

IMMIGRATION ADVISERS LICENSING ACT 2007

COMPLAINTS AND DISCIPLINARY PROCEDURES: PARTS 44 – 55

44. Complaints against immigration advisers

(1) Any person may make a complaint to the Registrar concerning the provision of immigration advice by—

- (a) a licensed immigration adviser; or
- (b) a person who, not more than 2 years before the date of the complaint, was a licensed immigration adviser (**a former licensed immigration adviser**).

(2) The grounds for complaint may be any 1 or more of the following in relation to the immigration adviser or former licensed immigration adviser complained of:

- (a) negligence;
- (b) incompetence;
- (c) incapacity;
- (d) dishonest or misleading behaviour;
- (e) a breach of the code of conduct.

(3) A complaint—

- (a) must be made in writing; and
- (b) must specify the ground or grounds that form the basis of the complaint; and
- (c) must state whether or not the complainant has made attempts to resolve the complaint using the immigration adviser's (or former licensed immigration adviser's) own complaints procedure, and the outcome (if any) of that process; and
- (d) must be accompanied by copies of any supporting documentation; and
- (e) may not be made anonymously.

45 Procedure on receipt of complaint by Registrar

(1) On receiving a complaint concerning a licensed immigration adviser or former licensed immigration adviser, the Registrar may—

- (a) determine that the complaint does not meet the criteria set out in section 44(3), and reject it accordingly;
- (b) determine that the complaint does not disclose any of the grounds of complaint listed in section 44(2), and reject it accordingly;
- (c) determine that the complaint discloses only a trivial or inconsequential matter, and for this reason need not be pursued;
- (d) request the complainant to consider whether or not the matter could be best settled by the complainant using the immigration adviser's own complaints procedure.

(2) If the Registrar determines that the complaint should not be dealt with under subsection (1), the Registrar must refer the complaint to the Tribunal for determination.

(3) The Registrar may refer a complaint to the Tribunal for a determination as to whether the licence of the immigration adviser concerned should be suspended under section 53.

- (4) If the complaint is to be referred to the Tribunal under subsection (2), the Registrar must—
- (a) prepare the complaint for submission to the Tribunal under section 47; and
 - (b) file the complaint with the Tribunal under section 48.

(5) If the Registrar makes a determination of any of the kinds referred to in subsection (1)(a) to (c), the Registrar must—

- (a) notify the complainant of the relevant determination in writing; and
- (b) in the case of a determination under subsection (1)(b) or
- (c), notify the complainant of the right to appeal to the Tribunal under section 54.

46 Registrar may refer complaint to Tribunal of own motion

(1) The Registrar may, of his or her own motion, make a complaint on one of the grounds set out in section 44(2) and prepare it for referral to the Tribunal.

(2) The Registrar may refer such a complaint to the Tribunal for a determination as to whether the licence of the immigration adviser concerned should be suspended under section 53.

(3) The complaint must be determined by the Tribunal in the same manner as any other complaint referred to it under section 45(2).

47 Preparation of complaint for referral to Tribunal

(1) For the purpose of preparing a complaint for submission to the Tribunal, the Registrar or a person authorised by the Registrar may gather further information on the complaint, including by exercising the powers of inspection referred to in section 57.

(2) Before referring a complaint to the Tribunal, the Registrar must—

- (a) notify the person complained of in writing of the complaint; and
- (b) give both the complainant (if any) and the person complained about a reasonable opportunity to make a written statement or explanation in relation to the complaint.

(3) The notice required by subsection (2)(a) must identify the complainant (if any), unless the Registrar considers that exceptional circumstances justify the withholding of the complainant's identity.

48 Filing complaint with Tribunal

(1) After determining to refer a complaint to the Tribunal under section 45(2) or 46(1), the Registrar must, having gathered such further information in relation to the complaint as he or she thinks fit (if any), file the complaint or matter with the Tribunal.

(2) Upon filing the complaint, the Registrar must—

- (a) give written notice of the referral, a copy of the complaint, and any further information that has been gathered on the complaint to the person to whom the complaint relates; and
- (b) give written notice of the referral to the complainant (in the case of a determination under section 45(2)).

49 Proceedings before Tribunal

- (1) The Tribunal may regulate its procedures as it thinks fit.
- (2) Subsection (1) is subject to this Act and any regulations made under this Act.
- (3) Matters or complaints must be heard on the papers.
- (4) Despite subsection (3), the Tribunal may, if it thinks fit in its absolute discretion,—
 - (a) request further information from any person in relation to a complaint or matter:
 - (b) request that any person appear before the Tribunal to make a statement or an explanation in relation to a complaint or matter.

50 Determination of complaint by Tribunal

After hearing a complaint, the Tribunal may—

- (a) determine to dismiss the complaint:
- (b) uphold the complaint but determine to take no further action:
- (c) uphold the complaint and impose on the licensed immigration adviser or former licensed immigration adviser any 1 or more of the sanctions set out in section 51.

51 Disciplinary sanctions

- (1) The sanctions that the Tribunal may impose are—
 - (a) caution or censure:
 - (b) a requirement to undertake specified training or otherwise remedy any deficiency within a specified period:
 - (c) suspension of licence for the unexpired period of the licence, or until the person meets specified conditions:
 - (d) cancellation of licence:
 - (e) an order preventing the person from reapplying for a licence for a period not exceeding 2 years, or until the person meets specified conditions:
 - (f) an order for the payment of a penalty not exceeding \$10,000:
 - (g) an order for the payment of all or any of the costs or expenses of the investigation, inquiry, or hearing, or any related prosecution:
 - (h) an order directing the licensed immigration adviser or former licensed immigration adviser to refund all or any part of fees or expenses paid by the complainant or another person to the licensed immigration adviser or former licensed immigration adviser:
 - (i) an order directing the licensed immigration adviser or former licensed immigration adviser to pay reasonable compensation to the complainant or other person.
- (2) The Tribunal must notify its decision to the complainant (if any) and the person complained about in writing, giving reasons for the decision.
- (3) A person subject to a sanction under this section has the right to appeal, under section 81, the Tribunal's decision to impose the sanction.
- (4) If an immigration adviser fails to demonstrate, to the satisfaction of the Registrar, compliance with a requirement imposed under subsection (1)(b), the adviser's licence is deemed to be cancelled at the end of the specified period.

(5) Any payment ordered by the Tribunal under subsection (1)(f) or (g) may be recovered as a debt due to the Crown.

52 Enforcement of disciplinary sanctions

The following orders for disciplinary sanctions made by the Tribunal under section 51 may be enforced in all respects as if they were an order of the District Court on the filing of a sealed copy in that court by—

- (a) the Crown, in the case of—
 - (i) an order for payment of a penalty under section 51(1)(f); or
 - (ii) an order for payment of costs and expenses of the investigation, inquiry, or hearing, or any related prosecution under section 51(1)(g);
- (b) the person in whose favour the order is made, in the case of—
 - (i) an order for a refund of all or any part of fees or expenses paid by the complainant or another person to the immigration adviser or former licensed immigration adviser under section 51(1)(h); or
 - (ii) an order for the payment of reasonable compensation to the complainant or another person under section 51(1)(i).

53 Suspension of licence pending outcome of complaint

(1) The Tribunal may suspend a licence where—

- (a) a complaint has been made about the licensed immigration adviser; and
- (b) the complaint has been referred to the Tribunal by the Registrar under section 45(3) or 46(2); and
- (c) the complaint is being prepared for submission to the Tribunal; and
- (d) the Tribunal considers that it is necessary or desirable to suspend the licence having regard to the interests of the public.

(2) The process for suspending a licence under this section is as follows:

- (a) the Tribunal must give the licensee written notice of its intention to suspend the licence; and
- (b) the notice must—
 - (i) contain or be accompanied by a statement of the Tribunal's reasons for the intended suspension; and
 - (ii) state that the licensee has 10 working days within which to make written representations to the Tribunal as to why the licence should not be suspended; and
 - (iii) state the proposed period or otherwise describe the proposed duration of the suspension; and
- (c) if any written representations are made by the licensee within the 10 working day period referred to in paragraph
- (b)(ii), the Tribunal must take those representations into account in deciding whether or not to suspend the licence, or the period or duration of the suspension; and
- (d) the Tribunal must then decide whether or not to suspend the licence, and notify the licensee accordingly, as soon as practicable.

(3) If the Tribunal decides to suspend the licence, the Tribunal must—

- (a) include in the notice under subsection (1)(d) the grounds for the decision, the date on which the suspension takes effect, and the period or duration of the suspension; and
- (b) specify in the notice the right of the licensee to appeal to the District Court under section 81.

54 Appeal to Tribunal against determination by Registrar to reject complaint

(1) A complainant may appeal to the Tribunal against a determination of the Registrar to reject or not pursue a complaint under section 45(1)(b) or (c) within 20 working days after the date of the notice given under section 45(5).

(2) The appeal is by way of written notice to the Tribunal of the complainant's intention to appeal, accompanied by—

- (a) a copy of the notice given to the complainant under section 45(5); and
- (b) such other information as the complainant wishes the Tribunal to consider in relation to the appeal.

(3) After considering the appeal, the Tribunal may—

- (a) reject the appeal; or
- (b) determine that the decision of the Registrar was incorrect, but nevertheless reject the complaint upon another ground; or
- (c) determine that it should hear the complaint, and direct the Registrar to prepare the complaint for filing with the Tribunal; or
- (d) determine that the Registrar should make a request under section 45(1)(d).

(4) A decision on an appeal under this section is final.

55 Appeal to Tribunal against determination by Registrar to cancel licence

(1) A person may appeal to the Tribunal against a decision of the Registrar to cancel that person's licence within 20 working days after the date of the notice given under section 28(1)(d).

(2) The appeal is by way of written notice to the Tribunal of the person's intention to appeal, accompanied by—

- (a) A copy of the notice given to the person under section 28(1)(d); and
- (b) Such other information as the person wishes the Tribunal to consider in relation to the appeal.

(3) After considering the appeal, the Tribunal may—

- (a) reject the appeal; or
- (b) uphold the appeal, and give the Registrar any appropriate directions in relation to the licence.

(4) A person may appeal to the District Court under section 81 against a decision of the Tribunal to reject an appeal under subsection (3)(a).