



DECISION RECORD

AGENT	Ryan Raygan
COMPLAINT NUMBER/S	CMP-27685, CMP-29192, CMP-29305, CMP-29695, CMP-29881, CMP-30749, CMP-31215, CMP-31834 and CMP-34893.
DECISION	Cancellation
DATE OF DECISION	11 May 2018

Terms used for reference

1. The following abbreviations are used in this decision:

<i>ABN</i>	Australian Business Number
<i>AAT</i>	The Administrative Appeals Tribunal
<i>FOI</i>	The Department administering requests under the <i>Freedom of Information Act 1982</i>
<i>MARN</i>	Migration Agent Registration Number
<i>Section 308 notice</i>	Notice issued by the Authority under section 308 of the Act
<i>Section 309 notice</i>	Notice issued by the Authority under section 309 of the Act
<i>The Regulations</i>	<i>The Migration Regulations 1994</i>
<i>The Act</i>	<i>The Migration Act 1958</i>
<i>The Agent</i>	Ryan Raygan
<i>The Authority</i>	The Office of the Migration Agents Registration Authority
<i>The Code</i>	The Migration Agents Code of Conduct prescribed under Regulation 8 and Schedule 2 to the Agents Regulations
<i>The Department</i>	The Department of Home Affairs (and its former manifestations)
<i>The Register</i>	Register of migration agents kept under section 287 of the Act
<i>The Agents Regulations</i>	<i>Migration Agents Regulations 1998</i>

STATEMENT OF REASONS

Background

2. The Agent was first registered as a migration agent on 20 July 2015 and was allocated the MARN 1573175. The Agent's registration has been renewed annually to date, with the most recent application for registration made on 14 June 2017.
3. The Register lists the Agent's business name as Immigration Services Pty Ltd, although no ABN is recorded for this business. A search of the Australian Business Register returned a result for this business as 70 606 451 567.

Prior Disciplinary action

4. The Agent has not been subject to any prior disciplinary action by the Authority.

Complaints

5. The Authority received nine complaints from both the Agent's clients, and the Department, between November 2016 and December 2017 in regards to the Agent's conduct, which are set out below:

Client complaints

- CMP-27685 (published in the first section 308 notice on 17 February 2017)
- CMP-29192 (published in the first section 308 notice on 17 February 2017)
- CMP-29305 (published in the first section 308 notice on 17 February 2017)
- CMP-29695 (published in the second section 308 notice on 25 July 2017)
- CMP-31215 (published in the section 309 notice)
- CMP-34893 (published subsequent to the section 309 notice)

Departmental complaints

- CMP-29881 (published in the section 309 notice)
- CMP-30749 (published in the section 309 notice)
- CMP-31834 (published in the section 309 notice)

Background

First notice under section 308 of the Act

6. The Authority provided a section 308 notice (the first section 308 notice) to the Agent on 17 February 2017 in regards to the three complaints received between 5 November 2016 and 8 February 2017 (CMP-27685, CMP-29192, CMP-29305), and his dealings with the Authority in February 2017. The Authority received the Agent's response to these complaints on 10 April 2017 by email, and subsequently by registered post on 18 April 2017.
7. Pursuant to subsection 308(1) of the Act, a second request was issued to the Agent on 3 August 2017 to provide a written response to further questions and provide additional relevant documents in relation to the three complaints identified in the first section 308 notice. The Authority received his second response on 11 August 2017.

CMP-27685

On 5 November 2016, the Authority received a complaint about the Agent's conduct as a migration agent from Mr DHS, who alleged that:

8. He received a section 46 bar lift in January 2016 to enable him to lodge an application for temporary protection.
9. On 1 March 2016, he met with the Agent to discuss his application and provided him with his FOI documents. The Agent assured him that he would commence work on his application and lodge it within a short period of time.
10. On 2 March 2016 he paid \$900 for the visa preparation and lodgement, however, months went by and no application was lodged. His Safe Haven Enterprise visa (SHEV) application was lodged in August 2016, after he had pressured the Agent to do so.
11. The Agent failed to consult him or meet with him at any time prior to the lodgement of the application, and the protection claims included in the application were based only on his entry interview.
12. After he terminated his contract with the Agent, he requested for the FOI documents and the \$900 fee to be returned to him. At the time of lodging the complaint, the Agent had not responded to this request.
13. In support of his complaint, Mr DHS has provided to the Authority the following documents:
 - The Agreement of Services and Fees signed and dated 1 March 2016
 - Departmental Acknowledgement of a valid application for Safe Haven Enterprise (subclass 790) visa letter dated 12 September 2016
 - Email correspondence with the Department regarding lodgement of his SHEV application.
 - Receipt of deposit of the agreed fee dated 2 March 2016

Response to CMP-27685

In summary to Mr DHS's complaint, the Agent's response stated:

14. Mr DHS attended nine face-to-face meetings alone with the Agent on the following dates to prepare his SHEV application.
 1. 1 March 2016
 2. 3 March 2016
 3. 7 March 2016
 4. 23 March 2016
 5. 29 March 2016
 6. 15 April 2016
 7. 19 May 2016
 8. 26 August 2016
 9. 30 August 2016
15. The Agent provided Mr DHS a copy of the Consumer Guide when he entered into the Service Agreement with the Agent on 1 March 2016, who made a note of this as part of his meeting record.
16. The Agent used both Mr DHS's entry interview, as well as information obtained from him during their meetings to prepare his SHEV application and supporting statement of claims.
17. The Agent acknowledged that it is his standard practice when preparing TPV and SHEV applications to:
 - (a) Lodge Freedom of Information (FOI) requests for clients with the Department to obtain documents;

- (b) Meet with clients on multiple occasions to take and confirm their instructions prior to completing their application forms, drafting the statement of claims, and collating supporting documents; and
 - (c) Meet again with clients to complete a final review of their application forms and statement of claims prior to lodging the application. If the Agent is unable to meet the client in person, then he will send them a draft copy of the application forms and statement of claims for their final review.
18. The Agent asserted that he had discussed the drafted statement of claims with Mr DHS at the meeting on 29 March 2016. At this meeting, it is alleged that Mr DHS agreed that the statement had been prepared in accordance with his instructions and reflected his personal circumstances, and subsequently signed it on the same day.
19. The Agent refuted the allegation that he told Mr DHS he lodged his application prior to the actual lodgement date of 31 August 2016 (sent by registered post on 30 August 2016). While the Agent confirmed that Mr DHS contacted him to enquire about the application's lodgement, he asserted that he advised Mr DHS that the application would not be lodged until the outstanding payment of \$635, as stipulated in the Service Agreement, was paid. The Agent asserts that Mr DHS requested he lodge the documents regardless and that he would pay the Agent the outstanding fee amount once this was done.
20. Following Mr DHS's subsequent visit to the Agent's office on 30 August 2016 to make another request that his SHEV application be lodged, despite still not having paid the outstanding amount, the Agent finally agreed to lodge the application, based on Mr DHS's promise to pay the outstanding amount. He undertook a final review of the completed application prior to signing, which was then placed in an envelope addressed to the Department for posting. The Agent asserted that he also gave Mr DHS a copy of the application at this time.
21. The Agent received an Acknowledgement of valid application from the Department by email on 12 September 2016, which he provided to Mr DHS when he attended the Agent's office on 16 September 2016.
22. Prior to receiving Mr DHS's complaint, the Agent did not receive any request from him for return of his documents. He had previously returned Mr DHS's identification documents to him and provided him with the entry interview files, and copies of the Service Agreement and Form 956 on 1 March 2016 and the application forms and statement of claims on 30 August 2016, as mentioned above. As the Agent understood that by lodging a complaint with the Authority, Mr DHS wished to terminate the Service Agreement, he emailed all remaining documents on Mr DHS's client file to him on 22 February 2017, and confirmed that he does not hold any documents belonging to Mr DHS.
23. To date, the Agent has not received any of the outstanding fee of \$635 still owed by Mr DHS.

Evidence provided in response to CMP-27685 in the first section 308 notice

24. In support of his response in the section 308 notice, the Agent provided the following documentation:
- The Agreement of Fees and Services, signed and dated 1 March 2016
 - SHEV application with statement of claims, cover letter, Form 956 and supporting documents, which were lodged with the Department on 31 August 2016
 - Cash receipt for payment of \$900 dated 2 March 2016
 - Tax Invoice for outstanding professional fees of \$660 dated 29 March 2016
 - Departmental Acknowledgement of valid application for a Safe Haven Enterprise (subclass 790) visa dated 12 September 2016
 - Copy of entry interview files

- Departmental Invitation to apply for a Temporary Protection (subclass 785) visa (TPV) or a Safe Haven Enterprise (subclass 790) visa (SHEV) dated 18 January 2016
- Departmental Notification of decision to grant a Bridging (Class WE) General (subclass 050) visa dated 15 August 2015
- Departmental Visa Information letter for grant of Bridging visa E dated 21 October 2014
- Form 424A requesting client information and documents from the Department – unsigned and undated
- Copies of Mr DHS's [removed] and Australian identity documents
- Client contact sheet

Subsequent departmental complaint regarding Mr DHS

25. Following publication of Mr DHS's complaint, the Authority received a departmental complaint on 1 May 2017 (CMP-30749) relating to a subsequent statutory declaration provided by Mr DHS, with the assistance of a new registered migration agent, and an interpreter. The subsequent statutory declaration attests that Mr DHS sought to submit an additional declaration to the Department as he:
 - Had not been provided with a copy of the original declaration or his application;
 - Did not get the opportunity to provide additional claims aside from those the Agent took from his entry interview files; and
 - Did not have the contents the previous declaration read to him in his own language.
26. The subsequent declaration also provides a very detailed and comprehensive account of Mr DHS's claims for protection in comparison to the basic, and in certain sections duplicated responses in the first declaration submitted by the Agent.
27. As these allegations are not dissimilar to those put forward in Mr DHS's own complaint, which had already been published to the Agent, the contents of the Department's complaint will not be considered as separate to CMP-27685.

CMP- 29192

On 1 February 2017, the Authority received a complaint from Mr PB, who alleges that:

28. He engaged the Agent in 2016 to assist with his Protection visa application after receiving an invitation to lodge, and he thought the Agent may have a better understanding of his situation as they were both Iranian.
29. The Agent sent Mr PB a contract as they were located in different states and could not meet in person. The contract was in English and the Agent did not explain its content to him. In good will, he signed this document and sent it back to the Agent.
30. Mr PB expected that the Agent would also sign and send him a copy of the finalised version of the contract but he never received a copy or any explanation from the Agent as to why this had not been provided.
31. He paid the Agent \$500, in two direct deposits of \$100 and \$400 respectively, as a first instalment for his services. He cannot find the banking receipts of these transactions but alleges the Agent sent messages to his phone confirming he had received the \$500.
32. Once he paid this first instalment, Mr PB did not receive any emails from the Agent and despite calling and messaging him on numerous occasions, the Agent was repeatedly unavailable. He could not attend the Agent's office as he lived in another state, and when he was able to reach the Agent, the Agent advised that he had received Mr PB's entry interview records and that he wanted him to pay more money to continue his application.
33. The Agent had never taken an oral or written statement from Mr PB or prepared any forms for him to sign as part of his application, which as a result, has not been lodged.

34. Mr PB decided to terminate his contract and engage a different migration agent located in Melbourne. He sent the Agent an SMS on 31 December 2016, which advised of the termination of services and requested that the Agent return all documents that Mr PB had provided him as well as the entry interview records that the Agent had previously told him had been received from the Department. He also requested a refund of the \$500 first instalment paid.
35. The Agent failed to return his documents or entry interviews, and when he called several times to find out what was happening, the Agent told him that he did not have his entry interview records.
36. Following the termination of the contract, the Agent started to call Mr PB using threatening language and undue pressure to attempt to obtain the outstanding amounts of money in the contract.
37. Mr PB alleged that the Agent made the following statements to him over the phone:
 - (a) That the Agent will destroy his life in Australia and Iran;
 - (b) That the Agent will advise the Department of Immigration and Border Protection to refuse his Protection application;
 - (c) That the Agent will make sure that his visa is refused and that he will have 'fun in Iran', which he fears may mean that the Agent would reveal his identity as a protection visa applicant or send his documents to Iran;
 - (d) That the Agent will physically harm him;
 - (e) That the Agent will publicly accuse him of terrorism because of his previous travel to Iraq for business reasons if he didn't pay the Agent \$1620;
 - (f) That the Agent will make him pay the entire contract amount or take him to court, where he would have to pay all the court costs and would be in debt with bad credit as a consequence;
 - (g) This bad credit would be noted on his police clearance records and would adversely affect his protection visa application.
38. Mr PB alleged that on 26 January 2017, he wrote an email to the Agent to request that he stop threatening and seeking to obtain additional costs from him. The Agent is purported to have responded to him the following day in English and Farsi with comments, which he interpreted culturally as a direct threat against him.

Response to CMP-29192 in first section 308 notice

In summary, the Agent's response to Mr PB's complaint stated:

39. Mr PB and his brother Mr AB had contacted the Agent a number of times in early 2016 to enquire about a SHEV application for Mr PB. The Agent explained the contents of the Service Agreement with Mr PB in Farsi over the phone as he was also a native Farsi speaker, and was satisfied that Mr PB understood the terms and conditions of the agreement. The Agent sent Mr PB the Service Agreement by email to sign and return, which he did on 14 April 2016. A copy of the finalised Service Agreement was sent to his address in Victoria by post.
40. The Agent received an EFTPOS payment of \$100 from Mr PB on 14 April 2016 as payment of the deposit amount stipulated in the Service Agreement, and provided him a receipt.
41. He received a second EFTPOS payment of \$400 from Mr PB on 15 April as part-payment of the first instalment of professional fees (\$900) stipulated in the Service Agreement, and provided a receipt.
42. At no point did the Agent consider an interpreter was necessary, given both Mr PB and him were native Farsi speakers.
43. The Agent made an FOI request for Mr PB's files on 29 April 2016, and followed up the request by email on 5 August 2016, and by phone on a number of occasions but did not

receive any response or the requested files from the Department. The Agent stated that at no stage did he tell Mr PB that he had received the entry documents.

44. The Agent refuted Mr PB's allegation that he had been difficult to contact, and stated that his regular means of communication was by telephone.
45. The Agent asserts that he took Mr PB's instructions over the phone on a number of occasions, totalling three to four hours, and used the information obtained to complete the application form. He was waiting for the FOI requested files from the Department to finalise the application.
46. The Agent refuted the allegation that he never sought to take an oral or written statement from Mr PB or asked him to sign or complete any forms for his application. He also refuted the allegation that he made any threats against Mr PB to extort further payment from him, or that involved physical threats of harm, untruthful claims of departmental sanctions or the Agent's relationship with the Department, manipulation of cultural anxieties or perceived threats to disclose his confidential information.

Evidence provided in response to CMP-29192 in first section 308 notice

47. In support of the Agent's response in the first section 308 notice, he provided the following documentation:
 - The Agreement for Fees and Services
 - Incomplete draft of Mr PB's Temporary Protection visa (TPV) application – unsigned and undated
 - Tax invoice for professional services dated 29 April 2016
 - Receipts for payments of \$100 and \$400 dated 14 April 2016 and 16 June 2016, respectively
 - Copies of Mr PB's [removed] and Australian identity documents
 - Departmental Notification of decision to grant a Bridging (Class WE) General (subclass 050) visa dated 22 April 2016
 - Departmental Invitation to apply for a Temporary Protection (subclass 785) visa (TPV) or a Safe Haven Enterprise (subclass 790) visa (SHEV) dated 26 March 2016
 - Forms 956 and 424A both signed and dated by both Mr PB and the Agent on 14 April 2016
 - Email sent to Department on 5 August 2016 following up on outstanding FOI request for Mr PB's information and documents
 - Client contact sheet

CMP-29305

On 8 February 2017, the Authority received a complaint about the Agent's conduct as a migration agent from Mr KMF who alleged that:

48. The Agent told him that his professional fee was \$1535 but that he would offer him a 10 per cent referral discount on his total fee for every client referred to him. As a result, Mr KMF only paid \$750, with the outstanding amount waived as part of the referral agreement.
49. He did not receive a receipt for the payment made.
50. The Agent was aware of Mr KMF's immigration history and protection claims before the Department, including his previous protection interview with the Department in 2013, and the invalid subclass 866 visa application statement of claims lodged in 2013.
51. Despite this knowledge, the Agent advised him to change his statement of claims to new claims, and that if he did not do so; he would fail the protection visa interview with the

Department, as his claims were not strong enough. He claims that the Agent told him that if he listened and did what the Agent told him, he would be granted a Protection visa.

52. Following lodgement of his TPV, he was invited to a Protection visa interview with the Department but the Agent cancelled this interview without his knowledge or permission.
53. The Agent failed to provide him with correspondence from the Department in a timely manner, and when he did show Mr KMF the letter regarding what to bring to his interview with the Department, this was provided only 10 minutes before his interview. As a result, he did not have enough time prepare the original identity documents, which were a requirement.
54. The Agent failed to provide a copy of the Consumer Guide to Mr KMF or advise that he was entitled to receive copies of his application.
55. Following the refusal of the application, Mr KMF requested a copy of the application, which the Agent refused to provide as he stated that he did not have any copies of it, and that he would need to contact the Department to request a copy of the application.
56. In support of his complaint, Mr KMF has provided the Authority with the Agreement of Services and Fees and a screenshot of an email he sent the Agent requesting a copy of the refused TPV application.

Response to CMP-29305 in first section 308 notice

In summary, the Agent's response to this complaint stated:

57. Mr KMF engaged his services on 25 November 2015, wherein he gave him a copy of the Consumer Guide and made a note of this in his meeting record.
58. The Agent has strenuously refuted the allegation that he advised Mr KMF that his original claims provided in his previous application(s) would not be strong enough for the grant of his TPV application, and at no stage did the Agent suggest altering the claims would result in a visa grant. Mr KMF did not request an assessment of the prospects of success for his application, and consequently, the Agent did not provide him with such advice. The only advice the Agent provided him was concerning the best formulation of his claims, rather than their success.
59. In response to the identified changes in Mr KMF's claims, the Agent asserted that Mr KMF's instructions were not materially different from the claims that he had previously provided the Department, and that he had only elaborated on these in response to question 89 of Form 866C. Mr KMF also reiterated the protection claims in his written statement during his Protection visa interview on 10 October 2016. The Agent stated in his submission that it was his belief that Mr KMF's claims had not changed in substance.
60. The Agent provided Mr KMF with receipts for the payments he made. He does not offer referral discounts to any clients, and Mr KMF did not refer any clients to him at any stage.
61. In relation to Mr KMF's cancelled Protection visa interview, the Agent notified him of the August 2016 interview by telephone and in person, as was also the case with the re-scheduled October 2016 interview. He contacted the Agent in late June 2016 by telephone to request the August interview be cancelled as he was unavailable on the scheduled date, and as per his instructions, the Agent contacted the Department to re-schedule the interview to 10 October 2016.
62. When he notified Mr KMF of his re-scheduled Protection visa interview, the Agent advised him to bring all his original documents to the interview, as stated in the information sheet attached to the interview notification from the Department, which is also available in Farsi. The Agent also met with Mr KMF on 1 and 8 October 2016 to assist in preparing him for the interview, at which time he reiterated the requirement for him to bring all his original identity documents to the interview. This is the same advice the Agent asserts that he provides to all of his Protection visa clients.
63. The Agent refuted Mr KMF's allegation that he did not provide departmental correspondence in a timely manner, and declared that while it was difficult at times to

contact Mr KMF by telephone due to him frequently changing his number without informing the Agent, he was able to provide all correspondence in a prompt and timely manner.

64. In relation to Mr KMF's allegation that he was not advised of, or provided with, a copy of his application the Agent stated that he was unable to comment on why Mr KMF was not aware of this entitlement as it is not within the Agent's knowledge, and was never raised. Further, the Agent asserts that he always held a copy of Mr KMF's application on his client file, in accordance with his obligations under clauses 6.1 and 6.1A of the Code, and provided a copy of the application to Mr KMF by email on 3 February 2017, following his request on 2 February 2017.

Evidence provided in response to CMP-29305 in first section 308 notice

65. The Agent provided the following documentation in support of his response in the first section 308 notice:
- TPV application with statement of claims, cover letter and supporting documents, dated 25 January 2016 and received by the Department on 5 February 2016
 - The Agreement for Fees and Services signed and dated 25 November 2015
 - Copies of Mr KMF's [removed] and Australian identity documents
 - Form 956 signed and dated by both Mr KMF and the Agent on 25 November 2015
 - Mr KMF's baptism certificate from [Australia] Church dated 21 March 2016
 - Departmental Notification of decision to grant a Bridging (Class WE) General (subclass 050) visa dated 12 September 2015
 - Departmental Request to Attend Interview dated 15 September 2016
 - Email correspondence between departmental officer and the Agent regarding rescheduling Mr KMF's Protection visa interview dated 20-21 June 2016.
 - Email correspondence between Mr KMF and the Agent regarding his request for a copy of his lodged application dated 3 February 2017
 - Departmental Notification of Refusal for Temporary Protection visa and decision record dated 21 January 2017
 - Client contact sheet
66. On 20 April 2017 the Authority provided the Agent's response to Mr KMF for his comments and the Authority received these verbally on the same day. In summary, he stated that while he is now a practicing Christian, this change had only occurred after living in Australia for a period of time. Prior to leaving Iran, Mr KMF had only explored the Baha'i faith, which he continued when he first arrived in Australia but over time become interested in Christianity. The instructions he asserted he provided to the Agent reflected the aforementioned points and at no stage did he tell the Agent that he explored or pursued Christianity in Iran.

Dealings with the Authority

67. On 8 February 2017, Mr PB requested the Authority's assistance for the return of his documents.
68. On 14 February 2017 an officer of the Authority contacted the Agent to request the return of Mr PB's documents, entry interview records and any work undertaken on his application to him, so that he may complete and lodge a temporary protection visa within the prescribed timeframes.
69. During this conversation the Agent advised that he had requested but never received Mr PB's entry interview documents from the Department.

70. The Agent subsequently refused the officer's request to return the documents he had retained to Mr PB until he received more money from him, despite the officer advising that as the Agent was not a solicitor, he could not legally withhold clients' documents.
71. The Agent became combative and started raising his voice. The Agent then made inappropriate and unprofessional allegations against the officer and suggested she was in a romantic relationship with the complainant.
72. The Agent told the officer that she was never to call him again and that all further contact with the Authority should be through email before the officer was forced to terminate the phone call due to the Agent's behaviour.

Section 308 response

In response to the aforementioned incident, the Agent provided the following response:

73. He was unaware that registered migration agents do not have a right to withhold client documents. Following receipt of the first section 308 notice on 17 February 2017, the Agent's solicitor subsequently advised him that he was not entitled to a lien, in accordance with the Code, and he had emailed Mr PB copies of all documents held on his file on 22 February 2017. The Agent confirmed that he does not hold any of Mr PB's original documents on the client file.
74. The Agent's behaviour during the phone call was in response to discovering that there were complaints against him.
75. He has apologised for his behaviour and any offence that may have been caused as a result of the comments made to the officer.
76. In addition to his written apology as part of his response to the first section 308 notice, the Agent subsequently contacted the Authority on 25 July 2017 to verbally apologise to the officer for his conduct, and to follow up on the progress of the investigation.

Second notice under section 308 of the Act

77. Following publication of the first section 308 notice to the Agent on 17 February 2017, the Authority subsequently received a fourth complaint (CMP-29695) regarding the Agent's conduct as a migration agent.

CMP-29695

78. On 1 March 2017, the Authority received a complaint from Mr AI, which was published to the Agent on 3 May 2017 by way of a section 308 notice (the second section 308 notice). The Authority received the Agent's response on 31 May 2017.
79. Pursuant to subsection 308(1) of the Act, a second request was issued to the Agent on 25 July 2017 to provide a written response to additional questions and relevant documents in relation to Mr AI's complaint. The Authority received the Agent's response on 11 August 2017.

The complaint alleged the following:

80. Mr AI was introduced to the Agent through a friend, and chose to engage his services based on his reputation as being helpful to people in the same situation and charging comparatively lower fees than other migration agents. The Agent guaranteed him that his visa application would be successful if he engaged the Agent's services.
81. He paid the Agent a total of \$2535 for his services but only received a receipt for the initial deposit amount of \$200.
82. The Agent did not provide a copy of the Consumer Guide to Mr AI when he engaged his services, and when he requested a copy of the signed Form 956, and his application, the Agent refused to provide them and stated at the time that he did not have the documents available.

83. Following hearing that the application of another client of the Agent's had been refused, Mr AI contacted the Agent on 3 February 2017 to again request a copy of his application and statement of claims, which the Agent stated he did not have, and told Mr AI that he would need to contact the Department to receive copies.
84. The Agent contacted Mr AI about two weeks later to ask for his email and postal address so that he could send him the requested documents, which Mr AI subsequently received. The Agent also asked him if he had been in touch with another client who had made a complaint against the Agent, and told him to not listen to his friend or believe what he said about the Agent as he had been refused because he had lied in his application.
85. The Agent failed to confirm with Mr AI the contents of his statement of claims prior to lodging his application. As a result, Mr AI subsequently asked a friend to translate the statement of claims for him and discovered that it included inaccurate claims for protection relating to conversion to Christianity, which Mr AI denies that he told the Agent were the basis of his claims.
86. In support of his complaint, Mr AI provided the Authority with the Agreement of Fees and Services dated 24 November 2015.

Section 308 response

In summary, the Agent's response to Mr AI's complaint stated:

87. He provided Mr AI a copy of the Consumer Guide on 24 November 2015 when his services were engaged, and made a note of this in the meeting details recorded in his client contact record.
88. Mr AI paid the Agent a total of \$2340 in instalments, which he was provided receipts for, and that the Agent has included in support of his submission.
89. The Agent communicated with Mr AI by telephone, both calls and messages, email and post throughout his engagement of the Agent's services, with most conversations conducted in Farsi, as both are native speakers. The Agent later clarified in response to a second request for information that he only communicated by email on one occasion when he sent Mr AI a copy of his application in February 2017.
90. Once the Agent had explained the application process to Mr AI in Farsi, he received written and verbal instructions from Mr AI to prepare his application and statement of claims. The Agent advised that he also used information obtained from the Department through an FOI request for Mr AI's files to assist in preparing his application and statement of claims. Once these documents were drafted, the Agent sent them to Mr AI for review on or about 14 January 2016, though this was not recorded in the client contact record.
91. The Agent subsequently stated in his second response that he also received instructions from Mr AI during telephone conversations and during his meeting with him on 24 November 2015, but as the Agent entered all information received directly into electronic documents, he did not have any draft versions of the applications forms or statement. The Agent was unable to provide any file notes to support his assertion that Mr AI provided written and verbal instructions or what the contents of these instructions were.
92. Based on the conversations the Agent had with Mr AI regarding his claims for protection, he formed the view that Mr AI may qualify for grant of a Protection visa. However, as Mr AI did not specifically request advice as to the probability of success, the Agent did not provide him with any written advice.
93. Aside from the Agent's conversations with Mr AI regarding the application and statement of claims, Mr AI also discussed the contents of his statement of claims with a number of other people, including friends, his caseworker at the migrant resource agency, and staff at the office of [removed] MP. The Agent stated that he understood these conversations occurred on or before 25 January 2017, and based on these discussions, Mr AI informed the Agent that he was satisfied that the contents of both the application and statement of claims reflected his instructions.

94. Mr AI sought the assistance of [removed] MP to facilitate an accelerated processing and finalisation of his application, so that he could make arrangements to travel to [removed]. As Mr AI's migration agent, the Agent contacted [MP]'s office on 27 and 29 July 2016 to assist with the request on his behalf.
95. Once satisfied with the application and supporting documentation, Mr AI visited a Justice of the Peace to sign and have the statement of claims witnessed on 25 January 2016.
96. Based on Mr AI's instructions and the information that was available to prepare his application, the Agent believes Mr AI's claims for protection were accurately reflected in the statement of claims he signed on 25 January 2016. The Agent asserted in his subsequent response to the second request for information that this was also the case in the application form responses pertaining to his ethnicity, religion, language proficiency and military service.
97. Following lodgement of Mr AI's TPV application, the Agent asserted that he was in regular contact with Mr AI and kept him fully informed of the progress of the application, as is evident in the client contact record.
98. The Agent denied withholding a copy of Mr AI's application forms and statement of claims or telling him that he did not have a copy on file. Mr AI first requested his documents by text message, and then in a phone call on 6 February 2017. During the telephone conversation, the Agent requested that he provide his email and new postal address, and it was not until 17 February 2017 that Mr AI provided his email address, whereupon the Agent emailed the documents to him, as well as sent them by post when he provided his new postal address on 28 February 2017. Prior to this, the Agent did not communicate by email with Mr AI, which is supported by the contents of the client contact register and the lack of an email address in Mr AI's contact details on the Service Agreement.
99. The Agent categorically denied discussing any other client's application or complaint with Mr AI but believes that, as Mr KMF and Mr AI were well known to each other and Mr KMF had witnessed Mr AI's Service Agreement, it was likely the two clients had discussed the outcome of Mr KMF's application.

Evidence provided in response to section 308 notice

100. In support of his response to the section 308 notice, the Agent provided the following documentation
 - TPV application forms signed by Mr AI and dated 25 January 2016. Departmental records show that the application was lodged on 19 July 2016
 - Mr AI's statement of claims
 - Copies of Mr AI's Australian identity documents
 - Mr AI's National ID card with NAATI accredited translation
 - Receipts for the following payment amounts made by Mr AI:
 1. \$200 dated 24 November 2015
 2. \$500 dated 30 December 2015
 3. \$660 dated 3 February 2016
 4. \$250 dated 17 February 2016
 5. \$230 dated 10 March 2016
 6. \$300 dated 21 March 2016
 7. \$200 dated 31 March 2016
 - Tax invoice dated 29 April 2016 for outstanding instalment of \$176 (\$160 plus GST)
 - Letter from Mr AI's doctor regarding recommendation to travel to a third country
 - Copy of the Consumer Guide

- Client contact sheet
- Termination of Service Agreement email to Mr AI dated 30 May 2017
- Form 956 terminating the Agent's appointment as Mr AI's registered migration agent signed by the Agent and dated 30 May 2017

Additional information provided by complainant

101. On 26 July 2017 the Authority contacted Mr AI with the assistance of a Translating and Interpreting Services (TIS) accredited interpreter to clarify information relating to his allegation that the Agent included inaccurate information in his application. The Authority received these verbally on the same day.

102. When asked to identify his ethnicity, what languages he spoke, his religion, and if he had undertaken military service, Mr AI provided the following responses:

- He is an [removed – not Persian];
- He speaks Farsi and [removed];
- He completed compulsory military service in Iran approximately 32-33 years ago; and
- He has no religion and considers himself an apostate of Islam, despite being born into a Muslim family. He has never attended church, has never identified as being Christian, and at no stage did he discuss any claims relating to Christian conversion with the Agent.

103. Mr AI also sought to clarify the following matters raised in the original complaint and in the Agent's response to the second section 308 notice, that he:

- Had been referred to the Agent by Mr KMF, who lived in [removed] at the time, and organised a flight for him to travel to Adelaide and attend a consultation with the Agent. Mr KMF had attended the Agent's office with him and witnessed his Service Agreement. This was the only occasion that Mr AI met with the Agent in person or attended his office.
- Had received the drafted application and statement of claims by mail but did not seek any translations of the contents before signing and returning the documents to the Agent.
- Conceded that the Agent had not discussed details of Mr KMF's application with him but that he had advised him to not speak with Mr KMF sometime after the lodgement of his application.

Broader questions

104. In the subsequent requests for information in relation to the two section 308 notices, which the Agent provided submissions to on 11 August 2017, the Agent was asked to respond to two broader questions on his administrative recordkeeping and financial management practices. In summary, the Agent's responses to each question were as follows:

- In providing an explanation of his receipt referencing system, the Agent stated that the reference number is comprised of a combination of the year (YY) the receipt is made out, the month in which the client engaged his services (MM), a unique client number, and the sequential issuing number of the receipt, such as 1 for the first receipt issued to the client.
- In relation to the issuing of Statement of Services to the clients identified in complaints CMP-27685, CMP-29192, CMP-29305, and CMP-29695 following completion or termination of services, the Agent asserted that the Service Agreements provided to each client clearly describe the services which he would perform and the charges for each service, at time of engagement. As such, it was his belief that this document also complied with the requirements of a Statement of Services

CMP-31215

105. Following publication of the second section 308 notice on 3 May 2017, the Authority received a complaint from Ms MM on behalf of Mr MYA regarding the Agent's conduct as a registered migration agent on 26 May 2017 (CMP-31215).

The complaint alleged the following:

106. Mr MYA engaged the Agent's services and signed a Service Agreement on 8 April 2016. He paid a total fee of \$1500, which was made up of two instalments; \$700 transferred electronically and \$800 in cash. He did not receive a copy of the Consumer Guide at the time the Service Agreement was signed.

107. He rang the Agent several times to check whether his application had been prepared and lodged with the Department, and was assured that the Agent had completed and lodged his application but Mr MYA later received a letter indicating that the application was not lodged until 18 October 2016, which was after he had been advised this had occurred. Mr MYA was upset that the application had been delayed as he was anxious for it to be lodged as soon as possible.

108. The Agent did not follow up for a new interview date after the first scheduled appointment for his Protection visa interview was postponed by the Department.

109. The Agent failed to keep Mr MYA informed of the progress of his application.

110. As a result, Mr MYA visited the Agent's office to terminate the Service Agreement, who spoke very rudely to him and called him an insulting name, before refusing to return his documents.

111. He attended the Agent's office for a second time on 2 May 2017, accompanied by Ms MM, to collect the documents. On this occasion, the Agent slammed the door and refused to return the documents until Mr MYA sent a written request, which was done by email immediately. Once the email was received, the Agent opened the door and gave Mr MYA and Ms MM electronic copies of the documents, including a copy of the Consumer Guide.

112. Mr MYA was seeking a refund of the professional fees paid, as he did not believe he received the services that he paid for.

113. In support of the complaint, Ms MM has provided the following documents on behalf of Mr MYA:

- The Agreement of Services and Fees signed and dated by both Mr MYA and the Agent on 8 April 2016
- Screenshot of an online banking transaction receipt for \$700 paid by Mr MYA on 8 April 2016
- Departmental notification dated 24 April 2017 for request to attend interview on 18 May 2017, with "*canceled[sic]*" handwritten on the first page of the request letter
- Termination letter allegedly provided by the Agent and signed by Mr MYA on 2 May 2017
- Statutory declaration signed by Mr MYA authorising Ms MM to act as his representative regarding his complaint to the Authority.

Departmental complaints

114. The Authority received two complaints from the Department (CMP-29881, CMP-31834), which identified concerns regarding protection applications received from the Agent's clients. These were published to the Agent in the section 309 notice on 13 December 2017 wherein he was offered the opportunity to provide submissions in regards to the allegations and potential findings identified in the notice.

CMP-29881

115. The first complaint from the Department, which was received by the Authority on 13 March 2017, concerned the apparent duplication of responses in the applications and statutory declarations of two of the Agent's clients, Mr MA and Mr FS, which the Department received on 18 October 2016, and 15 November 2016, respectively. The referring officer identified that many of the responses within the Form 866C of the application and large sections of the statutory declarations, which are supposed to reflect claims specific to the applicant, appeared to contain identical wording that appear to have been duplicated using a generic template.
116. As part of an investigation into complaint CMP-29881, the Authority reviewed the Agent's client caseload more broadly and identified a large number of temporary Protection applications lodged with the Department on behalf of his clients which contained duplicated and template based responses for protection claims. The identified applications can be categorised into two cohorts, as belonging to either Iranian or Afghani nationals, which form the basis of the duplicated claims and reflect the greatest similarity in text. In addition to Mr MA and Mr FS, other client applications examined are as follows:

Iran

- Mr AP
- Mr MJARC
- Mr AB
- Mr AAA
- Mr MRAJ
- Mr MM
- Mr HN
- Mr SA
- Mr AI

Afghanistan

- Mr KAJ
- Mr NS
- Mr HD
- Mr AH
- Mr ND
- Mr MYA
- Mr DHS

CMP-31834

117. The Authority received a departmental complaint on 6 July 2017, relating to concerns with irregularities between the responses in the SHEV application of one of the Agent's clients, Mr MK, and his subsequent responses at interview. The irregularities identified were:
- The claims for protection in response to question 91 of Form 866C of the application, which also featured in the statement of claims stated that the applicant had experienced imprisonment, torture and persecution. However, in the Protection visa interview, he denied that he had experienced any form of harm, aside from some mental distress from not being paid by his employer for a number of months; and
 - Mr MK's employment history in question 84 does not correlate with applicant's claims discussed at interview.

Information received from the Department

118. The Agent's legal representative stated in response to the first and second section 308 notices that the Agent had made "*over 300 protection visa applications, most of which have been successful*". Departmental records obtained by the Authority pursuant to s321 of the Act indicate that in the period from the date of the Agent's first registration on 20 July 2015, until the time he responded to the first section 308 notice on 10 April 2017, he had been nominated as the registered migration agent for 239 visa or citizenship applications on behalf of clients. Of these, 198 clients' interactions with the Department

related to either permanent or temporary Protection visa applications. Based on departmental records over this period, 14 of Protection visa applications that the Agent was associated with had been granted at the time of the first section 308 response.

Notice under section 309 of the Act

114. On 13 December 2017 the Authority sent the Agent a notice pursuant to section 309(2) of the Act, advising the Agent that it was considering cautioning, or suspending or cancelling the Agent's registration under section 303(1) of the Act.
115. The Agent was notified that having regard to the information before the Authority, it was open to the delegate to be satisfied that the Agent had engaged in conduct that breached the Agent's obligations under clauses 2.1, 2.4, 2.6, 2.9, 2.9A, 2.17, 2.23, 5.5, 6.1, 6.1A, 7.2, 7.4, 9.1, 10.4, 10.5(a), and 10.6 of the Code.
116. Pursuant to section 309(2) of the Act, the Authority invited the Agent to provide written submissions on the matter by 24 January 2018. The Agent requested an extension of time on 14 December 2017 to respond to the notice, given the new adverse information published in relation to the four additional departmental and client instigated complaints. The Agent was granted an additional four weeks to provide his written submissions.

The Agent's response to the Authority's section 309 notice

117. On 28 February 2018 the Authority received the Agent's submissions by way of a letter from his legal representative on his behalf. The letter stated:
118. The Agent repeats and relies on his previous submissions for complaints CMP-27685, CMP-29192, CMP-29305, and CMP-29695. However in relation to the potential findings that he provided false and misleading information to the Department in Mr KMF and Mr AI's applications, the Agent *"specifically denies the further allegations"* and stated through his legal representative that *"he prepared the statements and claims pursuant to the instructions of his client[s], lodged the application[s] containing the statements and claims pursuant to the instructions of his client[s]...[and] admits that he failed to test the veracity of inconsistent or incredible [sic] information provided by his client[s], including the inconsistencies instructed by the client[s] regarding...religion, ethnicity or language preference."* In addition, the Agent's legal representative stated that the Agent had *"no knowledge of what Mr. AI may or may not have said to the Department in July 2017 and cannot account for the inconsistencies referred to...in the [section 309] notice, but hypothesises that Mr. AI may have preferred to identify as Persian in his dealings with [the Agent] (also Persian) to engender a stronger rapport or feeling of trust towards Mr. AI."*
119. In relation to Mr MYA's complaint (CMP-31215), the Agent denies the allegations with the exception of the following:
 - That he was engaged by Mr MYA, *"pursuant to a service agreement 8 April 2016 to prepare and lodge a visa application for and on behalf of Mr MYA"*;
 - The Agent received a total of \$1500 from Mr MYA in accordance with the fees set out in the Service Agreement;
 - The Agent prepared and lodged the visa application for Mr MYA in accordance with the services set out in the Service Agreement, and the client's instructions. As such, the Agent is entitled to retain the funds paid by Mr MYA; and
 - On 2 May 2017, Mr MYA and Ms MM attended the Agent's office and requested that the Service Agreement be terminated, and that the Agent prepare a letter of termination, which the Agent complied with. Both Mr MYA and Ms MM read the letter, and appeared to understand and agree to its contents, before Mr MYA signed the letter, signalling the formal termination of the Service Agreement. At this time the Agent also completed a Form 956 ending his appointment by Mr MYA.

Both these documents were provided by the Agent's legal representative in support of the section 309 submission.

120. In responding to the Department's complaint regarding Mr MK's application (CMP-31834), the Agent denied that he provided false and misleading information to the Department. As with his responses to the potential findings in relation to Mr KMF and Mr AI's applications, the Agent reiterated that *"he prepared the statements and claims pursuant to the instructions of his client, lodged the application containing the statements and claims pursuant to the instructions of his client, and admits that he failed to test the veracity of inconsistent or incredible [sic] information provided by his client, including the inconsistencies instructed by the client regarding his employment and harm suffered"*.
121. The Agent *"specifically denies"* the potential findings made in relation to the departmental complaint CMP-29881, and the Authority's subsequent investigation in relation to duplication of client-specific claims. He asserted that *"...he prepared the statements and claims pursuant to the instructions of his clients [and] lodged the application containing the statements and claims pursuant to the instructions of his clients"*. While the Agent does not deny that he uses templates to prepare applications for his clients, he asserts that templates are used by the Department, and many professionals, including those in the migration advice profession as an acceptable practice to reduce the time spent on repetitious elements common in many visa applications while still being able to customise client-specific responses where relevant. Further, the Agent argued that the use of template information does not diminish the correctness or truth of the given response as in protection visa application, persecution and torture are common themes for applicants, and it may be appropriate to describe these matters broadly, in the same or a similar manner, even for different clients.
122. The Agent denied intentionally providing false and misleading information to the Department, and reiterated that responses to questions and statements of protection claims were prepared on the instruction of clients. With regard to providing clients with advice as to their application's prospect of success, the Agent asserted that he was not asked to provide any of the clients identified in the section 309 notice with an opinion as to the merits or prospects of success of their applications. However, following receipt of the section 309 notice, he now understands that he has an obligation under the Code to test the veracity of facts that may be inconsistent or not credible when preparing a client's visa application, and to provide appropriate advice to client in this regard.
123. Regarding the potential finding in the section 309 notice in relation to the provision of statements of service, the Agent reviewed this information, and conceded while his Service Agreements appear to satisfy section 313 of the Act, they do not meet the requirements for a statement of service under the Code.
124. The Agent also acknowledged that he has previously admitted to withholding Mr PB's documents following termination of services, however this is mitigated by him having already sought legal advice for this matter, and improving his understanding of his obligations under the Code and correcting his practice.
125. The Agent concedes that it is open to find him in breach of clauses 5.5 or 7.2, 10.2, 10.4, 10.5(a) or 10.6, and 6.1, 6.1A, and 7.4 of the Code in relation to the provision of statements of service, withholding documents, and recordkeeping. However, the Agent asserted that as a result of the aforementioned conduct being brought to his attention in the section 309 notice, and following conference with his legal counsel, has made the following changes to his practices:
 - The details of all conversations and meetings with clients are now thoroughly recorded to include the attending parties, date, time and method of communication;
 - Drafts and working copies of material prepared for clients are retained on client records; and
 - Internal business policies and procedures have been reviewed to ensure compliance with the Code.

126. The Agent asserted that the following factors be taken into account in mitigation of the conceded Code breaches:

- That he has always attempted to uphold the standards expected of the migration profession;
- That he has never acted intentionally to bring the migration profession into disrepute,
- His migration advice business is his only source of income;
- He has ceased providing services to new protection visa clients, due to integrity issues with the inconsistent information provided by clients, as is evidenced in the complaints against him;
- His relative inexperience in the migration advice profession and in running a migration advice business.

127. The Agent believes, based on his conceded breaches, and the mitigating circumstances identified, that the Authority should issue him a caution under section 303(1)(c) and (h) of the Act, and at the most, a period of suspension under section 303 (1) (b) of the Act for 12 months or as the Authority deems fit.

The Agent's second response to the Authority's section 309 notice

128. On 13 April 2018 the Authority received a second submission from the Agent's legal representative, on his behalf, in relation to the contents of the section 309 notice. The response, by way of a letter from his legal representative and a copy of Mr HN's visa decision record dated 12 April 2018, advised the following:

- The Agent referred to the following passages of the decision record:
"He advised Ryan wrote down the applicant's claims and sent it with the SHEV application. I asked if the applicant's migration agent had talked about the statement of claims with the applicant. He replied 'I just told him and he wrote it down. It was from my talking. It was my life, my previous life'...I asked the applicant, if he were to estimate, how much of the Statement of Claims had been written in his own words versus being written with the assistance of Ryan. The applicant replied '100 per cent of the words is mine'."
- The Agent asserted that these passages were evidence that he had prepared Mr HN's statement of claims directly based on the client's instructions, that the claims in the statement are Mr HN's, and that the Agent did not manufacture any details in the statement of claims. On this basis, the Agent submitted that it was reasonable for the Authority to accept his assertion in the first section 309 submission that he prepares all statements of claims on the direct instructions of his clients.
- In addition, the Agent has submitted that many of his clients will telephone other humanitarian applicants they know, following their Protection visa interviews, and share details of the questions the interviewing officer asked, and the responses given. The Agent therefore believes that, given the relatively small size of the Iranian refugee community in Australia, there may be some collusion between his clients which could account for the similarity in a number of the statements of claims.

Additional complaint received following publication of section 309 notice – CMP-34896

129. On 20 December 2017, the Authority received a complaint from Mr YD relating to the Agent's conduct as a registered migration agent (CMP-34893). The Agent was notified of the complaint allegations on 24 April 2018 and provided an opportunity to comment

on them. A response was received by the Authority, in the form of a letter dated 30 April 2018, advising that the Agent would not provide any comment on the complaint unless required to do so under section 308(1) of the Act, and would only do so if such a request was received from the Authority.

130. I note the length of time that has elapsed since the initial three complaints (CMP-27685, CMP-29192, and CMP-29305) were provided to the Agent for his response and having considered the seriousness of the allegations before me, I find it reasonable to proceed to make a decision based on the information before me without any further delay. I am satisfied that the Agent has been provided with a substantive opportunity to respond to the findings that were open for the Authority to make in relation to the eight complaints that were the subject of the section 309 notice. While I have not made specific findings in respect of this additional ninth complaint in my decision, I note that the allegations put forward by Mr YD relating to the Agent's conduct are almost identical in relation to the provision of misleading and inaccurate information in his SHEV application and accompanying statement of claims.

Jurisdiction

131. The Authority performs the functions prescribed under section 316 of the Act.
132. The functions and powers of the Authority under Part 3 of the Act and Regulations are the Minister for Home Affairs' 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.

Relevant legislation

133. The functions of the Authority under the Act include:
- to investigate complaints in relation to the provision of immigration assistance by registered migration agents (paragraph 316(1)(c)); and
 - to take appropriate disciplinary action against registered migration agents (paragraph 316(1)(d)).
134. The Authority may decide to cancel the registration of a registered migration agent by removing his or her name from the register, or suspend his or her registration, or caution him or her under subsection 303(1), if it is satisfied that:
- the agent's application for registration was known by the agent to be false or misleading in a material particular (paragraph 303(1)(d); or
 - the agent becomes bankrupt (paragraph 303(1)(e); or
 - the agent is not a person of integrity, or is otherwise not a fit and proper person to give immigration assistance (paragraph 303(1)(f); or
 - an individual related by employment to the agent is not a person of integrity (paragraph 303(1)(g); or
 - the agent has not complied with the Code prescribed under subsection 314(1) of the Act (paragraph 303(1)(h)).
135. Subsection 314(2) of the Act provides that a registered migration agent must conduct himself or herself in accordance with the Code. Regulation 8 of the Migration Agents Regulations made under the Act prescribes a Code.
136. Before making a decision under subsection 303(1) of the Act, the Authority must give the agent written notice under subsection 309(2) informing the agent of that fact and the reasons for it, and inviting the agent to make a submission on the matter.

(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 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, 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.

The Code of Conduct, under section 314 of the Act

1.10 The aims of the Code are:

(a) to establish a proper standard for conduct of a registered migration agent;

(b) to set out the minimum attributes and abilities that a person must demonstrate to perform as a registered migration agent under the Code, including:

(i) being of good character;

(ii) knowing the provisions of the Migration Act and Migration Regulations, and other legislation relating to migration procedure, in sufficient depth to offer sound and comprehensive advice to a client, including advice on completing and lodging application forms;

(iii) completing continuing professional development as required by the Migration Agents Regulations 1998;

(iv) being able to perform diligently and honestly;

(v) being able and willing to deal fairly with clients;

- (vi) *having enough knowledge of business procedure to conduct business as a registered migration agent, including record keeping and file management;*
- (vii) *properly managing and maintaining client records;*
- (c) *to set out the duties of a registered migration agent to a client, an employee of the agent, and the Commonwealth and its agencies;*
- (d) *to set out requirements for relations between registered migration agents;*
- (e) *to establish procedures for setting and charging fees by registered migration agents;*
- (f) *to establish a standard for a prudent system of office administration;*
- (g) *to require a registered migration agent to be accountable to the client;*
- (h) *to help resolve disputes between a registered migration agent and a client.*

1.11 *The Code does not list exhaustively the acts and omissions that may fall short of what is expected of a competent and responsible registered migration agent.*

1.12 *However, the Code imposes on a registered migration agent the overriding duty to act at all times in the lawful interests of the agent's client. Any conduct falling short of that requirement may make the agent liable to cancellation of registration.*

Migration Agents Regulations 1998, regulation 9

Complaints

For paragraphs 316 (c) and (e) of the Act, any person or body may make a complaint, including:

- (a) *a client of the registered migration agent or lawyer;*
- (b) *an official;*
- (c) *an employee or member of the Institute;*
- (d) *an employee of the Authority;*
- (e) *a parliamentarian;*
- (f) *a tribunal or court;*
- (g) *a community organisation;*
- (h) *the Department.*

Evidence and other material

137. In reaching the following findings of fact the Authority considered the following evidence:

- Documents contained in the Authority's complaint files for CMP--27685, CMP-29192, CMP-29305, CMP-29695, CMP-29881, CMP-30749, CMP-31215 and CMP-31834
- Information provided by the Agent in his submissions for the two section 308 notices, and the section 309 notice;
- Information held on the Department's databases in relation to the matters raised in the complaints which are the subject of this decision; and
- The registration files of the Agent held by the Authority.

DECISION AND REASONS

Finding on material questions of fact

138. Following consideration of the evidence before me, I am satisfied that the Agent has breached clauses 2.1, 2.4, 2.6, 2.9, 2.9A, 2.17, 2.23, 5.5, 6.1, 6.1A, 7.2, 7.4, 9.1, 10.4, 10.5(a), and 10.6 of the Code and is not a person of integrity or is otherwise not a fit and proper person to give immigration assistance.

139. I am satisfied that these breaches of the Code are of a serious nature and warrant a disciplinary decision.
140. My findings and full reasons for the decision are set out below.

Failure to issue clients with Statements of Service

138. Registered migration agents are required to provide clients with a Statement of Services consistent with the services, fees and disbursements in the Service Agreement within 28 days after a final decision has been made on an application to which the immigration assistance is related.
139. A review of the client files provided by the Agent in response to the first and second section 308 notices found that none contained a Statement of Service. This is despite the Agent confirming that the Service Agreements with Mr DHS, Mr PB, Mr KMF, and Mr AI were terminated following publication of their complaints regarding his conduct, which he perceived to be a conflict of interest. When requested by the Authority to confirm whether Statements of Service had been issued to the four clients, the Agent asserted in a statutory declaration dated 11 August 2017 that as his *“Agreement for Services with each of Mr. AI, Mr. DHS, Mr. PB and Mr. KMF clearly describes the services performed and the charges for each service and as such, [sic] complies with the requirements of a Statement of Services.”* Further, in the accompanying cover letter provided by the Agent’s legal representative, Mr KU, he contests that *“no separate Statement of Services was required to be provided to Messrs AI, DHS, PB or KMF since their respective Agreements for Service clearly identify the services to be performed and the charges for each services. The Agreements for Services satisfy the requirements of s313 of the Act (and therefore clause 5.5 of the Code of Conduct).”*¹ In support of this statement, Mr KU referenced *Guo and Migration Agents Registration Authority [2013] AATA 225* in relation to satisfying section 313 of the Act. Section 313 of the Act provides that:
- (1) *A registered migration agent is not entitled to be paid a fee or other reward for giving immigration assistance to another person (the assisted person) unless the agent gives the assisted person a statement of services.*
 - (2) *A statement of services must set out:*
 - (a) *particulars of each service performed; and*
 - (b) *the charge made in respect of each such service; and*
 - (3) *An assisted person may recover the amount of a payment as a debt due to him or her if he or she:*
 - (a) *made the payment to a registered migration agent for giving immigration assistance; and*
 - (b) *did not receive a statement of services before making the payment; and*
 - (c) *does not receive a statement of services within 28 days after a final decision is made about the visa application, cancellation review application, nomination or sponsorship to which the immigration assistance related.*
 - (4) *This section does not apply to the giving of immigration legal assistance by a lawyer.*
140. A review of *Guo and Migration Agents Registration Authority [2013] AATA 225* at [106] identified that while the agent who was the subject of the findings appeared to satisfy the provisions set out in section 313(2) of the Act by advising of their professional fees, they were found not to have complied fully with the requirements set out in clause 5.2 of the Code. However, no consideration is given in this decision to clause 5.5 as this was not included in the scope of the appeal. Conversely, while it appears that the Agent acted in

¹ *Guo and Migration Agents Registration Authority [2013] AATA 225* at [106]

accordance with clause 5.2 of the Code by issuing each of the identified clients a Service Agreement containing the services to be performed, fees for these services and any disbursements, this is separate to the requirements of clause 5.5 of the Code.

141. Clause 5.5(a) emphasises that the agent should give the client “a statement of services that is consistent with the services, fees and disbursements in the Agreement for Services and Fees mentioned in clause 5.2” and notes that the statement of services “may be an itemised invoice or account”. Clause 7.2 of the Code works to clarify this point by providing that an invoice should be issued to the client for the services performed in accordance with the Agreement for Services and Fees mentioned in clause 5.2 for each service performed and the fees in the block of work, once completed by the agent. Further, both section 313(2) of the Act and clause 5.5(b) of the Code stipulate that a statement of services sets out the services ‘performed’ and the charge ‘made’ for each service, reiterating that the statement of services should be issued as evidence of completion of services.
142. The Agent has provided copies of receipts and tax invoices in relation to each of the four identified clients, however, each of the invoices has been issued only for outstanding instalments of fees to be paid by the clients, which do not identify what payments have been received prior to issuing. Some of the invoices also predate receipts provided in the client files. As such, these invoices may not show the final amounts paid by each client. The tax invoices also only contain brief generalised descriptions of services included in the outstanding payable fee instalments, and do not distinguish what services have already been paid for or specify key milestones for the instalments paid (such as visa lodgement). In relation to these financial records, clause 7.4 of the Code clarifies that a statement of services as being separate to the issuing of receipts for payments made by the client to the agent, as well as invoices rendered. As such, I find that none of the documents provided by the Agent are reflective of, or an appropriate alternative to, a formally issued Statement of Services,
143. In responding to this matter in the section 309 notice submission, the Agent conceded that he failed to issue Statements of Service in accordance with the requirements of the Code. Consequently, I am satisfied that the Agent failed to issue Statements of Service to Mr DHS, Mr PB, Mr KMF, Mr AI and Mr MYA, and based on the Agent’s concession, that this practice extended to the Agent’s broader client caseload. I am also satisfied that, given the Agent’s concession and the significant period of time since the Agent received payments from the identified clients, the Agent was not entitled to the payments made without issuing his clients a Statement of Service, in accordance with clause 5.5(c)(iii) of the Code.

Failure to return Mr PB’s documents to him following termination of services

144. The Agent conceded in both his first section 308 notice, and section 309 notice, submission that he withheld Mr PB documents for a period greater than seven days, even when advised by the Authority that only an agent who holds a legal practicing certificate issued by an authorised Australian body may do this. The Agent subsequently returned the documents to Mr PB once informed by his legal representative upon receipt of the first section 308 notice that he was not entitled to a lien. The Agent’s registration information shows that he does not hold a legal practicing certificate. While I accept that the Agent has advised in his submissions that he subsequently corrected his practice and cooperated with the Authority to return Mr PB’s documents once counselled on the matter, he nonetheless failed to return the documents for more than seven days after both Mr PB’s notification of termination on 31 December 2016, and in his subsequent requests for documents on 26 January 2017, and through his complaint on 1 February 2017. As Mr PB did not receive the requested documents until 22 February 2017, I am satisfied the Agent withheld these documents without the appropriate authority to do so.

Preparation of statements in support of Mr KMF, Mr AI and Mr MK's applications for protection containing false and misleading information

CMP-29305

145. In response to questions from the Authority as to the preparation of Mr KMF's statement of claims and discrepancies with the information previously provided to the Department, the Agent stated in both his section 308 and 309 notice submissions that he prepared the protection claims based on client instructions and the documents obtained from a FOI request. The Agent has also repeatedly asserted that the claims he transcribed for Mr KMF were not materially different to those in his previous application. However, in the statement prepared by the Agent for Mr KMF's 2016 TPV, there is a significant change in his chosen religion from Baha'i to Christianity, which is purported to have occurred prior to arriving in Australia, and before his entry interview and previous PPV application in 2013, which was deemed invalid. A copy of Mr KMF's 2013 and 2016 statements of claims can be found at *Appendix 2*. In Mr KMF's refusal decision record for his 2015 TPV application, the delegate in making their decision, identified significant integrity concerns with some paragraphs in the statement prepared by the Agent which contained identical wording to those in the statement lodged with his previous application with the exception of the references to Baha'i which were changed to Christianity (*Appendix 3*). This substitution is most evident in the paragraphs below:

Statutory declaration dated 3 September 2013

*"I was approached by a neighbour named MN who worked for the Komeil (organisation under the supervision of Sepah) in Iran. At the time I did not know that MN worked for Komeil. MN told me that I recently done something which had "crossed the line". I asked MN what I had done wrong. MN asked if I had been enquiring about the **Baha'i** faith or trying to promote the **Baha'i** faith to convert people. I asked MN how he knew that and I also told him that I was simply trying to learn about it. MN told me that I had made phone calls to the Baha'i centre in India. MN told me to be careful and not to pursue the **Baha'i** faith any further. I asked him how he knew all this about me. MN told me that he could not tell me any more but he warned me to be careful.*

*...I went to the North of Iran. While I was in the North of Iran I rang mr mother to see if she needed anything. My mother told me that two people from Komeil had come to our home looking for me. After this I was very scared because I knew that people whom the authorities believed to be Baha'i can be killed in Iran. After this I came back to Tehran but I went into hiding and stayed with a friend named M. I stayed at M's place for approximately one month while I weighed up my options. I stopped going to work. I did not know what to do because I did not want to be in hiding for the rest of my life. Previously I had spoken with M's former manager (named Ali) at a restaurant had told me that he was planning on going to Australia. Given the situation I rang Ali and he told me that he still hadn't left and asked if I could go with him. Ali told me that I could go with him to Australia. As I was in a desperate situation, given the way the authorities treat people who, they believe to be **Baha'i** I felt I had no other option"*

Statement of claims dated 25 January 2016

*"I was approached by a neighbour named MN who worked for the Komeil (organisation under the supervision of Sepah) in Iran. At the time I did not know that MN worked for Komeil. MN told me that I recently done something which had "crossed the line". I asked MN what I had done wrong. MN asked if I had been enquiring about the **Christian** faith or trying to promote the **Christianity** to convert people. I asked MN how he knew that and I also told him that I was simply trying to learn about it. MN told me that I had made contact with Halgheh Erfan, also told me to be careful and not to pursue the Halgheh Erfan any further. I asked him how he knew all this about me. MN told me that he could not tell me any more but he warned me to be careful.*

*...I went to the North of Iran. While I was in the North of Iran I rang my mother to see if she needed anything. My mother told me that two people from Komeil had come to our home looking for me. After this I was very scared because I knew that people whom the authorities believed I should be killed because I changed my faith. After this I came back to Tehran but I went into hiding and stayed with a friend named M. I stayed at M's place for a while until I weighed up my options. I stopped going to work. I did not know what to do because I did not want to be in hiding for the rest of my life. Previously I had spoken with M's former manager (named Ali) at a restaurant had told me that he was planning on going to Australia. Given the situation I rang Ali and he told me that he still hadn't left and asked if I could go with him. Ali told me that I could go with him to Australia. As I was in a desperate situation, given the way the authorities treat people who, they believe to be **Christian** I felt I had no other option."*

146. In addition, when responding to question 90 of the application form 866C in the 2013 statutory declaration, Mr KMF states that *"I fear being interrogated, tortured or killed by the Iranian authorities because they believe that I am a follower of the Baha'i faith"* when asked what he fears may happen to him in Iran. In response to the same question in the 2016 statutory declaration prepared for him by the Agent, Mr KMF provides *"...I fear being interrogated, tortured or killed by the Iranian authorities because they believe that I am a follower of the Christianity [sic] faith."*
147. Based on the shared wording, including grammatical and spelling errors, and the Agent's own admissions, I am satisfied that the Agent had access to Mr KMF's 2013 statement of claims, and replicated large portions of this document to prepare his subsequent statement of claims. I also reject the Agent's assertion that the client's claims did not change in substance from those in the previous application, as whilst large portions of the text have been duplicated, the inclusion of a different religion was considered to be a significant divergence in claims by the interviewing officer and the delegate (*Appendix 3*). Given that specific personal events purported to have occurred to Mr KMF while in Iran appear to have been altered in the statement to refer to Christianity instead of Baha'i, I find that the statement of claims lodged with his TPV application contain misleading and inaccurate statements. Consequently, as the Agent has conceded in his submissions to the Authority that he prepared Mr KMF's 2016 statement of claims, I find these alterations were undertaken by the Agent.
148. As an aside, it was also identified that the opening paragraph of Mr ZMF's statement of claims states *"It is not an exhaustive statement of the reason or reasons why I cannot to [sic] return to Afghanistan"*. Given he is from Iran, it is highly unlikely that Mr KMF provided this instruction to the Agent or that the Agent relied solely on the documents obtained through the FOI request to the Department, as they make no mention of Afghanistan. It is therefore most likely that either the wording has been copied from the statement of an Afghani client of the Agent, or that another client's statement was used as a template for Mr KMF's, without a thorough review being undertaken prior to lodgement, which would have identified the obvious errors. This reaffirms the Agent's central role in the preparation of Mr KMF's statement of claims.
149. While it is open to accept that Mr KMF may now consider himself a Christian, as he has provided evidence that he had been baptised on 21 March 2016, this was not raised in his claims put forward in 2013. Moreover, it appears unlikely that specific events that transpired in his past could apply equally, or interchangeably, to two different religions. Even if I accept that Mr KMF provided instructions to the Agent to copy his previous statement and change references of Baha'i to Christianity, a prudent migration agent would have informed their client of the risks posed by altering their previous claims in this manner. The Agent stated in his section 309 submission that he did not provide any advice to Mr KMF regarding his prospects of success, and admitted to failing to test the veracity of Mr KMF's claims or provide frank and candid advice regarding the changes in the statement of claims. While I accept that the Agent did not provide Mr KMF with advice regarding the prospect of his application's success, I do not accept that he was unaware of the inconsistencies in Mr KMF's statement of claims, given he prepared the statement to include amendments that were overtly inconsistent with the information he already had available to him at that time. Accordingly, I find that the Agent failed to be

frank and candid with Mr KMF or act in his best interests when taking instructions and preparing his statement of claims.

CMP-29695

150. The Agent advised in his section 308 notice submissions that he only relied on Mr AI's entry interview files, and his instructions to the Agent in person and during telephone conversations to prepare his application forms and statement of claims.
151. In Form 866C of Mr AI's TPV application that the Agent prepared, his languages are indicated as Farsi and English, while his ethnic group is listed as "Persian". In Mr AI's Form 866B Character section, when asked whether he had undergone any military or paramilitary training, the answer 'no' has been indicated. His religion was left blank but there were references to Christianity in his Form 866C responses in the statement of claims.
152. These responses were found to be at odds with the information provided in both Mr AI's entry interview files, and the previously invalid PPV application lodged with the assistance of an IAAAS provider in 2013. When requested by the Authority to provide comments on the discrepancies, the Agent asserted in a statutory declaration dated 8 August 2017 that he only had access to Mr AI's entry interview documents to assist in the preparation of the application forms and statement of claims forms, and that:
 - Mr AI had told him in a phone conversation that he identified as Persian ethnically;
 - Question 20 of the entry interview indicates that Mr AI's preferred language is Farsi, supported by his use of a Farsi interpreter for the entry interview;
 - That the Agent communicated with him in Farsi, and were therefore satisfied of his proficiency;
 - When the Agent was questioned why [removed] was not indicated in the TPV application prepared by him, he did not address this directly but emphasised that Mr AI had similarly not advised that he spoke *[a third language]* at any time in the TPV preparation or compliant, despite it being listed in his entry interview, implying he is not consistent or credible in the information he provides;
 - Mr AI instructed the Agent to leave question 33 of Form 866C blank, in relation to his religion but advised him to include Christianity claims in his Form 866C and statement as he was *"pursuing the path of Christianity"*; and
 - Mr AI gave the Agent no instructions regarding his military service and the entry interview did not disclose sufficient information to accurately respond to question 27 of Form 866C in relation to military service.
153. Due to the discrepancies between the previous information provided to the Department, and the responses in the application forms and statement of claims prepared by the Agent, Mr AI was requested to respond to questions regarding his ethnicity, language proficiency, religion, and military service during a phone discussion with the Authority in July 2017. The answers provided by him were consistent with those provided in his entry interview files and in the PPV application lodged in 2013, prior to the Agent's involvement.
154. I accept that the Agent may not have accessed the 2013 PPV application when preparing Mr AI's TPV application as departmental records confirm that he received only the entry interview recording and form following an FOI requested on 22 January 2016. However, this does not account for the discrepancies between the information in the entry interview documents, and the information in the application forms and statement of claims the Agent has confirmed he prepared.
155. The Agent has asserted that Mr AI told him over the phone that he identified as Persian ethnically, which the Agent has subsequently hypothesised in his section 309 notice submission may have been an attempt by Mr AI to identify as Persian to build rapport with the Agent. However, the Agent has been unable to provide any file notes, draft

application response, or written confirmation from Mr AI of this. Question 19 of the entry interview states that his ethnicity is '[removed]', and both question 13 of the invalid PPV application and the supporting statutory declaration indicate his ethnicity as being *[removed]*. When contacted in July 2017 and asked to indicate his ethnicity, Mr AI stated '[removed]', before clarifying that his particular [removed] minority is *[removed]*. I find it difficult to accept that Mr AI would identify as a different ethnicity for a period of time while engaging the Agent's services, particularly given that he has been consistent in the information he previously provided the Department, and subsequently provided the Authority and the Department more recently. Given the Agent has failed to provide any records to support his responses, and has stated that he cannot account for the inconsistencies in Mr AI's responses despite having had access to the entry interview documents, I am satisfied that the Agent provided inaccurate information in the TPV application in relation to Mr AI's ethnicity.

156. I accept that Mr AI's preferred language is Farsi, which is indicated in question 20 of the entry interview, questions 10 and 12 of Form 866C of the invalid PPV application, and in questions 29 and 30 of Form 866C of the TPV application. I also accept that given Mr AI had spent several years living in Australia prior to the preparation of his TPV application he may have gained some proficiency in English. However, there is no inclusion of Mr AI speaking, reading or writing [removed], despite the findings made in relation to his ethnicity, and the information in his entry interview. As the Agent had the entry interview available to him, it would have been reasonable for him to have discussed the responses therein with Mr AI, particularly if there was any uncertainty or inconsistency in the instructions he provided, before completing his application responses. However, the Agent advised in his section 309 submission that he failed to discuss with Mr AI what languages he could still speak, read or write in the other languages listed in the entry interview. The Agent has also not provided any records, which indicate that he discussed this information with Mr AI at any stage. When contacted by the Authority with the use of a Farsi interpreter, Mr AI advised that he spoke Farsi and [removed]. As such, while I find that the answers prepared by the Agent for questions 29 and 30 are correct, it appears that he did not discuss the language information in Mr AI's entry interview with him or clarify his language proficiency before lodging the application.
157. In relation to Mr AI's religion, the Agent stated in his section 308 notice submissions that Mr AI instructed him to leave the question 33 of Form 866C blank, but also informed the Agent that he was "*pursuing the path of Christianity*", which was reflected in his responses to questions 89 and 95 of the same form and in the statement of claims. The Agent has not been able to provide any file notes or written instructions from Mr AI, which support this instruction. A review of question 33 of Form 866C, which requests that the applicant stipulate if they have a religion and specify what this is, including the denomination, confirms that the response has been left blank. This implies that Mr AI does not have a religion, which is consistent with the response of "*No religion (NFD)*"² for question 18 of the entry interview. Mr AI subsequently advised the Authority when contacted in July 2017 that he did not identify as having a religion and considered himself an apostate of the Muslim religion.
158. I am not convinced that Mr AI would provide conflicting accounts of his religion in his instructions to the Agent by requesting that no religion be designated in question 33 of the TPV application form, but then indicate that he was practicing Christianity in his protection claims. A prudent migration agent with experience in assisting Protection visa applicants with preparing application forms and articulating claims for protection, as the Agent emphasised he was in his section 308 notice responses, would have reviewed, identified, and likely questioned such an overt discrepancy in the client's instructions. Conversely, the Agent has conceded in his section 309 notice submission that he did not address such discrepancies before completing and lodging Mr AI's TPV application.
159. A review of Mr AI's responses (*Appendix 4*) to questions 89 and 95 of Form 866C, which were also transcribed into the statement of claims, appear to imply that he had faced

² No Further Detail

persecution for being Christian before departing Iran, and that since arriving in Australia, has continued to practice Christianity. The relevant text is transcribed below:

Question 89

"When I was a child I realized that we belong to a Muslim family but I was not pray [sic] and always ask myself why I should pray when there is nothing in Islam and it always gives us problems. But I always was thankful to God and was aware that there is Christianity religious [sic] who just give us no pain and problems. I always wished to go to church to pray there but having fear of being hanged if the government knows I was not able to go there. Every human has right to live [sic] on their own way and choice but [sic] un luckily in Iran people can't live how they want there are some Islamic groups who are against Christianity and not being Muslim, I belong to [sic] Christianity religion and police of Iran [sic] was torturing me about my religion."

Question 95

"Further, as we are pursuing the path of Christianity, I would be considered an infidel. I could not practice my religion in Iran; if I was caught practicing in public or privately, the authorities would persecute us for choosing another faith..."

160. These claims are in direct contrast to the information that Mr AI had previously provided to the Department in both his entry interview and 2013 PPV application, as well as the information he provided to the Authority in July 2017. As the response in question 89 states that Mr AI was tortured by Iranian police for being Christian, presumably before he left to travel to Australia, it would have been reasonable, else beneficial to his claims for protection for Mr AI to have disclosed this in his prior interactions with the Department. If the claims were to be accepted, it is open to refute any contradictory assertion that Mr AI only converted to Christianity after arriving in Australia. While more consideration has been given to the use of template and duplicated protection claims by the Agent in his clients' applications in this decision, the above highlighted paragraphs were also found to have been used in a number of other clients' application forms and statements of claims.³ Given the information before me, I am satisfied that the claims of Christianity in Mr AI's statement of claims do not reflect his personal circumstances and are inaccurate and misleading.

161. In relation to Mr AI's military service, the Agent stated in his section 308 notice submissions that Mr AI did not give him any instructions on this matter and the entry interview did not disclose sufficient information to accurately respond to question 27 of Form 866C. Contrary to this, the Agent subsequently asserted in his section 309 notice submission that all statements and claims were based on the client's instructions. A review of Part C of his entry interview found that Mr AI had indicated that he had received training in preparation for conflict and had been involved in military service. When asked to provide details, Mr AI had stated during the entry interview that he completed compulsory military service before the Revolution and only served

"1 year - Tehran (the King had granted everyone only one year in service that year instead of 2, because he had a son) [sic] Served in the Engineering Section, was trained to use a gun, wasn't really trained in anything else."

162. These entry interview responses alone clearly establish that Mr AI did undertake military service, as well as provide sufficient information to have completed the Character section of Form 866B, as well as parts question 27 of Form 866C. Therefore, I reject the Agent's assertion that the entry interview did not disclose sufficient information to establish that

³ The statements *"When I was a child I realized that I belong to a Muslim family...But I was thankful to God ...aware that there is Christianity religious [sic] who just give us no pain and problems"* were also found in the question 89 responses for Mr MA, Mr HN, and Mr AAA. Duplicated wording from question 95 found in response to the same questions in Mr AB, Mr MJARC and Mr MM's application forms and statements of claims.

Mr AI had completed any military service, and to complete the relevant questions of the application forms. It is unclear why the Agent then chose to respond to the Character section and question 27 of 866C by indicating that he had not undertaken military training and service.

163. In his 2013 PPV application, and when asked by the Authority, Mr AI has provided additional information relating to his military service, including which year he served. However, from the responses prepared by the Agent, it does not appear that the Agent actively pursued Mr AI for additional information on his military service to assist in preparing the responses, and that the onus was on Mr AI to provide this information without direction. It would be expected that a registered migration agent would actively seek to obtain outstanding information from a client to ensure their application form responses accurately reflected their circumstances before lodgement. Where a registered migration agent had already received a partial response to a question, and where the client was unable or unwilling to provide further details, it would be prudent of them to complete the response with the information available, not contrary to it. I accept that clients bear some responsibility in reviewing their applications to ensure that all relevant information is included and accurately reflected. It would be reasonable, however, to expect that in his capacity as their appointed migration agent, the Agent should have reviewed the application form with his clients so as to confirm that the responses were accurate prior to lodging the application. In light of the fact that he had Mr AI's entry interview files, this information should have been used to cross-reference the instructions the Agent has purported Mr AI provided him, in order to add a greater degree of certainty to the information provided to the Department.
164. Given the information considered, I find that, despite the information available to him, the Agent knowingly answered two separate questions on Mr AI's military service incorrectly, to the detriment of his client. With respect to this, I am also satisfied that the Agent has attempted to mislead the Authority in both his section 308 and section 309 notice submissions as to the provision of incorrect information in Mr AI's application.

CMP-31834

165. The referring departmental officer alleged that the Agent had failed to provide accurate information in two sections of Mr MK's SHEV application and the supporting documentation (*Appendix 5*). In relation to his employment history in question 84 of Form 866C, the roles, employers and periods of employment provided do not correlate with applicant's claims discussed at interview with the departmental officer. A review of Mr MK's entry interview files identified discrepancies in the employment information. It may be reasonable to assume that the Agent had access to Mr MK's entry interview files when preparing his application forms, given he advised the Authority that it is his standard practice to request these from the client or through a FOI request to the Department. In such circumstances, it would be prudent for the Agent to have reviewed existing information available prior to seeking instructions from the client, and subsequently to have sought clarification from the client to resolve any discrepancies in the information from both sources before finalising the application. A failure to ensure all the information in the application is an accurate reflection of the applicant's circumstances may affect findings on their integrity as part of delegate's assessment of their protection claims.
166. Secondly, and of greater concern was the response provided in relation to question 91 of Form 866C of Mr MK's application, which was also included in his statement of claims. The claims put forward, in response to the question of whether Mr MK experienced harm in Iran, stated:

"Yes, I being [sic] in prison, tortured and living in fear was the main part of my life in Iran. I was always concern [sic] and worried about my wellbeing, life and future. Although I lost my family, my job and all I had over there. I was heavily persecuted and tortured, though I was harmed in many ways in Iran and subject to limitation, discrimination, surveillance, vulnerability and fear of losing my family, I was psychologically harmed."

167. In his Protection visa interview, Mr MK advised that he had never experienced any form of physical harm, including persecution, discrimination, torture, or imprisonment. While he did indicate that he experienced some mental distress from not being paid by his employer for a number of months, this did not amount to the level of severity required to demonstrate psychological harm. A review of Mr MK's entry interview found it to be consistent with his responses in the subsequent Protection visa interview, with him having made no mention of the serious harm included in the SHEV application prepared by the Agent. The departmental officer who referred the complaint stated that they did not believe the response to question 91 related to Mr MK or his claims for protection, and that the wording appeared to have been copied and pasted from another client's application. Given the information before me, I am satisfied that the Agent prepared Mr MK's application forms and statement of claims, and that these documents contained inaccurate and misleading information. In addition, the concerns raised in regards to using another client's claims for Mr MK, or alternatively duplicating template information into a number of application forms and statements of claims for different clients, appears consistent with the conduct identified and discussed in association with CMP-29881.

Preparation and lodgement of clients PPV applications and statutory declarations containing duplicated and template claims for protection

168. The Authority received two complaints from the Department regarding the use of template wording and the duplication of protection claims in the TPV and SHEV application forms and accompanying statements of claims of the Agent's clients (CMP-29881, CMP-31834). In response, the Authority conducted a review of the Agent's broader client caseload, with the application forms and statement of claims of Afghani and Iranian clients examined alongside the applications identified by the Department, and those referred to in CMP-27685, CMP-29305, CMP-29695, and CMP-31215. In total, no less than 40 additional clients' applications were initially reviewed, of which seven Afghani and 12 Iranian clients' applications are referenced in this decision. The total applications reviewed include those already identified through client and departmental complaints. The client applications identified by the Authority and considered in this decision feature the most prominent examples of apparent template and duplicate protection claims, though the initial review of the Agent's client caseload identified a degree of duplicated wording in almost every application and statement of claims.
169. The review found repeated instances of duplicated wording within the two country cohorts, particularly in relation to questions 90 to 96 of Form 866C, which are also replicated in each accompanying statement of claims. While there appeared to be some original text in relation to parts of question 89 in the statements of claim, relating to the clients' personal circumstances and claims for protection, it would be expected that this would extend to the responses in respect of all the questions relating to an applicant's reasons for claiming protection. As such, it is unlikely that the Agent's clients would have provided identical instructions of their reasons for claiming protection in response to question 89 to 96.

Client applications belonging to Iranian nationals

Mr MA and Mr FS

170. Mr MA and Mr FS's application forms and statements of claims, when compared, contain a high percentage of shared wording, with identical grammatical and spelling errors, which appears to be the result of the same template claims being cut and pasted into the two applications without any review (*Appendix 6*). This shared wording is as follows:

“Q.89 Why did you leave that country?”

I came from Iran to Australia by boat via Indonesia and reached [sic] to Australia on the ...to save my life. The reason of my flee [sic] from Iran to Australia, goes back to when we realised that what I have been following is extracted from the Christian faith, I became interested in learning about the

Christian faith through an underground [sic] Churches with the help of one of the [sic] friend...

Almost...years ago, I started to [sic] process about Christianity, [sic] base of my research about Christianity and compare with Islam [sic] I became serious about learning about Christianity...I was strongly with the...political situation...in Iran.

...My friends (...) introduced me to an underground church...Very soon I became a member of that underground church and I was in touch with them for a while...

That's why it is very hard for one to find a Persian Bible in Iran and that is why people are not allowed to proselytize Christian faith in Iran and that is why Iranian government locates underground churches, arrests people and persecute them to create fear in the society so no one could dare to approach or find out about the underground Churches or Christianity.

However following the arrest...and series of threat and intimidations to my life and liberty, finally I decided to...come to Australia to end my fear of being persecuted, arrested or even executed...ever s[S]ince I came here and found the freedom of following my desired religion, I...baptised...in Christian faith..."

Q.90 What do you think will happen to you if you return to that country?

"I am sure that our return to Iran would never be safe again. This is particularly as Iranian government is very tough toward those renouncing Islam and embracing Christianity due to the fact that my conversion to Christianity...and questions their legitimacy... I will defiantly [sic] be arrested and persecuted for my converting from Islam into Christianity. I now extremely [sic] frightened to go back to Iran, the country of my citizenship, since my conversion from Islam to Christianity not only is not acceptable there, but also attract death penalty and the verdict is very tough for the people like me in Iran particularly if sent back to Iran as a failed asylum[sic].

Q.91 Did you experience harm in that country?

...I was always [sic] concern and worried about my family wellbeing, life and future, Although I lost my...all I had over there. I was heavily persecuted...though I was harmed in many ways in Iran and subject to limitation, discrimination, surveillance, vulnerability and fear of losing my...I was....psychologically harmed since my spiritual journeys [sic] I was very scared...the fear of getting...was my main reasons for escaping Iran.

Q.92 Did you seek help with the country after that harm?

No, I was fearful of the Iranian Islamic government and strict vigilantes of Sepah and Basij. Talking to them or others would only make our situation worse. In Iran you cannot declare conversion from Islam to any other religion and seek protection as you would be considered [sic] as infidel and enemy of God and Islamic government. Anyone there could harm you when are known as a Christian convert who has renounced Islam first before converting to Christianity.

Q93. Did you move, or try to move, to another part of that country to seek safety?

...no matter where I would go, Iranian government forces could locate me and harm me when they wanted...

Q94. Do you think you will be harmed or mistreated if you return to that country?

Yes, I believe that I will be harmed by the Islamic regime if I return to Iran, My conversion from Islam to Christianity attracts death penalty in Iran and

the Iranian government forces are very serious about punishing people like me. Iranian people living in Iran are mostly Muslims. Most of them [sic] not practicing their religious duties, but when it comes to conversion and renouncing Islam, they mostly act very serious and harsh. So if I return to Iran, I would most definitely be harmed there as the verdict for people renouncing Islam and converting [sic] into Christianity is death penalty. However the Iranian government would usually [sic] imposes extra [sic] judicially killing for fighting against those converting from Islam to Christianity or renouncing Islam or Islamic faith. Iranian government has a very low tolerance toward those not following their line of [sic] thoughts...

Q.95 Do you think the authorities of that country (or countries) can and will protection you if you go back?

No...the people of Iran are harassed and tortured by their government officials on a daily basis. In Iran, all the laws are based on Islamic rules and against non-Muslims. Those exiting from Islam like me would be considered as infidel and subject to capital punishment. This mainly due to the fact that my conversion to Christianity imputes my political opinion against the Iranian regime and clearly reflects my [sic] opponent against the Islamic regime of Iran. Renouncing Islam clearly means that I do not recognise the legitimacy of the Iranian government and supreme leader. Therefore Iranian government authorities would have no reason to be lenient to me rather [sic] would punish me [sic] hard to threaten others from thinking about apostasy.

Q.96 Do you think you would be able to relocate within that country?

No, Iran is an Islamic state and no matter where I go in Iran, If Iranian forces wanted to locate me, they could do [sic] easily. Unfortunately Iran is fully governed by Islamic state and their intelligence forces strongly controlling the country and fighting against anyone [sic] rejects their religion, government, their unjust laws or their values...having the details of our identities and case possibly accessed by the Iranian agents, I am sure that we would not even be able to enter the country safely. Also as Iran is [sic] Muslim country, I would not be able to practice my Christian faith there without being subject to sever [sic] hardship and risk to my life. No matter where I would be located in Iran, I would be captured, tortured and eventually killed."

Mr AB, Mr MJARC, Mr MRAJ, Mr AP, Mr AAA, and Mr MM

171. When reviewing the broader client caseload, other applications by Iranian nationals were identified to also contain similarly large scale duplicated responses, as those identified in the application forms and statements of claims of Mr MA and Mr FS. As with those already considered, these applications share duplicated wording responses to question 89 to 96, which feature in both Form 866C and the statements of claims, with at least one other identified client (Appendix 7).
172. Mr AB, Mr MJARC and Mr AP all state in their question 89 responses that "The reason of [sic] my flee from Iran to Australia, goes back to when I realised that what I have been following is extracted from the Christian faith, I became interested in learning about the Christian faith through an underground...with the help of...my friend", which are the same statements featured in both Mr MA and Mr FS's question 89 responses. As in Mr MA and Mr FS's applications, Mr MJARC provides that "I started to process about Christianity and base [sic] of my research compare with Islam [sic] I became serious about learning Christianity", and all three applicants, as well as Mr AAA, responded to question 89 with:

"However following the arrest...and series of threat and intimidations to...life and liberty ...finally I decided to come to Australian to end my fear of being persecuted, arrested or even executed...e[E]ver [s]Since I came here and found the freedom of following my desired religion, I...became part of the [Church]...in Christian faith, here I found more and ...more Christian friends

and later on became part of the... where its pastor and members accepted me with open arms."

173. Mr AP and Mr AAA's response to question 90 contains almost identical wording as that of Mr MA's response, and in doing so, also closely reflects that of Mr FS's, as detailed in paragraph 171.

"I am sure that our return to Iran would never be safe again. This is particularly as Iranian government is very tough toward those renouncing Islam and embracing Christianity...Iranian government's power comes from Islam and that is why they do not want to lose their power in Iran. Though they would harm me and alike [sic] to scare the rest of the Iranian people from thinking about conversation n [sic] to any other religion. If I go back to Iran, I will defiantly [sic] be arrested and persecuted for my converting from Islam into Christianity. I now extremely [sic] frightened to go back to Iran, the country of my citizenship, since my conversion from Islam to Christianity not only is not acceptable there, but also attract death penalty and the verdict is very tough for the people like me in Iran particularly if sent back to Iran as a failed asylum[sic]."

174. Mr MJARC's response to the same question also referenced part of Mr MA's response by stating *"[the government in Iran] is very tough toward those renouncing Islam and embracing Christianity due to the fact that my conversion to Christianity imputes my political opinions against them and questions their legitimacy"*.
175. This wording is also found in Mr AB and Mr MM's responses to question 90, which appear to contain the following identical statements:

"...(T)he government in Iran is very tough toward those renouncing Islam and embracing Christianity due to the fact that my conversion to Christianity imputes my political opinions against them and questions their legitimacy. Because of the history before...departure I would most likely be arrested and imprisoned. I will not return to Iran. If I am forced to return to Iran, I would be captured, tortured and eventually killed...photos are on the ...web showing me...have(ing) attended church while in Australia...The Iranian government dislike [sic] people who deflect [sic] from Islam and, are [sic] against the choice to change...faith. It is easy for reports to get to them or for them to locate our information and learn...are no longer following Islam and have chosen the Christian faith. If I am forced to return, the Iranian authorities will kill...because ...would be considered infidels. The penalty for this in Iran is death."

176. Mr MJARC, Mr AB, Mr MM and Mr AP's question 91 responses include *"Yes, I...had experience of harm, [I was/we were] harmed in many ways...subject to limitation, discrimination, surveillance and vulnerability....With reluctantly and grudgingly [sic] I had to attend to their unfair law"*, as well as other duplicated full and partial sentences as the aforementioned applications in paragraph 172. The same can be said of these four clients' responses to question 92, which all state *"No...the government is the perpetrators of these activities...We were/I was fearful of the Iranian Islamic government and strict vigilantes. Talking to them or others in Iran would only make our situation worse. Anyone there could harm you when you are known as a Christian convert who has renounced Islam first before converting to Christianity"*, some wording of which are featured in Mr MA, Mr FS and Mr MRAJ's responses. This wording also corresponds with those of Mr MK's and Mr HN in response to the same question.
177. With regards to Mr MJARC's response to question 93, it was found to be identical to that provided by Mr FS for the same question, while Mr AP's own question 93 response comprises of two of the sentences used by both Mr MJARC' and Mr FS. Mr AP's response to question 94 contains identical wording to that of Mr MA's, and with reference to the extract provided in paragraph 171⁴ encompasses Mr FS's response. While there is some deviation in the question 94 response for Mr MJARC', it also contained the same

⁴ Shared wording for Mr MA and Mr Safari's question 94 responses

shared sentences, *“My conversion from Islam to Christianity attracts death penalty in Iran and the Iranian government forces are very serious about punishing the people like me [sic]. However the Iranian government would usually imposes [sic] extra judicially [sic] killing for fighting against those converting from Islam to Christianity or renouncing Islam or Islamic faith.”* Mr MRAJ’s response to question 94 also consists of the same duplicated wording with Mr MA and Mr AP’s responses, and to a lesser extent, Mr FS and Mr MJARC’s.

178. Likewise, Mr MRAJ and Mr MK’s responses to question 95 contains the following identical text to those of Mr MA and Mr FS in the paragraph 171 extract:

“people...(in) Iran are harassed and tortured by their government officials on a daily basis. In Iran, all the laws are based on Islamic rules and against non-Muslims. Those exiting from Islam like me would be considered as infidel and subject to capital punishment. This mainly due to the fact that my conversion to Christianity imputes my political opinion against the Iranian regime and clearly reflects my opponent [sic] against the Islamic regime of Iran. Renouncing Islam clearly means that I do not recognise the legitimacy of the Iranian government and supreme leader. Therefore Iranian government authorities would have no reason to be lenient to me rather [sic] would punish me [sic] hard to threaten others from thinking about apostasy.”

179. Mr MM, Mr AB, Mr MJARC and Mr AP’s responses to question 96 all include a large proportion of shared wording, some of which is also evident in the responses provided by Mr AAA, Mr MA and Mr FS in relation to the same question:⁵

“No, relocation is not an option, Iran is an Islamic state country and no matter where I go over there, Iranian forces can locate me easily at any time. Unfortunately Iran is fully governed by Islamic state and their intelligence forces such as Basij, Sepah and Etel’aat which strongly controlling [sic] the country and fighting against anyone wants [sic] to think against them specially [sic] someone who wants to rejects [sic] their religion, government and their unjust laws...As a result of the photos and the release of personal details I believe it is easy for the Iranian government to know my details and I believe this...serious risk of harm if I am returned to Iran...I am sure that I would not even be able to enter the country safely...I would not be able to practice my Christian faith over there without being subject to sever [sic] hardship and risk of my life [sic].”

180. In addition to the text that appears consistently in the identified Iranian clients’ responses to each question, there are also a number of identical sentences that are featured in different sections of their Form 866 responses and statements of claims. An example of this is Mr MA’s statement of claims response to question 89, which includes the following,

“According to the Islamic sharia’s law, those who convert from Islam to any other religion including Christianity must be executed. They would consider my conversion as a heavy crime; infidelity and war against their Allah which must be punished by sever [sic] torture and death penalty.”

181. These sentences, including the grammatical and spelling errors, also appear in Mr FS’s response to question 90, as well as Mr AP’s response to question 95. The review of the Agent’s other clients’ applications and statements of claims found repetitive use of the same sentences or entire paragraphs, inclusive of the same grammatical and spelling errors and other identifiable features, used intermittently throughout many of the applications in response to different questions. This alludes to the use of template wording for protection claims that were placed into different responses for clients’ claims for protection as necessary. It also suggests that the Agent was cognisant of using the same wording for what should have been personalised responses for each client, and the reordering of paragraphs and sentences likely a deliberate attempt to obscure the degree of duplication in the documents from the assessing departmental officers.

⁵ Extract of shared wording for question 96 in paragraph 148

Mr HN and Mr SA

182. The application form responses and statement of claims for Mr HN were reviewed and found to not only contain duplicated wording in the responses to questions 88, and 90-96, but more significantly, included what appeared to be a large proportion of the same protection claims in response to question 89, as that submitted for Mr AI. The identical text from both clients' statement of claims is replicated below:

[REMOVED FOR PRIVACY REASONS]

183. A review of Mr HN's entry interview files indicates that while he did mention he worked at a boarding kennel and was responsible for training and caring for other people's pets, he reiterated to the interviewing officer that his main reason for leaving Iran was due to concerns over his job security when the kennel was forcibly closed. There is no indication of him *[removed]*, and that the extent of harm he faced related to the time when the Basij and the Government *"came to our place and sealed our working place and called us unclean because we are looking after animals which was due to religious matters. We paid money to re open [sic]"*. None of the claims mentioned in the application appear to correlate with any information Mr HN had previously provided the Department.
184. Conversely, Mr AI's statements relating to *[removed]* are consistent with those in his previous PPV application and entry interview. As with Mr AI, there is also no mention of Christianity in Mr HN's entry interview in relation to any claims for protection, and his religion had been left blank in the personal details section. During Mr HN's Protection visa interview on 12 December 2017, he stated that he started exploring the Christian faith two years prior, after he had already arrived in Australia. However, his statement of claims detailed above states that he was tortured by *"police of Iran"* because of his Christian religion. As such, it would appear the statement of claims is not consistent with the information provided by Mr HN at his Protection visa interview, as Mr HN confirmed that he did not have a religion in Iran, and therefore would not have been persecuted by Iranian police for being Christian. In the Department's decision to refuse Mr HN's SHEV application on 12 April 2018, the delegate determined that Mr HN had provided the Department with contradictory information regarding his claims for protection between his entry interview and his Protection visa interview on 12 December 2017, and had failed to engage with, acknowledge or explain why there were passages in his statement of claims that had previously been submitted by other visa applicants. The delegate was satisfied that Mr HN had submitted a statement of claim which has been plagiarised from another applicant's Protection visa application, and *"that the use of the plagiarised material was intentional, and undertaken in order to bolster the applicant's claims for protection"*.
185. While both Mr AI and Mr HN have identified as being ethnically Turkish in their interactions with the Department, there is no information available that suggests that Mr AI and Mr HN know each other, as they reside in different states, and engaged the Agent's services more than a year apart. As with the other applications considered in this decision, the Agent appears to be the only identifiable link between Mr AI and Mr HN, in regards to the preparation of their Protection visa applications. I therefore reject the Agent's statement in his second submission to the section 309 notice, that collusion between Iranian humanitarian visa applicants in Australia would account for the duplication of specific protection claims in Mr HN's statement of claims.
186. In addition, of the remaining statements in Mr HN's response to question 89 not attributed to Mr AI's claims, a proportion was identified in another application for a client the Agent had represented, Mr SA. Copies of the Form 866C responses and statements of claims for Mr HN and Mr SA can be found at (Appendix 8). The duplicated statements are as follows:

"They were giving me warnings to 'freeze'...As soon as I reached the...street, I hailed a private car. An elderly man who was driving the car stopped for me. In the car, he asked me what had happened and I asked him to save me from the(m)..."

187. It is unlikely that the specific and personalised nature of the protection claims in Mr HN's statement would be shared with Mr AI and Mr SA, and be expressed in the same words, inclusive of identical spelling and grammatical errors, given both clients appear to be unrelated and unknown to Mr HN. The identified wording in both Mr AI and Mr SA's Form 866C responses and statements of claim prepared by the Agent is largely consistent, and in the case of Mr SA identical, to those provided to the Department in their previous PPV applications prior to engaging the Agent's services. As such, I am of the view that these statements can be attributed to Mr AI and Mr SA, and consequently find that Mr HN's Form 866C responses and information in the statement of claims were likely prepared using their applications. When addressing this adverse information in the section 309 notice, the Agent initially elected to only broadly deny the potential findings the Authority put forward in relation to CMP-29881. In his subsequent submission to the section 309 notice, the Agent argued that Mr HN's responses at interview that the statement of claims was "*100 per cent*" his own words and reflected his "*previous life*" was evidence that the Agent had only prepared the statement based on Mr HN's instructions. Given the information before the Authority, including Mr HN's previous submission to the Department of his economic motivation for leaving Iran and his religion, and the findings of the delegate in relation to credibility, I am satisfied that the application and statement of claims that the Agent prepared contained information which did not reflect Mr HN's personal circumstances. Further, given the passages contain identical wording, including the same spelling, grammar and punctuation errors, which also implies that these were electronically cut and pasted between documents, I am satisfied that this information was extracted by the Agent from the applications of other clients he was representing, and which he had access to electronic copies to. As such, the information the Agent prepared and submitted to the Department on behalf of Mr HN was false and misleading.
188. In addition, both passages featuring statements pertaining to Christianity in Mr AI's application forms and statement of claims, were also found in the applications and statements of claims of Mr MA and Mr MJARC, which were lodged approximately eight months later. With consideration on the finding in respect of the duplication of Mr AI's claims within Mr HN's application forms and statement of claims, I am satisfied that the Agent likewise duplicated statements from Mr AI's documentation in respect of other identified clients. There is no evidence before the Authority that the Agent advised Mr HN that the application was vexatious or grossly unfounded, or that he obtained written acknowledgement to proceed with its lodgement.
189. This duplication of specific and personalised claims for protection is further concerning as Mr HN's application forms and statement of claims were finalised and signed on 7 June 2017, only one week after the Agent provided the Authority with his section 308 notice submission to respond to Mr AI's complaint. Despite being notified of allegations of inaccurate and false statement of claims in both Mr AI's complaint, as well as those identified in the first section 308 notice provided to him on 17 February 2017, the Agent elected to knowingly use wording taken directly from Mr AI and Mr SA's claims and substitute these into Mr HN's statement. As the Authority had already raised potential conduct concerns in respect of inaccurate or misleading information in relation to the clients' statements, the Agent's subsequent actions demonstrate a blatant and ongoing disregard of his professional obligations and an unwillingness to reform his practice, thereby compounding the adverse conduct addressed in this decision.

Client applications belonging to Afghani nationals

Mr KAJ, Mr NS, Mr HD, Mr AH, Mr ND, Mr MYA, Mr DHS

190. In addition to Mr DHS's and Mr MYA's applications, the review of the Agent's broader client caseload identified no less than five further applications in respect of Afghani clients, which contain duplicated or template wording. There is some specific text in response to question 89, including personal details and life events of the applicants, which appear to relate to the respective clients. Despite the inclusion of some

personalised text, duplicated wording was identified in a number of the responses provided in respect of question 89.

Mr AH and Mr HD both stated that:

"The Taliban group and their Ideology and opinion are strongly disagreeing with this sort of program; there were many Taliban near to that area[sic]. The Taliban found that I was helping to Afghanistan government [sic] through this program. The Taliban accused me as a traitor because of supporting [sic] the Afghans government [sic] by working for them...also accused me which I am [sic] a spy because of my relation with...organisation[s]...After I was threatened by the Taliban [sic] was so afraid. I knew they will come...to kill me, I didn't feel safe...was sure that they will capture me and after that they would kill me. They really hurt me and I got a lot of psychological damage....I am not sure that I will be alive by next couple of minutes or no [sic], I could be killed at any moment and everywhere. It was unbearable conditions, after that I made my decision to leave and flee from the country."

191. Mr NS, Mr KAJ and Mr ND's responses contain portions of this duplicated wording, though their responses most closely resemble Mr HD's response, particularly as all responses include the wording "*mentally I was not in normal condition*". Other identifiable shared wording was found in Mr NS and Mr KAJ's response which both include:

"...have been targeted by the Taliban for not supporting their religious and political ideas. They threatened to kill...I feared that I would eventually be killed by the Taliban. Life was extremely difficult for Shia Hazara under the Taliban, Shia Hazara was [sic] unable to practice their religion openly and many were targeted simply for being Hazara. I fear that the Taliban target Shia Hazara and those who are imputed to oppose the Taliban."

192. However, unlike the varying levels of original text in the question 89 responses, the other responses provided in the clients' applications in relation to questions 90 through to 96, appear to have almost identical text for all the applications considered. In relation to question 90, all the client applications reviewed, with the exception of Mr MYA, stated:

"I am sure that my return to Afghanistan would never be safe. If I return to Afghanistan I will be killed. There are Taliban present throughout Afghanistan and they stop people along the roads and it is very dangerous to travel from city to city. I have heard that many people have been beheaded by Taliban when travelling along the road. I believe if the Taliban were aware I had returned from Australia this would cause even more problems for me, if they find any proof of a person being associated with foreigners inside or outside the country they will kill them. If I am forced to return to [sic] I have no support and no protection over there."

193. Mr MYA's response was largely identical to that above, with slight alterations to include both Afghanistan and Pakistan as possible return locations, and the names of other insurgency groups when advising of many people being beheaded while travelling on roads.
194. In response to whether they experienced harm (question 91), all seven applicants' responses included "*Yes, please refer to my answer in Question 89; always I had experience of harm of [sic] that country.*" In addition, three of the applicants' responses repeated the same statements from those featured in some of the question 89 responses by stating "*I got a lot of psychological damage, mentally I was not in normal condition because I was not sure that I will be alive by next couple of minutes or no [sic], I could be killed at any moment and everywhere.*"
195. In response to question 92, all seven Afghani applications examined stated "*No, the authority of Afghanistan was not able to provide me with effective protection even they are not able to protect themselves from attacks by insurgent groups. I was fearful of the Afghanistan government and strict vigilantes*" when asked whether they had sought help. Mr MYA's response includes the same two sentences, though in the opposite order.

196. In response to question 93, six of the seven applications stated that *"No matter where I would go, the Taliban strict vigilantes could locate and harm me. There is not safe place [sic] in Afghanistan to seek safety especially for me as Shia Hazaras [sic] which is targeted by groups such as the Taliban throughout the country"*.
197. This pattern of clearly identifiable template statements being used by either all or most of the Afghani clients identified also extends to the responses to questions 94, 95, and 96 (*Appendix 9*).
198. All the aforementioned statements belonging to Iranian and Afghani nationals appear to contain claims that have either been sourced from template wording or have been copied from another client's application. There appears to be a consistent repetition of common grammatical and spelling errors across the documents, which lends support to a finding that they were prepared by the same person using pre-prepared templates. In all cases considered, only the responses provided for question 89 have contained a degree of personalised information such as dates, people, or vague events specific to the individual client.
199. A prudent migration agent with experience in assisting Protection visa applicants to articulate claims for protection would have reviewed, identified, and likely questioned overt similarities amongst their client caseload. Conversely, however, the Agent has conceded that he prepared all application forms, as well as the separate statements of claim, witnessed nearly all the client declarations featured in the application in his capacity as a JP, and subsequently lodged them on behalf of the clients without question. Such conduct despite the Agent's assertions in his section 309 submission, imply that he was complicit in the deception and potential fraudulent activity in association with the applications and declarations submitted or demonstrated repeated and grave negligence at the very least.
198. In his submission to the section 309 notice, the Agent advised that the use of templates to reduce the time spent on repetitious elements in visa applications is an accepted practice in the migration advice profession, and within the Department itself. He also stated that the use of a template response does not diminish its correctness or truth, and that it is appropriate to describe *"common themes"* in protection visa application, such as persecution and torture, in the same or similar manner for different applicants, while customising client specific responses *"where relevant"*. While I accept that in the interests of time management and efficacy prefilled templates may be utilised for generic administrative documents, such as cover letters, I do not accept that this does or should extend to any aspect of the application that addresses the applicant's specific grounds for protection, which are subjective and highly personalised in nature.
199. I am of the view that the statutory declarations and application form responses for Protection visa applications should be based entirely on the personal circumstances of the individual applicant, and not rely on generic or template based responses that might be applied broadly to different clients. It is for this reason that I also reject the Agent's assertion that the use of template wording when articulating protection claims does not diminish the correctness or truth of the claims, particularly given the findings made in this decision. Where template wording is duplicated to articulate the majority of an applicant's statement of claims, as the Agent has done with many of his clients, these responses are not necessarily reflective of the applicants' experiences or circumstances, and are open to oversight and errors by the drafter, which may constitute misleading or inaccurate information. The Agent's decision to repeatedly duplicate large portions of clients' protection claims as a means of reducing the time and effort spent on each application, rather than individually articulating every client's claims, which may have prevented some of the significant integrity issues raised in this decision, is reflective of a lack of care and consideration shown towards his clients, and their best interests.
200. All the clients whose applications have been examined and discussed within this decision were identified to have resided in either South Australia, Victoria or New South Wales at the time that their applications were lodged, which span across an 18-month period from January 2016 to June 2017. While it has been confirmed that Mr KMF and Mr AI were known to each other, prior to engaging the Agent's services within a day of each other,

their responses do not strongly resemble each other, and have therefore not been compared. While there is mention of the same Churches and shared membership of the [same organisation] contained within the responses provided to question 89 with different clients' which may indicate those living in Adelaide may have been known to each other, there is no information available to the Authority to suggest that any of the applicants may have acted in collusion. It follows that the Agent was the primary, if not only, link between all the applicants where identical, else substantially similar, responses were provided in a number of instances and in a number of documents. Given these factors, I am satisfied that the Agent engineered and inserted the identical text into the Form 866C responses and statement of claims in respect of his clients' applications, and subsequently edited the wording to include minor differences and a small amount of personal circumstances. I am therefore satisfied that the Agent is the only link to every applicant.

201. Given consideration of the aforementioned information, and the Agent's responses to the two section 308 notices, and the section 309 notice, I accept that he was responsible for preparing all application forms and statements of claims considered in this decision, and for duplicating template claims into many of his clients' applications for protection.

Failure to maintain proper administrative and financial management records for clients

202. The Agent was requested in the first section 308 notice to provide complete client files for Mr DHS, Mr PB and Mr KMF. In response, the Agent provided a number of documents by email before sending a USB of the complete client files on 18 April 2017. Upon review of the documents on the USB, the Agent's legal representative was contacted on 21 April 2017 to confirm to the Authority that the documents provided reflected the complete client files for each complainant, and that there were no additional clients documents that needed to be included. This was confirmed by the Agent's legal representative on the same day by return email. The Agent subsequently provided a screenshot of his Clients account transaction statement to support the subsequent response to the first section 308 notice regarding dates of payment by Mr PB. Likewise, the Agent was requested to provide the complete client file for Mr AI in the second section 308 notice sent on 3 May 2017, inclusive of all file notes, correspondence, and financial records and documents. This was provided on 31 May 2017, though upon receipt of the subsequent request, the Agent also provided termination notification and Form 956, and a copy of the Consumer Guide on 11 August 2017.
203. The Agent provided a client contact summary for Mr DHS, Mr PB, Mr KMF, and Mr AI, however these lack detailed information, and appear to be derived from the same electronic template. As such, it is difficult to determine whether the file notes were created at the time they purportedly relate to, or were done so retrospectively. In the case of Mr AI, the Agent conceded that his client contact register did not contain records of two events that should have been recorded, but was unable to provide a reason why they were not.
204. In addition, the Agent failed to provide any detailed note taking of his interactions with clients, or written confirmation of their instructions in relation to a number of contested allegations. It would be reasonable to expect that a registered migration agent would make detailed notes of their client's protection claims, particularly where these were provided orally, either by phone or in person, and would use these to develop a draft document that could be reviewed and amended as necessary, as part of their preparation of the application and supporting documentation. It would also be expected that the agent would ensure that, upon completion of the application forms and statement of claims, the client would review and agree to the application and statement of claims and confirm such in writing. Based on the client files provided, and the Agent's submissions, in which he confirmed that he only typed the client's claims straight into electronic versions of the documents, it does not appear that any review had taken place by either the Agent or the clients concerned. As such, the Agent failed to provide any substantive evidence to support many of the Agent's assertions relating to his interactions with clients, and their purported instructions to him, particularly in relation to the preparation of their application

forms and statements of claims,⁶ which contradict the information put forward in the complaints, as well as that contained in departmental records.

CMP-29192

205. In the section 308 notice submissions, in respect of Mr PB's complaint, the Agent refuted "... the allegation that [he] never sought to take an oral or written statement from Mr PB or asked him to sign or complete any forms for his application", which is taken to mean that the Agent did in fact seek and/or take a statement from Mr PB, and ask him to sign and/or complete his application forms. Additionally, the Agent asserted that he "...took Mr PB's instructions by telephone over a number of occasions totalling between 3 and 4 hours, and used the information obtained to complete the application form."
206. However, when reviewing Mr PB's complete client file, which the Agent provided in support of his submissions, it only contained a draft version of application forms 866A, B and C, which were neither signed or dated by Mr PB, and contained no responses in relation to questions 88 to 96 of Form 866C. It is therefore unclear why the Agent would assert that he had completed the application forms and asked Mr PB to sign the application forms, given the documents provided to the Authority were incomplete and unsigned.
207. In addition to the lack of responses in Form 866C in relation to Mr PB's protection claims, no draft or finalised statement of claims was identified, despite the Agent's file note on the client contact summary identifying two telephone conversations on 11 and 12 April 2016 regarding his statement. It would appear reasonable that, had the Agent received instructions in April 2016, he would have made detailed file notes of Mr PB's protection claims, or commenced drafting his Form 866C responses and statement of claims in the 8 months prior to him seeking termination of the Service Agreement.
208. With regards to the client contact register in Mr PB's client file, it was found to contain two entries dated 1 and 8 April 2016 which relate to two telephone conversations with descriptions "Protection-Refusal-arash" and "Protection-Refusal-his brother". These appear to relate to a different client, as there is no information suggesting Mr PB has any association with the name 'Arash', and departmental records show that prior to engaging the Agent's services, he had not been refused a visa. As such, I am not satisfied that the client contact register is credible evidence of the Agent's actions, as it does not accurately reflect all his interactions with Mr PB and may contain information related to a different client. Given consideration of the information available, I do not consider the Agents records as credible and reject the assertions put forward in his submissions and consequently accept Mr PB's account that the Agent did not take oral or written instructions from him regarding his statement of claims at the time the client contact register purports it occurred.

Financial documents

209. In a subsequent request for information in relation to the first section 308 notice, the Agent was made aware of concerns with the validity of the financial documentation in his client files. Paramount to this were discrepancies identified in the professional fees payable and dates of payment between Service Agreements, tax invoices and receipts.
210. All four Service Agreements in relation to Mr DHS, Mr PB, Mr KMF, and Mr AI indicate, in the schedule of fees, that no Goods and Services Tax (GST) is applicable to the amount on the professional fees. Therefore, it is reasonable to presume that GST would be costed into the total fee amount. However, when issuing invoices to the four clients for outstanding fee amounts, the Agent has calculated GST onto the remaining amounts, which would require the clients to pay more than the total amount confirmed in the Service Agreement, as well as being inconsistent with the GST calculations in this document.

⁶ Notably the allegations and potential findings of inaccurate or misleading information in Mr KMF and Mr AI's applications.

211. This information was put to the Agent in the second request for information and documents, specifically in regards to Mr PB's client file. In response, the Agent asserted that this had been inadvertently omitted from the Service Agreement but he had nonetheless included GST in the tax invoice. However, based on the other Service Agreements and tax invoices provided to the Authority, this does not appear to be a single omission but a standard practice. It would appear that the Agent has not been applying GST consistently to payments made by clients, in compliance with his GST obligations, which inadvertently increased the total fee amount paid by the client from what was stipulated in the Service Agreements. As this practice appears to be repeated across the four clients whose financial documents have been considered, it appears that it extends to affect the Agent's client caseload more broadly. This practice also presents concerns with how the Agent has managed his financial reporting requirements, given the apparent inconsistencies between the fee amounts he receives from clients, and those stipulated in the contractual arrangements.
212. It was subsequently put to the Agent that there also appeared to be a number of errors in the receipts provided with Mr PB's client file. The Agent advised that the receipt for \$400 had not been paid on 15 April 2016 via Eftpos, as his statutory declaration stated, but was instead made on 16 June 2016 as indicated on the receipt in the client's file. The receipt stated that the payment was made by Eftpos, which the Agent has conceded was incorrect as the payment was made by a direct cash deposit. To support this correction, the Agent provided a screenshot of his Clients account transaction statement, showing a transaction on 16 June 2016 for \$400 with the transaction details "*Cash Dep Branch [removed]*". The deposit appears to have been made in the same suburb as Mr PB's residential address on the Service Agreement. However, given there is no clearly identifiable information, such as a name or client reference provided that would indicate that this payment was made by Mr PB, I am not satisfied that this document is sufficient proof of the correct transaction details.
213. A review of PB's two receipts found that they both indicated that the total professional fee amount due was \$1500, instead of \$2000 as stipulated in the Service Agreement. In his submissions, the Agent stated that this was due to the receipt template used, which automatically reflected a total fee payable of \$1500 unless manually changed.
214. It was also identified that of the seven receipts issued to Mr AI for instalments paid between 24 November 2015 and 31 March 2016, only the last one issued provided reference to the client's name. The Agent had advised the Authority that he includes a unique client number in the cash receipt reference number, it is not a clearly identifiable means of identifying who the receipt was issued to, and does not excuse a failure to include any of the client's details on the receipts. It would be expected that where a registered migration agent had made significant errors in issuing a tax invoice or receipt to a client as to affect the overall validity of the document, records would have been made of this error, and a replacement would be issued with the correct information. The Agent initially asserted in his section 308 notice submissions that all the financial recordkeeping errors were 'one-off' errors that did not reflect his broader practice, though in his section 309 notice submission he acknowledged that he had breached the Code in relation to his administrative and financial recordkeeping. As this oversight is not an isolated error in the Agent's client files, I reject his initial assertion to the contrary, and find that he has repeatedly demonstrated a lack of care and attention to detail with both his administrative and financial recordkeeping.

Failure to respond properly to their complaints

215. Mr PB and Mr MYA have both alleged that the Agent acted inappropriately when they sought to terminate their Service Agreements and requested partial or full refunds of the professional fees paid. In the case of Mr MYA, his authorised representative, Ms MM, stated that she was witness to the events identified in the complaint as inappropriate conduct.
216. While both former clients outlined similar accounts of the behaviour displayed by the Agent, there is no evidence that Mr MYA and Mr PB were known to each other and lived

in different states at the time they engaged the Agent's services. In light of these accounts, consideration has been given to the Agent's behaviour during a telephone discussion with an officer of the Authority on 14 February 2017. While the Agent has since apologised twice for the inappropriate response to the officer's request, his behaviour throughout the phone call appears to reflect the conduct identified in the allegations against him in regards to his behaviour towards clients when they expressed dissatisfaction with the Agent's services.

217. In response to this issue the Agent provided a copy of a letter signed by Mr MYA and him with his section 309 response and which was referenced by his legal representative in the written submission. The letter, signed by Mr MYA indicates that he was satisfied with the services provided by the Agent and contests a number of the allegations made. While the letter appears to have been signed on the same day Mr MYA and Ms MM attended the Agent's office, it is unclear under what circumstances the document was signed and whether the Agent had acted inappropriately as alleged. Given the conflicting information before me, I am unable to make a finding on whether or not the Agent failed to act fairly and respectfully towards the two clients when they sought termination of his services and requested refunds of the professional fees paid. However, I am satisfied that the Agent failed to respond professionally and appropriately to the Authority when advised of the complaint by the Authority.

Breaches of the Code

2.1 A registered migration agent must always:

- (a) act in accordance with the law (including, for an agent operating as an agent in a country other than Australia, the law of that country) and the legitimate interests of his or her client; and*
- (b) deal with her or her client competently, diligently and fairly.*

2.4 A registered migration agent must have due regard to a client's dependence on the agent's knowledge and experience.

2.6 To the extent that a registered migration agent must take account of objective criteria to make an application under the Migration Act or Migration Regulations, he or she must be frank and candid about the prospects of success when assessing a client's request for assistance in preparing a case or making an application under the Migration Act or Migration Regulations.

2.9 A registered migration agent must not make statements in support of an application under the Migration Act or Migration Regulations, or encourage the making of statements, which he or she knows or believes to be misleading or inaccurate.

2.9A In communicating with, or otherwise providing information to, the Authority, a registered migration agent must not mislead or deceive the Authority, whether directly or by withholding relevant information.

2.17 If an application under the Migration Act or the Migration Regulations is vexatious or grossly unfounded (for example, an application that has no hope of success) a registered migration agent:

- (a) must not encourage the client to lodge the application; and*
- (b) must advise the client in writing that, in the agent's opinion, the application is vexatious or grossly unfounded; and*
- (c) if the client still wishes to lodge the application - must obtain written acknowledgment from the client of the advice given under paragraph (b).*

Note: Under section 306AC of the Act, the Minister may refer a registered migration agent to the Authority for disciplinary action if the agent has a high visa refusal rate in relation to a visa of a particular class.

2.23 A registered migration agent must take all reasonable steps to maintain the reputation and integrity of the migration advice profession.

5.5 A registered migration agent must be aware of the effect of section 313 of the Act, and act on the basis that:

- (a) the agent is not entitled to be paid a fee or other reward for giving immigration assistance to a client unless the agent gives the client a statement of services that is consistent with the services, fees and disbursements in the Agreement for Services and Fees mentioned in clause 5.2; and*
- (b) a statement of services must set out:*
 - (i) particulars of each service performed; and*
 - (ii) the charge made in respect of each such service; and*
- (c) a client is entitled by the Act to recover the amount of a payment as a debt due to him or her if he or she:*
 - (i) made the payment to the agent for giving immigration assistance; and*
 - (ii) did not receive a statement of services before making the payment; and*
 - (iii) does not receive a statement of services within 28 days after a final decision is made about the visa application, cancellation review application, nomination or sponsorship to which the immigration assistance related.*

6.1 A registered migration agent must maintain proper records that can be made available for inspection on request by the Authority, including files containing:

- (a) a copy of each client's application; and*
- (b) copies of each written communication between:*
 - (i) the client and the agent; and*
 - (ii) the agent and any relevant statutory authority; and*
 - (iii) the agent and the Department regarding the client; and*
- (c) file notes of every substantive or material oral communication between:*
 - (i) the client and the agent; and*
 - (ii) the agent and an official of any relevant statutory authority; and*
 - (iii) the agent and the Department regarding the client.*

6.1A A registered migration agent must keep the records mentioned in clause 6.1 for a period of 7 years after the date of the last action on the file for the client.

7.4 A registered migration agent must keep records of the clients' account, including:

- (a) the date and amount of each deposit made to the clients' account, including an indication of the purpose of the deposit and the client on whose behalf the deposit is made; and*
- (b) the date and amount of each withdrawal made in relation to an individual client, and the name of each recipient of money that was withdrawn; and*
- (c) receipts for any payments made by the client to the agent; and*
- (d) statements of services; and*
- (e) copies of invoices or accounts rendered in relation to the account*

9.1 A registered migration agent must respond properly to a complaint by a person (whether or not the person is a client) about the work or services carried out by the agent or the agent's employee.

10.2 A client is entitled to ask a registered migration agent (orally or in writing) to return any document that belongs to the client. The agent must return the document within 7 days after being asked.

10.4 A registered migration agent must not withhold a document that belongs to a client, as part of a claim that the agent has a right to withhold a document by a lien over it, unless the agent holds a current legal practising certificate issued by an Australian body authorised by law to issue it.

10.5 On completion of services, a registered migration agent must, if asked by the client, give to the client all the documents:

- (a) given to the agent by the client; or*
- (b) for which the client has paid.*

10.6 If the client terminates the instructions, a registered migration agent must take all reasonable steps to deliver all documents quickly to the client or any other person nominated by the client in writing. If the agent claims a lien on any documents, the agent must take action to quantify the amount claimed and tell the client in a timely manner.

217. Pursuant to paragraph 303(1)(h) of the Act, the Authority may caution a registered migration agent or suspend or cancel their registration if the agent has not complied with the Code.

218. On the basis of the evidence before the Authority in relation CMP-27685, CMP-29192, CMP-29305, CMP-29695, CMP- 29881, CMP-30749, CMP-31215 and CMP-31834, and having regard to the findings that have been made, I am satisfied that the Agent has made the following breaches of the Code of Conduct:

- (a) The Agent failed to issue Statements of Service to Mr DHS, Mr PB, Mr KMF and Mr AI, as well as his broader clientele since becoming registered. As such, I am satisfied that the Agent has breached **clauses 5.5 and 7.4(d)** of the Code.
- (b) The Agent withheld Mr PB's documents from him for a period longer than seven days after he terminated his Service Agreement, and following two subsequent requests made for their return. I am satisfied that the Agent has breached **clauses 10.2, 10.4, 10.5(a) and 10.6** of the Code by withholding these documents.
- (c) The Agent prepared Mr KMF's, Mr AI's and Mr MK's TPV and SHEV applications and statutory declarations which contained information he knew, or should have reasonably known were misleading and/or inaccurate. Consequently, I am satisfied that the Agent has engaged in conduct in breach of **clause 2.9** of the Code.
- (d) The Agent has repeatedly attempted to mislead the Authority in his responses to questions regarding integrity concerns in client applications and statements of claims in breach of **clause 2.9A** of the Code.
- (e) The Agent has repeatedly failed to act in the legitimate best interests of his clients by not providing frank and candid advice when preparing applications and statements of claims that deviated or contradicted information he knew was before the Department, which has negatively affected the applicants' prospects of success. Consequently, I am satisfied that the Agent engaged in conduct in breach of **clause 2.6** of the Code.
- (f) The Agent's conduct has exposed clients to potential adverse visa outcomes and/or criminal prosecution by assisting them to provide duplicated and template information to a Commonwealth department, in relation to their claims for protection. Accordingly, I am satisfied that the Agent's conduct by not acting in accordance with law, and failing to deal with clients competently, diligently and fairly, and with due regard for their dependence on his knowledge and experience is in breach of **clauses 2.1 and 2.4** of the Code.
- (g) I am satisfied that the Agent prepared a vexatious and/or grossly unfounded application and statement of claims on behalf of Mr HN, in breach of **clause 2.17** of the Code.
- (h) The Agent has failed to maintain sound recordkeeping practices and issue accurate financial records when handling client monies. Accordingly, I am satisfied that this conduct is a breach of **clauses 6.1, 6.1A and 7.4** of the Code.

- (i) The Agent failed to respond appropriately to the Authority when notified of Mr PB's complaint and when requested to return his documents in breach of **clause 9.1** of the Code.
- (j) The Agent has repeatedly failed to maintain the reputation and integrity of the migration advice profession by providing the Department and the Authority with statutory declarations, in both the application forms and statements of claims, prepared and witnessed by the Agent, containing statements and information which did not reflect the circumstances of his clients. Accordingly, I am satisfied that the Agent has acted in breach of **clause 2.23** of the Code.

Integrity, fitness and propriety

219. Pursuant to paragraph 303(1)(f) of the Act, the Authority may caution a registered migration agent, or suspend or cancel their registration, if the Authority becomes satisfied that the agent is not a person of integrity or otherwise not a fit and proper person to give immigration assistance.

220. There is a degree of overlap between 'fit and proper' and 'integrity' to the extent that fitness and propriety include consideration of the honesty of the actions of an individual.

221. 'Integrity' means 'soundness of moral principle and character, uprightness and honesty'.⁷

222. Whether a person is a 'fit and proper person to give immigration assistance' is an enquiry which looks broadly at three factors – honesty, knowledge and competency.

223. In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, Toohey and Gaudron JJ indicated several factors that could be taken into account in determining whether a person was 'fit and proper'. These included, but were not limited to, conduct, character and reputation. Their Honours stated (at 380):

[D]epending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.

224. The formula 'fit and proper' (and 'person of integrity') must be construed in light of the particular legislative context at the registration scheme underpinning the migration advice profession.⁸

225. The context in which the reference to 'fit and proper' person occurs in section 290 of the Act is the applicant's giving of immigration assistance. The context also includes:

- (a) the Act which creates offences for misleading statements and advertising, practicing when unregistered and misrepresenting a matter; and
- (b) the Code contained within the Agents Regulations which refers to the applicant being able to perform diligently and honestly, being able and willing to deal fairly with clients, having knowledge of business procedure and properly managing and maintaining client records and maintaining client confidentiality.

226. Key elements of the fitness test are:

⁷ See *Re Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 at paragraph [26].

⁸ See *Cunliffe v Commonwealth* (1994) 182 CLR 272

- the honesty of the person; and
 - the person's knowledge of the migration scheme and ability to fulfil the position of a migration agent.
227. The requirement in section 290 that the applicant also be a 'person of integrity' is not concerned with the person's knowledge of the migration scheme or ability as a migration agent, but is primarily concerned with a person's reputation, moral principle and character, including their honesty.
228. Having regard to the body of case law cited above, a consideration of whether the Agent is a fit and proper person or a person of integrity to provide immigration assistance can legitimately include the following:
- that the Agent's past conduct can be an indicator of the likelihood of the improper conduct occurring in the future;
 - the Agent's honesty and competency towards clients, the Department and the Authority;
 - a consideration of the context in which the agent works, i.e. the provision of immigration assistance to migration clients;
 - the Agent's knowledge and competency in immigration law and practice;
 - the reputation of the Agent as a result of their conduct and the public perception of that conduct; and
 - the perception of the conduct by the Agent's "professional colleagues of good repute and competency".⁹
229. Having regard to the totality of the Agent's conduct in relation to the complaint and my findings above, I am satisfied that the Agent is 'not a person of integrity or is otherwise not a fit and proper person to give immigration assistance'.
230. Based on the evidence before me, I am satisfied that the Agent:
- failed to issue any Statements of Service to clients, despite withdrawing client monies from his clients account;
 - Provided inaccurate and misleading information to the Department as part of Mr KMF's, Mr AI's, and Mr MK's applications;
 - Failed to keep adequate client file notes relating to drafting of client responses for their protection applications and supporting documentation;
 - Failed to provide frank and candid advice to clients when assisting them to apply for protection, and failed to provide advice relating to their prospects of success in writing;
 - Prepared a significant number of Protection visa applications and statements of claims that shared duplicated or template claims for protection, contrary to the integrity of Australia's visa program, and in doing so, undermined the program and failed to act in the best interests of his clients when articulating their protection claims;
 - Prepared and lodged a vexatious and/or grossly unfounded application for protection on behalf of Mr HN using Mr AI and Mr SA's protection claims. This conduct, considered to have occurred shortly after he responded to allegations of fraudulent conduct in respect of Mr AI's application, as well as in the first section 308 notice, shows a propensity for deceitful conduct;
 - The Agent has repeatedly attempted to mislead the Authority in his responses to the complaints;

⁹ *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

- The Agent has demonstrated a blatant disregard for the Authority and migration regulatory scheme by failing to respond reasonably to a request made by the Authority, and engaging in subsequent fraudulent conduct after the Authority had already brought conduct concerns to his attention;
- The Agent's conduct, as made out in this decision record, demonstrates a blatant and ongoing disregard for the integrity of the Department's Protection visa program; and
- The Agent has repeatedly demonstrated a lack of regard for section 11 of the Statutory Declaration Act 1959 and his clients by drafting and witnessing their statutory declarations and Form 866C's, knowing that the responses contained large amounts of duplicated, misleading, and inaccurate information.

Consideration of Appropriate Disciplinary Action

231. In deciding to discipline the Agent under section 303 of the Act I have taken into account all of the circumstances of the case, including the following:

- (a) Whether the Agent's behaviour is of a minor or serious nature. The Authority has identified the following behaviour as extremely serious and therefore likely to result in discipline at the higher end of the scale:
 - i. criminal behaviour;
 - ii. fraudulent behaviour;
 - iii. behaviour that demonstrates fundamental lack of knowledge of the law; or
 - iv. involves a blatant disregard for or a significant degree of indifference to the law;
 - v. repeated occurrences of the conduct described in subsection 303(1) (d)-(h) and/or;
 - vi. agent behaviour that has resulted in significant harm or substantial loss to clients.
- (b) Any aggravating factors that increase the Agent's culpability including but not limited to previous conduct.
- (c) Any mitigating factors that decrease the Agent's culpability including but not limited to evidence that the Agent's health has contributed to the Agent's culpability or where the Agent has undertaken steps to remedy the situation.

Seriousness of behaviour

232. In deciding to discipline the Agent under section 303 of the Act, I have taken into account all of the circumstances of the case, including the severity of the Agent's behaviour and any mitigating or aggravating circumstances which may exist.

233. Having regard to the Complaint Classification Matrix, I have considered that the Agent's conduct falls within the Major classification for the following reasons:

- (a) The conduct involves a blatant disregard for, or a significant degree of indifference, to the law, the Authority, and the Department's Protection visa program;
- (b) The Agent has breached the Code with respect to multiple counts of serious conduct, including fraudulent behaviour;
- (c) Contrary to his assertions, the Agent has acted without any concern as to whether his conduct would adversely impact on or undermine the reputation of the migration advice profession, particularly conduct which had the potential to jeopardise the integrity of the Protection visa program; and
- (d) I have found that the Agent is not a person of integrity, nor a fit and proper person to provide immigration assistance.

Aggravating factors

234. The Agent's behaviour and actions, which are addressed in this decision record, fall well short of the standard expected of a registered migration agent. I consider the Agents failure to take reasonable steps to ensure that the applications he submitted to the Department were not false or misleading to be extremely serious. Such conduct has a direct and profound impact upon the integrity of Australia's visa and migration programs.
235. While the Agent has conceded to breaching some clauses of the Code pertaining to more minor conduct issues, he has not been forthcoming in acknowledging or expressing remorse for the serious conduct identified during the investigation. The Agent has consistently attempted to distance himself from his personal responsibilities as a registered migration agent and his obligations under the Code by diverting and apportioning blame onto his clients for the most severe matters with a view to minimising potential disciplinary action. With regard to the findings that the Agent prepared and lodged Protection visa applications that contained duplicated claims for protection, misleading and/or inaccurate information, or that were manifestly unfounded, the Agent has failed to properly engage with, and respond to, this adverse information in the section 309 notice by using the same generic response and failing to address matters in any great detail. Furthermore, I am not satisfied that he has been honest throughout the investigation, or provided reliable evidence to support his submissions, demonstrating a level of disregard for the Authority and the migration agent regulatory scheme.
236. I acknowledge that this is the Agent's first sanction, however I find that his conduct over a number of years since he was first registered in 2015 has demonstrated that he poses a significant and ongoing risk to migration consumers and to the integrity of the Department's visa programs. I am satisfied that if he were to continue to practice as a registered migration agent, he would likely continue to engage in a similar pattern of conduct.
237. With regards to the Agent's integrity, fitness and propriety, I have found that his fraudulent practice over a substantial period of time to have been an abuse of the Protection visa system, and to have caused significant detriment to a number of his clients. In dealing with clients who are seeking Australia's protection, migration agents are usually dealing with persons who by reason of their unfamiliarity with Australian migration law and practice, and language, and are therefore heavily reliant on their migration agent. This role requires migration agents to be persons with the highest probity. The Agent, through his identified conduct, has failed to demonstrate the professionalism and integrity expected of a registered migration agent. I therefore reject his assertion that he *"has always attempted to uphold the standards of the migration profession...[and] never acted intentionally to bring the migration profession into disrepute"*.

Mitigating Factors

238. The Agent has provided the following submissions to be taken into account in making this decision:
- He has always attempted to uphold the standards expected of the migration profession and has never intentionally brought the migration profession into disrepute through his actions,
 - His migration advice business is his only source of income;
 - He has instigated a number of changes to his business practices to address the administrative and financial recordkeeping issues identified in the section 308 and 309 notices;
 - He no longer provides services to potential Protection visa clients, due to integrity issues he has experienced with them providing inconsistent information evident in the complaints made against him; and

- He is relatively inexperienced in the migration advice profession and in running a migration advice business.
239. With regards to the submissions put forward by the Agent within his section 309 notice response, I am not satisfied that these alone contributed to, or mitigate, the findings made as to the Agent's conduct over a number of years, in particular the most severe breaches of the Code which are the subject of this decision. While I accept that the Agent has only been registered since July 2015, and this inexperience may have contributed towards some errors in his business practices and procedures, the Agent's conduct extends to inherent concerns with his integrity. The Agent has not presented any evidence of other mitigating circumstances relevant to the findings in this decision.
240. In addition, while I acknowledge that the Agent has accepted responsibility for some of his conduct, and has advised that he has rectified his administrative and financial recordkeeping practice following receipt of the section 309 notice, he has either failed to properly engage with, or diverted blame onto his clients, for the most serious matters raised during the investigation. For example, the Agent's submissions that he no longer provides Protection visa services due to the "*integrity issues*" with clients providing inconsistent information, and that his clients may have acted in collusion to produce identically worded protection claims, are both incorrect and inadequate assertions, given I have found that it was the Agent's conduct, and not his clients, that attributed to the majority, if not all, of the integrity concerns raised with the Protection visa applications examined. I am not satisfied that the Agent has demonstrated a genuine understanding of the severity of his wrongdoing, and the impact on his suitability to provide immigration assistance. As previously addressed, the findings made in this decision demonstrate that the Agent has made no attempt to uphold the professional requirements of the migration advice profession or remedy the effect his prolonged and widespread fraudulent practice has had on the industry's reputation, since becoming registered.
241. As the Agent has advised that his migration advice business is his only source of income, I have taken into account whether a disciplinary decision would affect the Agent's financial earning capacity and livelihood. In weighing the effect of a suspension or cancellation decision on the Agent's financial earning capacity and livelihood, I consider that the serious nature of the conduct in question, which occurred over a number of years, is more than a singular lapse of judgement or behaviour. While I accept that the disciplinary decision will have an impact on his livelihood, I am of the view that this is significantly outweighed by the public interest given the seriousness of the Agent's conduct in relation to preparing and lodging claims for protection that contained duplicated, misleading and/or inaccurate information, and in the case of Mr HN's application, was manifestly unfounded.

Consumer Protection

242. 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.
243. The behaviour demonstrated by the Agent falls short of the reasonably expected standards of a registered migration agent. I consider that the Agent poses a serious and ongoing risk to consumers. I am satisfied that if the Agent were to continue to practice as a registered migration agent, the Agent 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.
244. I consider that any personal impact on the Agent resulting from the decision to cancel his registration is substantially outweighed by the public interest in ensuring that

vulnerable consumers are protected and that the integrity of the Australian visa programs is maintained.

Decision

245. In all of the circumstances, and in the interests of consumer protection, I consider that it is appropriate to cancel the Agent's registration.
246. Based on the facts and evidence before me, and my findings as discussed in the decision, I have decided to cancel the Agent's registration as a migration agent under subparagraph 303(1)(a) of the Act. I am satisfied for the purposes of subparagraphs 303(1)(f) and (h) that:
- the Agent is not a person of integrity, or is otherwise not a fit and proper person to give immigration assistance; and
 - the Agent has not complied with clauses of the Code.
247. In accordance with section 292 of the Act, an agent who has had their registration cancelled must not be registered within 5 years of the cancellation.
248. Accordingly, this cancellation will be in effect for a period of 5 years from the date of this decision.

Professional Standards and Integrity Section
Office of the Migration Agents Registration Authority
Department of Home Affairs
Date of Decision: 11 May 2018