

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2023] NZIACDT 24

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
(Sanctions)
Dated 25 August 2023**

REPRESENTATION:

Registrar: Self-represented
Complainant: Self-represented
Adviser: Self-represented

INTRODUCTION

[1] The complainant, WN, engaged the adviser, John Desmond Lawlor, to obtain residence for himself and a work visa for his partner. After successfully obtaining residence for the complainant, the latter withdrew instructions for his partner's visa. Mr Lawlor then repeatedly refused to return original documents and refund fees received in advance.

[2] A complaint to the Immigration Advisers Authority (the Authority) was referred by the Registrar of Immigration Advisers (the Registrar) to the Tribunal. It was upheld in a decision issued on 26 June 2023 in *WN v Lawlor*.¹ Mr Lawlor was found to have breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code), a ground of complaint under the Immigration Advisers Licensing Act 2007 (the Act).

[3] It is now for the Tribunal to determine the appropriate sanctions. A notable feature of the Tribunal's assessment is that Mr Lawlor has a poor disciplinary history.

BACKGROUND

[4] The narrative leading to the complaint is set out in the earlier decision and will only be briefly summarized here.

[5] Mr Lawlor was at the relevant time a licensed immigration adviser and director of Lawlor & Associates Ltd, of Thames. His licence expired on 7 January 2023.

[6] The complainant, a national of Cambodia, engaged Mr Lawlor to obtain residence for himself. An application filed by Mr Lawlor was successful, with residence being granted on 10 July 2021.

[7] Meanwhile, on 16 March 2020, the complainant and Mr Lawlor had signed a service agreement for a work visa for the partner. The complainant cancelled the instruction by email to Mr Lawlor on 13 April 2022. He asked for the original documents back and a discussion about a refund. The complainant sought updates and/or expressly requested the documents and/or a refund on 4 August, 13 August, 7 September, 22 September, 26 September, 30 September, 13 October, 17 October, 20 October, 27 October, 28 October, 2 November and 9 November 2022. Mr Lawlor responded on multiple occasions promising to contact him or to arrange a meeting to hand over the documents or to make payment, but he never returned the documents or refunded the monies.

¹ *WN v Lawlor* [2023] NZIACDT 21.

Decision of the Tribunal

[8] It was found by the Tribunal that Mr Lawlor had:

- (1) Deliberately misled the complainant about the return of the documents and the refund. He was neither honest nor professional. He had failed to return the documents or refund the fee in a timely manner. This was a breach of cl 1 of the Code.
- (2) Failed to ensure his refund obligations could be met and the refund made promptly, in breach of cl 24(b) and (c).
- (3) Failed to return the personal documents to the complainant without delay when requested, in breach of cl 27(b).

SUBMISSIONS

From the Registrar

[9] In her submissions (14 July 2023), Ms Issar of the Registrar's office submits that Mr Lawlor's conduct shows a significant failure to maintain fundamental professional standards. The Tribunal found his conduct to be disgraceful. He deliberately misled the complainant. It is misconduct at the higher end of the spectrum. There are additional factors:

- (1) The conduct continued over an extended period.
- (2) Mr Lawlor has recently appeared before the Tribunal for similar conduct, this being the third complaint upheld. He has been previously found to have misled clients. He has not learned from the previous complaints and the relatively low-level sanctions imposed have not changed his behaviour.
- (3) Not only did he mislead the complainant, but he falsely advised the Authority that he would refund the money.

[10] The Registrar notes that Mr Lawlor chose not to explain his conduct to the Tribunal. This suggests a limited desire to remedy defects in his practice.

[11] The Tribunal is invited to mark its disapproval of Mr Lawlor's conduct by imposing a significant sanction as a deterrent. He should be prevented from reapplying for a licence. While this is a sanction of last resort, the Tribunal has a significant responsibility to uphold professional standards and mitigate risk to the public. A focus on public

protection should be a core theme. A high monetary penalty is suggested to reflect the seriousness of the misconduct.

[12] It is submitted that the appropriate sanctions would be:

- (1) Censure.
- (2) An order preventing Mr Lawlor from reapplying for a licence for up to two years, or until such time as he has completed a rehabilitative course.
- (3) A financial penalty in the region of \$3,000 to \$7,000.
- (4) A refund to the complainant of \$3,495 and the return of his original documents.

From the complainant

[13] There are no submissions from the complainant.

From the adviser

[14] In an email (17 July 2023) to the Tribunal, Mr Lawlor said that at no time did he have any original documents of the complainant. He only had certified copies, which were not returned by Immigration New Zealand (Immigration NZ). As for the refund, Mr Lawlor says he offered to do so in the initial stages of the COVID-19 pandemic, but the complainant wanted to wait. Then in 2020, he suffered a mental breakdown. He subsequently decided to retire and withdrew the application to renew his licence in April 2023. Mr Lawlor acknowledges that the funds should have been transferred when the application was delayed, but he was not in a great headspace and had little or no income from 2020 to the end of 2022. The funds were used to pay the fixed costs of the business.

[15] Mr Lawlor apologises and states that he has always attempted to be fair and honest in dealing with his clients. He will be able to refund in full at the end of July when his pension funds are transferred from the United Kingdom.

[16] The Tribunal informed Mr Lawlor in an email on 17 July 2023 that it would take any refund into account as mitigation. He was asked to send confirmation of a refund by 18 August 2023, together with any updated medical or psychological evidence.

[17] As he did not notify the Tribunal of any payment to the complainant, he was asked by email on 22 August 2023 to confirm payment. He failed to reply to the Tribunal's email.

JURISDICTION

[18] The Tribunal's jurisdiction to impose sanctions is set out in the Act. Having heard a complaint, the Tribunal may take the following actions:²

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.

[19] 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.

² Immigration Advisers Licensing Act 2007.

[20] 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.

[21] 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 *Zideman 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.

[22] 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

[23] 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

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

⁴ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 and 727; *Bolton v Law Society* [1994] 2 All ER 486 (EWCA) at 492; and *Z*, above n 3, at [151].

⁵ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28].

[24] 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;
- (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

[25] The Tribunal upheld three heads of complaint involving the breach of four provisions of the Code, all concerning Mr Lawlor's failure to return original documents to the complainant and refund fees paid in advance when his instructions were withdrawn. The most serious was deliberately misleading the complainant about those matters. He was found to be neither honest nor professional, nor to have attended to returning the documents and the monies in a timely manner.

[26] Mr Lawlor now says, having declined to engage with the Tribunal while it was deliberating on the complaint, that he had no original documents of the complainant. If so, it is surprising he never said this to the complainant during the prolonged period the latter was seeking their return. Indeed, in an email on 13 October 2022, Mr Lawlor said he would arrange a meeting with the complainant to hand over the documents. The Tribunal will not revisit its earlier finding.

[27] This is not the first time a complaint has been upheld against Mr Lawlor, nor is it the first time he has been found to have lacked integrity. His poor disciplinary record is a significant aggravating factor in assessing the appropriate sanctions.

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].

[28] In the *BC* decision issued by the Tribunal on 18 May 2022, Mr Lawlor was found guilty of 14 breaches of the Code amounting to negligence.⁷ There was a lack of diligence, inadequate communications with his client, an inadequate client agreement and a failure to obtain instructions on a matter. The sanctions were censure and a financial penalty of \$2,000.⁸

[29] In the *WS* decision issued on 23 March 2023, Mr Lawlor was found to have deceived his client and to have committed 13 breaches of the Code.⁹ The deceit occurred when Mr Lawlor pretended to his client that an application had been made to NZQA, but no such application had actually been made. He invented reasons for what he asserted were delays by NZQA. The breaches of the Code related to a lack of diligence, inadequate client communications, an inadequate client agreement and to his obligations concerning client fees. The penalties were censure, a financial penalty of \$3,000 and compensation to the client of \$2,000.¹⁰

[30] The only mitigating factor advanced by Mr Lawlor is his past health. He has not sent any recent medical or psychological evidence, though a psychologist's report (29 March 2022) was filed in the Tribunal on an earlier complaint.¹¹ It provides some context and explanation, but no justification for misleading the complainant or breaching his professional obligations. While the report does not cover his current mental health, the psychologist said there that Mr Lawlor's physical and psychological health at the time of her report had significantly improved and his symptoms were in the normal range.

[31] The Registrar correctly classifies Mr Lawlor's misconduct at the higher end of the spectrum, since it involved the deceit of a client over an extended period. The Tribunal would not, however, entirely agree with the Registrar that it could be said Mr Lawlor had learned nothing from the earlier complaints. Certainly, he did not become any more professional after the decisions in the *BC* complaint (which were before most of his misconduct here), but the Tribunal's decisions in the *WS* complaint were after the misconduct here.

[32] The Registrar submits the Tribunal should direct the return of the documents to the complainant, but the Tribunal doubts it has any such power.

⁷ *BC v Lawlor* [2022] NZIACDT 10.

⁸ *BC v Lawlor* [2022] NZIACDT 15.

⁹ *WS v Lawlor* [2023] NZIACDT 9.

¹⁰ *WS v Lawlor* [2023] NZIACDT 16.

¹¹ *BC v Lawlor*, above n 8 at [26] and [28]–[30].

[33] This brings the Tribunal to consideration of the sanctions for the current complaint.

Caution or censure

[34] Given the gravity of the misconduct and Mr Lawlor's disciplinary history, the Tribunal hereby censures him to mark its disapproval of his conduct.

Training

[35] As Mr Lawlor's licence expired on 7 January 2023 and he has retired, the Tribunal will not direct retraining. Nor is his deceit a failing which will be resolved by education.

Preventing reapplication

[36] Mr Lawlor has twice been found to have deliberately lied to his client. His lack of integrity is not explained by any unwellness at the time. It is particularly serious misconduct. He has also refused to return documents and to refund a fee which he did not earn. He has perpetuated his lie to the complainant by falsely advising the Authority and the Tribunal he would refund the fee.

[37] The Tribunal agrees with the Registrar that prohibiting Mr Lawlor from reapplying for any licence is an appropriate sanction to protect the public. He will be prohibited for the maximum period of two years.

Penalty

[38] The Registrar submits a financial penalty of \$3,000 to \$7,000 would be appropriate.

[39] There are no submissions from Mr Lawlor as to the penalty. He has retired from immigration advisory work and he infers he cannot repay the complainant about \$3,500 until he receives pension monies from the United Kingdom. He has, however, presented no income or asset information to the Tribunal. The previous penalties of \$2,000 and \$3,000 are noted. Further noted is that the Tribunal will direct a refund of \$3,495 to the complainant. In assessing the penalty, it will have regard to the totality of the financial consequences for Mr Lawlor.

[40] In light of the seriousness of the complaint upheld and his disciplinary history, the penalty will be \$7,000. It would have been higher had it not been for the refund directed.

Refund

[41] Mr Lawlor took \$3,495 in advance of his fee. He did not perform the work for which the fee was taken. Mr Lawlor does not dispute that he should refund the full amount. Such an order will be made.

OUTCOME

[42] Mr Lawlor is:

- (1) Censured.
- (2) Prevented from reapplying for any licence for a period of two years from the date of this decision.
- (3) Ordered to pay the Registrar a penalty of \$7,000 within one month.
- (4) Ordered to pay the complainant \$3,495 within one month.

ORDER FOR SUPPRESSION

[43] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.¹²

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

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

D J Plunkett
Chair

¹² Immigration Advisers Licensing Act, s 50A.