

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2023] NZIACDT 21

Reference No: IACDT 01/23

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **WN**
Complainant

AND **JOHN DESMOND LAWLOR**
Adviser

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 26 June 2023

REPRESENTATION:

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

INTRODUCTION

[1] The complainant, WN, engaged the adviser, John Desmond Lawlor, to obtain residence for himself and his partner. Mr Lawlor successfully obtained residence for the complainant, but then the latter withdrew instructions for the partner's residence visa. He sought the return of original documents and a refund, but despite repeated requests Mr Lawlor failed to do so.

[2] A complaint by the complainant against Mr Lawlor to the Immigration Advisers Authority (the Authority) has been referred by the Registrar of Immigration Advisers (the Registrar) to the Tribunal. It is alleged that he has been negligent and breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code), being grounds of complaint under the Immigration Advisers Licensing Act 2007 (the Act).

[3] Mr Lawlor has a poor disciplinary history and has not engaged with the Tribunal on this complaint.

BACKGROUND

[4] The complainant is a national of Cambodia who came to New Zealand in 2016 and resides here.

[5] Mr Lawlor was at the relevant time a licensed immigration adviser and a director of Lawlor & Associates Ltd, of Thames.

[6] On 18 September 2019, Mr Lawlor filed a resident visa application under the skilled migrant category for the complainant.

[7] Mr Lawlor sent an email to the complainant on 5 March 2020 attaching a document list for a work visa for his partner. A written service agreement was then entered into by the complainant and Mr Lawlor on 16 March 2020 for the partnership work visa. The fee was \$3,000. The complainant paid Mr Lawlor \$3,495 on 17 March, including \$495 for the fee of Immigration New Zealand (Immigration NZ).

[8] The complainant and Mr Lawlor exchanged emails about the documents required for his partner's visa application.

[9] Immigration NZ approved the complainant's resident visa on 10 July 2021.

[10] On 13 April 2022, the complainant sent an email to Mr Lawlor to inform him of the cancellation of the partnership visa. He wanted his original documents back and a discussion as to how much would be refunded. Mr Lawlor replied to the complainant on the same day to say he would email him after Easter.

[11] The complainant followed up on 4 August 2022 asking Mr Lawlor for an update. On 13 August, the complainant asked again for the return of the documents, which he said were important to him. He also asked for a refund. Mr Lawlor replied that day to say he was in Europe and would contact him after 23 August. The complainant sent another email to Mr Lawlor on 7 September asking for his original documents and how much he could get back. Mr Lawlor replied that day telling him he would check and email him. He asked for the complainant's current address. The complainant immediately advised his address.

[12] The complainant asked Mr Lawlor again on 22 September 2022 for an update on his query. He sent yet another email to Mr Lawlor on 26 September requesting his original documents, reminding Mr Lawlor he had paid \$3,000, but he had not received any service. Mr Lawlor replied on the same day to say he would call him the following day. The complainant sent another email on 30 September saying he was waiting for Mr Lawlor's call. Then on 13 October, the complainant repeated he had not received any information about his original documents and the money. He needed the documents and money urgently. Mr Lawlor replied to say he would call him and arrange the handover of documents when he was in Auckland the following week.

[13] On 17 October 2022, the complainant asked him which day of the week he would return the documents and money. The complainant asked again on 20 and 28 October. He pointed out he had waited more than half a year. Then on 2 November, the complainant advised Mr Lawlor he would make a formal complaint if he did not receive the documents and money that week, adding that there was something wrong with Mr Lawlor's professionalism.

[14] The complainant and Mr Lawlor exchanged texts, in addition to the above emails, in the period from 21 October to 9 November 2022 concerning the documents and refund. In particular, the complainant asked him to transfer \$1,500 on 27 October. Mr Lawlor said he could do so the following afternoon. Then on 28 October, Mr Lawlor said it would be in the complainant's account on Monday. On 5 November, Mr Lawlor asked where they could meet on Monday "to drop off". The complainant replied that day to ask for the documents to be sent to his address and the money to his account, both of which were given. Mr Lawlor replied on the same day to say he would.

[15] On 8 November 2022, Mr Lawlor sent a text saying he would send the tracking number of the package and the funds would be in the complainant's account "in morning". On 9 November, the complainant said he had not received the tracking number or the funds. Mr Lawlor replied that day to say he would call in the evening. In his last text, the complainant asked him whether he had sent the documents and money. The

complainant expressed himself to be “really sick of any of these”. He asked him just to do it, there being no need to call him.

COMPLAINT

[16] On about 14 November 2022, the complainant filed a complaint against Mr Lawlor with the Authority. He said he had cancelled the service on 13 April 2022 and sought his documents and a refund, but Mr Lawlor kept making excuses. He did not receive them. He wanted his original documents and a refund of \$3,495.

[17] The complainant advised the Authority on 1 March 2023 that he had not received the money.

[18] On 9 March 2023, the Authority advised the complainant and Mr Lawlor that the complaint could best be settled using the latter’s complaints procedure. The complainant informed the Authority on 17 March that he asked Mr Lawlor for the return of the money and he said “OK”, but he had not received it.

[19] On 20 March 2023, the Authority wrote to Mr Lawlor setting out details of the complaint and inviting his explanation.

[20] Mr Lawlor advised the Authority on 24 March 2023 that he should have the matters addressed by early the following week to everyone’s satisfaction. He would send confirmation of a refund early the following week. Mr Lawlor sent another email to the Authority on 28 March to say he had made arrangements to refund in full that week. He had decided to withdraw his licence renewal application and retire. He had found the experiences of the past few years with COVID and the circumstances in the profession too stressful.

Complaint referred to Tribunal

[21] The Registrar filed a statement of complaint (6 April 2023) in the Tribunal alleging negligence or alternatively breaches of the specified provisions of the Code:

- (1) In breach of cl 1, Mr Lawlor failed to be honest, professional and conduct himself in a timely manner to –
 - (a) Ensure that the original documents were returned to the complainant upon his multiple requests.
 - (b) Refund to the complainant the fee for the unfilled partnership visa.

- (2) In breach of cl 24(b) and (c), Mr Lawlor failed to ensure his refund obligations could be met and promptly provided.
- (3) In breach of cl 27(b), Mr Lawlor failed to return the personal documents to the complainant without delay when requested or required.

JURISDICTION AND PROCEDURE

[22] 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.

[23] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.¹

[24] The Tribunal must hear complaints on the papers, but may in its discretion request further information or any person to appear before the Tribunal.² It has been established to deal relatively summarily with complaints referred to it.³

[25] 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.⁴

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

¹ Immigration Advisers Licensing Act 2007, s 45(2) and (3).

² Section 49(3) and (4).

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

⁴ Immigration Advisers Licensing Act, s 50.

⁵ Section 51(1).

⁶ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] and [151].

[27] 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.⁷

[28] The Tribunal has received from the Registrar the statement of complaint (6 April 2023) and a bundle of supporting documents. The complainant advised the Tribunal on 16 June 2023 that he had not received the original documents or any refund. The Tribunal has not received any submissions from Mr Lawlor.

ASSESSMENT

[29] 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.

Refunds

24. A licensed immigration adviser must:

...

- b. ensure that refund obligations can be met, and
- c. promptly provide any refunds payable upon completing or ceasing a contract for services.

Document security and return

27. A licensed immigration adviser must:

...

- b. when requested or required, return passports and other personal documents to the client without delay and in a secure manner.

[30] The Tribunal will assess the alleged breaches of the Code first.

(1) *In breach of cl 1, Mr Lawlor failed to be honest, professional and conduct himself in a timely manner to –*

- (a) *Ensure that the original documents were returned to the complainant upon his multiple requests*

⁷ Z, above n 6, at [97], [101]–[102] and [112].

(b) Refund to the complainant the fee for the unfilled partnership visa

[31] The complainant terminated Mr Lawlor's instructions to proceed on 13 April 2022. At the same time, he requested his original documents returned and a discussion as to how much of the fee would be refunded. There followed numerous requests from the complainant for the documents and the refund. Mr Lawlor either ignored the requests or made false promises to communicate later, or to return the documents and make a refund. This went on for seven months until the complaint was made to the Authority.

[32] Mr Lawlor has chosen not to reply to the Tribunal's invitation to respond to the complaint. He has not given any explanation to the Authority or the Tribunal. Indeed, he continued to falsely advise the Authority he would refund the money.

[33] Mr Lawlor's conduct in deliberately misleading the complainant over such an extended period is disgraceful. He was neither honest nor professional and he failed to conduct himself in a timely manner, in ensuring the documents were returned and the fee refunded. Mr Lawlor appears to have communicated with the complainant about assembling standard documentation for the partner's visa application, but there is no evidence he filed the application or undertook any substantive work in preparing it and nor does he assert that he did. Accordingly, the full fee of \$3,495 should have been refunded. Mr Lawlor has breached cl 1 of the Code in respect of the documents and the refund.

(2) In breach of cl 24(b) and (c), Mr Lawlor failed to ensure his refund obligations could be met and promptly provided

[34] Mr Lawlor's instructions were terminated on 13 April 2022. His failure to make a refund, which he accepted should have been made, is evidence he could not meet that obligation and do so promptly. Furthermore, he does not deny the Registrar's allegation that he could not meet the obligation and do so promptly. This is a breach of cl 24(b) and (c).

(3) In breach of cl 27(b), Mr Lawlor failed to return the personal documents to the complainant without delay when requested or required

[35] It is not known what original personal documents were handed by the complainant to Mr Lawlor, though it almost certainly included his partner's passport. Mr Lawlor plainly accepted he had such documents in his communications with the complainant. Despite the numerous requests, commencing 13 April 2022, he never returned the documents. This is a breach of cl 27(b).

Complaint of negligence

[36] Since the Tribunal has upheld the alternative breaches of the Code, there is no need to assess the complaint of negligence.

OUTCOME

[37] The Tribunal upholds the complaint. Mr Lawlor is in breach of cls 1, 24(b), 24(c) and 27(b) of the Code.

SUBMISSIONS ON SANCTIONS

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

[39] A timetable is set out below. 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. In assessing the sanctions, the Tribunal will take into account Mr Lawlor's disciplinary history. The parties are invited to address the Tribunal on whether it should consider making an order preventing Mr Lawlor from reapplying for a licence for a certain period.

Timetable

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

- (1) The Registrar, the complainant and Mr Lawlor are to make submissions by **18 July 2023**.
- (2) The Registrar, the complainant and Mr Lawlor may reply to submissions of any other party by **1 August 2023**.

ORDER FOR SUPPRESSION

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

[42] There is no public interest in knowing the name of Mr Lawlor's client.

⁸ Immigration Advisers Licensing Act, s 50A.

[43] The Tribunal orders that no information identifying the complainant is to be published other than to Immigration NZ.

D J Plunkett
Chair