

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2024] NZIACDT 07

Reference No: IACDT 004/23

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

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

**BETWEEN** **MM**  
Complainant

**AND** **TZU-TONG JANE MA**  
Adviser

Decision on the papers

**SUBJECT TO SUPPRESSION ORDER**

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**DECISION**  
**Dated 30 January 2024**

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**REPRESENTATION:**

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

## **PRELIMINARY**

[1] The adviser was engaged by the complainant to seek a job and a work visa. The fee was substantial. The adviser arranged employment with her husband's company, but she did not inform the complainant of the relationship. The visa application was successful, though the complainant was dismissed two months after commencing employment.

[2] A complaint by the complainant against the adviser 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 she has been dishonest or misleading or alternatively breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code), these being grounds for complaint under the Immigration Advisers Licensing Act 2007 (the Act).

## **BACKGROUND**

[3] Tzu-Tong Jane Ma is a self-employed licensed immigration adviser, trading as both Colab Ltd and New Zealand Immigration Concepts, based in Auckland.

[4] The complainant is MM, a national of China.

[5] The complainant first made contact with Ms Ma via the text message service, WeChat, on 14 September 2022. He was a carpenter who sought a work visa for New Zealand. He also asked her to find a job for him. On 15 September, Ms Ma advised him by WeChat text that the total fee would be RMB 85,000 (approximately NZD 19,500), with a deposit of RMB 10,000 (approximately NZD 2,300) and another RMB 10,000 payable after a successful interview. The balance would be payable after the visa was approved. On the next day, 16 September 2022, she informed him the deposit would have to be paid before the interview. Ms Ma advised what documents were required and gave some advice as to what to say at the interview.

[6] The text exchange between the complainant and Ms Ma continued as to the fee and documentary requirements. On 26 October 2022, Ms Ma asked the complainant to pay the deposit as soon as possible.

[7] On about 30 October 2022, the complainant was interviewed by Hao Zhang, a director of ZR Home Ltd (the company will be referred to as the employer). The complainant was not informed that Mr Zhang was Ms Ma's husband.

[8] Ms Ma told the complainant the interview was successful on 30 October 2022. On an unknown date, she sent him the employment agreement.

[9] On 6 November 2022, the complainant signed the employment agreement. He would work as a construction worker for the employer. The hourly rate was NZD 25.

[10] The complainant transferred RMB 10,000 to Ms Ma, also on 6 November 2022.

[11] The complainant then sent the supporting documents for the visa application to her. Their text exchange concerning the documents continued.

[12] On 7 November 2022, the complainant signed Ms Ma's immigration advice services agreement. Ms Ma would prepare and lodge a work visa application. No other services were specified in the agreement. The clause for the service fee was left blank. Any extra work would be at an hourly rate of NZD 85. The estimated fee for extra work was NZD 488.75 (incl. GST), based on an estimate of five hours. If extra work was required, the complainant would be advised and his approval sought.

[13] On 8 November 2022, Ms Ma filed a work visa application under the accredited employer scheme. It was approved by Immigration New Zealand (Immigration NZ) on 26 November. The visa required the complainant to work as a construction worker for the employer and would expire 24 months after his first arrival.

[14] The complainant appears to have transferred another RMB 11,000 to "Zitong Ma" (presumably Ms Ma) on 3 December 2022.

[15] The complainant arrived in New Zealand on 4 December 2022.

[16] On about 10 January 2023, the complainant commenced work for the employer. He was dismissed about two months later.

#### *Complaint to Ms Ma*

[17] The complainant sent a text to Ms Ma on 6 April 2023. He said the employer had dismissed him because he had made a slight mistake. He had been charged a fee of RMB 85,000, which far exceeded the standard fee. The complainant accused Ms Ma of serious fraud. He requested the "price difference", otherwise there would be legal proceedings.

[18] Ms Ma did not reply to his complaint.

## COMPLAINT

[19] On 13 April 2023, the complainant made a complaint against Ms Ma to the Authority. According to the complainant:

- (1) The contract price was NZD 488. He did not know English. Ms Ma lied to him in Chinese, saying the price was RMB 85,000 (NZD 19,904). Of the RMB 85,000, she said RMB 10,000 was for her to refer him to the employer and another RMB 10,000 if the interview was successful. The remaining RMB 65,000 was to be paid after the visa was secured. This was not what the contract said. She exploited his lack of English. He sought a refund of the excessive fee, the amount charged over and above the sum specified in the contract.
- (2) After arriving in New Zealand and starting work, he found out Ms Ma was the wife of his employer.

[20] The Authority formally advised Ms Ma of the details of the complaint on 7 August 2023 and invited her explanation.

### *Explanation from Ms Ma*

[21] Ms Ma provided an explanation to the Authority on 8 August 2023:

- (1) Translators were referred to the complainant because she does not provide translation services. He arranged a translator for the household register and paid that person.
- (2) NZD 488 was the standard fee, if extra work was required.
- (3) The price of RMB 85,000 was pre-agreed at the very beginning and did not change. It was reasonable as it was roughly 250 hours at NZD 85 per hour.
- (4) Ms Ma acknowledged introducing the complainant to the employer and failing to disclose that the interviewer was her husband. The company had genuine work building apartments. The lack of disclosure was because she was not aware it had anything to do with her work. She was deeply sorry. While the relationship was not disclosed in writing, it was not hidden as the immigration services agreement and the employment agreement used the same address. The non-disclosure of the relationship in writing was a minor issue. She had offered to pay Immigration NZ's variation fee if he wanted

to change jobs. The complainant was dismissed after working for two months, not a few weeks as alleged, and he was paid well.

- (5) In answer to the Authority's allegation that she had used the visa approval letter as leverage to pressure the complainant to pay the remaining RMB 65,000, Ms Ma said the complainant did not pay the last instalment, so she did not "continue with the progress". However, he was entitled to fly to New Zealand without the e-visa, as it was recorded in Immigration NZ's system. She did not use the e-visa as a threat. The approval email from Immigration NZ was given to him straight away without payment. She told him it was approved, which ended her job. Days later, he paid, so she continued to find out when he could start work.
- (6) Ms Ma acknowledged that she did not alter the template agreement. It was not tailored for the complainant. She did not alter the receipts as he requested. This was her fault, for which she sincerely apologised. She accepted the need to work on documentation, particularly the receipts.
- (7) She did not provide an internal complaints procedure, instead using a template agreement from her school studies.
- (8) Everything was explained in detail by her to the complainant, including the agreement.

#### *Complaint referred to Tribunal*

[22] On 25 August 2023, the Registrar referred the complaint against Ms Ma to the Tribunal alleging dishonest or misleading behaviour, or alternatively breaches of the specified provisions of the Code:

#### *Dishonest and/or misleading behaviour*

- (1) Intentionally leaving the payment terms and conditions in the written agreement blank and charging unfair and unreasonable fees of RMB 85,000.
- (2) Providing the complainant with misleading advice about his work visa conditions.
- (3) Failing to be honest about the genuineness and sustainability of the complainant's employment.

- (4) Withholding the visa approval letter to put pressure on the complainant to pay the remaining RMB 65,000 fee.
- (5) Failing to disclose a conflict of interest to the complainant or obtain his written consent to continue representing him.
- (6) Failing to provide the complainant with a written agreement containing a full description of the services to be provided, failing to explain all significant matters in the written agreement and failing to facilitate the provision of interpreters and translators as appropriate, as the complainant could not understand the services agreement in English.
- (7) Failing to respond to the complainant's concerns and blocking him in WeChat after he raised his concerns with her.

*Breaches of the Code*

- (8) Providing false and misleading information about the complainant's work visa conditions, in breach of cls 1, 29(e) and (f).
- (9) Failing to conduct herself in an honest and professional manner by failing to respond to the complainant's concerns and blocking him in WeChat, in breach of cl 1.
- (10) Failing to provide translations of the written agreement and the employment documents, in breach of cl 2(c).
- (11) Failing to disclose the conflict of interest to the complainant or obtain his written consent to continue representing him, in breach of cls 5 and 6.
- (12) Failing to explain all significant matters in the written agreement to the complainant, in breach of cl 18(b).
- (13) Failing to ensure that the fees charged were fair and reasonable in the circumstances, in breach of cl 20(a).
- (14) Failing to provide the complainant with a full description of the services provided and failing to provide an invoice for the fees, in breach of cls 19(e) and (f), and 22.
- (15) Failing to provide the complainant with her internal complaints procedure, in breach of cl 17(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.<sup>1</sup>

[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.<sup>2</sup> It has been established to deal relatively summarily with complaints referred to it.<sup>3</sup>

[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.<sup>4</sup>

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

[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.<sup>7</sup>

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<sup>1</sup> Immigration Advisers Licensing Act 2007, s 45(2) and (3).

<sup>2</sup> Section 49(3) and (4).

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

<sup>4</sup> Immigration Advisers Licensing Act, s 50.

<sup>5</sup> Section 51(1).

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

<sup>7</sup> At [97], [101]–[102] and [112].

*From the Registrar*

[29] The Tribunal has received from the Registrar the statement of complaint (25 August 2023), with a file of supporting documents.

*From the complainant*

[30] There are no submissions from the complainant.

*From the adviser*

[31] There is a statement of reply (21 September 2023) from Ms Ma, with attached submissions. At the request of the Tribunal, Ms Ma provided further information on 22 January 2024. She does not seek an oral hearing.

**ASSESSMENT**

[32] The following provisions of the Code are relevant:

**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:

...

- c. facilitate the provision of interpreters and translators as appropriate

...

**Conflicts of interest**

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



### **Complaints procedure**

15. A licensed immigration adviser must:
- a. develop and maintain an internal complaints procedure that notes that the client may also complain to the Immigration Advisers Authority, and
  - b. if a complaint is made to the adviser, follow their internal complaints procedure.

### **Code and complaint documents**

17. Before entering into a written agreement with the client, a licensed immigration adviser must:
- ...
- c. advise the client that they have an internal complaints procedure and provide them with a copy of it.

### **Written agreements**

18. A licensed immigration adviser must ensure that:
- ...
- b. before any written agreement is accepted, they explain all significant matters in the written agreement to the client
- ...
19. A licensed immigration adviser must ensure that a written agreement contains:
- ...
- e. a full description of the services to be provided by the adviser, which must be tailored to the individual client
  - f. where fees are to be charged, the fees for the services to be provided by the adviser, including either the hourly rate and the estimate of the time it will take to perform the services, or the fixed fee for the services, and any New Zealand Goods and Services Tax (GST) or overseas tax or levy to be charged
- ...

### **Fees**

20. A licensed immigration adviser must:
- a. ensure that any fees charged are fair and reasonable in the circumstances
- ...

## 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.

## Advisers

29. A licensed immigration adviser must not misrepresent or promote in a false, fraudulent or deceptive manner:

...

- e. immigration opportunities or risks, or
- f. New Zealand's immigration requirements.

## Dishonest and/or misleading behaviour

- (1) *Intentionally leaving the payment terms and conditions in the written agreement blank and charging unfair and unreasonable fees of RMB 85,000*
- (2) *Providing the complainant with misleading advice about his work visa conditions*
- (3) *Failing to be honest about the genuineness and sustainability of the complainant's employment*
- (4) *Withholding the visa approval letter to put pressure on the complainant to pay the remaining RMB 65,000 fee*
- (5) *Failing to disclose a conflict of interest to the complainant or obtain his written consent to continue representing him*
- (6) *Failing to provide the complainant with a written agreement containing a full description of the services to be provided, failing to explain all significant matters in the written agreement and failing to facilitate the provision of interpreters and translators as appropriate, as the complainant could not understand the services agreement in English*
- (7) *Failing to respond to the complainant's concerns and blocking him in WeChat after he raised his concerns with her*

[33] The Registrar alleges Ms Ma was dishonest or deliberately misleading in a number of aspects of her conduct.

[34] Such a serious allegation requires a high standard of evidence.<sup>8</sup> While it will be seen from the assessment below that the evidence establishes Ms Ma committed numerous breaches of her professional obligations, the evidence does not prove she did so in order to deceive or defraud the complainant. Her cumulative conduct is suspicious, but dishonesty is not proven. The evidence establishes that Ms Ma generally lacks an understanding of her professional obligations. It is the view of the Tribunal that an oral hearing is unlikely to prove dishonesty.

[35] The Tribunal will turn to the alternative alleged breaches of the Code.

#### Breaches of the Code

(8) *Providing false and misleading information about the complainant's work visa conditions, in breach of cls 1, 29(e) and (f).*

[36] The Registrar states that Ms Ma was dishonest and misleading in her advice to the complainant as to the ease with which he could change employers.

[37] On 28 October 2022, as Ms Ma was arranging the interview with her husband, the complainant asked her by text how long he would have to stay with the employer to complete the project. She advised him the same day he would not need to complete the project and could transfer to another employer if he found a higher paid job. He replied stating he thought he would have to stay with the employer for years. She responded on the same day saying there was no need, the job was just “help to get you here”. He could work there or transfer to another employer.

[38] On 26 November 2022, Immigration NZ approved the complainant's work visa under the accredited employer scheme. A condition required him to work as a construction worker with the employer.

[39] Despite his visa being linked to the employer, Ms Ma sent texts to him in December 2022 concerning other possible jobs.<sup>9</sup> For example, she told him on 6 December (about 12:33 pm) he could change employer if he liked. She said (at 2:18 pm) she would pay for the transfer of his work visa. She repeated (after 3:03 pm) that he could change employment to where he wanted to work. He could tell her to “directly change it”. Later that day (at 7:01 pm), she said:

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<sup>8</sup> Z, above n 6 at [97], [101]–[102] and [112].

<sup>9</sup> 3 December 2022 at 117 of the Registrar's documents, 5 December at 126, 6 December at 132, 136–138, 142 and 154–155.

... Workers are constantly switching to higher paying jobs, which is very normal. Sometimes, a person change for four or five times, which doesn't matter.

[40] The communications concerning changing employer continued the next day, 7 December 2022.<sup>10</sup> She informed him (before 1:05 pm) that all the employers she introduced to him were qualified, high quality and certified by Immigration NZ. He could choose from one of them. He asked her if it would be illegal. She replied (about 1:05 pm):

... Just transfer it to another company and it will be the name of that company. Don't worry about it being illegal. That's my cases one after another, which I think is better. It's not illegal.

[41] The communications continued in January 2023.<sup>11</sup> On 11 January, the complainant informed Ms Ma he had started work with the employer, to which she replied (at 5:36 pm) that he could look for a higher paying job to transfer to. The same day (after 5:36 pm) she mentioned another company which needed a plasterer with a relatively higher salary and which was a very good company.

[42] However, transferring employment on a visa linked to a specific employer is not merely a matter of what the visa holder wants. Immigration Instructions require such visa holders to work in a specified occupation for a specified employer at a specified location and at or above a specified remuneration.<sup>12</sup> Should a visa holder seek to change employer, the Instructions require a "Job Change" process.<sup>13</sup> The process requires an application to Immigration NZ and approval.

[43] The Registrar alleges that there is no evidence Ms Ma explained to the complainant the requirements of varying the condition specifying the employer, or that it is subject to assessment and approval by the government agency.

[44] In her explanation to the Authority (8 August 2023), Ms Ma said advising the complainant to apply to change his job was not a breach of Immigration NZ's Instructions as any worker can vary their employer if they wish. In her submissions to the Tribunal (21 September 2023), Ms Ma says the Registrar has taken her texts to the complainant out of context. The complainant wanted to start a job earlier than he could with the employer and he also wanted accommodation with the job.

[45] The Tribunal accepts the Registrar's allegation that Ms Ma's advice to the complainant – about the ease with which he could change jobs – is misleading. The

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<sup>10</sup> See the Registrar's documents at 159–161.

<sup>11</sup> 11 January 2023 at 162–163.

<sup>12</sup> Immigration Instructions WA4.15 (effective 26 April 2023), Registrar's documents at 225.

<sup>13</sup> Immigration Instructions E3.26 (effective 31 May 2023), Registrar's documents at 226.

Registrar has not taken Ms Ma's advice in her communications out of context. She failed to tell him that the jobs had to meet the same immigration criteria as the job for which he was approved. Nor did she tell him any transfer was subject to an assessment by Immigration NZ, though he presumably knew an application would have to be made, as he was aware Immigration NZ charged a fee for changing jobs.

[46] There is, however, no evidence Ms Ma's advice was deliberately misleading and therefore dishonest or false or fraudulent or deceptive. While there is no breach of cl 29, her advice was not professional or diligent. This is a breach of cl 1 of the Code.

(9) *Failing to conduct herself in an honest and professional manner by failing to respond to the complainant's concerns and blocking him in WeChat, in breach of cl 1*

[47] The Registrar alleges that Ms Ma failed to respond to the complainant's concerns after he was dismissed and she blocked him in WeChat.

[48] On 6 April 2023 (at 9:54 am), the complainant sent a text to Ms Ma stating he had been dismissed because he made a slight mistake, adding that he had been charged a fee of RMB 85,000, which far exceeded the standard fee. He accused Ms Ma of serious fraud. He requested a refund, otherwise he would go through legal proceedings. Ms Ma did not reply. On 8 April, he sent another text asking her if she was online.<sup>14</sup> He received a reply from the service provider stating that the message had been sent, but it was blocked by "the other side".

[49] In her submissions to the Tribunal (21 September 2023), Ms Ma says this was blackmail on the part of the complainant. Four months had passed since approval of his visa and he only contacted her because of his dismissal. This had nothing to do with the visa application. Her work was completed in 2022. The threat to sue amounted to blackmail.

[50] Ms Ma sees her obligations to the complainant as expiring with the approval of the visa. The extent of her services is assessed by the Tribunal later. However, even if her services were merely the visa application and she had no responsibility for any ongoing employment, she continued to have contractual and professional obligations concerning complaints by the complainant about her immigration services.

[51] Clause 15.1 of Ms Ma's services agreement states the complainant can make a complaint to "Us" and it would be dealt with in accordance with the internal complaints

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<sup>14</sup> Registrar's documents at 12.

procedure provided to him. However, Ms Ma did not provide an internal complaints procedure, as she did not have any such procedure.<sup>15</sup>

[52] In addition to her contractual obligation, Ms Ma had a professional obligation to develop and follow her complaints procedure.<sup>16</sup> Accordingly, irrespective of whether she was required to undertake any substantive work for the complainant at 6 April, she was required to respond to his complaint about her fee. She failed to understand her contractual and professional obligations at the time of the complaint and continues to fail to understand them even now.

[53] Ms Ma's refusal to respond to the complaint is a breach of the obligation in cl 1 of the Code to be professional and respectful. The Registrar alleges this amounts to dishonesty, but the evidence does not establish her refusal to respond to the complaint was dishonestly motivated. It seems to the Tribunal she merely overlooked her obligation to engage with the complainant over the complaint, due to her general lack of understanding of her obligations.

*(10) Failing to provide translations of the written agreement and the employment documents, in breach of cl 2(c)*

[54] The Registrar alleges Ms Ma did not provide translations of the written immigration services and employment agreements. This head of complaint is not developed in the statement of complaint.

[55] The only particulars of this head given are in the 'Background' section of the statement (at [3.6]). It is said that notwithstanding the complainant's inability to understand English, Ms Ma instructed him to sign his name on the last page of the employment agreement without giving him the option of a translated version or facilitating an interpreter. The Registrar relies on a text exchange between the complainant and Ms Ma on 6 November 2022. However, that exchange merely shows the complainant did not know how to insert a signature electronically. It is not evidence he did not understand English or needed help to understand the agreement.

[56] The complainant does say in his complaint (13 April 2023) that he does not understand English and the Tribunal surmises Ms Ma knew this, but there is no evidence he did not have access to someone who could assist him to read English or that he ever requested translations. In her submissions (21 September 2023 at [3.6]) to the Tribunal, Ms Ma says translation options were given to the complainant at the beginning.

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<sup>15</sup> See Ms Ma's email (22 January 2024) to the Tribunal.

<sup>16</sup> Licensed Immigration Advisers Code of Conduct 2014, cl 15.

[57] This head is dismissed.

*(11) Failing to disclose the conflict of interest to the complainant or obtain his written consent to continue representing him, in breach of cls 5 and 6*

[58] On 29 October 2022, Ms Ma sent the complainant by text an introduction to “A Professional foundation” and asked him to add this employer (actually her husband) for the purpose of an interview. She also gave him guidance as to what to say at the interview. On 30 October, he told her the employer had not accepted the introduction. She said she would hurry him up. Later that day, the complainant informed Ms Ma that the interview had gone ahead and the employer was “approachable”. She replied that day to say he had succeeded and she would look over the contract.

[59] On or before 6 November 2022, Ms Ma sent the complainant the employment agreement. On that day, she sent him a text again telling him the interview had been successful and asking him to make a payment of RMB 10,000. The complainant signed the employment agreement and made the payment on the same day. Until the complainant later arrived in New Zealand, he was not aware that the employer was the husband of Ms Ma.

[60] In her explanation (8 August 2023) to the Authority, Ms Ma admitted not disclosing her relationship with the interviewer. This was because she was not aware it had anything to do with her work. She expressed deep regret. In her opinion, this was a minor issue.

[61] In her submissions (21 September 2023) to the Tribunal (at [39]–[40]), Ms Ma said she told the complainant on the phone that “these employers are friends and family”. She did not hide it as the same address was used in both the service and employment agreements. There was a certain degree of conflict but “not really”. She practices in her own business and the building company practices on its own. The businesses are separate, though this does make some people feel uncomfortable. She then submitted there was no conflict of interest. She did not inform the complainant in writing as she thought he already knew of the relationship.

[62] The Tribunal accepts the complainant’s allegation in the complaint that he was not aware of the relationship between Ms Ma and the director of the employer, Mr Zhang, until he arrived in New Zealand. The Tribunal finds Ms Ma did not inform him before his arrival, whether in writing or verbally. It would seem she advised him generally that employers she introduced were friends and family, but at no time did she tell him the specific employer who interviewed him and whose agreement he signed was her

husband or her husband's company. Leaving the complainant to discover a possible relationship from the use of the same addresses for the employer and immigration business in the contractual documents, is not disclosure, particularly if he cannot read English.

[63] Ms Ma does not understand this is a serious breach of her professional obligations. She does not even recognise the issue. It is self-evident she was compromised in her duty to give independent advice to the complainant, while at the same time having familial and indirect financial interests in the employer she was promoting to him. Ms Ma's failure to disclose the relationship and the consequential conflict at all, let alone in writing, and obtain the complainant's consent to nonetheless represent him, is a breach of cls 5 and 6.

*(12) Failing to explain all significant matters in the written agreement to the complainant, in breach of cl 18(b)*

[64] The Registrar does not develop this head of complaint in the statement of complaint. No particulars are given. It does not appear to be a complaint made by the complainant. In her explanation (8 August 2023), Ms Ma says she explained everything in detail to the complainant, including the services agreement. This head of complaint is dismissed.

*(13) Failing to ensure that the fees charged were fair and reasonable in the circumstances, in breach of cl 20(a)*

[65] The Registrar alleges that the fees charged were not fair and reasonable.

[66] On 15 September 2022, Ms Ma told the complainant the total fee was RMB 85,000, with RMB 10,000 to be paid as a deposit and another RMB 10,000 after a successful interview. The rest would be paid after the visa was approved.

[67] On 7 November 2022, the complainant and Ms Ma signed the services agreement. The services specified were an initial consultation, an application for a work visa and then lodgement of the visa. No other services were identified. The fee was left blank. The only fee mentioned in the agreement was an estimate of NZD 488.75 (incl. GST) for extra work (which Ms Ma says is for such matters as character or health issues), comprising five hours work at NZD 85 per hour. According to Ms Ma, it transpired there was no such extra work for the complainant.<sup>17</sup>

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<sup>17</sup> Ms Ma's explanation (8 August 2023) to the Authority at p 1; Registrar's documents at 219.



[68] The Registrar's file of supporting documents contains evidence of the transfer of RMB 10,000 to Ms Ma on both 6 November and 3 December 2022. The payments were all made following repeated requests from Ms Ma. The following "Receipt Statements" were issued by Colab Ltd with the same street address as that of Ms Ma's immigration business:<sup>18</sup>

7 November 2022	RMB 20,000
26 November 2022	RMB 20,000
26 November 2022	RMB 20,000
(refunded)	
26 November 2022	RMB 10,000
29 November 2022	RMB 24,000
3 December 2022	RMB 20,000
3 December 2022	RMB 11,000
<b>Total</b>	<b>RMB 85,000</b>

[69] Ms Ma charged RMB 85,000 (NZD 19,904 according to the complainant and NZD 19,485 according to Ms Ma).<sup>19</sup> She points out that RMB 85,000 was pre-agreed in writing at the very beginning. In her submissions (21 September 2023), Ms Ma repeats that NZD 488.75 was not the service fee, but extra work which did not apply. The fee was RMB 85,000.

[70] The fee of RMB 85,000 was not however specified in the written agreement. Ms Ma had a professional obligation to specify the total fee for her services in the services agreement, which could be a fixed fee or the hourly rate together with an estimate of time to perform the services.<sup>20</sup> The only fee specified in the agreement was an estimated NZD 488.75, based on five hours at NZD 85. The only service identified in the agreement was the work visa application. The complainant's application was straight-forward, so an hourly rate of NZD 85 and a fee of about NZD 489 would be reasonable, albeit at the low end of the spectrum.

[71] Ms Ma says, however, NZD 489 was not the service fee. It was an estimate for extra work only, but no extra work was required for the complainant. The Tribunal accepts the agreement appears to say this, but that may not have been clear to the complainant who says he does not know English. It is to be remembered that no other

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<sup>18</sup> Registrar's documents at 201–207.

<sup>19</sup> Complaint (13 April 2023), Registrar's documents at 3; Ms Ma's explanation (8 August 2023) to the Authority, Registrar's documents at 221.

<sup>20</sup> Code of Conduct, cl 19(f).

fee was specified in the services agreement and the only service identified was the visa application.

[72] Irrespective of whether the complainant really was confused as to the amount of the fee, the only fee Ms Ma could charge was NZD 488.75. No other fee was specified in the agreement. Ms Ma cannot avoid her professional obligation to stipulate in the agreement the fee for the services identified there, by pointing to a vague parallel arrangement to charge RMB 85,000 for employment and accommodation services, as well as the immigration services. That broader arrangement was not set out in the services agreement. Ms Ma's receipts issued to the complainant for the total sum of RMB 85,000 do not mention employment and accommodation services. They describe the services as legal advice, translation, postage, visa application fee and consultation preparation, though she says the receipts are wrong as she did not alter the standard wording.<sup>21</sup>

[73] While Ms Ma has not said to the Authority or the Tribunal what the fee of RMB 85,000 was for or how it was arrived at, it was presumably for the employment and accommodation services, together with the immigration services. However, she did not set any of this out in the services agreement or separate the immigration service component of the total fee. It follows that the total fee and all the services are covered by her professional obligations. As noted above, she cannot avoid the obligations in the Code by omitting the higher fee or the non-immigration work from the services agreement. The employment and accommodation services were inextricably linked to the ultimate goal of a visa for working and staying in New Zealand. In other words, they were linked to her immigration services.

[74] Ms Ma could have charged for the additional employment and accommodation services and avoided the higher fee and those services being caught by the Code, had she entered into a separate written agreement for them which clearly took them outside her engagement for the "immigration advice" work.<sup>22</sup> In order to achieve separation of employment and accommodation services from her immigration services, she should set up a separate company to undertake such services under a separate agreement for a separate fee.<sup>23</sup> Her vague exchange of texts with the complainant does not amount to a clear, separate agreement for such additional services.

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<sup>21</sup> Ms Ma's explanation (8 August 2023) at p 2.

<sup>22</sup> As defined in the Immigration Advisers Licensing Act, s 7.

<sup>23</sup> *SM v Kim* [2023] NZIACDT 5 at [67]–[68].

[75] The Tribunal finds the fee of RMB 85,000, for preparing and lodging a work visa application, the only service specified in the written agreement, to be grossly excessive. The fee was unfair and unreasonable. This is a breach of cl 20(a) of the Code.

*(14) Failing to provide the complainant with a full description of the services provided and failing to provide an invoice for the fees, in breach of cls 19(e) and (f), and 22*

[76] The only services specified by Ms Ma in the services agreement concerned the work visa application. However, she also provided employment and accommodation services for him. Ms Ma does not deal with this head of complaint in her explanation to the Authority or submissions to the Tribunal, except admitting in the explanation she did not alter her agreement. By this, she means she did not tailor the template agreement sent to the complainant to fully describe her services or the fee of RMB 85,000.

[77] The failure to provide a full description of the services to be undertaken for the complainant is a breach of cl 19(e) of the Code. The failure to specify the full fee is a breach of cl 19(f). The failure to send an invoice with a description of the service to which it relates, for each instalment requested, is a breach of cl 22.

*(15) Failing to provide the complainant with her internal complaints procedure, in breach of cl 17(c)*

[78] The Registrar alleges Ms Ma did not provide the complainant with a copy of her internal complaints procedure at or before the time he entered into the services agreement. The Tribunal finds that Ms Ma had no such procedure, so self-evidently no such document was provided to the complainant. It is a breach of cl 17(c) of the Code.

## **OUTCOME**

[79] The eighth, ninth, eleventh, thirteenth, fourteenth and fifteenth heads of complaint are upheld. Ms Ma has breached cls 1, 5, 6, 17(c), 19(e) and (f), 20(a), and 22 of the Code. The other heads are dismissed.

## **SUBMISSIONS ON SANCTIONS**

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

[81] A timetable is set out below. Any request that Ms Ma undertake training should specify the precise course suggested. Ms Ma specifically requires training in conflicts of

interest, so the parties are asked to identify a suitable course. Any request for repayment of fees or the payment of costs or expenses or for compensation must be accompanied by a schedule particularising the amounts and basis of the claim.

#### *Timetable*

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

- (1) The Registrar, the complainant and Ms Ma are to make submissions by **23 February 2024**.
- (2) The Registrar, the complainant and Ms Ma may reply to submissions of any other party by **8 March 2024**.

#### **ORDER FOR SUPPRESSION**

[83] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.<sup>24</sup>

[84] There is no public interest in knowing the name of Ms Ma's client.

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

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D J Plunkett  
Chair

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<sup>24</sup> Immigration Advisers Licensing Act, s 50A.