

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2024] NZIACDT 05

Reference No: IACDT 008/23

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **UT**
Complainant

AND **JOHN DESMOND LAWLOR**
Adviser

Decision on the papers

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 18 January 2024

REPRESENTATION:

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

PRELIMINARY

[1] The complainant and her partner engaged the adviser to seek residence. The application was successful, but the adviser was unprofessional in his communications with the couple and failed to maintain a proper file.

[2] A complaint against the adviser was made to the Immigration Advisers Authority (the Authority). It has been referred by the Registrar of Immigration Advisers (the Registrar) to the Tribunal. It is alleged the adviser was negligent, or breached certain provisions of the Licensed Immigration Advisers Code of Conduct 2014 (the Code), both being grounds of complaint under the Immigration Advisers Licensing Act 2007 (the Act).

[3] The complaint is not contested by the adviser, who no longer practises.

BACKGROUND

[4] John Desmond Lawlor was at the relevant time a licensed immigration adviser and director of Lawlor & Associates Ltd, of Thames. His licence expired on 7 January 2023 and he has been prohibited by the Tribunal from reapplying for a new licence (until about 25 August 2025).

[5] The complainant is UT, a national of Brazil. Her partner is TC, a national of India. According to Immigration New Zealand (Immigration NZ), the couple is married.

[6] On 12 January 2022, the partner entered into an immigration services agreement with Mr Lawlor. He would prepare and lodge a resident visa application under the 2021 Resident Visa instructions. The fee was \$2,500, including GST, but excluding the fee of Immigration NZ. It was payable in instalments. The partner had paid a total of \$4,630 by 14 February 2022.

[7] Mr Lawlor lodged the visa application with Immigration NZ on 29 April 2022. It was on behalf of the partner (the principal applicant) and the complainant.

[8] The complainant sent an email to Mr Lawlor on 20 June 2022 asking if there was any way they could check the status of the application themselves, without bothering him. He replied on the same day saying, "Yes" and would let her know. He did not subsequently let her know.

[9] On 7 January 2023, Mr Lawlor's licence expired, but he did not inform the complainant or Immigration NZ.

[10] On 16 January 2023, the complainant sent an email to Mr Lawlor asking for their “application page” so they could check the status of the application themselves. She wanted to have a look at the page instead of messaging him every week or so. Mr Lawlor replied the same day to say he would call to discuss it that afternoon. According to him it was not that simple as the Adept system (Immigration NZ’s electronic system) was linked to his company. He added that he expected the result in the near future.

[11] The complainant responded, also on 16 January 2023, to say she would wait for his call. She did not want access to his company’s account. She thanked him for the explanation that the application appeared in his account, not that of her or her partner.

[12] Mr Lawlor did not subsequently call her to discuss obtaining access.

[13] On the same day, 16 January 2023, the partner rang Immigration NZ’s contact centre seeking an update on the application. It is not known what information he was given, except he was sent an electronic link to making a complaint against the adviser.

[14] On 20 March 2023, Immigration NZ requested further information. It is understood Mr Lawlor provided it on 18 April.

[15] On 2 May 2023, the complainant sent an email to Mr Lawlor asking him to confirm he had sent the partnership documents to Immigration NZ and whether he had any update on the visa application. This email was undelivered. Mr Lawlor had not informed the couple of a change of email address.

[16] On 4 May 2023, Immigration NZ wrote to the partner requiring evidence that the partnership was genuine and stable. It is understood the letter was sent to Mr Lawlor. He did not pass it onto the complainant or her partner.

[17] Then on 16 May 2023, the complainant rang Mr Lawlor 11 times between 1:52 pm and 2:01 pm, but she was unable to connect with him. She then rang Immigration NZ’s contact centre and was informed about the agency’s letter of 4 May. A copy was sent to her.

[18] On 17 May 2023, the partner contacted Immigration NZ seeking to become the primary contact on the visa application. The agency recorded that the clients were having issues with receiving information. On the same day, further supporting documentation was provided to Immigration NZ, presumably by the complainant or her partner.

[19] The further evidence sent by the couple was assessed by the visa officer on 18 May 2023 and the resident visa for both of them was approved the next day, 19 May 2023.

COMPLAINT

[20] On about 29 May 2023, the complainant made a complaint against Mr Lawlor to the Authority alleging:

- (1) He misled them into believing they had to ask him to contact Immigration NZ. He said he could not give them access to their “application page”.
- (2) He did not reply to communications.
- (3) When Immigration NZ requested more information in March 2023, they sent the documents to him the following day, but he did not send them all to the government agency since the agency asked again in May.
- (4) He failed to inform them of the request for documents in May 2023.

[21] Despite a request from the Authority on 15 September 2023 for an explanation concerning the complaint and reminders, Mr Lawlor provided no explanation.

Complaint referred to Tribunal

[22] On 13 October 2023, the Registrar referred the complaint against Mr Lawlor to the Tribunal alleging negligence, or alternatively a breach of the specified provisions of the Code:

- (1) Failing to respond to the complainant’s request to check the application status herself, in breach of cl 1.
- (2) Failing to provide the complainant with an invoice containing a full description of the services the fee related to, in breach of cl 22.
- (3)(i) Failing to maintain a hard copy and/or electronic file for the complainant, in breach of cl 26(a).
- (ii) Failing to maintain a well-managed filing system, in breach of cl 26(d).
- (iii) Failing to make the records available for inspection on request by the Authority, in breach of cl 26(e).

- (4) Failing to make timely on-going updates about the visa application and failing to inform the complainant about Immigration NZ's request for evidence on 4 May 2023, in breach of cl 26(b).
- (5) Failing to inform Immigration NZ he could no longer represent the complainant and her partner as his licence had expired on 7 January 2023, in breach of cl 28(b).
- (6) Failing to inform the complainant and her partner about his expired licence and advise them where they could get assistance, in breach of cl 28(c).

JURISDICTION AND PROCEDURE

[23] 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.

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

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

[26] After hearing a complaint, the Tribunal may dismiss it, uphold it but take no further action or uphold it and impose one or more sanctions.⁴

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

² Section 49(3) and (4).

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

⁴ Immigration Advisers Licensing Act, s 50.

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

[28] It is the civil standard of proof, the balance of probabilities, that is applicable in professional disciplinary proceedings. However, the quality of the evidence required to meet that standard may differ in cogency, depending on the gravity of the charges.⁷

From the Registrar

[29] The Tribunal has received from the Registrar the statement of complaint (13 October 2023), together with a paginated bundle of supporting documents.

From the complainant

[30] There are no submissions from the complainant.

From the adviser

[31] Mr Lawlor did not file a statement of reply, but in an email to the Tribunal on 14 November 2023, he said his last act as a licensed adviser was to file with Immigration NZ on 18 April the requested documents supplied by the complainant. There were no further requests for information. The complaint was owing to the fact that the complainant did not think the information had been provided.

ASSESSMENT

[32] 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.

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.

⁵ Section 51(1).

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

⁷ At [97], [101]–[102] and [112].

File management

26. A licensed immigration adviser must:

- a. maintain a hard copy and/or electronic file for each client, which must include:
 - i. a full copy of the client's application or other immigration matter
 - ii. copies of all written agreements and any changes to them
 - iii. copies of all written communications (including any file notes recording material oral communications and any electronic communications) between the adviser, the client and any other person or organisation
 - iv. copies of all invoices and receipts relating to the client
 - v. copies of all personal documents relating to the client supplied to the adviser, and
 - vi. evidence of the safe return of the client's original documents
- b. confirm in writing to the client when applications have been lodged, and make on-going timely updates
- ...
- d. maintain a well-managed filing system
- e. maintain each client file for a period of no less than 7 years from closing the file, and make those records available for inspection on request by the Immigration Advisers Authority, and
- ...

Termination of services

28. A licensed immigration adviser must ensure that:

- ...
- b. where they cease to act for the client for any reason other than the completion of agreed services, they inform Immigration New Zealand or the Immigration and Protection Tribunal, as appropriate, that they are no longer representing the client, and
- c. if, for any reason, the adviser cannot continue to act for the client, the adviser fully updates the client on the status of their immigration matter and advises them of where they could get assistance.

[33] None of the heads of complaint are denied by Mr Lawlor and he has provided no explanation to the Authority or the Tribunal. His brief email to the Tribunal of 14 November 2023 is factually incorrect (see later).

- (1) *Failing to respond to the complainant's request to check the application status herself, in breach of cl 1*

[34] On 20 June 2022 and 16 January 2023, the complainant sought direct access to information from Immigration NZ concerning the status of the application. Mr Lawlor's only response was that the agency's electronic system was linked to his company. The Tribunal does not know whether a client can obtain parallel access, but Mr Lawlor failed to inform them they could ring Immigration NZ's contact centre directly themselves, as indeed they eventually did.

[35] Mr Lawlor's withholding of information about access, twice, was not professional or respectful. It is a breach of cl 1 of the Code.

- (2) *Failing to provide the complainant with an invoice containing a full description of the services the fee related to, in breach of cl 22*

[36] The complainant paid Mr Lawlor \$1,500 on 23 January 2022 and \$3,130 on 14 February 2022, yet he did not issue an invoice to them. This is a breach of cl 22.

- (3)(i) *Failing to maintain a hard copy and/or electronic file for the complainant, in breach of cl 26(a)*

- (ii) *Failing to maintain a well-managed filing system, in breach of cl 26(d)*

- (iii) *Failing to make the records available for inspection on request by the Authority, in breach of cl 26(e)*

[37] The Authority requested Mr Lawlor's file concerning the complainant and her partner on 6, 13 and 21 June 2023. Mr Lawlor did not send his file. He has not shown that he had a file (hard copy and/or electronic) or a well-managed filing system or that he made his file available for inspection by the Authority. This is a breach of cl 26(a), (d) and (e).

- (4) *Failing to make timely on-going updates about the visa application and failing to inform the complainant about Immigration NZ's request for evidence on 4 May 2023, in breach of cl 26(b)*

[38] It is alleged that Mr Lawlor failed to make timely updates as to the status of the visa application and failed to inform the couple of the request from Immigration NZ for more evidence on 4 May 2023. The lack of updates is clearly proven by the

complainant's requests on 20 June 2022 and 16 January 2023. The complainant alleged in the complaint that Mr Lawlor did not inform them of the request on 4 May 2023. This must be correct as in his email to the Tribunal, he overlooks that such a request was ever made. This is a breach of cl 26(b).

(5) *Failing to inform Immigration NZ he could no longer represent the complainant and her partner as his licence had expired on 7 January 2023, in breach of cl 28(b)*

(6) *Failing to inform the complainant and her partner about his expired licence and advise them where they could get assistance, in breach of cl 28(c)*

[39] The Registrar alleges Mr Lawlor did not inform either Immigration NZ or the couple on or about 7 January 2023 that his licence was expiring or had expired, and he must cease to represent them. He was also required to advise the complainant or the partner of the status of the visa application and where they could get assistance. Mr Lawlor produces no evidence that he did so inform Immigration NZ and the complainant. This is a breach of cl 28(b) and (c).

OUTCOME

[40] As the Tribunal has assessed the heads of complaint in terms of the alternative breaches of the Code, there is no need to assess them on the ground of negligence.

[41] All heads of complaint are upheld. Mr Lawlor has breached cls 1, 22, 26(a), (b), (d), (e), 28 (b) and (c) of the Code.

SUBMISSIONS ON SANCTIONS

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

[43] A timetable is set out below. Any request for repayment of fees or the payment of costs or expenses or for compensation must be accompanied by a schedule particularising the amounts and basis of the claim. Mr Lawlor's disciplinary history will be taken into account in assessing the sanctions.

Timetable

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

- (1) The Registrar, the complainant and Mr Lawlor are to make submissions by **9 February 2024**.
- (2) The Registrar, the complainant and Mr Lawlor may reply to submissions of any other party by **23 February 2024**.

ORDER FOR SUPPRESSION

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

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

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

D J Plunkett
Chair

⁸ Immigration Advisers Licensing Act, s 50A.