

# IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2023] NZIACDT 23

Reference No: IACDT 05/22

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

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

**BETWEEN** **ED**  
Complainant

**AND** **YUXIANG HENDRY DAI**  
Adviser

Hearing at Auckland on 27 July 2023

## SUBJECT TO SUPPRESSION ORDER

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**DECISION**  
**Dated 11 August 2023**

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### REPRESENTATION:

Registrar: T M Thompson, counsel  
Complainant: Self-represented  
Adviser: Self-represented

## **PRELIMINARY**

[1] The adviser, Yuxiang Hendry Dai, was engaged by ED the complainant, to obtain a student visa for herself and a visitor visa for her husband. The complainant says she dealt only with the unlicensed FN and EI. The visa applications were duly filed but ultimately withdrawn, as Immigration New Zealand (Immigration NZ) raised an issue about forged documents filed by the complainant on an earlier application.

[2] A complaint by the complainant against Mr Dai to the Immigration Advisers Authority (the Authority) has been referred by the Registrar of Immigration Advisers (the Registrar) to the Tribunal, following a direction by the Tribunal. It is alleged that Mr Dai has breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code), which is a ground of complaint under the Immigration Advisers Licensing Act 2007 (the Act).

## **BACKGROUND**

[3] The adviser is a director of JC Migration Service Ltd (JC Migration), of Auckland. This company was previously known as JC International Education Ltd and before that JC Education and Immigration Services Ltd.

[4] At the relevant time, FN was an unlicensed contractor to JC Migration and found clients for the company. EI was a shareholder in JC Migration who advised clients on finance and mortgages. She was not licensed as an immigration adviser. TY was an employee of JC Migration and was also unlicensed.

[5] On 23 May 2019, the complainant and her husband, YD, nationals of China, applied for visitor visas. The complainant says a Chinese travel agent who assisted them used false employment and banking documents. She says they were the victims of the agent's fraud which was unknown to them.

[6] Immigration NZ granted visitor visas to the complainant and her husband on 28 May 2019, and they arrived in the country on about 18 June 2019.

[7] On about 30 June 2019, the complainant met FN by chance in a supermarket. FN described herself as an immigration agent. The complainant says she told FN that she had been cheated by a Chinese agent who gave false information to Immigration NZ. FN assured the complainant she could make an immigration application for her.

[8] From 1 July 2019, the complainant and FN exchanged information by 'WeChat' text and voice messages. FN sent the complainant a customer information form to be completed. They met at FN's home to complete the form.

[9] On 8 July 2019, FN sent a text to the complainant informing her she could apply for an English language course. They could help her apply to a school and to seek a student visa.

*Complainant enters service agreement with JC Migration*

[10] The complainant and her husband went to FN's house on 8 July 2019 to enter a service agreement with JC Migration. While at FN's house, FN rang EI (whom she described as "the boss") and handed the phone to the complainant. According to the complainant, EI told her she could apply for a student visa to study English for one year and she could then study Chinese medicine, following which she could seek a job and a work visa, then get residence. They discussed how much it would cost.

[11] The service agreement was signed by the complainant on the same day. The complainant says she was given the last page of the agreement only and FN pointed out where to sign. She was not shown the other pages. Neither FN nor EI explained the agreement to her. Mr Dai's name was not on the page she signed at the time she signed it. The full agreement recorded that Mr Dai would assist them with multiple visa applications, starting with an English language student visa for the complainant, a visitor visa for her husband and a student visa for their child. Later, there would be work visa applications. The fee was \$9,200 (incl. GST).

[12] On 9 July 2019, JC Migration issued an invoice for \$6,900 to the complainant and her husband, which they paid that day.

[13] On the same day, a WeChat group was set up by FN comprising FN, EI, Mr Dai, TY, the complainant and another employee of JC Migration.

[14] The complainant and FN continued to exchange text messages regarding the earlier visitor visas, the choice of an English language school for the complainant and other matters. The complainant also continued to provide further information about herself and her employment to FN by text, as well as copies of documents such as the couple's passports, qualifications and the like.

[15] On 22 July 2019, Mr Dai made a request under the Official Information Act 1982 to Immigration NZ seeking a copy of the couple's visas and immigration file.

[16] On 30 July 2019, FN asked Mr Dai in the chat group about the threshold for the minimum living allowance for a language course of six months, to which he replied that it was \$8,500 for a student visa and \$7,000 for the visa holder's partner.<sup>1</sup> FN then

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<sup>1</sup> Mr Dai's text (30 July 2019) at 155 of the Registrar's bundle (the bundle).

repeated that information to the complainant in the same WeChat group. The complainant gave evidence to the Tribunal that she could see text messages sent by any member of the group.

[17] Immigration NZ provided the requested documents to Mr Dai on 10 August 2019.

[18] On 14 August 2019 (at 1:34 pm), FN sent to Mr Dai the complainant's holiday photos by text (not using group chat).<sup>2</sup> The file notes record that Mr Dai advised they needed more travel photos in other areas of New Zealand. FN then repeated that advice in a text to the complainant (at 6:23 pm).

[19] On 20 August 2019, Mr Dai filed a student (English language studies) visa application on the complainant's behalf with Immigration NZ. A place had been offered by a named school. On the following day, Mr Dai filed a visitor visa application on behalf of the husband (as the partner of a student).

[20] Immigration NZ issued interim visas to the complainant and her husband on 11 September 2019, pending the decision on their visa applications.

*Immigration NZ notifies false information*

[21] On 12 September 2019, Immigration NZ sent two letters to Mr Dai in relation to the student and visitor visa applications of the complainant and her husband respectively. The "PPI" (potentially prejudicial information) letters stated that false information (employment letters and bank statements) had been provided in their earlier visitor visa applications made in May 2019. Hence, they may not meet the good character requirements for a visa.

[22] A text from FN to the complainant on 13 September 2019 advised her that Immigration NZ's letter had been received and she should not attend school.<sup>3</sup> FN would need to meet with her and her husband.

[23] The complainant says that FN called her four or five times by phone asking her to withdraw the student visa application, since what she had filed earlier was untrue.

[24] On 16 September 2019, FN sent a text to the complainant requesting a discussion.<sup>4</sup> FN then went to the complainant's school and gave her copies of Immigration NZ's PPI letters, which had been translated into Chinese by Mr Dai. FN

<sup>2</sup> JC Migration's file notes "Memory records tidy up" (entry for 14 August 2019) at 73 of the bundle; and text messages in Chinese at 117–118 of the bundle.

<sup>3</sup> File notes, above n 2, at 74 of the bundle. See the Chinese language texts and English translations at 137 of the bundle.

<sup>4</sup> Texts and English translations at 137–138 of the bundle.

informed her that she needed to decide whether to withdraw the visa applications. The text exchange that day between them concerning possible withdrawal continued. The complainant agreed to withdraw her application (at 9:29 pm). There was an exchange about whether “the adviser” would be told.

[25] FN sent a text to the complainant on 17 September 2019 stating she had asked the adviser who said the complainant needed to decide whether to withdraw the visa application and confirm with them that day.

[26] FN went to the complainant’s home the same day, 17 September 2019, and produced a visa application withdrawal letter to be signed. The complainant was reluctant to sign it. FN telephoned “the boss” (EI) and passed the phone to the complainant. This was the second time she spoke to EI. According to the complainant, EI advised that if the applications were not withdrawn, there was a very high chance of their decline, which would leave a negative record. The complainant was told she would receive a refund of \$3,000. As for the next immigration step, EI advised her to go to “a gathering”, following which she would be able to apply for refugee status one year later.

[27] During the visit by FN, the complainant and her husband signed the letters authorising the withdrawal of their student and visitor visa applications respectively. Mr Dai accordingly withdrew the applications the following day. This was confirmed by Immigration NZ by letters to each of them on 19 September 2019. They were both informed by the government agency that they were liable for deportation from 10 October 2019 and might be prohibited from entering New Zealand.

[28] FN then met the complainant at a mall on 19 September 2019 to hand over the confirmation letters from Immigration NZ (as translated by Mr Dai).

#### *Meeting with Mr Dai*

[29] On 1 October 2019, Mr Dai met with the complainant and a friend of hers.<sup>5</sup> She sought a refund. The parties did not reach an agreement. The complainant says this was the first time she had met or spoken to Mr Dai.

[30] Mr Dai sent an email to the complainant’s friend that day stating that he would refund \$3,450. The friend replied that the complainant believed she was entitled to a full refund but that he might be able to negotiate \$5,000, or he would arrange legal action.

[31] The complainant continued to send text messages to FN from 3 to 11 October 2019 concerning a refund. The complainant said on 3 October (at 4:57 pm) that she had

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<sup>5</sup> File notes, above n 2, at 76 of the bundle.

clearly informed FN of the fake documents provided by the agent in China, but both FN and her manager had advised it was alright to apply for a visa. The communications from the complainant became acrimonious.

[32] The complainant sent an email to Mr Dai on 8 October 2019 requesting a refund, otherwise a complaint would be lodged with the Authority. According to her, it was not Mr Dai who provided the immigration advice, but FN.

[33] Mr Dai replied by email on the same day. He said that no-one apart from immigration consultants had given immigration advice. Nor had the complainant told them about the fraudulent documents previously provided. Mr Dai offered a refund of half the fee. He would not agree to a full refund, nor refund Immigration NZ's application fee. If the complainant thought there was a problem with his procedure, she could make a complaint to the relevant department.

[34] The complainant responded to say she did not know who he was until meeting him on 1 October 2019. She received no advice from him. She wrote another email to Mr Dai on 9 October 2019 seeking a refund of \$7,500, otherwise he would be asked to additionally pay their legal fees of \$5,000.

[35] Mr Dai replied on the same day stating that the complainant had breached her obligation to them and to Immigration NZ by providing false information. She was not entitled to a refund. All the documents had been provided "face to face". They would inform Immigration NZ and the relevant parties.

## **COMPLAINT**

[36] On 10 October 2019, the complainant signed a complaint form and lodged it with the Authority the following day, 11 October. It was against Mr Dai and the unlicensed FN. On 12 October 2019, the complainant signed another complaint form and lodged it with the Authority on an unknown date. It was against the unlicensed EI. The Tribunal records that it has no jurisdiction over unlicensed persons, though the conduct of an unlicensed person can be material to the assessment of a complaint against the licensed adviser responsible for the unlicensed person's work.

[37] The complainant stated in her complaints that she had never received any immigration advice from Mr Dai. She had not spoken to him until seeing him at his office on 1 October 2019. He used the unlicensed FN to provide immigration advice.

[38] The complainant recorded that she had met FN, her “immigration agent (adviser)”, in July 2019 in a supermarket.<sup>6</sup> She later went to FN’s home. She told FN that an agent in Shanghai had cheated her out of RMB 270,000 and had provided false information to Immigration NZ. They had not known about this until they saw the agent at the airport on 17 June 2019. FN advised her that she could apply for a student visa and there would not be any problem. FN phoned her boss (EI) and passed the phone to the complainant. EI said the complainant could apply for a student visa to study English for one year, after which she could study Chinese medicine. She could then find a job and apply for residence.

[39] The complainant said that on 17 September 2019 she spoke to EI a second time. FN had again rung EI and passed the phone to the complainant. The discussion was about withdrawing the case and a refund of the fee paid.

[40] The complainant asked the Authority to investigate EI’s company, since the marketing staff provided immigration advice to clients. The complainant wanted a refund of \$7,500 and compensation for their financial losses, mental pressure and fear of deportation.

[41] The Registrar wrote to Mr Dai on 13 November 2019 advising him of the complaint and requiring him to produce his file. On an unknown date, he provided his file to the Authority, as well as a document titled “Client information records” and the “Memory records tidy up” document prepared by the staff.

#### *Registrar’s letter dismissing complaint*

[42] On 17 April 2020, the Registrar wrote to the complainant advising her that the complaint would not be pursued as it disclosed only a trivial or inconsequential matter. It was acknowledged that there had been extensive interactions between the complainant and FN. According to the Registrar, FN collected personal information/documents, sent the invoice and service contract, accompanied the complainant to the bank to open an account, made a health check appointment, booked a tourist trip and forwarded Immigration NZ’s letters to her.

[43] It appeared to the Registrar that the activities undertaken by FN fell under the statutory definition of clerical work which was permitted to be undertaken by unlicensed individuals. Furthermore, FN had sought Mr Dai’s advice on immigration matters in relation to the application and had copied that advice to the complainant.

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<sup>6</sup> Complaint to Authority (12 October 2019) at 44 of the bundle.

[44] The Registrar had found potential breaches of the Code. It appeared that Mr Dai had failed to confirm in writing the details of material discussions (cl 26(c)). He had also failed to personally obtain the complainant's instructions for the withdrawal of the applications since FN and EI did this, although he did carry out her instructions (cl 2(e)). These were obligations Mr Dai could not delegate to unlicensed staff. It also appeared that EI had personally given immigration advice to the complainant, as it was recorded on Mr Dai's file that EI had informed her that if the application was not withdrawn it had a high chance of being declined and that would leave a negative record.

[45] According to the Registrar's decision, the potential breaches were diminished by a number of matters:

- (1) The complainant had made an informed decision to apply for a student visa and Mr Dai had carried out her instructions.
- (2) It did not appear that the failure to confirm in writing the details of material discussions had any impact on the complainant's visa application or immigration status.
- (3) Mr Dai did not appear to have been aware that EI gave immigration advice and it appeared to have been an isolated incident.
- (4) The complainant had made an informed decision to withdraw the applications.
- (5) Immigration NZ's concerns were due to false documents which Mr Dai had no knowledge of until the government agency had written.

[46] A similar letter was sent by the Authority to Mr Dai on the same day, notifying him that he was to bear in mind his obligation to write to clients with details of all material discussions and that he was required to personally obtain his clients' instructions. The Authority regards such a letter as a warning to Mr Dai.

#### *Complainant's appeal to Tribunal*

[47] On about 11 June 2020, the complainant appealed to the Tribunal against the Registrar's decision not to pursue the complaint.

[48] In her undated letter in support, the complainant says that false information was lodged with Immigration NZ by an agent in China without their knowledge. This was explained to FN at her house on 8 July 2019. FN said it was "OK" and she would present it to Immigration NZ as factual information as long as the fake employment information



could be memorised. The complainant felt nervous and trapped, so decided to go along with FN's advice as there was no other option.

[49] They assumed FN was the adviser and were not aware that FN and EI were not licensed. FN and EI directly gave all the immigration advice from the very beginning to the end. There was no contact between them and Mr Dai. Neither she nor her husband were contacted by him directly until after the applications were withdrawn and a refund requested. The complainant contends there is no evidence of any communication (by phone, texts or emails) between them and Mr Dai.

[50] When FN advised them that Immigration NZ had raised concerns, they asked her to explain to the government agency that they had been conned by an agent in China, but instead she persisted with the advice that the applications had to be withdrawn.

[51] The complainant noted the Registrar's finding that Mr Dai provided immigration advice in the WeChat group conversations, but this was based on a single sentence concerning the maintenance funds required.

[52] According to the complainant, FN advised them on 19 August 2019 that they had to undertake a tour to convince Immigration NZ "for visa purposes". She suggested a two-day tour and to take many photos.

[53] Following a request from the Tribunal, the Authority's investigator sent an email to Mr Dai on 10 November 2020 seeking further information:

- (1) Who wrote the document "Memory records tidy up"?
- (2) Identify any meeting, discussion or communication directly between him and the complainant (or her husband).

[54] Mr Dai replied immediately by email to the investigator:

- (1) The file notes were written by his previous staff and contractors, including FN, combining all the information from their individual WeChat records and group discussions, together with his client information records.
- (2) Mr Dai said he had the following discussions with the complainant:
  - (i) 8 July 2019 – telephone discussion about all service matters while she was at FN's house, explaining key parts of related documents.
  - (ii) 17 September 2019 – telephone discussion explaining the risks and confirming authorisation to withdraw the applications.

- (iii) 19 September 2019 – reiterating the conditions and expiry dates of their interim visas.
- (iv) 1 October 2019 – face-to-face meeting and then emailing minutes to the complainant's then representative.

[55] According to Mr Dai, all the other direct discussions and communications were via WeChat. As for evidence, his old phone was broken and he had switched mobile service providers two or three times. He did not have any phone records. Most direct communication was via WeChat phone and sometimes FN just passed the phone to him while she was talking to the complainant.<sup>7</sup>

[56] In a decision issued on 19 November 2020, the Tribunal found the Authority's investigation of the complaints to be inadequate as to the use of unlicensed staff and any undisclosed commission.<sup>8</sup> It determined to hear both of the complaints. The Registrar was directed to prepare and file them in the Tribunal.

[57] The Registrar duly wrote to Mr Dai on 15 October 2021 summarising the complaints and seeking an explanation.

[58] Mr Dai provided an explanation in a lengthy email to the Authority on 28 October 2021. He said FN assisted the complainant and her husband a lot in their daily lives, so there was plenty of communication between them regarding all issues. FN provided comments, ideas and common sense which may have related to visa and school matters. FN was a marketing contractor to his company, so it was impossible to observe her daily and check whether her assistance to the complainant included providing immigration advice. He used any chance to tell the unlicensed staff and contractors not to provide immigration advice.

[59] As for EI, she was Mr Dai's business partner at JC Migration, specialising in providing mortgage and financial advice and did not have an abundant knowledge of immigration. As the director, Mr Dai says he was the only person who gave immigration advice to clients. EI worked fulltime in her own financial company and rarely talked to clients about immigration matters. FN might occasionally ask "the boss" (EI) for advice when dealing with clients, but if it related to immigration, it would to a large extent just be common sense.

[60] Mr Dai acknowledged that he did not see the clients face-to-face before they came to the office seeking a refund. They were outside Auckland and even outside New

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<sup>7</sup> Email from Mr Dai to the Authority (10 November 2020) at 172 of the bundle.

<sup>8</sup> *ED v Registrar of Immigration Advisers* [2020] NZIACDT 48.

Zealand while he provided advice and assisted them. He directly communicated with the complainant in WeChat groups. Their visa plan in New Zealand was straightforward. He said that a lot of the communication between the clients and “us” related to choosing the school. He would provide his main advice at the very beginning and then leave the paperwork and communications (with the school, insurer and bank) to the staff.

[61] The complainant and her husband did not provide email addresses and only used WeChat communications, though they did hand over documents face-to-face. FN therefore obtained the information and collected the documents.

[62] Mr Dai said to the Authority that the complainant and her husband knew who he was. They had signed Immigration NZ’s “authorisation on behalf forms”.

[63] As for the request he made to Immigration NZ for the complainant’s file, Mr Dai could definitely remember she told “us” to retrieve the previous visa application details “via phone calls with [FN]”.

[64] All phone calls with the complainant were “talked via FN’s phone and her wechat app”. FN normally answered the complainant’s call and talked for a while ahead of passing the phone to him to answer.<sup>9</sup>

[65] It was accepted by Mr Dai that he failed to send immediately to the complainant the notes made about their discussions. This was because the information was more about study, with only limited information about visa queries. It was not necessary to record all detailed information, only a key summary if the information discussed was extremely important.

[66] According to Mr Dai, the communication records kept by him were limited due to there being no email address provided by the complainant and her husband. The couple replied “a lot” to the contracting staff. FN’s assistance also went beyond being an education and migration agent. The working manner of FN seemed to be “out of control”.<sup>10</sup> He was unable to figure out whether she provided any unexpected visa comments or not.

[67] Mr Dai said he was the one who from the beginning to the end collected the clients’ information and documents, communicated with them and prepared and presented the visa applications. That was his working manner.

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<sup>9</sup> Email from Mr Dai to the Authority (28 October 2021) at 184 of the bundle.

<sup>10</sup> Email Mr Dai to the Authority, above n 9, at 185 of the bundle.

[68] As for the allegation about breaching cls 5 and 6 of the Code, the Authority had investigated and obtained the school's confirmation that his company was not the school's agent. They received no commission.

[69] Mr Dai told the Authority that after the applications were withdrawn, the complainant informed FN that most of the documents presented to Immigration NZ on their initial visitor visa applications were forged. The complainant said they had paid CNY 200,000 (NZD 50,000) to someone in China but had gained nothing. Their intention in coming to New Zealand was not pure. They withheld this information from him and FN. Once he knew, he immediately terminated the service.

*Registrar files complaint in the Tribunal*

[70] On 23 February 2022, the Registrar filed a complaint in the Tribunal against Mr Dai alleging breaches of the specified provisions of the Code:

- (1) Allowed two unlicensed employees to give immigration advice to the complainant and obtain her instructions, in breach of cls 2(e) and 3(c).
- (2) Lodged an information request with Immigration NZ without obtaining the complainant's instruction, in breach of cl 2(e).
- (3) Failed to record details of oral discussions and failed to confirm details of material discussions in writing to the complainant, in breach of cls 26(a)(iii) and (c).
- (4) Failed to declare a conflict of interest in writing to the complainant and obtain her written consent to acting, in breach of cls 5 and 6.

**JURISDICTION AND PROCEDURE**

[71] 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.

[72] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.<sup>11</sup>

[73] 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>12</sup> It has been established to deal relatively summarily with complaints referred to it.<sup>13</sup>

[74] 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>14</sup>

[75] The sanctions that may be imposed by the Tribunal are set out in the Act.<sup>15</sup> The focus of professional disciplinary proceedings is not punishment but the protection of the public.<sup>16</sup>

[76] 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>17</sup>

[77] A Minute (10 January 2023) was issued by the Tribunal directing an oral hearing for the first head of complaint and setting out the procedure.

*From the Registrar*

[78] The Tribunal has received from the Registrar the statement of complaint (23 February 2022), with supporting documents. Oral submissions were made by Ms Thompson at the hearing.

*From the complainant*

[79] There is a statement of reply (27 March 2022) from the complainant, with supporting documents. She further responded on 13 April 2022 to Mr Dai's statement of reply. The complainant also gave oral evidence to the Tribunal.

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<sup>11</sup> Immigration Advisers Licensing Act 2007, s 45(2) and (3).

<sup>12</sup> Section 49(3) and (4).

<sup>13</sup> *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].

<sup>14</sup> Immigration Advisers Licensing Act, s 50.

<sup>15</sup> Section 51(1).

<sup>16</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] and [151].

<sup>17</sup> *Z*, above n 16 at [97], [101]–[102] and [112].

[80] The complainant confirms that when she first met FN in a supermarket on 30 June 2019, FN told her that she was an immigration agent and could deal with any visa applications.

[81] The complainant spoke to EI on FN's phone on 8 July 2019 and was advised what visas she could seek.

[82] According to the complainant, she signed the visa withdrawal letter after the phone discussion on 17 September 2019 with EI who threatened that if she did not, she could not apply for a visa in the future. FN and EI were the only two people she spoke to about withdrawing.

[83] All the advice on immigration matters was given by FN and EI and it was only later that she found out they were unlicensed. She did not meet or talk to Mr Dai directly until she went to his office on 1 October 2019 seeking a refund. She had no phone calls with him on 8 July or 17 or 19 September 2019, as he alleges. This is a lie. She noted there was no reference to any of these calls in all the text messages. There were only two occasions in which Mr Dai messaged anything in the chat group. In doing so, he was responding to FN and not to her. He provided no immigration advice to her. It was FN and EI who told her how to get the visas and that the family should go on a tour to provide photographic evidence. The complainant regards herself as essentially a client of FN and not Mr Dai.

*From Mr Dai*

[84] There is a statement of reply (27 March 2022) from Mr Dai, with supporting documents:

- (1) The complainant gave FN oral consent to retrieve their previous immigration documents.
- (2) It was on 16 September 2019 that the complainant finally informed them that fake documents were used on their initial visa applications, which had been prepared by a local agent in China.
- (3) EI spoke to the complainant by phone on 17 September 2019 saying that if she did not withdraw the visa, there was a very high chance of a decline letter, which would leave a negative record. This was common sense, not immigration advice.
- (4) He translated and explained key information from the PPI letters (of 12 September 2019) and the withdrawal confirmation letters, as well as the

expiry and conditions of their interim visas. This was direct communication with the complainant.

- (5) All forms were provided by him, not his supporting contractors. All key matters were explained by him by phone.
- (6) The contractor just passed documents to the complainant in person. The other “heaps of communications” between the complainant and FN were all about daily life, not the visa applications.
- (7) As for the telephone discussion he had with the complainant on 8 July 2019, the supporting evidence is the “Client information records” he provided to the Authority.<sup>18</sup>
- (8) Mr Dai acknowledges his insufficient performance in confirming material discussions in writing to the complainant. This was mainly because of her lack of email access, which was why FN visited her in person several times. It was also because the initial student and dependent partner visa applications did not require a lot of direct communication about the applications.
- (9) Mr Dai denies allowing the unlicensed FN and EI to give immigration advice. He only authorised the staff to collect documents.
- (10) He did not receive commission from the school.

[85] In his further submissions (13 April 2022), replying to the statement of reply of the complainant, Mr Dai says:

- (1) The group chat is the main instrument to communicate and to deal with a client’s inquiries and concerns. Clients are invited to join a WeChat group with all relevant team members together. Everyone in the group can see all the messages. The information transmitted by FN was general information, as well as his advice specifically for the complainant.
- (2) FN’s communications with the complainant were 90 per cent daily life assistance and 10 per cent clerical assistance (collecting information and documents, general enquiries). He knew nothing about any immigration advice she was giving and had not delegated this duty.

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<sup>18</sup> JC Migration “Client information records” at 68–69 of the bundle.

- (3) The applications failed because the couple deliberately provided forged documents to Immigration NZ, which he was not aware of until Immigration NZ's letters.
- (4) The visa applications were lodged using his 'RealMe' account and every supporting document was completed and combined by him.
- (5) In answer to the complainant's allegation that there was no discussion with him on 8 July, 17 September and 19 September 2019, Mr Dai says the communications were through FN who rang the complainant and then "we talk to client respectively".<sup>19</sup> The dates were recorded in the file notes.

[86] Mr Dai gave oral evidence at the hearing and made closing submissions.

[87] Mr Dai describes FN as an occasional contractor who was paid a referral fee. He confirms speaking to the complainant (using FN's phone) on 8 July, 17 September and 19 September 2019.

[88] On 8 July 2019, Mr Dai spoke to the complainant using FN's phone. He explained to her what service they could provide, as well as the agreement. He did not give immigration advice, as she had to sign the service agreement first.

[89] Mr Dai says he received the signed visa application form from FN. He obtained the information for the form from the documents provided by Immigration NZ in response to the information request he had made. It was FN who had the most communication with the complainant and collected the documents. He did not know what FN said to her. He did, however, advise the complainant in mid-July 2019 via WeChat about the declaration on the form signed by her.

[90] Mr Dai accepts that the WeChat group record showed only two messages posted by him to the group:

- (1) On 11 July 2019, he texted, "Received".<sup>20</sup>
- (2) On 30 July 2019, he sent a text specifying the maintenance funds required for a student visa and a partnership visa respectively.<sup>21</sup>

[91] Mr Dai says that the second time he spoke to the complainant was on 17 September 2019. He thinks he spoke about the withdrawal, but cannot remember.

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<sup>19</sup> Submissions of Mr Dai to the Tribunal (13 April 2022) at [20].

<sup>20</sup> Group chat messages (11 July 2019) at 151 of the bundle.

<sup>21</sup> Group chat messages (30 July 2019) at 155 of the bundle.



[92] It is Mr Dai's evidence that these types of applications do not require a lot of immigration advice work. He did prepare the documents, but did not check all the documents or details.

[93] EI and TY were called as witnesses by Mr Dai.

#### EI

[94] There is a statutory declaration (23 May 2023) from EI. She states that Mr Dai never allowed any unlicensed staff to provide immigration services, including herself. FN was a casual contractor who referred clients to them. They found out she did not follow the company's culture and regulations, so they stopped cooperating with her after a short period.

[95] In her oral evidence, EI told the Tribunal she did not talk about immigration matters to clients. She dealt with their finances and mortgages. She never saw the complainant and did not know her. EI recalls that FN met a client in a supermarket and she (EI) spoke to this person on the phone, but does not recall when. The person had a travel visa and wanted another visa, so EI told her she would have to talk to the licensed adviser. EI denies having a second discussion with this person. She did not know why the file notes recorded a second discussion with the complainant. EI did not remember any group texts and did not remember what her text avatar (image) was. She did not know whether FN gave immigration advice to the complainant.

#### TY

[96] In her statutory declaration (24 July 2023), TY states that Mr Dai was the only person who consulted clients and gave immigration advice. In relation to the complainant's matter, she worked as an assistant arranging documentation for Mr Dai. FN referred the client to them. FN did not provide immigration advice in the group chat texts, but they do not know what other communications she had directly with the complainant. Mr Dai took care of the cases and never passed them to the unlicensed staff or contractors.

[97] In her oral evidence, TY said she did not know if Mr Dai or FN had any communication with the complainant.

### **ASSESSMENT**

[98] The Registrar relies on the following provisions of the Code:

### **Client Care**

2. A licensed immigration adviser must:

...

- e. obtain and carry out the informed lawful instructions of the client, and

...

### **Legislative requirements**

3. A licensed immigration adviser must:

...

- c. whether in New Zealand or offshore, act in accordance with New Zealand immigration legislation, including the Immigration Act 2009, the Immigration Advisers Licensing Act 2007 and any applicable regulations.

### **Conflicts of interest**

5. Where a licensed immigration adviser is aware that there is a potential or actual conflict of interest relating to the client, including the existence of any financial or non-financial benefit the adviser will receive as a result of the relationship with the client, the adviser must disclose the potential or actual conflict to the client in writing.
6. Where a licensed immigration adviser is aware that there is a potential or actual conflict of interest relating to the client, the adviser may only represent or continue to represent the client where the client gives written consent.

...

### **File management**

26. A licensed immigration adviser must:

- a. maintain a hard copy and/or electronic file for each client, which must include:

...

- iii. copies of all written communications (including any file notes recording material oral communications and any electronic communications) between the adviser, the client and any other person or organisation

...

...

- c. confirm in writing to the client the details of all material discussions with the client

...

[99] The Tribunal will assess the heads of complaint in order.

(1) *Allowed two unlicensed employees to give immigration advice to the complainant and obtain her instructions, in breach of cls 2(e) and 3(c)*

[100] There is a practice in the immigration advisory industry known as ‘rubber stamping’.

[101] Typically, this occurs where a licensed immigration adviser uses unlicensed agents to recruit the clients, communicate with them, prepare the immigration applications and send them to the licensed adviser to sign off and file with Immigration NZ. There is little, if any, direct contact between the licensed adviser and the client.

[102] It is contrary to the Act and indeed it is a statutory offence for an unlicensed person to undertake “immigration advice” work (as defined in the Act) or for any person (who would usually be licensed) to hold out that a person who is not licensed can undertake such work, or to employ or contract with such a person, or to receive a fee for such advice.<sup>22</sup>

[103] The term “immigration advice” is broadly defined in the Act:

## **7 What constitutes immigration advice**

(1) In this Act, **immigration advice**—

- (a) means using, or purporting to use, knowledge of or experience in immigration to advise, direct, assist, or represent another person in regard to an immigration matter relating to New Zealand, whether directly or indirectly and whether or not for gain or reward; but
- (b) does not include—
  - (i) providing information that is publicly available, or that is prepared or made available by the Department; or
  - (ii) directing a person to the Minister or the Department, or to an immigration officer or a refugee and protection officer (within the meaning of the Immigration Act 2009), or to a list of licensed immigration advisers; or
  - (iii) carrying out clerical work, translation or interpreting services, or settlement services.

(2) To avoid doubt, a person is not considered to be providing immigration advice within the meaning of this Act if the person provides the advice in the course of acting under or pursuant to—

- (a) the Ombudsmen Act 1975; or

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<sup>22</sup> Immigration Advisers Licensing Act, ss 6, 63, 64, 65, 67 and 68.

- (b) any other enactment by which functions are conferred on Ombudsmen holding office under that Act.

[104] The use of unlicensed persons to undertake immigration advice work is not just contrary to the Act, but it can also amount to a breach of cls 2(e) and 3(c) of the Code, as set out above. The obligations in the Code are personal to the licensed adviser and cannot be delegated.<sup>23</sup>

[105] There are two principal obligations personal to licensed advisers which need to be reviewed:

- (1) Engaging with and taking instructions from the client (cl 2(e) – “obtain ... informed ... instructions”).
- (2) Performing the substantive immigration work, such as advising the client on immigration matters, completing the visa application, compiling the support information, filing the application and communicating with Immigration NZ (cls 2(e) – “carry out the ... instructions”, 3(c)).

[106] The issue for the Tribunal is the extent of Mr Dai’s engagement with the complainant (there being no evidence of any engagement with the husband).

[107] The complainant says she dealt exclusively with FN and EI and did not meet or speak with Mr Dai until 1 October 2019 (by which time the visa applications had been withdrawn and the immigration matters were closed). She says she received no text messages from him. While she saw two text messages in the group chat from Mr Dai’s avatar, she did not know who this person was. She was aware there was an “adviser”, but thought this person was there merely to help FN in filing applications and communicating with Immigration NZ. So far as she was aware, FN was the immigration agent or adviser.

[108] Mr Dai accepts that he did not meet the complainant until 1 October 2019, but he says he spoke to her on the phone (he was using FN’s phone) on three occasions, being 8 July, 17 September and 19 September 2019. There was also direct communication in the form of two texts in the WeChat group. He told the Tribunal he additionally advised the complainant in mid-July 2019 via WeChat about her declaration on the visa application form. The Tribunal will assess this fourth possible discussion shortly.

[109] The Tribunal finds that Mr Dai’s evidence as to the three (possibly four) conversations with the complainant is not credible, for the reasons that follow.

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<sup>23</sup> *Sparks*, above n 13, at [22], [26] and [34].

[110] It is notable that none of the alleged conversations are referred to in the extensive file notes compiled by the staff, including FN, yet it is Mr Dai's narrative that he used FN's phone to talk to the complainant. It is implausible that FN would overlook mentioning in the notes Mr Dai's discussions with the complainant on all three (possibly four) occasions he says he spoke to her. Furthermore, the entry for 17 September 2019 in the file notes records the complainant's discussion with EI, but none of the purported discussions with Mr Dai.

[111] In his statement of reply (27 March 2022) filed in the Tribunal, Mr Dai says the evidence supporting his discussion with the complainant on 8 July 2019 is in the "Client information records".<sup>24</sup> When examined by counsel, Mr Dai accepted that he was not involved when the complainant went to FN's home that day.

[112] In giving evidence to the Tribunal, Mr Dai initially denied speaking to the complainant about the visa application form. However, when asked by counsel whether he had advised the complainant about the meaning of the declaration in the application form, he said he advised her in mid-July 2019. When it was pointed out to him that he had not mentioned speaking to her between 8 July and 17 September 2019, he said he spoke via WeChat. He was taken through the WeChat records provided to the Tribunal and could not identify any discussion between him and the complainant. The Tribunal disbelieves his evidence as to this fourth discussion. Nor is there any text message from Mr Dai at this time.

[113] As to Mr Dai's two messages in the group chat, one was merely to record that something had been received (11 July 2019). The other was advice as to the maintenance funds needed for the student and partnership visas (30 July 2019). It is, as the complainant points out, remarkable that there is only one reference to advice from Mr Dai in the many text messages. That is inconsistent with Mr Dai's position that he was responsible for all the decisions on the complainant's immigration matters.

[114] The Tribunal dismisses the vague evidence of EI and TY. EI was evasive as to whether she spoke to or knew of the complainant. Her denial of the second discussion on 17 September 2019 is inconsistent with the file notes. Her failure to recognise the avatar used by her in the group texts is implausible. EI is not a reliable witness. Nor does the Tribunal place any weight on TY's evidence that Mr Dai was the only person who gave immigration advice. She did not know if FN had any communications with the complainant. That is implausible given TY was arranging the documentation which plainly would have involved FN.

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<sup>24</sup> Statement of reply of Mr Dai (27 March 2022) at Part 3C item 6; and Client information records, above n 18, at 68 of the bundle.

[115] In Mr Dai's explanation to the Authority (28 October 2021), he stated that the intentions of the complainant and her husband in coming to New Zealand were "not pure".<sup>25</sup> This is a reference to the forged documents provided on their original visa applications. He repeated this at the hearing, questioning the credibility of the complainant.

[116] The complainant says they were unsuspectingly duped by an agent in China. As the Tribunal informed Mr Dai at the hearing, it is his conduct being reviewed by the Tribunal, not that of the complainant. Whether or not the complainant is being untruthful in asserting she did not know of the forged documents is not material. The Tribunal accepts her evidence as to her dealings with Mr Dai. It is consistent and plausible, unlike the evidence of Mr Dai.

[117] As Ms Thompson contends, someone was giving immigration advice to the complainant and as it was not Mr Dai, it must have been FN and EI. The Tribunal accepts this. The complainant's evidence that she was advised only by FN, together with EI on two occasions, is true.

[118] In particular, the Tribunal accepts the complainant's evidence that it was FN and EI who advised her on 8 July 2019 to file a student visa for English language studies and her husband a visitor's visa, as well as the subsequent immigration steps they might take. It was FN who advised the complainant on 14 August 2019 to provide more photographs of their travels around New Zealand. While that advice appears to have originated from Mr Dai, it was FN who informed the complainant. There is no evidence of any other substantive advice originating from Mr Dai, aside from the maintenance funds.

[119] Then there was the advice from FN and EI on 17 September 2019 about withdrawing the visa application. Again, the Tribunal accepts the complainant's evidence. It is consistent with the file notes, which record that FN called EI, who told the complainant that if she did not withdraw the visa application, there would be a high chance of a decline letter and therefore a negative record. The complainant is recorded as having then signed the withdrawal letter. In other words, the complainant relied on EI's advice concerning withdrawal. There is no reference in the file notes to any discussion with Mr Dai on or about 17 September 2019. He neglected to give her any advice about this important matter. Accordingly, it cannot be said that his instructions to withdraw the application were "informed", as required by cl 2(e).

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<sup>25</sup> Email from Mr Dai to the Authority, above n 9, at 185 of the bundle.

[120] Mr Dai says the withdrawal advice given by FN and EI amounts to common sense and is not immigration advice. It will be recalled that the complainant wanted to explain to Immigration NZ how they had been cheated by the agent who she says had produced the forged documents unknown to them. The advice from FN and EI as to a high probability of a decline letter and a negative record, thereby dismissing the complainant's explanation, is patently immigration advice.

[121] Mr Dai states that he does not know what advice or information KN was giving the complainant. He describes FN as "out of control" and said he could not figure out whether she provided any unexpected visa comments.<sup>26</sup> Mr Dai told the Authority it was impossible to check daily what words FN spoke to the complainant involving any immigration advice.<sup>27</sup> He said to the Tribunal he knew nothing about any immigration advice she gave.<sup>28</sup>

[122] EI says in her statutory declaration that FN did not follow the company's culture and regulations. She told the Tribunal she did not know whether FN gave immigration advice to the complainant. EI, who was not a credible witness as to her own communications with the complainant or of her knowledge of what FN was telling the complainant, was candid as to their lack of oversight of FN.

[123] As the licensed adviser formally representing the complainant, Mr Dai is responsible for what is done in his name. That is so even if FN and EI did not disclose his existence as the only licensed adviser.

[124] The Tribunal finds that Mr Dai must have been aware of FN and EI providing substantive immigration advice to the complainant, as he knew he was not doing so. To his knowledge, they were the only people dealing with her on the family's immigration matters.

[125] Whether or not Mr Dai knew the precise advice and immigration strategy given by FN and EI, as the only licensed person, he was the person with a duty to ensure compliance with the professional obligations in the Code. He was obliged to make sure they did not stray into work falling within the statutory definition of immigration advice. If he could not trust them to follow the restrictions on their work in the Act, he should not have permitted them to engage with his clients. It is not enough that he warned them not to undertake such work. He must make sure they did not.

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<sup>26</sup> Email from Mr Dai to the Authority, above n 9, at 185 of the bundle.

<sup>27</sup> Email from Mr Dai to the Authority, above n 9, at 183 of the bundle.

<sup>28</sup> Submissions of Mr Dai to the Tribunal, above n 19, at [11].

[126] Nonetheless, Mr Dai did not completely abandon the complainant to FN and EI as there is evidence, he undertook some of the substantive work. The Tribunal accepts he completed and filed the applications and communicated with Immigration NZ. However, Mr Dai knowingly permitted FN and EI to also undertake services within the statutory definition of immigration advice, specifically the immigration strategy at the beginning and the withdrawal. He further allowed them to exclusively engage with the complainant.

[127] Mr Dai's conduct is a breach of cl 2(e) of the Code (both as to obtaining informed instructions and carrying out instructions) and of cl 3(c). The first head of complaint is upheld.

(2) *Lodged an information request with Immigration NZ without obtaining the complainant's instruction, in breach of cl 2(e).*

[128] On 22 July 2019, Mr Dai sought from Immigration NZ the couple's immigration file. It was provided on 10 August 2019.

[129] The complainant says she did not authorise Mr Dai to get her personal information, as she did not know who he was. Mr Dai says the complainant told "us" to retrieve the previous visa application details and copies through voice messages and phone calls with FN.<sup>29</sup> She gave oral consent.<sup>30</sup> Mr Dai added that FN told the complainant she may not need formal authorisation to send an information request to Immigration NZ, to which the latter answered, "OK".

[130] The Tribunal finds it is likely that Mr Dai had verbal instructions to obtain the complainant's Immigration NZ file, obtained through FN. The complainant may not have known Mr Dai by name, but she was aware of another adviser whose role she thought was to communicate with Immigration NZ. There was no breach of cl 2(e) in regard to the information request. Obtaining consent from a client to seek copies of a file or documents from Immigration NZ at the request of an adviser is clerical work which can be performed by an unlicensed person. The second head of complaint is dismissed.

(3) *Failed to record details of oral discussions and failed to confirm details of material discussions in writing to the complainant, in breach of cls 26(a)(iii) and (c).*

[131] The Tribunal has found that Mr Dai had no oral discussions with the complainant, but plainly FN and EI did. Those discussions traversed material immigration matters.

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<sup>29</sup> Email from Mr Dai to the Authority, above n 9, at 184 of the bundle.

<sup>30</sup> Statement of reply of Mr Dai, above n 24, at Part 3A item 4 and Part 3C items 4–5.



Yet, there are no written communications from Mr Dai to the complainant and/or her husband confirming any of FN's or EI's oral immigration advice.

[132] Mr Dai admits there is no written record of the advice. He says that is because the complainant did not have an email address. If she had no email address, he should have written a letter to her residential or postal address, or even sent a text.

[133] It is Mr Dai who must make sure there is compliance with the Code in respect of all matters concerning the visa applications of the complainant and her husband. He has breached cl 26(c) of the Code. The third head of complaint is upheld.

(4) *Failed to declare a conflict of interest in writing to the complainant and obtain her written consent to acting, in breach of cls 5 and 6.*

[134] There is no breach of cl 26(a)(iii) as it does not require the production of file notes or the recording of oral discussions.

[135] The complainant alleges Mr Dai and/or JC Migration received a commission from the English language school FN recommended to her. Mr Dai denies this.

[136] The complainant presents no evidence in support of her allegation. She says only that she was informed by the school's staff and her classmates that commissions were paid for referrals.<sup>31</sup> The school advised the Authority that it does not have an agency agreement with JC Migration, which had not sent any students to it, so no commission had been paid.<sup>32</sup> The Tribunal observes that the Authority did not ask the school whether FN or Mr Dai had been paid commissions.

[137] It is conceivable the school paid commission to FN and is not aware of her association with JC Migration, but there is no evidence of this. There is no reliable evidence the school paid any commission to Mr Dai. This head of complaint is dismissed.

## OUTCOME

[138] The first and third heads of complaint are upheld. Mr Dai has breached cls 2(e), 3(c) and 26(c) of the Code.

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<sup>31</sup> Email from the complainant to the Authority (1 October 2021) at 65 of the bundle.

<sup>32</sup> Email from the school to the Authority (30 September 2021) at 223 of the bundle.

## SUBMISSIONS ON SANCTIONS

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

[140] A timetable is set out below. Any request that Mr Dai 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.

### *Timetable*

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

- (1) The Registrar, the complainant and Mr Dai are to make submissions by **1 September 2023**.
- (2) The Registrar, the complainant and Mr Dai may reply to submissions of any other party by **15 September 2023**.

## ORDER FOR SUPPRESSION

[142] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.<sup>33</sup> It must balance the public interest in the transparency of the Tribunal and knowing of wrongdoing by licensed advisers with the privacy of the named individuals.

[143] There is no public interest in knowing the name of Mr Dai's client or her husband, or the identity of the unlicensed persons.

[144] The Tribunal orders that no information identifying the complainant, her husband, FN, EI or TY is to be published other than to Immigration NZ.

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D J Plunkett  
Chair

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<sup>33</sup> Immigration Advisers Licensing Act, s 50A.