

**IMMIGRATION
ADVISERS AUTHORITY**



The Start of the Client Relationship

28 April 2022 3-4pm (NZST)

Webinar overview

- Introduction
- What documents must and should be provided?
- What must and should be explained?
- Other important things to note
- Resources
- Q & A

Introduction

The start of the relationship is important

- Initial consultation (in person or virtual)

During initial assessment key questions for you consider:

- Are you considering the visa eligibility criteria in all cases?
- Are you identifying potential barriers?
- Are you evaluating the possible range of visa options?
- Are you giving reasons for your advice?

Consider Competency Standards 4.1 criteria

Documentation

During an initial consultation, you must provide certain documents as evidence and/or in writing, even if you don't think the relationship will progress past one meeting:

- evidence of being licensed
- If charging a consultation fee:
 - set out amount and how it should be paid,
 - obtain consent in writing.
- letter of non-engagement, if applicable

Code of Conduct

Immigration adviser licence

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

Initial consultations

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.

Documentation

Written Agreement

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2. Sed do eiusmod tempor
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10. Ut
- 11.

Internal Complaints Procedure

1. Lorem ipsum, 126 Dolor Str
2. If at any time you have a co
3. the licensed immigration a
4. If you would prefer to disc
5. We will send you an ackn
6. We would be happy to m
7. We would also be happ
8. We will formally reply t
9. If you are not happy w
10. A complaint made to

IMMIGRATION ADVISERS AUTHORITY

NEW ZEALAND LICENSED IMMIGRATION ADVISERS PROFESSIONAL STANDARDS

New Zealand licensed immigration advisers are skilled people who have met immigration adviser competency standards and who follow a professional code of conduct.

Your New Zealand immigration adviser must either be licensed with the Immigration Advisers Authority (the Authority) or exempt. To check if a person is licensed or to see exempt groups, visit the Authority's website www.iaa.govt.nz.

The Licensed Immigration Advisers Code of Conduct

- ensures that your licensed immigration adviser will:
- show you evidence that they are licensed
- be honest, professional, diligent and respectful
- conduct themselves with due care and in a timely manner
- provide you with objective advice
- declare any conflicts of interest, including any commission they will receive, and seek your approval to continue to act for you
- provide you with a written agreement for you to sign before any work is started which sets out the services to be provided and the fees
- charge fees that are fair and reasonable
- provide you with invoices with full descriptions of what the fees relate to
- let you know when your application has been lodged and provide you with on-going timely updates
- keep your personal documents safe and return them to you in a secure manner

If you experience a problem with your licensed immigration adviser you should try and resolve it with them. Should you need help, contact the Authority. Making a complaint to the Authority will not affect your visa application.

The Immigration Advisers Authority:

- ensures that only suitable people are licensed to provide immigration advice
- keeps a public register of licensed immigration advisers
- develops and maintains competency standards and a code of conduct for licensed advisers
- investigates and takes enforcement action against officers in breach of the Immigration Advisers Licensing Act 2007, such as providing advice when not their licensed role
- receives complaints about licensed immigration advisers and, if appropriate, refers them to the Immigration Advisers Complaints and Disciplinary Tribunal who will hear the complaint and may impose sanctions.

The Authority cannot help you with your visa application. Visit www.iaa.govt.nz for more information and:

- The Licensed Immigration Advisers Code of Conduct.

Authority Contact Details

info@iaa.govt.nz
www.iaa.govt.nz

0508 422 422
+64 9 325 3829

CLICK ON  at www.iaa.govt.nz to check if a person is licensed

LICENSED PROFESSIONAL PROTECTED MIGRANT

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Code of Conduct

Initial consultations

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

...

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

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

...

Documentation: Written agreement

1. identify adviser and specify licence type
2. services
3. financial matters
4. conflict of interest disclosure and record
5. record important documents provided and explained

Code of Conduct

Initial consultations

19. A licensed immigration adviser must ensure that a written agreement contains...

Competency Standards

Conducting business professionally, ethically and responsibly

...

- 6.7 The ability to develop and apply a clear and understandable written agreement...

Documentation

- if applicable, terminate the services of a previous adviser in writing on behalf of the client
- inform if futile and obtain written acknowledgement
- written confirmation of material discussions

Code of Conduct

Futile immigration matters

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...

Professional relationships

10. A licensed immigration adviser must:
 - a. if they are aware that the client has previously used another licensed or exempt immigration adviser...

...

File management

26. A licensed immigration adviser must...

Scenario 1

X verbally discusses the submission of a work visa application with their client (Z). X collects the necessary documents and lodges the application with INZ. The application is declined.

Z submits a complaint stating he didn't know the application was futile. X claims Z was advised of the risks, but could not recall if there was a written agreement, or whether he gave X a copy of his internal complaints procedure. The client file contains no record of the initial consultation and eligibility assessment.

Select all that apply:

- A. X has verbally advised Z of the risks, and Z was happy to proceed, therefore X has complied with his obligations under Clause 9 of the Code.
- B. X has potentially breached his obligations under Clauses 9, 17, 18, and 26 of the Code.
- C. X has obtained and carried out the informed lawful instructions of the client as per Clause 2(e), therefore he has complied with all of his obligations.
- D. All of the above

Scenario 1

The correct answer is B:

X has potentially breached his obligations under Clauses 9, 17, 18, and 26 of the Code.

Refer to *Sidhu v Tan* [2016] NZIACDT 62.

The Code is prescriptive regarding the client engagement process. This is intended to protect the adviser, as well as their clients.

The Tribunal stated at [21]:

One of the very important elements of professional conduct is that the licensed immigration adviser must obtain informed instructions...the scope of work, and terms of engagement need to be recorded in writing.

Case law

Failure to comply with client engagement process

- *Sidhu v Tan* [2016] NZIACDT 62

Written agreements

- *NLT v Coetzee* [2019] NZIACDT 81
- *Y(O)R v Tian* [2020] NZIACDT 23

Confirmation in writing

- *Singh v Patel* [2019] NZIACDT 17
- *NJUM v Vole* [2020] NZIACDT 5

Documentation: Summary

- Professional Standards
- internal complaints procedure
- written agreement and any changes to it
- written confirmation of material discussions
- evidence of being licensed
- if applicable:
 - written consent of consultation fee, payment terms, invoice and receipt
 - letter of non-engagement
 - terminate the services of a previous LIA in writing
 - disclose potential or actual conflicts and obtain written consent
 - inform if futile and obtain acknowledgement

Explanations

- Professional Standards must be *explained* to the client. It is not enough to give them a copy.
- Explain where to access a full copy of the Code of Conduct.
- Explain to the client verbally about your internal complaints procedure and what that means.

Code of Conduct

Code and complaint documents

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

Written agreements

18. A licensed immigration adviser must ensure that:
 - ...
 - b. before any written agreement is accepted, they explain all significant matters in the written agreement to the client

Explanations

- Explain material terms and significant points verbally and in plain language.
- Ensure the client understands the payment and refund policies.
- This allows for informed consent of the written agreement
- Explaining significant matters in the written agreement was an issue identified in the 2021 Migrant Survey Results.

Competency Standards

Communicating in English

- 5.6 The ability to communicate orally in English to a professional standard including: conducting telephone and face-to-face interviews; active listening; dealing with conflict; and delivering detailed and well-structured oral presentations, submissions or arguments.

Conducting business professionally, ethically and responsibly

- 6.1 Understanding of and commitment to professional, ethical, socially responsible and culturally sensitive behaviour and practice; in particular, to all aspects of the licensed immigration advisers code of conduct.
- ...
- 6.6 The ability to develop and maintain ethical and professional relationships with clients.
- 6.7 The ability to develop and apply a clear and understandable written agreement that includes a full description of the services to be provided by the adviser; fees to be charged and payment schedule; how and when the client will be invoiced, and the refund policy.

Explanations

- Ensure they know the name of your supervisor
- Ensure they understand their information will be shared with the supervisor (who is obliged to keep the matter confidential)
- Any approved supervision agreement will have a clause stating the provisional licence holder will inform clients of supervision

Code of Conduct

Work within limits of knowledge and skills

8. A licensed immigration adviser must: ...
 - 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.

...

Roles and responsibilities of the supervisor

12. A supervisor must: ...
 - d. preserve the confidentiality of the provisional licence holder's clients

Roles and responsibilities of the provisional licence holder

13. A provisional licence holder must:
 - a. act in accordance with the supervision agreement as approved by the Registrar of Immigration Advisers

Other important things

- set the right tone and boundaries of the relationship
- this is a professional relationship
- you are there to help, but you have obligations under the Code of Conduct and New Zealand law

Code of Conduct

Client Care

2. A licensed immigration adviser must:
 - a. maintain a relationship of confidence and trust with the client and provide objective advice

Competency Standards

Conducting business professionally, ethically and responsibly

- 6.1 Understanding of and commitment to professional, ethical, socially responsible and culturally sensitive behaviour and practice; in particular, to all aspects of the licensed immigration advisers code of conduct.
...
- 6.6 The ability to develop and maintain ethical and professional relationships with clients.

Other important things

- Cultural norms and values may impact on how a client will interact with you
- client background
- Is there a language barrier?
Find a translator
- Client engagement cannot be delegated to unlicensed staff, even if they are translating

Code of Conduct

Client Care

2. A licensed immigration adviser must:
 - ...
 - b. acknowledge the cultural norms and values of the client
 - c. facilitate the provision of interpreters and translators as appropriate
 - ...
 - e. obtain and carry out the informed lawful instructions of the client, and

Case law

Client engagement shouldn't be delegated to unlicensed staff:

- *Immigration New Zealand v Ahmed* [2019] NZIACDT 18
- *Immigration New Zealand v Cleland* [2019] NZIACDT 25
- *Matheis v Ling* [2015] NZIACDT 91

Other important things

- learn to say 'no'
- refer on if appropriate
 - when conflict of interest, or
 - matter outside of adviser's knowledge and skills

Code of Conduct

Client Care

2. A licensed immigration adviser must:
 - a. maintain a relationship of confidence and trust with the client and provide objective advice
- ...
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

Competency Standards

Conducting business professionally, ethically and responsibly

- 6.6 The ability to develop and maintain ethical and professional relationships with clients.

Scenario 2

An adviser (L) assists his friend (F) with a work visa application. L doesn't want to be too formal in his dealings with F, and doesn't prepare a written agreement. No invoices are sent to F, and no material discussions are confirmed in writing.

When INZ raises questions with the application, L and F's relationship breaks down. F terminates the engagement.

Select all options that apply:

- A. As a licensed adviser, L was under an obligation to comply with all Code of Conduct provisions, including those contained in Clauses 18, 22, and 26.
- B. The Code of Conduct does not apply to advice provided in informal or family context, therefore L is in the clear.
- C. L should have established a professional relationship with B, even though L knew B socially
- D. Options A and C are correct
- E. All of the above options are correct

Scenario 2

The correct answer is D (answers A and C are correct):

As a licensed immigration adviser, you are expected to adhere to all aspects of the Code and carry out the duties expected of a licensed adviser when you are providing immigration advice. This is the case even if you are acting for a client whom you know socially.

Refer to *NTT v Gong* [2019] IACDT 56.

The Tribunal observed that mistakes were made due to the way in which the relationship had originally developed. The adviser had not treated the immigration side of the relationship objectively and professionally. The Tribunal noted that the adviser's conduct illustrated the danger of mixing personal and professional relationships

Resources

IAA resources:

- Competency Standards 2016
- Code of Conduct 2014
- Code of Conduct Toolkit
- Past webinars
- 2021 Migrant Survey Results

INZ queries:

- www.immigration.govt.nz

Referrals:

- [New Zealand Law Society Registry](#)
- [Citizens Advice Bureau, Community Directory](#)

Feedback? Further questions?

- How can we do better?
- Have we done a good job?
- Whatever the feedback, compliments or complaints, we want to hear from you.

Email us at info@iaa.govt.nz
with “**Feedback-Webinar**” in the subject line.