

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2024] NZIACDT 01

Reference No: IACDT 013/19

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **RN**
Complainant

AND **JIAYU LI**
Adviser

Hearing: 4 – 5 December 2023

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 08 January 2024

REPRESENTATION:

Registrar: T Gray, counsel
Complainant: Self-represented
Adviser: S Laurent, counsel

PRELIMINARY

[1] Mr Jiayu Li (Mr Li) acted for RN (the complainant) on an application for a work visa. The complainant alleges that Mr Li did not contact him, as all communication was with the unlicensed Mr X whom he thought was his immigration adviser or agent.

[2] A complaint against Mr Li to the Immigration Advisers Authority (the Authority) was referred by the Registrar of Immigration Advisers (the Registrar) to the Tribunal. It alleges that Mr Li's conduct was contrary to the Immigration Advisers Licensing Act 2007 (the Act) and breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

[3] Mr Li says he communicated directly with the complainant on a number of occasions. The essential issue is whether it has been established that Mr Li's evidence of discussions with the complainant is untrue.

[4] The Tribunal records that Mr Li and Mr X were subject to criminal proceedings on a matter which did not involve the complainant. The details of the charges are unknown. Mr Li was acquitted. The fate of Mr X is not known, but as he has absconded, it is assumed the charges against him have not proceeded. The criminal proceedings are not material to the Tribunal's deliberations, except they explain the delay in hearing this complaint.

BACKGROUND

[5] Mr Li was at the material time a provisionally licensed immigration adviser. He was also then a shareholder and director of Apec Immigration Group Limited (Apec Immigration), based in Auckland. His licence expired on 25 September 2019 and he is no longer licensed. Apec Immigration was previously known as New Zealand National Foundation Limited and NZ-China Free Trade Agreement (FTA) Association Limited.

[6] Mr Kuan Cheong Yap (Mr Yap), the holder of a full immigration adviser's licence, was Mr Li's supervisor for the purpose of the licensing regime. At the material time, he was a shareholder of Apec Immigration and a chartered accountant.

[7] Mr X was at the material time, a shareholder and director of Apec Immigration. He has never held a licence. He had another company, Aoxin Ziyou Trade (SZ) Limited (AZ), though this appears not to have been a New Zealand company. Mr Li says this company is a conduit or post box for the exchange of documents between himself and clients for immigration applications.

[8] The complainant, a national of China, was living in Singapore and working as a tiler, blocklayer and concrete worker. He alleges that Mr X told him he could earn more in New Zealand working at a large building project in Northland. According to the complainant, Mr X owned two companies, “New Zealand Free Trade Association Limited” (presumably Apec Immigration) and New Zealand Immigration Bureau Limited.¹ The seals of the companies appearing in marketing documents looked official, so the complainant thought he was dealing with a representative of the New Zealand government.²

[9] Mr X handed to the complainant marketing documents in Chinese in the name of the free trade association company concerning the Northland project, together with other Chinese language documents including a consulting service agreement (presumably Apec Immigration’s client agreement), information concerning the remuneration in New Zealand of bricklayers and a document bearing the title, “Telephone Questions and Answers” (Q & A document). The latter is a list of questions which the complainant was told by Mr X that a visa officer from Immigration New Zealand (Immigration NZ) might ask him over the telephone, together with the answers (except to the biographical questions).³

[10] The complainant entered into an employment agreement with a New Zealand stone company on 11 June 2017 to work as a stonemason/bricklayer.

Complainant enters agreement with Apec Immigration

[11] On 26 June 2017, the complainant entered into a client agreement with Apec Immigration. Mr Li had signed it on 9 June 2017. The complainant was described as a client of AZ. Mr Li’s supervisor was identified as Mr Yap. Apec Immigration would prepare a work visa application, for a fee of \$2,000.

[12] Mr Li prepared the work visa application.⁴ Despite Mr Li’s preparation of the document, the complainant says the only person he dealt with was Mr X.

[13] The work visa application for the complainant, linked to the stone company, was filed by Mr Li on 15 July 2017. It was declined by Immigration New Zealand on 2 August 2017, as there was a lack of evidence establishing his work experience and his visa status in Singapore. Mr Li wrote to the visa officer on 14 September 2017 answering the

¹ Complaint letter from Ms Tagg (on behalf of the complainant) to the Authority (13 August 2018), Registrar’s documents at 13.

² See a document bearing the seals of these companies, Registrar’s documents at 83.

³ Document 21 attached to the complainant’s complaint to the Authority (13 August 2018), Registrar’s documents at 85–86 & 215–216.

⁴ Complaint letter (13 August 2018), Registrar’s documents at 13.

officer's concerns and seeking a reconsideration of the decision. He enclosed a statement in English from the complainant (8 September 2017) explaining why a previous application in 2008 had been declined.

[14] A second work visa application, linked to the same stone company, was filed by Mr Li on 19 September 2017. The visa was granted by Immigration NZ on 10 October 2017.

[15] On arriving in New Zealand on 30 November 2017, the complainant went to work for the stone company. He then contacted Mr X about the Northland building project, but his calls were eventually blocked.

COMPLAINT

[16] On 14 August 2018, the complainant filed a complaint against Mr Li with the Authority (form dated 13 August 2018). He was assisted by Linda Tagg. He alleged that he only dealt with Mr X, the business partner of Mr Li. The complainant stated that he was working as a tiler in Singapore earning a high income. Mr X told him he could earn more in New Zealand working on the Northland project, but this turned out to be a scam. He had paid CNY 270,000 (\$54,000) to Mr X.

[17] According to the complainant, it was Mr X who prepared the complainant's CV and a covering letter to Immigration NZ. It was Mr X who sent him the employment contract in Chinese. Mr X also outlined Immigration NZ's interview process and gave him a list of questions and answers to "learn" (the Q & A document).

[18] The complainant said he was very distressed and realised he had been cheated. He would like to have his fees and costs refunded, reimbursement for his lost income and compensation for stress, so he could afford to leave New Zealand and return to his family. He itemised the compensation sought amounting to \$215,000.

[19] On an unknown date, Mr Li provided the Authority with his file. It included seven pages of "Discussion notes" dated from 6 June to 19 September 2017. They purport to be Mr Li's notes of his activity on the file, including discussions with the complainant. Their veracity is challenged by the Registrar and the complainant.

[20] The Authority sent the discussion notes to Ms Tagg who replied on 13 December 2018 stating that the complainant had never been contacted personally by Mr Li and never met him, as alleged in the notes. The complainant did not have any Skype conversations with Mr Li.

[21] The Authority formally notified Mr Li on 25 January 2019 of the details of the complaint and sought his explanation.

Explanation from Mr Li

[22] Mr Turner, then counsel for Mr Li, sent submissions to the Authority on 6 March 2019. Counsel contended that Mr Li's discussion notes were not fabricated. However, it was accepted that he did not confirm his verbal discussions with the complainant in writing to him, so there may have been a breach of cl 26(c) of the Code. Mr Li understood the importance of proper record keeping and would follow a better process in the future.

[23] While Mr Li could speak Chinese, he could not read or write it, which is why he did not communicate with the complainant by WeChat message.

[24] According to counsel, Mr Li had consistent contact with the complainant, as detailed in the discussion notes. Counsel made a number of observations about some of the documents provided by the complainant. In particular, Mr Li did not know about the Q & A document.

[25] As for the use of the complainant's signature, Mr Turner stated that AZ and Mr X had the complainant's permission to use the signature, as did Mr Li, as it was easier than sending documents by mail.

[26] In support, a statutory declaration from Mr Li (6 March 2019) was produced. He declared that it was not true that he never communicated verbally with the complainant, but he acknowledged that his discussions with him were not confirmed in writing. The file notes showed that he communicated with him on 6, 9, 26 June, 3, 5, 14 July and 18 September 2017. He did not know about the Q & A document.

[27] A brief statement (22 February 2019) from Mr Yap was also produced to the Authority. Mr Li reported to him in July 2017 that the complainant had signed the service agreement. Because the client was overseas, he advised Mr Li to confirm details by ringing him before filing the application.

Complaint filed in Tribunal

[28] The Registrar filed a statement of complaint in the Tribunal on 30 July 2019, with supporting evidence. It is alleged that Mr Li breached the identified provisions of the Code:

- (1) Relied on an unlicensed person to communicate with the complainant which appears to have enabled the provision of immigration advice, thereby acting unprofessionally and failing to exercise due care, in breach of cl 1.
- (2) Failed to interact directly with the complainant and obtain his informed instructions, in breach of cl 2(e).
- (3) Enabled the provision of immigration advice by an unlicensed person, in breach of cl 3(c).
- (4) Failed to confirm the details of material discussions in writing to the complainant, in breach of cl 26(c).

JURISDICTION AND PROCEDURE

[29] 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.

[30] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.⁵

[31] The Tribunal must hear complaints on the papers, but may in its discretion request further information or any person to appear before the Tribunal.⁶ It has been established to deal relatively summarily with complaints referred to it.⁷

[32] 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.⁸

⁵ Immigration Advisers Licensing Act 2007, s 45(2) & (3).

⁶ Section 49(3) & (4).

⁷ *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].

⁸ Section 50.

[33] The sanctions that may be imposed by the Tribunal are set out in the Act.⁹ The focus of professional disciplinary proceedings is not punishment but the protection of the public.¹⁰

[34] 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.¹¹

[35] The Tribunal issued procedural Minutes on 12 October 2020 and 21 August 2023.

From the Registrar

[36] The Tribunal has received from the Registrar the statement of complaint (30 July 2019) and supporting documents. At the hearing, Mr Gray produced a number of additional documents. Following enquiries by Mr Gray of the Authority at the conclusion of the first day of the hearing, it transpired that the Authority had records of further text communications between the complainant and Mr X which had been obtained from the complainant for the purpose of another investigation by the Authority. A supplementary bundle was produced at the commencement of the second day of the hearing.

From the complainant

[37] No statement of reply or submissions were received from the complainant, but on 27 August 2019, Ms Tagg filed a remittance note allegedly from the complainant to Mr X (date unreadable). The Tribunal records that the document, on its face, appears to be a “family maintenance” remittance from the complainant to a person in China with the same family name as the complainant. Ms Tagg provided to the Tribunal on about 17 November 2020 copies of the complainant’s communications, as directed by the Tribunal in Minute 1 (12 October 2020). On 2 December 2023, Ms Tagg provided the complainant’s response to Mr X’s affidavit (undated). A revised response to Mr X’s affidavit (undated) was then produced at the commencement of the hearing.

From Mr Li

[38] Mr Laurent has filed a memorandum (6 September 2019) on behalf of Mr Li.

[39] Counsel notes that Mr Li, in his statutory declaration, refutes the complainant’s claim that there was never any direct contact between them. It is difficult to see how the

⁹ Section 51(1).

¹⁰ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151].

¹¹ At [97], [101]–[102] & [112].

complainant could have provided the information and documents for the work visa application without the detailed advice set out in Mr Li's record of his contact with the complainant. The WeChat messages relied on by the complainant do not impart the content of such instructions. Therefore, Mr Li's account should be preferred.

[40] It is accepted that the WeChat communications do disclose that Mr X gave immigration advice in some instances. However, this was not a situation in which aspects of Mr Li's work were left to others to carry out without oversight. For example, on 14 July 2017, after the complainant had supplied information and documents to Mr Li, he telephoned the complainant to check that the details were correct. So, even if a third party had been involved in helping the complainant collate the materials, Mr Li had satisfied himself that it was the complainant's evidence for the purposes of the application.

[41] The documents supplied by the complainant came through AZ, a company related to Mr X. Mr Li disclosed his working relationship with Mr X. The arrangement was a conduit or post box for the provision of documents. This was done via Dropbox. Mr Li also forwarded documents to the complainant in this way. Mr Li's business model restricted Mr X to the exchange of documents.

[42] It is submitted that the careful establishment of the client relationship, albeit at a distance, argues against a finding that he was careless or reckless about the involvement of unlicensed people in the provision of immigration advice. Mr Li knew nothing of the direct communications which Mr X had with the complainant.

[43] Mr Li can speak Mandarin, though he cannot read or write in Chinese. This is why all his dealings with the complainant were conducted orally.

[44] As for the Q & A document, Mr Li says he was unaware of it. Nor was it something he could have foreseen.

[45] In summary, Mr Li did not facilitate unlicensed advice and had no need to do so. He could not have reasonably foreseen that Mr X would gratuitously provide immigration advice without his knowledge.

[46] It is acknowledged that Mr Li breached the Code in failing to confirm material discussions in writing.

[47] Mr Li produced to the Tribunal an affidavit from Mr X (13 November 2020). Mr X deposes that he was running a women's fashion company with 14 stores from 2010 to 2019. Mr Li was the operations and recruitment manager from 2014 to 2018. "We" (presumably Mr X and Mr Li) set up Apec Immigration. Mr X sets out at length his

connection with the complainant and the latter's New Zealand immigration matters. He arranged the Skype video call on 6 June 2017 with the complainant and Mr Li. According to Mr X, the complainant is not reliable and his information is false. The complainant denies contact with Mr Li in order to blackmail Mr X.

[48] At the hearing, the Tribunal heard from the complainant, Mr Li and Mr Yap.

Evidence of the complainant

[49] The complainant cannot read or write English. The Tribunal observed at the hearing that his spoken English appears to be limited. He has previously worked in Japan, as well as Singapore.

[50] The complainant has known Mr X since 2006. In about 2008, Mr X made two or three unsuccessful attempts on the complainant's behalf to obtain a visa for New Zealand. Mr X had told him then he could make a lot of money in New Zealand, so the complainant contacted him in about April 2017 to try again to obtain a New Zealand work visa.

[51] The complainant confirmed that he only dealt with Mr X in relation to New Zealand immigration matters and at no time did he have any meeting or discussion with Mr Li. Mr X did not mention Mr Li. The complainant did not know of Mr Li's existence until after his arrival in New Zealand. When Mr X blocked the complainant's phone calls, he read the Q & A document and found the reference to Mr Li. This would have occurred in about August 2018.

[52] At the request of Mr X, the complainant wrote sample signatures on blank paper, photographed them and then sent them by text to Mr X.¹² The complainant said in evidence he did so as he provided Mr X with whatever Mr X sought from him. He did not think about it. The complainant accepted that his signature appearing on certain documents (which had been used for his visa applications) would have been pasted from the sample signatures he had given Mr X. This included:

1. The power of attorney in favour of Mr X (6 June 2017), in both Chinese and English, which the complainant said he did not know about.¹³
2. The employment agreement with the stone company (11 June 2017).
3. The client agreement with Apec Immigration (26 June 2017).

¹² Exhibit 7 to Mr X's affidavit (13 November 2020).

¹³ Exhibit 5 to Mr X's affidavit (13 November 2020).

4. The work visa declaration form (5 July 2017).

[53] The Q & A document was sent to him by Mr X on about 19 July 2017. He was asked to print it off and memorise it in case a visa officer phoned him to ask questions.

[54] While the complainant agrees that his compensation claim relates to the losses and expenses from his dealings with Mr X, he denies that the purpose of the complaint is to blackmail Mr Li to provide substantial compensation.

Evidence of Mr Li

[55] At the time Mr Li undertook immigration advisory work, he was a fulltime operations manager in Mr X's clothing company. He did the immigration work from his desk at the clothing warehouse. He would have undertaken only about 10 visa applications in total over three or four years, all from Mr X. While Mr X paid him for his work as an operations manager, he was not paid for the immigration advisory work. In particular, he was not paid for the complainant's visa applications. According to Mr Li, Apec Immigration was Mr X's company.

[56] Mr Li confirmed that his discussion notes were truthful records of his activity on the complainant's file, including his discussions with the complainant.¹⁴ At the time of the discussions, he created handwritten notes on pieces of paper, which he later typed on his computer or laptop into the running record of the file activities. He entered the information from the handwritten notes into the electronic record within one or two days of the discussion or other event.

[57] Mr Li acknowledged he never met the complainant, who was based in Singapore when he acted for him, but he says he had the following discussions with him (all but the first call were Skype audio calls):¹⁵

1. 6 June 2017 – Skype video call with Mr X and the complainant. Mr X introduced the complainant. The complainant outlined his background. Mr Li explained the documentary requirements for an essential skills work visa. The complainant stated he did not have email and he worked six to seven days per week. He had no time to provide documents, so it would be done through his agent, AZ. Mr Li notified him of the fee and other required information, and disclosed his working relationship with Mr X.

¹⁴ "Discussion notes with [the complainant] [deleted] client number–Singapore", Registrar's documents at 117–123.

¹⁵ This information comes from the discussion notes and Mr Li's evidence to the Tribunal.

2. 9 June 2017 – The complainant was asked by Mr Li whether he had any questions about Apec Immigration's client agreement previously sent to him. Mr Li went through the details of the agreement. The complainant said he would sign the agreement and send it through the agent. The complainant was asked to compile the necessary documents, which were identified.
3. 26 June 2017 – Having received the client agreement, Mr Li rang him to confirm he had read and understood it. The complainant advised that I of AZ (described by Mr Li as the complainant's agent) had signed it on his behalf using his digital signature with his permission. Mr Li identified the documents required. He asked the complainant to write a letter explaining why his visa applications in 2008 were declined.
4. 3 July 2017 – Mr Li rang the complainant explaining the contents of the visa declaration form.
5. 5 July 2017 – Having received the signed declaration form, Mr Li spoke with the complainant to confirm that he agreed with the declaration. The complainant stated that AZ had signed the form on his behalf with his permission to use his digital signature.
6. 14 July 2017 – Mr Li rang the complainant to check that the information in the draft application form sent previously to him was correct. The complainant confirmed it was.
7. 3 August 2017 – Mr Li believes he called the complainant. The discussion notes record he informed the complainant of the reasons given by Immigration NZ to decline the visa. The complainant instructed him to try again.
8. 17 August 2017 – Mr Li discussed with the complainant the concerns expressed by Immigration NZ. The complainant informed Mr Li of the reason for the declined visa in 2008 given to him by his agent. Mr Li told the Tribunal he discussed this with the complainant's agent (in China) who confirmed the explanation given by the complainant.
9. 22 August 2017 – Mr Li informed the complainant he would need to prove his work experience. He would need certain documents, including a detailed explanation answering Immigration NZ's concerns.

10. 11 September 2017 – Having received the complainant's explanation letter, Mr Li rang him to confirm the details.
11. 18 September 2017 – Mr Li rang the complainant to confirm the details before lodging the visa application again.

[58] While not recorded in the discussion notes, Mr Li says he also spoke to the complainant after his visa application was successful, and again when he was in New Zealand and looking to bring his wife here.

[59] Mr Li told the Tribunal he also spoke to I, the complainant's agent in China, about obtaining documents and information for the complainant's visa applications. The documents and information were supplied directly by I, not by Mr X.

[60] Mr Li said he did not know about the Q & A document. The complainant did not need any such document.

[61] Following the hearing, Mr Li sent an email (5 December 2023) to the Tribunal making a number of points. He said Mr Laurent had not mentioned them at the hearing as counsel did not regard them as relevant. The Tribunal agrees with counsel.

Mr Yap

[62] Mr Yap is a licensed immigration adviser with a full licence and is a chartered accountant. He had been involved with Mr X and his companies for about 10 years, in a company secretarial capacity. He was the supervisor of Mr Li.

[63] Mr Yap said he did not know which premises Mr Li worked from. He thinks it may have been from his home. He did not supervise Mr Li on a day-to-day basis, but Mr Li could phone him if he wanted advice. He never saw Mr Li speak on the phone to the complainant. Mr Li did have questions about the complainant's matter, but he could not remember when. He did not receive any correspondence prepared by Mr Li in relation to the complainant. He could not remember reviewing any documents. He believed it to be a straight-forward matter. Contrary to his earlier evidence, he confirmed he had no direct involvement with Mr Li on the complainant's matter. He agreed he had no idea whether Mr Li interacted with the complainant.

[64] Mr Yap said he did not know the process at Apec Immigration regarding client files.

[65] When Mr Yap was asked in cross-examination whether he was a supervisor in name only, he replied, "To a certain degree".

[66] According to Mr Yap, the purpose of his statement (22 February 2019) was to show the client he was involved with the case. Mr Li asked him to prepare it.

ASSESSMENT

[67] 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.

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.

File management

26. A licensed immigration adviser must:

...

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

...

(1) *Relied on an unlicensed person to communicate with the complainant which appears to have enabled the provision of immigration advice, thereby acting unprofessionally and failing to exercise due care, in breach of cl 1*

(2) *Failed to interact directly with the complainant and obtain his informed instructions, in breach of cl 2(e)*

(3) *Enabled the provision of immigration advice by an unlicensed person, in breach of cl 3(c)*

[68] These three heads of complaint will be assessed together. They stand or fall on the issue of whether Mr Li had the discussions with the complainant he asserts he had.

[69] The Tribunal did not find either the complainant or Mr Li to be entirely truthful witnesses.

[70] As for the complainant, his evidence as to when he first came to know of Mr Li is untruthful. It was his evidence that the Q & A document had been sent to him by Mr X on about 19 July 2017. He says he did not know of Mr Li until trawling through the Q & A document in about August 2018, after Mr X refused contact with him. There are two matters which show that the complainant knew of Mr Li from about July 2017:

1. The Q & A document itself expressly refers in two places to “Mr Li Jiayu” from Apec Immigration as the complainant’s immigration adviser. It will be recalled that it was the complainant’s evidence that he was told by Mr X to memorise the answers in case the visa officer rang. He confirmed that it was important to memorise the document and that he did so. He said, however, that he took no notice of Mr Li’s name. This is inherently improbable. Knowing the name of his adviser formally acting for him in filing the application and communicating with Immigration NZ would have been as critical as the other information in the Q & A document.
2. The text records produced to the Tribunal by Mr Gray at the commencement of the second day of the hearing show that in about December 2017, Mr X had sent the complainant the WeChat contact of an immigration agent identified as “Jay” of “NZI Bureau”. At the time, the complainant was exploring bringing his wife and child to New Zealand. Mr X then sent to the complainant a screenshot of a text from Jay in about March 2018. The complainant denied that this Jay was Mr Li (who also uses the name, Jay). The complainant said the photo profile used by the Jay referred to in the texts was female. However, a comparison of the photo profiles on the phones of the complainant and Mr Li show they are one and the same person.

[71] Nor did the Tribunal believe the complainant’s evidence concerning affixing his signatures to various documents. Like Mr Laurent, the Tribunal struggles to understand why he gave his sample signatures to someone else allegedly without knowing what they would be used for.

[72] When the complainant was first asked what he thought the signatures would be used for, he said he did not think about it. He provided Mr X with whatever the latter asked for. Mr X never explained what the sample signatures would be used for. He did not ask him. The complainant even claimed not to have seen a number of the documents to which his signature was attached, including the employment agreement and the power of attorney in favour of Mr X. He acknowledged knowing about the employment agreement, but he did not ask Mr X what was in it.

[73] This evidence is inherently improbable. The complainant is a mature person with considerable immigration experience in three countries. He did not come across as unintelligent or naïve. The complainant's claimed ignorance of the use to which the signatures would be put is untruthful.

[74] However, there were also important parts of Mr Li's narrative which are not credible.

[75] The Tribunal does not believe Mr Li's explanation as to why he cannot produce the complainant's original hard copy file, such as the handwritten file notes he claims to have made contemporaneously with the discussions and other activities on the file. Nor did it find credible his lack of effort to obtain records of the many Skype communications he says he had with the complainant.

[76] The allegation from the complainant and Mr Gray is that the discussion notes were created after Mr Li became aware of the complaint and are not a true record of discussions since there were no such discussions. During the course of the proceedings, the Tribunal had twice directed Mr Li to produce the original notes and the Skype logs, but he did not.¹⁶

[77] Mr Li's explanation in relation to the original notes is that the physical Apec Immigration file was left in or near his desk in the clothing warehouse. He left the company which went into liquidation and does not know what became of the file, yet he was able to access from the company's staff the discussion notes which were held digitally. He claims to have searched the warehouse for the file, but it appears to the Tribunal he made little effort to find it.

[78] According to Mr Laurent, the telephone and online communications might have been accessible through his personal devices, but owing to the passage of time, these were no longer available to him.¹⁷ Mr Li made no real effort to obtain from Skype records of his Skype calls. He asked Mr X, the account holder, whom he was in contact with

¹⁶ Minute 1 (12 October 2020) at [8](5), Minute 2 (21 August 2023) at [7](6).

¹⁷ Letter (15 November 2023) Mr Laurent to the Tribunal.

through 2020 after the complaint was laid, but he did not know if Mr X had asked for them. He did not seek them from Skype himself. He said he did not think of asking Skype.

[79] As Mr Gray points out, any positive evidence of direct contact with the complainant would have exonerated Mr Li. Despite the critical nature of this evidence, he made little effort to obtain it.

[80] The Tribunal's doubts concerning the authenticity of the discussion notes are amplified by their apparently incomplete nature and the discrepancies between the notes and Mr Li's statutory declaration of 6 March 2019:

1. Mr Li listed the discussions with the complainant in the declaration, but he failed to mention the discussions on 3, 17 and 22 August¹⁸ and 11 September 2017. He thought that maybe he had forgotten about them when making the declaration.
2. His phone call to the complainant after the visa was granted was not mentioned in the notes and nor was the phone call Mr Li said he had with the complainant when the latter was in New Zealand and sought to bring his wife here.
3. Mr Li's claimed phone calls with the agent were not in the discussion notes.

[81] The Tribunal also doubts Mr Li's evidence concerning the complainant's claimed agent in China, I, of AZ. The complainant denies having any agent. Mr Li says he often dealt with I who provided him with documents and who affixed the complainant's signature to documents. Yet he never sighted a power of attorney in favour of I. The only power of attorney produced to the Tribunal is in favour of Mr X, a document which Mr Li said he had never seen before. Mr Li told the Tribunal he did not even know if AZ was Mr X's company. Mr Li has produced no communications with I and the discussions with her are not referred to in the discussion notes.

[82] Mr Li's explanation for dealing with I as the complainant's agent despite not sighting a power of attorney, was that the complainant had informed him he had an agent. The Tribunal does not accept this. Mr Li had never met the complainant and was dealing with a client in Singapore. He had never met I who lived in China. It is highly improbable that he would accept documents with his client's signatures affixed by an agent without seeing a written authorisation from the client.

¹⁸ Incorrectly recorded as 22 July 2017 in the discussion notes, Registrar's documents at 122.

[83] As for Mr Yap's brief statement (22 February 2019) provided to the Authority, which states that he advised Mr Li to ring the complainant to confirm details before filing the application, no weight is placed on this evidence. It is apparent from Mr Yap's evidence to the Tribunal that he provided no effective supervision of Mr Li on this or any other matter. Mr Yap ultimately conceded in cross-examination that he had no direct involvement with Mr Li on the complainant's matter.

[84] There is also Mr X's affidavit (13 November 2020). Mr X absconded from New Zealand, presumably to avoid the criminal proceedings. He did not make himself available to the Tribunal for questioning. No weight is placed on his affidavit (though some of the exhibits are material to the Tribunal's deliberations).

[85] These heads of complaint alleging Mr Li had no direct communications with his client and used an unlicensed agent, a practice known as rubber stamping, are serious. As Mr Laurent submits, the quality of the evidence required to meet the applicable standard (the balance of probabilities) is higher for a graver type of wrongdoing. Given the unreliable nature of important aspects of the complainant's narrative, the Tribunal is not in a position to find that the discussions asserted by Mr Li did not occur.

[86] The first to third heads of complaint are accordingly dismissed.

(4) *Failed to confirm the details of material discussions in writing to the complainant, in breach of cl 26(c)*

[87] According to Mr Li's evidence, he discussed the visa application with the complainant on 6, 9, 26 June, 3, 5, 14 July, 3, 17, 22 August, 11, 18 September 2017 and on other occasions. He accepts that he did not confirm any of his discussions in writing with the complainant. Much of what was discussed was plainly material to the visa applications. The breach of cl 26(c) is admitted.

OUTCOME

[88] The first to third heads of complaint are dismissed. The fourth head is upheld. Mr Li has breached cl 26(c) of the Code.

SUBMISSIONS ON SANCTIONS

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

[90] A timetable is set out below. Any request that Mr Li undertake training prior to any relicensing should specify the precise course suggested. Any requests 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

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

- (1) The Registrar, the complainant and Mr Li are to make submissions by **30 January 2024**.
- (2) The Registrar, the complainant and Mr Li may reply to the submissions of any other party by **13 February 2024**.

ORDER FOR SUPPRESSION

[92] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.¹⁹ It must balance the transparency of the Tribunal and the public's interest in knowing of wrongdoing by advisers, with the privacy of individuals.

[93] There is no public interest in knowing the name of the complainant or Mr X. There is a public interest in knowing of the immigration companies/company names used by Mr Li. Disclosure of the name of Mr Li's supervisor is also in the public interest.

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

D J Plunkett
Chair

¹⁹ Immigration Advisers Licensing Act 2007, s 50A.