



IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

PRACTICE NOTE

An Adviser's Guide to Proceedings before the Tribunal

Effective from 26 October 2016

PRELIMINARY

This Practice Note is issued by the Immigration Advisers Complaints and Disciplinary Tribunal (the Tribunal), under section 49(1) of the Immigration Advisers Licensing Act 2007 (the Act).

WHO SHOULD USE THIS PRACTICE NOTE

You should use this Practice Note if you are, or were, a Licensed Immigration Adviser (an adviser) and the Registrar of the Immigration Advisers Authority (the Registrar) has referred a complaint made against you to the Immigration Advisers Complaints and Disciplinary Tribunal (the Tribunal).

The Tribunal is independent of the Registrar and the Immigration Advisers Authority. The complaints process before the Immigration Advisers Authority is separate to proceedings before the Tribunal. You should not assume that the Tribunal knows anything about you or your case, outside of the materials provided to it in the course of proceedings before it.

There is a separate Practice Note available for complainants.

Unless the Tribunal approves or accepts an alternative process in your particular case, you are expected to comply with the procedures set out in the Act and, subject to that, this Practice Note.

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REPRESENTATION

1. CHOOSING YOUR REPRESENTATION

1.1. In proceedings before the Tribunal, you can choose to represent yourself or have a lawyer represent you.

1.1.1. If you choose to represent yourself you should be aware of the following statement of the High Court in *ZW v Immigration Advisers Authority* [2012] NZHC 1069 at [41]:

I consider it would be foolish for any immigration adviser who contests serious aspects of a complaint not to seek some form of legal advice. The consequences of complaints being upheld may well be severe.

1.2. If you would like to apply for leave to have another person, who is not a lawyer, represent you, you may write to the Tribunal:

1.2.1. Requesting that a named layperson be allowed to represent you,

1.2.2. Providing reasons why it is appropriate in the circumstances for the named person to be allowed to represent you in place of self representation and/or legal representation,

1.2.3. Providing any relevant evidence supporting your reasons, and

1.2.4. Signing the request and having your proposed representative sign the request.

1.3. The Tribunal does not grant leave to allow laypersons to represent advisers as a matter of course. For a discussion of the factors which may play a part in deciding an application for leave, see *Five Complainants v Kumar* [2015] NZIACDT 82; available on the Tribunal's website.

FILING DOCUMENTS WITH THE TRIBUNAL

2. TIMEFRAME FOR FILING

2.1. A document will be deemed to be filed on the date on which the Tribunal receives it, provided it is filed on a working day:

2.1.1. A working day is any day apart from a Saturday, a Sunday, a public holiday, or a day in the period commencing on 25 December and ending with the close of 15 January the following year.

2.1.2. If your document arrives at the Tribunal on a day that is not a working day, it will be deemed to have been filed on the next working day.

NOTE: If you are filing by post or courier, you will need to allow enough time for the document to arrive at the Tribunal within the time limit for filing.

3. EMAIL FILING

- 3.1. Email is the Tribunal's preferred method of filing.
- 3.2. You can file documents with the Tribunal by emailing the documents to:

IACDT@justice.govt.nz
- 3.3. Once an email document is filed, the Tribunal will send you an email expressly acknowledging receipt.
- 3.4. If the document you are filing by email is larger than ten pages in length, you must also send or deliver a paper copy to the Tribunal.

NOTE: Unless you have an acknowledgement email, you should not regard the document as having been filed. You are responsible for being able to produce acknowledgement emails as proof that your document was filed.

4. POSTAL FILING

- 4.1. You can file documents with the Tribunal by posting them to:

Immigration Advisers Complaints and Disciplinary Tribunal
Tribunals Unit
Private Bag 32-001
Featherston Street
Wellington 6011

5. IN PERSON OR COURIER FILING

- 5.1. You may file any document in person or by having it couriered to the Tribunal's office during working hours:

Tribunals Unit
Level 1, 86 Customhouse Quay
Wellington

Office hours: Monday – Friday 8.00am – 5.00pm

SERVING DOCUMENTS ON OTHER PARTIES

6. TIMEFRAME FOR SERVICE

- 6.1. Whenever you file a notice or document with the Tribunal, you must also serve a copy on the complainant and the Registrar of the Immigration Advisers Authority (the other parties).

NOTE: If there is a significant delay between filing and service, the Tribunal may have to alter its procedure to allow the other parties sufficient time to consider and respond to your documents.

6.2. Pursuant to section 93 of the Immigration Advisers Licensing Act 2007, a notice or document will be treated as having been received by a party at the following times:

6.2.1. If faxed or emailed: not less than 2 days after the date it is sent

6.2.2. If posted: not later than 7 days after date it was posted

NOTE: A notice or document will not be treated as received if the person, to whom it was posted or sent, proves that it was not received, without any fault on that person's part.

7. ADDRESSES FOR SERVICE

7.1. When serving other parties you must use the addresses being used by the Tribunal:

7.1.1. The Tribunal will use the email, and physical residential or business addresses provided by the Registrar in the Statement of Complaint, unless a party updates their details.

7.1.2. All parties are required to maintain current contact details with the Tribunal.

NOTE: **If any of your contact details change, you need to notify the Tribunal** using the form provided on the Tribunal's website. Failure to maintain current contact details may mean that documents will be treated as having been effectively served on you, irrespective of whether you actually receive them.

8. WITHHELD ADDRESSES

8.1. Where the Immigration Advisers Authority withholds the complainant's identity pursuant to section 47(3), you will serve the Immigration Advisers Authority who will then serve the complainant.

8.2. Where the Tribunal withholds the complainant's addresses for service pursuant to its powers to regulate its own procedure, you will serve the complainant by serving the Tribunal. Where this occurs:

8.2.1. The Tribunal will serve the complainant and will issue confirmation that the complainant has been served.

8.2.2. You should not consider that the documents have been sufficiently served on the complainant unless you hold confirmation from the Tribunal that it has served the complainant.

9. EMAIL SERVICE

9.1. The Tribunal will treat a document as having been sufficiently served on another party, if:

- 9.1.1. You copy that party into the email used to file the documents with the Tribunal, and
- 9.1.2. That party provides you with an email expressly acknowledging receipt of service.
- 9.1.3. You have used the email address the Tribunal has on file for that party.

9.2. If the document you are serving by email is larger than ten pages in length, you must also send or deliver a paper copy to each party.

NOTE: Unless you have an acknowledgement email from each party, you should not regard the document as having been served. You are responsible for being able to produce acknowledgement emails as proof that your document was served. If another party is failing to acknowledge receipt, please inform the Tribunal immediately.

10. POSTAL SERVICE

10.1. You may serve documents on another party by posting them in a letter addressed to the party at their place of residence or business in New Zealand.

10.1.1. If you are unsure, check with the Tribunal for the correct address.

10.2. The Tribunal will accept a track and trace or registered post receipt as proof of post.

11. IN PERSON OR COURIER SERVICE

11.1. You may serve documents on another party by leaving them at or couriering them to the party's usual or last known place of residence or business in New Zealand.

11.1.1. If you are unsure, check with the Tribunal for the correct address.

11.2. The Tribunal will accept a courier receipt enabling track and trace of the item as proof of service.

APPEAL AGAINST DECISION TO CANCEL LICENCE

12. PROCESS

12.1. The Registrar is required to cancel your licence in certain circumstances.

12.2. If the Registrar intends to cancel your licence, they will inform you in writing and give you 10 working days to provide written representations as to why the licence should not be cancelled.

12.3. If the Registrar decides that they must cancel your licence, they will notify you in writing.

12.4. You can appeal against the Registrar's decision to cancel your licence, if it was based on one of the following reasons:

- 12.4.1. You are prohibited from holding a licence under section 12(6) or 15;
- 12.4.2. Your licence was granted on the basis of a false or fraudulent representation or declaration;
- 12.4.3. Your application for the licence or renewal was accompanied by payment which has subsequently been dishonoured; or
- 12.4.4. Your payment of the immigration adviser's levy has subsequently been dishonoured

13. FORM

13.1. You can appeal against a decision to cancel your licence, by filing with the Tribunal:

- 13.1.1. A section 55 Appeal Form, provided on the Tribunal's website;
- 13.1.2. A copy of the notice of the Registrar's decision to cancel your licence; and
- 13.1.3. Any other information that you want the Tribunal to consider in relation to the appeal.

14. TIMEFRAME FOR FILING

14.1. You must file your section 55 Appeal Form within 20 working days after the date on which the Registrar notified you of the decision you want to appeal.

STATEMENT OF COMPLAINT

15. PURPOSE

15.1. The Registrar refers a complaint to the Tribunal by filing a Statement of Complaint. The Registrar is also required to serve a copy on you and the complainant.

15.2. The purpose of the Statement of Complaint is to put you and the complainant on notice of the grounds on which the Registrar is referring the complaint to the Tribunal.

15.3. The Tribunal will only consider the grounds of complaint on which the Registrar has referred the complaint unless:

- 15.3.1. The complainant's Statement of Reply gives notice that they want the Tribunal to consider other or additional grounds; or
- 15.3.2. The Tribunal thinks it should conduct an inquisitorial hearing into other matters in the public interest.

16. FORM

16.1. The Statement of Complaint will be in the form specified in Schedule 1 of this Practice Note, unless the Tribunal determines to allow variation in any particular case.

STATEMENT OF REPLY

17. PURPOSE

17.1. If you disagree with anything set out in the Statement of Complaint, or want to clarify any matters, you should file a Statement of Reply.

17.1.1. The complainant will also be able to file a Statement of Reply if they disagree with the Statement of Complaint.

17.2. You are not required to file a Statement of Reply; however, if you choose not to, the Tribunal will consider that you accept the content of the Statement of Complaint.

18. FORM

18.1. A Statement of Reply is to be in the form available on the Tribunal's website.

18.2. The Statement of Reply allows you to:

18.2.1. Identify which aspects of the Statement of Complaint you accept and which you deny,

18.2.2. Supply any additional information you consider the Tribunal should take into account,

18.2.3. Attach any additional documentation and evidence which supports your claim, and

18.2.4. Apply to have the Tribunal hear oral evidence from you and/or another witness/witnesses.

18.3. TIMEFRAME FOR FILING

18.4. The Tribunal will give you written notification of the date by which your Statement of Reply must be received by the Tribunal.

18.4.1. Generally, this will be 10 working days after the date on which the Tribunal notifies you that it has received the Statement of Complaint.

18.5. The Tribunal will proceed to hear the complaint without further notice if your Statement of Reply is not received within the notified timeframe and an extension has not been granted.

18.6. For more information on timeframes and how to file and serve a Statement of Reply see the Statement of Reply form on the Tribunal's website.

ANSWER TO STATEMENT OF REPLY

19. PURPOSE

- 19.1. If the complainant has filed a Statement of Reply and you disagree with anything in it, or wish to clarify any matters, you should file an Answer to that Statement of Reply.
- 19.2. The complainant will be able to file an Answer to any Statement of Reply that you have made.
- 19.3. You are not required to file an Answer to a Statement of Reply, and should only do so if you consider that relevant information and/or your position are not adequately set out in the papers filed with the Tribunal.

20. FORM

- 20.1. An Answer to a Statement of Reply is to be in the form available on the Tribunal's website.
- 20.2. An Answer to a Statement of Reply allows you to:
 - 20.2.1. Identify any concerns you have regarding the complainant's Statement of Reply,
 - 20.2.2. Supply any additional information you consider the Tribunal should take into account,
 - 20.2.3. Attach any additional documentation and evidence that supports your claim, and
 - 20.2.4. Apply to have the Tribunal hear oral evidence from you or your witness/witnesses.

21. TIMEFRAME FOR FILING

- 21.1. The Tribunal will give you written notification of the date by which an Answer to a Statement of Reply must be received by the Tribunal.
 - 21.1.1. Generally, this will be 10 working days after the date on which the Tribunal notifies you that it has received the other party's Statement of Reply.
- 21.2. The Tribunal will proceed to hear the complaint without further notice if your Answer to a Statement of Reply is not received within the notified timeframe and an extension has not been granted.
- 21.3. For information on timeframes and how to file and serve an Answer to Statement of Reply see the Answer to Statement of Reply form on the Tribunal's website.

DECISIONS ‘ON THE PAPERS’

22. FORM OF PROCEEDINGS

22.1. Normally the Tribunal will hear complaints ‘on the papers’, which means it will make its decision on the basis of the written information provided without the need for an oral hearing.

22.2. The Tribunal will base a decision ‘on the papers’ on the information provided in:

22.2.1. The Statement of Complaint,

22.2.2. Any Statements of Reply,

22.2.3. Any Answers to Statements of Reply, and

22.2.4. The supporting documents filed with the above.

22.3. Where necessary, the Tribunal will issue a minute or direction, or convene a teleconference to discuss any matters requiring consideration.

22.4. Otherwise, the Tribunal will make its decision on the information before it, without further notice to you or the complainant.

22.5. If the Tribunal upholds the complaint, you will then have an opportunity to present submissions on sanctions. For more information on sanctions see sections 27 and 28 of this practice note.

DECISIONS ‘ORAL HEARING’

23. PURPOSE

23.1. The most common reasons for an oral hearing are that:

23.1.1. There is disagreement about the events leading up to the complaint,
or

23.1.2. An adviser reasonably considers that they need to provide their explanation in person.

24. APPLICATION FOR ORAL HEARING

24.1. You can apply for an oral hearing in the relevant section of your Statement of Reply or Answer to Statement of Reply.

24.2. If the Tribunal has directed that an oral hearing will be held, you may apply to have other witnesses appear by completing the form available on the Tribunal’s website.

24.2.1. The Tribunal will generally allow applications for additional witnesses where it is considered that they will have a differing position from the other witnesses appearing.

24.3. The Tribunal has the power to summons witnesses where it considers necessary.

25. FORM OF PROCEEDINGS

25.1. If the Tribunal does request any person to appear, the Tribunal will issue a direction identifying the nature of the hearing and related processes for that particular hearing. You will also be provided with a timetable setting out the dates for completing each step of the process.

25.2. Generally, where an oral hearing is called, the Tribunal will require witnesses to:

- 25.2.1. Provide a written statement of their evidence before the hearing,
- 25.2.2. Appear in person (although, when necessary the Tribunal may direct that attendance is to be via an audio or video link),
- 25.2.3. Give evidence under oath, and
- 25.2.4. Be subject to cross-examination and re-examination in the same manner as in a court hearing.

25.3. Subject to any contrary directions, where the Tribunal convenes an oral hearing:

- 25.3.1. Material already filed with the Tribunal will be accepted as part of the evidence and need not be repeated or formally produced by a witness;
- 25.3.2. The parties will have an opportunity at the hearing to make any submissions arising from the evidence given during the hearing;
- 25.3.3. The Tribunal will reserve its decision and issue a decision in writing, dismissing or upholding the complaint.

25.4. If the Tribunal upholds the complaint, you will then have an opportunity to present submissions on sanctions. For more information on sanctions see sections 27 and 28 of this Practice Note.

26. APPLICATION FOR ADJOURNMENT

26.1. Oral hearings are set down on the basis that the hearing will go ahead on the date fixed.

26.2. If you are unable to attend on the fixed date, you may apply for an adjournment using the form provided on the Tribunal's website:

- 26.2.1. The Tribunal will not grant an adjournment unless there are good reasons to justify it.
- 26.2.2. The consent of the other parties is not, of itself, a sufficient reason for an adjournment to be granted.

26.2.3. You should make your application at the earliest possible opportunity. The Tribunal will not grant an adjournment if the application is made less than five working days prior to the fixed hearing date unless there are extraordinary and compelling reasons for the matter to be adjourned.

26.2.4. Where an adjournment is granted, the matter will usually be rescheduled for hearing as soon as possible.

26.3. Your application should:

26.3.1. Set out the reasons why an adjournment is necessary,

26.3.2. Be accompanied by a signed affidavit and/or other evidence supporting your reasons, and

26.3.3. Be signed or otherwise authenticated.

26.4. You are not required to attend an oral hearing, however, if you do not appear and an adjournment has not been granted, the Tribunal will continue to hear the matter in your absence. If an oral hearing has been called, it will be your final opportunity to present your case.

SANCTIONS

27. PURPOSE

27.1. If the Tribunal upholds a complaint against you, it will ask for submissions on sanctions.

27.1.1. This allows you to make submissions on what (if any) sanctions you think are appropriate, in light of the aspects of the complaint that have been upheld against you.

27.2. The Tribunal may impose any or all of the following sanctions (section 51):

27.2.1. Caution or censure,

27.2.2. A requirement to undertake specified training or otherwise remedy any deficiency within a specified period,

27.2.3. Suspension of licence for the unexpired period of the licence, or until you meet specified conditions,

27.2.4. Cancellation of licence,

27.2.5. An order preventing you from reapplying for a licence for a period not exceeding 2 years, or until you meets specified conditions,

27.2.6. An order for the payment of a penalty not exceeding \$10,000,

- 27.2.7. An order for the payment of all or any of the costs or expenses of the investigation, inquiry, or hearing, or any related prosecution,
- 27.2.8. An order directing you to refund all or any part of fees or expenses paid by the complainant or another person to you,
- 27.2.9. An order directing you to pay reasonable compensation to the complainant or other person.

27.3. If you disagree with the Tribunal's decision on sanctions, you may appeal that decision to the District Court. The grounds of appeal are limited; see *Wang v Immigration Advisers Authority* [2012] DCR 180.

Note: Penalties are payable to the Immigration Advisers Authority

28. FORM OF PROCEEDINGS

28.1. The decision upholding the complaint will set out the timeframes for submissions on sanctions:

- 28.1.1. The Registrar and complainant will be invited to make submissions on sanctions.
- 28.1.2. You will then have time to respond to those submissions and make any submissions of your own.
- 28.1.3. The Registrar and complainant will have a further period in which they can reply to your submissions.

28.2. Once all the timeframes have expired, the imposition of sanctions will almost always be determined 'on the papers' and a written decision will be issued.

PUBLICATION OF TRIBUNAL DECISIONS

29. PURPOSE

29.1. The Tribunal publishes its decisions on its website in order to:

- 29.1.1. Maintain open access to justice,
- 29.1.2. Ensure that the public are aware of any complaints that have been upheld against an adviser,
- 29.1.3. Effect any censure imposed on an adviser, and
- 29.1.4. Ensure that advisers are able to conduct their practices in accordance with the law.

30. PUBLICATION

30.1. Unless circumstances warrant suppression in a particular case, the Tribunal will publish its decisions on its website in the following manner:

30.1.1. Where a complaint is upheld:

- The Tribunal will publish the decision including your name and any other identifying information.
- The complainant's name will also be included, unless the Tribunal considers it appropriate to suppress certain information. The complainant is able to apply to have their name and other details suppressed.

30.1.2. Where a complaint is dismissed:

- The Tribunal will publish an anonymised version of the decision where the names and identifying information of both yourself and the complainant are suppressed.
- If you consider that there are reasons justifying the publication of the names and identifying information, of either yourself or the complainant, you may apply to the Tribunal.

30.2. If you consider that circumstances warrant greater suppression than what is set out above, you may apply in writing to the Tribunal. Your application should:

30.2.1. Request that your name, certain information and/or the whole decision be suppressed,

30.2.2. Provide reasons why suppression is appropriate in the circumstances of the case,

30.2.3. Provide any evidence supporting your reasons, and

30.2.4. Be signed or otherwise authenticated.

NOTE: The Tribunal will only depart from its normal publication practices if there are compelling reasons.

Grant Pearson

Chair

Immigration Advisers Complaints and Disciplinary Tribunal

26 October 2016

Tribunal Contact Details

Postal address:

Immigration Advisers Complaints and Disciplinary Tribunal
Tribunals Unit
Private Bag 32-001
Featherston Street
Wellington 6011

Physical address:

Immigration Advisers Complaints and Disciplinary Tribunal
Tribunals Unit
Level 1
86 Customhouse Quay
Wellington

Email: IACDT@justice.govt.nz

Ph: (04) 462-6660

Fax: (04) 462-6686

Website: www.justice.govt.nz/tribunals

SCHEDULE 1

Statement of Complaint

**IN THE IMMIGRATION ADVISERS
COMPLAINTS AND DISCIPLINARY TRIBUNAL**

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

BY **The Registrar of Immigration Advisers**
Registrar

BETWEEN **[Complainant's name (unless withheld)]**
Complainant

AND **[Adviser's name]**
Adviser

STATEMENT OF COMPLAINT

DATED [date filed]

A Parties

1. The Parties to the Complaint are:

Complainant

Name:

Address:

Mobile:

Email:

Fax:

[if the Registrar has withheld the complainant's identity or is referring the complaint of his/her own motion this should be specified in place of the above particulars]

Licensed immigration adviser

Name:

Address:

Mobile:

Email:

Fax:

Licence status:

B Background

2. [A brief outline of the apparent factual circumstances to which the complaint relates, with references to supporting material]

C Grounds of Complaint

3. The complainant indicated the following grounds of complaint:

3.1 [List grounds of complaint as identified by complainant]

4. The Registrar has determined not to deal with this matter under section 45(1) of the Immigration Advisers Licensing Act 2007 and has instead identified that the complaint may disclose one or more of the grounds below:

- 4.1 [List grounds of complaint being referred by Registrar, this should include legislative reference to the relevant section or clause]

D Details of the Grounds Referred

5. [Repeat each of the grounds of complaint referred by Registrar in turn, with details of the information and reasoning on which the Registrar determined to refer that ground of complaint]

E Supporting Material

6. [Outline and attach the information which the Registrar holds that he/she considers is relevant and reasonably necessary for the Tribunal to consider when determining the complaint. The attached information should be in the form of a copy of written material; with other information to be set out in writing. All material is to be in the English language (translated where necessary)]

Dated:

Signature: