



DECISION RECORD

AGENT	Mohammed Wadood
COMPLAINT NUMBER	CMP-42455
DECISION	Cancellation
DATE OF DECISION	13 April 2021

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>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 Act</i>	<i>The Migration Act 1958</i>
<i>The Regulations</i>	<i>The Migration Regulations 1994</i>
<i>The Agent</i>	Mohammed Silmy Abdul Wadood
<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
<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 9 April 2015 and was allocated the MARN 1570930. His registration had been renewed annually to date, with the most recent registration commencing on 9 May 2019. His application for repeat registration made on 8 May 2020 is pending.
3. The Register lists the Agent as being an independent contractor for [removed for privacy reasons]. He is also a director of Oz Study & Migration based in Sri Lanka.

Complaint

4. On 20 February 2019 the Authority received a complaint about the Agent's conduct as a migration agent from Mr UL.
5. The complaint related to a subclass 457 visa application. The main points of Mr UL's complaint were:
 - His agreement stated that he would be charged a maximum of \$15,000 but he had to pay \$22,000 in total.
 - He had an interview and signed an employment contract with a potential sponsor ('the potential sponsor') however he later found out that his sponsor was ('the sponsor') a business he had no knowledge of.
 - The money he paid the Agent was deposited into the bank accounts of multiple persons in Sri Lanka, and not into an account under the Agent's name.
 - The Agent agreed to provide him with a refund, after Mr UL withdrew his application following the refusal of the nomination, but had not done so.
6. Note: Since making his complaint Mr UL has confirmed that he has been provided a full refund with the final instalment received on 16 October 2020.

Department records

7. Departmental records relevant to Mr UL's complaint:
 - On 30 June 2017 a Standard Business Sponsor application was lodged for the sponsor. The same day the sponsor lodged an application nominating Mr UL for a subclass 457 visa. The sponsorship was approved on 18 October 2017.
 - On 28 February 2018 an application for a subclass 457 visa was lodged for Mr UL in relation to the nomination by the sponsor.
 - On 21 August 2018 the nomination was refused on. The same day Mr UL was invited to comment on the adverse information that his sponsor did not have an approved nomination, or to withdraw his application. He duly withdrew his application on 21 September 2018.
 - The Agent was the acting migration agent for the sponsorship, nomination and visa applications.

8. Departmental records relevant to the Agent's relatives:
- On 29 June 2017 an application was lodged by the potential sponsor nominating the Agent's relative for a subclass 457 visa. The nomination was approved on 23 February 2018.
 - On 30 June 2017 an application for a subclass 457 visa was lodged for relatives of the Agent in relation to the nomination by the potential sponsor. This application was refused on 20 August 2018 as the qualification and work experience requirements for the position were not met.
 - The Agent was the acting migration agent for both the nomination and visa applications.
9. The relevance of the above applications arose during the investigation of the complaint, and is discussed later in this decision under Conflict of interest.

Notice under section 308 of the Act ("the first section 308 notice")

10. On 5 March 2020 the Authority published the complaint to the Agent, advising the Agent that it raised concerns regarding the Agent's compliance with clauses 2.1, 5.2, 7.2, and 7.4 of the Code.
11. Pursuant to section 308 of the Act, the Authority requested the Agent to provide the following information:
- Advice given to Mr UL about the change of his sponsor.
 - Details of the payments made by Mr UL and the arrangements to handle the money he paid.
 - Details of the refund of the VAC following the withdrawal of Mr UL's subclass 457 visa application.
 - The Agent's arrangements to collect clients' monies.
 - The Agent's intention to provide a further refund to Mr UL.

The Agent's response to the first section 308 notice

12. The Agent was required to provide a response to the first section 308 notice by no later than 20 March 2020. However, his response was not received until 19 May 2020, after the grant of three extensions and much prompting. In summary, the Agent response stated:

Advice provided to Mr UL about the change in his sponsor

- Mr UL was referred to the Agent by the consultant in Sri Lanka, who looks for possible sponsors in Australia for him.
- The potential sponsor agreed to interview Mr UL and one other applicant. After the interview the Agent emailed the employment contract (unsigned by the employer) to both the candidates for signature mentioning that the employment offer is not finalised. Once the candidate was chosen he would get a signed copy of the contract from the employer.
- The Agent verbally advised Mr UL that he was not successful through WhatsApp, his preferred method of communicating, unless when sending documents, which went through the consultant in Sri Lanka.

Services and payments not in the agreement

- The contract clearly showed the fees and the bank details to make payments. Mr UL never directly made any payments to the Agent, as they all came through the consultant. This he

did for his 'convenience and trust'. The Agent always took payments after the services were completed and when the files were ready to lodge.

- The money was not transferred to any of the Agents accounts but the consultant paid him in cash. Regarding his refund request, the Agent told Mr UL verbally through WhatsApp that a refund to an overseas account would take longer therefore he insisted the refund be made to the Agent's account to be used for a new visa application with a new nomination with the same sponsor.

Refund of VAC for subclass 457 visa application

- As soon as the Agent received the refund, he tried several times to contact Mr UL by phone without success. He therefore immediately emailed him advising that overseas account transactions take a bit longer than the onshore account. As previously mentioned Mr UL insisted the refund be paid into the Agent's account to lodge a new visa application. As Mr UL was not in contact for a long time, the money was refunded through the consultant in September 2019.

Collection of client monies

- For consultations, the Agent collects money the same day. If a client is committed then he charges only when the application is ready for submission, after the work has been done. All payments are made into his business account.

Payment in advance of services by Mr UL

- The Agent is not too sure what agreement Mr UL made with the Sri Lankan consultant regarding payments. The Agent provided him with a service agreement, which clearly has payment details and mode of payment.

Refund request

- The Agent is willing to provide all the money Mr UL paid as per the agreement. The Agent is unable to verify and collect the evidence of the amount he has already refunded due to this lockdown here in Australia as well as Sri Lanka. Once restrictions are lifted, the full amount will be refunded.

Notice under section 308 of the Act ("the second section 308 notice")

13. On 26 June 2020 pursuant to section 308 of the Act, the Agent was requested to provide the following information:
14. On 26 June 2020 pursuant to section 308 of the Act, the Agent was requested to provide the following information:
 - Details about the interview with the potential sponsor and the involvement of the Agent's relative as the successful applicant and the Agent's representation of his relatives.
 - Whether he had a conflict of interest in representing his relatives.
 - Details about the sponsorship by the sponsor and advice given to Mr UL
 - Details about the employment contract with the sponsor, which Mr UL has denied signing.
 - His arrangements with the consultant in Sri Lanka.
 - Further information about the payments made by Mr UL.
15. The Agent was also asked to provide his service agreement with the sponsor, any invoices or receipts issued to the sponsor, and any communications with the sponsor relating to the selection and nomination of Mr UL.

16. He was also provided with a statement made by Mr UL's attorney. It had been an oversight not to have provided the Agent with this statement when first notified of the complaint.

The Agent's response to the second section 308 notice

17. The Agent's response to the second section 308 notice was received on 3 August 2020 and is summarised below:

Interview with potential sponsor

- The Agent found out that Mr UL was unsuccessful on 8 May 2017 after the owner of the potential sponsor, interviewed the second applicant. The same day he unsuccessfully tried to call Mr UL so informed the consultant of the outcome, and advised her about the potential employer, the sponsor.
- The Agent's relative was the successful applicant, and the Agent acted as their migration agent. He did not think he had a conflict of interest when representing Mr UL because he did not interview any of them, the employer made the decision.

Sponsorship by the sponsor

- After Mr UL was unsuccessful, the Agent forwarded his resume to Mr AC of the sponsor who because he was a very busy person was happy to recruit him without an interview.
- It was not easy to contact Mr UL (about being sponsored by the sponsor) as the Agent used to mostly communicate through the consultant in Sri Lanka. The advice was given in about mid May 2017 through the consultant.

Employment contract with the sponsor

- The signing of the employment contract was arranged by the consultant. It came into the Agent's possession when she brought it to his office in Colombo. He had no idea that Mr UL had not signed the employment contract.

Arrangement with the consultant

- The arrangement was formal. The consultant would refer potential clients, mostly just for an initial free consultation as they were not skilled enough for further processing. Mr UL was the only one who went to this level, with no further referrals from her.
- Communications were mostly directly with clients or sometimes through the consultant's WhatsApp when the client was in her office.

Financial matters

- The Agent only discussed financial matters with confirmed clients, with the mode of payment stated in the client agreement.
- The Agent had no idea about Mr UL's claims and his agreement with the consultant. The payment terms were only as per the client agreement.
- Mr UL dealt with the financial matters through the consultant. The Agent had no control though he did advise Mr UL to follow the agreement.

Agreement with the sponsor

- Mr AC signed a printed copy of the agreement with the sponsor but the Agent did not return a scanned copy to him. The Agent recently moved house but all the documents should be somewhere in his garage. He would search for them and email them as soon as he can. At the same time, he would also email any invoices or receipts issued to the sponsor.
- All communication with the sponsor was by phone when Mr AC would call.

Notice under section 309 of the Act ("the section 309 notice")

18. On 12 October 2020, the Authority sent to the Agent a notice pursuant to section 309(2) of the Act, advising him that it was considering cautioning him, or suspending or cancelling his registration under section 303(1) of the Act.
19. The Agent was notified that having regard to the information before the Authority, it was open to the delegate to be satisfied that he had engaged in conduct that breached his obligations under clauses 2.1, 2.1A, 2.9, 2.9A, 5.2, 5.5, 6.1, 6.3, 7.2 and 7.4 of the Code.
20. Pursuant to section 309(2) of the Act, the Authority invited the Agent to provide written submissions on the matter by no later than 9 November 2020.

The Agent's response to the section 309 notice

21. The Agent's response to the section 309 notice was received on 9 November 2020 and is summarised below:
 - The Agent has fully refunded all the amounts paid by Mr UL including the amounts paid to the consultant. All deposit slips are attached.
 - He had no involvement at all regarding the interviews conducted by the owner of the potential sponsor and he had no intention to favourably prepare his relatives's application so that they should get the job. It was the owner of the potential sponsor who interviewed them and made the decision.
 - He has no evidence of the requests made by the consultant for the deposits. He understands that the finances were not handled professionally and he discontinued any referrals from the consultant.
 - There was no fraud in regards to the new employer, the sponsor, it was a genuine position. All the email communications are attached. It was a miscommunication with Mr UL regards to the change of employer.
 - He understands that he has not followed the code of conduct but he has improved completely since then. For the last six years, he has no complaints apart from this. He is currently contracting for [removed for privacy reasons] and has never had any issues. He has been perfect in record keeping and the handling of finances.
 - He had no intention at all of cheating or being involved in any fraud, it was total miscommunication with Mr UL. He no longer uses 'middleman' or referrals from third parties.
 - He is a father of four children aged 16, 10, 3 and 10 months. Since the pandemic started his income has decreased by more than 50%. He has an office in Sri Lanka where he pays a rent of 150,000 Rupees (\$1150). Since March, he has not done any offshore applications and his income from Sri Lanka is zero. He has to pay the rent in Sri Lanka from whatever he makes in Australia. He is indebted to the banks. He has been going to the office in the city

only for the last 2 weeks as the office was closed because of the lockdown. Suspending or cancelling his registration will 'completely affect highly' his family's livelihood.

- He has attended many CPD activities since then and is happy to undertake more or attend further studies to update any knowledge he is lacking. Since he received the notice he is confused and depressed. He had no intention in my life to cheat anyone financially, and makes every effort to give his clients the best service.
- He humbly requests the Authority to consider his request and to contact him if any further clarifications or documents are needed.

Jurisdiction

22. The Authority performs the functions prescribed under section 316 of the Act.
23. The functions and powers of the Authority under Part 3 of the Act and Agents Regulations are the functions and powers of the Minister. The Minister has delegated the powers under Part 3 of the Act and the Agents Regulations to officers of the Authority. I am delegated under the relevant Instrument to make this decision.

Relevant legislation

24. 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)).
25. 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)).
26. 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 Agents Regulations made under the Act prescribes a Code.
27. 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.

Migration Act 1958 (Cth)

Section 276 Immigration assistance

- (1) For the purposes of this Part, a person gives **immigration assistance** if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist a visa applicant or cancellation review applicant by:
- (a) preparing, or helping to prepare, the visa application or cancellation review application; or
 - (b) advising the visa applicant or cancellation review applicant about the visa application or cancellation review application; or
 - (c) preparing for proceedings before a court or review authority in relation to the visa application or cancellation review application; or
 - (d) representing the visa applicant or cancellation review applicant in proceedings before a court or review authority in relation to the visa application or cancellation review application.
- (2) For the purposes of this Part, a person also gives **immigration assistance** if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist another person by:
- (a) preparing, or helping to prepare, a document indicating that the other person nominates or sponsors a visa applicant for the purposes of the regulations; or
 - (b) advising the other person about nominating or sponsoring a visa applicant for the purposes of the regulations; or
 - (c) representing the other person in proceedings before a court or review authority that relate to the visa for which the other person was nominating or sponsoring a visa applicant (or seeking to nominate or sponsor a visa applicant) for the purposes of the regulations.
- (2A) For the purposes of this Part, a person also gives **immigration assistance** if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist another person by:
- (a) preparing, or helping to prepare, a request to the Minister to exercise his or her power under section 351, 391, 417, 454 or 501J in respect of a decision (whether or not the 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

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

- Supporting evidence provided by Mr UL with his complaint;
- The Agent's statutory declaration dated 20 May 2020 in response to the first section 308 notice;
- The Agent's statutory declaration dated 2 August 2020 in response to the second section 308 notice;
- The Agent's statement dated 9 November 2020 in response to the section 309 notice;
- Supporting documents provided by the Agent in response to the section 309 notice;
- Department records relating to the nomination and visa applications for Mr UL.
- Department records relating to the subclass 457 visa application for the Agent's relatives.

DECISION AND REASONS

Breaches of the Code

29. 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.

30. Having regard to the findings I have made, I am satisfied that the Agent has engaged in conduct in breach of the Agents obligations under clauses 2.1, 2.1A, 2.9, 2.9A, 5.2, 6.1, 7.2 and 7.4 of the Code.

Potential sponsor's Recruitment

31. In November 2016 Mr UL engaged the Agent's services for a subclass 457 visa, and made an initial payment of \$3000. On 2 May 2017 he had an interview through Skype with the owner of the potential sponsor. He claims that, on the same day as the interview, the Agent told him that he had been successful, and asked for a further \$5000. On 20 June 2017 the Agent sent him an employment contract for the potential sponsor, and according to Mr UL's attorney, made a request for \$7000.
32. Mr UL was therefore surprised when the Agent forwarded a natural justice letter from the Department dated 21 August 2018, advising that the sponsor, his prospective employer, did not have an approved nomination for him. Up to that time, now 15 months after his interview, he had thought that he was being sponsored by the potential sponsor. Mr UL claims that he found out later, directly from the owner of the potential sponsor, that the Agent had been told on the day of the interview that Mr UL had not been successful.
33. In the Agent's first section 308 response he stated that after the interview he emailed an unsigned employment contract to Mr UL and to the other candidate for their signature, though advising them that the employment offer was not yet finalised. This he did to speed up the process. He would get the employer to sign once the successful candidate was chosen. Sometime later he verbally told Mr UL, through WhatsApp, that he was not successful.
34. In the second section 308 response, the Agent stated that he found out that Mr UL was unsuccessful on 8 May 2017, after the second applicant was interviewed. He tried to get in contact with Mr UL the same day without success, but told the consultant of the outcome. This appears to contradict the Agent's initial response, that he had verbally told Mr UL that he had been unsuccessful.
35. The Agent did not indicate when he sent the unsigned employment contract with the potential sponsor to Mr UL only that it was after his interview, and presumably before the selection process had been finalised. By either Mr UL's account or his own, the Agent found out by no later than 8 May 2017 that Mr UL had not been successful. This would suggest that he would have sent the contract to Mr UL by no later than that date.
36. However, the evidence provided by Mr UL supports his claim that it was not until 20 June 2017 that he was sent the potential sponsor employment contract.
37. On 20 June 2017 the consultant forwarded to Mr UL, at the Agent's request, an employment contract. On 16 November 2018, Mr UL first asked the Agent for a refund. He expressed confusion that the contract sent to him on 20 June 2017 was in the name of a family trust and not the potential sponsor, not realising that they were the same entity.
38. On 3 May 2017, the day after the interview with the potential sponsor, separate deposits of 525,000 and 50,000 rupees were made into the accounts of VR and a relative of the Agent, respectively. In his summary of the payment details Mr UL equates this to a total amount of \$5000.
39. On 21 June 2017 deposits of 550,000 and 262,000 rupees were paid into the accounts of SS and the Agent's relative respectively, which Mr UL equates to \$7000 in total. This was the day after Mr UL claims he was sent the contract with the potential sponsor.
40. The Agent has not stated when exactly he sent Mr UL the contract with the potential sponsor nor has he provided any evidence of when that may have happened. In the absence of any

relevant evidence from the Agent, I am satisfied that the potential sponsor employment contract was sent to Mr UL by the consultant on 20 June 2017 as he claims. This was six weeks after the Agent states he found out that Mr UL's interview with the potential sponsor had not been successful. There is, however, no evidence that the Agent had told Mr UL of this negative outcome, on 8 May 2017 or any time after.

Conflict of interest

41. The Agent has confirmed that the successful candidate for the job with the potential sponsor was his relative. He also confirmed that he acted as the migration agent for the subsequent subclass 457 visa application.
42. The Agent stated that that he did not have a conflict of interest when representing Mr UL. He had no intention to favourably prepare his relative's application so that they would get the job. It was also the employer who interviewed the candidates, and who chose the successful candidate.
43. Due to this strong personal connection, it would be reasonable to presume that the Agent would have preferred that the potential sponsor recruited his relative rather than Mr UL. While the Agent believed that a conflict of interest did not arise because the decision was in the hands of the employer, consciously or subconsciously, he may not have put forward both candidates with equal favour.
44. According to his attorney, Mr UL found out that the Agent's relative was the successful candidate, when he contacted the owner of the potential sponsor to find out when the Agent had been told that he [Mr UL] had been unsuccessful. It is not stated when that was, however it would presumably have been sometime after Mr UL received the natural justice letter from the Department, revealing that he was not being sponsored by the potential sponsor as he had thought.
45. There is no indication that the Agent had ever informed Mr UL that he was also representing his relative, and he has made no claim that he had. If Mr UL had known this, it is unlikely that he would have thought that his prospects were equal to those of the Agent's relative.
46. Regardless of whether the Agent considered that he showed no favour to his relative, and could not have done so, he did have a conflict of interest in this situation. He was representing a client, Mr UL, who was in direct competition with a relative of his. At the very least he should have informed Mr UL of this, which he did not do.
47. I am satisfied that the Agent breached his obligations under clause 2.1A of the Code.

Nomination by the sponsor

48. On 30 June 2017, an application was lodged for the sponsor nominating Mr UL for a subclass 457 visa. In association with that nomination, a subclass 457 visa application for Mr UL was lodged on 28 February 2018. The Agent was the migration agent for both of these applications, and also for the sponsor's sponsorship application.
49. On 18 October 2017 the Department requested further information in relation to the nomination, including evidence that the nominated position was genuine. Mr AC, in response, explained the difficulty in recruiting a baker. He had interviewed Mr UL through Skype and was very impressed with his skills and experience, and found his references to be excellent. Among other documents, an employment contract for Mr UL was uploaded to the application at that time.
50. However, on 21 August 2018 the nomination was refused as the nominated position was considered to relate to mass or standardised, as opposed to specialised, production. The same

day the Department issued Mr UL with a natural justice letter advising that he did not have an approved nomination, and invited him to either comment on this adverse information or withdraw his application.

51. On 27 August 2018 the Agent forwarded the natural justice letter to Mr UL. Mr UL states that this was the first time that he was aware that he had been nominated by the sponsor.
52. The employment contract uploaded to the nomination application on 18 October 2017 was signed on 29 June 2017 by *the Employee* (Mr UL) and Mr AC on behalf of the sponsor. Mr UL has however denied that he had ever signed this contract, and confirmed that he had no contact with the sponsor and had not been interviewed by them. He stated that the employment contract was 'absolutely' a forged document.
53. In response to these concerns, the Agent stated that he had forwarded Mr UL's resume to Mr AC after he had been unsuccessful with the potential sponsor. Mr AC is apparently a busy man who was happy to recruit him without an interview. The Agent was not able to contact Mr UL himself about being sponsored by the sponsor however in about mid-May 2017 the consultant was able to inform him of this. She also arranged for the signing of the employment contract, which she later gave to the Agent when visiting his office in Colombo. The Agent had no idea that Mr UL had not signed the contract.
54. In response to the section 309 notice, the Agent denied that there was any fraud. He stated that the nominated position with the sponsor was genuine and that there was just a miscommunication with Mr UL about the change of employer. He has provided what he stated to be 'all the email communications'.
55. These emails do show that the Agent was in correspondence with Mr AC and with the sponsor's accountant. The correspondence with the accountant related to obtaining financial documents for the sponsorship application. On 18 October 2017, in separate emails, Mr AC sent the Agent an employment contract template for the sponsor and scanned copies of contracts for two of their employees.
56. The Agent had previously been required under the second section 308 notice to provide a copy of his agreement with the sponsor, invoices or receipts issued to them, and any communications with the sponsor relating to the selection and nomination of Mr UL.
57. On 24 July 2020, the day the Agent was due to provide these documents, he advised that he did not have a scanned version of the agreement but a hard copy was somewhere in his garage. He would email a copy along with any invoices and receipts as soon as he could. The Agent further advised on 3 August 2020 that he had 'misplaced' the agreement, and requested another week. By 18 August 2020, no documents had been provided, and the Agent was advised that, it was reasonable to conclude that he does not have them. He has not responded to that assertion and to date has not provided any of the requested documents.
58. A client agreement and associated invoices and receipts are important documents, as evidence of a transparent business arrangement, and to comply with relevant financial and taxation obligations. The hard, and apparently only, copy of the Agent's agreement may have been 'misplaced' however, it is very likely that any invoices or receipts issued to the sponsor would have been computer generated and electronically sent. As such, it would be expected that they would be readily accessible, and hence available to provide, along with evidence of their means of transmission.
59. The Agent stated that he had sent Mr UL's resume to Mr AC, and presumably he also provided the references that Mr AC referred to in his response to the Department. It is very likely that these documents would also have been sent to Mr AC by email, or some other electronic means.

60. However, despite being specifically asked to provide any correspondence relating to Mr UL's selection and nomination, the Agent has provided no evidence that he had sent the resume or references to Mr AC. Also in none of the emails that the Agent did provide was there any mention of Mr UL or of the nomination application for him.
61. There is also disagreement in the accounts of the selection process, with Mr AC telling the Department he conducted a Skype interview whereas the Agent stated that Mr AC had been happy to recruit without an interview.
62. The Agent has denied any fraud and asserts that the nominated position was genuine, and it may well be that the sponsor did genuinely need a baker. However, even if accepted that there was a genuine need, the Agent has not been able to provide any evidence to dispute Mr UL's claim that he had no contact with the sponsor, and had no knowledge that he was being sponsored by them.
63. Mr UL's own reactions around the relevant time provide further, if indirect, evidence of his claims. On 16 November 2018 he accuses the Agent of deceiving him when finding out that he had been nominated by the sponsor and not the potential sponsor as he had expected.
64. The subclass 457 visa nomination process is specific to the person being nominated. That person must be identified in the nomination application, and the sponsoring business must be named in the associated visa application. Both parties must also have entered into this process with genuine intent, which among other things requires that the parties have knowledge of each other.
65. The extent of any knowledge the sponsor may have had of Mr UL is not known, though it appears less than that claimed in Mr AC's letter to the Department. For his part, Mr UL has denied any knowledge of the business that was apparently sponsoring him.
66. The signed employment contract is the only document that directly links Mr UL with the sponsor. The signature for Mr UL on the contract is very similar to the one on his passport. It would probably take an expert to make a finding about the genuineness or otherwise of the signature on the employment contract.
67. Despite Mr UL's strong denial, in the absence of an expert opinion, it is not possible to say that he did not sign the contract. However, he may have done so without being aware what he was signing. He had been sent the potential sponsor contract only nine days before the contract with the sponsor had apparently been signed. He likely would have anticipated having to sign some documents so he may have believed he was signing a contract with the potential sponsor or possibly some other relevant document.
68. Mr UL has firmly denied that he had any contact with the sponsor. None of the evidence he has provided is inconsistent with his account. However, in comparison, the Agent's account is vague, lacks relevant detail, and conflicts with statements made to the Department by Mr AC. He has provided minimal evidence, none of which links Mr UL with the sponsor. As a registered migration agent, the Agent would be expected to be able to provide evidence in support of his actions. His inability to do so leads to a conclusion that his account lacks credibility.
69. I am therefore satisfied that Mr UL did not undergo a recruitment process with the sponsor and had no knowledge that he was being nominated for a subclass 457 visa by them.
70. As such, I am satisfied that the nomination application for Mr UL and his associated visa application were not genuine applications. These applications were prepared and lodged by the Agent. He therefore played a significant role in the submission of non-genuine applications to the Department.

71. In doing so, the Agent was party to making statements in support of applications that he knew or believed to be misleading or inaccurate. I am therefore satisfied that he breached his obligations under clause 2.9 of the Code.
72. While I am not able to say that Mr UL did not sign the employment contract, I am satisfied that if it was his actual signature he was unaware that he was signing a contract with the sponsor. It would be an act of fraud if Mr UL's signature had been forged, however it would also be fraud if he was deceived into signing the contract without realising what it was.
73. The Agent claims that it was the consultant who organised the signing of the contract. However, even if that was the case, she was acting under his instructions. He was the migration agent acting for both the sponsor and Mr UL and therefore had ultimate responsibility for the handling of their cases.
74. The Agent was the declared migration agent for the sponsorship and nominations applications for the sponsor. He has provided evidence that he actively assisted in the preparation of these applications. However, despite being specifically requested to do so, he has not been able to provide any evidence that he entered into a contractual arrangement with them.
75. The Agent claims that he did have an agreement with the sponsor, which had been signed by Mr AC. However, the Agent had not scanned and saved the agreement to his computer as he would normally do, and so he had not provided Mr AC with a copy. The Agent appears to attribute this oversight to him moving house in 'the recent past', which also appears to be the reason his copy was to be found somewhere in his garage.
76. The Agent did not specify when his recent move was. However, the sponsorship and nomination applications were lodged in June 2017, so it would be expected that any agreement would have been signed before that. That would have been some three years before the Agent was asked to provide documents for the sponsor. It therefore seems very unlikely that the scanning, saving and return of the agreement to Mr AC was held up by any recent move.
77. It is possible that the Agent's claim that he had not provided Mr AC with a copy of the agreement was to avoid any expectation that he may have been able to provide a copy with the assistance of Mr AC.
78. Based on the Agent's inability to provide any associated documents, such as invoices or receipts, I am satisfied that his claim that he had an agreement with the sponsor is not credible.
79. I am satisfied that the Agent did not give the sponsor written confirmation of the services to be performed and the fees for those services. I am therefore satisfied that he breached his obligations under clause 5.2 of the Code.
80. The Agent has not provided copies of any invoices or receipts issued to the sponsor, despite being specifically requested to do so. As such, I am satisfied that he did not keep appropriate financial records, and is therefore in breach of his obligations under clause 7.4 of the Code.

Clause 2.9A – Misleading the Authority

81. As mentioned above the Agent was requested to provide specific documents relating to his representation of the sponsor. The Agent advised that he was looking in his garage for the agreement and once found would provide this along with the other requested documents.
82. The Agent subsequently advised that his copy of the agreement had been 'misplaced'. He was also not able to provide any invoices or receipts, which would be expected to be electronic documents and hence not subject to being 'misplaced' in his garage.

83. However, it appears that these documents do not actually exist. By claiming that he would provide the requested documents as soon as he could, the Agent has intentionally misled the Authority. I am therefore satisfied that he has breached his obligations under clause 2.9A of the Code.

Payments

84. Mr UL stated that according to his agreement, he would be charged a maximum of \$15,000 but he had to pay \$22,000 in total. Mr UL, or his attorney on his behalf, also stated that all of his payments were made on the Agent's direct instructions, including which accounts the money was to be paid into, none of which belonged to the Agent.
85. The agreement stated an estimated fixed fee of \$10,000. The balance of the \$15,000 that Mr UL refers to appears to be made up of Visa Application Charges for him and his family totalling \$2915, and an amount of \$2000 quoted for additional costs that may arise during the processing of the application.
86. The Agent has disputed Mr UL's version, claiming that he had no control of financial matters as they were managed by the consultant. Despite advising Mr UL, of the fees and mode of payment stated in the agreement, for Mr UL's 'convenience and trust' all payments were made through the consultant, who then paid the Agent in cash. He had 'no idea' what their arrangement was, and does not know anything about Mr UL's claim to have paid in excess of the fees stated in the agreement.
87. However, the evidence provided by Mr UL casts doubt on the Agent's version. The bank deposit slips show that Mr UL made seven separate payments into various bank accounts in Sri Lanka, on five separate dates. Only the last two payments appear to be directly linked to the consultant with the account. Mr UL states that these payments of 240,000 rupees (\$2000) and 600,000 rupees (\$5000), made on 23 October and 14 November 2017, were respectively for completing various forms and on completion of health checking.
88. Two payments were made into the account of a relative of the Agent. The first for 50,000 rupees on 3 May 2017. This Mr UL combines with a payment on the same day for 525,000 rupees to VR, for a total of 575,000 rupees (\$5000). The second payment to the Agent's relative was made on 21 June 2017 for 262,000 rupees, which was also combined with another payment on the same day. The other payment of 550,000 rupees deposited into the account of SS, to give a total amount paid that day of 812,000 rupees (\$7000). This brought the total amount paid by Mr UL to \$22,000.
89. If, as the Agent claims, he had no knowledge of any of the financial matters, it seems strange that the consultant would have arranged for payments to be made into his relative's account.
90. The timing of the payments on 3 May 2017 (\$5000) and 21 June 2017 (\$7000) are also consistent with Mr UL's version of events. The first being made immediately after he claims the Agent advised him that his interview with the potential sponsor had been successful, and the second immediately after the Agent sent him the potential sponsor employment contract.
91. On 16 November 2018 Mr UL requested a full refund from the Agent. The subject line of his email to the Agent read 'REFUND Payment of AUS \$ 22,000', leaving little doubt about the amount involved. On 4 December 2018 Mr UL complained about a lack of progress on a refund proposal the Agent put to him when speaking two days earlier.
92. On 15 December 2018, at the Agent's request, Mr UL provided his bank deposit slips, and on 27 January 2019 the Agent asked for his bank account details and advised that he would start refunding the fees from February. In reply the next day, with the subject line 'REFUNDING OF AUS \$22,000', Mr UL provides his bank account details and indicates that he is expecting a refund of \$22,000. The same day maintaining the same subject line the Agent advised that the

refund will be as per the agreement. On 6 February 2019 the consultant on the Agent's behalf confirms that the refund payments will start that month.

93. In the email correspondence provided by Mr UL, he makes it very clear that he is expecting a full refund of \$22,000. In none of the Agent's messages does he dispute the amount Mr UL is claiming. Even when advising that the refund will be as per the agreement, the Agent does not say that this meant that it would be less than the claimed amount. When Mr UL refers to the Agent's refund proposal, he gives no indication that he has settled for a lesser amount.
94. Based on the evidence provided by Mr UL, and the absence of any relevant evidence from the Agent, I am satisfied that Mr UL did pay the Agent \$22,000, an amount in excess of that stated in his agreement. There is no evidence that Mr UL provided any written acceptance that he agreed to this increase.

I am therefore satisfied that the Agent breached his obligations under clause 5.2 of the Code.

Refund of VAC for subclass 457 visa application

95. Following the withdrawal of Mr UL's subclass 457 visa application, the Agent applied for a refund of the VAC on Mr UL's behalf, and with his authority for the refund to be paid into the Agent's account. The Agent stated that Mr UL insisted that the money be paid into his account in anticipation of lodging a new application.
96. The Department approved the refund on 8 November 2018 and on 16 November 2018 the Agent advised Mr UL that the refund had been received. In the Agent's response, he advised that this money was not transferred to Mr UL until September 2019 through the consultant. This was apparently because Mr UL was not in contact for a long time.
97. However, the day the Agent told Mr UL that he had received the VAC refund, was the same day Mr UL asked the Agent for a full refund. He told the Agent that he had lost his trust and that he did not want any further dealings with him. Nothing in his later correspondence indicated any change of mind on his part. In late January 2019 Mr UL had also provided the Agent with his bank account details for the purpose of receiving the refund of the Agent's fees. However despite having all the information the Agent needed to transfer the money to him, it would be another eight months before Mr UL received the VAC refund.
98. The Agent has not provided any evidence of the transfer of the VAC refund. However, Mr UL advised that he had received \$2600 from the Agent's relative in September 2019 and a further \$2500 from the consultant's relative in October 2019. Neither of these amounts directly matched the VAC of \$2999.11, so individually they cannot be confirmed as relating to the VAC refund.
99. However, even if accepted that both amounts contributed to the full refund of the VAC, there was a delay of eight months before Mr UL received his refund. The Agent claimed that Mr UL insisted that the money be used for a further application however this is not supported by the email evidence provided by Mr UL, which clearly indicates that he no longer wanted to continue with the Agent's services. The Agent's claim that he had been unable to contact Mr UL is also not credible.
100. I am satisfied that the Agent retained this money for many months without a valid reason.

Regulation 2.87

101. Under regulation 2.87 of the *Migration Regulations 1994* costs that the sponsor is liable for, including migration agent fees, cannot be transferred to another person.

102. In Mr UL's agreement with the Agent, the Scope of Service is stated to be 'Employer Sponsorship, Nomination and Visa Application'. The Agent's professional fees were stated to be for services outlined in the Scope of Service. This wording suggests that a portion of his fees related to the sponsorship and nomination, costs for which Mr UL was not liable.
103. Mr UL was required to make an initial payment of \$3000 on signing the agreement. On 23 November 2018 in reply to Mr UL's request for a full refund, the Agent explained that this first payment was to start looking for employers, as the initial stage of his recruitment service on collaboration with the consultant. Any costs associated with recruitment are costs that the sponsor is liable for.
104. The Agent has also been unable to provide any evidence that he had a contractual arrangement with the sponsor, or had been paid any fees by them.
105. In the absence of any relevant evidence from the Agent, it is reasonable to conclude that any agent fees that ordinarily would be associated with a sponsorship and nomination application, and the Department's application fees for those applications, were not paid for by the sponsor.
106. It was put to the Agent in the section 309 notice that it was open to find that he had facilitated the transfer of such costs to Mr UL. In response he offered no comment or explanation on this issue. It is therefore reasonable to conclude that the Agent did facilitate the transfer of such costs to Mr UL, in contravention of regulation 2.87, thereby having him pay for his own sponsorship.

Collection of client monies

107. Client monies taken in advance of work being undertaken and for disbursements must be deposited in an agent's clients' account, and held there until an agreed block of work has been completed, and a corresponding invoice issued detailing the completed work (a statement of services). If money is not collected in advance of work there is no requirement to deposit fees into a clients' account.
108. The Agent stated that he only collected money from clients after completion of work and their applications are ready to submit. All client payments were made into his business account. His repeat registration applications since 2016 also indicate that he does not collect money in advance.
109. However according to Mr UL's service agreement he had to make a \$3000 deposit on signing the agreement. The Agent later told him that this was for recruitment costs though this is not indicated in the agreement. A payment of \$5000 was made on 3 May 2017, the day after the interview with the potential sponsor, and a further \$7000 paid on 21 June 2017, immediately after receiving the potential sponsor employment contract.
110. At that point, Mr UL had paid \$15,000, however he had been unsuccessful with the potential sponsor and his non-genuine recruitment by the sponsor had not yet occurred. His visa application would also not be lodged for another eight months. As such, it is not credible that the full amount of these substantial payments was for work that had already been completed.
111. Further payments of \$2000 and \$5000 were made in October and November 2017, which according to Mr UL were respectively for filling out the application and other forms, and after completing their health checks.
112. The nomination was lodged on 30 June 2017, five months before the final payment was made. If all of the payments had related to completed work, it might be expected that Mr UL's visa application would have been ready to lodge. However, it was not lodged until three months after the final payment was made. This suggests that either further work was still needed to be done or lodgement was delayed for no particular reason.

113. Based on the limited information available it is not possible to determine what work was done before or after any particular payment was made. The Agent offered no response to the potential finding that he had taken money in advance of work done. However, for the reasons given above, I am satisfied that a portion, and likely a sizable portion, of the fees that the Agent received were in advance of work being done.
114. Any money received from a client for disbursements has to be held in an agent's clients' account until it is used to pay for the relevant service. This applied to the Department's VAC. This requirement is acknowledged in Mr UL's agreement which states:
- We may, at any time, withdraw money from your client account in order to pay these charges to the DIBP on your behalf. We will give you reasonable written notice of the date by which any charges are required, as well as written notice of each amount paid on your behalf.*
115. The agreement indicated that the VACs for Mr UL and his family would be \$2915. This forms part of the \$15,000 he thought he would be paying the Agent.
116. All of Mr UL's payments were made no later than three months before his visa application was lodged. However, none of the payments were made into a clients' account of the Agent. Therefore, the money given to the Agent for the VACs had not been held in a clients' account until Mr UL's visa application was lodged, as required.
117. Based on the limited information available it is not possible to determine what work was done before or after any particular payment was made. The Agent offered no response to the potential finding that he had taken money in advance of work done. However, for the reasons given above, I am satisfied that a portion, and likely a sizable portion, of the fees that the Agent received were in advance of work being done.
118. Any such fees should have been deposited into a clients' account. The money taken for the VACs should also have been held in a clients' account. However none of the money paid by Mr UL was paid into a clients' account. I am therefore satisfied that the Agent breached his obligations under clause 7.2 of the Code.

Record keeping

119. The Agent has admitted that in the past he was not well organised and had poor record keeping, though he now claims to have improved his filing and record management. This admission was made in the context that he had relevant records but just could not locate them. He has also claimed not to be able to access some records due to the lockdown in Sri Lanka.
120. Even if it is accepted that some records may have gone astray or were not made or kept in the first place, it would be expected that the Agent would have been able to provide some records of his dealings with Mr UL, the potential sponsor or the sponsor. However, he has only provided a few emails which appear to relate to the preparation of the sponsor's sponsorship application. He has provided no records relating to the sponsor's nomination of Mr UL despite being specifically asked to do so.
121. I am therefore satisfied that the Agent failed to keep proper records and so breached his obligations under clause 6.1 of the Code.
122. Alternatively, the Agent may have intentionally chosen not to provide any relevant records in an attempt to avoid accountability for his handling of this case, which would be a breach of his obligations under clause 6.3 of the Code.

Clause 2.1

123. Under clause 2.1 of the Code, a migration agent is required to act in accordance with the law and the legitimate interests of their client.

124. For the following reasons I am satisfied that the Agent did not act in Mr UL's legitimate interests:

- He misled him about the outcome of the interview with the potential sponsor.
- He did not advise that he was also representing his relative, who was a candidate for the same job.
- He lodged a nomination application for the sponsor without Mr UL's knowledge.
- He charged him costs that the sponsor was liable for.
- He involved Mr UL in a scheme to lodge non-genuine nomination and visa applications without his knowledge.
- He charged him more than the amount stated in the agreement.
- He failed to uphold his financial obligations.
- He withheld the refunded VAC without valid reason.

125. I am therefore satisfied that the Agent breached his obligations under clause 2.1 of the Code.

Integrity, fitness and propriety

126. 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.

127. 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.

'Integrity' means 'soundness of moral principle and character, uprightness and honesty'.¹

128. 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.

129. At common law, the basic test to determine whether a person is "fit and proper" is known as the "Allinson test". A person is not fit and proper person if his or her conduct "would be reasonably regarded as disgraceful or dishonourable by his professional colleagues of good repute and competency".²

130. 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.

¹ See *Re Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 at paragraph [26].

² See *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

131. 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.³
132. 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, practising 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.
133. Key elements of the fitness test are:
- the honesty of the person; and
 - the person's knowledge of the migration scheme and ability to fulfil the position of a migration agent.
134. 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.
135. 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"⁴.
136. 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'.
137. Based on the evidence before me, I am satisfied that the Agent has:
- Lodged nomination and visa applications based on the nomination by the sponsor without the knowledge of Mr UL. In doing so, he was actively involved in lodging applications that were non-genuine, thus undermining the integrity of the migration program. The Department may therefore have concerns about the credibility of other applications lodged by the Agent.

³ See *Cunliffe v Commonwealth* (1994) 182 CLR 272

⁴ *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

- Demonstrated a complete disregard for his financial obligations. He required Mr UL to deposit money into the accounts of various third parties compromising the ability to account for that money. He also withheld the refunded VAC money from Mr UL without any valid reason to do so.
- Intentionally misled the Authority in an attempt to avoid accountability for his conduct in this case. He advised of an intention to provide documents, which do not appear to have existed. He also passed blame of how financial matters were managed onto the consultant.
- Failed to uphold the standards expected of a registered migration agent.
- For multiple reasons failed to act in the legitimate interests of Mr UL.

Consideration of Appropriate Disciplinary Action

138. 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

139. 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.

140. 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) Breaches of the Code indicating systemic poor practices;
- (b) Indifference to professional responsibilities;
- (c) Failure to manage client funds;
- (d) Conflict of interest;
- (e) Evidence the Agent has attempted to conceal culpability;
- (f) Conduct involving dishonesty impacting the legitimate interests of his client; and

- (g) Conduct demonstrates that the agent is not a person of integrity or is not a fit and proper person to give immigration assistance

Aggravating factors

141. I consider the Agents conduct falls short of the standard expected of a registered migration agent.
142. In his section 309 response, the Agent claimed that he had been confused and depressed since he received the notice. It is not clear whether he was referring to the section 309 notice or to when he was first notified of the complaint in the first section 308 notice.
143. Whatever the Agent's state of mind, his actions appear to have been an attempt to avoid accountability. He did not provide a response to the first section 308 notice until two months after the original due, and then only after the grant of three extensions and much prompting. While he may have been prevented from obtaining some records from his office in Sri Lanka due to travel restrictions and lockdowns, he also failed to provide any evidence in support of his response, that he should have been able to access within Australia.
144. He has misled the Authority about documents relating to his agreement with the sponsor and their nomination of Mr UL, requested in the second 308 notice. The agreement was supposedly somewhere in his garage but was then reported to be lost. He had been given 28 days to provide these documents however it was only on the due date that he advised that he would search for them. None of the requested documents were ever provided including ones that should have been electronically available.
145. The evidence also indicates that the Agent misled the Authority about his role in the collection of fees from Mr UL. He claims to have played no part in this, putting that responsibility on to the consultant. However, the timings of the payments and some of the accounts they were paid into indicated that he was directly involved. The Agent not only blamed the consultant, by his own account he showed a complete disregard for what his financial obligations were.

Mitigating Factors

146. The Agent has provided the following submissions to be taken into account in making this decision. He submitted that:
- He had no intention at all of cheating or being involved in any fraud, it was total a miscommunication with Mr UL.
 - He acknowledged that finances had not been handled professionally and he understands that he has not followed the Code. However he has 'improved completely' since then.
 - He has fully refunded all the amounts paid by Mr UL including the amounts paid to the consultant. Mr UL has confirmed that he has received a full refund.
 - He no longer takes referrals from the consultant or any other third party, and no longer uses any middle-men.
 - He has only received this one complaint against him in the last six years. He is currently contracting for [removed for privacy reasons] and he has not had any issues. He has been 'perfect' in record keeping and the handling of finances.
 - He has attended many CPD activities since then and is happy to undertake more or attend further studies to update any knowledge he is lacking. He has been confused and depressed since receiving the notice. He had no intention to cheat anyone financially, and made every effort to give his clients the best service.

- Since the pandemic started his income has decreased by more than 50 percent, and he is indebted to the banks.
- Since March (2020) he has not done any offshore applications and he receives no income from Sri Lanka. He still maintains an office in Sri Lanka for which he has to pay the rent of 150,000 Rupees (\$1150) from whatever he earns in Australia.
- At the time of his section 309 response (9 November 2020) he had been going to the office only for the last 2 weeks as the office was closed due to the lockdown in Melbourne.
- He is the father of four children aged 16, 10, 3 and 10 months. Suspending or cancelling his registration would 'completely affect highly' his family's livelihood.

147. I accept that a disciplinary decision would affect the Agent's financial earning capacity and livelihood, which will likely have financial implications for him and his family. However, I am of the view that these considerations are outweighed by the seriousness of the Agent's conduct.

Consumer Protection

148. 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.

149. 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 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 and that even if further education and training were undertaken by the Agent, that would not be sufficient to address the conduct which is the subject of this decision.

DECISION

150. In all of the circumstances, and in the interests of consumer protection, I consider that it is appropriate to cancel the Agent's registration.

151. 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.

152. 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.

153. Accordingly, this cancellation will be in effect for a period of 5 years from the date of this decision.