



IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

PRACTICE NOTE

A Complainant's Guide to Proceedings before the Tribunal

Effective from 26 October 2016

PRELIMINARY

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

WHO SHOULD USE THIS PRACTICE NOTE

You should use this Practice Note if you have filed a complaint with the Registrar of the Immigration Advisers Authority (the Registrar) against a Licensed Immigration Adviser (an adviser) and the Registrar has either referred your complaint to the Immigration Advisers Complaints and Disciplinary Tribunal (the Tribunal), or if the Registrar has decided not to refer your complaint and you would like to appeal the Registrar's decision.

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

There is a separate Practice Note available for advisers.

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

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REPRESENTATION

1. CHOOSING YOUR REPRESENTATION

- 1.1. In proceedings before the Tribunal, you can choose to represent yourself or have a lawyer represent you.
- 1.2. If you would like to apply for leave to have another person, who is not a lawyer, represent you, you may write to the Tribunal:
 - 1.2.1. Requesting that a named layperson be allowed to represent you,
 - 1.2.2. Providing reasons why it is appropriate in the circumstances for the named person to be allowed to represent you in place of self representation and/or legal representation,
 - 1.2.3. Providing any relevant evidence supporting your reasons, and
 - 1.2.4. Signing the request and having your proposed representative sign the request.
- 1.3. The Tribunal will not grant leave to allow a layperson to represent you as a matter of course.

FILING DOCUMENTS WITH THE TRIBUNAL

2. TIMEFRAME FOR FILING

- 2.1. A document will be deemed to be filed on the date on which the Tribunal receives it, provided it is filed on a working day:
 - 2.1.1. A working day is any day apart from a Saturday, a Sunday, a public holiday, or a day in the period commencing on 25 December and ending with the close of 15 January the following year.
 - 2.1.2. If your document arrives at the Tribunal on a day that is not a working day, it will be deemed to have been filed on the next working day.

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

3. EMAIL FILING

- 3.1. Email is the Tribunal's preferred method of filing.
- 3.2. You can file documents with the Tribunal by emailing the documents to:
IACDT@justice.govt.nz
- 3.3. Once an email document is filed, the Tribunal will send you an email expressly acknowledging receipt.

- 3.4. If the document you are filing by email is larger than ten pages in length, you must also send or deliver a paper copy to the tribunal.

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

4. POSTAL FILING

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

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

5. IN PERSON OR COURIER FILING

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

Tribunals Unit
Level 1, 86 Customhouse Quay
Wellington

Office hours: Monday – Friday 8.00am – 5.00pm

SERVING DOCUMENTS ON OTHER PARTIES

6. TIMEFRAMES

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

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

- 6.2. A notice or document will be treated as having been received by a party at the following times:

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

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

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

7. ADDRESSES FOR SERVICE

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

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

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

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

8. WITHOLDING YOUR ADDRESS

8.1. If the Immigration Advisers Authority has withheld your identity during the investigation of the complaint pursuant to section 47(3), the adviser will serve the Immigration Advisers Authority who will then pass the documents on to you.

8.2. Once your complaint has been referred to the Tribunal, you can raise any privacy concerns you may have by writing to the Tribunal. The Tribunal may agree to withhold your contact details from the adviser and agree to act as a conduit for service between you and the adviser. Where this occurs:

8.2.1. You will serve the adviser by filing the documents with the Tribunal, who will issue confirmation that the adviser has been served.

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

8.2.3. The adviser will serve documents on you by filing them with the Tribunal, who will pass them on to you.

9. EMAIL SERVICE

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

9.1.1. You copy that party into the email used to file the documents with the Tribunal, and

9.1.2. That party provides you with an email expressly acknowledging receipt of service.

9.1.3. You have used the email address the Tribunal has on file for that party.

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

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

10. POSTAL SERVICE

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

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

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

11. IN PERSON OR COURIER SERVICE

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

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

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

APPEAL AGAINST DECISION NOT TO REFER COMPLAINT

12. PROCESS

- 12.1. When you make a complaint to the Immigration Advisers Authority, the Registrar must investigate your complaint before deciding whether or not to refer it to the Tribunal.

- 12.2. If the Registrar decides not to refer your complaint, they will notify you in writing.

- 12.3. You can appeal against a decision not to refer your complaint if the Registrar's reason for deciding not to refer it was that it:

12.3.1. Does not disclose any of the grounds of complaint listed in section 44(2) of the Act; or

12.3.2. Discloses only trivial or inconsequential matters and need not be pursued

13. FORM

- 13.1. You can appeal against a decision not to refer, by filing with the Tribunal:

- 13.1.1. A section 54 Appeal Form, provided on the Tribunal's website;
- 13.1.2. A copy of the notice of Registrar's decision not to refer your complaint; and
- 13.1.3. Any other information that you want the Tribunal to consider in relation to the appeal

13.2. TIMEFRAME FOR FILING

- 13.3. You must file your section 54 Appeal Form within 20 working days after the date on which the Registrar notified you of the decision you want to appeal.

STATEMENT OF COMPLAINT

14. PURPOSE

- 14.1. The Registrar refers a complaint to the Tribunal by filing a Statement of Complaint. The Registrar is also required to serve a copy on you and the adviser.
- 14.2. The purpose of the Statement of Complaint is to put you and the adviser on notice of the grounds on which the Registrar is referring the complaint to the Tribunal.
- 14.3. The Tribunal will only consider the grounds of complaint on which the Registrar has referred the complaint unless:
 - 14.3.1. You believe those grounds are incorrect or too narrow and file a Statement of Reply giving notice that you want the Tribunal to consider other or additional grounds; or
 - 14.3.2. The Tribunal thinks it should conduct an inquisitorial hearing into other matters in the public interest.

15. FORM

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

STATEMENT OF REPLY

16. PURPOSE

- 16.1. If you disagree with anything set out in the Statement of Complaint, or want the Tribunal to consider wider grounds than the ones the Registrar has referred, you should file a Statement of Reply.
 - 16.1.1. The adviser will also be able to file a Statement of Reply setting out their version of events, if they disagree with the Statement of Complaint.

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

17. FORM

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

17.2. The Statement of Reply allows you to:

- 17.2.1. Identify which aspects of the Statement of Complaint that you agree with and those which you disagree with or wish to add to,
- 17.2.2. Supply any additional information you consider the Tribunal should take into account,
- 17.2.3. Attach any additional documentation and evidence which supports your claim, and
- 17.2.4. Apply to have the Tribunal hear oral evidence from you and/or another witness/witnesses.

18. TIMEFRAME FOR FILING

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

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

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

18.3. For more information on timeframes and how to file and serve a statement of reply see the Statement of Reply form.

ANSWER TO STATEMENT OF REPLY

19. PURPOSE

19.1. If the adviser has filed a Statement of Reply and you disagree with anything in it, or wish to clarify any matters, you should file an Answer to that Statement of Reply.

19.2. The adviser will be able to file an Answer to any Statement of Reply that you have made.

19.3. You are not required to file an Answer to a Statement of Reply, and should only do so if you consider that relevant information and/or your position are not adequately set out in the papers filed with the Tribunal.

20. FORM

20.1. An Answer to a Statement of Reply is to be in the form available on the Tribunal's website.

20.2. An Answer to a Statement of Reply allows you to:

20.2.1. Identify any concerns you have regarding the adviser's Statement of Reply,

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

20.2.3. Attach any additional documentation and evidence that supports your claim, and

20.2.4. Apply to have the Tribunal hear oral evidence from you or your witness/witnesses.

21. TIMEFRAME FOR FILING

21.1. The Tribunal will give you written notification of the date by which an Answer to a Statement of Reply must be received by the Tribunal.

21.1.1. Generally, this will be 10 working days after the date on which the Tribunal notifies you that it has received the other party's Statement of Reply.

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

21.3. For more information on timeframes and how to file and serve an answer to a statement of reply see the Answer to Statement of Reply form.

DECISIONS 'ON THE PAPERS'

22. FORM OF PROCEEDINGS

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

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

22.2.1. The Statement of Complaint,

22.2.2. Any Statements of Reply,

22.2.3. Any Answers to Statements of Reply, and

22.2.4. The supporting documents filed with the above.

- 22.3. Where necessary, the Tribunal will issue a minute or direction, or convene a teleconference to discuss any matters requiring consideration.
- 22.4. Otherwise, the Tribunal will make its decision on the information before it, without further notice to you or the adviser.
- 22.5. If the Tribunal upholds the complaint, you will then have an opportunity to present submissions on sanctions. For more information on sanctions see sections 27 and 28 of this Practice Note.

DECISIONS 'ORAL HEARING'

23. PURPOSE

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

- 23.1.1. There is disagreement about the events leading up to the complaint, or
- 23.1.2. An adviser reasonably considers that they need to provide their explanation in person.

24. APPLICATION FOR ORAL HEARING

- 24.1. You can apply for an oral hearing in the relevant section of your Statement of Reply or Answer to Statement of Reply.
- 24.2. If the Tribunal has directed that an oral hearing will be held, you may apply to have other witnesses appear by completing the form available on the Tribunal's website.
 - 24.2.1. The Tribunal will generally allow applications for additional witnesses where it is considered that they will have a differing position from the other witnesses appearing.
- 24.3. The Tribunal has the power to summons witnesses where it considers necessary.

25. FORM OF PROCEEDINGS

- 25.1. If the Tribunal does request any person to appear, the Tribunal will issue a direction identifying the nature of the hearing and related processes for that particular hearing. You will also be provided with a timetable setting out the dates for completing each step of the process.
- 25.2. Generally, where an oral hearing is called, the Tribunal will require witnesses to:
 - 25.2.1. Provide a written statement of their evidence, before the hearing,
 - 25.2.2. Appear in person (although, when necessary the Tribunal may direct that attendance is to be via an audio or video link),
 - 25.2.3. Give evidence under oath, and

25.2.4. Be subject to cross-examination and re-examination in the same manner as in a court hearing.

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

25.3.1. Material already filed with the Tribunal will be accepted as part of the evidence and need not be repeated or formally produced by a witness;

25.3.2. The parties will have an opportunity at the hearing to make any submissions arising from the evidence given during the hearing;

25.3.3. The Tribunal will reserve its decision and issue a decision in writing, dismissing or upholding the complaint.

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

26. APPLICATION FOR ADJOURNMENT

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

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

26.2.1. The Tribunal will not grant an adjournment unless there are good reasons to justify it.

26.2.2. The consent of the other parties is not, of itself, a sufficient reason for an adjournment to be granted.

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

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

26.3. Your application should:

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

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

26.3.3. Be signed or otherwise authenticated.

26.4. You are not required to attend an oral hearing; however, if you do not appear and no adjournment has been granted, the Tribunal will continue to hear the matter in your absence. If an oral hearing has been called, it will be your final opportunity to present your case.

SANCTIONS

27. PURPOSE

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

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

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

27.2.1. Caution or censure,

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

27.2.3. Suspension of licence for the unexpired period of the licence, or until the adviser meets specified conditions,

27.2.4. Cancellation of licence,

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

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

27.2.7. An order for the payment of all or any of the costs or expenses of the investigation, inquiry, or hearing, or any related prosecution,

27.2.8. An order directing the adviser to refund all or any part of fees or expenses paid by you or another person to the adviser,

27.2.9. An order directing the adviser to pay reasonable compensation to you or another person.

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

28. FORM OF PROCEEDINGS

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

- 28.1.1. You and the Registrar will be invited to make submissions on sanctions.
- 28.1.2. The adviser will then have time to respond to those submissions and make any submissions of their own.
- 28.1.3. You and the Registrar will then have a further period in which you can reply to the adviser's submissions.

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

PUBLICATION OF TRIBUNAL DECISIONS

29. PURPOSE

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

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

29.2. PUBLICATION

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

- 29.3.1. Where a complaint is upheld:
 - The Tribunal will publish the decision including the adviser's name and any other identifying information.
 - Your name will also be included, unless the Tribunal considers it appropriate to suppress certain information. You may apply in writing to the Tribunal requesting that your name and other details be suppressed.
- 29.3.2. Where a complaint is dismissed:

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

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

- 29.4.1. Request that your name, certain information and/or the whole decision be suppressed,
- 29.4.2. Provide reasons why suppression is appropriate in the circumstances of the case,
- 29.4.3. Provide any evidence supporting your reasons, and
- 29.4.4. Be signed or otherwise authenticated.

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

Grant Pearson

Chair

Immigration Advisers Complaints and Disciplinary Tribunal

26 October 2016

Tribunal Contact Details

Postal address:

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

Physical address:

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

Email: IACDT@justice.govt.nz

Ph: (04) 462-6660

Fax: (04) 462-6686

Website: www.justice.govt.nz/tribunals

SCHEDULE 1

Statement of Complaint

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

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

BY **The Registrar of Immigration Advisers**
Registrar

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

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

STATEMENT OF COMPLAINT

DATED [date filed]

A Parties

1. The Parties to the Complaint are:

Complainant

Name:

Address:

Mobile:

Email:

Fax:

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

Licensed immigration adviser

Name:

Address:

Mobile:

Email:

Fax:

Licence status:

B Background

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

C Grounds of Complaint

3. The complainant indicated the following grounds of complaint:

3.1 [List grounds of complaint as identified by complainant]

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

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

D Details of the Grounds Referred

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

E Supporting Material

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

Dated:

Signature: