



DECISION RECORD

AGENT	Bahman Hatami
COMPLAINT NUMBERS	Multiple, as listed on page 2
DECISION	Barring
DATE OF DECISION	3 November 2021

Definitions

The following abbreviations are used in this decision:

"The Authority"	The Office of the Migration Agents Registration Authority
"The Former Agent"	Bahman Hatami
"The Department"	The Department of Home Affairs
"The AAT"	The Administrative Appeals Tribunal
"The Act"	The <i>Migration Act 1958</i> (Cth)
"The Agents Regulations"	The <i>Migration Agents Regulations 1998</i> (Cth)
"The Regulations"	The <i>Migration Regulations 1994</i> (Cth)
"The Code"	The Migration Agents Code of Conduct prescribed under Regulation 8 and Schedule 2 to the Agents Regulations
"The Register"	Register of Migration Agents kept under section 287 of the Act

Background

1. The Former Agent was first registered as a migration agent on 5 December 2013 and was allocated the migration agent registration number 1387919. The Former Agent's registration had been renewed annually until 5 December 2018. The Former Agent's registration expired on 6 December 2019.
2. While registered as a migration agent, the Register listed the Former Agent's trading name as Australian Visa Advocates with an Australian Business Number of 99 403 670 935.
3. The Authority received eight (8) complaints about the Former Agent's conduct as a registered migration agent:

	Complaint Reference	Date Received	Complainant
1	CMP-39624	21 September 2018	Mr RY
2	CMP-45422	1 October 2018	Ms AF
3	CMP-39960	1 October 2018	Mr MK
4	CMP-47908	29 October 2019	Ms RD
5	CMP-49811	3 February 2020	Mr SM
6	CMP-49546	10 March 2020	Mr MA
7	CMP-50863	13 March 2020	Mr SN
8	CMP-50912	16 March 2020	Ms MM

4. The complaints about the Former Agent were in relation to his provision of immigration assistance within the meaning of section 276 of the Act.

CMP-39624 - Mr RY

5. On 21 September 2018 the Authority received a complaint from Mr RY. The complaint was allocated the reference number CMP-39624.
6. Mr RY alleged the following about the Former Agent's conduct:
 - a) He found the Former Agent's services in an <<removed for privacy>> newspaper in Australia, where the Former Agent had advertised himself in <<language>> as an 'Immigration Lawyer.'
 - b) He was a student visa holder, intending to apply for a skilled visa. He told the Former Agent his entire story, and the Former Agent advised him that he would be eligible for a Protection visa. On the basis of this advice, Mr RY instructed the Former Agent to lodge a Protection visa application.
 - c) This application was refused. One of the reasons for refusal was the fact that the complainant had remained in Australia for a prolonged period of time, prior to the lodgement of the application.

- d) The Former Agent advised the complainant that he should appeal the decision with the AAT. On the basis of the Former Agent's advice, Mr RY paid him \$1600 and instructed him to lodge the appeal application. Mr RY was subsequently contacted by the AAT advising him that the lodgement fee had not been paid. He paid the lodgement fee directly to the AAT, and is still waiting for a refund of the \$1600 from the Former Agent.
- e) The AAT affirmed the decision to refuse the protection visa application. Upon receiving the AAT decision, the complainant realised that the Former Agent had not included the complainant's wife in the review application. At this point the complainant learnt that his wife became an unlawful non-citizen.
- f) He signed an *Agreement for Services and Fees* in respect of the initial protection visa application, but no additional agreement was signed in respect of the AAT appeal.

Documentary evidence provided by the complainant:

- 7. In support of the complaint, Mr RY provided the following documents:
 - a) Protection Visa Decision Record.
 - b) AAT Decision Record.
 - c) Bridging Visa E Grant letter for his wife.
 - d) An *Agreement for Services and Fees*.
 - e) Deposit receipts for two deposits made at Commonwealth Bank on 29 May 2014 for \$1100 and \$1000.
 - f) Copy of the Former Agent's written advice.
 - g) Copies of advertisements for the Former Agent's services.

Departmental records:

- 8. Departmental records in respect of Mr RY indicate that:
 - a) He was granted a student visa on 19 June 2013. He arrived in Australia as a holder of this visa on 23 October 2013.
 - b) On 6 May 2014 the Former Agent lodged a Protection (Class XA) visa application on his behalf. Ms MTN, the complainant's wife, was included in the application.
 - c) On 12 May 2015 the protection visa application was refused.
 - d) On 31 May 2015 an application for review of the decision was lodged with the Administrative Appeals Tribunal (AAT). The AAT affirmed the refusal decision on 5 May 2017.
 - e) The complainant's wife was not included in the review application. As a result, the complainant's wife became unlawful and is now the holder of a Bridging Visa E.

CMP-45422 – Ms AF

- 9. On 1 October 2018 the Authority received a complaint from Ms AF. The complaint was allocated the reference number CMP-45422.
- 10. Ms AF alleged the following about the Former Agent's conduct:
 - a) She is a refugee from <<removed for privacy>>. She has two children and is divorced from her husband. The younger child was included in her application, and was granted

refugee status with her. The older child, Mr MG, was included in his father's (the complainant's ex-husband's) application and was refused a protection visa.

- b) She approached the Former Agent seeking advice in respect of her older son's visa status. The Former Agent advised her that Mr MG could be 'transferred' to Ms AF's application. The Former Agent offered to lodge an application on behalf of Mr MG.
- c) She paid the Former Agent \$1000 for Former Agent's services, in two \$500 instalments. She emailed the Former Agent copies of her own and her son's applications.
- d) The Former Agent subsequently breached her confidentiality by contacting her ex-partner to discuss the case. She did not authorise the Former Agent to do this.
- e) The Former Agent did not lodge the application that he was engaged to lodge.
- f) The Former Agent did not provide an *Agreement for Services and Fees*.
- g) Ms AF's authorised representative has been in contact with the Former Agent, and the Former Agent agreed to provide her with a refund. No refund has been provided to date.
- h) The Former Agent's lack of action, and his breach of her confidentiality have caused the complainant a great deal of distress.

Documentary evidence provided by the complainant:

- 11. In support of the complaint, the complainant provided a statutory declaration.

Departmental records:

- 12. Departmental records in respect of Ms AF and Mr MG confirm that:
 - a) There are no records of any applications lodged by the Former Agent in respect of Mr MG.

CMP-39960 – Mr MK

- 13. On 1 October 2018 the Authority received a complaint from Mr MK. Mr MK alleged the following:
 - a) He engaged the Former Agent's services to assist him with a Protection visa application.
 - b) He paid the Former Agent \$4000 for this service.
 - c) On 8 June 2016 the Former Agent lodged a Protection visa application on behalf of the complainant.
 - d) The Former Agent was inconsistent with the addresses the Former Agent provided to the Department for correspondence: the Former Agent provided addresses in Rydalmere, NSW and in Dundas, NSW at various times.
 - e) On 23 June 2016 the Department wrote to the Former Agent (via email and post to the Rydalmere address), inviting the complainant to an interview on 1 August 2016 to provide personal identifiers.
 - f) On 10 August 2016 the Former Agent emailed the Department, advising of his address change to the Dundas address, which had resulted in the Former Agent not receiving the post sent to the Rydalmere address.

- g) On 14 September 2016 the Protection visa application was found to be invalid as the complainant failed to provide personal identifiers.
- h) On 13 September 2016, the Former Agent lodged a second Protection visa application on behalf of the complainant. The Former Agent included the Rydalmere address on the Form 956 included with this application, and in the footer of his cover letter.
- i) This application was found to be valid, but was refused on 5 May 2017. Notification was sent to the Former Agent's Rydalmere address.
- j) On 9 January 2018 the Former Agent lodged an application for review of the decision with the AAT. The Former Agent made submissions in respect to his change of address.
- k) On 12 March 2018 the AAT advised that it did not have jurisdiction to review the decision as the complainant was correctly notified.
- l) The Former Agent had advised the complainant to seek legal assistance to lodge an application for judicial review.
- m) On 23 August 2018 the Former Agent informed the complainant that the Former Agent would refund the fees he had paid the Former Agent. The complainant required this money to enable him engage a lawyer to represent him at the judicial review hearing.
- n) The Former Agent was aware that the complainant had been allocated a hearing date, but the complainant did not receive the refund until 20 September 2018. This was insufficient time for the complainant to instruct a lawyer in respect of this matter, resulting in a loss in respect of the Federal Circuit Court matter.

Documentary evidence provided by the complainant:

- 14. In support of the complaint, the complainant provided:
 - a) Notification of AAT Refusal
 - b) Agreement for Fees and Services

Departmental records:

- 15. Departmental records in respect of Mr MK indicate that:
 - a) On 8 June 2016 the Former Agent lodged a protection visa (XA-866) application on behalf of the complainant. This application was deemed invalid on 14 September 2016 as the applicant did not attend an appointment with the Department.
 - b) On 13 September 2016 the Former Agent lodged a second protection visa (XA-866) application on behalf of the complainant. This application was valid, but refused on 5 May 2017.
 - c) An application for review was lodged with the AAT on 9 January 2018. On 12 March 2018 the AAT advised that it did not have jurisdiction to review the decision as the application for review was made outside of the required timeframe.
 - d) On 13 June 2018 an application for judicial review was lodged with the Federal Circuit Court.
 - e) On 7 May 2019 the complainant lost the judicial review application.

CMP-47908 - Ms RD

16. On 29 October 2019 the Authority received a complaint from Ms RD. Ms RD alleged the following:
- a) On 23 August 2016 she signed an Agreement for Fees and Services with the Former Agent, and engaged the Former Agent to assist her with a Temporary Protection visa application.
 - b) She paid the Former Agent a total of \$4500 in two instalments - \$3000 and \$1500. The Former Agent initially advised her that the fee was \$3000, but sought a further \$1500 to assist Ms RD in respect of an interview with the Department.
 - c) On 17 October 2019 the Former Agent advised her that she would need to attend an interview on 22 October 2019. The Former Agent had received notification from the Department about this interview on 8 October 2019.
 - d) She was unable to contact the Former Agent until the day of the interview.
 - e) The Former Agent did not assist her to prepare for the interview.
 - f) The Former Agent was aware that she suffers from epilepsy, and high levels of stress can cause her to have seizures.
 - g) The Former Agent did not forward information in respect of her medical condition to the Department, in spite of her requests to do so.
 - h) She is very dissatisfied with the Former Agent's lack of service, and is seeking a full refund of the fees paid.

Documentary evidence provided by the complainant:

17. In support of the complaint Ms RD provided:
- An *Agreement for Services and Fees*, dated 23 August 2016, between the Former Agent and the complainant, indicating that fees of \$3000 were agreed to for the purpose of a "TVP subclass 785".
 - A copy of an email from the complainant to the Former Agent, dated 6 February 2017, in which she raised concerns in respect of the Former Agent's lack of contact.
 - A copy of an email from the complainant to the Former Agent, undated, in which she raised concerns in respect of the Former Agent's lack of service.
 - A letter from the Department, dated 8 October 2019, inviting the complainant to attend an interview.
 - Evidence of a money transfer of \$1500 to the Former Agent on 2 October 2019.

Departmental records:

18. Departmental records in respect of Ms RD indicate that:
- a) On 20 July 2016 the Former Agent lodged a Safe Haven Enterprise (XE 790) protection visa application on behalf of the complainant.
 - b) On 8 October 2019 the Department emailed to the Former Agent an invitation for the complainant to attend an interview on 22 October 2019.
 - c) On 22 October 2019 the complainant attended the interview.
 - d) There is no record that the Former Agent provided any information about the complainant's medical condition to the Department.

CMP-49811 - Mr SM

19. On 3 February 2020 the Authority received a complaint from Mr SM. Mr SM alleged the following:

- He contacted the Former Agent via email, seeking advice in respect of studying in Sydney.
- The Former Agent advised him that the Former Agent would be able to assist him, and provided him with an *Agreement for Fees and Services*.
- On 1 May 2016, he paid \$2500 to the Former Agent through his aunt, as he was overseas at the time and unable to transfer money from <<removed for privacy>>.
- The Former Agent initially delayed applying for him to study, but eventually applied on his behalf for him to study at Macquarie University. He was accepted into a Diploma of Information Technology and a Bachelor of Digital Business. The course was due to commence in February 2018.
- The Former Agent asked him to pay 'around' \$20,000 to enable him to commence the course. He transferred \$17,000 to the Former Agent via <<removed for privacy>>.
- The Former Agent subsequently contacted the complainant's aunt, seeking additional funds. She paid the Former Agent \$1850 on 9 May 2017.
- The complainant believes that none of the money he paid to the Former Agent was forwarded to Macquarie University.
- The Former Agent continued to delay the complainant's visa application, and suggested he apply for Griffith University instead as this university offered a scholarship opportunity.
- On 19 June 2018 the complainant was offered a place at Griffith University to study for a Bachelor of Information Technology.
- On 17 June 2018 the Former Agent applied for a student visa on behalf of the complainant. This application was refused on 17 July 2018. The reason for refusal was that the delegate was not satisfied that the complainant demonstrated strong reasons as to how his study plan in Australia would assist him to obtain employment or improve employment prospects in his home country.
- The complainant believes that the Former Agent:
 - i. Had been dishonest in regards to assisting him in enrolling for university studies;
 - ii. Unnecessarily postponed lodgment of the visa application;
 - iii. Withheld his money (approximately \$20,000).

Documentary evidence provided by the complainant:

20. In support of the complaint, the complainant provided:

- Screen shot of bank transfer from Ms AM to the Former Agent for \$2500, made on 1 May 2016
- Screen shot of a <<removed for privacy>> receipt

- Screen shot of a bank statement showing payment of \$1850 to the Former Agent on 9 May 2017
- Copy of an *Agreement for Services and Fees*
- Email in regards to a refund, signed by <<removed for privacy>>, dated 4 October 2018
- Letters of Offer from Griffith and Macquarie Universities
- Evidence of a refund from Griffith University, dated 5 October 2018
- Visa refusal letter, dated 17 July 2018

Departmental records

21. Departmental records in respect of Mr SM indicate that:

- On 17 June 2018 the Former Agent lodged a Class TU, Subclass 500 Student – Higher Education visa application (student visa application) on behalf of the complainant.
- On 17 July 2018 the student visa application was refused.

CMP-49546- Mr MA

22. On 10 March 2020 the Authority received a complaint from Mr MA. Mr MA alleged the following:

- He initially engaged the Former Agent's services in 2016 for the purpose of a Temporary Protection visa. This visa was granted, and the complainant has expressed no concerns in respect of Former Agent's assistance at this time.
- He engaged the Former Agent's services again in January 2019 for the purpose of a Subsequent Temporary Protection Visa for himself, his wife and child. He gave the Former Agent authorization to apply for this visa on his behalf, but no *Agreement for Services and Fees* was provided.
- He paid the Former Agent \$450 in cash, and requested an invoice for this payment. The Former Agent advised that an invoice would be emailed to the complainant, but to date he has not received an invoice.
- He subsequently contacted the Former Agent about the progress of the visa application, and the Former Agent informed him that he had to continue waiting.
- Mr MA telephoned and messaged the Former Agent more than 50 times since 17 December 2019 and has not received a response to his phone calls or messages.
- In January 2020 a friend of the complainant informed the complainant that the Former Agent wished to speak to him in regards to the visa application. The complainant contacted the Former Agent again, and the Former Agent advised him that he was required to answer some questions and sign a form, but the Former Agent did not provide any further information.
- Since this telephone conversation, the complainant has been unable to get in contact with the Former Agent.

Documentary evidence provided by the complainant:

23. The complainant did not provide any documentary evidence in support of the complaint.

Departmental Records

24. Departmental records in respect of Mr MA indicate that:

- On 2 September 2015 the Former Agent lodged a Class XD Subclass 785 Temporary Protection visa on behalf of the complainant. This visa was granted on 13 July 2016.
- On 14 January 2019 the Former Agent lodged a Class XD Subclass 785 Temporary Protection (Subsequent Entrant) application on behalf of Mr MA, his spouse and child.
- The application is currently undecided.
- On 13 February 2020 the Former Agent provided the Department with a Form 956, appointing the Former Agent as the representing migration agent. The form was signed by the Former Agent on 12 February 2020.

CMP-50863 – Mr SN

25. On 13 March 2020 the Authority received a complaint from Mr SN. Mr SN alleged the following:

- He contacted the Former Agent via telephone for assistance in respect of a permanent residency application. He was referred to the Former Agent by his neighbour due to the Former Agent's language ability.
- At the time he was the holder of a Bridging Visa A (BVA) and wanted assistance with progressing his application for a Remaining Relative visa.
- The Former Agent advised that he would be able to assist Mr SN, and provided him with a blank Form 956 for him to sign, and asked for "a few thousand dollars" to be paid into Former Agent's account.
- Mr SN informed the Former Agent that he can only afford \$500, and made two payments of \$250, on 3 April 2019 and 8 April 2019 respectively.
- Mr SN made numerous phone calls and sent numerous emails and text messages following up on the progress of Former Agent's assistance.
- The Former Agent agreed that he would refund the money paid by Mr SN, but to date has failed to provide a refund.

Documentary evidence provided by the complainant:

26. In support of the complaint, the complainant provided:

- Screen shot of various messages between Mr SN and the Former Agent.

Departmental Records

27. Departmental records in respect of Mr SN indicate that the Former Agent has not lodged any applications on his behalf.

CMP-50912 – Ms MM

28. On 16 March 2020 the Authority received a complaint from Ms MM. Ms MM alleged the following:

- On 25 June 2019 she engaged the Former Agent's services and a Service and Fee Agreement was signed.
- She paid the Former Agent \$4000 fees in cash, which the Former Agent collected from her workplace and promised that he would issue a receipt "later".
- The Former Agent visited her workplace (<<removed for privacy>>) on 8 January 2020 and, at the insistence of the complainant, issued a "receipt" on a piece of paper.
- Since the payment had been made, the Former Agent has been avoiding all communication attempts, and has not responded to her enquiries.
- The Former Agent has not taken any action in respect of the immigration assistance she requested.

Documentary evidence provided by the complainant

29. In support of the complaint, the complainant provided:

- *An Agreement for Fees and Services*
- A hand-written note, dated "08/01/2020" stating "*All fees in relation to Mrs MM has been fully paid,*" signed "Bahman Hatami."

Departmental Records

30. Departmental records in respect of Ms MM indicate that the Former Agent has not lodged any applications on her behalf, and has not been authorized to act on her behalf in respect of any applications before the Department.

Notice to give information pursuant to section 308 of the Act (section 308 notice)

31. On 19 November 2019 the Authority wrote to the Former Agent, when the Former Agent was a registered migration agent, pursuant to section 308 of the Act, requiring the Former Agent to provide:

- Answers in the form of a statutory declaration in response to allegations made in respect of the following complaints:
 - a. CMP-39624 – received on 21 September 2018 from Mr RY;
 - b. CMP-45422 – received on 1 October 2018 from Ms AF;
 - c. CMP-39960 – received on 11 October 2018 from Mr MK;
 - d. CMP-47908 – received on 29 October 2019 from Ms RD.
- A complete client file in respect of each of these four complainants.

32. At the time of the section 308 notice, these were the only four complaints made to the Authority.

33. The Former Agent was advised that the complaints raised issues under clauses 2.1, 2.4, 2.6, 2.9, 2.18, 3.1, 3.2, and 5.3 of the Code of Conduct referred to in section 314(1) of the Act.

34. A copy of the section 308 notice is attached to this Decision Record.

The Former Agent's response to the section 308 notice

35. The Authority has not received a response to the four complaints nor copies of the requested client files.

Other relevant documents or information

36. Subsequent to the section 308 notice issued on 19 November 2019 the Authority received further complaints in respect of the Former Agent's conduct, namely CMP-49811, CMP-49546, CMP-50863 and CMP-50912 as discussed above. Information in respect of these complaints was included in the section 311D notice discussed below. Copies of these complaints and relevant supporting evidence were attached to the section 311 D notice.

Notice pursuant to section 311D of the Act

37. On 13 July 2021 the Authority sent to the Former Agent a notice pursuant to subsection 311D(1) of the Act (section 311D notice).
38. The section 311D notice informed the Former Agent of the complaints lodged by Mr RY, Ms AF, Mr MK and Ms RD. In addition, the section 311D notice informed the Former Agent of further complaints, lodged by Mr SM (CMP-49811), Mr MA (CMP-49546), Mr SN (CMP-50863) and Ms MM (CMP-50912).
39. The section 311D notice, in addition to informing the Former Agent of the eight complaints, also informed the Former Agent:
- that the Authority had investigated the eight complaints;
 - that the Authority was considering whether or not to bar the Former Agent under subsection 311A(1) of the Act from being a registered migration agent for a period;
 - that period could be up to five years; and
 - the reasons for the proposed decision.
40. The section 311D notice invited the Former Agent to make a written submission to the Authority on the matter within 28 days, and also informed the Former Agent that subject to any written submission received within that period, it was open for the Authority to be satisfied that the complaints were made out.

The Former Agent's response to the section 311D notice

41. The Former Agent was requested to provide his response to the section 311D notice by no later than 28 days after the notice had been given.
42. On 9 August 2021 the Authority received the Former Agent's response to the section 311D notice. The Former Agent stated:
- He has not sought legal advice.
 - "... in nearly all the unsuccessful applications (specially the Protection Visa ones), the Migration Agent is accused of doing nothing to the interest of the client, having

no proper knowledge on the migration system and its rules and regulations. In fact, nearly all visa applicants expect us to ignore our commitments to the country and its values, and do everything to make a successful outcome. In many cases, applicants expect all the monies paid to the Migration Agent to be refunded, regardless of the fact that they have signed an agreement where it clearly says that outcome of this application cannot be guaranteed by the Migration Agent."

43. In respect of Mr RY's¹ complaint, the Former Agent stated, of relevance:

- Mr RY was on a student visa when he approached the Former Agent. Mr RY and his wife attempted to achieve the requisite IELTS score to be able to lodge a skilled visa but did not succeed.
- Mr RY was aware of the requirements of a protection visa when he approached the Former Agent, and had "a few letters available and lots of ideas to prove the serious and systematic harm he will experience if he returns to <<removed for privacy>>."
- Mr RY lied when he stated that the Former Agent advised him to apply for a protection visa.
- Mr RY did not pay the Former Agent for the AAT application, and the Former Agent "did everything for him for free."
- The Former Agent loaned Mr RY money, which Mr RY has not repaid. The Former Agent stated "Please if you kindly request I can possibly find the bank transfer from my account to his when he borrowed from me."

44. In respect of representing himself as a "lawyer," the Former Agent stated, of relevance:

- He refuted the allegation and stated that there is only one word in <<language>> "which stands for any other types of advocacy (advocate, lawyer, barrister and migration agent)."
- Mr RY had designed and prepared a brochure/promotional material for the Former Agent, and utilised the <<language>> word in this promotional material.
- Mr RY told Mr MK's son about the Former Agent's use of the word, resulting in the allegation also being raised by Mr MK in court. The Former Agent was "summoned as a subpoena" to appear in Mr MK's court matter.
- The Former Agent stated "please find attached a photo of the promotional material designed and prepared for me by Mr RY." This attachment was not included with the response.

45. In respect of Mr MK's complaint, the Former Agent stated of relevance:

- The Former Agent was "summoned at Mr MK's court as a subpoena where I met his <<removed for privacy>> lawyer whom I met with Mr RY sometime later in <<removed for privacy>>."
- Mr MK's application had been refused. The Former Agent was waiting for "the letter" inviting Mr MK to an interview, but it had been posted to the Former's Agent previous address.
- The Former Agent stated "I humbly admit it was my fault that he missed on the timeframe for AAT. However, I learned from the court that he was given a chance to apply for AAT by the court."²

¹ In his response, the Former Agent utilised a different spelling for Mr RY's name. For consistency, "RY" is utilised throughout this decision.

² The Former Agent provided no evidence to support this statement. However, Departmental systems confirm that following an application to the Federal Circuit Court, Mr MK was able to lodge an appeal application with the AAT.

46. In respect of Ms AF's³ complaint, the Former Agent stated of relevance:

- He has never met Ms AF or her son.
- Ms AF's husband had been in contact with the Former Agent, and had 5 Skype meetings. Only one of these meetings was about the son's visa.
- Ms AF's husband was "suffering from acute stress in relation to his separation from his son and his visa status."
- Ms AF's husband agreed to pay the Former Agent \$1000 for the Skype meetings, and this money was paid by Ms AF.
- The Former Agent stated "The couple, I remember, had had too much personal disputes between them and I thought it would not be wise to be between them so I stopped contacting both."
- In respect of the son's visa, the Former Agent advised the couple that he did not know whether it would be possible and that they should seek the advice of another migration agent.
- A few months later, the Former Agent received a call from Ms AF, seeking a refund. He agreed to refund the money to Ms AF, but had his own financial problems and "totally forgot to do so." The Former Agent stated "I will return this money as I too believe that it was her husband who should have paid the money and not her."

47. In respect of Ms RD's⁴ complaint, the Former Agent stated of relevance:

- Ms RD was "one of the most trouble making and hardest applications to handle."
- She told the Former Agent "stories" of "the lies she had told the Department."
- She sought the Former Agent's assistance with various personal problems, "including her complicated immigration claim which was full of lies."
- The Former Agent charged Ms RD a small service fee. Prior to her interview, Ms RD transferred "\$1000 or \$1500 to cover my time and my trip to Melbourne." Unfortunately, the Former Agent was involved in a serious car accident and was hospitalised, preventing his travel to Melbourne.
- The Former Agent stated that after the interview Ms RD told "her friend" that it was "good" that the Former Agent could not attend the interview as it allowed Ms RD to appeal to the case officer by "pretending she was sick and lonely and in need of the case officer's sympathy."
- Following the interview, Ms RD demanded a full refund. The Former Agent was willing to refund the costs of the trip to Melbourne that he was unable to undertake, but had "spent a lot of time" on Ms RD's application, and was not willing to refund all fees paid to him.

48. In respect of the complaint from Mr SM, the Former Agent advised of relevance:

- The delay in lodging the visa application was at Mr SM's request – Mr SM's was offered "a seat" at a German university, and Mr SM was not certain whether he⁵ would apply for a visa to Australia or not. The Former Agent stated that he still has all email correspondence between Mr SM, his father and himself.

³ In his response, the Former Agent utilised a different spelling for Ms AF's name. For consistency, "AF" is utilised throughout this decision.

⁴ In his response, the Former Agent utilised a different spelling for Ms RD's name. For consistency, "RD" is utilised throughout this decision.

⁵ In his response, the Former Agent referred to "she" rather than "he" in respect of Mr SM.

- On a number of occasions Mr SM's aunt contacted the Former Agent to obtain updates about the progress of the visa application. The Former Agent advised her that as she is not the client, he is unable to provide her with information.
- All monies in relation to Mr SM's application was refunded to his father, with the exception of the "agent's fee."
- The Former Agent stated "If required, please let me know and I'll look for evidence."

49. In respect of Ms MM's complaint, the Former Agent advised of relevance:

- Ms MM's application had been refused, and the Former Agent lodged an application for review with the AAT.
- Due to the fact that the Former Agent's registration lapsed, Ms MM decided to use a registered migration agent, and sought a refund.
- The Former Agent refunded the money "through a friend named <<removed for privacy>>." The Former Agent provided no evidence to support this statement.
- Ms MM had "promised to contact MARA and let them know that the dispute was settled down fully."
- The Former Agent stated "Please let me know if it's not been resolved so that I can contact her and ask her to send an email to MARA."

50. In respect of Mr MA, the Former Agent stated of relevance:

- Mr MA was a client in respect of a TPV visa.
- Mr MA was "mentally unstable," "suffering from a lack of literacy and almost totally unable to do anything."
- Mr MA sought the Former Agent's assistance in respect of matters such as completing a form for Medicare, writing a CV and when he had an accident and "didn't know how to do things."
- The Former Agent did not charge Mr MA for any services.
- The Former Agent is still the authorised recipient in respect of Mr MA's second TPV. Mr MA did contact the Former Agent multiple times, and the Former Agent "cannot answer the phone the way he or others expect me."
- The Former Agent will withdraw as an authorised recipient in respect of Mr MA's matter.

51. Additionally, the Former Agent stated:

- He has assisted many refugees, a lot of them for free or for a fee between \$1500 and \$3000, which is less than other <<removed for privacy>> agents have been charging.
- He always treats his clients with respect, but in many cases he has been disrespected when he is unable to take client calls or due to long waiting times.
- From his experience "all refugees want us to lie and fabricate cases for them"
- When an application fails, applicants "lie and fabricate stories as the complainants in (the Authority's) email." "MARA decides to bar an agent based on a complainant's claim and without hearing the true stories."
- The Former Agent would "truly appreciate if you take into consideration what I said in response to each of the claims."

52. The Former Agent did not address Mr SN's complaint in his response to the Authority.

53. The Former Agent did not provide any documents in support of his response.
54. In light of the Former Agent's reference to various evidence being available in support of his response, the Authority wrote to the Former Agent on 9 August 2021, and encouraged the Former Agent to provide "any further information or document in support of the claims" made in his statement. The Former Agent was encouraged to provide this information by 15 August 2021.
55. To date, the Authority has not received any further information or documents from the Former Agent.

Statement of Reasons

Evidence and other material

56. In reaching the following findings of fact the Authority has considered the following evidence:
 - Documents contained in the Authority's complaint files CMP-39624, CMP-45422, CMP-39960, CMP-47908, CMP-49811, CMP-49546, CMP-50863, and CMP-50912;
 - Information held on Departmental records in relation to the matters raised in the complaints;
 - Information held by the Authority in relation to the Former Agent; and
 - Information provided by the Former Agent to the Authority in response to the section 311D notice.

Relevant legislation

Migration Act 1958

Section 276 Immigration assistance

- (1) *For the purposes of this Part, a person gives immigration assistance if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist a visa applicant or cancellation review applicant by:*
 - (a) *preparing, or helping to prepare, the visa application or cancellation review application; or*
 - (b) *advising the visa applicant or cancellation review applicant about the visa application or cancellation review application; or*
 - (c) *preparing for proceedings before a court or review authority in relation to the visa application or cancellation review application; or*
 - (d) *representing the visa applicant or cancellation review applicant in proceedings before a court or review authority in relation to the visa application or cancellation review application.*
- (2) *For the purposes of this Part, a person also gives immigration assistance if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist another person by:*

- (a) *preparing, or helping to prepare, a document indicating that the other person nominates or sponsors a visa applicant for the purposes of the regulations; or*
 - (b) *advising the other person about nominating or sponsoring a visa applicant for the purposes of the regulations; or*
 - (c) *representing the other person in proceedings before a court or review authority that relate to the visa for which the other person was nominating or sponsoring a visa applicant (or seeking to nominate or sponsor a visa applicant) for the purposes of the regulations.*
- (2A) *For the purposes of this Part, a person also gives immigration assistance if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist another person by:*
 - (a) *preparing, or helping to prepare, a request to the Minister to exercise his or her power under section 351, 391, 417, 454 or 501J in respect of a decision (whether or not the exercise of the decision relates to the other person); or*
 - (aa) *preparing, or helping to prepare, a request to the Minister to exercise a power under section 195A, 197A, 197AB or 197AD (whether or not the exercise of the power would relate to the other person); or*
 - (b) *advising the other person about making a request referred to in paragraph (a) or (aa).*
- (3) *Despite subsections (1), (2) and (2A), a person does not give immigration assistance if he or she merely:*
 - (a) *does clerical work to prepare (or help prepare) an application or other document; or*
 - (b) *provides translation or interpretation services to help prepare an application or other document; or*
 - (c) *advises another person that the other person must apply for a visa; or*
 - (d) *passes on to another person information produced by a third person, without giving substantial comment on or explanation of the information.*
- (4) *A person also does not give immigration assistance in the circumstances prescribed by the regulations.*

Section 311A Barring former registered migration agents from being registered for up to 5 years

- (1) *The Migration Agents Registration Authority may decide to bar a former registered migration agent from being a registered migration agent for a period if, after investigating a complaint about him or her in relation to his or her provision of immigration assistance while he or she was a registered migration agent, it is satisfied that the subject matter of the complaint is made out.*

Note: Before making such a decision, the Authority must invite the former registered migration agent to make a submission: see section 311D

Subsection 316 (1B)

However, the Authority can investigate a complaint about a former registered migration agent only if the complaint is received within 12 months after he or she ceased to be a registered migration agent.

Jurisdiction

57. The Authority performs the functions prescribed under section 316 of the Act.
58. The functions and powers of the Authority under Part 3 of the Act and Regulations are the Assistant Minister for Immigration and Border Protection' functions and powers. The Minister has delegated his powers under Part 3 of the Act and the Regulations to officers of the Authority. I am delegated under the relevant Instrument to make this decision.
59. Four of the complaints which are the subject of this decision were received whilst the Former Agent was registered as a migration agent, as follows:

Complaint Reference	Date Received	Complainant
CMP-39624	21 September 2018	Mr RY
CMP-45422	1 October 2018	Ms AF
CMP-39960	1 October 2018	Mr MK
CMP-47908	29 October 2019	Ms RD

60. Four of the complaints were received within 12 months after the Former Agent ceased to be registered on 6 December 2019, as follows:

Complaint Reference	Date Received	Complainant
CMP-49811	3 February 2020	Mr SM
CMP-49546	10 March 2020	Mr MA
CMP-50863	13 March 2020	Mr SN
CMP-50912	16 March 2020	Ms MM

Findings on material questions of fact

Provision of Immigration Assistance

61. Section 276(1) of the Act defines the term "immigration assistance" as follows:
- [A] person gives **immigration assistance** if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist a visa applicant or cancellation review applicant by:*
- (a) preparing, or helping to prepare, the visa application or cancellation review application; or*
 - (b) advising the visa applicant or cancellation review applicant about the visa application or cancellation review application; or*
 - (c) preparing for proceedings before a court or review authority in relation to the visa application or cancellation review application;*

(d) representing the visa applicant or cancellation review applicant in proceedings before a court or review authority in relation to the visa application or cancellation review application.

62. Sections 276(2), 276(2A), 276(3) and 276(4) of the Act also contribute to the meaning of “immigration assistance”.

Client-Agent relationship

63. The meaning of “client” is set out in the Agents Regulations as follows (as relevant):

“3(1) “client”, of a registered migration agent, means a person to whom the agent agrees (whether or not in writing) to provide immigration assistance.”

64. The meaning of client was also considered in *Hudson v Migration Agents Registration Authority* [2004] AATA 1007 at [92] per Dwyer SM:

“I accept that a person does not become a client of a professional adviser simply by making an enquiry or seeking information. It is necessary for the professional, in this case, a migration agent, to agree to give some advice or to perform work within the person’s area of expertise. For a person to become a client, usually, except in cases of a free consultation or work being done “pro-bono”, there will be a fee paid or an agreement or understanding that a fee will be paid”.

65. Furthermore, at [97] per Dwyer SM:

“...I accept that the term ‘client’, as used in the Code, refers to a person who uses the services of a migration agent to obtain ‘immigration assistance’.”

66. All of the complainants alleged that they entered into a client relationship with the Former Agent for the provision of immigration assistance.
67. I considered the following evidence which demonstrates that the Former Agent provided immigration assistance:
- In relation to complaints CMP-39624 (Mr RY), CMP-45422 (Ms AF), CMP-39960 (Mr MK), CMP-47908 (Ms RD), CMP-49546 (Mr MA) and CMP-50912 (Ms MM) the Former Agent was alleged to have been instructed to assist in respect of protection visa applications, either temporary or permanent;
 - In relation to complaint CMP-49811 (Mr SM) the Former Agent was alleged to have been instructed to assist in the preparation and lodgement of a student visa application;
 - In relation to complaint CMP-50863 (Mr SN) the Former Agent was alleged to have been instructed to assist to progress a remaining relative visa application.
68. In his response to the Authority, the Former Agent has not denied the alleged instructions in respect of CMP-39624 (Mr RY), CMP-39960 (Mr MK), CMP-47908 (Ms RD), CMP-49546 (Mr MA) and CMP-50912 (Ms MM), and CMP-49811 (Mr SM).
69. In respect of CMP-50863 (Mr SN), the Former Agent did not provide any response to the Authority, but has also not denied that he provided immigration assistance to Mr SN. Mr SN provided evidence of payment made to the Former Agent, as well as screen shots of text messages between what appears to be the Former Agent and Mr SN. In these text messages, it appears that Mr SN is seeking a refund of the money paid, questioning the Former Agent’s registration with the Authority and seeking urgent assistance in respect of “PR.” “PR” is understood to mean permanent residence. As such, it appears that

immigration matters, payment of money and the Former Agent's registration were the subject matter of communication between Mr SN and the Former Agent.

70. In respect of CMP-45422 (Ms AF), the Former Agent stated that he had never met the complainant or her son. However, the Former Agent stated that Ms AF paid him \$1000, allegedly for time that the Former Agent spent providing immigration advice to Ms AF's ex-husband via Skype meetings, and one of those meetings was in respect of their son, Mr MG. I have turned my mind to who the client was in respect of this matter. I note that the Former Agent acknowledged that the couple "had too much personal disputes between them," but did not specifically confirm that the couple were separated. Notably, while the complainant referred to her "ex" husband, the Former Agent referred to the complainant's "husband." I acknowledge that neither the complainant nor the Former Agent have provided evidence of immigration assistance provided or an Agreement for Services and Fees. The complainant provided evidence of text messages between her and the Former Agent in respect of payment of money, and has alleged that the money was paid for the purpose of immigration assistance. I find it unlikely that Ms AF would pay the Former Agent's fees for services provided to a person she claimed to be her ex-husband. It is more likely that she would pay for services rendered to her, and that therefore Ms AF was the client.
71. Having considered the subject matter of the eight complaints, I am satisfied that the conduct relates to the Former Agent's provision of immigration assistance, as defined in section 276 of the Act. With no evidence to the contrary, I am further satisfied that the Former Agent provided immigration assistance to the eight complainants, as listed at paragraphs 59 and 60 of this decision. Accordingly, I find that the aforementioned parties were clients of the Former Agent, as defined in Regulation 3(1) of the Migration Agents Regulations, for the purpose of providing immigration assistance at the relevant times, which is discussed further throughout this decision.

The subject matter of the complaint

72. Having regard to the relevant evidence before the Authority I am satisfied that the subject matter of the complaints put forward by Mr RY, Ms AF, Mr MK, Ms RD, Mr MA, Mr SM, Ms MM and Mr SN is made out. My findings in relation to this are set out below in more detail.

Mr RY – CMP-39624

73. The subject matter of Mr RY's complaint was that:
- a. The Former Agent advised him to apply for a protection visa, which the Former Agent should have known he wasn't eligible for due to his circumstances; and
 - b. The Former Agent subsequently failed to include Mr RY's wife in an appeal application, resulting in her unlawful status.
74. Mr RY alleged that he engaged the Former Agent's services to assist him in attaining permanent residency in Australia. He was a student visa holder⁶ and intended to apply for a skilled visa. Mr RY claimed that the Former Agent advised him that he would be eligible for a protection visa. Mr RY has provided a copy of a *Letter of Advice*, dated 23 February 2014, on Australian Visa Advocates letterhead, signed by the Former Agent.
75. In response to this complaint, the Former Agent claimed that Mr RY "knew everything about protection visas and he even (had) a few letters available and lots of ideas to prove the serious and systematic harm he will experience if he returns to <<removed for privacy>>." Further, the Former Agent stated that "Mr RY's solicitor told me that he was

⁶ Mr RY's visa status is verified by records of the Department of Home Affairs.

told that it was me who advised him to apply for a Protection visa. This was an absolute lie.” The Former Agent did not provide any evidence in support of his response.

76. I have considered that the *Letter of Advice* provided by Mr RY in support of his complaint is signed by the Former Agent. The Former Agent has not denied that he provided the *Letter of Advice* to Mr RY. In the absence of evidence to the contrary I am satisfied that the Former Agent provided the advice contained in the letter. This letter recommends that Mr RY should apply for “a class XA Protection Visa subclass 866 as soon as possible before your student visa expires.” On the basis of the available evidence, I am satisfied that the Former Agent advised Mr RY to apply for a protection visa.
77. On the basis of Former Agent’s advice, Mr RY alleged he instructed the Former Agent to lodge a visa application on behalf of himself and his wife, Ms MTN as a dependent applicant. Departmental records indicate that on 6 May 2014 the Former Agent lodged a Protection (Class XA) visa application on behalf of Mr RY and Ms MTN, giving credibility to Mr RY’s allegation in respect of the instructions he gave to the Former Agent.
78. The *Letter of Advice* provided by the Former Agent to Mr RY stated “You are not married and therefore have no children.” In spite of this statement in the Former Agent’s advice, departmental records indicate that when the Former Agent lodged the Protection visa application on behalf of Mr RY, the Former Agent included Mr RY’s wife as a dependent applicant. On the basis of this, I accept that the Former Agent was aware that Mr RY was married, and his wife was to be included in the application.
79. Departmental records indicate that Mr RY arrived in Australia as a holder of a student visa on 23 October 2013, and that on 6 May 2014 the Former Agent lodged a protection visa application on behalf of Mr RY and his wife. On 12 May 2015 the protection visa application was refused as the delegate found that Mr RY was not a person in respect of whom Australia has protection obligations. In reaching this decision, the delegate noted that “the applicant fabricated parts of his claims in order to strengthen his claims for protection.” A further reason for refusal was the fact that the complainant had remained in Australia for a prolonged period of time prior to the lodgement of the application.
80. There is no evidence in departmental records to indicate that the Former Agent attempted to verify Mr RY’s visa status through the Department’s Visa Entitlement Verification Online (VEVO) system. The Former Agent has not claimed to have verified Mr RY’s visa status prior to lodgement, and has not clarified why he did not undertake such a check. Doing so may have alerted the Former Agent to the visa that Mr RY held, and potentially the period of time he had been in Australia.
81. According to Mr RY, he then instructed the Former Agent to lodge an appeal application with the AAT, and gave the Former Agent money for the appeal application. On the information before the Authority, the Former Agent provided Mr RY with an *Agreement for Services and Fees* in respect of the initial application, however there is no evidence to suggest that the Former Agent had entered into a new agreement for the AAT application or that the Former Agent had amended the initial agreement to include the assistance provided in respect of the AAT matter. In response to the Authority, the Former Agent has not provided evidence of payment or evidence of an *Agreement for Services and Fees* in respect of the AAT application. Mr RY also has not provided evidence of payment specifically relating to the AAT matter.
82. Mr RY alleged that the Former Agent lodged the appeal application form, but omitted to include Mr RY’s wife, and failed to pay the application fee. The result of the Former Agent’s actions was that Mr RY’s wife became unlawful and Mr RY had to pay the fee directly to the AAT himself.
83. In support of his complaint, Mr RY provided the initial Protection visa application decision record, from the Department, which indicates that his wife was included in the application. Mr RY also provided the AAT decision record, which does not include his wife. Departmental records confirm that the Former Agent represented the clients in respect of

both applications. However, the Former Agent did not include Mr RY's wife in the AAT appeal application. As such, Mr RY's allegations in respect of the applications lodged are corroborated by departmental records. The Former Agent did not address the allegation that he failed to include Mr RY's wife in the appeal application, and has not provided any evidence to contradict this allegation.

84. In light of the information before the Authority, I am satisfied that:
- a. The Former Agent was engaged to provide immigration assistance in relation to obtaining permanent residency.
 - b. The Former Agent advised Mr RY to apply for a protection visa, and on the basis of the Former Agent's advice he instructed the Former Agent to lodge a protection visa application in May 2014 on behalf of Mr RY and his wife.
 - c. The Former Agent did not advise Mr RY that due to the length of time spent in Australia, Mr RY may not satisfy the criteria of a protection visa.
 - d. The Former Agent did not include Mr RY's wife in the AAT appeal application.
85. Considering the existence of independent evidence that corroborates the allegations, I am satisfied that Mr RY's allegations have been made out. Namely, I am satisfied that:
- The Former Agent advised him to apply for a protection visa, which the Former Agent should have known he wasn't eligible for due to his circumstances; and
 - The Former Agent subsequently failed to include Mr RY's wife in an appeal application, resulting in her unlawful status.
86. Further, in respect of the AAT application, I am satisfied that the Former Agent did not provide an *Agreement for Services and Fees* to Mr RY as neither Mr RY nor the Former Agent have provided a copy of such an agreement.
87. On this basis, and as the Former Agent was a registered migration agent at that time, I am satisfied that Former Agent breached clauses 2.1, 2.4, 2.6, 2.7, 2.8 and 5.2 of the Code.
88. For completeness, in respect of the alleged payments made, I am not satisfied that Mr RY made further payments to the Former Agent for the AAT application. The Former Agent has denied that such payments were made. Mr RY provided evidence of payments he made to the Former Agent on 29 May 2014. The date of the payment appears to correspond to the lodgement of the initial protection visa application in May 2014, and not to the AAT application lodged on 31 May 2015. Further, the Former Agent referred to paying Mr RY for the design and production of promotional material. Mr RY confirmed that he did some work for the Former Agent but stated he did not get paid for it. While both parties have confirmed that Mr RY completed some work for the Former Agent, the nature of the agreement and the associated payment appear to be in dispute. The Former Agent also alleged that he loaned money to Mr RY, but did not provide evidence of this in spite of being encouraged by the Authority to provide evidence to support his statements. Insufficient evidence has been provided by either party, and as such I make no finding in respect of why Mr RY undertook work for the Former Agent and what the payment arrangements in respect of any such work may have been, or whether Mr RY borrowed money from the Former Agent.
89. Further, Mr RY stated that the Former Agent referred to himself as a "lawyer." The Former Agent alleged that this is a language issue in translation between English and <<language>>, as there is only one word in <<language>> to represent various types of advocacy including lawyers and migration agents. Whether the Former Agent represented himself as a "lawyer" and if so, whether he was entitled to do so, is not a matter for the Authority to consider.

Ms AF – CMP-45422

90. The subject matter of Ms AF's complaint was that the Former Agent:
- Did not provide the services that he was engaged to provide.
 - Did not provide her with an *Agreement for Services and Fees*.
 - Breached her confidentiality by discussing the application with her ex-husband.
91. Ms AF alleged that she engaged the Former Agent's assistance in or around September 2018 for the purpose of immigration assistance in respect of her son, Mr MG. Mr MG was included in a protection visa application lodged by his father (Ms AF's ex-husband), but this application had been refused. Ms AF alleged that the Former Agent advised her that her son could be 'transferred' to her visa. Former Agent offered to lodge the relevant application on behalf of Mr MG. Ms AF alleged that she provided the Former Agent with relevant documents via email to lodge the application.
92. Further, Ms AF alleged that she paid the Former Agent \$1000 for the Former Agent's services, and that the Former Agent did not provide her with an *Agreement for Services and Fees*. She provided a statutory declaration in which she declared that the Former Agent did not act in accordance with her instructions and did not complete the services for which he was engaged. . In support of the allegations, Ms AF provided evidence of text messages, allegedly between her and the Former Agent. The text messages were sent to mobile number <<removed for privacy>>, which, according to the Authority's records, was the mobile number of the Former Agent. On the basis of this, and the fact that the Former Agent has not denied the existence of these text messages in his response to the Authority's section 311D notice, I am be satisfied that the text messages were between the Former Agent and Ms AF.
93. The text messages included:
- A message from the Former Agent, dated 5 September 2018, in which the Former Agent provided an email address for correspondence and details of his bank account.
 - A message in regards to whether payment had been made, followed by a response (dated 24 September 2018) stating that the money had been deposited to the Former Agent's account.
 - Messages on 17 and 22 October and 27 November 2018, where the Former Agent asked "Can I call you later."
 - Message from Ms AF on 23 February 2019 where she asks about a refund and the Former Agent's response that states "on Monday the money will be deposited to you."
 - Further follow up in regards to the refund on 12 March 2019.
94. Departmental records confirm that the Former Agent has not lodged any applications on behalf of Ms AF's son.
95. Ms AF alleged that following the payment of \$1000, the Former Agent stopped responding to her phone calls. Ms AF's authorised representative has been in contact with the Former Agent, and the Former Agent agreed to provide her with a refund. No refund has been provided to date.
96. Further, Ms AF alleged that the Former Agent had breached her confidentiality by discussing her case with her ex-husband without her knowledge or authority. Ms AF alleged that she did not give the Former Agent authority to discuss her case with her ex-husband.

97. Ms AF's complaint was published to the Former Agent in the form of a section 308 notice, to which the Authority did not receive a response. The complaint was subsequently published to the Former Agent in a section 311D notice. In response, the Former Agent claimed he had never met Ms AF or her son, and the immigration assistance was provided to Ms AF's "husband" in respect of their son, Mr MG.
98. Notably, while Ms AF referred to her "ex-husband," the Former Agent referred to "husband." The discrepancy in the status of the relationship has not been clarified by either party. However, the Former Agent acknowledged that it was Ms AF who paid for his services. In considering who the client was for the purpose of immigration assistance, I note that the Former Agent stated that the couple "had too much personal disputes between them" and that the "husband... was suffering from acute stress in relation to his separation from his son." I find it unlikely that Ms AF would pay the Former Agent's fees for services provided to her ex-husband. It is more likely that she would pay for services rendered to her, in respect of her son, and that Ms AF was therefore the client. Further, both parties have stated that the purpose of the engagement was to provide immigration assistance in respect of Ms AF's son. As such, I am satisfied that Ms AF paid the Former Agent a fee and that this fee was for the purpose of immigration assistance.
99. Ms AF alleged that the Former Agent did not provide her with an *Agreement for Services and Fees*. The Former Agent has confirmed that he accepted money from Ms AF in return for immigration assistance, and has not disputed that he did not provide an *Agreement for Services and Fees*. On the basis of this I am satisfied that the subject matter of Ms AF's complaint in this regard has been made out.
100. Ms AF further alleged that the Former Agent did not act in accordance with her instructions by not lodging the application he was engaged to lodge. Departmental systems confirm that the Former Agent did not lodge any applications on behalf of Ms AF or her son, Mr MG. The Former Agent stated that Ms AF and her ex-husband wanted to transfer Mr MG onto either of their visas. The Former Agent advised them that he did not think it "would be possible" and that "they'd better consult with another migration agent." The Former Agent's statement indicates that he did not provide the services he was engaged to provide. However, his statement also indicates that this was due to the fact that he determined that Mr MG was not eligible for the application that Ms AF wanted the Former Agent to lodge. Both the Former Agent and Ms AF stated that the Former Agent agreed to issue a refund to Ms AF, however did not do so. Ms AF has provided text messages as evidence that a refund was discussed, and the Former Agent conceded that he agreed to refund the money. On the basis of the available evidence, including both from the complainant and the Former Agent, I am satisfied that the former Agent did not act in accordance with Ms AF's instructions. While I acknowledge that the applicant may not have been eligible for the application, nonetheless, I find that the Former Agent retained money that he was not necessarily entitled to as the services were not rendered. The Agent has failed to deal with Ms AF in a diligent and fair manner, and there is no evidence that the agreement had been terminated. I am satisfied that this aspect of the allegation is made out.
101. I have considered Ms AF's allegation that the Former Agent breached her confidentiality by discussing her case with her ex-husband. As noted above, neither party has provided evidence to clarify the relationship status. The Former Agent has acknowledged that he had provided immigration assistance to Ms AF's ex-husband, but did not address the confidentiality issue of this allegation. However, neither the Former Agent nor Ms AF have provided evidence to indicate that the Former Agent discussed confidential matters with Ms AF's ex-husband, or has in any way breached her confidentiality. As such, I am not satisfied that the Former Agent breached her confidentiality by discussing the case with her ex-husband, and this aspect of the complaint has not been made out.
102. Given all the above discussed in regards to Ms AF's complaint and as Former Agent were a registered migration agent at that time I am satisfied that the Former Agent has breached

clauses 2.1, 2.8, 5.2 and 10.1 of the Code. I am not satisfied that the Former Agent has breached clause 3.2 of the Code.

Mr MK – CMP-39960

103. The subject matter of Mr MK's complaint was that the Former Agent:

- a. Failed to act in a diligent manner;
- b. Did not inform him of the progress of an application; and
- c. Failed to lodge an application for a review of a visa decision within the required timeframe, in spite of being instructed by Mr MK to do so.

104. Mr MK alleged that he engaged the Former Agent's services to lodge a Protection visa application and paid the Former Agent \$4000 for the Former Agent's services. The Former Agent lodged the application on behalf of the complainant. The Former Agent was inconsistent with the address that the Former Agent provided for correspondence to the Department, providing both an address in Rydalmere NSW and in Dundas, NSW at various times. Mr MK alleged that as a result of the inconsistencies in the address, the Former Agent stated he did not receive correspondence from the Department seeking personal identifiers from Mr MK. Consequently, Mr MK's protection visa application was found to be invalid.

105. The Former Agent lodged a second Protection visa application on Mr MK's behalf. This application was refused by the Department. The Former Agent did not lodge an application for review of the decision with the AAT until more than 6 months after the Department's decision, even though Mr MK alleges that the Former Agent was instructed to do so earlier. Mr MK expected the Former Agent to follow his instructions, and lodge the AAT review application within the designated timeframe for review.

106. Departmental records confirm that:

- a. The Former Agent lodged a protection visa on behalf of Mr MK, and the application was deemed invalid as the applicant did not attend an appointment with the Department to provide personal identifiers.
- b. The Former Agent lodged a second protection visa on behalf of Mr MK. This application was valid, but was refused.
- c. An application for review was lodged with the AAT, however the AAT did not have jurisdiction to review the application as it was made outside of the required timeframe.

107. Mr MK further alleged that the Former Agent encouraged him to seek legal advice to lodge a judicial appeal application, and agreed to refund the \$4000 paid to the Former Agent to enable him to engage a lawyer for this purpose. He advised the Former Agent that he required the money in advance of the Federal Circuit Court (FCC) hearing, scheduled for 26 September 2018. On 23 August 2018 the Former Agent agreed that he would provide a refund, however did not refund the money to Mr MK until 20 September 2018. Mr MK alleged that this was too close to the hearing date to enable him to engage a lawyer to represent him. As a result, the FCC review application was unsuccessful. Departmental records confirm that the application for judicial review to the FCC was unsuccessful.

108. Departmental records also confirm that the Former Agent was engaged to provide Mr MK with immigration assistance, and corroborate Mr MK's account of events in respect of visa lodgements.

109. In response to the section 311D notice, the Former Agent stated "I humbly admit it was my fault that he missed on the timeframe for AAT." The Former Agent did not address the

allegation in respect of the contact details he provided to the Department or about the manner in which he provided Mr MK with updates on the progress of his application. The Former Agent did not address the allegations made by Mr MK in respect of a delay with his refund.

110. On the basis of the available evidence I am satisfied that:

- a. The Former Agent failed to act in a diligent manner by not providing his correct contact details to the Department. Consequently, the Former Agent did not receive notification from the Department, resulting in an invalid application. This is corroborated by information from departmental records.
- b. The Former Agent did not inform Mr MK of the progress of his second application by not informing him of the outcome in a timely manner. The Former Agent has not denied this allegation and has not provided any evidence to the contrary.
- c. The Former Agent failed to lodge an application for a review of a visa decision within the required timeframe, in spite of being instructed by Mr MK to do so. The Former Agent has admitted to this failure.

111. On the basis of the available evidence, I am satisfied that the subject matter of Mr MK's complaint is made out.

112. I find that the Former Agent failed to act in a diligent and competent manner in respect of the applications that he lodged on behalf of Mr MK, and failed to follow instructions. I am satisfied that Former Agent failed to provide the Department with written notice of changes to his address. I find that the Former Agent's failure to ensure that Mr MK was provided a refund in time for him to lodge a further appeal application indicates that the Former Agent had not acted in the best interests of the client. Further, I am satisfied that the Former Agent carried out the work in a manner that unnecessarily increased the costs to the client as Mr MK was required to lodge a second application and unable to utilise the available avenues of appeal due to the Former Agent's lack of diligence.

113. Given all the above discussed in regards to Mr MK's complaint and as the Former Agent was a registered migration agent at that time I am satisfied that the Former Agent breached clauses 2.1, 2.4, 2.8, 3.5 and 5.3 of the Code.

Ms RD – CMP-47908

114. The subject matter of Ms RD's complaint was that the Former Agent:

- a. Did not provide her with the services the Former Agent was engaged to provide;
- b. Did not inform her of key developments in her application in a timely manner;
- c. Did not act in accordance with her instructions.

115. Ms RD alleged that she engaged the Former Agent's services for the purpose of assistance with a Protection visa application. Departmental records indicate that the Former Agent was the appointed registered migration agent on Ms RD's Safe Haven Enterprise (Class XE Subclass 790) visa application.

116. She alleged she paid the Former Agent \$3000 for the purpose of assistance with the application, and a further \$1500 for the purpose of assisting with preparation for an interview with the Department. Ms RD provided evidence of the \$1500 paid to the Former Agent on 2 October 2019. The Former Agent stated that Ms RD paid him "\$1000 or \$1500."

117. In spite of this payment being made, Ms RD alleged that the Former Agent did not assist her with any preparation for her interview with the Department about her Protection visa

application. Further, she alleged that in spite of being notified of the interview by the Department on 8 October 2019, the Former Agent did not inform her that she was required to attend the interview until 17 October 2019, leaving her with only four days to prepare herself for the interview. Departmental records indicate that the invitation to the interview was sent to the Former Agent on 8 October 2019. Ms RD expected that as she specifically paid for this service, the Former Agent would provide such assistance and depended on the Former Agent's knowledge and experience to guide her through the interview process. Additionally, she alleged that the Former Agent caused her unnecessary stress by not informing her of the interview date as soon as it was available to the Former Agent.

118. In response to this allegation, the Former Agent conceded that "before her interview (Ms RD) transferred \$1000 or \$1500 to cover my time and my trip to Melbourne. Unfortunately though I had a severe car accident and was hospitalised." The Former Agent advised that this prevented his travel to Melbourne, and that he was willing to refund the "travel fee and part of the service fee" but Ms RD demanded all of the money she had paid to be refunded. The Former Agent stated "this was not possible as I had spent a lot of time on her application." The Former Agent further stated "...when I heard from her friend that she thought my absence in the interview did her so good, I was ... feeling less guilty of not being able to travel to Melbourne for her interview." The Former Agent did not address the issue in respect of not informing Ms RD about the interview date in a timely manner.
119. Based on the available evidence, both from Ms RD and the Former Agent, I am satisfied that the Former Agent was engaged and paid to assist Ms RD with her interview. I am further satisfied that the Former Agent failed to provide that service and retained the money he was paid in spite of not rendering the service. I acknowledge the Former Agent's comments that we has involved in a car accident, which rendered him unable to provide this service. Although the Former Agent did not provide any evidence to support this statement, I accept that it is plausible. However, I note that in spite of acknowledging that he did not render the service, the Former Agent also acknowledged that he did not refund the money he was paid for this service. As such, I am satisfied that the Former Agent took advantage of the situation and retained money he was not necessarily entitled to. Ms RD alleged that she was not informed about the interview in a timely manner and the Former Agent has not disputed or contradicted this allegation. I am satisfied that the substance of this aspect of Ms RD's complaint has been made out.
120. Further, Ms RD stated that she had instructed Former Agent to provide evidence of her medical condition to the Department in support of her application. The Former Agent did not address this aspect of the allegation, and did not provide any evidence to contradict it. Departmental records indicate that no evidence of a medical condition was provided in support of Ms RD's application. However, Ms RD has not provided evidence that she suffers from a medical condition, nor evidence that she provided these instructions to the Former Agent. While I acknowledge that Departmental records indicate that the information was not presented to the Department, I am not satisfied that there is sufficient evidence available to indicate that Ms RD instructed the Former Agent to provide this information to the Department.
121. On the basis of the available evidence, which in part is corroborated by departmental records, and in the absence of evidence to the contrary, I am satisfied that the substance of Ms RD's complaint is partly made out. Accordingly, I am satisfied that the Former Agent:
 - a. Did not provide Ms RD with the services the Former Agent was engaged to provide, which was to provide her with assistance in preparing for her interview with the Department. This has been conceded by the Former Agent;
 - b. Did not inform Ms RD of key developments in her application in a timely manner by not informing her of the invitation to an interview until 9 days after the Former Agent received the invitation;

122. On this basis, I am satisfied that the Former Agent failed to have regard for Ms RD's dependence on his knowledge and experience and did not keep Ms RD informed of the progress of her application in a timely manner. I am satisfied that the Former Agent failed to deal with Ms RD in a competent, diligent and fair manner. Given all the above discussed in regards to Ms RD's complaint and as Former Agent was a registered migration agent at that time I am satisfied that the Former Agent breached clauses 2.1, 2.4, and 2.8(c) of the Code.
123. However, due to a lack of evidence, I am not satisfied that the Former Agent did not act in accordance with Ms RD's instructions by not providing evidence of her medical condition to the Department.

Mr SM – CMP-49811

124. The subject matter of Mr SM's complaint was that the Former Agent:
- a. Did not act in accordance with his instructions;
 - b. Was dishonest with him in regards to the study options related to his student visa application;
 - c. Withheld money he paid to the Former Agent for the purpose of education provider fees.
125. Mr SM alleged that he engaged the Former Agent's services in 2015 for the purpose of a student visa. He has provided a copy of an *Agreement for Services and Fees* dated 29 April 2015 in support of his complaint. He paid the Former Agent a total of \$21,350 in three installments, for the purpose of the Former Agent's fees as well as fees for his university course. In support of this allegation, Mr SM provided evidence of money transfers. Departmental records indicate that the Former Agent lodged a student visa application on behalf of Mr SM on 17 June 2018. In response to the section 311D notice the Former Agent confirmed that he assisted Mr SM with a student visa application. On the basis of this evidence I am satisfied that the Former Agent was engaged to provide immigration assistance to Mr SM.
126. Mr SM alleged that he provided the Former Agent with relevant information, but the Former Agent kept postponing his application to study with an education provider. Mr SM alleged that the Former Agent applied on his behalf to study at Macquarie University. In support of the allegation, Mr SM provided a copy of a letter of offer from Macquarie University, dated 20 November 2017. The letter states that in order to accept the offer, he must make a payment of \$16,755 by 8 January 2018. Mr SM alleged that he transferred the relevant university fees to the Former Agent, but the Former Agent did not forward the money to the university, and again kept delaying the application for a visa. As the fees were not paid, Mr SM lost the opportunity to study at Macquarie University.
127. According to Mr SM, in 2018 the Former Agent encouraged him to apply to study at Griffith University instead, claiming it was a better opportunity as it provided Mr SM with a scholarship. In support of the allegation, Mr SM provided a letter of offer from Griffith University, dated 19 June 2018. This letter is dated more than 6 months after the letter of offer from Macquarie University, and corroborates Mr SM's allegation in respect of the change to study provider. Mr SM agreed to the Former Agent's suggestion, and the Former Agent lodged the relevant visa application. Departmental records confirm that the Former Agent lodged a student visa application on his behalf on 17 June 2018.
128. In response to the section 311D notice, the Former Agent stated that the delay was at the request of Mr SM due to the fact that Mr SM's father was offered a position in a German university, and Mr SM was not sure whether he would go ahead with study in Australia or not. The Former Agent stated that he still has "all the emails between me and Mr SM and

his father” but the Former Agent did not provide any evidence in support of his response, even when encouraged by the Authority to do so. The Former Agent also stated that all of the money, except the Former Agent’s fees, was refunded to Mr SM’s father.

129. Mr SM’s student visa application was refused on 17 July 2018 as the delegate was not satisfied that the applicant demonstrated strong reasons that his study plan in Australia would assist him to obtain employment or improve his employment prospects in his home country. Griffith University refunded \$14,250 to Mr SM.
130. Mr SM alleged that the Former Agent was dishonest in regards to the university studies; unnecessarily postponed the lodgment of his visa application and withheld his money. A period of more than three years passed between the signing of the *Agreement for Services and Fees* on 29 April 2015 and the lodgment of the student visa application on 17 June 2018. Mr SM was overseas throughout the process, and relied on the Former Agent’s advice and action to enable him to study in Australia.
131. Mr SM has provided evidence to support his allegation. The allegation is also partly corroborated by departmental records in particular regarding lodgement and refusal of the student visa application.
132. The Former Agent has denied the allegation, and claimed the delay was a result of Mr SM’s indecisiveness. The Former Agent provided no evidence to support his claims. I find it unlikely that a client would pay a large sum of money, being \$21,350, and then delay their decision for over three years. While it is unclear why the Former Agent did not lodge the visa application as initially instructed, I am satisfied that he signed an *Agreement for Services and Fees* on 29 April 2015 and a visa application was not lodged for more than three years (being on 17 June 2018) supports Mr SM’s allegation that there was a significant delay during which the Former Agent did not provide the services he was engaged to provide. The Former Agent has not provided any evidence to explain the reason behind this significant delay.
133. In the absence of any evidence to the contrary, I am satisfied that the subject matter of Mr SM’s complaint is made out. Accordingly, I am satisfied that the Former Agent
- a. Did not act in accordance with Mr SM’s instructions by not lodging a student visa application when he obtained the letter of offer to study at Macquarie University;
 - b. Withheld money paid to him for the purpose of education provider fees by not forwarding on fees paid for the purpose of study at Macquarie University, resulting in Mr SM losing that opportunity;
 - c. Was dishonest with Mr SM in regards to the study options by not providing forthright information in respect of study and Macquarie University and subsequently guiding him towards study at Griffith University when he lost the opportunity to study at Macquarie University due to non-payment of fees.
134. On that basis, I am satisfied that the Former Agent failed to show regard for Mr SM’s dependence on the Former Agent’s knowledge and experience. This was exacerbated by the fact that Mr SM was overseas and completely reliant on the Former Agent’s guidance. Further, I am satisfied that by unnecessarily delaying Mr SM’s application and withholding his money the Former Agent did not act in accordance with the law and the legitimate interests of the client.
135. Given all the above discussed in regards to Mr SM’s complaint and as the Former Agent was a registered migration agent at that time I am satisfied that the Former Agent has breached clauses 2.1, 2.4 and 2.8 of the Code.

Mr MA – CMP-49546

136. The subject matter of Mr MA's complaint was that the Former Agent:

- a. Did not provide him with an *Agreement for Services and Fees*;
- b. Did not keep him informed of the progress of his application.

137. Mr MA alleged that he engaged the Former Agent's services in January 2019 for the purpose of assistance with a Subsequent Temporary Protection Visa. Mr MA paid Former Agent \$450 in cash, but the Former Agent did not provide him with an *Agreement for Services and Fees* or a tax invoice for the payment. Departmental records indicate that the Former Agent (while registered) was the appointed registered migration agent on Mr MA's protection visa application, and that the Former Agent lodged the application on behalf of Mr MA and his family on 14 January 2019. In response to the section 311D notice the Former Agent acknowledged that Mr MA was his client for a "TPV," understood to mean a temporary protection visa. On the basis of this information I am satisfied that the Former Agent was engaged by Mr MA to provide him with immigration assistance. Neither the Former Agent nor Mr MA provided a copy of an *Agreement for Services and Fees*. On the basis of this I am satisfied that no *Agreement for Services and Fees* was provided by the Former Agent to Mr MA.

138. Mr MA further alleged that he continually followed up on the progress of the application, but did not receive a response to his phone calls or messages. This would have caused Mr MA a great deal of anxiety about the progress of the application and his ability to remain in Australia.

139. In response to the section 311D notice the Former Agent stated that "...sometimes he calls 50 times, it's true, and I cannot answer the phone the way he or others expect me." The Former Agent did not deny that he failed to keep Mr MA updated on the progress of his application, nor did the Former Agent provide any evidence to refute the allegation.

140. Departmental records indicate that Mr MA made enquires directly with the Department in respect of his application on 28 February 2019, 18 March 2019, 17 July 2019, 17 December 2019 and 16 January 2020. When making an enquiry on 16 January 2020, Mr MA advised the Department that he was unable to contact the Former Agent. Mr MA's persistent direct contact with the Department supports his allegation that he did not receive updates from the Former Agent in regards to the progress of his application, prompting him to contact the Department directly. His discussion with the Department on 16 January 2020 indicates that he was unaware at this stage that the Former Agent was no longer a registered migration agent and believed that he could continue relying on the Former Agent to provide immigration assistance.

141. According to Mr MA, in January 2020 he was informed by a friend that the Former Agent wished to speak to him. He contacted the Former Agent who advised him he was required to answer some questions and sign a form, but the Former Agent did not provide him with further details and he has not heard from him since. There is no indication from Mr MA that he signed any documents at that time.

142. Departmental records indicate that on 12 February 2020 the Former Agent provided a Form 956 to the Department, allegedly signed by Mr MA and himself on 12 February 2020. Notably, the Former Agent's registration as a migration agent expired on 6 December 2019. It is unclear why Former Agent continued to hold himself out to the Department as a registered migration agent two months later. In response to the section 311D notice the Former Agent stated that he was still the authorised recipient on Mr MA's application but would be withdrawing from this role. I do not accept this explanation as the Former Agent could have submitted a Form 956A if he wanted to act purely as an authorised recipient. Instead, he submitted a Form 956, the purpose of which is to appoint a registered migration agent.

143. On the basis of available evidence, and in the absence of any evidence to the contrary, I am satisfied that the subject matter of Mr MA's complaint is made out. Accordingly, I am satisfied that the Former Agent:

- a. Did not provide Mr MA with an *Agreement for Services and Fees*;
- b. Did not keep him informed of the progress of his application.

144. On that basis, I am satisfied that the Former Agent did not provide an *Agreement for Services and Fees* to Mr MA, in breach of clause 5.2 of the Code. I am further satisfied that the Former Agent had no regard to Mr MA's dependence on his knowledge and experience, and failed to keep him updated on the progress of his application, in breach of clauses 2.4 and 2.8 of the Code.

Mr SN – CMP-50863

145. The subject matter of Mr SN's complaint was that the Former Agent:

- a. Did not act in accordance with his instructions;
- b. Did not provide the services the Former Agent was engaged to provide;
- c. Did not provide an *Agreement for Services and Fees*.

146. Mr SN alleged that he engaged the Former Agent's services for the purpose of progressing his Remaining Relative visa application. Although he did not meet the Agent in person, he spoke to the Agent over the telephone and explained his needs to the Former Agent in <<language>>. The Former Agent advised him that he can assist him and sought "a few thousand dollars." He alleged he paid Former Agent \$500 and provided evidence of a money transfer for \$250 on 8 April 2019. Mr SN did not receive an *Agreement for Services and Fees* or any acknowledgement of payment made such as a receipt. Following the payment, Mr SN alleged that he received no assistance or communication from the Former Agent. Mr SN alleged that he repeatedly contacted the Former Agent to follow up on the progress of his application, and he did not receive a response.

147. Departmental records indicate that the Former Agent has not lodged any applications on behalf of Mr SN, and the Former Agent has not informed the Department that the Former Agent was his authorised representative.

148. The Former Agent has not addressed Mr SN's allegations in response to the Authority's section 311D notice, but has not disputed the allegations either.

149. The available evidence indicates that Mr SN transferred \$250 to the Former Agent, supporting the premise that he engaged the Former Agent's services. As Mr SN was awaiting progression of a migration matter at the time, it is likely that he engaged the Former Agent's services for the purpose of immigration assistance. However, Mr SN has not specified what the Former Agent was engaged to do, and as such I am not satisfied that the Former Agent failed to provide the services he was engaged to provide.

150. In the absence of any evidence to the contrary, I accept that the subject matter of Mr SN's complaint is partially made out. I am satisfied that the Former Agent accepted a fee of \$250, but did not provide an *Agreement for Services and Fees*. I am satisfied that the Former Agent's conduct is in breach of clause 5.2 of the Code.

Ms MM – CMP-50912

151. The substance of Ms MM's complaint is that the Former Agent:

- a. Did not act in accordance with her instructions;

- b. Did not provide the services he was engaged to provide;
- c. Did not refund her fees.

152. Ms MM alleged that she paid \$4000 on 25 June 2019 to receive immigration assistance from the Former Agent. The Former Agent provided her with an *Agreement for Services and Fees*, dated 25 June 2019, which indicates the cost of Former Agent's services as \$4000. The Former Agent did not provide her with a receipt for payment, but upon her insistence he provided her with a hand-written note, dated 8 January 2020, stating that all the fees have been paid in full. Departmental records indicate that the Former Agent has not lodged any applications on her behalf. In the section of the agreement with the heading "Services to be provided," all options are crossed out. As such, it is unclear from the *Agreement for Services and Fees* what services the Former Agent was engaged to provide. However, in response to the Authority's section 311D notice the Former Agent stated that Ms MM approached him after her application had been refused by the Department, and he applied for a review of the application to the AAT on her behalf.

153. Ms MM alleged that the Former Agent did not provide her with any assistance, and had not refunded the money she paid to him. Further, she alleges that the Former Agent has been avoiding communication with her. In response to the Authority's section 311D notice, the Former Agent stated that Ms MM's money was "refunded through a friend named <<removed for privacy>>." The Former Agent provided no evidence to support this statement, and further claimed that Ms MM "promised to contact MARA and let them know that the dispute was settled down fully." The Authority has not received any correspondence from Ms MM.

154. In light of the information before the Authority, especially the *Agreement for Services and Fees*, evidence of payment, and the Former Agent's statement, I am satisfied that the Former Agent was engaged by Ms MM to provide immigration assistance. The Former Agent claimed that he lodged the AAT application on behalf of Ms MM, but after his registration as a migration agent "expired" Ms MM decided to choose a registered migration agent. The Former Agent provided no evidence that he lodged the AAT application on behalf of Ms MM. Departmental records indicate that a different registered migration agent lodged Ms MM's visa application, and there is no evidence in the departmental systems that the Department was notified of a change of representation. As such there is no evidence available that the Former Agent rendered the services he was paid to provide. On the basis of the available evidence I am satisfied that the subject matter of Ms MM's complaint is made out. Accordingly, I am satisfied that the Former Agent:

- a. Did not act in accordance with Ms MM's instructions;
- b. Did not provide the services he was engaged to provide;
- c. Did not refund her fees.

155. In the absence of any evidence to the contrary, I am satisfied that the Former Agent failed to have due regard for Ms MM's dependence on the Former Agent's knowledge and experience.

156. Given all the above discussed in regards to Ms MM, and as the Former Agent was a registered migration agent at that time, I am satisfied that the Former Agent breached clauses 2.4, 2.8(b), and 10.1 of the Code.

Failure to respond to complaints

157. Each of the complainants referred to in this notice have indicated that they raised their dissatisfaction on the Former Agent's services with him. Some of the complainants, including Mr MA, Mr SN and Ms MM, have indicated that they repeatedly followed up on their complaints with the Former Agent, and have not received a response.

158. Mr MA wrote in his complaint:

"I have contacted Mr Hatami almost every day since early January 2020 to ask about the process of my application for the Subsequent Temporary Protection Visa, however, he has not responded to my call and has not returned my call."

159. Mr SN wrote in his complaint:

"...he never answer my email or phone call, one text he said he try to pay me back and he never DID..."

160. Ms MM's representative wrote in the complaint lodged on her behalf:

"Ever since Mr Hatami fully charged us the fee of \$4000, he's been avoiding any contact or response to Ms MM's communication attempts. and only when we informed him of our intention & decision for lodging the complaint, he only replied to one of the text messages, claiming that he is driving along a highway and will be back to Ms MM ASAP. But never heard from him again!!!"

161. Similarly, Ms AF alleged that following the payment of \$1000 the Former Agent stopped responding to her phone calls. Ms AF's authorised representative has been in contact with the Former Agent, and he agreed to provide her with a refund. No refund has been provided to date.

162. In response to this allegation the Former Agent stated "I have always treated them with respect but in so many cases, I was disrespected by them only because I was not able to take their calls, or because they were waiting too long before they were invited for an interview." The Former Agent did not provide any evidence to contradict the allegations of his inaction in responding to the concerns raised by his former clients when they expressed their dissatisfaction on his services.

163. On the basis of the available evidence and considering the consistency of the alleged conduct, I am satisfied that each client's allegation in respect of the Former Agent's failure to respond to their enquiries and complaints has been made out. On this basis I am satisfied that the Former Agent failed to keep the clients informed of the progress of their cases, and failed to respond to their complaints. Given this, I am satisfied that the Former Agent breached clauses 2.8 and 9.1 of the Code.

Consideration of Whether or Not to Bar the Former Agent

164. In reaching my conclusion with respect to being satisfied that the subject matter of the complaints has been made out, I have considered the strength of the evidence and the level of satisfaction required in accordance with the grave and serious consequences for the person the subject of the decision in terms of his or her livelihood and reputation.

165. In deciding whether or not to bar the Former Agent under to subsection 311A(1) of the Act, I have taken into account all of the circumstances of the complaints, including the following:

Seriousness of behaviour

166. As a registered migration, the Former Agent was obligated under the Code to possess and maintain a high standard of conduct in order to maintain the reputation and integrity of the migration advice profession.
167. The Former Agent has demonstrated behaviour of a serious nature by acting in a manner which indicates a blatant disregard for his clients' interests. I am satisfied that the Former Agent has acted with a significant degree of indifference towards the law, the Authority and his obligations as a member of the migration advice profession. I am further satisfied that if the Former Agent were to be registered again, vulnerable consumers would be subject to his unprofessional and unlawful conduct.
168. As the Former Agent was registered at the time, I am also satisfied that the Former Agent has breached clauses 2.1, 2.4, 2.6, 2.7, 2.8, 3.5, 5.2, 5.3, 9.1 and 10.1 of the Code.
169. Having regard to the Complaint Classification Matrix I have considered that the Former Agent's conduct falls within the Major classification for the following reasons:
- The Former Agent's conduct has resulted in significant harm or substantial loss to multiple (8) clients;
 - The Former Agent's behaviour has resulted in some financial loss to clients;
 - The Former Agent has breached multiple clauses of the Code, indicating systemic poor practices;
 - The Former Agent has shown blatant disregard or significant degree of indifference to his professional responsibilities to his clients and the Authority;
 - The Former Agent's conduct has, or is likely to have an adverse impact or undermine the reputation of the migration advice profession.
170. Applying these factors, I have determined that a barring decision is appropriate as the Former Agent had engaged in conduct that has resulted in adverse visa outcomes and financial loss for multiple complainants. I have also found that the Former Agent, while registered, had breached multiple clauses of the Code on numerous occasions and in relation to multiple clients.

Aggravating Factors

171. I consider the Former Agent's conduct falls well below the standard expected of a registered migration agent, particularly his apparent indifference towards his obligations to his clients, the Department and the Authority. I find the following are aggravating factors that increase the severity of the sanction:
- The Former Agent has demonstrated misconduct of a serious nature by failing to deal with multiple clients competently, diligently and fairly, which resulted in his clients incurring significant harm through lost visa opportunities, financial loss, emotional stress and periods of unlawfulness.
 - The Former Agent has demonstrated a poor standard of immigration assistance and communication for multiple clients, which was contrary to the Former Agent's obligations when he was a registered migration agent.
 - The Former Agent has demonstrated his disregard for the law and his obligations as a member of the migration advice profession.

- The Former Agent has not expressed any accountability for most of his actions, or appreciation for the seriousness of the allegations.

172. I am satisfied that the Former Agent's conduct has the potential to tarnish the reputation of the migration advice profession, and would be viewed by other registered migration agents within the profession as unacceptable. This is underscored by the high number of complaints alleging similar conduct relating to the Former Agent's lack of diligence, lack of regard for his client's dependence and failure to act in accordance with client instructions.

173. I consider the Former Agent's conduct falls short of the standard expected of a registered migration agent, and that the conduct poses a serious risk to migration consumers and to the integrity of the migration advice profession. Given the aggravating factors considered, I am of the view that it is likely the Former Agent would continue to display the same unprofessional and unlawful conduct if he was registered as a migration agent, posing an ongoing risk to consumers.

Mitigating Factors

174. The Former Agent, despite being invited to do so, has failed to provide any evidence of mitigating factors.

175. I have considered that the Former Agent has not previously been subject of a sanction or disciplinary action by the Authority. However, I am of the view that this does not mitigate the seriousness of the conduct which is the subject of this decision.

176. In considering whether a disciplinary decision would affect the Former Agent's financial earning capacity, I have noted that the Former Agent did not seek to renew his registration when it expired on 6 December 2019. I am therefore satisfied that barring the Former Agent from future registration would not impact further on the Former Agent's livelihood.

177. The Former Agent, in responding to the Authority's section 311D notice, made submissions that he has assisted "many refugees, a lot of them for free, and almost all of them for a fee between \$1500 and \$3000," which according to the Former Agent is less than what "other <<removed for privacy>> agents have been charging." The Former Agent did not provide evidence of this statement. I have considered the impact of a lower cost service on making migration agent services more accessible. I am not satisfied that the low fees allegedly charged by the Former Agent outweigh the risk of provision of a poor standard of immigration assistance to vulnerable consumers.

178. The Former Agent also made submissions in respect of how difficult the complainants were to deal with, and that "all refugees want us to lie and fabricate cases for them." In providing a response in respect of the clients, the Former Agent referred to his clients in various derogatory terms including statements that a client was the "most trouble making and hardest applications to handle," and a client was "mentally unstable." The Former Agent provided no evidence to support his statements. However, I acknowledge that it is possible that consumers of professional services of registered migration agents may not have the knowledge and experience for dealing with Australia's immigration system. For these reasons such consumers, who are often vulnerable persons, seek professional services. Accordingly, I am not satisfied that the potential difficult nature of the clients is an adequate explanation for the Former Agent's conduct in respect of his clients.

Consumer Protection

179. Consumers of professional services of registered migration agents are often vulnerable and place a high degree of trust in their registered migration agent. Consumers are therefore entitled to a high level of professional service from their registered migration agent.
180. The behaviour demonstrated by the Former Agent falls short of the reasonably expected standards of a registered migration agent. I consider that the Former Agent would pose a serious risk to consumers if he was registered as a migration agent. I am satisfied that if the Former Agent were to practice as a registered migration agent, he would not demonstrate the requisite skills expected of a registered migration agent. I consider that a disciplinary decision is warranted to address the conduct the subject of this decision, and in the interests of consumer protection.
181. I expect that a decision to sanction the Former Agent would more likely than not deter other registered migration agents from engaging in similar conduct and ensure that public confidence in the migration agent profession is maintained.

Period of barring

182. I consider that a barring is warranted to address the conduct of the Former Agent, which has been the subject of this decision. In the Narayanan case the AAT stated:

In fixing the appropriate period in which to ban the applicant, one needs to take account of the fact that Parliament has indicated that the maximum period is five years. That is obviously reserved for the most severe cases. The most severe cases would inevitably involve an element of fraud, dishonesty or incompetence.

183. Having regard to all the circumstances, I consider that the Former Agent's conduct falls within the higher end of this range of severity as he has demonstrated that he cannot be trusted to act in accordance with the professional obligations under the Code and the Act. The Former Agent has been subject of eight (8) complaints, which is a significant number of complainants. The Former Agent has repeatedly failed to act in a diligent manner towards his clients and act in their legitimate interests. The Former Agent has failed to have due regard for the dependence of his clients on his knowledge and experience; and failed to provide an *Agreement for Services and Fees* in respect of some of his clients. The Former Agent has failed to respond to complaints raised against his conduct by his clients and although he agreed to refund the fees to a number of clients, appears not to have done so.

Decision

184. I have decided to bar the Former Agent from being registered as a migration agent for a period of 5 years that starts when he is taken to have been given this notice under section 332H of the Act, and ends at the expiration of five (5) years starting on the day of this decision.

Senior Professional Standards Officer

Professional Standards and Integrity Section

Office of the Migration Agents Registration Authority

Department of Home Affairs

Date of Decision: 3 November 2021