Choosing to have the client pay up front for services
Acknowledgements

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Disclaimer

The Immigration Advisers Authority has made every effort to ensure that, at the date of publication, this Toolkit is free from errors and that advice and information drawn upon have been provided in good faith. Neither the Immigration Advisers Authority nor any person or organisation associated with the preparation of this Toolkit accepts liability for any loss which a user of this Toolkit may suffer as a result of reliance on the Toolkit and in particular for:

- use of the Toolkit for a purpose for which it was not intended
- any errors or omissions in the Toolkit
- any inaccuracy in the information or data on which the Toolkit is based or which are contained in the document, or
- any interpretations or opinions stated in, or which may be inferred from, the Toolkit.

Many Immigration Advisers Complaints and Disciplinary Tribunal decisions referenced in this publication were made at the time the Licensed Immigration Advisers Code of Conduct 2010 was in force.

This document is intended to provide guidance to licensed immigration advisers only.

Nothing in this document should be taken as a substitute for legal advice, and in no case will the Immigration Advisers Authority or the Ministry of Business, Innovation and Employment be responsible for the adequacy or inadequacy at law of any purported reliance on this document.

Advisers should take such independent legal advice as they consider appropriate, regarding their obligations as licensed immigration advisers.
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Purpose

The Immigration Advisers Authority (the Authority) has developed this *Code of Conduct Toolkit* to assist licensed immigration advisers (advisers) to:

- understand the professional responsibilities they have to clients and stakeholders under the *Licensed Immigration Advisers Code of Conduct 2014* (Code)

- understand the professional practice requirements that they must adhere to under the Code

- be able to successfully identify, and address, any issues that arise in complying with the Code.

By publishing this document, the Authority seeks to:

- foster transparency, consistency and professionalism

- encourage meaningful discussion that will contribute positively to the ongoing development of the immigration advice profession

- contribute to better overall outcomes for the New Zealand immigration system

- encourage the sharing of information to enhance the continuing professional development of licensed immigration advisers.
The Licensed Immigration Advisers Code of Conduct 2014

The Code has three key purposes:

- to set out a common statement of how advisers will behave when conducting their business with their clients - a statement to which all agree to subscribe, and by which all agree to be bound

- to guide advisers in their everyday business and professional decision-making, which enables them to meet the legitimate expectations of other stakeholders involved in the New Zealand immigration system

- to act as a written reference point in any complaints process or other proceedings.

The Code of Conduct Toolkit may be read in conjunction with the Ethics Toolkit which may assist advisers to make professional and ethically responsible decisions.

This symbol prompts advisers to think about how the Ethics Toolkit may assist them to make the best decisions in applying the Code. Clicking on the symbol will link directly to the Ethics Toolkit.
Individual responsibility

Individual licensed immigration advisers are responsible for adhering to the Code. This means that advisers who are employees of a company are still responsible for adhering to the Code. Advisers who are employees should discuss their responsibilities under the Code with their employer.

Here are some decisions from the Immigration Advisers Complaints and Disciplinary Tribunal that refer to employee responsibility:

**Slinger v Zhou**
Decision: [2015] NZIACDT 38 (15 April 2015) (PDF, 246KB)
Penalty Decision: [2015] NZIACDT 87 (27 August 2015) (PDF, 181KB)

**Kumar v Ahuja**
Decision: [2014] NZIACDT 120 (19 December 2014) (PDF, 127KB)
Penalty Decision: [2015] NZIACDT 105 (21 December 2015) (PDF, 174KB)

**Musese v Min**
Decision: [2013] NZIACDT 24 (4 April 2013) (PDF, 119 KB)
Penalty Decision: [2013] NZIACDT 60 (18 September 2013) (PDF, 96.7 KB)

**McLeod v C Yap**
Decision: [2013] NZIACDT 19 (28 March 2013) (PDF, 176 KB)
Penalty Decision: [2013] NZIACDT 43 (15 July 2013) (PDF, 92.4 KB)
Professional responsibilities

General

Clause 1:
A licensed immigration adviser must be honest, professional, diligent and respectful and conduct themselves with due care and in a timely manner.

Clause 1 relates to an adviser’s behaviour when dealing with clients and any other person or office they may encounter in their professional dealings.

This could include, but is not limited to, Immigration New Zealand, the Immigration and Protection Tribunal, the Minister of Immigration, the Immigration Advisers Complaints and Disciplinary Tribunal, the Authority, the courts, any other government bodies or any other licensed or exempt immigration adviser.

Honesty

Being honest underpins the Code and is an important part of each clause. Honesty is a fundamental ethical value upon which society and the legal system operate. It is important to be honest, even if a client wants the adviser to be dishonest.

Dishonesty is taken very seriously by the Immigration Advisers Complaints and Disciplinary Tribunal and can lead to an adviser’s licence being cancelled.
Here are some decisions from the Immigration Advisers Complaints and Disciplinary Tribunal that refer to dishonesty:

**Chand v Shearer**
Decision: [2016] NZIACDT 12 (18 March 2016) [PDF, 84 KB]

**J v Khetarpal**
Decision: [2015] NZIACDT 95 (5 November 2015) [PDF, 224KB]
Penalty Decision: [2016] NZIACDT 7 (22 January 2016)

**EBT v Mudaliar**
Decision: [2015] NZIACDT 79 (6 August 2015) [PDF, 240KB]
Penalty Decision: [2015] NZIACDT 92 (16 October 2015) [PDF, 201KB]

**Toiloloi v Letalu**
Decision: [2014] NZIACDT 52 (15 April 2014) [PDF, 129KB]
Penalty Decision: [2014] NZIACDT 93 (18 September 2014) [PDF, 194KB]

**Chen v Loh**
Decision: [2013] NZIACDT 15 (19 March 2013) [PDF, 217 KB]
Penalty Decision: [2013] NZIACDT 55 (30 August 2013) [PDF, 151 KB]

**Moctezuma v Chase-Seymour**
Penalty Decision: [2013] NZIACDT 40 (26 June 2013) [PDF, 151 KB]
Professionalism

Professionalism is important because the public needs to know that they can trust all members of the immigration advice profession.

To act professionally the adviser needs to demonstrate that he or she:

- brings integrity to all of their business dealings
- acts in their client’s best interests
- provides the benefits of their knowledge and skill to their client, but also knows the limits of their knowledge and skill
- treats people with respect
- does not act in a manner that will bring the profession into disrepute.

Here are some decisions from the Immigration Advisers Complaints and Disciplinary Tribunal that refer to professionalism:

**L v Kim**
Penalty Decision: [2015] NZIACDT 108 (22 December 2015) (PDF, 186KB)

**AQ v Mudaliar**
Decision: [2015] NZIACDT 76 (23 June 2015) (PDF, 192KB)
Penalty Decision: [2015] NZIACDT 93 (16 October 2015) (PDF, 132KB)

**Juan v Ramos**
Decision: [2015] NZIACDT 48 (7 May 2015) (PDF, 133KB)
Penalty Decision: [2016] NZIACDT 3 (14 January 2016) (PDF, 130KB)

**Senadipathi & Xavier v Sampang**
Decision: [2015] NZIACDT 43 (20 April 2015) (PDF, 98KB)
Penalty Decision: [2015] NZIACDT 110 (23 December 2015) (PDF, 123KB)

**Tully v Yerman**
Decision: [2012] NZIACDT 19 (9 May 2012) (PDF, 102 KB)
Penalty Decision: [2012] NZIACDT 39 (31 July 2012) (PDF, 78 KB)

**Muneez v Deng**
Decision: [2013] NZIACDT 33 (27 May 2013) (PDF, 108 KB)
Penalty Decision: [2013] NZIACDT 53 (20 August 2013) (PDF, 65.4 KB)
Diligence

To be diligent the adviser needs to demonstrate that he or she:

- makes a constant and earnest effort to accomplish what they have agreed to do
- takes the appropriate level of care required for the job at hand.

Respect

Respect for persons and their rights is the basis for many of the ethical principles expressed in the Code. To show a person respect an adviser should:

- treat them with consideration, and
- refrain from offending, corrupting or tempting them.

Having due care

Due care is the conduct that a reasonable person will exercise in a particular situation, in looking out for the safety of others. Advisers who conduct themselves with due care should protect themselves from acting negligently.

To exercise due care the adviser needs to demonstrate that he or she exerts the efforts which are ordinarily applied by a licensed immigration adviser, i.e. the efforts which are expected from a prudent adviser with the same set of skills and experience in a given situation.
Here are some decisions from the Immigration Advisers Complaints and Disciplinary Tribunal that refer to diligence and having due care:

**Gill v Singh**
Decision: [2017] NZIACDT 5 (6 April 2017) [PDF, 82 KB]

**Adams v Aucamp**
Decision: [2015] NZIACDT 94 (22 October 2015) (PDF, 150KB)

**N v Tangilanu**
Decision: [2015] NZIACDT 37 (31 March 2015) (PDF, 131KB)

**N v Letalu**
Decision: [2015] NZIACDT 41 (16 April 2015) (PDF, 142KB)

**Eppanapally v Zhou**
Decision: [2014] NZIACDT 118 (28 November 2014) (PDF, 233KB)
Penalty Decision: [2015] NZIACDT 84 (27 August 2015) (PDF, 189KB)

**Ikbarieh v Hammadih**
Decision: [2014] NZIACDT 49 (15 April 2014) (PDF, 168KB)
Penalty Decision: 2014] NZIACDT 111 (13 October 2014) [PDF, 388KB]
Acting in a timely manner

To act in a timely manner the adviser needs to demonstrate that he or she:

- does not spend unnecessary time on any given task, potentially increasing their client’s fees in the process
- makes every effort to meet each deadline imposed, no matter who has stipulated it. Not meeting deadlines imposed by Immigration New Zealand or the Immigration and Protection Tribunal, for example, could have a detrimental effect on the client’s immigration matter.

What has changed compared to the 2010 Code?

**2010 Code** – required due care, diligence, respect and professionalism when dealing with clients and the maintenance of respectful and professional relationships with stakeholders

**2014 Code** – requires honesty, professionalism, diligence, respectfulness, due care and timeliness at all times and with all people.
Negligence is also a ground for complaint. A person behaves negligently when they are not doing what a reasonable person would do in a situation where that person owes a duty of care. Here are some decisions from the Immigration Advisers Complaints and Disciplinary Tribunal that refer to negligence:

**Nguyen v Hu**
Decision: [2016] NZIACDT 24 (16 May 2016) [PDF, 96 KB]
Penalty Decision: [2016] NZIACDT 51 (12 September 2016) [PDF, 134 KB]

**Alagappa v Ah-Kuoi**
Decision and Penalty Decision: [2015] NZIACDT 89 (17 September 2015) (PDF, 18KB)

**Goher v Hammadieh**
Decision: [2015] NZIACDT 44 (22 April 2015) (PDF, 95KB)
Penalty Decision: [2015] NZIACDT 1 (14 January 2016)

**Tamang v Varquez**
Decision: [2015] NZIACDT 39 (15 April 2015) (PDF, 86KB)
Penalty Decision: [2015] NZIACDT 78 (31 July 2015) (PDF, 186KB)

**Shankar v Ahuja**
Decision: [2015] NZIACDT 36 (31 March 2015) (PDF, 187KB)
Penalty Decision: [2015] NZIACDT 106 (21 December 2015) (PDF, 196KB)

**U v Tangilanu**
Decision: [2015] NZIACDT 35 (23 March 2015) (PDF, 135KB)
Penalty Decision: [2015] NZIACDT 61 (19 May 2015) (PDF, 179KB)

**Chand v Devi (Negligence and incompetence)**
Decision: [2014] NZIACDT 25 (14 March 2014) (PDF, 138KB)
Penalty Decision: [2014] NZIACDT 80 (15 September 2014) (PDF, 203KB)
Client care

Defining the client

It is important that advisers clearly recognise who their clients are in order to ensure that they fulfil the obligations that they owe to them.

The client could be any individual, firm, legal entity or organisation to whom or to which a licensed immigration adviser provides immigration assistance or advice.

The client may not always be the final recipient of a visa or the subject of an appeal. The adviser could be providing advice to an applicant’s employer or to a sponsor for a family category visa.

In any situation where the adviser is providing immigration advice the recipient of that advice is a client.

In some situations, the adviser may be dealing with more than one client in relation to the same immigration matter. In these situations confidentiality and potential conflicts of interest between the various clients or parties have to be managed, and the adviser must ensure that this is done with care.

Characteristics of the adviser-client relationship

The relationship between an adviser and their client has several distinctive characteristics. These include:

- The adviser is in a position of holding knowledge and expertise concerning New Zealand immigration legislation and instructions.
- The client has either little or no idea about New Zealand immigration legislation and instructions, and is relying on the expertise of the adviser to assist them.
- There may be cultural, language or gender barriers that need to be overcome.
- The client will provide information to the adviser that is both personal and confidential in nature. There is a clear expectation that the adviser will only use this information for the purposes of achieving an outcome regarding an agreed matter for the client.
Maintaining a relationship of confidence and trust and providing objective advice

Clause 2(a):

A licensed immigration adviser must:

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

This clause reflects the duty an adviser has to recognise that their expert knowledge puts their client at a disadvantage in the relationship. The client must have confidence that the adviser will act in their best interests and they must be able to trust the adviser to provide advice that will assist them to make decisions that will be of the greatest benefit to them.

Knowing that an adviser will provide objective advice will assist a client to have this trust and confidence in their adviser. An adviser should be able to weigh up all the options available to their client and advise the option that they believe will be of the greatest benefit to their client.

An adviser should never rate one option higher than another based on a personal interest in that option. Clause 7 states that if the relationship of confidence and trust would be compromised due to a conflict of interest, then an adviser must not continue to act for the client.

Having a relationship of confidence and trust with their client is a positive relationship that will enable an adviser to:

- obtain information from their client in order to make good decisions
- inform the client of their options
- gain the confidence of the client
- ensure that the client understands their advice.
What has changed compared to the 2010 Code?

2010 Code – did not specifically mention the nature of the relationship between an adviser and their client

2014 Code – requires advisers to maintain a relationship of confidence and trust with the client and provide objective advice.

Acknowledging the cultural norms and values of clients

Clause 2(b):

A licensed immigration adviser must:

b) acknowledge the cultural norms and values of the client

This clause recognises that advisers are likely to encounter clients from a variety of cultural backgrounds when dealing with immigration matters.

The Office of Ethnic Communities is part of the New Zealand government and works to promote the benefits of ethnic diversity to develop prosperity for every New Zealander. Useful background information for advisers is available on their website, www.ethniccommunities.govt.nz.

The Office of Ethnic Communities has also published Ethnicity Matters - a guide to working with ethnic communities that is available at http://ethniccommunities.govt.nz/story/ethnicity-matters-guide-working-ethnic-communities

Ethnicity Matters stresses the importance of remembering that diversity exists within community groups. Advisers may be able to see differences in their clients arising from:

- the level of information/services received prior to and on arrival in New Zealand
- settlement experiences
- different cultural or religious needs
• different needs of specific groups such as women, children, teenagers, or older people
• language and communication
• specific needs of refugees
• values and views (e.g. approaches to health/healing and well-being)
• social or economic exclusion within the host country.

It is also useful to remember that ethnic communities may identify with the following broad values:

• Collectivism: the well-being of the individual in the context of the collective is more important than individual well-being in isolation
• Hierarchy: elders and those who hold positions of esteem have influence and are viewed as the ‘spokespersons’ of a particular community
• Family: the immediate and wider family unit is important to wellbeing
• ‘Model migrant’: the perception that as a migrant one has to appear to be the model citizen, so negative incidents that may occur within a community are down-played
• Faith/religion: for some ethnic communities, their faith forms a central part of the community identity
• Self-sufficiency (‘for us, by us’): a desire to contribute to New Zealand’s future, and to build self-sufficient lives for their communities and families.

Individuals may not always identify with their community values and the broad values of an ethnic community may also change over time and be influenced through integration into New Zealand society.

As part of their continuing professional development (CPD), advisers may wish to keep themselves informed about:

• Migration and labour market research undertaken in New Zealand, through sources such as:
  
  the Ministry of Business, Innovation and Employment at http://www.mbie.govt.nz/publications-research/research
General country conditions through sources such as:

- the United States Department of State Human Rights Reports available at www.state.gov
- the United Kingdom’s country information and guidance available at https://www.gov.uk/government/collections/country-information-and-guidance

Facilitating the provision of interpreters and translators as appropriate

Clause 2(c):

A licensed immigration adviser must:

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

Clause 2(c) sets out the requirement to facilitate the provision of interpreters and translators as appropriate. This recognises that advisers are likely to encounter language difficulties with clients when dealing with immigration matters and must arrange for interpreters and translators to be provided to clients so these difficulties can be minimised.

All applications or requests to Immigration New Zealand must be made in English. This means that if an applicant or requestor does not speak, read or write in English they will need assistance by way of translators or interpreters to successfully complete the application or request process.
The client needs to be able to convey to the adviser, in detail, all of the relevant information and background that pertains to their situation, so that the adviser can assess and place this information appropriately in context. Throughout this process, the client must be able to understand the adviser’s questions, and to ask the adviser to clarify any matters that are unclear if needed. Advisers may also be dealing with concepts that are difficult, even for clients who have no linguistic or cultural barriers to overcome.

To participate effectively in an interview with an adviser without assistance, a client requires very good language skills - far better than those required to understand and answer just a few simple questions.

**Using an interpreter may be necessary for an adviser and client to communicate freely at the relatively advanced level needed to gain a shared understanding.**

Many of the simple questions asked at the beginning of an interview, such as “what is your name?” or “where do you live?”, are the kinds of questions that the client may often be asked, and to which they may be able to respond. The client’s responses to such questions may not be a clear guide as to his or her higher-level language abilities.

Advisers could try the following strategies when assessing whether the client needs an interpreter:

- ask the client if he or she needs an interpreter. They may indicate immediately that they require assistance
- be alert for:
  - repeated “don’t know” responses
  - inability to answer questions posed
  - inappropriate responses to questions posed
  - difficulty in formulating clear responses
- keep in mind that non-verbal behaviour varies from culture to culture and person to person, but look out for:
  - a puzzled expression
  - lack of eye contact
  - continual nodding of the head indicating agreement
  - frequent (inappropriate) laughter.
If the need for an interpreter does not become clear until after an interview has commenced, it may be best to postpone the interview so that an interpreter can be arranged.

**Where to get help**

Trained interpreters can be accessed through a variety of national and regional interpreting bodies.

As a starting point, an adviser seeking the assistance of an interpreter or translator can access an online directory of translators and interpreters through the New Zealand Society of Translators and Interpreters (NZSTI) website, www.nzsti.org.

Certified translators can also be accessed through the Translation Service which operates within the Department of Internal Affairs as a stand-alone business, and provides professional translation services to businesses, central and local government, education providers and private individuals.

The Translation Service is an accredited agency for Immigration New Zealand, and more information about it can be obtained from the Department of Internal Affairs website, www.dia.govt.nz.

**Using a trained interpreter – pre-interview considerations**

Advisers may wish to consider the following strategies when preparing to use a trained interpreter at an interview:

- Brief the interpreter about the case. Go over any complex information that needs to be conveyed so that the interpreter has a clear understanding of this before the interview.

- Establish the objectives for the interview. Consider giving the interpreter a brief written overview.

- Establish the mode of interpreting (simultaneous/consecutive) and the need for the adviser to be kept informed, for example if there is extra discussion required for clarification.

- Stress the importance of confidentiality.

Be careful about treating the interpreter as a ‘cultural expert’. Whilst the interpreter is likely to be aware of the values and attitudes generally within his or her culture, they may not know the significance of any aspect of the culture for a particular client. Background cultural information may be checked in the interview with the client directly, or before or after the interview through the adviser’s own research.
Using a trained interpreter – interview considerations

Advisers may wish to consider the following strategies when using a trained interpreter at an interview:

- Arrange seating to allow direct communication between the adviser and the client – place the interpreter to one side.

- Introduce everyone present at the interview to each other, and explain their various roles.

- Explain why information is being sought and that questions will be asked to obtain the information required.

- Speak slowly and clearly, but naturally. Avoid jargon and slang and do not assume the client knows technical terms, even simple ones.

- Speak directly to the client and not to the interpreter – e.g. “Where did you live in Vietnam Mr Nguyen?” not “Ask Mr Nguyen where he lived in Vietnam”. Ensure that the client is using the same technique when speaking to you.

- Maintain appropriate eye contact with the client, and observe responses closely. Remember the importance of non-verbal communication.

- Allow adequate time for the interpreter to interpret questions, and for the client to answer.

- Appreciate that the notion of ‘word for word’ or ‘verbatim’ interpretation is a myth, as no two languages equate sufficiently for this to occur. The interpreter will use his or her professional skills to take the words spoken in one language, and provide a representation of them in the other language, so as to best convey their sense and meaning given the overall context of the situation.

- Periodically throughout the interview, check the client understands the questions asked and the immigration advice given if applicable.

- Remember that the interview is a two-way process. It is equally important for the client to be able to ask questions and to check that he or she has understood the adviser (and has been understood) as it is for the adviser.

- Discourage any private conversations between the interpreter and the client, and also between the adviser and the interpreter, during the interview itself.

- If control slips in the interview, stop it straight away and re-establish ground rules.
**Working with an untrained interpreter (language assistant)**

A client may often wish to use family or friends to interpret for them - i.e. to act as a language assistant - rather than obtain the services of a trained interpreter, as this is often free or at a minimal cost.

It is useful to bear in mind that the fact that a person is very competent in two languages does not mean they have the skills of an interpreter. Interpreters require professional training. Serious miscommunication is possible when essential professional skills are not present and the risks are not understood.

Where a trained interpreter cannot be obtained and it is necessary to use an untrained language assistant, the following guidelines are useful to keep in mind:

- Keep language as uncomplicated as possible. Do not try to use ‘broken English’ as this can make a sentence less clear, and can be insulting.
- Do not raise matters that are confidential.
- Explain clearly to the language assistant what the client must do or what will happen. Check that the language assistant fully understands what has been said, before they interpret for the client.
- If an available immigration advice professional has skills in the client’s language, that professional may be called in to assist.

If the adviser thinks it necessary, they could then arrange to see the client again with a trained interpreter. The person providing the information and the adviser are both at risk in situations where information is not correctly provided.

When these issues are not managed in an ideal or appropriate way, it is a good idea to record the fact that there were issues with communication.

Effective communication is at the core of all professional relationships, and transmitting information accurately to Immigration New Zealand is a key element of an adviser’s professional responsibilities. Dealing with language barriers is a professional skill and responsibility that an adviser should take very seriously.

**Costs of using an interpreter or translator**

The Code does not set out any requirement on advisers to bear the costs of using an interpreter or translator to either facilitate communication with a client, or translate documents that may need to be submitted as part of an immigration matter. When using an interpreter or translator, as a matter of best practice, advisers should clearly set out to their client how these costs will be covered, including clearly itemising these as disbursements if required.
Advising the client when they may be eligible for legal aid

Clause 2(d):

A licensed immigration adviser must:

d) where appropriate, advise the client when they may be eligible for legal aid under the Legal Services Act 2011 in relation to a refugee status or protection claim or appeal or immigration detention

In certain circumstances a client may be eligible for legal aid – that is they may be entitled to government funding to help them with a particular legal matter. Only approved lawyers can provide legal aid services. In the immigration context a person is only eligible for legal aid in relation to a refugee or protection status claim or appeal or immigration detention.

It is important that an adviser explains to potentially eligible clients when they may be entitled to funded assistance in relation to a refugee or protection status claim or appeal or immigration detention if they were to use the services of a lawyer.

An adviser may feel that they are at a disadvantage in needing to refer their client to another professional – however, it would be unethical to deprive some of the most vulnerable individuals from government funded advice if they are entitled to it.

Legal aid for immigration advice may be available only for the proceedings specified in section 7(1)(j) to (m) of the Legal Services Act 2011 as follows:

j) proceedings before the Immigration and Protection Tribunal, as established by the Immigration Act 2009, in respect of appeals against decisions to decline to grant recognition as a refugee or a protected person, or decisions to cease to recognise a person as a refugee or a protected person, as provided in sections 194(1) and 195 of that Act, or against liability for deportation arising under section 162 of that Act

k) the processing, under Part 5 of the Immigration Act 2009, of any claim for recognition as a refugee or a protected person

l) any proceedings before the District Court or High Court following an application made under section 316 or 324 of the Immigration Act 2009

m) any appeal or review proceedings (as defined in section 4 of the Immigration Act 2009) in respect of proceedings or matters to which which paragraph (j) or (k) applies.

The Ministry of Justice has additional information on their website about eligibility for legal aid, finding a civil legal aid lawyer and applying for legal aid.


What has changed compared to the 2010 Code?

**2010 Code** – did not include any requirement relating to legal aid

**2014 Code** – requires advisers to, where appropriate, advise the client when they may be eligible for legal aid under the Legal Services Act 2011 in relation to a refugee status or protection claim or appeal or immigration detention.

Obtaining and carrying out the informed lawful instructions of clients

**Clause 2(e):**

A licensed immigration adviser must:

e) obtain and carry out the informed lawful instructions of the client

Clause 2(e) requires an adviser to obtain and carry out the instructions of their client, but only where those instructions are both lawful and informed.

To ensure a client is in a position to provide informed instructions an adviser must provide them with sufficient advice and options to make an informed decision. Interviewing a client and completing an eligibility assessment can be one way of achieving this. This process often forms a significant part of an initial consultation. However, obtaining informed instructions will be relevant at any time an adviser needs to take action on behalf of their client.

Once an adviser has obtained informed instructions from their client their next obligation is to carry them out.
If the client instructs an adviser to take any action that is not lawful, the adviser should discuss this with the client and try to offer some alternative options which are lawful. However, there may be cases where the client does not want to try another option, or where the client is simply not eligible for any type of New Zealand visa. In these circumstances the adviser cannot act for the client and may wish to use a non-engagement letter to confirm this. For more information see the Authority’s guidance on Initial consultations and Termination of services below.

An adviser is expected to carry out all lawful and reasonable instructions of the client. However, no adviser can do something unprofessional or unlawful and claim immunity. The Code and both criminal and immigration law apply regardless of a client’s instructions to the adviser.

What has changed compared to the 2010 Code?

2010 Code – required advisers to carry out the lawful informed instructions of clients

2014 Code – requires advisers to obtain and carry out the informed lawful instructions of the client.
Here are some decisions from the Immigration Advisers Complaints and Disciplinary Tribunal that refer to the importance of informed lawful instructions:

**Sidhu v Tan**
Decision: [2016] NZIACDT 62 (29 September 2016) [PDF, 159 KB]

**J v Khetarpal**
Decision: [2015] NZIACDT 95 (5 November 2015) (PDF, 224KB)
Penalty Decision: [2016] NZIACDT 7 (22 January 2016)

**Matheis v Ling**
Decision: [2015] NZIACDT 91 (8 October 2015) (PDF, 184KB)

**Carley (INZ) v Kim**
Decision: [2015] NZIACDT 47 (7 May 2015) (PDF, 144KB)
Penalty Decision: [2015] NZIACDT 107 (22 December 2015) (PDF, 183KB)

**IAA v van Zyl**
Decision: [2012] NZIACDT 37 (31 July 2012) (PDF, 156 KB)
Penalty Decision: [2012] NZIACDT 59 (11 September 2012) (PDF, 77 KB)

**Chen v Loh**
Decision: [2013] NZIACDT 15 (19 March 2013) (PDF, 217 KB)
Penalty Decision: [2013] NZIACDT 55 (30 August 2013) (PDF, 151 KB)
Information about the Treaty of Waitangi and tikanga (Māori customs and traditions)

Clause 2(f):

A licensed immigration adviser must:

   f) when requested, assist the client to access information about the Treaty of Waitangi and tikanga (Māori customs and traditions)

Clause 2(f) sets out the requirement that advisers need to assist their clients to access information about the Treaty of Waitangi and Māori customs and traditions to clients when they ask for it.

There are a number of sources of information available to assist advisers to meet their professional practice obligations in this regard.

The Authority has collated a selection of resources for advisers to use in a section entitled The Treaty and Māori culture on its website, www.iaa.govt.nz.
Acting in accordance with the law

The Code sets out the specific legislation that immigration advisers must act in accordance with.

Clause 3:

A licensed immigration adviser must:

a) if operating in New Zealand, act in accordance with New Zealand law

b) if operating offshore, act in accordance with the law of the jurisdiction they are operating in, and

c) whether in New Zealand or offshore, act in accordance with New Zealand immigration legislation, including the Immigration Act 2009, the Immigration Advisers Licensing Act 2007 and any applicable regulations

Clause 3 requires advisers to comply at all times with the laws of the country they are operating in.

In professional practice this means that advisers must understand and abide by the relevant laws when operating their businesses.

Clause 3(c) requires that advisers must act in accordance with New Zealand immigration legislation, including the Immigration Act 2009, the Immigration Advisers Licensing Act 2007 and any applicable regulations made under either Act. This includes the Licensed Immigration Advisers Code of Conduct 2014 and the Immigration Advisers Competency Standards 2015.

Here is a decision from the Immigration Advisers Complaints and Disciplinary Tribunal that refers to acting in accordance with New Zealand law:

Carley (INZ) v Pastushenko
Decision: [2016] NZIACDT 10 (16 March 2016) [PDF, 78 KB]
Penalty Decision: [2016] NZIACDT 54 (14 September 2016) [PDF, 64 KB]
It is an offence under the Immigration Advisers Licensing Act 2007 to employ or contract an unlicensed or non-exempt person as an immigration adviser. Advisers should be careful to ensure that clerical staff or other unlicensed staff do not provide immigration advice. Here are some of many decisions from the Immigration Advisers Complaints and Disciplinary Tribunal that refer to this issue:

**Greyling v Gimranov**  
Decision: [2016] NZIACDT 22 (2 May 2016) [PDF, 181 KB]  
Penalty Decision: [2016] NZIACDT 55 (15 September 2016) [PDF, 216 KB]

**Matheis v Ling**  
Decision: [2015] NZIACDT 91 (8 October 2015) (PDF, 184KB)

**Chand v Devi**  
Decision: [2015] NZIACDT 74 (12 June 2015) (PDF, 152KB)  
Penalty Decision: [2016] NZIACDT 4 (14 January 2016)

**L v Kim**  
Penalty Decision: [2015] NZIACDT 108 (22 December 2015) (PDF, 186KB)

**Slinger v Zhou**  
Decision: [2015] NZIACDT 38 (15 April 2015) (PDF, 246KB)  
Penalty Decision: [2015] NZIACDT 87 (27 August 2015) (PDF, 181KB)

**Kong v Li**  
Decision: [2015] NZIACDT 33 (23 March 2015)  
Interim Decision: [2015] NZIACDT 59 (15 May 2015) (PDF, 135KB)

**Mohammadalibeigy v Yap**  
Decision: [2015] NZIACDT 7 (13 February 2015) (PDF, 92KB)  
Penalty Decision: [2015] NZIACDT 64 (25 May 2015) (PDF, 182KB)

**IAA v van Zyl**  
Decision: [2012] NZIACDT 37 (31 July 2012) (PDF, 156 KB)  
Penalty Decision: [2012] NZIACDT 59 (11 September 2012) (PDF, 77 KB)

**NQE v Tan**  
Decision: [2013] NZIACDT 37 (13 June 2013) (PDF, 195 KB)  
Penalty Decision: [2013] NZIACDT 46 (1 August 2013) (PDF, 130 KB)

This decision refers to the scope of what is immigration advice:  
**Ekanayake v Registrar of Immigration Advisers**  
Decision: [2015] NZIACDT 67 (28 May 2015) (PDF, 177KB)
What has changed compared to the 2010 Code?

2010 Code – required all advisers to act in accordance with New Zealand laws

2014 Code – advisers must:

a) if operating in New Zealand, act in accordance with New Zealand law

b) if operating offshore, act in accordance with the law of the jurisdiction they are operating in, and

c) whether in New Zealand or offshore, act in accordance with New Zealand immigration legislation, including the Immigration Act 2009, the Immigration Advisers Licensing Act 2007 and any applicable regulations.
Confidentiality

Clause 4(a):

A licensed immigration adviser must:

a) preserve the confidentiality of the client except in the following circumstances:

i) with the client’s written consent, or

ii) if making a complaint to the Immigration Advisers Authority relating to another adviser or reporting an alleged offence under the Immigration Advisers Licensing Act 2007, or

iii) for the administration of the Immigration Advisers Licensing Act 2007, or

iv) as required by law

Confidentiality lies at the heart of the relationship of trust between a client and their adviser. It is essential from an ethical and legal perspective, because it provides the basis on which a client can feel safe in divulging all of the necessary information to their adviser. This allows the adviser to do their job and provide full and complete immigration advice and assistance.

Clause 4(a) states that an adviser must preserve the confidentiality of the client except in the circumstances outlined in sub-clauses (i) to (iv).

All information that comes into the adviser’s possession by reason of his or her acting for the client, including any personal information about the client or their affairs, belongs to the client and cannot be used by the adviser for his or her own purposes unless provided for in clause 4(a)(i – iv). A prudent and ethical adviser would start from an assumption that everything that a client tells them is confidential, unless the client has clearly indicated otherwise.

Clause 4(a)(i) relates to having the client’s consent to disclose the confidential information. If an adviser has informed the client of the reason they need to divulge the information and the client has provided their informed consent then it is acceptable to share the confidential information for the reasons agreed with the client.
In situations where an adviser is acting on behalf of a client they will disclose confidential information to Immigration New Zealand on the client’s behalf. The client should be fully informed of this.

Advisers should be careful to maintain client confidentiality even between clients who are involved in the same immigration application. A client’s information should only be shared with their permission, and advisers should carefully consider what may be disclosed between clients. Bear in mind that, under clause 7(b), if disclosing a conflict of interest to a new client would breach the confidentiality of an existing client, an adviser may not act for the new client.

Under clause 4(a)(ii), to make a complaint or report an alleged offence to the Authority an adviser does not need to have the client’s consent. However, the Code does not place any onus on an adviser to make a complaint or report an offence. If the adviser would not feel comfortable making a complaint without the client’s consent there is no requirement for them to do so. One option may be to discuss the matter with the client and advise them that making a complaint or reporting an offence will benefit others who may have had the same experience, with the aim that the client will consent to the adviser to assist them with making the complaint or reporting the offence.

If an adviser believes that they are under a statutory duty under clause 4(a)(iii) or (iv) to disclose confidential client information for the administration of the Immigration Advisers Licensing Act 2007 or as required by any other law, then he or she should inform the client promptly of this. The adviser should also inform the client if there is any opportunity available to challenge the disclosure using legal processes.

The adviser must comply with a statutory obligation to disclose client information regardless of the client’s views.

Advisers may wish to take legal advice where they believe they are required by law to disclose otherwise confidential information.
Advisers should consider the Information Privacy Principles set out in the Privacy Act 1993 when reflecting on the duty of confidentiality.

Clause 4(b):

A licensed immigration adviser must:

b) require that any employees or other persons engaged by the adviser also preserve the confidentiality of the client

Under clause 4(b) advisers must require any staff they employ or engage (such as contractors, translators or volunteers) to preserve the confidentiality of their clients.

The duty to ‘require’ staff and contractors to preserve the confidentiality of clients means that the adviser must make sure those staff and contractors are clearly advised of this obligation.

Advisers may wish to include a confidentiality provision in each signed employment agreement or contract that specifies that the employee or contractor will not at any time during the employment or contract period or afterwards disclose any personal or confidential information or details about any client of the adviser, unless expressly authorised to do so by the adviser or the client.

This would avoid any possibility of misunderstanding and act as a strong deterrent to an employee or contractor who comes into possession of confidential client information. It would also provide proof that the adviser has met the requirements of clause 4(b).

Here are some decisions from the Immigration Advisers Complaints and Disciplinary Tribunal that refer to confidentiality:

_S v Xue_
Decision: [2015] NZIACDT 6 Y v Xue (13 February 2015) (PDF, 199KB)
Penalty Decision: [2015] NZIACDT 58 (15 May 2015) (PDF, 188KB)

_Lim v Gu-Chang_
Decision: [2014] NZIACDT 77 (29 August 2014) (PDF, 103KB)
Penalty Decision: [2015] NZIACDT 3 (26 January 2015) (PDF, 166KB)

_Musese v Min_
Decision: [2013] NZIACDT 24 (4 April 2013) (PDF, 119 KB)
Penalty Decision: [2013] NZIACDT 60 (18 September 2013) (PDF, 96.7 KB)
Conflicts of interest

The principle of good faith includes the concept of ‘undivided loyalty’. That is, the adviser owes a duty to his or her client to act in the client’s best interests, free from any competing loyalties to anyone else, including themselves.

A conflict of interest arises when an adviser’s own interests, or the interests of another client of the adviser, may influence the adviser’s judgement or actions towards a client. A conflict may arise between the adviser and the client or between the client and another client of the adviser’s.

Clause 5:

Where a licensed immigration adviser is aware that there is a potential or actual conflict of interest relating to the client, including the existence of any financial or non-financial benefit the adviser will receive as a result of the relationship with the client, the adviser must disclose the potential or actual conflict to the client in writing.

A client must be advised in writing of any potential or actual conflict of interest relating to them. This can be achieved by referring to the actual or potential conflict in the written agreement with the client.

The adviser should explain to the client as fully as possible what they believe the actual or potential conflict of interest is.

Clause 5 highlights that any financial or non-financial benefit that an adviser will receive as the result of their relationship with the client is an actual or potential conflict of interest. The existence of this benefit must be disclosed to the client in writing. Advisers should carefully consider what they need to disclose on a case by case basis with a view to being as transparent as possible in the circumstances.
What has changed compared to the 2010 Code?

2010 Code – required that any financial and non-financial interests in goods or services be disclosed to their client but was located under Disclosure. It was not clear how this related to the conflict of interest clauses.

2014 Code – requires that any potential or actual conflict of interest, including the existence of any financial or non-financial benefit the adviser will receive as a result of the relationship with client, be disclosed to the client. This makes it clear that having a financial or non-financial benefit resulting from the relationship with the client is a conflict of interest and must be treated as one.

Clause 6:

Where a licensed immigration adviser is aware that there is a potential or actual conflict of interest relating to the client, the adviser may only represent or continue to represent the client where the client gives written consent.

Clause 6 follows on from the requirement to disclose any conflict to the client in writing. The next step is that the client must give consent in writing if they still want to engage the services of the adviser.

The duty to disclose a potential or actual conflict or interest is on-going, and if the adviser’s situation changes at any time, they must inform their client, make any necessary changes to the written agreement and seek written confirmation from all parties to the agreement that they accept the change.

Where there is a potential or actual conflict of interest and the client has been informed of this in writing, the client must give written consent to proceed with the services.
Clause 7:

A licensed immigration adviser must not in any circumstances represent or continue to represent the client where they are aware that there is an actual conflict of interest that means:

a) the adviser’s objectivity or the relationship of confidence and trust between the adviser and the client would be compromised, or

b) the adviser would breach the confidentiality of a client.

Where conflicts of interest arise, an adviser must address these on a case by case basis, bearing in mind all relevant contract(s) and written agreement(s) that have been entered into as well as the Code.

In some situations a conflict of interest may mean that the adviser can no longer represent the client.

Both provisions under clause 7 are requirements elsewhere in the Code - 7(a) is covered under clause 2(a) and 7(b) is covered under clause 4(a). Clause 7(a) reiterates that these requirements must be taken into consideration whenever an actual conflict of interest is identified.

If an adviser finds that an actual conflict of interest would mean that their objectivity would be compromised or that the relationship of confidence and trust with the client would be compromised, then the adviser has a choice; either:

• to find a way to manage or remove the conflict so that this situation does not arise, or

• not to act or continue to act for the client.

The same is true if the adviser finds that disclosing a conflict of interest to a new client would breach the confidentiality of an existing client. Unless the existing client consents to the confidential information being disclosed to the new client, the adviser must not act or continue to act for the new client.
Here is a decision from the Immigration Advisers Complaints and Disciplinary Tribunal that refers to conflicts of interest:

*Moctezuma v Chase-Seymour*

Penalty Decision: [2013] NZIACDT 40 (26 June 2013) (PDF, 151 KB)

**What has changed compared to the 2010 Code?**

**2010 Code** – allowed the adviser to act for the client in any situation where there was a conflict of interest providing that the client agreed

**2014 Code** – prevents an adviser from acting or continuing to act for the client if:

a) the adviser’s objectivity or the relationship of confidence and trust between the adviser and the client would be compromised, or

b) the adviser would breach the confidentiality of a client.
Working within limits of knowledge and skills

A client must be able to rely on an adviser to have the knowledge and skills to understand the relevant immigration legislation and instructions that apply to the client’s particular personal circumstances.

Clause 8:

A licensed immigration adviser must:

a) work within the scope of their individual knowledge and skills, or under direct supervision if a provisional licence holder, or refer the client to another professional

b) if a limited licence holder, explain to the client that a limited licence authorises them to provide immigration advice only in relation to specified matters, and they may provide advice only in those areas, and

c) if a provisional licence holder, explain to the client that a provisional licence requires them to work under the direct supervision of a full licence holder, and they must seek advice from the supervisor whenever necessary.

Clause 8 requires an adviser to work within the scope of their individual knowledge and skills and to disclose to a client any limitations of their licence. An adviser’s ability, knowledge and skill to undertake their client’s immigration matter may depend on, amongst other things:

- their general background and level of relevant education
- their level of experience working in the immigration advice industry
- the types of immigration matters they have dealt with
- their commitment to continuing professional development.

The decision about whether or not to agree to act for a client is as much an ethical one as it is a decision about risk. It is not fair to the client for an adviser to take on a matter that they cannot handle.
If an adviser does not have the necessary knowledge or skill to deal with a particular matter, and they are not a provisional licence holder who can seek assistance from their supervisor, they should refer the client to an adviser or lawyer who does have the necessary knowledge and skills.

Clause 8 should not prevent an adviser taking on a new type of matter if their existing knowledge and skills mean that they could handle the matter competently.

Clause 8 also requires provisional and limited licence holders to explain to their clients what it means to hold that particular type of licence.

Provisional licence holders must explain that they work under the direct supervision of a full licence holder and will consult with that adviser whenever necessary.

A limited licence holder must explain to their clients the areas in which they are licensed to provide advice and that they may provide advice only in those areas.

Provisional and limited licence holders need to include these explanations in the written agreement, in accordance with clause 19(c) or (d).

What has changed compared to the 2010 Code?

2010 Code – required that advisers work within the scope of their knowledge and skills

2014 Code – requires advisers to work within the scope of their individual knowledge and skills, or under direct supervision if a provisional licence holder, or refer the client to another professional. Clauses 8(b) and 8(c) require limited and provisional licence holders to disclose the limitations of their licence to the client.

Here is a decision from the Immigration Advisers Complaints and Disciplinary Tribunal that refers to working within the scope of individual knowledge and skills:

Five complainants v Kumar
[2015] NZIACDT 82 (17 August 2015) (PDF, 169KB)
Futile immigration matters

Clause 9:
If a proposed application, appeal, request or claim is futile, grossly unfounded, or has little or no hope of success, a licensed immigration adviser must:

a) advise the client in writing that, in the adviser’s opinion, the immigration matter is futile, grossly unfounded or has little or no hope of success, and

b) if the client still wishes to make or lodge the immigration matter, obtain written acknowledgement from the client that they have been advised of the risks.

If an adviser receives instructions from a client regarding an immigration matter that they believe is futile, grossly unfounded or has little or no hope of success, then the adviser must advise the client, in writing, of this opinion and the risks of lodging or making such an immigration matter.

An adviser may choose not to take on a client. However, an adviser is not required to persuade a client not to pursue an immigration matter, especially where Immigration New Zealand or the Immigration and Protection Tribunal may have discretion.

If, after being informed of the risks, the client still wishes to go ahead with the immigration matter, they must be asked to acknowledge in writing that they have been informed of the risks and must instruct the adviser to go ahead.

For transparency, it is a good idea to include the adviser’s opinion that the matter is futile, and the client’s acknowledgment of that, in the written agreement with the client.

What has changed compared to the 2010 Code?

2010 Code – required advisers to encourage their client not to lodge a futile application

2014 Code – removes the requirement to encourage the client not to lodge a futile application. The client must still acknowledge that they have been advised of the risks.
Professional relationships

Clause 10 sets out some specific responsibilities in relation to an adviser’s dealings with the following stakeholders:

- other licensed or exempt immigration advisers
- Immigration New Zealand
- the Immigration and Protection Tribunal
- the Immigration Advisers Authority.

Other stakeholders that advisers may deal with in the course of their business include the Minister and Associate Minister of Immigration, and the Immigration Advisers Complaints and Disciplinary Tribunal.

These stakeholders, along with Immigration New Zealand, the Immigration and Protection Tribunal and the Authority are the official decision-making entities in the New Zealand immigration system.

The relationships between advisers and these stakeholders are important.

Remember that clause 1 relates to an adviser’s behaviour when dealing with any individual and is therefore relevant to all of the above stakeholders.

1. A licensed immigration adviser must be honest, professional, diligent and respectful and conduct themselves with due care and in a timely manner.
Other licensed or exempt advisers

Clause 10(a):

A licensed immigration adviser must:

a) if they are aware that the client has previously used another licensed or exempt immigration adviser:

   i) ensure that the previous contract has ended, or
   ii) ensure that the client has terminated the services in writing, or
   iii) with the client’s written consent, terminate the services in writing on the client’s behalf, or
   iv) if the client wishes to continue to engage another licensed or exempt adviser, ensure that there are clear instructions on the terms of engagement with the new adviser

Ensuring that an adviser is not taking over work from another adviser without the knowledge of the other adviser is a professional courtesy.

Under clause 10(a), an adviser has several ways of ensuring that this has been done. If the client informs the adviser that they previously engaged the services of another adviser, the adviser should check if the agreed services have come to an end. If so, no further action needs to be taken.

If the client advises that the agreed services have not come to an end, but that they or the previous adviser have terminated the services, the adviser should check that this was done in writing. If the services have not yet been terminated, the adviser should either ask the client to terminate the services of the previous adviser in writing, or seek permission to do this on their behalf.

In some situations, a client may want to engage the services of two advisers simultaneously. In this case the written agreement with the new adviser must include clear terms of engagement.
What has changed compared to the 2010 Code?

2010 Code – did not specifically mention an adviser’s relationships with their colleagues

2014 Code – requires professional relationships between advisers and their licensed and exempt colleagues, in particular - if they are aware that the client has previously used another licensed or exempt immigration adviser:

   i) ensure that the previous contract has ended, or
   ii) ensure that the client has terminated the services in writing, or
   iii) with the client’s written consent, terminate the services in writing on the client’s behalf, or
   iv) if the client wishes to continue to engage another licensed or exempt adviser, ensure that there are clear instructions on the terms of engagement with the new adviser.

Complying with operating requirements

Clause 10(b) and (c):

A licensed immigration adviser must:

b) comply with the operating requirements of Immigration New Zealand

c) when applicable, comply with the operating requirements of the Immigration and Protection Tribunal

Immigration New Zealand

Clause 10(b) requires that advisers must comply with the operating requirements of Immigration New Zealand. In professional practice this means that advisers should:

- understand and adhere to the immigration instructions that are collated in the Immigration New Zealand Operational Manual
- understand and respect the designations, functions and powers, and delegations accorded to each office or position within Immigration New Zealand
• understand that the Immigration Act 2009 allows for the Chief Executive responsible for Immigration New Zealand to give general instructions, to immigration officers and refugee and protection officers, on the order and manner of processing any application or claim, or specified classes of application or claim

• understand that Amendment Circulars are used by Immigration New Zealand to record immigration instructions that are published between updates of the Immigration New Zealand Operational Manual

• understand that Immigration New Zealand issues Internal Administration Circulars as and when required, to provide information for its staff on procedural and process issues (these do not form part of the Immigration New Zealand Operational Manual)

• disclose to Immigration New Zealand any relevant change in circumstances relating to the representation of clients or to clients’ immigration applications.

It may be helpful for advisers to reflect on the following points when communicating with Immigration New Zealand in writing:

• supply the client name and INZ file reference or client number

• address the appropriate criteria or issue succinctly

• submit a schedule of all the documents being submitted

• if aware of a weak point in the client’s case, provide the evidence and sound reasons why it should not result in an unfavourable decision

• be specific to assist the case officer to make a favourable decision for the client

• avoid submitting documents that have no relevance to the application. Explain how each document is relevant to meeting the law or instructions. It may be obvious to the adviser, but may not be to the case officer.

**Immigration and Protection Tribunal**

Clause 10(c) requires that advisers must comply with the applicable operating requirements of the Immigration and Protection Tribunal. In professional practice this means advisers should understand:

• the structure, functions, relevant legislation and jurisdictional boundaries of the Tribunal, including understanding and adhering to any Practice Notes that the Tribunal may issue from time to time
• who has a right of appeal to the Tribunal, and the lodgement requirements (including statutory timeframes) and fees that apply to different types of appeals
• how to collect, prepare and submit evidence and how to make submissions to the Tribunal
• the need to comply with timeframes and other directions from the Tribunal
• the hearing processes of the Tribunal, including the confidential nature of refugee and protected person appeals
• how decisions from the Tribunal are communicated and published, including the need to comply with any prohibition on publication
• that they must disclose to the Tribunal any change in circumstances relating to the representation of clients or to the factual circumstances in relation to a matter before the Tribunal
• the options available to appeal or review a decision of the Tribunal.

For further information refer to the Immigration and Protection Tribunal section of the Ministry of Justice website, www.justice.govt.nz.

Remember that you must also work within the limits of your knowledge and skill according to clause 8(a).

Representing an appellant requires specialist expertise and understanding of the law relating to appeals. For example, when representing a client in respect of an appeal on humanitarian grounds, an adviser should have a good understanding of the kind of matters that are important to highlight to the Tribunal.

Immigration Advisers Authority

Clause 10(d) and (e):

A licensed immigration adviser must:

  d) disclose to the Immigration Advisers Authority in writing any information that would have a material effect on their licence, and

  e) notify the Immigration Advisers Authority in writing of any changes to their details as recorded on the register of licensed immigration adviser as soon as practicable, but no later than 10 working days, after the change.
An adviser must let the Authority know in writing any information that would have a material effect on their licence. This is likely to include:

- any matter that could prohibit an adviser from holding a licence under section 15 of the Immigration Advisers Licensing Act 2007 (the Act) such as:
  - becoming bankrupt
  - being prohibited or disqualified from managing a company under any of the provisions of sections 382, 383, or 385 of the Companies Act 1993
  - being convicted of an offence against the Immigration Act 2009
  - being removed or deported from New Zealand under the Immigration Act 2009
  - becoming unlawfully in New Zealand

- any change in circumstances that could affect an adviser’s fitness to be licensed under sections 16 and 17 of the Act (these are the Fitness for licensing questions that are asked of advisers in every licence application form).

An adviser must also inform the Authority in writing of any change to their details as recorded on the register within 10 working days of the change.

Make sure any register changes are communicated to the Authority by logging on and updating your profile at [www.iaa.govt.nz](http://www.iaa.govt.nz)

It is important that not only the Authority, but also clients, Immigration New Zealand or the Immigration Advisers Complaints and Disciplinary Tribunal can access an adviser’s most up-to-date contact details on the register of licensed immigration advisers.
What has changed compared to the 2010 Code?

**2010 Code** – required that advisers comply with the operating requirements of the Registrar

**2014 Code** – requires advisers to disclose to the Immigration Advisers Authority in writing any information that would have a material effect on their licence, and to notify the Immigration Advisers Authority in writing of any changes to their details as recorded on the register of licensed immigration advisers as soon as practicable, but no later than 10 working days, after the change.
Supervision

The Code includes clauses relating to the supervision agreement between a full and provisional licence holder, the roles and responsibilities of the supervisor and the roles and responsibilities of the provisional licence holder.

Section 19(5) of the Immigration Advisers Licensing Act 2007 (the Act) requires that a person who holds a provisional licence must work under the direct supervision of an immigration adviser who holds a full licence.

Direct supervision must continue when the primary supervisor is away or unavailable. The supervision agreement may include provision for an alternative full licence holder to provide direct supervision in the absence of the primary supervisor.

Supervision agreement

**Clause 11:**

A provisional licence holder and their supervisor must have a supervision agreement in place that is approved by the Registrar of Immigration Advisers.

The provisional licence applicant must develop a supervision agreement with their proposed supervisor and provide a signed copy of their agreement to the Registrar with their licence application. See the Authority’s Supervision Toolkit for more information about submitting this information to the Authority.

The Registrar has developed a model supervision agreement available on the Authority website [www.iaa.govt.nz](http://www.iaa.govt.nz) to assist provisional applicants and their supervisors to develop their agreement.

The Registrar stipulates that, to be approved, all supervision agreements must contain:

- the names and details of each party to the agreement
- the purpose of the agreement
- details of the supervision arrangement, including details of how direct supervision will take place
• the agreement of the employer of the provisional licence holder and/or the supervisor, where neither party is the employer
• who will bear any fair and reasonable costs of the supervision arrangement
• a new professional development plan for the provisional licence holder
• the roles and responsibilities of the provisional licence holder and the supervisor
• agreement by both parties to abide by the Code
• any conflicts of interest either party may have, or close personal relationship the two parties may have with each other and how they will manage these
• agreement on how disputes will be resolved
• agreement to keep records relating to the supervision arrangement for inspection by the Authority
• a notice period for termination by either party
• the date and signatures of both parties and the provisional licence holder’s employer (if this is not the supervisor) and the supervisor’s employer (if applicable).

Roles and responsibilities of the supervisor

Clause 12:

A supervisor must:

 a) hold a full immigration adviser licence
 b) ensure that any fees charged are fair and reasonable in the circumstances
 c) act in accordance with the supervision agreement as approved by the Registrar of Immigration Advisers
 d) preserve the confidentiality of the provisional licence holder’s clients
 e) where there is a close personal relationship with the provisional licence holder, ensure that this does not compromise the supervision agreement between the parties, and
 f) inform the Registrar of Immigration Advisers when any notice is given that the supervision agreement is to be terminated.

Supervisors should be able to justify the supervision fees they have charged. When considering whether to engage a particular supervisor, it may be helpful for a prospective provisional licence holder to consider what they will be able to afford to pay for supervision.
In the Registrar’s model supervision agreement the supervisor agrees to:

- monitor all formal documentation and correspondence from the provisional licence holder to clients, the Minister of Immigration, Immigration New Zealand, the Immigration and Protection Tribunal and the New Zealand Qualifications Authority
- meet regularly with the provisional licence holder to discuss the provisional licence holder’s current client cases, relevant provisions of the Immigration Act 2009 and its regulations, the relevant provisions of the Immigration Advisers Licensing Act 2007 and its regulations, immigration instructions and all other operational instructions in the Immigration New Zealand operational manual
- ensure the provisional licence holder is working within the scope of his/her individual knowledge and skills and that documentation is being monitored
- develop a professional development plan that identifies the provisional licence holder’s learning needs
- monitor and support the provisional licence holder to develop the skills and competencies required for a limited or full licence by providing: critical feedback; support and guidance for work and business practices; structured learning; and opportunities for on-the-job learning and development.
- provide direct supervision on the basis that he/she has supervision, leadership or management experience, and/or has completed a relevant training course
- provide direct supervision for the named provisional licence holder
- accept responsibility for the quality of the provisional licence holder’s work by: ensuring they operate within the scope of his/her individual knowledge and skills; monitoring all documentation and correspondence to clients, the Minister of Immigration, Immigration New Zealand and the Immigration and Protection Tribunal; and maintaining oversight of their handling of immigration matters
- keep records relating to the supervision arrangement.

In accordance with section 57 of the Act, the Registrar may inspect the records relating to the supervision arrangement.

Roles and responsibilities of the provisional licence holder

Clause 13(a):

A provisional licence holder must:

a) act in accordance with the supervision agreement as approved by the Registrar of Immigration Advisers
This clause means that provisional licence holders must comply with all aspects of the supervision agreement.

**Other responsibilities of provisional licence holders within the Code:**

- clause 8(a) - work within their competence
- clause 8(c) - advise all clients that they hold a provisional licence, that they are formally supervised and that they must seek advice from their supervisor whenever necessary
- clause 11 - provide to the Registrar a copy of their signed and dated supervision agreement for approval
- clause 19(c) - include within their written agreement with clients:
  - that their licence requires them to work under the direct supervision of a full licence holder, and that they must seek advice from the supervisor whenever necessary
  - the name and licence number of their supervisor
  - a record that they will disclose the client’s personal information to their supervisor who is obliged to keep that information confidential (by virtue of clause 12(d))

**What happens if a supervision agreement is terminated?**

**Clause 13 (b) to (d):**

A provisional licence holder must:

b) inform the Registrar of Immigration Advisers when any notice is given that the supervision agreement is to be terminated
c) not give immigration advice for any period of time in which they do not have in place a supervision agreement approved by the Registrar of Immigration Advisers
d) provide any new supervision agreement to the Registrar of Immigration Advisers for approval.
If notice is given by either the supervisor or the provisional licence holder that the supervision agreement is to be terminated, the provisional licence holder must inform the Registrar.

**A provisional licence holder may not provide any immigration advice for any period in which they do not have a supervision agreement in place.**

When a provisional licence holder finds a new supervisor and enters into a supervision agreement with them, this must be provided to the Registrar for approval before the provisional licence holder may recommence providing immigration advice.

**What has changed compared to the 2010 Code?**

2010 Code – did not have any specific requirements relating to supervision

2014 Code – has specific requirements relating to supervision that require a provisional licence holder and their supervisor to have a supervision agreement in place that is approved by the Registrar of Immigration Advisers. There are also specific roles and responsibilities outlined for supervisors and provisional licence holders.
Professional practice

Immigration adviser licence

Clause 14:

A licensed immigration adviser must provide evidence of being licensed to the client.

An adviser may provide evidence of being licensed by:

- displaying their immigration adviser licence in a prominent place where the client can see it
- showing their licence wallet card to the client
- giving the client a link to their listing on the register of licensed immigration advisers on the Authority’s website, www.iaa.govt.nz.

An adviser must not wait to be asked to show evidence that they are licensed. Each client must be provided with this evidence when they make contact.

What has changed compared to the 2010 Code?

2010 Code – required advisers to display their licence in a prominent place in their place of business at all times and to provide evidence of being licensed to clients on request

2014 Code – requires advisers to provide evidence of being licensed to the client.
Complaints procedure

Clause 15:

A licensed immigration adviser must:

a) develop and maintain an internal complaints procedure that notes that the client may also complain to the Immigration Advisers Authority, and

b) if a complaint is made to the adviser, follow their internal complaints procedure.

An internal complaints procedure may include the following information:

- details of who the complaint can be made to
- how to complain
- timeframes for acknowledging a complaint and for a response to be made
- what steps the adviser will take to resolve a complaint including meeting with the client and arranging a mediator if necessary
- how to complain to the Immigration Advisers Authority if the complaint is not resolved.
What has changed compared to the 2010 Code?

2010 Code – required advisers to:

- develop and maintain internal procedures for the resolution of complaints
- explain to and provide clients with a copy of the adviser’s internal complaints procedure before any agreement was entered into
- explain to, and provide clients with, the details of the complaints and disciplinary procedures that are outlined in the Immigration Advisers Licensing Act 2007
- where complaints were received by the Registrar, provide timely responses to requests by the Registrar, as required by the Registrar’s operating requirements.

2014 Code – clause 15 requires advisers to:

a) develop and maintain an internal complaints procedure that notes that the client may also complain to the Immigration Advisers Authority, and

b) if a complaint is made to the adviser, follow their internal complaints procedure.

Advisers must then, under clause 17(c), before entering into a written agreement with the client, advise the client that they have an internal complaints procedure and provide them with a copy of it.

Advisers must still respond to any requests from the Registrar in a timely manner as required by clause 1.
Role and value of the internal complaints procedure

It is a reality that all professionals make mistakes, that they will be unfairly accused of making mistakes and that they will have to deal with clients who have been disappointed. Professionals deal with aspects of people’s lives that are both important to them and often emotionally sensitive.

Having an internal complaints procedure is an opportunity to deal effectively with issues that have ‘gone wrong’. If a client comes to an adviser with a complaint, and the adviser addresses their concerns effectively, the adviser may retain a healthy professional relationship with that client.

As a starting point, an adviser should usually acknowledge the genuineness of the client’s concerns, which is a different matter from accepting that the adviser has done something wrong. In fact, the client may have a genuine concern, which is based on a misunderstanding.

In assessing the client’s complaint, an adviser should objectively consider whether they have made a mistake and, if that is the case, what they should do to put it right.

Some clients will be unreasonable, and an adviser will not be able to change that. The majority of clients, however, will be influenced by whether their adviser listens to their concerns, explains honestly and frankly what their perspective is, takes responsibility to the extent that they have been in error and tries to put things right.

A client may not necessarily head up their correspondence ‘complaint’. It is an adviser’s responsibility to identify when a client is making a complaint, which could be in person or in writing. An adviser should start their internal complaints process as soon as they determine that the client is making a complaint.

It may sometimes be prudent for an adviser to use a mediator if it looks like it may be difficult to put things right with the client, or a client may actually suggest using a mediator themselves. A mediator can act as a neutral third party and facilitates rather than directs the process. Although mediation may come at a cost to an adviser, it may save time and money in the long run. Mediation may resolve an issue within hours. Alternatively a complaint made to the Authority and forwarded to the Immigration Advisers Complaints and Disciplinary Tribunal for decision may take some time and may result in a public decision, financial penalties or other sanctions.
Example internal complaints procedure

Here is an example of an internal complaints procedure that advisers may wish to adapt to fit their circumstances:

<table>
<thead>
<tr>
<th>Internal Complaints Procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Company Name and Business Address]</td>
</tr>
</tbody>
</table>

1. If at any time you have a complaint about any of the services that we have undertaken to provide to you in accordance with our written agreement, you may make a complaint to:

   - the licensed immigration adviser handling your immigration matter; or
   - if you would prefer to discuss the complaint with someone other than your licensed immigration adviser, you may contact [Name] at our office. [He/she] may be contacted by email at [Email Address], by telephone at [Telephone Number], or in writing at [Postal Address].

2. We will send you an acknowledgement of your complaint in writing within two (2) working days of receiving it.

3. We would be happy to meet with you at any time to discuss the nature of your complaint, so that we can attempt to resolve it fairly and promptly between ourselves. You can bring any support person you wish to such a meeting.

4. We would also be happy to arrange a mediator to attend a meeting if you wish.

5. We will formally reply to your complaint within 10 working days of meeting with you, or receiving the full details of your complaint.

6. If you are not happy with our response to your complaint, and you feel that we have demonstrated one or more of the following grounds for complaint - negligence, incompetence, incapacity, dishonest and misleading behaviour, or have breached the Licensed Immigration Advisers Code of Conduct - you may complain to the Immigration Advisers Authority (the Authority).

7. A complaint made to the Authority must be in writing and specify the ground or grounds that form the basis of your complaint. You can use the Complaint Form which, together with other information on the complaints process, is available on the Immigration Advisers Authority website, at [www.iaa.govt.nz](http://www.iaa.govt.nz), where you will also find the Authority’s contact details.
If a client complains to the Immigration Advisers Authority

The Immigration Advisers Licensing Act 2007 outlines the process by which complaints made against licensed immigration advisers are managed. Under this process, the Authority decides whether to accept or reject a complaint, and if accepted, refers the complaint to the Tribunal to decide.

Remember, if you do receive a complaint:

- deal with the client professionally when they raise an issue with you – take them seriously and do what you can to resolve the issue.

If the complaint is made to the Authority for referral to the Tribunal:

- provide clear written records to the Authority if requested
- be professional with the client, the Authority and the Tribunal
- if you have made a mistake, be honest and identify what you can do to make improvements in your practice.

For further information about the Tribunal, refer to the Immigration Advisers Complaints and Disciplinary Tribunal section of the Ministry of Justice website, www.justice.govt.nz.

Here are some decisions from the Immigration Advisers Complaints and Disciplinary Tribunal that refer to the importance of dealing with the Tribunal professionally:

**Schiller-Cooper v Lozano**
Decision: [2013] NZIACDT 1 (8 January 2013) (PDF, 234 KB)
Penalty Decision: [2013] NZIACDT 17 (21 March 2013) (PDF, 136 KB)

**Chand and Kumari v Prakash**
Decision: [2012] NZIACDT 60 (28 September 2012) (PDF, 145 KB)
Penalty Decision: [2012] NZIACDT 85 (3 December 2012) (PDF, 178 KB)
Initial consultations

Clause 16:

A licensed immigration adviser:

a) must, if charging a fee for an initial consultation, before the initial consultation, obtain the client’s written consent to the fee and the payment terms and conditions for that fee, and

b) when conducting an initial consultation with the client or potential client, whether charging a fee or not, is not required to meet the requirements at 17 and 18 below, but must adhere to all other requirements of this code of conduct.

Potential clients and advisers may wish to engage in an initial consultation prior to entering into a formal engagement for services. Some advisers may conduct initial consultations free of charge. Others may charge a standard fee or an hourly rate.

If an adviser is charging for an initial consultation they must obtain the client’s written consent to the fee and the payment terms and conditions for that fee before the initial consultation commences. This will avoid any misunderstanding about what the client must pay and how and when the adviser expects to receive payment.

An email exchange with the client accepting the fee and payment terms by email reply is acceptable. The main thing to remember is that the disclosure of the fee and the client’s agreement to it must both be in writing.

Only clauses 17 and 18 do not need to be adhered to when conducting an initial consultation. That is, a copy of the summary of licensed immigration advisers’ professional responsibilities and the adviser’s internal complaints procedure do not need to be provided to the client and there is no need to enter into a written agreement with the client at the initial meeting.

If the client does decide to engage the adviser to provide further services following an initial consultation, a written agreement would then need to follow. More guidance on written agreements can be found on the following pages.

If the client decides not to use an adviser’s services following an initial consultation, the adviser could complete a letter of non-engagement to ensure that the outcome of the initial consultation is clear. However this is not a Code requirement.
What has changed compared to the 2010 Code?

2010 Code – did not have any specific requirements relating to initial consultations. Advisers were required to have a full written agreement with a client where they charged a fee for an initial consultation.

2014 Code – requires that advisers must, if charging a fee for an initial consultation, before the initial consultation, obtain the client’s written consent to the fee and the payment terms and conditions for that fee.

Advisers are not required to meet the requirements of clauses 17 or 18 when conducting an initial consultation, but all other requirements of the Code must be adhered to.
Code and complaint documents

Clause 17:

Before entering into a written agreement with the client, a licensed immigration adviser must:

a) provide the client with the summary of licensed immigration advisers’ professional responsibilities, as published by the Registrar of Immigration Advisers

b) explain the summary of licensed immigration advisers’ professional responsibilities to the client and advise them how to access a full copy of this code of conduct, and

c) advise the client that they have an internal complaints procedure and provide them with a copy of it.

The Code does not require advisers to provide an actual copy of the Code to each client. Instead, clause 17 requires advisers to provide each client with the summary of licensed immigration advisers’ professional responsibilities, as published by the Registrar of Immigration Advisers, before a written agreement is entered into.

This summary explains some of the duties of an adviser under the Code and provides information about the Authority and how to contact it. Advisers need to explain this summary to their clients. Advisers also need to advise their clients how they can access a full copy of the Code. A good way to do this is to provide a direct link to the Code in an email or a letter. This ensures there is a written record. Advisers may provide their clients with a copy of the Code if they wish, but this is not required.

Before a written agreement is entered into, it is also necessary to provide the client with a copy of the adviser’s internal complaints procedure. This may be incorporated into the written agreement, but the client must be made aware that it is there.
Clause 19 (m) and (n) require an adviser to record in the written agreement that the summary of licensed immigration advisers’ professional responsibilities has been provided and explained to the client, and that the client has received a copy of the adviser’s internal complaints procedure.

What has changed compared to the 2010 Code?

2010 Code – required advisers to explain to and provide clients with a copy of the Code and to display the Code in a prominent place at their place of business at all times. It also required them to explain to and provide clients with their internal complaints procedure.

2014 Code – requires advisers, before entering into a written agreement with the client, to:

a) provide the client with the summary of licensed immigration advisers’ professional responsibilities, as published by the Registrar of Immigration Advisers

b) explain the summary of licensed immigration advisers’ professional responsibilities to the client and advise them how to access a full copy of the Code, and

c) advise the client that they have an internal complaints procedure and provide them with a copy of it.

Here is a decision from the Immigration Advisers Complaints and Disciplinary Tribunal that refers to providing code and complaints documents:

Kong v Li

Decision: [2015] NZIACDT 33 (23 March 2015)
Interim Decision: [2015] NZIACDT 59 (15 May 2015) (PDF, 135KB)
Having a written agreement

Clause 18:

A licensed immigration adviser must ensure that:

a) when they and the client decide to proceed, they provide the client with a written agreement

b) before any written agreement is accepted, they explain all significant matters in the written agreement to the client

c) all parties to a written agreement sign it, or confirm in writing that they accept it, and

d) any changes to a written agreement are recorded and accepted in writing by all parties.

Deciding to proceed

Clause 16 provides that a written agreement is not required for an initial consultation but clause 18(a) requires that when the adviser and client decide to proceed they must enter into a written agreement. This requirement applies even when no fee is being charged.
Explain all significant matters

Clause 18(b) requires an adviser to explain all significant matters in the written agreement to the client before the agreement is accepted.

This step is an important part of the professional relationship and should be approached with thoroughness and care.

Each step of an adviser’s relationship with a client has potential for misunderstanding and a mismatch of expectations to occur. Having a well thought-out written agreement that meets the requirements of the Code will help reduce the scope for a mismatch of expectations.

Confusion over time and money are the most common matters that clients complain about, so it is important to be as clear as possible about each of these. Where an adviser has estimated how long things will take, but is relying on other decision-makers within the New Zealand immigration system to determine outcomes, it is helpful to explain the time uncertainty to clients.

An adviser should be able to produce a written record reflecting how the requirements of clause 18(b) - to explain all significant matters in the written agreement to the client - were met. The easiest way to do this is to have an acknowledgement in the written agreement that all significant matters have been explained.

Here is a decision from the Immigration Advisers Complaints and Disciplinary Tribunal that refers to explaining all significant matters:

*Musese v Min*

Decision: [2013] NZIACDT 24 (4 April 2013) (PDF, 119 KB)

Penalty Decision: [2013] NZIACDT 60 (18 September 2013)(PDF, 96.7 KB)
All parties agree

A written agreement may not always be between a single client and a single adviser. The adviser may work for a company which will charge the fees in which case the company, rather than the adviser, may be the party to a written agreement. Other third parties may also be involved in the client’s immigration matter (such as family members, sponsors or employers).

Where there is more than one client involved in a particular matter, the adviser needs to decide who needs to accept a written agreement and then whether to have a single written agreement with the clients involved or separate agreements. Having different agreements may be more prudent in situations where confidentiality obligations could be breached if the same agreement was to be signed by all parties.
Where the adviser contracts with an employer of multiple migrants it may be appropriate to have a separate agreement with the employer, and separate agreements with each migrant. In such a case:

- the agreement with the employer might typically provide for the employer to pay the adviser’s fees and expenses on the immigration cases intended to be covered by it, and for the adviser to keep the employer fully informed on the progress of those cases
- the agreement with each migrant might typically record the client’s authority to the adviser to act for them and, in the fee and disbursement clauses, that payment will be made by the migrant’s employer
- both agreements would contain other clauses about services to be performed and terms and conditions, particularly those required by clause 19.

Where advisers are entering into contractual arrangements involving three-way agreements or multiple agreements (possibly affecting an adviser’s legal liability and/or ability to enforce payment of fees among other things) the adviser may wish to seek legal advice on the form and content of their agreements.

In some scenarios, advisers may find it difficult to obtain a client’s signature on a written agreement. In such situations, an email from the client to the adviser stating that they accept the terms and conditions of the written agreement would suffice as confirming in writing that they accept it. Bear in mind, however, that in such situations the obligation to explain all significant matters in the written agreement remains.

What has changed compared to the 2010 Code?

**2010 Code** – required advisers to ensure that clients confirmed in writing that they accepted the terms of agreements

**2014 Code** – requires advisers to ensure that all parties to a written agreement sign it, or confirm in writing that they accept it.
Changes to written agreements

After the agreement has been accepted by all parties, there may be occasions where there is the need to make amendments to it. The adviser must ensure that all parties agree to any changes in writing.

Here are some of many decisions from the Immigration Advisers Complaints and Disciplinary Tribunal that refer to written agreements:

**Sidhu v Tan**
Decision: [2016] NZIACDT 62 (29 September 2016) [PDF, 159 KB]

**EBT v Mudaliar**
Decision: [2015] NZIACDT 79 (6 August 2015) (PDF, 240KB)
Penalty Decision: [2015] NZIACDT 92 (16 October 2015) (PDF, 201KB)

**Muller v Yerman**
Decision: [2015] NZIACDT 77 (25 June 2015) (PDF, 205KB)
Penalty Decision: [2015] NZIACDT 102 (11 December 2015) (PDF, 119KB)

**AQ v Mudaliar**
Decision: [2015] NZIACDT 76 (23 June 2015) (PDF, 192KB)
Penalty Decision: [2015] NZIACDT 93 (16 October 2015) (PDF, 132KB)

**Talanoa v Tangilanu**
Decision: [2015] NZIACDT 40 (15 April 2015) (PDF, 87KB)

**Tamang v Varquez**
Decision: [2015] NZIACDT 39 (15 April 2015) (PDF, 86KB)
Penalty Decision: [2015] NZIACDT 78 (31 July 2015) (PDF, 186KB)

**Chand and Kumari v Prakash**
Decision: [2012] NZIACDT 60 (28 September 2012) (PDF, 145 KB)
Penalty Decision: [2012] NZIACDT 85 (3 December 2012) (PDF, 178 KB)

**Dablo v Tan**
Decision: [2013] NZIACDT 28 (20 May 2013) (PDF, 234 KB)
Penalty Decision: [2013] NZIACDT 47 (1 August 2013) (PDF, 83.4 KB)

**NQE v Tan**
Decision: [2013] NZIACDT 37 (13 June 2013) (PDF, 195 KB)
Penalty Decision: [2013] NZIACDT 46 (1 August 2013) (PDF, 130 KB)
Content of written agreements

Clause 19 sets out the minimum requirements for the content of a written agreement with the client.

What has changed compared to the 2010 Code?

2010 Code – required that agreements contained a full description of the services and there were other clauses that indicated that things needed to be included in the agreement but this was not clear

2014 Code – clearly sets out the minimum requirements for the contents of a written agreement with the client(s).

Adviser name(s) and number(s)

Clause 19(a):

A licensed immigration adviser must ensure that a written agreement contains:

a) the name and licence number of any adviser who may provide immigration advice to the client

It is the responsibility of the adviser to ensure that their name and licence number appear on any written agreement with a client. This helps to ensure that the client is clear about who will provide them with the advice, especially where the agreement is with a company or where there may be more than one adviser acting for the client. The adviser is always personally liable for any immigration advice they give.

Written authority

Clause 19(b):

A licensed immigration adviser must ensure that a written agreement contains:

b) where an adviser is representing the client, written authority from the client for the adviser to act on the client’s behalf
An adviser may only represent their client, be that to Immigration New Zealand, the Immigration and Protection Tribunal, or any other party, if they have the client’s written authority to do so. This authority is not required where advisers are engaged purely to provide the client with advice and will not be engaged to represent the client.

Here is a decision from the Immigration Advisers Complaints and Disciplinary Tribunal that refers to the importance of written authority to act:

*Musesse v Min*

*Decision:* [2013] NZIACDT 24 (4 April 2013) (PDF, 119 KB)

*Penalty Decision:* [2013] NZIACDT 60 (18 September 2013)(PDF, 96.7 KB)

**Provisional licence limitations**

Clause 19(c):

A licensed immigration adviser must ensure that a written agreement contains:

- c) if the adviser holds a provisional licence:
  - i) a record that a provisional licence requires them to work under the direct supervision of a full licence holder, and that they must seek advice from the supervisor whenever necessary
  - ii) the name and licence number of their supervisor, and
  - iii) a record that they will disclose the client’s personal information to their supervisor who is obliged to keep that information confidential

Clause 8(c) requires provisional licence holders to explain to their client that a provisional licence allows a person to provide immigration advice in all immigration matters while working under the direct supervision of an immigration adviser with a full licence. Clause 19(c) requires this to be confirmed in the written agreement along with the supervisor’s name and licence number. Clause 19(c) ensures that clients know the supervisor will be made aware of their personal information and that the supervisor is obliged to keep it confidential. Clause 12(d) specifically requires supervisors to preserve the confidentiality of their provisional licence holder’s clients.
Limited licence limitations

Clause 19(d):

A licensed immigration adviser must ensure that a written agreement contains:

d) if the adviser holds a limited licence, a record of what specified matters their limited licence authorises them to provide immigration advice in relation to, and that they may provide advice only in those areas.

Clause 8(b) requires limited licence holders to explain to their clients that a limited licence allows a person to provide immigration advice in relation to specified immigration matters and that they may only provide advice in those areas. Clause 19(d) requires this to be confirmed in the written agreement along with a record of which particular areas the adviser is licensed to provide advice in.

Full description of services

Clause 19(e):

A licensed immigration adviser must ensure that a written agreement contains:

e) a full description of the services to be provided by the adviser, which must be tailored to the individual client.

To avoid any misunderstanding between the adviser and the client, it is important for an adviser to clearly set out what services they will be providing. The description of the services should be applicable to the individual client and their needs.

Some clients have unreasonable expectations of advisers, or misunderstand what the adviser is actually able to do. If a complaint is made by a client alleging that the adviser did not do what was promised, and the agreement clearly set out the scope of the work, it will be much easier to deal with the complaint internally and prevent it escalating.

The courts have long held that, where there is a difference in understanding between a professional person and his or her client about the terms of a written agreement, the word of the client is to be preferred to that of the professional. This reflects their inequality of expertise and the opportunity that the professional person has to avoid a misunderstanding by setting out in writing the extent of the services that he or she is to provide.
Fees to be charged

Clause 19(f):

A licensed immigration adviser must ensure that a written agreement contains:

f) where fees are to be charged, the fees for the services to be provided by the adviser, including either the hourly rate and the estimate of the time it will take to perform the services, or the fixed fee for the services, and any New Zealand Goods and Services Tax (GST) or overseas tax or levy to be charged

Advisers must provide a tailored and accurate description of any fees to be charged to the client. An adviser may choose to set a fixed fee for their service or to provide an hourly rate and an estimate of the time the services will take to provide.

See Fair and reasonable fees below for more information.

Advisers may also wish to note how extra costs will be charged for, including that written agreement to these will be obtained from the client in accordance with clause 20(c).

GST or overseas tax or levy

Advisers should contact the Inland Revenue Department (IRD) directly at www.ird.govt.nz, or an accountant, if they are unclear about GST requirements.

When listing fees and/or disbursements remember to include the currency that they are quoted in.

Here is a decision from the Immigration Advisers Complaints and Disciplinary Tribunal that refers to the importance of having fees in writing:

Juan v Ramos
Decision: [2015] NZIACDT 48 (7 May 2015) (PDF, 133KB)
Penalty Decision: [2016] NZIACDT 3 (14 January 2016)
Disbursements to be charged

Clause 19(g) and (h):
A licensed immigration adviser must ensure that a written agreement contains:

- g) the likely disbursements that will be incurred (including any Immigration New Zealand fees), including the amount, if known, or a reasonable estimate; and
- h) where disbursements will be incurred, whether the disbursements will be paid directly by the client or by the adviser on the client’s behalf

The written agreement must include any known or likely disbursements that the client will be responsible for. Disbursements are supplementary costs which may include, among other things, Immigration New Zealand application fees, costs of obtaining medical certificates, costs of obtaining police certificates, courier costs, translation costs and interpreter costs.

Clause 19(g) recognises that an adviser may not always know all the disbursements that will be incurred at the beginning of their relationship with the client. However, the likely disbursements including the amounts, if known, or a reasonable estimate, need to be set out in the written agreement.

In circumstances where a disbursement is known at the time of the written agreement, but the adviser knows that it can be subject to change with little notice (such as Immigration New Zealand fees) it may be acceptable to set out the disbursement as follows, or in some similar fashion:

<table>
<thead>
<tr>
<th>INZ Fee for Student Visa (lodged in NZ)</th>
<th>NZ$250</th>
</tr>
</thead>
<tbody>
<tr>
<td>(correct at 21 October 2013 – please note may be subject to change prior to lodgement)</td>
<td></td>
</tr>
</tbody>
</table>

Clause 19(h) requires the adviser to set out clearly in the written agreement who will be responsible for paying the disbursements. There are generally three ways disbursements can be paid for:

- The adviser receives the money in advance from the client, holds it in the client account and then pays the disbursement.
- The adviser pays the disbursement and then seeks reimbursement from the client.
- The client pays the disbursement directly.
Payment terms and conditions

Clause 19(i):
A licensed immigration adviser must ensure that a written agreement contains:

i) where fees and/or disbursements are to be charged, the payment terms and conditions for any fees and/or disbursements

Payment terms and conditions should set out any advance payments required and all payment milestones, including the actual payable milestone for any payment received in advance.

Advisers should carefully consider what payment milestones will work for them. Fees may be paid either on completion of all of the services or in milestones.

Interest and refunds

Clause 19(j) - (k):
A licensed immigration adviser must ensure that a written agreement contains:

j) where fees and/or disbursements are to be charged, what interest on unpaid accounts will be charged, if any

k) where fees and/or disbursements are to be charged, the adviser’s refund policy

Interest on unpaid accounts

The written agreement must specifically provide for any situation where the adviser wishes to charge interest on overdue accounts.

Refund policy

The written agreement must specifically set out the adviser’s refund policy. The refund policy should be clear and simple and in line with the Code. For example:
“Refunds will be assessed on the basis of what is fair and reasonable in the circumstances. Where a refund is due it will be paid within 20 working days of termination or completion of services.”

Advisers should take clause 24 on refunds into account when drafting their refund policy. Advisers are not able to contract out of the clause 24 requirements.

Conflicts of interest

Clause 19(l):
A licensed immigration adviser must ensure that a written agreement contains:

1) if applicable, a record of any potential or actual conflict of interest relating to the client, including the existence of any financial or non-financial benefit the adviser will receive as a result of the relationship with the client

Clause 5 requires the adviser to inform the client in writing of any conflict of interest and clause 6 prohibits the adviser from representing a client following this disclosure unless the client has given their written consent.

It is sufficient for the required disclosure and consent to be expressed in the written agreement. However, if the disclosure and consent have already occurred through letters or emails, a record of the conflict of interest must still be recorded in the written agreement.

This requirement is on-going, so if the conflict does not arise until sometime into the adviser-client relationship, the disclosure must be made in writing at that time and all parties would need to confirm in writing that they accept the change, as per clause 18(c).

Under clause 7, should a conflict mean that the adviser’s objectivity or the relationship of confidence and trust between the adviser and client would be compromised, or that the confidentiality of a client would be breached, the adviser must not continue to represent the client.

Advisers may seek legal advice if they are ever uncertain about what to do about a conflict of interest.
Documents provided to client

Clause 19(m) and (n):

A licensed immigration adviser must ensure that a written agreement contains:

m) a record that a copy of the summary of licensed immigration advisers’
professional responsibilities has been provided and explained to the client,
and

n) a record that a copy of the adviser’s internal complaints procedure has
been provided to the client.

The written agreement must include an acknowledgement that
the client has received both the summary of licensed immigration
advisers’ professional responsibilities and the adviser’s internal
complaints procedure, and that the summary of licensed
immigration advisers’ professional responsibilities has been
explained to the client. This records that the adviser’s obligations
under clause 17 have been met.
Fees

Fair and reasonable fees

Clause 20(a):

A licensed immigration adviser must:

a) ensure that any fees charged are fair and reasonable in the circumstances

Advisers should be able to justify the fees they have charged.

Advisers who are employees of a company are still responsible for ensuring that any fees charged are fair and reasonable in the circumstances. Advisers who are employees should discuss this clause with their employer.

Practice tips for setting fair and reasonable fees

Influences on fees

There are a number of factors to take into account when setting fees. Some factors are competing which can act to drive fees higher or lower.

Influences on higher or lower fees might include:

- the level of qualification or experience of the adviser
- the ease, specific difficulties or complexities of a particular application
- the client having partly completed work relating to the immigration matter
- the desire to assist in an unusual circumstance
- the desire to enter a particular market
- the time required to be spent on the case
- the costs associated with operating the business or practice
- the desire of the client for high personal levels of service.
Fixed fee or hourly rate?

Many new advisers wonder whether professional fees should be charged on a fixed fee basis or at an hourly rate. There is no right or wrong answer to that question.

Calculating fees

An important first step for any adviser operating their own business is to understand the costs of running their business by having a clear budget.

Visit www.business.govt.nz for help with budgeting.

The table below outlines one way in which an adviser could calculate fees for defined services, ensuring that they are fair and reasonable. This is not the only way in which fees can be calculated and is intended as guidance only.

<table>
<thead>
<tr>
<th>Possible steps</th>
<th>Actions</th>
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<tbody>
<tr>
<td>Work out your budget</td>
<td>For example, take into account recovery of:</td>
</tr>
<tr>
<td></td>
<td>• labour costs (salaries for the adviser and staff)</td>
</tr>
<tr>
<td></td>
<td>• practice overheads (i.e. fixed costs such as rent and insurance)</td>
</tr>
<tr>
<td></td>
<td>• the costs associated with maintaining a professional library,</td>
</tr>
<tr>
<td></td>
<td>registration, and continuing professional development</td>
</tr>
<tr>
<td></td>
<td>• a mark-up for profit, to recognise the fact that you are in business.</td>
</tr>
<tr>
<td>Calculate average fees for services</td>
<td>Identify your forecasted number and type of clients. Work out the fixed</td>
</tr>
<tr>
<td>frequently provided</td>
<td>fees required for particular services to meet the costs of your budget,</td>
</tr>
<tr>
<td></td>
<td>taking into account the influences on higher or lower fees listed</td>
</tr>
<tr>
<td>Prepare a budget for each new assignment</td>
<td>If a fixed fee is not appropriate, take into account the service to be</td>
</tr>
<tr>
<td></td>
<td>provided and the influences on higher or lower fees listed above.</td>
</tr>
<tr>
<td>Calculate the proposed client fee</td>
<td>Set out the total fee to be quoted.</td>
</tr>
<tr>
<td>Check</td>
<td>Consider the resulting fees, and ask:</td>
</tr>
<tr>
<td></td>
<td>• Are the proposed fees fair to the client?</td>
</tr>
<tr>
<td></td>
<td>• Has the work been planned to be undertaken as efficiently as possible?</td>
</tr>
<tr>
<td></td>
<td>• Do the resulting fees represent value to the client?</td>
</tr>
<tr>
<td></td>
<td>• Having paid these fees, is the client likely to recommend the</td>
</tr>
<tr>
<td></td>
<td>adviser’s services to others?</td>
</tr>
</tbody>
</table>
Not unnecessarily increasing fees

Clause 20(b):

A licensed immigration adviser must:

b) work in a manner that does not unnecessarily increase fees

Where an adviser is following the Code and pays careful attention to how they set fees they should not find themselves in a situation where fees are unnecessarily increased, for example, through poor time management or rework.

Changes to fees

Clause 20(c):

A licensed immigration adviser must:

c) inform the client of any additional fees, or changes to previously agreed fees, and ensure these are recorded and agreed to in writing

In some situations, a client’s case may involve additional costs and complexities that neither the adviser nor the client was aware of at the time the written agreement was entered into. If this is the case, then under clause 20(c), the adviser must obtain the client’s agreement in writing to any additional fees, or changes to those previously agreed, as soon as the adviser knows about them.

What has changed compared to the 2010 Code?

2010 Code – required advisers to obtain agreement in writing to any material increase in costs as soon as the increase was known to the adviser

2014 Code – requires advisers to inform the client of any additional fees, or changes to previously agreed fees, and ensure these are recorded and agreed to in writing.
Here are some decisions from the Immigration Advisers Complaints and Disciplinary Tribunal that refer to fees:

**IT v KRR**  

**Goher v Hammadieh**  
Decision: [2015] NZIACDT 44 (22 April 2015) (PDF, 95KB)  
Penalty Decision: [2016] NZIACDT 1 (14 January 2016)

**N v Letalu**  
Decision: [2015] NZIACDT 41 (16 April 2015) (PDF, 142KB)  

**Yasin & Nawaz v Hammadieh**  
Decision: [2014] NZIACDT 71 (23 June 2014) (PDF, 157KB)  

**Lim v Gu-Chang**  
Decision: [2014] NZIACDT 77 (29 August 2014) (PDF, 103KB)  
Penalty Decision: [2015] NZIACDT 3 (26 January 2015) (PDF, 166KB)
Disbursements

Clause 21:
A licensed immigration adviser must:

a) charge disbursements to the client at the actual amount, if known, or at a reasonable estimate of what it costs the adviser to provide the service, and

b) work in a manner that does not unnecessarily increase disbursements, and

c) inform the client of any additional disbursements, or changes to previously agreed disbursements, and ensure these are recorded and agreed to in writing.

Disbursements are supplementary costs which advisers may incur on their client’s behalf, and can include, among other things:

- Immigration New Zealand application fees
- costs of obtaining medical certificates
- costs of obtaining police certificates
- courier costs
- translation and interpreter costs.

What has changed compared to the 2010 Code?

2010 Code – did not specifically mention disbursements separately, rather costs was used to refer to both fees and disbursements

2014 Code – requires advisers to charge disbursements to the client at the actual amount, if known, or at a reasonable estimate of what it costs the adviser to provide the service.
Guidance for calculating and processing disbursements

The table below outlines some ways in which an adviser could manage disbursements. These may not be the only ways in which disbursements can be managed and is intended as guidance only.

<table>
<thead>
<tr>
<th>Steps</th>
<th>Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Calculating disbursements</td>
<td>Ensure that:</td>
</tr>
<tr>
<td></td>
<td>• disbursements to clients are charged at the actual amounts and are not marked up</td>
</tr>
<tr>
<td></td>
<td>• general disbursements (e.g. international telephone calls, photocopying and other such items) may be charged at a reasonable estimate of what it costs to provide the service.</td>
</tr>
<tr>
<td></td>
<td>Be practical, as a lot of time and effort can be spent analysing costs, which is not good use of an adviser’s time.</td>
</tr>
<tr>
<td>Processing disbursements</td>
<td>Disbursements can be paid directly by the client or by the adviser, generally in the following ways:</td>
</tr>
<tr>
<td></td>
<td>• directly by the client (e.g. the client pays the Immigration New Zealand application fee directly to Immigration New Zealand)</td>
</tr>
<tr>
<td></td>
<td>o No further action is required from the adviser, but it is good practice to obtain evidence of the payment and record this on the client’s file</td>
</tr>
<tr>
<td></td>
<td>• directly by the adviser (e.g. the adviser pays the Immigration New Zealand application fee to Immigration New Zealand), who then seeks reimbursement from the client by issuing an invoice</td>
</tr>
<tr>
<td></td>
<td>o The adviser uses their business credit card or practice account to pay the disbursement</td>
</tr>
<tr>
<td></td>
<td>o The client is issued with an invoice for the disbursement</td>
</tr>
<tr>
<td></td>
<td>o The adviser receives payment from the client</td>
</tr>
<tr>
<td></td>
<td>o The client may be issued with a receipt – this is mandatory for a cash payment</td>
</tr>
<tr>
<td></td>
<td>• by the adviser, who has received an advance payment from the client, who then can issue an invoice to the client and transfer the funds from the client account to the practice account</td>
</tr>
<tr>
<td></td>
<td>o The adviser uses their business credit card or practice account to pay the disbursement</td>
</tr>
<tr>
<td></td>
<td>o The client is issued with an invoice for the disbursement</td>
</tr>
<tr>
<td></td>
<td>o The money is withdrawn from the client account to reimburse the practice account.</td>
</tr>
</tbody>
</table>
Below is an example of a tax invoice for a disbursement where the client has paid the money in advance and the adviser is seeking reimbursement from the client account:

**Tax Invoice**

[Your Company Name]
Supplier GST Number:

To: [Client Name]
[Company Name]
[Street Address]
[City – Postcode]
[COUNTRY]

Date: 

[Your Company Name]

Reference: Invoice for Professional Services and Disbursements

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Service Description</th>
<th>Price including GST (NZ dollars)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Entrepreneur Category visa application charge paid on 28 June 2013</td>
<td>$3,200.00</td>
<td>$3,200.00</td>
</tr>
</tbody>
</table>

Total amount payable including GST $3,200.00

Total amount received to date (Receipt No. 8542) $3,200.00

Total balance amount due (NZ dollars) $0.00

No payment required.

[YOUR FOOTER HERE]

Following issue of the invoice the adviser should transfer the $3,200.00 from the client account to their practice account.

**Not unnecessarily increasing disbursements**

If an adviser is working in a diligent and timely manner and taking due care, then there should be no reason to unnecessarily increase disbursements.
Remember that under clause 5, an adviser must disclose the existence of any financial or non-financial benefit the adviser will receive as a result of the relationship with the client.

Therefore if an adviser receives a commission for recommending or using a particular provider (such as a translator, consulting expert, etc.) the client must be told about the existence of the commission.

Changes to disbursements

As with changes to fees, discussed above, in some situations there may be additional disbursements or changes to disbursements that neither the adviser nor the client was aware of before the original written agreement was entered into. If this is the case, then under clause 21(c), the adviser must obtain the client’s agreement in writing to any additional disbursements, or changes to previously agreed disbursements, as soon as the adviser knows about the change.

What has changed compared to the 2010 Code?

**2010 Code** – required advisers to obtain agreement in writing to any material increase in costs as soon as the increase was known to the adviser

**2014 Code** – requires advisers to inform the client of any additional disbursements, or changes to previously agreed disbursements, and ensure these are recorded and agreed to in writing.
Invoices

Clause 22:
A licensed immigration adviser must, each time a fee and/or disbursement is payable, provide the client with an invoice containing a full description of the services the fee relates to and/or disbursements that the invoice relates to.

When to issue an invoice
An invoice notifies the client of their obligation to make payment (of either a fee or disbursement) to the adviser. A written agreement cannot act in place of an invoice.

The adviser must issue an invoice for each payment milestone as it becomes payable. A single invoice for the entire fee does not meet the requirements of clause 22 unless an adviser charges the entire fee at the conclusion of their services.

An invoice should also be issued when any advance payments held in the client account fall due, before the money is transferred to a practice account.

Paying an invoice in instalments
If an invoice is provided to the client for an amount and the adviser and the client agree on a payment plan so that the amount can be paid to the adviser in instalments until it is paid off, there is no requirement to issue an invoice for each of these instalments.

What to include on an invoice
It is helpful to include the following items on an invoice:

- identification that the document is an invoice
- date of issue
- identity of the client
- a full description of services that the invoice relates to (this should match a payment milestone description in the written agreement)
- a full description of any disbursements included in the invoice
- the total amount payable
- the New Zealand Goods and Services Tax (GST) amount, if any, payable in relation to the amount being invoiced.

Below is an example of a tax invoice:

```
Tax Invoice

[Your Company Name]
Supplier GST Number:

To: [Client Name] Date: [Company Name] Our Reference: [Street Address] Licensed Adviser Name: [City – Postcode] Licensed Adviser Number: [COUNTRY]

Invoice No.

Reference: Invoice for Professional Services and Disbursements

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Service Description</th>
<th>Price (NZ dollars)</th>
<th>GST</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Fee for work on preparing work visa application prior to lodgment.</td>
<td>$1,000.00</td>
<td>$150.00</td>
<td>$1,150.00</td>
</tr>
<tr>
<td>2</td>
<td>Translation costs</td>
<td>$100.00</td>
<td>$15.00</td>
<td>$115.00</td>
</tr>
</tbody>
</table>

Total amount payable $1,265.00
Total amount received to date $0.00
Total balance amount due (NZ dollars) $1,265.00

Payment terms: within 20 days of issue of this invoice

[YOUR FOOTER HERE]
```

Invoice or tax invoice

The difference between an invoice and a tax invoice involves the charging of GST. If an adviser is charging GST, they must be GST registered with the Inland Revenue Department (IRD).

Overseas based advisers must ensure that they clearly set out any additional tax or levy that the client must pay.
Advisers should contact IRD directly at www.ird.govt.nz, or an accountant, if they are unclear about GST requirements.

Here are decisions from the Immigration Advisers Complaints and Disciplinary Tribunal that refers to invoices:

**N v Letalu**
Decision: [2015] NZIACDT 41 (16 April 2015) (PDF, 142KB)

**Talanoa v Tangilanu**
Decision: [2015] NZIACDT 40 (15 April 2015) (PDF, 87KB)

**Kanta v Prakash**
Decision: [2014] NZIACDT 64 (5 May 2014)
Penalty Decision: [2014] NZIACDT 107 (2 October 2014) (PDF, 126KB)

**Dablo v Tan**
Decision: [2013] NZIACDT 28 (20 May 2013) (PDF, 234 KB)
Penalty Decision: [2013] NZIACDT 47 (1 August 2013) (PDF, 83.4 KB)
Clause 23:

A licensed immigration adviser must, each time a payment is received in cash from the client, provide the client with a receipt, clearly indicating which invoice(s), if applicable, the receipt relates to.

Below is an example of a receipt:

```
YOUR LOGO HERE

[Your Company Name]
Supplier GST Number:

To: [Client Name]
[Company Name]
[Street Address]
[City – Postcode]
[COUNTRY]

Date: ______________________

[Your Company Name] Our Reference:

[Your Company Name] Licensee Number:

Receipt No. Corresponding Invoice No.

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Service Description</th>
<th>Price [NZ dollars]</th>
<th>GST</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Fee for initial consultation and work on preparing work visa application prior to lodgement.</td>
<td>$1,000.00</td>
<td>$150.00</td>
<td>$1,150.00</td>
</tr>
<tr>
<td>2</td>
<td>Translation costs</td>
<td>$100.00</td>
<td>$15.00</td>
<td>$115.00</td>
</tr>
</tbody>
</table>

Total amount payable $1,265.00
Total amount received $1,265.00
Total amount outstanding NIL

Thank you for your payment

[Your Footer Here]
```
Clause 23 requires advisers to issue a client with a receipt whenever a payment is received in **cash**. This is important because the receipt will form the only evidence that the transaction has occurred.

**What has changed compared to the 2010 Code?**

**2010 Code** – did not specifically mention any requirements relating to receipts

**2014 Code** – requires advisers to, each time a payment is received in cash from the client, provide the client with a receipt, clearly indicating which invoice(s), if applicable, the receipt relates to.

**Difference between an invoice and a receipt**

The table below sets out some differences between an invoice and a receipt:

<table>
<thead>
<tr>
<th>Invoice</th>
<th>Receipt</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Provided to the client when the fee is payable.</td>
<td>• Provided to the client after money is received from them.</td>
</tr>
<tr>
<td>• Represents the amount payable to the adviser by the client.</td>
<td>• Represents the amount already received by the adviser (including any money received in advance to be invoiced later).</td>
</tr>
<tr>
<td>• Contains a full description of the services /disbursements included in the invoice.</td>
<td>• Indicates which invoice(s) the receipt relates to (if applicable).</td>
</tr>
</tbody>
</table>
Refunds

Clause 24:

A licensed immigration adviser must:

a) ensure that refunds given are fair and reasonable in the circumstances

b) ensure that refund obligations can be met, and

c) promptly provide any refunds payable upon completing or ceasing a contract for services.

Fair and reasonable refunds

Unforeseen circumstances may arise that require an adviser to provide a refund to their client.

There may be cases where fees are not refundable, such as where the adviser gives up the opportunity of other work to be available. As a general principle, however, an adviser cannot retain fees that are not fair and reasonable for services provided.

Ensuring refund obligations can be met

Ensuring refund obligations can be met may be provided for by keeping any money paid in advance in the client account. However, there may be situations where payment for services has already been taken and for whatever reason it is decided that a portion of that fee should be refunded to the client. Therefore it is advisable for an adviser to keep some practice funds available for such a situation.

Providing any refunds promptly

Clause 24(c) requires an adviser to promptly provide any refunds payable upon completing or ceasing a contract for services. If for any reason the adviser is required to make a refund they should do so promptly.

An adviser may include a timeframe for prompt payment of refunds in their refund policy.
Here are some decisions from the Immigration Advisers Complaints and Disciplinary Tribunal that refer to refunds:

**Greyling v Gimranov**
*Decision:* [2016] NZIACDT 22 (2 May 2016) [PDF, 181 KB]
*Penalty Decision:* [2016] NZIACDT 55 (15 September 2016) [PDF, 216 KB]

**Muller v Yerman**
*Decision:* [2015] NZIACDT 77 (25 June 2015) (PDF, 205KB)
*Penalty Decision:* [2015] NZIACDT 102 (11 December 2015) (PDF, 119KB)

**Samisoni v Tangilanu**
*Decision:* [2015] NZIACDT 34 (23 March 2015) (PDF, 84.3KB)
*Penalty Decision:* [2015] NZIACDT 60 (19 May 2015) (PDF, 169KB)

**Mohammadalibeigy v Yap**
*Decision:* [2015] NZIACDT 7 (13 February 2015) (PDF, 92KB)

**Asad v Patel**
*Decision:* [2014] NZIACDT 61 (30 April 2014) (PDF, 138KB)

**Eppanapally v Zhou**
*Decision:* [2014] NZIACDT 118 (28 November 2014) (PDF, 233KB)
*Penalty Decision:* [2015] NZIACDT 84 (27 August 2015) (PDF, 189KB)

**Tully v Yerman**
*Decision:* [2012] NZIACDT 19 (9 May 2012) (PDF, 102 KB)
What has changed compared to the 2010 Code?

2010 Code – required advisers to provide any refunds payable upon completing or ceasing a contract for services

2014 Code – requires advisers to:

a) ensure that refunds given are fair and reasonable in the circumstances

b) ensure that refund obligations can be met, and

c) promptly provide refunds payable upon completing or ceasing a contract for services.
Client funds

Understanding what money is client funds, and how to deal with it properly is an essential professional obligation.

If an adviser never receives fees or disbursements from a client in advance of having provided a service they do not need to have a separate client account. If an adviser receives fees or disbursements in advance of having provided a service they must establish a separate client account.

A separate client account is a bank account established for holding client funds paid in advance and should be easily identifiable as a client account. More than one client account is not needed.

If an adviser takes money in advance, the Authority may ask to see the client account bank statements for the last three months and a related ledger on inspection.

A client account ledger may take the form of an accounting system, an electronic ledger or a hard copy ledger.

It is helpful for your client account ledger to include:

- the date of each transaction
- the type of each transaction
- the amount of each transaction
- the client name
- the purpose of each transaction
- the related invoice number.

The following pages show some examples of the steps that could be taken if an adviser chooses to take money in advance, and the steps that could be taken if an adviser chooses to take money after the services have been provided. These are not the only steps that could be taken and are intended as guidance only.
Choosing to have the client pay up front for services

1. **INITIAL CONSULTATION**
   i. Adviser gives client initial consultation fee information
   ii. Client agrees to fee in writing and pays at initial consultation
   iii. Initial consultation takes place and client wishes to engage adviser

2. **WRITTEN AGREEMENT**
   i. Adviser prepares a written agreement which includes that payment will be made up front (in advance) for agreed blocks of work
   ii. Client accepts the written agreement in writing

3. **RECEIVE CLIENT MONEY**
   i. Adviser receives full payment from client
   ii. Adviser issues a receipt to the client
   iii. Money received belongs to the client and is deposited into client account

4. **COMMENCE WORK**
   i. Work is completed for first agreed block of work

5. **PROFESSIONAL FEES**
   i. Invoice is issued to client for block of work completed and funds are transferred from client account to practice account

6. **DISBURSEMENTS**
   i. Third party disbursement is paid by adviser
   ii. Invoice is sent to client
   iii. Funds for disbursement transferred from client account to practice account
Choosing to have the client pay after completion of services

**INITIAL CONSULTATION**
1. Adviser gives client initial consultation fee information
2. Client agrees to the fee in writing
3. Initial consultation takes place and client wishes to engage the adviser’s services. Client pays for the initial consultation

**I don’t want to charge my clients in advance**

**PRACTICE ACCOUNT**
4. Money received from client can be deposited directly into adviser’s practice account
5. Adviser issues receipt for payment (mandatory if a cash payment)

**DISBURSEMENTS**
6. Third party disbursement is paid by adviser
7. Invoice is sent to client

**WRITTEN AGREEMENT**
8. Adviser prepares a written agreement which includes payment milestones for agreed blocks of work
9. Client accepts the written agreement in writing

**COMMENCE WORK**
10. Work is completed for first agreed block of work

**PROFESSIONAL FEES**
11. Invoice for block of work completed issued to client
Funds remain property of client

Clause 25(a):

A licensed immigration adviser must, if taking payment for fees and/or disbursements in advance of being payable and invoiced:

a) recognise that these client funds remain the property of the client until payable and invoiced

The Immigration Advisers Complaints and Disciplinary Tribunal has expressed the view that client funds are held on trust and an adviser in this situation is seen as a trustee. If a trustee takes property they know to be trust property, and use it as their own, they will be regarded as having dealt with the money dishonestly.

When any money held in the client account is due to be paid to the adviser, an invoice must be issued to the client before the money is transferred to the adviser.

Establishing and maintaining a client account

Clause 25(b):

A licensed immigration adviser must, if taking payment for fees and/or disbursements in advance of being payable and invoiced:

b) establish and maintain a separate client account for receiving and holding all client funds paid in advance

If taking payment for fees and/or disbursements in advance of being payable an adviser will need to set up a client account. To do this they will need to:

- establish a separate account or add a separate suffix to the adviser’s current practice account
- ensure the client account has the words “client account” in the account name or descriptions so that it is clearly identifiable

Requirements for offshore advisers

Advisers working offshore must comply with the Code requirements in relation to the client account. If an offshore adviser cannot operate a separate client account, he or she may not receive payments in advance for disbursements or services.
Mixed funds

Clause 25(c):

A licensed immigration adviser must, if taking payment for fees and/or disbursements in advance of being payable and invoiced:

   c) deposit any mixed funds (funds including payable payments and advance payments) into the client account at the outset and then as soon as practical withdraw from the client account the portion of the funds that were payable and for which an invoice has been issued

The following table sets out the definitions of the different types of funds that may be received from clients and the different bank account requirements that are attached to each of these.

<table>
<thead>
<tr>
<th>Definition</th>
<th>Client funds</th>
<th>Mixed funds</th>
<th>Practice funds</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Advance payments received for fees and all money received for disbursements not yet paid.</td>
<td>Funds that include both client funds, and also disbursements paid and/or fees incurred which are due.</td>
<td>Funds that are due to the adviser.</td>
</tr>
<tr>
<td>Bank account requirements</td>
<td>Must be held in a separate client account.</td>
<td>All must be deposited into the client account at the outset. The portion of the funds which is due should be withdrawn from the client account as soon as practical.</td>
<td>Deposited into a practice account.</td>
</tr>
</tbody>
</table>

If an adviser receives mixed payments from a client, i.e. payments in advance and payments for services already supplied, these mixed funds must all be deposited into the client account at the outset. The portion of the funds which is due should then be withdrawn from the client account as soon as practical.

If there are no client funds received in advance those funds should be deposited directly into the practice account.
Administrative costs of client account

Clause 25(d):

A licensed immigration adviser must, if taking payment for fees and/or disbursements in advance of being payable and invoiced:

   d) cover any administrative costs of maintaining the client account

Clause 25(d) requires the adviser to meet any administrative costs of the client account.

An adviser may comply with this clause by:

- asking the bank to charge any costs relating to the client account directly to the practice account
- if the bank can only take fees directly from the client account, maintaining a nominal amount in the client account to cover bank fees or other unanticipated charges.

Withdrawing funds only when payable and invoiced

Clause 25(e):

A licensed immigration adviser must, if taking payment for fees and/or disbursements in advance of being payable and invoiced:

   e) withdraw client funds only when payments for fees and/or disbursements are payable and invoiced

The money held in a client account is being held on behalf of the client and remains their property until they receive an invoice telling them that the money is now payable to the adviser.

See the flow charts above for examples of the difference between invoicing a client when they have paid up front and the money is in the client account and invoicing a client after the completion of services.
Purpose of client funds

Clause 25(f):
A licensed immigration adviser must, if taking payment for fees and/or disbursements in advance of being payable and invoiced:

f) use client funds only for the purpose for which they were paid to the adviser

Client accounts should not be used to hold money simply for the purpose of service fee refunds or to earn interest. Money should be transferred out of the client account when it is due to be paid to the adviser and an invoice for the agreed services and/or disbursement(s) has been issued to the client.

Audits of business accounts

Clause 25(g):
A licensed immigration adviser must, if taking payment for fees and/or disbursements in advance of being payable and invoiced:

g) when requested by the Registrar of Immigration Advisers, have business accounts audited by a Chartered Accountant to show that any client funds taken in advance are held in a separate client account and only withdrawn when payments for fees and/or disbursements are payable and invoiced

The Authority recognises that having business accounts audited by a Chartered Accountant may come at a significant cost to advisers. The Registrar would not invoke this clause lightly. The results of such an audit may be used as evidence in an own motion complaint in which case the Tribunal would make a determination as to whether the adviser was in breach of the Code.
Here are some decisions from the Immigration Advisers Complaints and Disciplinary Tribunal that refer to client funds:

<table>
<thead>
<tr>
<th>Case</th>
<th>Decision Date</th>
<th>Penalty Decision Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>IAA v UKFE</td>
<td>[2012] NZIACDT 30 (28 June 2012) (PDF, 130 KB)</td>
<td></td>
</tr>
<tr>
<td>Chaiyapoom v Hu</td>
<td>[2014] NZIACDT 78 (9 September 2014) (PDF, 144KB)</td>
<td>[2015] NZIACDT 11 (26 February 2015) (PDF, 131KB)</td>
</tr>
<tr>
<td>Chen v Gu-Chang</td>
<td>[2013] NZIACDT 16 (19 March 2013) (PDF, 221 KB)</td>
<td>[2013] NZIACDT 56 (30 August 2013) (PDF, 149 KB)</td>
</tr>
<tr>
<td>LG v Hakaoro</td>
<td>[2013] NZIACDT 23 (3 April 2013) (PDF, 167 KB)</td>
<td>[2013] NZIACDT 32 (27 May 2013) (PDF, 93.9 KB)</td>
</tr>
</tbody>
</table>
What has changed compared to the 2010 Code?

**2010 Code** – required advisers to:

- establish and maintain a separate clients’ bank account for holding all clients’ funds paid in advance for fees and/or disbursements
- withdraw funds held on behalf of clients only when payments for fees and/or disbursements fell due
- use funds held on behalf of clients only for the purpose for which they were paid to the adviser

**2014 Code** – requires advisers, if taking payment for fees and/or disbursements in advance of being payable and invoiced, to:

a) recognise that these client funds remain the property of the client until payable and invoiced

b) establish and maintain a separate client account for receiving and holding all client funds paid in advance

c) deposit any mixed funds (funds including payable payments and advance payments) into the client account at the outset and then as soon as practical withdraw from the client account the portion of the funds that were payable and for which an invoice has been issued

d) cover any administrative costs of maintaining the client account

e) withdraw client funds only when payments for fees and/or disbursements are payable and invoiced

f) use client funds only for the purpose for which they were paid to the adviser, and

g) when requested by the Registrar of Immigration Advisers, have business accounts audited by a Chartered Accountant to show that any client funds taken in advance are held in a separate client account and only withdrawn when payments for fees and/or disbursements are payable and invoiced.
File management

Clause 26(a):

A licensed immigration adviser must:

a) maintain a hard copy and/or electronic file for each client, which must include:

i) a full copy of the client’s application or other immigration matter

ii) copies of all written agreements and any changes to them

iii) copies of all written communications (including any file notes recording material oral communications and any electronic communications) between the adviser, the client and any other person or organisation

iv) copies of all invoices and receipts relating to the client

v) copies of all personal documents relating to the client supplied to the adviser, and

vi) evidence of the safe return of the client’s original documents

One of the most valuable risk management tools that an adviser can use when dealing with clients is to proactively manage client files. A well-managed file is like a ‘useable trail’ of actions, which will benefit the adviser as well as the client.

It is helpful if all aspects of the adviser’s relationship with a client and his or her affairs are recorded clearly and chronologically.
A file for each client

Having taken instructions to proceed with an immigration matter, an adviser needs to open a unique client file and place all documentation in that file. The file can either be in hard copy or electronic – or both.

A copy of each client’s application or other immigration matter

The word ‘application’ in this context includes:

- the immigration application form(s)
- any sponsorship form that might be needed to accompany the application form
- all supporting documentation, e.g. certified copies of birth, marriage and death certificates, educational qualifications and passports, and
- any covering letter written to Immigration New Zealand by the client or adviser, when the application is submitted.

In respect of an ‘appeal’, ‘request’, ‘claim’ or ‘other representation’ any other relevant form(s), supporting documentation and covering letter submitted to Immigration New Zealand or the Immigration and Protection Tribunal should similarly be kept.

Copies of any legislation or instructions that are relevant to the client’s immigration matter

Although it is not required, as immigration instructions can change, it may be useful to place on the client’s file a copy of the relevant legislation or instructions that applied to their particular immigration matter at that time.

A copy of all written agreements

Copies of all signed/agreed written agreements relating to the client (or clients) on the file must be kept.

If any changes are made to the written agreement during the relationship with the client, a copy of the amended agreement must be kept, together with evidence that all parties have accepted the changes in writing. If the adviser has obtained the client’s agreement to any changes in writing via email or letter, a copy should be attached to the client’s file.
Copies of written communications

During the progress of an immigration matter, written communications may occur between the adviser and the client, Immigration New Zealand, or another relevant statutory authority, which must be kept on the client’s file. It is also important to keep file notes that record material oral communications.

It is important that advisers maintain a written record of their eligibility assessment and any other advice for each client.

Copies of invoices and receipts

Advisers must keep on the client file copies of:

- any invoices issued by the adviser to the client
- any receipts issued by the adviser to the client.

Copies of client’s personal documents

The adviser must make sure that they take a copy of any personal documents submitted as supporting documentation in regard to an immigration matter to retain on their client file.

Evidence of safe return of original documents

Clause 27(b), discussed below, requires passports and other personal documents to be returned to the client without delay and in a secure manner. Evidence that this has occurred must be kept on the client’s file. This could take the form of, for example:

- a copy of a track and trace courier confirmation of delivery
- a signed receipt from the client that they have collected/received their documents.
Confirmations in writing

Clause 26(b) and (c):

A licensed immigration adviser must:

b) confirm in writing to the client when applications have been lodged, and make on-going timely updates

c) confirm in writing to the client the details of all material discussions with the client

When an adviser lodges an application they must confirm this in writing to their client.

The adviser must also make on-going timely updates to their client in regard to their immigration matter.

It may be helpful to agree with the client in the written agreement when these updates will occur, for example, monthly or only when an action is taken on the immigration matter.

Whenever a material discussion takes place with the client, the adviser must confirm the details of the discussion to their client in writing. This reduces the risk of misunderstanding between the client and the adviser and gives the client an opportunity to question or correct any aspect of the discussion.

Written confirmations and updates should be kept on the client’s file.
Here are decisions from the Immigration Advisers Complaints and Disciplinary Tribunal that refers to the importance of confirming in writing when applications have been lodged, timely updates and confirming in writing material discussions:

**Adams v Aucamp**
Decision: [2015] NZIACDT 94 (22 October 2015) (PDF, 150KB)
Penalty Decision: [2016] NZIACDT 53 (14 September 2016) (PDF, 210 KB)

**AQ v Mudaliar**
Decision: [2015] NZIACDT 76 (23 June 2015) (PDF, 192KB)
Penalty Decision: [2015] NZIACDT 93 (16 October 2015) (PDF, 132KB)

**Muller v Yerman**
Decision: [2015] NZIACDT 77 (25 June 2015) (PDF, 205KB)
Penalty Decision: [2015] NZIACDT 102 (11 December 2015) (PDF, 119KB)

**Carley (INZ) v Kim**
Decision: [2015] NZIACDT 47 (7 May 2015) (PDF, 144KB)
Penalty Decision: [2015] NZIACDT 107 (22 December 2015) (PDF, 183KB)

**Senadipathi & Xavier v Sampang**
Decision: [2015] NZIACDT 43 (20 April 2015) (PDF, 98KB)
Penalty Decision: [2015] NZIACDT 110 (23 December 2015) (PDF, 123KB)

**N v Letalu**
Decision: [2015] NZIACDT 41 (16 April 2015) (PDF, 142KB)
A well-managed filing system

Clauses 26(d):
A licensed immigration adviser must:

d) maintain a well-managed filing system

Advisers can choose the method that they use to file client records. The primary considerations in respect of any filing system should be:

- that the system is well-managed, and
- that it is easy to use.

What has changed compared to the 2010 Code?

2010 Code – required advisers to maintain professional business practices relating to finances, records, documents, contracts and staff management

2014 Code – requires advisers to maintain a file for each client, including the minimum requirements to be kept on that file, and to maintain a well-managed filing system.

Maintain files for no less than 7 years

Clause 26(e):
A licensed immigration adviser must:

e) maintain each client file for a period of no less than 7 years from closing the file, and make those records available for inspection on request by the Immigration Advisers Authority

The adviser must ensure that each client file is maintained for at least 7 years, and that the file is accessible.
Advisers also need to remember their obligations to IRD in New Zealand or their obligations to any overseas equivalent department. In New Zealand, for example, the IRD requires that all financial records are kept for a period of at least 7 years.


What has changed compared to the 2010 Code?

2010 Code – required advisers to maintain complete client records that tracked all transactions for a period of seven years and to make those records available for inspection on request by the Authority.

2014 Code – requires advisers to maintain each client file for a period of no less than 7 years from closing the file, and make those records available for inspection on request by the Immigration Advisers Authority.

Release of client files

Clause 26(f):

A licensed immigration adviser must:

f) when requested by the client or their new licensed or exempt immigration adviser, release a copy of all applications lodged on behalf of the client and all correspondence relating to the client.

In the event that the client terminates the contract with their adviser part way through performance of the services, the client, or their new adviser if they have engaged one, may request a copy of the client’s file.

Any lodged applications and any correspondence relating to the client must be released to the client or their representative.

An adviser must also consider their obligations to release personal information under the Privacy Act 1993.
There is no requirement in the Code for an adviser to release this information without charge. However, if charging for providing a copy of a file, the adviser also needs to ensure they are complying with clauses 21 a, b and c, relating to disbursements.

If not previously agreed to with the client, the adviser would need to discuss the options and estimates with the client and ensure these are recorded and agreed to in writing.


Here are some decisions from the Immigration Advisers Complaints and Disciplinary Tribunal that refer to the importance of file management and good record keeping:

**Muneez v Deng**  

**TX v MGK**  

**TSO v Hassan**  
Penalty Decision: [2013 NZIACDT 62 (18 September 2013)](https://privacy.org.nz/the-privacy-act-and-codes/privacy-principles/access/charges/) (PDF, 68.9 KB)

What has changed compared to the 2010 Code?

**2010 Code** – did not include specific requirements around the provision of client files to clients or their representatives, except that personal documents had to be returned on request.

**2014 Code** – requires that advisers, when requested by the client or their new licensed or exempt immigration adviser, release a copy of all applications lodged on behalf of the client and all correspondence relating to the client.
Clause 27: A licensed immigration adviser must:

a) ensure any financial and personal documents belonging to or relating to the client, whether held physically or electronically, are held securely whilst in the adviser’s possession, and

b) when requested or required, return passports and other personal documents to the client without delay and in a secure manner.

Clause 27 requires an adviser to ensure that any financial and personal documents belonging to or relating to clients are held securely whilst in the adviser’s possession and are returned to clients without delay and in a secure manner when requested or required at the completion of services.

Within New Zealand, the Electronic Transactions Act 2002 authorises advisers to retain in electronic form information that is in paper or other non-electronic form so long as the electronic form provides a reliable means of assuring the integrity of the information and the information is readily accessible for subsequent reference.

Advisers cannot retain personal documents (including passports) provided by the client for any reason. In particular, none of a client’s personal documents can be retained as security for payment of fees or disbursements.

A good option for the return of personal documents to meet the requirements of clause 27(b) is to use a courier that either uses a track and trace number, or requires a signature, before personal documents are handed over. Another method is to have the client come to the adviser to collect them in person and sign a document acknowledging receipt of their personal documents.
Here are some decisions from the Immigration Advisers Complaints and Disciplinary Tribunal that refer to the importance of returning personal documents:

**Goher v Hammadieh**  
Decision: [2015] NZIACDT 44 (22 April 2015) (PDF, 95KB)  
Penalty Decision: [2016] NZIACDT 1 (14 January 2016)

**Chand and Kumari v Prakash**  
Decision: [2012] NZIACDT 60 (28 September 2012) (PDF, 145 KB)  
Penalty Decision: [2012] NZIACDT 85 (3 December 2012) (PDF, 178 KB)

**Musese v Min**  
Decision: [2013] NZIACDT 24 (4 April 2013) (PDF, 119 KB)  
Penalty Decision: [2013] NZIACDT 60 (18 September 2013) (PDF, 96.7 KB)
Termination of services

Clause 28:

A licensed immigration adviser must ensure that:

a) the termination of services, for any reason, is confirmed to the client in writing

b) where they cease to act for the client for any reason other than the completion of agreed services, they inform Immigration New Zealand or the Immigration and Protection Tribunal, as appropriate, that they are no longer representing the client, and

c) if, for any reason, the adviser cannot continue to act for the client, the adviser fully updates the client on the status of their immigration matter and advises them of where they could get assistance.

Just as there are professional ethical issues to consider in relation to the formation and conduct of an adviser/client relationship, there are also professional ethical issues to consider in the ending of such a relationship.

A client relationship will normally end once the adviser has provided the agreed services and has been paid for those services.

There may be circumstances in which the relationship will end before the agreed services have been completed. This could be initiated by either the client or the adviser.

Whenever services are terminated before their completion, under clause 28(a), this must be confirmed to the client in writing.

Under clause 28(b), advisers must inform Immigration New Zealand or the Immigration and Protection Tribunal if they cease to represent a client partway through an application or appeal. This will ensure that any further correspondence is sent directly to the client rather than the adviser.

If services are terminated before their completion, clause 28(c) requires that the adviser fully updates the client on the status of the immigration matter. If the adviser has kept an up-to-date file for the client this will be a simple requirement to fulfil. The adviser should also advise the client of where they could get assistance.
Here are some decisions from the Immigration Advisers Complaints and Disciplinary Tribunal that refer to the termination of services:

*Musese v Min*

Decision: [2013] NZIACDT 24 (4 April 2013) (PDF, 119 KB)

Penalty Decision: [2013] NZIACDT 60 (18 September 2013) (PDF, 96.7 KB)

What has changed compared to the 2010 Code?

**2010 Code** – required advisers to:

- confirm in writing to clients when work ceased part way through the immigration process on clients’ instructions or by the action of the adviser, and
- to take reasonable steps to ensure clients’ interests were represented if the adviser could not for any reason continue as a representative.

**2014 Code** – requires advisers to ensure that:

a) the termination of services, for any reason, is confirmed to the client in writing

b) where they cease to act for the client for any reason other than the completion of agreed services, they inform Immigration New Zealand or the Immigration and Protection Tribunal, as appropriate, that they are no longer representing the client, and

c) if, for any reason, the adviser cannot continue to act for the client, the adviser fully updates the client on the status of their immigration matter and advises them of where they could get assistance.
Misrepresentation

Advisers

Clause 29:

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

a) themselves, including their qualifications or their licence status or type
b) their business
c) their employees
d) the client
e) immigration opportunities or risks, or
f) New Zealand’s immigration requirements.

Examples of misrepresentation that have been the subject of complaints to the Immigration Advisers Complaints and Disciplinary Tribunal include:

- advertising that a visa is 100% guaranteed – an adviser cannot make this claim as they are not the decision-maker
- knowingly providing misleading or false information to Immigration New Zealand
- being dishonest about qualifications held by the adviser.
Here are some decisions from the Immigration Advisers Complaints and Disciplinary Tribunal that refer to misrepresentation:

**Fifita v Tangilanu**
Decision: [2014] NZIACDT 108 (3 October 2014)
Penalty Decision: [2015] NZIACDT 15 (6 March 2015) (PDF, 156KB)

**Yasin & Nawaz v Hammadieh**
Decision: [2014] NZIACDT 71 (23 June 2014) (PDF, 157KB)

**HNL v SEC**
Decision: [2013] NZIACDT 11 (19 March 2013) (PDF, 146 KB)
Penalty Decision: [2013] NZIACDT 36 (11 June 2013) (PDF, 10.8 KB)
What has changed compared to the 2010 Code?

**2010 Code** – required that advisers did not, in a false, fraudulent or deceptive manner, misrepresent or promote:

- himself or herself
- his or her business
- his or her clients’ immigration opportunities
- New Zealand’s immigration requirements

**2014 Code** – requires that advisers must not misrepresent or promote in a false, fraudulent or deceptive manner:

a) themselves, including their qualifications or their licence status or type

b) their business

c) their employees

d) the client

e) immigration opportunities or risks, or

f) New Zealand’s immigration requirements.
Former government officials

Clause 30:
Licensed immigration advisers who are former government officials must take special care to ensure representations regarding their qualifications and past employment are strictly factual and must not promote the notion that they may have special access or influence.

Under section 15(2) of the Immigration Advisers Licensing Act 2007, Ministers and Associate Ministers of Immigration in the New Zealand government or any immigration officer or refugee and protection officer (as defined in the Immigration Act 2009) are prohibited from being licensed as an immigration adviser while holding that office or employment or at any time within 12 months of leaving the office or employment.

After this 12 month stand down period an adviser who held one of these positions may not use their previous standing to promote the notion that they may have special access or influence.

What has changed compared to the 2010 Code?

2010 Code – did not make any specific mention of former government officials

2014 Code – requires that advisers who are former government officials must take special care to ensure representations regarding their qualifications and past employment are strictly factual and must not promote the notion that they may have special access or influence.
Applications

Clause 31(a):

A licensed immigration adviser must:

a) not deliberately or negligently provide false or misleading documentation to, or deliberately or negligently conceal relevant information from, the decision maker in regard to any immigration matter they are representing

Clause 31(a) relates to providing false or misleading documentation to or concealing relevant information from any decision maker in regard to an immigration matter. That could be Immigration New Zealand, the Immigration and Protection Tribunal or the Minister or Associate Minister of Immigration.

The clause should not apply to advisers who genuinely believe the information they are providing is correct, even if it is found to be false by the decision-maker.

The clause covers any adviser behaving in this manner deliberately (which would be in breach not only of the Code but also of New Zealand law) or negligently.

A person behaves negligently when they are not doing what a reasonable person would do in a situation where that person owes a duty of care. An adviser who is not acting with due care can be said to be acting negligently.

If false documentation is provided or relevant information is concealed through the adviser failing to act with due care, then this clause may have been breached.
Clause 31(b):

A licensed immigration adviser must:

b) if they become aware that false or misleading documentation has been provided to, or that relevant information has been concealed from, the decision maker in regard to any immigration matter they are representing:

i. inform the client about the potential consequences of continuing to misrepresent themselves to the decision maker

ii. discuss with the client the ways the misrepresentation or concealment could be remedied, and

iii. should the client not consent to take action to remedy the situation, terminate their services to the client in writing.

If an adviser becomes aware that there has been misrepresentation or concealment associated with an immigration matter they are representing, whether or not the client has acted intentionally, the steps at clause 31(b) must be followed.

The first step is to discuss the misrepresentation or concealment with the client and explain what will happen if nothing is done to remedy the situation. The consequences may include:

- the decision-maker declining the application or appeal
- the success of future applications being at risk
- the adviser not being able to continue to act for the client.

The second step is to talk to the client about how the situation can be remedied. This may include:

- deciding to withdraw the application or appeal
- writing to the decision maker to address the misrepresentation or concealment.

Finally, if the client refuses to take steps with the adviser to remedy the situation, the adviser would need to terminate their services to the client in writing. Failure to do this would mean the adviser would be in breach of clause 31(a) because they would then be party to deliberately concealing information or providing false documentation.
What has changed compared to the 2010 Code?

2010 Code – required that advisers did not knowingly provide false or misleading documentation with any application, appeal, request, claim or other representation, or conceal relevant information relating to any application, appeal, request, claim or other representation.

2014 Code – requires that advisers must:

a) not deliberately or negligently provide false or misleading documentation to, or deliberately or negligently conceal relevant information from, the decision maker in regard to any immigration matter they are representing, and

b) if they become aware that false or misleading documentation has been provided to, or that relevant information has been concealed from, the decision maker in regard to any immigration matter they are representing:

i) inform the client about the potential consequences of continuing to misrepresent themselves to the decision maker

ii) discuss with the client the ways the misrepresentation or concealment could be remedied, and

iii) should the client not consent to take action to remedy the situation, terminate their services to the client in writing.
Trade mark

Clause 32:

A licensed immigration adviser must, if using the “Licensed by Immigration Advisers Authority” trade mark, do so in accordance with the Trade Mark Licence Agreement.

The Authority, through the Ministry of Business, Innovation and Employment, has registered the “Licensed by Immigration Advisers Authority” trade mark (the Trade Mark) with the Intellectual Property Office of New Zealand. This is the Trade Mark:

The Ministry of Business, Innovation and Employment retains ownership of the Trade Mark, as set out in the Trade Mark Licence Agreement, which is appended to each licence approval letter.

Advisers may only use the Trade Mark if they have read, understood and agreed to the terms of the Trade Mark Licence Agreement.

Use of the Trade Mark:

• is deemed to be an acceptance of the terms and conditions of the Trade Mark Licence Agreement, and

• can only occur while a person holds a current immigration adviser licence.

Advisers must comply with the following requirements when using the Trade Mark:

• Ensure that the Trade Mark is attributable to each individual adviser.

• Display the adviser’s name next to the Trade Mark. Advisers may use a legal first name and surname, or a full legal name, or a preferred name. Whatever name is used must be on the register of licensed immigration advisers.

• Display the adviser’s licence number alongside the Trade Mark.
• Since individuals and not firms are licensed, the names of all licensed advisers in a firm must be clearly visible in close proximity to the Trade Mark.

• The Trade Mark may be reduced in size or enlarged (as long as it is legible), but it cannot be edited in any way.

• The Trade Mark can only be printed using the given colours, or reproduced in black and white.

• Advisers cannot use the Trade Mark in a way that creates an impression that their company or business trade name is licensed.

• On a website, the Trade Mark must not be displayed as hidden text or in a linked page to the Trade Mark.

For avoidance of doubt, an adviser may not use the Trade Mark other than in connection with their practice as an immigration adviser.

Below are examples of correct and incorrect uses of the Trade Mark.

**Correct uses of the Trade Mark**

**Email signature**

Kind regards

![Trademark Logo]

Mary Smith

Licence Number: 123456789

**Website**

A company, Migrants R Us, employs two licensed immigration advisers:

![Trademark Logo]

Mary Smith

Licence Number: 123456789

Peter Smith

Licence Number: 987654321
Incorrect uses of the Trade Mark

*Email signature*

Kind regards

Migrants R Us

Company Number: 123456

Problem: This could lead a migrant to believe that the company is licensed.

*Website*

Contact the team at Migrants R Us:

Mary Smith  Peter Smith  Margaret Brown

Problem: It is not clear who the licensed advisers within the company are.

What has changed compared to the 2010 Code?

**2010 Code** – did not include any specific requirements relating to use of the trade mark

**2014 Code** – requires that advisers must, if using the “Licensed by Immigration Authority” trade mark, so so in accordance with the Trade Mark Licence Agreement.