

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2022] NZIACDT 6

Reference No: IACDT 021/21

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **IL**
Complainant

AND **APURVA KHETARPAL**
Adviser

SUBJECT TO SUPPRESSION ORDER

**DECISION
(Sanctions)
Dated 19 April 2022**

REPRESENTATION:

Registrar: Self-represented
Complainant: No appearance
Adviser: No appearance

INTRODUCTION

[1] Ms Apurva Khetarpal, the adviser, acted for IL, the complainant, on visa applications for herself and her family. Ms Khetarpal committed numerous breaches of her professional obligations.

[2] A complaint against Ms Khetarpal was referred by the Immigration Advisers Authority (the Authority) to the Tribunal. It was upheld in a decision issued on 10 February 2022 in *IL v Khetarpal*.¹ Ms Khetarpal was found to have breached her professional obligations, contrary to 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 decision of the Tribunal upholding the complaint and will only be briefly summarised here.

[5] Ms Khetarpal was at the relevant time a licensed immigration adviser. She was a director of Ivisas Ltd, of Auckland. Her licence has been cancelled and she is now prohibited from holding any licence.

[6] The complainant, a national of India, engaged Ms Khetarpal for renewal of the visas of the complainant herself, her husband and her son.

Decision of the Tribunal

[7] The following breaches of the Code were found by the Tribunal:

- (1) Failing to advise the complainant that her salary did not meet the threshold to support the relevant visa and failing to file the son's application in the correct visa category, thereby lacking due care, in breach of cl 1.
- (2) Failing to inform the complainant about an order of the District Court (permitting her to practice), in breach of cl 3(a).
- (3) Failing to provide the complainant with a written agreement, in breach of cl 18(a).
- (4) Failing to provide to the Authority the complainant's client file, in breach of cl 26(e).

¹ *IL v Khetarpal* [2022] NZIACDT 3.

SUBMISSIONS

Submissions from the Registrar

[8] In his submissions of 3 March 2022, Mr Connor, the Registrar, notes that this is the fifth complaint upheld against Ms Khetarpal. Her history aggravates the case. It is apparent from Ms Khetarpal's sustained history of misconduct that she had learned nothing from her previous appearances before the Tribunal as her behaviour has remained unchanged.

[9] Ms Khetarpal did not contest any of the allegations against her and chose not to participate in the proceedings. She has an attitude of contempt towards the disciplinary process and a lack of remorse.

[10] As the Tribunal is aware, her licence was cancelled and she cannot reapply for a licence until 24 September 2023.

[11] It is submitted that Ms Khetarpal should be:

- (1) Censured.
- (2) Prevented from applying for a licence for a further period of two years, running concurrently with the existing period of prevention.
- (3) Ordered to pay to the Registrar a financial penalty in the vicinity of \$3,500.

Submissions from the complainant

[12] The complainant seeks compensation, as discussed later.

Submissions from Ms Khetarpal

[13] There are no submissions from Ms Khetarpal.

JURISDICTION

[14] 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

² Immigration Advisers Licensing Act 2007.

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.

[15] 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:
- (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.

[16] 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.

[17] 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.

[18] 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 collective reputation and public confidence in the profession itself.⁴

[19] 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

[20] 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;

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

⁴ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Bolton v Law Society* [1994] 2 All ER 486 (EWCA) at 492; *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].

- (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

[21] As the Registrar highlights, this is the fifth complaint against Ms Khetarpal upheld by the Tribunal. In the sanctions decision regarding the fourth complaint, the Tribunal set out Ms Khetarpal's wrongdoing in relation to that complaint and the previous three which had been upheld.⁷ Three of the complaints have involved dishonesty. Previous complaints have involved a lack of due care and a lack of professionalism, as does the current one.

[22] Ms Khetarpal's licence has previously been cancelled by the Tribunal and she has been prevented from reapplying for a licence for the maximum period of two years. She has previously been ordered to pay financial penalties (\$3,500, \$5,000 and \$7,000), as well as compensation to her clients.

Caution or censure

[23] The Tribunal agrees with the Registrar that Ms Khetarpal should be censured.

Prohibition against renewal

[24] It is self-evident that the public need as much protection from Ms Khetarpal as the Tribunal is able to give. She is cavalier about her professional obligations and contemptuous of the disciplinary process. Ms Khetarpal will be prevented from reapplying for any licence for two years, to run concurrently with the existing order. She does not contest this penalty.

Financial penalty

[25] The Tribunal agrees with the Registrar that an appropriate financial penalty would be \$3,500. Despite having previously been fined more than this, the wrongdoing here does not warrant a greater fine. This is not contested by Ms Khetarpal.

⁷ *CL v Khetarpal* [2021] NZIACDT 23 at [11]–[14] & [37]–[40].

Reasonable compensation

[26] The complainant has sought compensation of \$5,000 from Ms Khetarpal. There is no itemised breakdown of this sum. She sent the Tribunal bank statements dated about June to August 2019 showing that she and her husband were in overdraft. Other documents show the couple had debts in mid to late 2019.

[27] In her explanation to the Tribunal on 30 March 2022, the complainant says the bank statements show that they had to borrow from her parents and family to survive when her husband was not working. According to her, this was because Ms Khetarpal did not apply for the visa on time, so he did not get the interim visa and could not therefore work. Some information was also provided to the Tribunal by the complainant as to the couple's income and expenses.

[28] Compensation is available for modest and readily assessed losses and expenses, arising from or caused by an adviser's professional violations.⁸

[29] In this case, the Tribunal is unable to discern a link between the complainant's overdraft and loans from her family, and Ms Khetarpal's wrongdoing. They cannot have arisen out of the failure to inform the complainant of the District Court order, or to provide a written agreement or to provide the Authority with the client file. Nor has the complainant shown how her husband's apparent lack of a work visa relates to the failure to properly advise the complainant about the salary threshold and failing to file their son's application in the correct category. No wrongdoing concerning the husband's work visa has been upheld.

[30] The complainant has not shown that any of these amounts arise from Ms Khetarpal's wrongdoing upheld by the Tribunal.

OUTCOME

[31] Ms Khetarpal is:

- (1) censured;
- (2) prevented from reapplying for any licence for two years from today's date;
and
- (3) ordered to immediately pay to the Registrar \$3,500.

⁸ *KIT v Zhu* [2019] NZIACDT 46 at [35], *NLT v Coetzee* [2020] NZIACDT 7 at [47].

ORDER FOR SUPPRESSION

[32] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.⁹

[33] There is no public interest in knowing the name of Ms Khetarpal's client, the complainant.

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

D J Plunkett
Chair

⁹ Immigration Advisers Licensing Act 2007, s 50A.