

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

Decision No: [2018] NZIACDT 4

Reference No: IACDT 035/17

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

BY **The Registrar of Immigration
Advisers**

Registrar

BETWEEN **S B**
Complainant

AND **Irene William Karam Atia**
Adviser

THE NAME AND IDENTITY OF THE COMPLAINANT NOT TO BE PUBLISHED

DECISION

REPRESENTATION:

Registrar: In person.

Complainant: In person.

Adviser: Mr J Turner, lawyer, Laurent Law, Auckland.

Date Issued: 19 February 2018

DECISION

Preliminary

- [1] This is a complaint regarding an alleged conflict of interest and failing to minimise fees.
- [2] The essential facts are that Ms Atia engaged with her client who lives in the Middle East, he wanted some relatively uncomplicated immigration services. As matters developed:
- [2.1] Ms Atia put business proposals to her client;
- [2.2] Those business proposals involved or would potentially be implemented in a way that Ms Atia would participate in a profit sharing arrangement;
- [2.3] One of the business ventures came into effect, Ms Atia was the sole director of a company in which her client was the sole shareholder. She had a profit sharing agreement and provided services to the business (a retail shop); and
- [2.4] She also had an agreement to provide immigration services for \$250 + GST, and later joined another immigration practice, and a new fee of \$1,500 for similar services was substituted for the existing terms.
- [3] The Registrar contends that potentially Ms Atia failed to manage a conflict of interest and failed to minimise her fees for services.
- [4] There is some dispute as to the facts, but the key issues are to identify the nature of Ms Atia's professional obligations in relation to conflicts of interest and managing fees. Whether Ms Atia met her professional obligations flows from those conclusions, as the core facts are documented with only a limited scope for dispute.

The Complaint

The background facts

- [5] The Registrar filed a statement of complaint, set out a factual narrative, and identified two aspects that were potentially grounds for complaint. The main elements of the factual background in the statement of complaint were as follows:
- [5.1] The adviser, Ms Atia, was a self-employed director of The Future Immigration Consultants Limited (Future Immigration).
- [5.2] Other persons connected with the events arising in the complaint are:

- [5.2.1] Bineet Talwar, a provisionally licenced immigration adviser Ms Atia supervised. Mr Talwar was the Director of Immigration Law Experts Limited (Immigration Law Experts) and provided contractual services to Future Immigration.
- [5.2.2] Mr Peter Woodberg, the Managing Director of North Shore Immigration Limited (North Shore Immigration). Mr Woodberg is not a licensed immigration adviser. At times Ms Atia provided services to that practice.
- [5.2.3] Mr Nagi Lofty Faltaus, Ms Atia's lawyer, who is a principal of Saint Mark's Law Practice.
- [5.3] The Registrar has applied not to have the name of the complainant disclosed. The complainant was at the material time living in the Middle East.
- [6] The essential narrative identified by the Registrar in the statement of complaint is:
- [6.1] The complainant lives in the Middle East, he had been born in Palestine and held an Egyptian refugee travel document. In late 2014, he had been granted a single entry New Zealand residence visa and had been issued with a Certificate of Identity by Immigration New Zealand. His Egyptian refugee travel document was not valid for travel to New Zealand.
- [6.2] In early 2015, the complainant contacted Ms Atia and sought her assistance to obtain a new Certificate of Identity, and transfer his current New Zealand residence visa into a form which would allow him to travel in and out of New Zealand.
- [6.3] Ms Atia and the complainant signed a written agreement regarding this assistance. The written agreement provided for fees of NZ\$250 plus GST, the services included assistance to the complainant's wife who held a Saudi Arabian passport and a New Zealand residence visa.
- [7] In April 2015, the complainant emailed Ms Atia saying that he had been looking at Immigration New Zealand's website, and investigating his options given that he did not anticipate being able to stay in New Zealand for the first two years of residence (which was a requirement of the visa he held). The complainant went on to say:

I have just noticed the option of sharing a 25% of some business or buying a house. Would you please look into the matter and advise me ...

- [7.1] Ms Atia arranged contacts and gave advice to the complainant regarding purchasing or investing in a business in New Zealand. That occurred during May 2015.
- [7.2] In June 2015, Ms Atia started working for Mr Woodberg and a practice he was associated with called North Shore Immigration. She worked in the practice for about 25 hours a week, while she continued to operate her own practice with Future Immigration. The complainant signed a new written agreement with Ms Atia and North Shore Immigration regarding obtaining a refugee travel document, residence visa, and assisting his wife. The fee provided in this agreement was NZD\$1,500. Ms Atia later refunded the fees that had been paid under the existing agreement (the total fee under that agreement was \$250 + GST).
- [7.3] During June and July 2015 Ms Atia, while working for North Shore Immigration, applied for a travel document and a transfer of the complainant's existing visa. During this time, the complainant travelled to New Zealand and met with Ms Atia, she also organised for him to meet Mr Woodberg and discuss commercial property investments.
- [7.4] In June 2015, the complainant received a Certificate of Identity, it was valid for one year and his visa was transferred to that document. He then left New Zealand in early July 2015.
- [7.5] At some point during September or October 2015, Ms Atia's engagement with North Shore Immigration ended.
- [7.6] Between November 2015 and March 2016, Ms Atia searched for and recommended businesses to the complainant as options for purchase. She said she would manage any potential business for the complainant while he was living overseas. Ms Atia also researched lawyers and fees for him, and said she would contact her own lawyer Mr Faltaus, and give him the complainant's details.
- [7.7] In April 2016, the complainant considered purchasing a business recommended by Ms Atia. It was a retail shop — a dairy and milk bar (the Dairy). The complainant changed his mind and cancelled the purchase, but said he may reconsider when he visited New Zealand in June of that year. In mid-2016, the complainant required another Certificate of Identity and transfer of his visa. Ms Atia emailed him and said that her fees would be \$350 plus GST and the work would be done through her own practice Future Immigration.

- [7.8] During May and June 2016, Ms Atia and the complainant continued to discuss purchasing a business and started to negotiate what percentage of profit Ms Atia would receive for managing the business.
- [7.9] In June 2016, the complainant travelled to New Zealand and signed a written agreement with Ms Atia to apply for a refugee travel document and transfer his visa. Ms Atia asked Mr Talwar to undertake this work for the complainant. However, there were issues with the application for the travel document and Ms Atia decided to also act for the complainant.
- [7.10] On 21 June 2016, the complainant received a new Certificate of Identity, he proceeded with the purchase of the Dairy and he gave Ms Atia's address as his point of contact.
- [7.11] In the latter part of June 2016, Mr Talwar applied for the transfer of the complainant's visa to his new Certificate of Identity and those documents were forwarded to Ms Atia. The same day that those documents were sent to her, Ms Atia signed a New Zealand Companies office form to become a director of a company. That company was incorporated the following day and Ms Atia was identified as the sole director and the complainant was the sole shareholder.
- [7.12] In July 2016, Ms Atia signed an agreement with the complainant, agreeing that she was entitled to 20 per cent of the newly incorporated company's profits.
- [7.13] In June 2016 to September 2016, Ms Atia was heavily involved in the day-to-day running of the Dairy. The business was not successful in the way anticipated, and the relationship between Ms Atia and the complainant deteriorated.
- [7.14] The complainant sold the Dairy business in September 2016, both Ms Atia and the complainant engaged lawyers and made allegations of a criminal nature against each other.

The grounds of complaint identified by the Registrar

Conflicts of interest

- [8] Clause 5 of the Licenced Immigration Advisers Code of Conduct 2014 (the Code of Conduct) provides that when a licenced immigration adviser is aware of a potential or actual conflict of interest relating to their client, they must disclose that to the client in writing. Clause 6 of the Code of Conduct provides that when that occurs, the adviser may represent or continue to represent the client only if the client gives written consent.

- [9] The registrar referred to the following sequence of events as potentially establishing a breach of cl 5:
- [9.1] Ms Atia searched for and recommended businesses for the complainant to purchase, offered to arrange a bank loan for him, provide a guarantor and to manage the business for the complainant when he was living overseas. The Registrar also noted Ms Atia researched lawyers to engage and their fees for the complainant; in fact, she introduced him to her own lawyer, Mr Faltaus.
 - [9.2] The complainant and Ms Atia discussed purchasing the Dairy business, alongside conversations about applying for a new Certificate of Identity.
 - [9.3] Ms Atia negotiated the purchase price for the business, organised for Mr Faltaus to assist with the purchase, and discussed clauses of the Sale and Purchase Agreement with the complainant.
 - [9.4] After stopping the proposed purchase of the Dairy, subject to later reconsideration, the complainant told Ms Atia on two occasions that he would compensate her for the work she had done on the business purchase.
 - [9.5] Ms Atia and the complainant later discussed applying for a new Certificate of Identity and transfer of his visa, along with negotiating a percentage of profits to be paid to the adviser.
 - [9.6] The adviser prepared a file note dated 4 June 2016, it showed she was aware there was a conflict of interest with the complainant. She passed the complainant's file to Mr Talwar, a provisionally licenced adviser who was under her supervision.
 - [9.7] The complainant signed a written agreement with the adviser and Future Immigration to apply for a refugee travel document and transfer of visa. Mr Talwar did not sign the written agreement and was not mentioned in it.
 - [9.8] There were some further issues concerning renewal of the complainant's Certificate of Identity, and Ms Atia prepared a file note stating the complainant called her in an agitated and distressed state, asking for assistance. After considering whether to act for the complainant or leave Mr Talwar to address the matter, she decided the best course of action was for her to act for the complainant. She went on to assist the complainant with the Certificate of Identity application.

- [9.9] Ms Atia then emailed the complainant with another business proposal. She proposed to set up an office in the Middle East and involve the complainant in the ownership of her own immigration practice.
- [9.10] The complainant was issued with a Certificate of Identity, and on the same day he signed the Sale and Purchase Agreement for the Dairy and listed the adviser's address as his contact.
- [9.11] Mr Talwar applied for the transfer of the complainant's visa to the new Certificate of Identity and on 27 June 2016, Ms Atia emailed the complainant saying the contract for immigration services was completed. On the same day, she completed the documentation required for her to become the sole director of the company through which the complainant would invest in the Dairy.
- [9.12] Ms Atia rang Immigration New Zealand on 19 September 2016 and stated she was no longer representing the complainant.
- [10] The Registrar contends that those events establish:
- [10.1] Ms Atia was aware there was a conflict of interest with the complainant.
- [10.2] She failed to disclose the conflict in writing to the complainant.
- [10.3] She did not obtain the complainant's written consent.
- [11] On that basis, Ms Atia failed to comply with cls 5 and 6 of the Code of Conduct.
- Breaches of cls 20(b) and 20(c) of the Code of Conduct*
- [12] Clause 20(b) of the Code of Conduct requires that a licenced immigration adviser must work in a manner that does not increase fees, and cl 20(c) requires that the adviser must inform the client of any additional fees or changes to previously agreed fees and record that in writing.
- [13] The Registrar referred to the following sequence of events:
- [13.1] The complainant signed a written agreement with the adviser for services that were to be provided at a cost of NZ\$250 plus GST. Ms Atia received a payment from the complainant relating to that agreement.
- [13.2] Ms Atia began providing services through North Shore Immigration. She proposed a new written agreement with North Shore Immigration which would result in an increase in fees.
- [13.3] The Registrar identified that:

[13.3.1] The complainant's view is that he queried the increased fee and Ms Atia told him that all her clients had to engage her services through North Shore Immigration, and that there would be an increase in fees.

[13.3.2] Ms Atia says that it was the complainant's choice to engage North Shore Immigration and he did so on an informed basis.

[13.4] The complainant signed an agreement with North Shore Immigration and the cost of those services was NZ\$1,500 (the identified services were similar to the services provide under the former agreement).

[14] The Registrar's view is that Ms Atia may have breached cl 20(b) of the Code of Conduct by unnecessarily increasing fees for the complainant. She had agreed to provide services for NZ\$250 plus GST and then charged \$1,500 for the same or comparable services.

[15] The Registrar contends that the adviser also failed to inform the complainant in writing of changes to the previously agreed fees or gain his written agreement to those changes before signing the new agreement with North Shore Immigration. Accordingly, she breached her obligations under cl 20(c) of the Code of Conduct.

The complainant's response to the statement of complaint

[16] The complainant did not respond to the statement of complaint and was not required to do so if he agreed with it.

Ms Atia's response to the statement of complaint

The conflict of interest

[17] Ms Atia's counsel provided submissions and to the extent the issues were factual she provided an affidavit to support her position.

[18] Ms Atia's response relied quite heavily on an email she sent on 15 June 2016 to the complainant. In this email, Ms Atia informed the complainant:

[18.1] That her immigration practice had operated since 2013 and she provided particulars of the staffing and governance arrangements.

[18.2] She disclosed the former turnover of the practice and the difficulties she faced due to the financial collapse of a third party. She said as a result "I lost all my business" and there had been an on-going adverse effect.

[18.3] She had not completed her tax return for the most recent year, but anticipated a marginal profit (she did not say whether that was before or after she drew an income).

- [18.4] She said she would contact the Immigration Advisers Authority to confirm if there was any conflict of interest, and ascertain how not to become the complainant's agent if she and the complainant went into a business partnership.
- [18.5] She presented the complainant with a proposal to establish an immigration practice in the Middle East.
- [18.6] The proposal was for the complainant to be a 50/50 partner in an immigration practice, Ms Atia wanted to know "how much can you offer, and what is your business turnover expectations?"
- [19] Counsel for Ms Atia contended that this email put the complainant on notice of a "perception" of a conflict of interest and instructions that followed amounted to written instructions to continue despite that perceived conflict of interest.
- [20] Through her counsel, Ms Atia contended there was no actual conflict of interest. Having referred to the attempt on Ms Atia's part to solicit funds for her own purposes from her client, counsel went on to claim the Registrar had failed to identify any conflict of interest in the statement of complaint.
- [21] The submission continued with an argument which appears to contend that Ms Atia's involvement in her client's business affairs, and attempts to solicit money from him for her business purposes was divorced from her role as a licensed immigration adviser. The argument suggested:
- [21.1] The immigration services were simple and administrative, so no conflict could arise.
- [21.2] The purchase of the Dairy may or may not have had immigration objectives, but any application for a residence visa that would follow and were not part of Ms Atia's current instructions. Therefore, there could be no conflict of interest when she involved herself in the purchase and operation of the Dairy.
- [21.3] The complainant kept insisting Ms Atia participate in the dairy, but she did not want to be involved in the Dairy. Furthermore, other people provided some of the professional services relating to the Dairy.
- [21.4] The Authority's Code of Conduct tool kit states that:
- A conflict of interest arises when adviser's own interests, ..., may influence the adviser's judgement or actions towards a client.
- [21.5] He said it is very difficult to see how there could be a conflict of interest defined in that way, between the adviser's advice about the prospective

business purchase on the one hand and any immigration advice the adviser was to give on the other.

[21.6] Providing business advice may have been outside Ms Atia's area of expertise, but that did not amount to a conflict of interest.

[22] Counsel suggested the Tribunal ought to reach the following conclusions:

[22.1] Ms Atia perceived there was a conflict of interest but there was none in fact.

[22.2] Ms Atia derived no financial benefit from the giving of business advice until August 2016, at that point the provision of immigration advice had ended.

[22.3] There was no actual conflict of interest when the adviser provided immigration services in relation to the Certificate of Identity and the time when there were business dealings outside of immigration services.

[23] Essentially the position taken by counsel for Ms Atia is that given the absence of an actual conflict of interest, she had adequately informed the complainant of the possibility and that was sufficient to meet her professional obligations. Furthermore, the complainant continued to provide instructions in writing.

Increasing the cost of work

[24] In relation to cls 20(b) and 20(c) of the Code of Conduct counsel for Ms Atia accepted the essential factual claim that there was initially an agreement for services to be provided for NZ\$250 plus GST, and then the fee was increased to NZ\$1,500 in the circumstances outlined by the Registrar in her statement of the complaint. Counsel noted that Ms Atia was willing to refund the fees.

[25] Counsel for Ms Atia described a change from the lower fee to the higher fee as "a decision the complainant made with freedom and which was a motivated choice".

[26] He went on to contend that North Shore Immigration was in a better position to provide a fuller range of services and suggested that Mr Peter Woodberg of North Shore Immigration was in a better position to provide business advice.

[27] On this basis, counsel for Ms Atia contended that the complainant accepting the increased fees was an informed choice, which the complainant made and did so after considering that North Shore Immigration could provide more satisfactory services to him.

[28] Counsel for Ms Atia suggested that communications between Ms Atia, North Shore Immigration and the complainant were sufficient to satisfy the

requirement that she inform the complainant of additional fees or changes, and ensure they are agreed in writing.

[29] Accordingly, counsel for Ms Atia suggested that the Tribunal should conclude:

[29.1] There was no breach of the code, because the code does not require an agreement to change a fee to be in writing prior to a service agreement being signed.

[29.2] The complainant willingly agreed to the change.

[29.3] There was no breach of cl 20 of the Code of Conduct.

Ms Atia's affidavit

[30] In several minor respects, Ms Atia minimised her role in the Dairy purchase and operation. However, the essential narrative in which Ms Atia participated in the arrangements for the purchase of the Dairy, became the sole director of the company operating it and had a profit sharing agreement is not challenged.

[31] Ms Atia also placed some emphasis on Mr Talwar's role, but did not dispute she was supervising him and that he did not have a contractual relationship with the complainant.

[32] Ms Atia recognised she sent an email on 23 June 2015 to the complainant and stated that "I am obliged under a contract [with North Shore Immigration] to transfer all my clients". This was in the context of an email exchange in which the complainant challenged the increase in fees. She admitted in an email of 28 May 2015 that Mr Woodberg told Ms Atia she could retain her clients and that was not consistent with what she told her client. Ms Atia explained this in terms of confusion and pressure in her practice. She offered to refund the \$1,500 and claimed the complainant chose to instruct North Shore Immigration to provide services.

[33] Ms Atia went on to make various allegations against the complainant and say the events giving rise to the complaint had adversely affected her health. She sought not to disclose that part of the information to the complainant.

Procedure

[34] The Tribunal hears complaints on the papers under s 49 of the Immigration Advisers Licensing Act 2007 (the Act), but may in its discretion request information or request that persons appear before the Authority.

[35] In this case the parties did not seek an oral hearing.

Discussion

The standard of proof

- [36] The Tribunal determines facts on the balance of probabilities. However, the test must be applied with regard to the gravity of the potential finding: *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1.

Conflicts of interest in a professional setting

- [37] The concept of conflict of interest in a professional setting is not unique to licensed immigration advisers, the Act and the Code of Conduct. Other professions have similar professional issues when they mix their personal financial interests with their client's financial or business interests. Obvious examples include lawyers and chartered accountants. Licensed immigration advisers and those professions all act as their clients' representatives, assist in meeting their clients' regulatory obligations, and advocate for their clients with officials.
- [38] The nature of the professional relationship has been considered by the higher Courts in relation to other professions. This Tribunal has addressed some aspects of conflicts of interest in relation to licensed immigration advisers in decisions such as *MSC v Scholes* [2013] NZIACDT 58 at [122]. The Act resolutely imposes professional obligations on licensed immigration advisers. Section 37 of the Act requires the Code of Conduct to address professional standards. Nothing in the Act or the Code of Conduct suggests anything less than professionalism is required from licensed immigration advisers.
- [39] A useful overview of the issues raised for lawyers who engage in a business transaction with a client is set out in *Ethics, Professional Responsibilities and the Lawyer*¹. The text discusses the fiduciary nature of the professional relationship and the consequences that flow. They include the need for full disclosure, the potential conflict with the duty of loyalty to the client, and need to remain objective. The discussion goes on to note that disclosure must be complete², with "perfect good faith", the lawyer must secure informed consent; and there a potential need for independent advice.
- [40] The Court of Appeal also discussed the principles applying to lawyers in *Sims v Craig Bell & Bond* [1991] 3 NZLR 535, where it observed the relationship between lawyers and their clients is one recognised in equity as a fiduciary one. That relationship imposes on the lawyer the obligation to deal with a client with utmost good faith. The Court emphasised similar duties to those discussed in *Ethics, Professional Responsibilities and the Lawyer*. The statutory professional

¹ Webb, Dalziel and Cook, 3rd Ed, LexisNexis New Zealand, at p.200

² Citing *Law Society of New South Wales v Harvey* [1976] 2 NSWLR 154, 170,

environment created by the Act has not fundamental differences from the professionalism imposed on lawyers by the corresponding legislation. The functions and obligations that lawyers and licensed immigration advisers have when providing immigration services are very similar. The Act regulates who can provide immigration services, and lawyers are the principal group exempted from the requirement to hold a licence, due to having their own professional regulatory and disciplinary regime. Nothing in the statutory regimes applying respectively to lawyers and licensed immigration advisers suggests that a client receiving immigration services from a lawyer has a fiduciary relationship, and does not have that when receiving the same services from a licensed immigration adviser. Section 3 of the Act provides the purpose of the Act is “to promote and protect the interests of consumers receiving immigration advice”; that is a purpose it does achieve by demanding professionalism from licensed immigration advisers.

- [41] The *Sims* case concerned whether a transaction was valid given a breach of professional duty, rather than a professional disciplinary case. Regardless, it is a clear exposition of the obligations and risks professional persons have when they mix their personal interests with those of their clients. Richardson J, which all the members of the Court supported, observed:

The inquiry then is as to what steps ought to have been taken in order to discharge that duty. Rules of equity have to be applied to a wide diversity of circumstances and it is elementary that in determining the scope and content of the fiduciary obligations of the solicitor it is necessary to consider the exact circumstances of the particular case.

... A client must be able to place complete reliance on the professional advice of the solicitor and is entitled to expect that the solicitor will serve and protect the client's interests at all times. Wherever there is potential for conflict of interest there is a risk that the advice of the solicitor may be influenced insidiously or even unconsciously by the prospect of benefit (other than professional remuneration) to the solicitor from the transaction which the solicitor is retained to carry through. If the client is to be in a position to make an informed decision about the proposed transaction he or she must be fully informed by the solicitor of the transaction and of all the implications for the client of entering into it. In short the client must be made aware of every circumstance relevant to his or her decision. And, as Megarry J observed in *Spector v Ageda* [1973] Ch 30, 47 (in another context):

". . . The solicitor must be remarkable indeed if he can feel assured of holding the scales evenly between himself and his client. Even if in fact he can and does, to demonstrate to conviction that he has done so will usually be beyond possibility in a case where anything to his client's detriment has occurred. Not only must his duty be discharged, but it must manifestly and undoubtedly be seen to have been discharged."

- [42] Clearly the obligations require exemplary conduct on the part of a professional person owing a fiduciary duty. It is of course necessary to consider the terms of the Code of Conduct; however, it is appropriate to consider that nature of the relationship the Code of Conduct regulates. Before considering the exact

circumstances of this particular case, and the terms of the Code of Conduct, I note the decision of the New Zealand Lawyers and Conveyancers Disciplinary Tribunal in *Auckland Standards Committee 5 v Van Noort* [2017] NZLCDT 21. The case concerned a lawyer who entered into a lease agreement with his clients. The Tribunal described the situation as: “You were hopelessly conflicted and you should have known it.” The decision is a reflection of the typical consequences of a professional person involving their financial interests with those of their clients outside of fees for professional services. Only the most scrupulous attendance to the duties discussed in the *Sims* case will avert a similar outcome for a professional person in these circumstances.

The facts and the scope of professional responsibility

- [43] The material interactions between Ms Atia and the complainant are documented. There is little scope for disputing the essential narrative of what transpired between them.
- [44] The Registrar’s statement of complaint sets out a narrative that is intended to demonstrate Ms Atia’s role in providing immigration services was intertwined with her involvement in her client’s business affairs. Ms Atia’s response is largely concerned with endeavouring to separate the immigration services she provided with her proposals to solicit money from her client and her entering into a business relationship in respect of the Dairy.
- [45] In my view, there is little significance in the details of timing between the provision of immigration services and the time when Ms Atia put the business arrangements between her and the complainant in place. There is also little of importance in the nature of the immigration services when compared with the business arrangements. Conflicts of interest in a professional setting are not confined to a conflict that can interfere with the delivery of professional services. This case concerns a gross conflict in which a licensed immigration adviser attempted to solicit money from her client for her own business purposes, and entering into a profit sharing agreement with her client in relation to his business. She did not provide immigration services to solicit the money in question; the concern is she used her professional relationship to exploit the opportunity to extract money from her client. There was an inherent conflict of interest.
- [46] It exhibits a concerning lack of perspective that Ms Atia’s response to the complaint is to deny there was a conflict of interest at all. It is important to bear in mind the nature of a professional relationship, with the trust, confidence and vulnerabilities that are an integral part of professional relationships. That relationship of trust and confidence, supported by the professional person’s status as a licenced professional and concomitant duties to meet the standards of her profession wholly permeates the relationship and dealings between the professional person and their client. It is not open to claim some dealings in a

professional context attract professional duties and not others. The authorities relating to lawyers discussed above amply demonstrate that position.

- [47] Decisions of this Tribunal have repeatedly pointed out that in the course of a practice operated by a licenced immigration adviser, some services come within the scope of services that may only be provided by a licenced or exempt person under the Immigration Adviser's Licensing Act 2007 and unregulated services may also be provided. That is very commonly the case.
- [48] To use an analogy a lawyer may act for a client in District Court proceedings, where they cannot appear unless they are a lawyer, they may also appear for the same client in proceedings before a Tribunal where the client is entitled to be represented by any person as an agent. The professional responsibilities carried by the lawyer do not change, in both circumstances the lawyer will carry the same professional obligations in both instructions.
- [49] Licenced immigration advisers also often provide a range of services, some require they are a licenced immigration adviser, others can be offered by unqualified persons. For example, licenced immigration advisers may provide employment search services as well as immigration services. When a person holds themselves out as acting as a licenced immigration adviser, and uses that privileged status, they must maintain the standards of professionalism and honesty through all of their dealings with their client. That is the position in which Ms Atia found herself. She was dealing with the complainant throughout as a licensed immigration adviser, and her conduct when she attempted to solicit funds from her client and enter into a business relationship with him will be measured on that basis.
- [50] I recognise there can be occasions when a professional person, after acting for a client, enters into an entirely different type of relationship with that person. A client may employ their lawyer as in-house counsel, then the former client becomes the lawyer's employer. Equally, the former client could become the lawyer's employee. Very similar circumstances can arise in relation to a licenced immigration adviser and a range of other professional persons such as chartered accountants. I use these professions as an analogy, because they have some similarities to licensed immigration advisers. They all represent clients, provide business services and negotiate regulatory requirements for clients. The disciplinary issues have similarities.
- [51] Some other professions have quite different issues, where extremely personal disclosures and confidences can trigger other sensitivities in relation to a change of status between the client and the professional. Obligations in such cases may endure permanently and inhibit forming a different relationship between the professional recipient of a confidence, and their former client.

[52] In this case the evidence is that Ms Atia and the complainant first became involved in relation to a relatively straightforward immigration instruction. Potentially the instruction may have become more complex, but the initial work was of a relatively administrative nature. As matters developed it became more of an objective for the complainant to take steps to gain permanent residence in New Zealand on terms that were suitable for him. The written material does indicate that the purchase of the Dairy was related to that objective. However, that change is not of particular importance for the reasons identified. All of Ms Atia's dealings with the complainant occurred within the professional relationship, and the obligations that attended that relationship.

Role of other parties

[53] I recognise North Shore Immigration appeared to have been responsible for the client relationship for a time. However, Ms Atia continued to provide immigration services through that practice. Mr Peter Woodberg, who is not a licensed immigration adviser, was engaged, or potentially engaged, in providing some business advisory services. Licensed immigration advisers must be personally identified in service agreements. Ms Atia maintained the client relationship throughout, a non-qualified person providing other services cannot alter Ms Atia's professional obligations to the complainant. Furthermore, she ended her involvement with North Shore Immigration and continued providing immigration services before the most significant elements relating a potential conflict of interest emerged.

[54] I note in addition, that at some point, Ms Atia had her subordinate, Mr Talwar provide some of the immigration services, apparently in an endeavour to provide independent representation for the complainant. However, Ms Atia did take over the instructions again and Mr Talwar did not have a contractual relationship with the complainant. In my view, Mr Talwar's involvement cannot alter Ms Atia's responsibilities to her client.

[55] Similarly, I attach no significance to Ms Atia directing the complainant to her own lawyer and the role of some other professionals in the Dairy purchase. Potentially, directing the complainant to her own lawyer was problematic, but the lawyer had his own professional responsibilities to avoid conflicts of interest between his clients. Accordingly, I take no adverse implication from that element.

[56] There was no professional adviser who entered the sequence of events who provided independent advice to the complainant on the professional relationship between him and Ms Atia, and what was to be done in relation to the matters that gave rise to the conflict of interest. Put simply, nobody gave independent professional advice on the proposals to take money from the complainant, or the profit sharing agreement that implemented one of the proposals to do so.

Ms Atia did not at any material time terminate her client relationship with the complainant

- [57] I have already identified that Ms Atia provided services to the complainant in a client relationship, and the implications that follow. Ms Atia has claimed she terminated the client relationship, and that is an answer to the complaint.
- [58] On 27 June 2016, she sent an email to the complainant which said “[a]t this point, our immigration contract is finalized, and I have fulfilled my obligations.” At the same time, she entered the profit sharing arrangement in relation to the Dairy.
- [59] However, she did not notify Immigration New Zealand until 19 September 2016. At that point, she had been running the Dairy and attempted to solicit money from her client. Rather than effectively terminating the client relationship before the conflicts arose, this evidence shows Ms Atia was conscious of the problematic situation she was in and continued.
- [60] Regardless, on 19 September 2016 it was too late; before signing the profit sharing arrangement, Ms Atia had attempted to solicit money and advised her client on purchasing the business in which she intended to profit, and negotiated the terms of the profit share. An announcement that the immigration services were complete did not end the adviser/client relationship, or ameliorate the prior exploitation of Ms Atia’s client when she had a conflict of interest.
- [61] To end her adviser/client relationship, the information Ms Atia needed to convey to her client included the following:
- [61.1] Down to that point in time she had been acting as a licenced immigration adviser and she carried the professional responsibilities under the Code of Conduct and the Act, and was accountable on that basis. The complainant had already been made aware that (cl 19 of the Code of Conduct) notifying the client of the adviser’s professional duties is one of the central features of the client engagement process. He needed to know if and when those obligations ended.
- [61.2] From that point in time forward, Ms Atia would no longer be working for the complainant as a licenced immigration adviser, she would be entering into a business relationship with him. In that relationship, she would no longer be bound by the Act and the Code of Conduct. The complainant would have needed to understand that.
- [61.3] Clause 28 of the Code of Conduct provides essential steps to take whenever there is a termination of services.

[62] Instead of taking those steps, Ms Atia announced to her client she had fulfilled her obligations. She had not fulfilled her professional obligations at all. Instead she had participated in her client purchasing a business, intended to take profits from it, and was about to sign an agreement to that effect; and attempted to have him finance her professional practice. She had seriously breached her obligations and was about to embark on a new phase of that process.

[63] Ms Atia had two options, either:

[63.1] Terminate the client relationship in a manner that was consistent with involving herself in her client's business activities with the intention of gaining personal benefits; or

[63.2] Comply with the Code of Conduct in relation to managing conflicts of interests (and all the other provisions in the Code) and involve herself in in her client's business activities within an adviser/client relationship. Given the nature of the solicitation of money and ongoing risks relating to the Dairy, compliance with the Code within an adviser client relationship may not have been possible.

[64] Ms Atia did neither of those things and the conflicts of interest continued within the client relationship, without compliance with the Code of Conduct. *Longstaff v Birtles* [2001] EWCA Civ 1219 a decision of the Court of Appeal (UK) illustrates the difficulty of terminating a professional relationship and entering into a business relationship with a client or former client. The Court found there was a paramount duty to observe fiduciary obligations in dealing with clients and former clients.

Ms Atia pursued her own interests not her client's

[65] In this present case, there was no termination of the client relationship. After she commenced the client relationship as a licenced immigration adviser, Ms Atia was facing her own personal financial difficulties. She then pursued her own financial interests, they did not coincide with the complainant's interests:

[65.1] In an email, which she relies on, she disclosed to her client her practice was financially precarious, having lost a major source of work. She solicited funds from her client to re-establish her practice in another part of the world. That was a manifest conflict of interest, aside from using the client relationship to gain the confidence of a client, the terms of any business arrangement would be negotiable. Ms Atia suggested a 50/50 partnership — there was an inherent potential conflict — the more Ms Atia took the less her client would take. Furthermore, whether the client would invest would require due diligence, the relationship of investor and proposer has an inherent conflict.

[65.2] Ms Atia embarked on providing business advice in relation to purchasing the Dairy. The submissions advanced for her raise the question of whether she was equipped to provide business advice. Regardless, she had a plain conflict of interest because she embarked upon a process where she anticipated and then created a profit sharing arrangement. That the purchase should go ahead was in her financial interests, as that allowed her access to the anticipated profits. Further, the more she took of the profits the less the complainant received.

[65.3] Ms Atia became the sole director of the company operating the Dairy, that gave her control and access to information, which put her client at a disadvantage, and facilitated her control over the profit mechanism.

[66] It is not necessary to find these conflicts had any relationship with specific or potential immigration advice that she was proffering. It is enough that she established a relationship with her client as a licenced immigration adviser and in the course of that professional relationship gave him advice regarding the purchase of a business and did so intending to profit from participation in that business. What in fact transpired was that the business did not perform financially in the way that the complainant had anticipated. The conflict was a very serious one.

[67] In addition, Ms Atia put proposals to her client to establish an immigration practice in the Middle East. She intended to re-establish her own barely profitable immigration practice and the implication is that she expected the complainant to contribute to establishing this practice.

[68] In short, having established a relationship as a licenced immigration adviser, Ms Atia systematically went about seeking financial and non-financial benefits of a business nature, where inherently the more she gained the less her client gained. She variously advised on, and proposed aspects of these investments for her client. She was in an impossibly conflicted situation. Her own interests and her client's had an inherent conflict, and an obvious potential to develop into the deplorable situation that in fact did develop. Ultimately, she faced her client's accusations of criminality, because she used her professional relationship to access his money.

[69] Having considered Ms Atia's response to the complaint, I now turn to my findings in respect of the grounds of complaint.

The specific grounds of complaint

Breaches of cls 5 and 6 of the Code of Conduct

[70] Clause 5 has an obligation requiring a potential or actual conflict of interest to be disclosed in writing. Clause 6 requires that the adviser may only continue to represent a client with written consent.

[71] It is elementary that both the disclosure and the consent must be on a basis which fully informs the client. I find there was correspondence that makes it patently obvious that the adviser intended to profit from her relationship with the complainant, there is also information that makes it obvious that she was facing financial pressures and sought to have her client provide resources to develop her practice; and that she sought to share profits with her client. There is no written authority for her to continue to act despite the conflict of interest, except in as much as the complainant continued to give written instructions.

[72] In my view, it is necessary to consider the application of cls 5 and 6 in the context of the Code of Conduct as a whole. In that regard, there can be no more important provision than cl 1 of the Code of Conduct which provides:

A licenced immigration adviser must be honest, professional, diligent and respectful and conduct themselves with due care and in a timely manner.

[73] In addition, cl 2 provides that:

[2] A licenced immigration adviser must:

(a) Maintain a relationship of confidence and trust with the client and provide objective advice

...

(e) Obtain and carry out the informed lawful instructions of the client ...

[74] When dealing with a conflict of interest, and applying cls 5 and 6, those general obligations apply.

[75] In this present case, Ms Atia sought a business relationship rather than a professional relationship with her client. For the reasons discussed, Ms Atia did not end her adviser/client relationship before the conflicts of interest were potential and actual conflicts of interest. She did not manage the conflicts of interests properly within the client relationship in accordance with the Code of Conduct either.

[76] I am satisfied Ms Atia breached cl 5 of the Code of Conduct:

[76.1] she knew her interests and her clients were in conflict;

[76.2] a potential³ conflict of interest lay in her attempts to solicit money from her client to develop her practice;

³ There may have been an actual conflict in that Ms Atia did solicit money, the alternative view is that the conflict was potential only, in that she did not receive any money or other benefit. It is not necessary to decide the scope of potential or actual for present purposes.

[76.3] A potential and then actual conflict of interest lay in her advising her client on a business purchase, intending to, and then operating that business under a profit sharing arrangement; and

[76.4] Ms Atia necessarily disclosed to her client she was seeking financial benefits from him; but failed to disclose in writing why her interests and her client's interest conflicted in relation to those matters.

[77] I am also satisfied Ms Atia breached cl 6 of the Code of Conduct:

[77.1] For the reasons identified in the preceding paragraph:

[77.1.1] Ms Atia had a potential conflict of interest when she attempted to solicit money from the complainant to develop her practice.

[77.1.2] Ms Atia had an actual conflict of interest throughout the arrangements in which her client purchased a business, and she operated the complainant's business under a profit sharing business.

[77.2] Ms Atia did not obtain written consent to continue to represent her client not withstanding those potential and actual conflicts of interest.

[77.3] Ms Atia continued to represent the complainant without the necessary written consent.

Breaches of cl 20(b) and 20(c) of the Code of Conduct

[78] Clause 20(b) and (c) of the Code of Conduct required that Ms Atia "work in a manner that does not unnecessarily increase fees" and "inform the client of any additional fees, or changes to previously agreed fees, and ensure these are recorded and agreed to in writing".

[79] The indisputable facts are:

[79.1] Ms Atia and her client had an agreement for her to provide services for an agreed fee.

[79.2] She proposed that be cancelled and similar services provided by a different service provider.

[79.3] Her client objected, given the increase was several multiples of the original fee.

[79.4] She then solicited her client's agreement with a false statement that she was obliged to transfer the client relationship.

- [80] The Registrar has apparently accepted Ms Atia's explanation that the misrepresentation regarding the obligation to transfer clients was a result of confusion on Ms Atia's part. The Registrar has not included dishonesty as one of the allegations. I accordingly deal with the misrepresentation on the basis it was the result of confusion, as Ms Atia claims.
- [81] There was in fact no reason for Ms Atia could not provide the services for the agreed price. She was free to carry on under the existing arrangement. She was confused; however, when her client queried the change, she had an obligation to ensure she did understand the situation. The Code of Conduct required her to be diligent and take due care (cl 1 of the Code of Conduct). Diligence and care would have quickly established she was free to continue to provide the services and what she told her client was not correct.
- [82] I accept that Mr Woodberg may have been in a position to provide business advice services that were not immigration services. However, Ms Atia could have identified those services and Mr Woodberg could then make his own arrangements to provide them as separate services. Certainly, the fees for the respective services needed to be identified, and the complainant's rights under the existing agreement disclosed to him. Instead he was misled.
- [83] Accordingly, I am satisfied Ms Atia breached both cl 20(b) and (c) by working in a manner that unnecessarily increased fees, and failed to inform her client and obtain agreement. The specific findings are:
- [83.1] The change from the agreement to provide services for \$250 +GST to an agreement to provide similar services for \$1,500 unnecessarily increased the fees.
- [83.2] Ms Atia has not put forward evidence, or claimed, that the increase is explicable in terms of additional services provided under the second agreement and that the immigration services were priced at the original cost.
- [83.3] The complainant could not provide informed agreement or consent to the increase, as his agreement was procured by a misrepresentation that there was no alternative if he was to receive the services, whereas in fact, Ms Atia had a contractual obligation to provide the services for the lower price and was in a position to do so.

Confidential information not disclosed to the complainant

- [84] One of the issues raised by Ms Atia is an allegation that her client was to some extent responsible for the way in which matters developed. Ms Atia has also provided various medical information relating to her personal situation. She has

applied to maintain confidentiality in relation to this information and that it not be disclosed to the complainant.

- [85] In my view, whatever the complainant said or did has very limited relevance to the allegations faced by Ms Atia. Ms Atia has not suggested that the complainant engaged in some deception or the like whereby she acted unwittingly, without an understanding of the material circumstances. If a professional adviser feels pressure from a client, it is their duty to ensure that they manage the client relationship appropriately, if necessary by terminating it. Professional persons will constantly come under pressure from clients to lend their name and reputation to support a client's position, it is critical that a professional person ensures that they never compromise their own integrity. Unless a person is willing to withstand such pressure as they may come under from clients, they cannot maintain the standards of a profession. In this particular case, it is not necessary to make factual findings regarding what the complainant did or did not do. If it were necessary, then it would not be possible to deal with the issue with Ms Atia, as she proposes, withhold her claims from the complainant.
- [86] Indeed, some of the information provided by Ms Atia would be consistent with her having identified her client may be vulnerable to her influence. However, I make no findings regarding those matters, it is not necessary to do so.
- [87] Ms Atia has produced information relating to the impact of these matters on her personally. I regard that as of little, if any, relevance except possibly in relation to the imposition of sanctions. To the extent that these matters have had an impact on Ms Atia, the impact is an unsurprising and foreseeable consequence of her failing to maintain professional boundaries and comply with the Code of Conduct. The Code of Conduct provides significant protection for licenced immigration advisers, not only their clients. Had Ms Atia avoided a conflict of interest, or alternatively managed it in a way that was required by the Code, she would not have had these difficulties. Whether she has breached the Code is not determined by the adverse consequences of doing so.
- [88] In these circumstances, for the moment, the Authority will make an interim direction that the information Ms Atia has provided relating to her claims regarding the complainant, and her personal health are not to be disclosed to the complainant or the Registrar. Either may apply for disclosure in which case the issue will be addressed on its merits.

Decision

- [89] The Tribunal upholds the complaint pursuant to s 50 of the Act.
- [90] The adviser breached the Code of Conduct in the respects identified. These are grounds for complaint pursuant to s 44(2) of the Act.

Submissions on Sanctions

- [91] The Tribunal has upheld the complaint. Therefore, pursuant to s 51 of the Act, it may impose sanctions.
- [92] The authority and the complainant have the opportunity to provide submissions on the appropriate sanctions, including potential orders for costs and compensation. Whether they do so or not, the adviser is entitled to make submissions and respond to any submissions from the other parties.
- [93] Given the findings regarding Ms Atia's role in the purchase of the Dairy in breach of the Code of Conduct, an issue may arise in relation to compensation for any losses resulting from that purchase. If the complainant seeks compensation for those losses and return of any profits paid to Ms Atia, he should provide particulars and documentary evidence to support the claim for compensation. The same applies to any other compensation he seeks. If compensation for losses relating to the Dairy is sought, the Tribunal will consider the material in support as well as Ms Atia's response. At that point, it will consider whether an oral hearing is necessary and whether the issues should be addressed instead in a different forum.
- [94] Any application for an order for the payment of costs or expenses under s 51(1)(g) should be accompanied by a schedule particularising the amounts and basis for the claim.

Timetable

- [95] The timetable for submissions will be as follows:
- [95.1] The Authority and the complainant are to make any submissions within 15 working days of the issue of this decision.
- [95.2] Ms Atia is to provide any further submissions (whether or not the Authority or the complainant file submissions) within 25 working days of the issue of this decision.
- [95.3] The Authority and the complainant may reply to any submissions made by the Ms Atia within 5 working days of Ms Atia filing and serving those submissions.

Non-publication of the complainant's name and identity

- [96] The Registrar sought an order for the non-publication of the complainant's identity, but did not provide particularly clear grounds. The facts do disclose various grounds that could justify an order. In the circumstances, there will be an interim order not to disclose the name of, or any information that may identify the complainant or his family.

- [97] The form of this decision, aside from the name of the complainant may be published. If the complainant has a concern any details would disclose his identity, and if so he should inform the Tribunal's Case Manager.
- [98] If Ms Atia objects to the order she may give notice she does so, and in that case the Tribunal will ensure the grounds are identified, and that all parties have an opportunity to address them before making a final decision.
- [99] If no party takes issue with the order, the interim order will become a final order after 15 working days from the issue of this decision.
- [100] The order will not prevent any party from disclosing this decision to a barrister or solicitor of the High Court of New Zealand to obtain legal advice or services; and any party may apply to vary the order.

DATED at WELLINGTON this 19th day of February 2018

G D Pearson
Chair