from about 10 October (when she became aware of Immigration New Zealand's September letters) until 8 November 2018;
- (2) gave false information about the processing status of the first application;

- (3) told the complainant the decline was due to problems at Immigration New Zealand, concealing from her the real reason for the decline and hence also both the 12 and 25 September 2018 letters; and
- (4) inferred a reconsideration application had been made in relation to the 25 September decline.

[113] Having found the statutory ground of dishonest or misleading behaviour to be established, the alternative complaint of breaches of the Code is dismissed.

[114] This brings me to the allegation of negligence in the first head of complaint.

(1) *Negligence, or alternatively breach of cls 1, 2(e) & 26(b) of the Code —*

- 1. *Failing to exercise due care in providing the complainant with ongoing updates;*
- 2. *Failing to respond to Immigration New Zealand regarding the letter of 12 September 2018;*
- 3. *Failing to obtain the complainant's instructions; and*
- 4. *Providing erroneous advice to the complainant regarding working while on the interim visa.*

[115] I regard the first and third particulars — failing to provide ongoing updates and failing to obtain instructions — as dishonest conduct rather than negligence or a breach of the Code.

[116] If I accept Ms Mackintosh's explanation for failing to reply to the letter of 12 September 2018 (the computer problems), which I do, the second particular must be dismissed. In the circumstances, there is no need to assess whether Ms Mackintosh's dilatory fixing of her computer problems was itself negligent or unprofessional.

[117] This leaves the fourth particular, providing erroneous advice to the complainant that she could work on an interim visa.

[118] Ms Mackintosh accepts that her advice to the complainant on 11 February 2019 that she would be able to work while on the interim visa was wrong. She had candidly admitted this mistake to Immigration New Zealand in the complainant's s 61 application on 10 June 2019. In her statement to the Authority, Ms Mackintosh accepts this advice

was negligent.<sup>11</sup> It seems to me plain there was a lack of reasonable care in giving this advice.

[119] I uphold the fourth particular of the complaint of negligence. Ms Mackintosh was negligent in advising the complainant she could work on the interim visa. The rest of this first head of complaint is dismissed.

## **OUTCOME**

[120] I uphold the complaint. Ms Mackintosh has been found to be negligent, and her behaviour to be dishonest or misleading.

## **SUBMISSIONS ON SANCTIONS**

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

[122] A timetable is set out below. Any request that Ms Mackintosh undertake training should specify the precise course suggested and its start/completion dates. Any request for the 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*

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

- (1) The Registrar, the complainant and Ms Mackintosh are to make submissions by **29 March 2021**.
- (2) The Registrar, the complainant and Ms Mackintosh may reply to submissions of any other party by **14 April 2021**.

## **ORDER FOR SUPPRESSION**

[124] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.<sup>12</sup>

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

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<sup>11</sup> Statement of Ms Mackintosh (9 December 2019) at [41].

<sup>12</sup> Immigration Advisers Licensing Act 2007, s 50A.

[126] 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