

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2023] NZIACDT [9]

Reference No: IACDT 011/22

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

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

**BETWEEN** **WS**  
Complainant

**AND** **JOHN DESMOND LAWLOR**  
Adviser

**SUBJECT TO SUPPRESSION ORDER**

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**DECISION**  
**Dated 23 March 2023**

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**REPRESENTATION:**

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

## **PRELIMINARY**

[1] The complainant, WS, was in New Zealand and instructed the adviser, John Desmond Lawlor, to seek a work visa and residence. While the applications were ultimately successful, Mr Lawlor committed numerous breaches of his professional obligations. In particular, he informed the complainant that an assessment of her foreign qualification had been lodged with the New Zealand Qualifications Authority (NZQA) when no such application had been made.

[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 dishonest or misleading, negligent and breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code), all grounds for complaint under the Immigration Advisers Licensing Act 2007 (the Act).

[3] Mr Lawlor does not admit dishonesty but otherwise largely admits breaching the Code. He advances a medical explanation for his conduct.

## **BACKGROUND**

[4] The complainant, a national of India, came to New Zealand in 2015. She initially had a student visa, but appears to have had a work visa as a contract administrator since 2016. She was granted a further work visa on 4 March 2019, valid until 5 June 2019.

[5] Mr Lawlor, a licensed immigration adviser, is a director of Lawlor & Associates Ltd, of Thames.

[6] In early March 2019, the complainant contacted Mr Lawlor for help to obtain a skilled migrant work visa and residence.

[7] The complainant signed Mr Lawlor's services agreement on 19 March 2019. Mr Lawlor would apply on her behalf for a "SMC Application followed by Essential Skills and Partnership Visa", the latter being for the complainant's partner. The fee was \$6,500 (incl. GST), payable in instalments.

### *First expression and work visa application filed*

[8] The expression of interest under the skilled migrant category seems to have been filed almost immediately, as Immigration New Zealand (Immigration NZ) wrote to the complainant (care of Mr Lawlor) on 21 March 2019 advising that she had been invited to

apply for residence. She was informed she had four months to make the residence application and no extension would be considered. Mr Lawlor told her of the invitation immediately.

[9] Mr Lawlor filed an essential skills work visa application for the complainant on 11 May 2019.

[10] On 15 and 21 May 2019, Immigration NZ wrote to the complainant (care of Mr Lawlor) requiring her:

- (1) Police certificate.
- (2) Full employment agreement.
- (3) Full job description.

[11] In response, Mr Lawlor provided the police certificate only, so on 27 May 2019, Immigration NZ wrote to him stating that the employment agreement and job description had not been provided. The documents or an explanation were sought. The documents were provided by him to Immigration NZ on 27 and/or 30 May 2019.

[12] Then on 31 May, Mr Lawlor sent an email to the complainant to say he had applied for her partner's visa.

[13] The work visa applications for the complainant and her partner were successful. Immigration NZ granted them visas for one year on 5 and 6 June 2019 respectively (later extended due to the pandemic). Mr Lawlor immediately advised the complainant.

#### *Residence application filed*

[14] On 15 July 2019, Mr Lawlor applied for residence for the complainant and her partner.

[15] On 29 July 2019, Immigration NZ wrote to the complainant (care of Mr Lawlor) to say the residence application was not accepted, as the police certificates were missing. It was returning the application and the fee.

[16] In order to assess whether Mr Lawlor's medical explanation is an adequate explanation for his conduct, it is necessary to review the extensive communications between him and the complainant in some detail.

[17] The complainant sent a text message to Mr Lawlor on 12 August 2019 asking whether there was any confirmation email for the “Ita” (invitation to apply, meaning residence) application. Mr Lawlor did not reply. She emailed and texted him on 30 August asking him to call her back. She said she had had no luck contacting him for the past two to three days. She wanted an update on the application. He said on 30 August that Immigration NZ had returned it. The complainant asked whether there was any reason. Mr Lawlor said he did not know until he saw it, but it was normally a document issue. He would deal with it.

[18] On the same day, the complainant rang Immigration NZ and was told the residence application was returned as the police certificates had not been provided. The officer said another expression would have to be filed and if approved, she could reapply for residence.

[19] On 2 September 2019, the complainant said to Mr Lawlor that she was still waiting for his call. He replied that day by email to say that Immigration NZ returned the application as there were no police certificates. He had queried this with the manager and would revert, adding that he would not charge if the expression had to be redone. She replied to say she had provided the police certificates. The complainant asked him for an update on 3 September. He responded on the same day to say he would reapply again, for free. The complainant then emailed some questions to him and pointed out that her visa was expiring on 5 June 2020.

[20] The complainant sent Mr Lawlor an email on 4 September 2019 and a text on 5 September asking a number of questions, including when he was refiling the expression. At their meeting on 8 September, he said he would refile the expression. She sent a text on 10 September asking if the expression had been filed. The complainant sent a text the following day to say, “Is EOI submitted”. The complainant asked him again in an email on 16 September whether the expression had been filed. He declined her call on 18 September.

[21] The complainant emailed Mr Lawlor on 24 September 2019 asking whether the expression had been filed. This was followed by an email and a text on 25 September expressing her high disappointment. He had declined her calls for two weeks. He had told her partner that day that the expression had not been filed. He was asked to explain the delay. On 26 September, Mr Lawlor said he would lodge it at his own expense “now”. She asked by text and email on 3 October if he had applied. She asked again on 9 October.

*Second expression filed*

[22] Mr Lawlor advised the complainant by email on 9 October 2019 that “Its” (presumably the second expression) was in the draw that day. It was selected from the pool on 16 October. Mr Lawlor told the complainant by text and email on 18 October that it had been selected. According to the Registrar, it was selected that day for a “credibility check process”.<sup>1</sup>

[23] The complainant rang the visa officer on 1 November 2019, confirming her degree and work experience. She reminded Mr Lawlor on 4 November to speak to a named officer, adding that she was waiting to hear from him what Immigration NZ said about the “ITA”. He replied saying he had left a message with the officer and would ring again.

[24] On 5 November 2019, Immigration NZ advised the complainant in a letter sent to Mr Lawlor that she would not be invited to apply for residence. The expression had undergone a credibility check. A total of 170 points had been claimed, but only 150 awarded. No points had been allocated for work experience or bonus points for New Zealand work experience. Her expression would be returned to the pool. Mr Lawlor rang the officer that day. The officer explained his concern about the qualification and work experience. Mr Lawlor confirmed that the complainant’s primary [international] degree qualification would be assessed.

[25] The complainant texted Mr Lawlor on 6 November 2019 to say she had emailed the degree and transcript to him. He replied the same day stating that he would process it “tonight”. She sought an update on 14 November concerning NZQA’s assessment.

**[30]** On 20 November, Mr Lawlor texted to say he was waiting for the assessment and it should be in the draw before Christmas.<sup>2</sup> She asked when had the assessment been filed. He replied, “a week ago” adding that the result was expected the following week. On 28 November, the complainant asked him by text whether the assessment results were available. He said that day they should have them in a couple of days.

[26] On 9 December 2019, the complainant texted Mr Lawlor saying she had been trying to phone him since the previous Thursday. She asked for an update on NZQA’s assessment. He replied that day to say they were waiting for the assessment. There were problems on NZQA’s website. On 11 December, he said he would call back. She said on the 12th she was waiting for his call. He replied that he would call her back.

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<sup>1</sup> Statement of complaint (11 August 2022) at [4.12].

<sup>2</sup> See Registrar’s bundle at 31. As will be seen later, Mr Lawlor made no assessment application.

[27] On 16 December 2019, the complainant sent an email to Mr Lawlor expressing disappointment that he did not call her back. She had been trying to speak to him for two weeks to obtain an update on the assessment. The lack of communication was stressful. This was about her future. Following her further query on 19 December, Mr Lawlor sent an email that day giving her information about the criteria. She asked on 19 December whether there was an update from NZQA. He replied that he expected to hear the assessment result shortly.

[28] On 13 January 2020, the complainant asked Mr Lawlor by text for an update on the expression and whether it had been filed. He replied to say he would be back in New Zealand the following week. She asked again on 15 and then on 16 January. On 16 January, he said he had chased NZQA the previous day. The next draw was 22 January so they should be good for that. They just needed to add the assessment. The complainant then asked on 17 January whether there was any update from NZQA. He replied on 17 January to say, "Not yet", noting a response time of three days. He said he had made three requests.

[29] The complainant asked Mr Lawlor again on 20 January 2020 about an update from NZQA. He said he would let her know in the morning. She asked again on 21 January. He said he was waiting for a call back. She repeated the request on 22 January. He sent an email to her on 22 January to say he was expecting a call from the visa officer to discuss a return to the pool, as he did not think the officer got it right. The complainant asked for an update on 23 January. Mr Lawlor sent an email on 23 January to say he had spoken to NZQA in relation to his three files and they were updating their systems, so there were delays. He said he had spoken to a manager at Immigration NZ who would come back to him.

[30] On 29 January 2020, the complainant sent a text and an email asking Mr Lawlor for an update from NZQA or Immigration NZ, as well as a question about the criteria. He replied by text the same day to her question concerning the visa criteria, but not the query about the update. She asked him again about the update from NZQA and whether he had spoken to a manager at Immigration NZ. On 30 January 2020, she repeated her previous question. He replied stating he expected to get the NZQA assessment that week. He added that he had spoken to the immigration manager (presumably about the expression) who would revert by Friday.

[31] On 4 February 2020, the complainant asked Mr Lawlor about the assessment and also what the manager had said. He replied to say he had heard nothing on the assessment. He told her what the immigration manager had said. There were further text communications that day. The complainant asked him to push NZQA, pointing out

that it had already taken two months. She asked again about the assessment on 11 February. Mr Lawlor said he would ring and revert, but the holiday season had been quoted as responsible for the delays. She then asked him to follow up. He said he would speak to NZQA.

[32] The complainant asked Mr Lawlor once more about the assessment on 11 February 2020. On the same day, she sent him an email about the visa criteria. He immediately replied concerning the criteria. The complainant asked by text on 13 February whether NZQA had responded. Mr Lawlor said he was in bed with strong antibiotics and would follow up in the morning.

[33] The complainant texted and/or emailed Mr Lawlor on 17, 18 and 19 February, seeking NZQA's application number. He said he would call her back. He did not. He replied on 19 February to say he was in Henderson dealing with a deportation matter. He suggested they meet the next day. The complainant said she was unable to meet him, but he could telephone her. She asked again for the application number, reminding him she had asked for this four or five times. Mr Lawlor responded that he was in Henderson and not at his home office.

[34] The complainant called NZQA on 19 February 2020 and learned that no assessment application had been made.

[35] The complainant texted and emailed Mr Lawlor on 20 February 2020 to say she was waiting for NZQA's application number. On 24 February, she said in an email that he had not sent the assessment application number, which was highly unprofessional. She added that he promised to phone but never called back, nor did he bother to email or text. His behaviour was causing stress. They wanted him to explain why they had been waiting for the assessment. She sent a text on 3 March asking if he was even working on her expression. He said he would call that afternoon. She sent a text on 4 March expressing frustration that he never called when saying he would. Mr Lawlor said he was on a call. She then asked for progress on the expression and asked again whether he was even working on it. He said he would call that night. He appears to have rung her and they arranged to meet the following day.

[36] Mr Lawlor and the complainant met on 5 March 2020. He confirmed that no assessment application had been made to NZQA. He agreed to file a new expression by 11 March. She emailed him a timeline of her work experience that day.

[37] Commencing 9 March 2020, the complainant continued to text and/or email Mr Lawlor as to whether the expression had been filed. He replied by email that day to say he would do it that afternoon. She asked on 12 March about one criterion. He

replied concerning the criterion. She asked again that day whether it had been filed. The question about filing the expression was repeated in texts and/or emails on 18 and 19 March. She reminded him that he had promised at the meeting to file it by 11 March. She asked him to file the expression at the earliest opportunity without wasting time. He said he would call later that day, as he was tied up with family and the Coronavirus in Europe.

[38] In an email on 19 March 2020, the complainant reminded Mr Lawlor that at their meeting on 5 March, he said he would file the expression by 11 March. He was not acting fast on her visa application. She texted him on 24 March to remind him he had said he would call. Any reply from Mr Lawlor has not been sent to the Tribunal.

[39] On 8 April 2020, Immigration NZ advised that the skilled migrant category, including selecting expressions, was on hold as a result of the pandemic (with effect from 2 April).

[40] On 11 May 2020, Mr Lawlor texted the complainant to say he was out walking and would call when he got back. Then on 13 May, the complainant said she had been trying to reach him since Monday, but he was not answering calls or replying to texts. She wanted to know when he planned to work on the expression. He texted to say he would call. The complainant sent him an email on 13 May saying he was not answering his calls or texts. She wanted to know when he would work on the expression. Mr Lawlor said he would call in the evening.

#### *Third expression filed*

[41] On 14 May 2020, Mr Lawlor filed another expression of interest. On the same day, he sent an email to the complainant confirming that the application had been refiled.

[42] The complainant sent Mr Lawlor another text on 14 May 2020 asking him to call at the earliest. He replied by text that day to say he would call. On 8 June, she sent a text asking a question about the criteria. He replied to the question. She texted asking him to call her on 8 July. He asked her on 30 July whether she had got the extension and she confirmed that she had. She then asked him a question about Immigration NZ which he answered.

[43] On 7 September 2020, the complainant asked Mr Lawlor whether he had spoken to a visa officer about her partner's visa. He said he was waiting for a response. On 15 September, he said he would call her back. She asked him to call her on 2 November about her job. He did so. She asked on 11 December for some information about the criteria. It is not known whether he responded.



[44] The complainant advised Mr Lawlor on 12 January 2021 that she would apply for the “VOC” (variation of condition)<sup>3</sup> herself and required his service only for the ongoing skilled migrant residence application. The complainant told the Authority that Mr Lawlor ceased to represent her on that date.<sup>4</sup>

#### *Refund requested*

[45] On 7, 8 and 10 December 2021, the complainant sent emails and texts to Mr Lawlor seeking a refund of \$2,730, as she did not need to file a skilled migrant residence application. On 20 December, she asked him to reply to the email seeking a refund. She again requested it on 11 and 13 January 2022. On the 13th, he asked for justification. On 14 January, she said she had resent the details of justification.

[46] Mr Lawlor replied to the complainant on 14 January 2022 to say that he would probably make the refund around the end of the month. He noted that he had lodged the “ita” once and provided advice, but after consulting him she chose to lodge it herself. She responded that he had lodged it, but it failed. She did not know that until she called Immigration NZ. On 1 February 2022, the complainant sent a text to Mr Lawlor reminding him he said he would refund \$2,730 by the end of the month. He replied that day to say he was awaiting scheduled funds.

[47] The complainant reminded Mr Lawlor about the refund by email and text on 9, 15 and 16 February 2022. He replied on 16 February stating he was waiting for a large payment. The complainant asked again on 1 March as to when he would pay. He replied that hopefully in the following couple of days. On 4 March, the complainant sent an email to Mr Lawlor again reminding him he said he was going to refund the fee for the residence application. She had been requesting a refund since 10 December 2021. She would file a formal complaint with the Authority. She said the same in a text to Mr Lawlor on 4 March 2022. She remarked that he did not reply to her emails. She was tired of chasing him for a refund. It was mentally exhausting.

#### *Complainant makes residence application*

[48] Sometime in March 2022, the complainant personally filed a residence application under the 2021 Resident Visa instructions, which included her partner. It was granted on 22 November 2022.

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<sup>3</sup> This is understood to relate to a change of employer requiring a variation of the complainant’s work visa.

<sup>4</sup> Complaint (9 March 2022), Registrar’s bundle at 3.

## COMPLAINT

[49] Meanwhile, on 9 March 2022, the complainant made a complaint to the Authority against Mr Lawlor. She set out a detailed chronology. Essentially, she alleged that Mr Lawlor had failed to reply to Immigration NZ which resulted in the ITA failing, failed to inform her of events, delayed filing an expression, claimed an assessment had been filed but provided no evidence, and had no intention to refund the fee for the residence visa. He wasted three of their major years. This had caused them stress and anxiety. He had been negligent, dishonest and misleading.

[50] On 23 March 2022, the Authority copied the complaint to Mr Lawlor and required him to send his file. He did so on 31 March and 1 April 2022.

[51] On 5 May 2022, Mr Lawlor refunded \$2,730 to the complainant.

[52] The Authority formally set out particulars of the allegations against Mr Lawlor in a letter to him on 15 June 2022 and invited his explanation.

[53] The complainant sent an email to the Authority on 22 July 2022 emphasising that the main reason for the complaint was that Mr Lawlor was negligent. He lied about filing an assessment with NZQA and did not provide proof when asked. He wasted three years of her time and delayed their opportunity to settle in New Zealand. She confirmed on 22 and 24 July that \$2,730 was part of Mr Lawlor's fee of \$6,500 paid to him.

### *Explanation of Mr Lawlor*

[54] Mr Moses, counsel for Mr Lawlor, provided the latter's explanation to the Authority on 21 July 2022:

- (1) It was accepted that Mr Lawlor made an error in the failure of the residence application which was returned by Immigration NZ due to the absence of certain documents. Nor did he inform the complainant. This was an oversight, as he had been unaware of the returned application. These were material breaches.
- (2) The second expression was selected but the visa officer required an assessment by NZQA. Mr Lawlor did so, but not in a timely manner.<sup>5</sup> It occurred during a period of ill-health from December 2019 onwards. This was a breach of the Code.

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<sup>5</sup> Mr Lawlor later acknowledges he incorrectly instructed Mr Moses that the assessment application was filed with NZQA.

- (3) It was accepted that the services agreement was not amended to add the NZQA assessment to the scope of the work. Mr Lawlor did not charge an additional fee for this. This was a breach of the Code, but it did not cross the disciplinary threshold.
- (4) Mr Lawlor accepted that if no invoices were sent, this would be a breach of the Code.
- (5) It was accepted that the refund, agreed in December 2021, was paid about six months later. This was due to his inability to fund the payout as a result of the collapse of his business.
- (6) Mr Lawlor conceded that files relating to other clients were sent to the Authority. He thought this was due to misfiling electronically some documents. He accepted there was a breach, though there was no breach of privacy or confidentiality as the Authority was entitled to see such files and was subject to privacy obligations.
- (7) Mr Lawlor acknowledged that the standard and timeliness of his reporting was not adequate. He was mistaken when advising the complainant in December 2019 that the assessment had been done. It was the result of an error. He was dealing with a large number of matters, was overseas and becoming increasingly unwell. He misremembered or was confused about what was completed and what was not.
- (8) Counsel had been instructed to apologise to the complainant.

#### *Complaint referred to the Tribunal*

[55] The Registrar filed a statement of complaint (11 August 2022) in the Tribunal against Mr Lawlor alleging:

#### Negligence, or alternatively breach of the specified provisions of the Code:

- (1) Failing to exercise due care to ensure that the work visa application filed was complete, in breach of cl 1.
- (2) Failing to provide the complainant with timely updates regarding the work visa application, in breach of cl 26(b).
- (3) Failing to exercise due care to ensure that the residence application filed was complete, in breach of cl 1.

- (4) Failing to provide the complainant with timely updates regarding the residence application, in breach of cl 26(b).
- (5) Failing to exercise due care to file the second expression in a timely manner, in breach of cl 1.
- (6) Failing to provide the complainant with timely updates regarding the second expression, in breach of cl 26(b).
- (7) Failing to exercise due care to file the assessment with NZQA in a timely manner, in breach of cl 1.
- (8) Failing to provide the complainant with timely updates regarding the assessment application, in breach of cl 26(b).
- (9) Failing to provide a new or amended written agreement for the assessment, in breach of cl 18(a).
- (10) Failing to provide invoices for the fees paid, in breach of cl 22.
- (11) Failing to ensure the refund obligation could be met, in breach of cl 24(b), 25(a), (e) and (f).
- (12) Failing to promptly pay the refund, in breach of cl 24(c).
- (13) Failing to ensure documents belonging to clients were held securely, in breach of cl 27(a).

Dishonest or misleading behaviour, or alternatively breach of cl 1 of the Code:

- (14) Claiming he had included the police certificates in the residence application, that it was Immigration NZ at fault and he had communicated with it about them.
- (15) Claiming he had filed the assessment application with NZQA when he had not done so and providing the complainant with updates of the non-existent application.

**JURISDICTION AND PROCEDURE**

[56] 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.

[57] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.<sup>6</sup>

[58] 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>7</sup> It has been established to deal relatively summarily with complaints referred to it.<sup>8</sup>

[59] 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>9</sup>

[60] The sanctions that may be imposed by the Tribunal are set out in the Act.<sup>10</sup> The focus of professional disciplinary proceedings is not punishment but the protection of the public.<sup>11</sup>

[61] 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>12</sup>

[62] The Tribunal has received from the Registrar the statement of complaint (11 August 2022), with supporting documents.

### *Evidence of the complainant*

[63] On 24 October 2022, the complainant filed a response to the statement of Mr Lawlor. According to the complainant:

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<sup>6</sup> Immigration Advisers Licensing Act 2007, s 45(2) & (3).

<sup>7</sup> Section 49(3) & (4).

<sup>8</sup> *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].

<sup>9</sup> Section 50.

<sup>10</sup> Section 51(1).

<sup>11</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151].

<sup>12</sup> *Z v Dental Complaints Assessment Committee*, above n 11, at [97], [101]–[102] & [112].

- (1) The expression filed by Mr Lawlor did not lead to them being able to apply for residence under the special 2021 instructions. Immigration NZ told them there was no expression in the system (the expression filed in October 2019 had expired). They had to apply for another essential skills work visa and a partnership visa.
- (2) Mr Lawlor kept confirming in emails and texts that he was waiting to hear from NZQA. When he stopped replying to their messages and answering calls, they telephoned NZQA and found there was no such application. At the face-to-face meeting, Mr Lawlor accepted he had never applied. This came as a shock. They do not understand how an adviser can lie to a client. He was misleading and dishonest.
- (3) They lost three years of their lives, from 2019 to 2022. It caused stress, depression, anxiety, financial pressure and uncertainty. The complainant lost her job and had to find another one, which caused panic attacks and sleepless nights. Her partner had to refile his visa and could not work for three months which hugely impacted them financially. The complainant could not travel to India for her father's funeral.

[64] At the request of the Tribunal, the complainant provided further information on 14 February 2023. In particular, she informed the Tribunal that no assessment of her qualification was done by NZQA.

#### *Explanation of Mr Lawlor*

[65] In his memorandum (11 October 2022), Mr Moses records Mr Lawlor's acknowledgement of his lack of professionalism in the delivery of services to the complainant. He accepts all aspects of the complaint, except that he acted dishonestly and in a misleading manner. His communications with the complainant were inadequate and in breach of cl 1 of the Code. Mr Lawlor had ill-health. The letter (29 March 2022) from [redacted], filed in the earlier complaint against Mr Lawlor, was re-sent to the Tribunal. It is submitted that there is insufficient evidence for the Tribunal to conclude Mr Lawlor acted dishonestly or with an intention to mislead.

[66] There is a statement from Mr Lawlor (11 October 2022). He accepts breaching the Code. He is not proud of his performance and apologises. As for the failure of the residence application, he was not aware of the letter sent to his Auckland office. This error by him meant he could not re-file the application within the validity of the invitation. He failed to lodge the assessment with NZQA which was his error.

[67] According to Mr Lawlor, the third expression was lodged but it was stagnant for two years until the 2021 residence visa instructions which meant that the complainant was able to apply owing to the expression in the system. She no longer needed him to rectify his earlier mistakes free of charge, so it was agreed he would partially refund her fees. It was only a partial refund, as he had successfully obtained the work visas for both her and her husband. Furthermore, the expression allowed the complainant to rely on the 2021 residence instructions. The work he started contributed to the desired outcome of residence for the couple. Mr Lawlor said he was unable to make the refund until May 2022 owing to the impact of the pandemic on his business.

[68] Mr Lawlor noted in his statement that his health deteriorated in late 2019. He fell ill on 24 December 2019 in Ireland and remained ill until well after his return to New Zealand on 14 January 2020. He was very unwell. He was ill until the lockdown in March 2020 and then suffered from [redacted] as his income collapsed. He was also in the middle of a construction project (they were building a new home which stalled during the lockdown). Mr Lawlor said he was alone in rental accommodation as his wife travelled for work. All the stresses led to a deterioration in his [redacted] health. After Christmas 2020, a gradual recovery started. This led him to see a [redacted] for several months. His health issues were the reason why he was remiss in his communications with the complainant from December 2019.

[69] In his statement, Mr Lawlor goes on to accept the various breaches of his professional obligations alleged. He has no defence to the complaint of negligence. He admits, with the benefit of hindsight, that the complainant will feel he misled her in relation to the assessment, but that was not his intention. The correspondence occurred when he was [redacted] unwell and not thinking straight. He understands that it is inevitable that the Tribunal will uphold the majority of the breaches identified by the Authority.

[70] In her letter of 29 March 2022, [redacted] noted Mr Lawlor's request for [redacted] support in June 2021. He had chest infections from December 2019 to February 2020. He then experienced a dramatic loss of work due to the lockdown commencing in March 2020. These events had a significant impact on his [redacted] health and well-being. The notification of the earlier complaint in January 2021 exacerbated the deterioration of his [redacted].

[71] [Redacted].

[72] On 9 February 2023, the Tribunal invited Mr Lawlor to reply to the complainant's contention his emails and texts (stating he was waiting to hear from NZQA) were

misleading and dishonest. He was also asked for proof that he had filed an assessment application with NZQA, as he had claimed to the Authority (in his letter of 21 July 2022).

[73] Mr Moses replied on behalf of Mr Lawlor on 9 March 2023:

- (1) Mr Lawlor says that, on reflection and having reviewed his file, no assessment application was lodged with NZQA. His advice to the complainant at the time, that he was waiting to hear from NZQA, was incorrect. He was mistaken. His emails and texts were therefore objectively misleading.

Mr Lawlor says he was [redacted] unwell and overwhelmed by his situation. He was genuinely mistaken. He did not deliberately mislead the complainant. He was confused about what he had, or had not, done. In this sense, he was not dishonest.

When the expression was re-filed by him on 14 May 2020, an assessment was no longer required.

- (2) Mr Lawlor accepted that he was mistaken in his instructions to counsel in July 2022 that an assessment application had been filed. Mr Lawlor could find no evidence of lodging any assessment application.

## **ASSESSMENT**

[74] 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.

### **Written agreements**

18. A licensed immigration adviser must ensure that:
  - a. when they and the client decide to proceed, they provide the client with a written agreement

### **Invoices**

22. A licensed immigration adviser must, each time a fee and/or disbursement is payable, provide the client with an invoice containing a full description of the services the fee relates to and/or disbursements that the invoice relates to.

### **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.

#### **Client funds**

25. A licensed immigration adviser must, if taking payment for fees and/or disbursements in advance of being payable and invoiced:

- a. recognise that these client funds remain the property of the client until payable and invoiced

...

- e. withdraw client funds only when payments for fees and/or disbursements are payable and invoiced

- f. use client funds only for the purpose for which they were paid to the adviser, and

...

#### **File management**

26. A licensed immigration adviser must:

...

- b. confirm in writing to the client when applications have been lodged, and make on-going timely updates

...

#### **Document security and return**

27. A licensed immigration adviser must:

- a. ensure any financial and personal documents belonging to or relating to the client, whether held physically or electronically, are held securely whilst in the adviser's possession, and

...

[75] The Tribunal will assess the dishonesty heads of complaint first.

#### **Dishonest or misleading behaviour, or alternatively breach of cl 1 of the Code:**

(14) *Claiming he had included the police certificates in the residence application, that it was Immigration NZ at fault and he had communicated with it about them*

[76] The residence application was returned by Immigration NZ on 29 July 2019 as the mandatory police certificates were not included. Mr Lawlor told the complainant by email on 2 September that Immigration NZ said there were no police certificates. He had queried this with the manager and would revert. She replied that she had provided the “ITA” documents (she does not say to whom).

[77] The complainant and Mr Lawlor then met on 8 September 2019.<sup>13</sup> According to her account of the meeting, she told him she had submitted the certificates with the application. Mr Lawlor agreed as he had checked the documents himself. One of them said it looked like Immigration NZ had lost them. Her account concludes by stating that Mr Lawlor would refile the certificates as soon as possible.

[78] It is alleged that Mr Lawlor misled the complainant in claiming he had included the police certificates in the documents filed with the residence application, yet the complainant says precisely the same. It is not clear whether she was saying she included them in the documents she sent to Mr Lawlor or she uploaded them herself in her electronic file with Immigration NZ. Both of them seemed to have thought Immigration NZ did have the certificates. Even if Immigration NZ did not have the certificates, the communications do not establish that Mr Lawlor misled the complainant into believing they had been given to the government agency.

[79] It is further alleged that Mr Lawlor claimed to have communicated with Immigration NZ concerning its assertion that the police certificates were missing. On 26 September 2019, Mr Lawlor had sent an email to the complainant saying he had been in “discussion” with the government agency about waiving the fee (for the second expression) as it did not follow the procedures, and he would lodge it at his own expense. The Registrar points out that Mr Lawlor did not provide any documents regarding his alleged communications with Immigration NZ. This does not exclude a verbal communication, as Mr Lawlor’s reference to a discussion alludes to on 26 September.<sup>14</sup>

[80] The absence of disclosed documents, which the Registrar may not have specifically requested, is not a sufficient basis to prove such serious wrongdoing as dishonest or misleading behaviour. Nor has any breach of cl 1 of the Code been established. The 14th head is dismissed.

*(15) Claiming he had filed the assessment application with NZQA when he had not done so and providing the complainant with updates of the non-existent application*

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<sup>13</sup> Complaint (9 March 2022), Registrar’s bundle at 10.

<sup>14</sup> Email (26 September 2019) Mr Lawlor to the complainant; Registrar’s bundle at 97.

[81] Following a credibility check on the points claimed in the second expression, Mr Lawlor agreed with the visa officer on 5 November 2019 that the complainant's primary degree qualification from India would be assessed by NZQA. He must have immediately told the complainant as she sent him the certificate and transcript the next day. He said he would process it that night. In fact, he never filed an assessment application.

[82] Starting on 14 November 2019, the complainant asked him for updates. From 20 November onwards, he offered specific explanations for NZQA's delay in making the assessment, as if such an assessment had been filed. For example, on 20 November he said it had been filed a week earlier and a result was expected the following week. On 9 December, he said he was waiting for a result. He referred to problems on NZQA's website. If there were any such problems, they had nothing to do with there being no result from NZQA (which had no application). On 16 January 2020, he claimed to have chased NZQA. On 23 January, he said he had spoken to NZQA about his three files and delays were being caused by the updating of their systems. If there was any such call and delays due to systems' updates, it had nothing to do with the complainant. On 11 February, he said the holiday season was being quoted for the delays.

[83] The complainant rang NZQA herself on 19 February 2020 and learned that no assessment application had been made. She confronted Mr Lawlor about this at a meeting on 5 March, at which he admitted that no such application had been made. He agreed to do so by 11 March, but in fact never made such an application. She continued to seek updates, but he continued to either not reply or promised to call back and then did not do so.

[84] In his statement, Mr Lawlor accepts he did not file an assessment application.<sup>15</sup> He confirmed this in counsel's email to the Tribunal on 9 March 2023. Mr Lawlor says failing to lodge it was an error. He concedes that his communications were confused and inadequate. He admits that:<sup>16</sup>

with the benefit of hindsight [the complainant] will feel I misled her in relation to the [assessment] being filed. However, this was not my intention. The correspondence occurred at a time when I was [redacted] unwell, and not thinking straight.

[85] The same explanation concerning his health was advanced, on instructions, in counsel's email of 9 March 2023.

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<sup>15</sup> Statement Mr Lawlor (11 October 2022) at [11].

<sup>16</sup> At [35].

[86] According to Mr Lawlor, his health deteriorated in late 2019. He fell ill with a serious chest infection on 24 December 2019 while in Ireland. He remained ill until well after his return to New Zealand on 14 January 2020. He was still ill when New Zealand went into lockdown in March 2020. He additionally began to suffer from [redacted] as his income collapsed. At the same time, he and his wife were building a house which stalled during the lockdown. He had to close his office and move out of Auckland ([redacted] says this was in July 2020). The isolation from his wife, together with all the other stresses, led to a serious deterioration in his [redacted] health. He was unable to effectively respond in any way. He was confused as to what he had, or had not, done.

[87] There is a report (29 March 2022) from [redacted]. She was consulted in June 2021. She records that Mr Lawlor indicated several chest infections from December 2019 and then the dramatic loss of work due to the lockdowns. This had a significant impact on his [redacted] health.

[88] The Tribunal finds that Mr Lawlor's communications with the complainant were not merely confused and inadequate, as he describes them. They were false. He pretended an assessment application had been made when it had not. He made up reasons for what he claimed were NZQA's delays. This behaviour is not explained by confusion on his part or by what the Tribunal accepts was a deterioration in his [redacted] health. That deterioration did not start until 24 December 2019,<sup>17</sup> whereas the subterfuge had commenced on 20 November 2019. His conduct from late December onwards as his health was deteriorating was merely a continuation of the deception which had started at least a month earlier.

[89] While the Tribunal can accept that Mr Lawlor's [redacted] state might lead to prolonged and systemic delays in replying to communications, or even delays to making an application, it is no explanation for the false reasons given to the complainant about NZQA's delay (website problems, systems upgrades, holiday season) nor falsely advising her about a discussion with NZQA concerning three files. Any such discussion cannot have involved the complainant's qualifications, as NZQA would have told him no application had been lodged.

[90] There is further evidence of Mr Lawlor's deceit. He was evasive about giving the complainant NZQA's application number, so she could make her own enquiries (as in fact she did eventually without the number). That is evidence of his intention to mislead her, not of any muddled thinking due to ill-health. It is also noteworthy that on 29 January, 11 February and 12 March 2020, Mr Lawlor was able to promptly answer queries about

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<sup>17</sup> Statement of Mr Lawlor (11 October 2022) at [15].

the visa criteria, but not about the status of the assessment application. This is consistent with deceit, not with ill-health.

[91] On 19 February 2020, Mr Lawlor said he was unable to call the complainant because he was in Henderson dealing with a deportation.<sup>18</sup> Whether or not that was true, such an explanation is more consistent with deceit than ill-health.

[92] Counsel's submission that Mr Lawlor misremembered or was confused about what was completed is not accepted. It is found that Mr Lawlor deliberately misled the complainant into believing an assessment application had been filed with NZQA. The 15th head is upheld.

[93] The Tribunal will now deal with the breaches of the Code alleged, as an alternative to negligence. Mr Moses advises that Mr Lawlor accepts all aspects of the complaint (as to breaches of the Code and negligence).<sup>19</sup>

*Negligence, or alternatively breach of the specified provisions of the Code:*

- (1) *Failing to exercise due care to ensure that the work visa application filed was complete, in breach of cl 1*
- (2) *Failing to provide the complainant with timely updates regarding the work visa application, in breach of cl 26(b)*

[94] The work visa application was filed by Mr Lawlor on 11 May 2019. It was incomplete as identified by Immigration NZ on 15 and 21 May 2019. He provided the police certificate but not the employment documents, so Immigration NZ wrote on 27 May requesting them. He provided the documents on 27 and/or 30 May. The application was successful and the work visa was approved on 5 June.

[95] Arguably, Mr Lawlor lacked care in filing an incomplete application and failing to send all the documents sought in response to Immigration NZ's emails of 15 and 21 May, but shortly thereafter he provided all the required documents at the further request of Immigration NZ and the application was successful. Any breach of the Code is trivial. The first head of complaint is dismissed.

[96] It is alleged Mr Lawlor did not provide timely updates to the complainant concerning the work visa application. He did not inform her of Immigration NZ's emails

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<sup>18</sup> Registrar's bundle at 39.

<sup>19</sup> Mr Moses (11 October 2022) at [5].

of 15 and 21 May 2019. Mr Lawlor accepts he did not send the emails to his client.<sup>20</sup> This is a breach of cl 26(b) of the Code. The failure to inform his client of issues raised by Immigration NZ is not trivial. The second head is upheld.

(3) *Failing to exercise due care to ensure that the residence application filed was complete, in breach of cl 1*

(4) *Failing to provide the complainant with timely updates regarding the residence application, in breach of cl 26(b)*

[97] The residence application for the complainant and her partner was filed on 15 July 2019. It was returned by Immigration on 29 July, as it was incomplete. It was missing the police certificates. Mr Lawlor has no explanation.<sup>21</sup> He lacked due care, in breach of cl 1. The third head is upheld.

[98] Mr Lawlor failed to advise the complainant on or about 29 July 2019 that the lodgement had failed. He accepts making an error in not checking his office where the letter had been sent, while working from home.<sup>22</sup> This is a breach of cl 26(b). The fourth head is upheld.

(5) *Failing to exercise due care to file the second expression in a timely manner, in breach of cl 1*

(6) *Failing to provide the complainant with timely updates regarding the second expression, in breach of cl 26(b)*

[99] Mr Lawlor filed the second expression on or about 9 October 2019. It is alleged he did not file it in a timely manner.

[100] The residence application following the successful first expression had failed on 29 July 2019. A delay of over two months to file a new expression based substantially on information and documents Mr Lawlor would have had already, is unacceptable. It was not filed in a timely manner, in breach of cl 1. The fifth head is upheld.

[101] As for communicating to the complainant updates on Immigration NZ's response to the expression, the complainant had sought such updates from not later than 13 January 2020. Putting to one side Mr Lawlor's conduct concerning the assessment by NZQA, he either did not reply or gave vague, obfuscating information about the

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<sup>20</sup> Statement of Mr Lawlor (11 October 2022) at [24].

<sup>21</sup> At [26].

<sup>22</sup> At [28].

expression. The complainant's increasing frustration is evident in her communications. She asked him more than once if he was even working on the expression. This is a breach of cl 26(b). The sixth head is upheld.

- (7) *Failing to exercise due care to file the assessment with NZQA in a timely manner, in breach of cl 1*
- (8) *Failing to provide the complainant with timely updates regarding the assessment application, in breach of cl 26(b)*
- (9) *Failing to provide a new or amended written agreement for the assessment, in breach of cl 18(a)*

[102] Mr Lawlor said to the visa officer on 5 November 2019 he would seek an assessment of the complainant's primary qualification, but he never did so, despite persistent communications over many months from the complainant seeking updates. It is difficult to fathom why. He has offered no satisfactory explanation. During 2020, he suffered from ill health. This might in other cases explain the delay, but if he could communicate with the complainant intermittently and make false excuses for the delay, he could make what was a straight-forward application to NZQA. It is patently obvious that he failed to make a timely assessment application, in breach of cl 1. The seventh head is upheld.

[103] As for Mr Lawlor's failure to provide timely updates to the complainant concerning the assessment, the Tribunal has dealt with this professional failure under the dishonest or misleading behaviour ground of complaint, rather than as a breach of the Code or negligence. The eighth head is accordingly dismissed.

[104] Mr Lawlor's services agreement (19 March 2019) covered the first expression, though not the second or third expressions. This is not the subject of the Registrar's statement of complaint, so it is not relevant to the Tribunal's work. What is relevant is that the services agreement does not cover the assessment application to be made to NZQA. The agreement must contain a full description of the services to be provided.<sup>23</sup>

[105] As Mr Lawlor agreed to file an assessment application, he should have had a fresh agreement, or at least an expansion to the scope of the existing agreement, which had to be in writing.<sup>24</sup> Clause 18(a) requires him to provide such an agreement when the decision to proceed is made. While he did not go ahead and make the assessment

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<sup>23</sup> Licensed Immigration Advisers Code of Conduct 2014, cl 19(e).

<sup>24</sup> See cl 18(a) and (d).

application, he did undertake work by communicating with the complainant (albeit inadequately) on such an application. This is a breach of cl 18(a). The ninth head is upheld.

*(10) Failing to provide invoices for the fees paid, in breach of cl 22*

*(11) Failing to ensure the refund obligation could be met, in breach of cl 24(b), 25(a), (e) and (f)*

*(12) Failing to promptly pay the refund, in breach of cl 24(c)*

[106] The complainant paid \$6,500 for Mr Lawlor's fees in four instalments in 2019. He did not issue any invoices. This is a breach of cl 22. It is admitted.<sup>25</sup> The 10th head is upheld.

[107] A refund was first sought by the complainant on 7 December 2021. Mr Lawlor agreed to do so on 14 January 2022. Yet despite reminders from the complainant, the partial refund was not made until 5 May 2022, after the complaint was filed with the Authority. Whether the refund was adequate will be assessed at the sanctions stage of the disciplinary process.

[108] Focussing on the refund that was made, it was plainly late (the subject of the next head of complaint). The explanation for the delay is the financial straits faced by Mr Lawlor due to COVID-19 (the effect of border closure on immigration).

[109] However, Mr Lawlor's explanation means that he used the complainant's money for other business purposes. It was not his money to use until he had completed the work for which the money was taken in advance and had invoiced her. He did neither. The funds therefore remained her property and were required to be kept in a separate client account.<sup>26</sup> He was not entitled to use them. This is a breach of cls 24(b), 25(a), (e) and (f). The 11th head is upheld.

[110] As mentioned above, it is clear that Mr Lawlor was late making the refund. It took him six months from when it was requested, which was already after he had ceased services for her. This is a breach of cl 24(c). This is admitted.<sup>27</sup> The 12th head is upheld.

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<sup>25</sup> Statement of Mr Lawlor (11 October 2022) at [30].

<sup>26</sup> Licensed Immigration Advisers Code of Conduct 2014, cl 25(b).

<sup>27</sup> Statement of Mr Lawlor (11 October 2022) at [31].



(13) *Failing to ensure documents belonging to clients were held securely, in breach of cl 27(a)*

[111] The Authority notified Mr Lawlor of the complaint and required his file on 23 March 2022. He provided it on 31 March and 1 April 2022. The documents provided included those relating to other clients. He admits this.<sup>28</sup> This is a breach of cl 27(a).

[112] The Tribunal, however, agrees with Mr Moses that this breach does not warrant disciplinary action.<sup>29</sup> The Authority could have required him to produce the files of those other clients in relation to matters concerning those clients, and it is itself bound by confidentiality obligations. Plainly, there was no harm to the other clients. It would have been different had Mr Lawlor sent the documents inadvertently to a third party. The 13th head is dismissed.

### *Negligence*

[113] There is no need to assess negligence where the alternative breach of the Code is alleged. Nor is negligence made out where the breach has not been upheld. In respect of the eighth head, it is assessed under the dishonesty charge.

## **OUTCOME**

[114] All heads of complaint are upheld, apart from the 1st, 8th, 13th and 14th. Mr Lawlor misled the complainant and has breached cls 1, 18(a), 22, 24(b), (c), 25(a), (e), (f) and 26(b).

## **SUBMISSIONS ON SANCTIONS**

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

[116] A timetable is set out below. Any request that Mr Lawlor 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.

[117] This is the second complaint upheld against Mr Lawlor. Furthermore, in light of the finding of misleading behaviour, the Tribunal will give consideration to the cancellation or suspension of Mr Lawlor's licence, and/or to supervision and/or to

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<sup>28</sup> At [32].

<sup>29</sup> See Mr Moses' submissions to the Authority (21 July 2022) at section 7.

preventing any reapplication from him. The parties are asked to address this. Any proposal for supervision must identify a supervisor and provide evidence of the supervisor's consent.

*Timetable*

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

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

**ORDER FOR SUPPRESSION**

[119] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.<sup>30</sup>

[120] There is no public interest in knowing the name of Mr Lawlor's client or details of his health.

[121] The Tribunal orders that no information identifying the complainant or the details of his health is to be published other than to Immigration NZ.

D J Plunkett  
Chair

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<sup>30</sup> Immigration Advisers Licensing Act 2007, s 50A.