

REPORT OF THE INTERNATIONAL EDUCATION APPEAL AUTHORITY

1 OCTOBER 2005 TO 31 DECEMBER 2006

The Code of Practice for the Pastoral Care of International Students covers three key areas, namely the marketing to, and recruitment and care of international students.

Attention to each of these elements is critical to building a sustainable export education sector. Providers who do not pay sufficient regard to the requirements of the Code of Practice do so at the risk of undermining the industry as a whole. It is disappointing that complaints relating to these issues continue to arise from time to time. The complaints mechanism, however, provides an opportunity to highlight the issues and to resolve problems.

Overall the number of complaints remains relatively low. The reality is that only a small number of dissatisfied students will ever complain. Indeed the review of the Code carried out in 2006 highlighted the fact that relatively few students were aware of the complaints mechanism provided under the Code. Dissatisfied students who do not formally complain, are likely to return home and tell others of their unhappy experience. It is important, therefore, that all complaints received by the Authority be treated as an opportunity to understand where improvements might be made.

Satisfied students are vital to the success of the export education sector. It is therefore essential that education providers know and understand the particular needs of international students and cater for those needs.

This report covers a 15 month period from 1 October 2005 to 31 December 2006 in order to bring the Authority's reporting period into line with the calendar year.

Complaint Statistics

The Authority received a total of 65 complaints in the period 1 October 2005 to 31 December 2006. The figure for the period of 1 October 2005 to 30 September 2006 was a total of 54 complaints. Complaints were received from students from China, Iraq and India, Korea, Pakistan, Sweden. Seven complaints were received from the Code Administrator.

The largest number of complaints continues to come from students enrolled at Private Training Establishments.

Breakdown of Complaints by Provider Type

Private Training Establishments	40
Secondary schools	14
Universities	4
Polytechnics	4
Primary schools	3
Intermediate schools	Nil
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Total number of complaints	65

Number of Complaints per Provider

The total number of providers receiving complaints was 47. Twelve providers received more than one complaint. Two of the providers receiving multiple complaints have since closed.

<i>Number of Complaints Received</i>	<i>Number of Providers</i>
1 complaint	35
2 complaints	8
3 complaints	2
4 complaints	2
	—
Total number of providers	47

Complaint Type

Provider refusal to refund fees continues to be the most common cause of student complaint. The issues which lead students to withdraw from a course and seek a refund of fees however are varied. Issues raised by the complaints included:

- Provision of information.
- Appropriate course placement.
- Unsatisfactory homestay and issues relating to the monitoring of homestay.
- Expulsion.
- Failure to apply refund provisions or failure to provide refund provisions fairly.
- Failure to pay refunds under section 236A of the Education Act 1989.

Resolution of Complaints

The process of the Authority is inquisitorial rather than adversarial. Evidence is gathered by letter, email, telephone and interviews with the parties concerned. Interpreters are used if necessary. The Authority is happy to discuss a complaint with the provider prior to an assessment being issued. This will often lead to the resolution of the complaint. If the complaint is not resolved by this means, a preliminary assessment is issued which expresses the Authority's initial view of the complaint. The parties are then given an opportunity to produce further evidence or make additional submissions before a final decision is made. The Authority issued a total of 24 Preliminary Assessments and 14 Final Reports during this period. These figures include some reports relating to complaints made prior to 1 October 2005.

Breakdown of Resolution of Complaints¹

Complaint not accepted ²	7
Complaint withdrawn or discontinued	9
Settled during investigation prior to preliminary assessment	19
Preliminary assessment issued and no further action required	9
Final report issued	5
Awaiting disposition	<u>16</u>
Total	65

Outcome in Cases where Final Report or Preliminary Assessment Issued

Of the nine cases in which a Preliminary Assessment was issued and no further action was required, the Authority upheld the complaint in whole or in part in five cases and found no breach of the Code in the four remaining cases.

Of the five cases in which a Final Report was issued, the Authority upheld the student's complaint in whole or in part in three cases and found that there had been no breach of the Code in two cases.

Publication of Education Provider's Name

Section 26.2 of the Code provides that, in addition to corrective action the Authority may publish an education provider's name. The Authority did not direct that the name of any provider be published in connection with a complaint during this period.

¹ These statistics relate to the resolution of complaints received during the 15 months in question. They do not include complaints from previous years resolved during the period.

² This includes cases referred back to the education provider for the internal grievance procedure to be used; a case where it transpired that the student was not an international student, and a case where the provider had already closed.

Referral to the International Education Review Panel

No referrals were made to the International Education Review Panel during this period. However, one provider in respect of whom three complaints were received was deregistered by the NZQA before final reports could be issued. In a further case, following the issuing of a final report the limited - liability owner of the education provider concerned went into liquidation. It is a matter of concern that this company may have gone into liquidation in order to avoid claims by the particular student.

Conclusion

Satisfied customers do not complain. The majority of complaints represent a failure by the provider to meet the expectations and needs of the student. The export education sector in New Zealand needs to continue to work together to ensure that the experience of international students in New Zealand is a positive one.

APPENDIX 1

**CASE NOTES OF THE
INTERNATIONAL EDUCATION
APPEAL AUTHORITY**

Provision of Information

The importance of providing accurate information to students prior to enrolment should not be underestimated. International students coming to New Zealand for the first time rely heavily on the information supplied by education providers before they arrive in New Zealand. Providing the information referred to in section 4.2.1 of the Code after the student has arrived in New Zealand is too late. The accessibility of information on the websites of some large tertiary institutions is also an issue. The provision of accurate information is a requirement of the Fair Trading Act 1986.

Case Note 1

In this case the student wished to study child psychology at postgraduate level. This was discussed with the university's agent. On arrival in New Zealand the student discovered child psychology papers were not being offered in 2005.

N was a student from India who came to New Zealand intending to undertake a postgraduate course in the Psychology Department at a university. She had previously completed a Bachelor of Arts degree majoring in Psychology at an Indian university. N said that she had a particular interest in child psychology and her ambition was to become a registered child psychologist.

N initially looked at the university's website on a computer in an Internet café in India where, she read about two papers in advanced child psychology. Her boyfriend attended an education fair where he spoke to a university staff member about N's interest in child psychology.

N submitted an application to study at the university. She was offered a place in the Bachelor of Arts Honours (Psychology General) programme. The offer was made subject to her achieving an IELTS score of 6.5. The offer of place also required that N enrol in a prerequisite course but did not explain why this was necessary or indicate that an additional fee was payable.

In December 2004 N met with an agent representing the university in India. She discussed with him her interest in child psychology. She paid her fees of \$22,984.99 and accepted the university's offer of place through the agency in India.

N duly arrived in New Zealand on 21 February 2005. She went to the international office of the university with the aim of completing her enrolment before the semester commenced on 28 February. The international office sent her to the Psychology Department to select her subjects. There she met a staff member who advised her that the university would not be offering child psychology in 2005. The student was given a copy of the Department's handbook for the first time. At this meeting N was also advised that it was unlikely that she would be able to undertake a dissertation as the deadline for applying for a Supervisor was November 2004. Efforts were made by the staff member to find a suitable supervisor but none of the staff available possessed research interests which matched those of the student. The student was also advised for the first time that she would be required to pay an additional \$3,000 in fees for the prerequisite course referred to in the offer of place. The university did, however, reconsider its position on this issue and allowed the student to include this course as one of the papers in her postgraduate course.

Over the next two weeks the student met with various people from the Psychology Department to try and select a new course of study.

On 4 March 2005, after realising that she could neither undertake courses in child psychology nor select a dissertation in a subject suited to her background, N elected to undertake studies in organisational psychology. She also changed her programme of study from a Bachelor of Arts (Honours) degree to a Postgraduate Diploma in Arts.

A week later, on 11 March 2005 N met with an international student support officer and advised him that she wished to withdraw from her course. This was the last day that

students could withdraw from first semester courses and still obtain a full refund of the fees paid. The student support officer assisted her to withdraw shortly before the university closed on that day.

After reconsidering her decision over the weekend N re-enrolled at the university electronically on Monday 14 March 2005. She began attending sessions at the Student Learning Centre a week later and continued with sessions at the Student Learning Centre until 26 April 2005.

On 9 May N said that she suffered an anxiety attack. She eventually withdrew from the university on 8 June 2005 and sought a refund of fees. Agreement could not be reached on this issue and N then complained to the Authority.

The university advised the Authority that the student had accessed the "*course prescriptions*" section of the university's online calendar. The university said there was a warning on a particular page in the calendar that students should not rely on the course description but check on whether the courses would be offered in 2005. The Child Psychology courses had not been offered for some years.

In the course of investigating the complaint, the Authority attempted to access the online calendar but found that due to its size and because it was divided into a number of different pdf files the online calendar was very difficult to navigate.

The Authority found that it was not surprising that N had overlooked the instruction to check whether the courses listed were to be offered in 2005. The Authority considered that the online Psychology course calendar was liable to mislead students like N into believing it was possible to undertake postgraduate studies in child psychology. This misleading information was exacerbated by the university's agent, who, knowing of N's desire to study child psychology omitted to advise her there were no child psychology papers on offer at the university in 2005. The Authority noted that, had the university or its agent provided the student with a copy of its Psychology handbook upon receiving her application, she would have been better able to make informed decisions about her course of study.

The Authority found in its preliminary assessment that the university had breached sections 4.2.7 and 5.1 of the Code. Findings were also made under sections 6.1 and 7.1. These are discussed below under "*Appropriate Recruitment*".

In its Preliminary Assessment the Authority indicated it considered the student's fees should be repaid in full. The matter was settled for a lesser amount before a final report was issued. (See also Case Note 6).

Case Note 2

In this case the duration of the course was described as one year (minimum) and the student was not made aware of course prerequisites prior to her arrival in New Zealand.

P was a mature student who enrolled in a Diploma in Professional Accountancy at a polytechnic.

P had qualified as an accountant in Russia and had substantial experience practising as an accountant in Russia. Her Russian qualifications were assessed by the polytechnic as being equivalent to a Bachelor of Commerce degree.

While in Russia the student consulted an education agent representing the polytechnic based in New Zealand. The agent suggested the student enrol in a Diploma in Professional Accountancy course with a view to becoming a Chartered Accountant. The polytechnic's website and domestic prospectus described this course as a one-year course. The international prospectus described the duration of the course as "*one year minimum*".

P received a provisional offer of place which included a requirement that she take an advanced English language course prior to commencing her study in the Diploma in Professional Accountancy programme. No further prerequisites were mentioned in the offer.

P stated that she believed that the course in which she was enrolling was a one-year course. She was not advised that there were any prerequisite courses for the programme in question.

Following her arrival in New Zealand, and after completing the advanced English language programme, P sought to enrol. She submitted her enrolment form listing the subjects she wished to study.

She then received a letter from the course co-ordinator outlining a programme of study over three semesters. The programme outlined included a number of prerequisite courses. P was shocked to discover that the proposed programme involved three semesters of study and not two. As a result, she approached the course co-ordinator who ultimately agreed to waive the prerequisite courses. A programme of study structured over two semesters was arranged for her.

Within the first two weeks of her course P reported difficulty with her programme of study, saying that she could not take four papers. A suggestion was made that she withdraw from the Law of Business Obligations and obtain a refund in respect of that paper. However, when she was advised that as an international student she was not entitled to a refund, she decided to continue with all four papers.

While P did not have any difficulty with two of the papers she was studying, she came to the conclusion that she did not have sufficient background knowledge to study the Law of Business Obligations and Professional Studies which were heavily language-based subjects.

As a result of her discussions with the director of the programme, P decided to withdraw from the courses in which she was enrolled in the first semester rather than risk failing the exams. She decided to enrol in a lower level course which she believed would give her the necessary background in the second semester.

She sought a refund of fees from the provider in respect of the first semester. Her request was declined. She then complained to the Authority.

The Polytechnic stated it was only after P's arrival in New Zealand that she made them aware that her objective was to become a Chartered Accountant. This objective was relevant to the subjects she chose and therefore any prerequisites.

The Authority noted its concern that the Polytechnic had not ascertained from the outset that it was P's intention to become a Chartered Accountant. If this would affect the papers she must take and therefore possibly the prerequisites and the length of the course, then it was clearly a matter which the Polytechnic needed to ascertain at an early stage. The enrolment form did not contain any questions relating to the student's career intentions. It was difficult to see how the Polytechnic could make the assessment required in section 7.1 of the Code without this information.

In any event the Authority was satisfied in this case that the Polytechnic's agent was aware of the student's aim of becoming a Chartered Accountant.

The Authority noted that there was nothing on the polytechnic's website which suggested that the length of the programme might differ for an international student.

The Authority accepted that the student had received the prospectus for international students prior to enrolment (this was disputed by the student). While the international prospectus described the duration of the course as "*one year (minimum)*" there was no indication as to why the word "*minimum*" had been added to the one-year timeframe nor any explanation as to what factors might alter the length of the course. There was no reference in the prospectus to the fact that there were a number of prerequisite courses for some of the Diploma in Professional Accountancy courses. Nor did it suggest that prior knowledge in any particular area, particularly about the New Zealand business environment would be desirable. There was no suggestion that an international student who had not studied in New Zealand previously might be required to structure their course over three semesters instead of two.

Furthermore P had seen the course described as a one year course in a letter from her agent to the New Zealand Immigration Service. All of these factors led the Authority to conclude that it was not surprising that P believed that she would be able to complete the course in one year.

The fact that, at the outset, the Polytechnic's staff advised P to structure her course over three semesters suggested that this was in fact the most desirable programme for her.

The Authority concluded that the information given in the international student prospectus relating to the length of the course for an international student was potentially misleading in that it did not alert international students to the likelihood that their course may take longer than a year if they had not completed certain prerequisite courses or had not studied in New Zealand previously.

The Authority found that in describing the length of the Professional Diploma of Accountancy course on its website as one year, and in its international prospectus as one year minimum the Polytechnic had provided information which was potentially misleading in breach of section 5.1 of the Code. In failing to advise the student prior to the conditional offer of place being made to her that there were prerequisite courses for some papers in the Diploma of Professional Accountancy the Polytechnic was in breach of section 13.2 of the Code.

The Authority directed the provider to refund P's fees of \$6,700.00 for the first semester and interest.

The provider complied with this request following the Final Report.

(See also Case Note 6)

Case Note 3

In this case a course advertised as a diploma course was reassessed by NZQA as a certificate level course after the student had commenced the course.

S was enrolled in a one year Beauty Therapy course at a private training establishment commencing on 25 July 2005.

The course was promoted as a diploma qualification at the time of her enrolment in the course in July 2005.

Following a review of the course in August/September 2005, NZQA advised the provider that the course for which the student was enrolled was a certificate rather than a diploma

level course. This assessment was made in accordance with the New Zealand Register of Quality Assured Qualifications.

The fact that the qualification to be awarded would be a diploma was of some significance to S. She believed that a diploma programme would earn her points if she applied for residence in New Zealand.

Students were advised in September that the course qualification had been assessed at certificate level but that the level of each course had been reassessed to a higher level. At that point S advised that she wished to withdraw from the course as the certificate qualification would not qualify for immigration points. The provider indicated it would refund her fees. However, following a meeting with students, the director of the school indicated that he would develop a diploma level course that could be offered to international students. As a result S decided not to withdraw from the course. By the end of September the provider had lodged an application with NZQA to accredit and approve a level 5 Diploma course.

In December S decided to withdraw from the course in any event. She sought a refund of fees based on the fact that she had been misled as to the nature of the course at the outset and there was no confirmation from NZQA by December that the diploma level course had been approved.

The provider gained approval from NZQA for its diploma level course in January 2006.

The Authority found:

- It did not accept that the student's reason for leaving in December 2005 was entirely related to the fact that no advice had been received about the approval of the diploma course.
- In September S had elected to rejoin the course fully cognisant of the circumstances surrounding the NZQA assessment and the fact that the director was seeking to have a diploma programme approved. Had she remained enrolled she could have attained her goal.

- While the Authority considered that the provider had not intentionally misled its students and ultimately took steps to ensure the students were not disadvantaged, balanced against that were the stress and uncertainty which the changes in the qualification must have caused S.

The Authority considered that the college had breached sections 4.2.7 and 5.1 of the Code. It directed the provider to pay a sum of \$1,000.00 to S.

The provider complied with this requirement.

Case Note 4

In this case the student and his parents were not advised that entry to a programme he wished to take was limited and entry would be gained by a special selection process. Nor was accurate information given about the length of the course.

Z was already studying English at a location in the South Island when his mother attended an education fair in Beijing at which a North Island based polytechnic had a stall. She claimed she enquired as to whether the polytechnic had a “two year degree diploma programme majoring in car repairs”. She claimed she was told that it had. She was also told that her son needed to do further English study before he could enter the programme. The polytechnic prospectus described a number of one year programmes in its Automotive Trades Department.

Back in Beijing for the Christmas holidays Z met the agent at his parent's home for dinner and the idea of an Automotive trades course was discussed.

Z returned to New Zealand to the city in which the polytechnic was located. He discovered the Automotive Trades course on offer was not a two year programme. He rang his parents who went to the polytechnic's Beijing office. There they were given a list of the courses relevant to NZIS skills shortage list. Listed was a one year course in Automotive Repairs. In fact, the polytechnic was offering a six month Certificate course in 2005.

In the meantime, Z enrolled in an English language programme. On the completion of that course the student attempted to enrol in the Certificate for Entry into the Automotive Trades (NCEAT).

There were limited places in the programme. Z was interviewed and “*wait listed*” for the programme. He did not gain entry to the programme.

Z and his family had understood that if he passed the English language exam he would be able to participate in the NCEAT course. They were not aware that entry to the programme was by selection.

The student’s parents were very upset at this development and made a complaint.

The Authority found that:

- The Polytechnic did not have up to date written information about the six month NCEAT programme. Even at the end of February 2005, the list of courses shown to the parents in the Beijing office referred to a one year course, not the six month certificate course that was actually being offered.
- No one had told the student or his parents that students were selected for entry into the course and that simply passing the English exam would not guarantee entry.
- Z had previously been studying in another part of New Zealand. He chose to move to the city where the polytechnic was located because of representations about the availability of an Automotive Trade course.
- In failing to provide information in written or electronic format to the student that entry to the course was restricted and candidates would be selected according to criteria in addition to English language proficiency, prior to the student entering into a commitment with the polytechnic, the polytechnic was in breach of sections 4.2.2 and 4.2.7 of the Code.

The Authority directed that a sum of \$500 be paid to the student and his parents for the inconvenience caused by the inadequacies of the information provided.

The Authority also made a number of recommendations including a recommendation that the Polytechnic ensure that written material used for marketing purposes overseas be up to date, and that it advise in its prospectus that places in the NCEAT course were limited and that candidates would go through a selection process.

The Polytechnic accepted the Authority's Preliminary Assessment and Final Report.

Appropriate Recruitment

Sections 6.1 and 7.1 of the Code of Practice place obligations on providers to assess that international students have the skills necessary to effectively participate in the course they are enrolled in. Section 6.1 requires an assessment of English language ability, prior learning and academic prerequisites. The provider must be satisfied on reasonable grounds that the student has the skills necessary to effectively participate in the course. Section 7.1 requires providers to make an assessment that the course the student is enrolled in is suitable for the proficiencies and career intentions of the student. This may involve the provider making some inquiry about the student's career intentions, particularly if the student's career intention is relevant to the choice of subjects offered.

Case Note 5 (See also Case Note 1)

N (the student referred to in Case Note 1) withdrew from her university course on the last day she could withdraw and receive a refund. She re-enrolled electronically the following Monday. She re-enrolled in a Postgraduate Diploma programme. She attended the Student Learning Support Centre from 21 March 2005 to 26 April. She withdrew from the course in June and sought a refund of fees. As part of its response to the complaint, the university advised the Authority:

"It appears that the difficulty N experienced in finding a supervisor for her dissertation related to her academic skills not the lack of availability of university supervisors. ... The comments of staff and N's own messages suggest a lack of background

knowledge and more particularly a reluctance to learn the skills needed to undertake research and to write up that research for her dissertation. ...

Dr - (from the Student Learning Centre) has advised us that N was lacking in skills that we would normally take for granted with students at her level. ... While N appeared highly motivated and willing to work hard she came up with questions that he found surprising for a student at her level. ... Dr - commented that N's lack of background knowledge combined with the lack of the necessary academic study and writing skills meant that in the limited amount of time she had available even with the effort and determination she demonstrated, he felt it unlikely that she could succeed with her studies.

It appears that N's main problems were her lack of fundamental skills that would be expected of a student studying at this level. ...

Academically while she has a reasonably good undergraduate degree record, it quickly became apparent to staff in our university that N lacks the academic background and/or the academic determination to pursue research in this subject at this time."

On the basis of this submission, the Authority concluded that when N enrolled for the second time, the university was well aware of the difficulties she was experiencing in finding a course of study that suited her career intentions. Any issues about her ability to cope with postgraduate studies should have been apparent by then.

The Authority found that in permitting the student to enrol a second time the university failed to properly address the issue of whether or not the course in question was appropriate for N, given her proficiencies and career intentions. It also found that the university failed to assess whether she had adequate prior learning to be able to effectively participate in the course. The Authority considered the university was in breach of sections 6.1 and 7.1 of the Code.

As noted previously, while the Authority recommended in its Preliminary Assessment that the student's fees be repaid in full, the case was settled for a lesser amount before a Final Report was issued.

Case Note No 6 (Also see Case Note 2)

In this case when the student realised that her course would be structured over three semesters instead of two she successfully sought to have prerequisites that she had not been advised about waived. However at an early stage she indicated she was struggling and ultimately withdrew from the programme and re-enrolled in a lower level programme in the second semester.

In addition to the issues relating to the information P (the student referred to in Case Note 2) received about the length of the course and prerequisites the Authority considered whether a proper assessment had been made of whether she had the requisite skills to enable her to effectively participate in the course. The Authority found:

- That sections 6.1, 6.2 and 6.3 of the Code emphasise that assessment and advice of the requirements necessary to enable the student to effectively participate in the course must take place at an early stage.
- The polytechnic had had regard to P's English language and the NZQA assessment of her Russian qualification in making an offer of place to her. Assessment of the appellant's qualification as comparable to a New Zealand Bachelors degree would not in itself establish that P would have adequate prior knowledge or learning to enable her to effectively participate in the Diploma of Professional Accountancy programme.
- The Polytechnic had systems in place as a safeguard in the form of prerequisites for particular subjects.
- No assessment was made that either P had completed the prerequisite courses or that she could be exempted from them before an offer of place was made to her.
- There were a number of factors indicating that the student did not have sufficient background and prior knowledge to effectively participate in her first semester programme without completing the prerequisite courses.

- The decision in this case to waive the prerequisite required careful consideration. This was a marginal case. If the prerequisites were to be waived the student needed to be counselled carefully about the difficulties she would face and the support should be put in place to assist her in meeting the challenge.
- The Polytechnic had made reasonable efforts to assess the student's ability to effectively participate in the course although the assessment was too late.
- When the student indicated at an early stage that she was not coping with four papers her concerns should have been reviewed carefully and discussions held as to how the Polytechnic could assist her either by allowing her to drop a paper and receive a refund of fees or by putting in place special support.
- When the student later approached the head of the programme regarding her concern that she was failing the Polytechnic ought to have accepted some responsibility for the situation P found herself in and endeavoured to settle the financial issues which arose as well as the academic issues.
- In failing to assess the student's need to complete prerequisite courses prior to making an offer of place to P the Polytech failed to comply with section 6.1 of the Code.
- In failing to adequately counsel the student when she sought to drop a paper in the first two weeks of the course and in failing to adequately review the reasons for and consequences of the student's withdrawal from the programme in the first semester and offer to reach a financial settlement with her the Polytechnic failed to conduct its contractual and financial dealings with the student in a fair and reasonable manner in breach of section 13.2 of the Code.

HOMESTAY

Good quality homestay accommodation and friendly, caring homestay hosts can be the key to success for international students. Education providers must have robust procedures for the selection and monitoring of homestay carers and residences. The procedures must include an assessment of the homestay carer's suitability and an onsite assessment of the suitability of the residential facilities. Interviewing and/or surveying students about their homestay is an important mechanism in monitoring a homestay placement. PTEs in particular need to recognise that under 18 year olds require significantly more support and guidance than older students. It is essential that they are placed in appropriate homestays. It is also important that providers or their agents provide appropriate support and guidance for homestay carers. Staff involved in arranging homestay must have appropriate skills for assessing the suitability of homestay accommodation and for providing appropriate guidance for homestay carers. They must carry out their roles with care and sensitivity.

It is also important that all involved in the provision of homestay accommodation remember that first impressions are very important. Schools are ultimately responsible for monitoring the homestay of all international students enrolled. This includes the homestays of students enrolled through exchange organisations. If a suitable homestay cannot be arranged, it may be necessary to decline to enrol a student.

Case Note 7

This case raised the issue of the respective responsibilities of an exchange organisation and a secondary school in selecting and monitoring homestay. Ultimately the Code of Practice for the Pastoral Care of International Students places responsibility for the care of exchange students with their education provider.

V was a 16 year student from Sweden. The exchange organisation arranging her stay in New Zealand had some difficulty in placing her. Eventually a placement was arranged with a family consisting of a solo father and his 18-year-old daughter. Another female exchange student was also placed with the family. The homestay father was working an

afternoon/evening shift at the time that V lived in his household. He finished work at midnight. At the weekends he was involved in his own sporting commitments. His daughter and the two exchange students were left to fend for themselves. The girls were expected to cook, clean and do their own laundry. The homestay father said that his care for the girls was to buy the food and pay the bills. From time to time he took them to the train station to catch the train. He paid for their transport. V was unhappy with the homestay arrangement and after approximately six weeks was moved to a second homestay situation. This family was unexpectedly unable to continue to offer V accommodation after a few weeks and as a result she left New Zealand after only 10 weeks. Following her return to Sweden her mother lodged a complaint in relation to the first homestay placement.

The exchange organisation's manual relating to the recruitment of host families placed considerable emphasis on the "*family*" aspect of the homestay placement. It described the homestay arrangement as living with a "*host family*".

The Authority found:

- A student coming to New Zealand might expect to be placed in a household where one or more adults was responsible for the running of the household and the oversight and welfare of the teenagers in the household.
- A "*family*" might take many different forms. However, living with "*a family*" implies that there will be regular family gatherings and activities such as regular meal times at which all family members are gathered. It implies that at the end of the day there will be an adult available to discuss the triumphs and disappointments of the day and to enforce curfews.
- The situation V found herself in was more akin to flatting than to the arrangements normally associated with family life.
- The homestay father's lack of involvement in the day to day running of the household and his lack of involvement with the young people in his household meant that this was not a suitable homestay placement for an international student.

- Careful consideration should also have been given to whether placing a teenage girl in a household headed by a solo father was appropriate.
- In assessing whether a particular homestay is able to provide a safe physical and emotional environment, the person arranging the homestay needs to determine the homestay host's hours of work, responsibilities in the household and the extent to which they expect to be involved in the day to day care and activities of any international student living with them.
- In this particular case contact between the exchange organisation area representative was mainly with the 18 year old daughter of the house rather than the father. Little thought was given to discussing with the homestay father his work and sporting commitments, and the impact these might have on his ability to be involved with the teenagers in his household.
- Careful consideration needed to be given to whether the student would fit in with the daughter of the household and the other exchange student.
- The exchange organisation's forms to be completed by the host family were incomplete. Further some of the questions asked were not adequate to elicit the necessary information to ascertain whether the student would indeed be in a family situation and able to participate in "*family life*".
- The exchange organisation did not have sufficiently robust procedures for assessing a homestay carer's suitability and for determining whether the homestay carer would provide a safe physical and emotional environment for the student.
- The exchange organisation needed to give consideration to providing more detailed guidelines to its area representatives regarding the placement of exchange students in sole parent households.

- Where there is an agreement between the school and an exchange organisation which results in the exchange organisation taking responsibility for the selection and monitoring of homestay and other arrangements, the exchange organisation is acting as the agent for the school. The school is responsible for the actions of its agents. The school therefore needs to have in place mechanisms for ensuring that the exchange organisation, as its agent, is carrying out its obligations under any agreement and is complying with the Code.
- The school had failed to adequately assess whether V's homestay carer provided a safe physical and emotional environment for her. It did not have a sufficiently robust procedure for assessing the homestay carer's suitability and it failed to adequately monitor the exchange organisation's assessment and selection of homestay carers.
- The school had not benefited in any way financially from the enrolment of the student. The Authority was not therefore prepared to impose any financial sanctions against the school. The Authority noted that it had no power to impose any sanctions against the exchange organisation.

The Authority recommended that the school put in place systems for checking that any exchange organisation acting as its agent in relation to the Code carry out its activities to a standard required by the Code.

It also recommended that the exchange organisation take steps to develop assessment criteria for the placement of a student in a sole parent household in order to ensure that students will be adequately supervised and that family life is available to them.

The Authority also recommended that the exchange organisation takes steps to ensure that its host families are re-interviewed every year and that the Code Administrator review the approval of the exchange organisation under section 29.4 of the Code.

No monetary sanction was imposed. The recommendations were accepted by both the Exchange Organisation and the school.

Case Note 8

This case emphasises the need for staff involved in monitoring homestay to act sensitively in carrying out their duties.

P was a year 8 student from Korea. Arrangements for his enrolment at an intermediate school in New Zealand were made by his aunt, Mrs K with whom he was living.

The school contracted out the monitoring of homestay placement to a homestay Company. At the first inspection by the homestay company employee, it was reported that Mrs K gave the impression that she did not want the employee in her house. She did not want photographs taken of her house and did not want any further visits. As a result of the employee's experience, the owner of the homestay company and the school's international student director became concerned about P's homestay.

They made an unannounced visit to the home at 5-5.30 pm one evening. When they arrived there was no adult at home. The door was opened by a girl of approximately 13 years of age. The homestay co-ordinator and the international student director asked if they could come into the house. They were invited in. They waited for a short time and then asked the girl if they could see P's room. They inspected the room and then left the house, indicating that they would either return later or contact Mrs K at a later date.

They did not return to the home. Instead, a few days later, without speaking to Mrs K personally, the international student director wrote to her in the following terms:

"At the time of our visit you were not home. I must remind you that it is illegal to leave children under the age of 14 in New Zealand without adult supervision. I also felt that your home did not meet with the requirements of the Code. It states that a home must have adequate heating and be clean and tidy."

Following receipt of this letter Mrs K withdrew P from the school and sent him back to Korea. She sought a refund of fees. She stated that because of the invasion of her privacy and the criticisms levelled at her in the letter, she found herself unable to continue caring for P.

The Authority noted that the school had good systems in place for notifying caregivers of their responsibilities under the Code and, given the concerns raised as a result of the first visit, it was appropriate that further steps be taken by the school to assure itself that the requirements of section 20.1.2 of the Code were being met.

The Authority had some misgivings however as to whether it was entirely necessary that the visit be an unannounced visit.

The Authority found:

- In New Zealand the law places certain protections around entry to homes by persons in positions of authority or persons who have not been invited onto a property. Although the homestay company owner and International Student Director were invited into the home by Mrs K's 13 year old daughter, this was not a social call. The purpose of the call was, at least in part, to inspect the home. The situation required careful consideration, particularly given Mrs K's apparent objection to the first visit. Moving to another part of the house in the absence of Mrs K was unwise.
- Many New Zealanders would be offended by persons entering to inspect their homes or part of their homes without their permission. It was understandable that Mrs K was upset by this event. While the homestay company owner and the International Student Director were concerned about P's living situation, there was nothing to suggest that he was at risk or that urgent investigation was required.
- The situation may have been recovered had the Homestay Company Director and International Student Director returned later the same evening as promised. Instead, the International Student Director wrote a letter to Mrs K outlining her concerns. This was not a strategy designed to establish a rapport with Mrs K. Mrs K may have needed reminding of the requirements of the Code, in particular the need for home visits and adult supervision needed to be discussed with Mrs K. However, as long as P remained in Mrs K's house, the need for good communication between the homestay company, the school and Mrs K was essential.

- It was not surprising that Mrs K was upset both by the unannounced visit and the subsequent letter.

The Authority concluded that the school should accept some responsibility for the student's withdrawal from the school. While in one sense the school was fulfilling its obligations under the Code, the expectation is that those obligations will be carried out with sensitivity and in a manner which promotes communication with homestay carers.

The Authority directed that the school refund \$1,375.00 in fees to the student. The school agreed to this.

(See also Case Note 10)

EXPULSION

State and integrated secondary schools are required to comply with the Education (Stand Down, Suspension, Exclusion and Expulsion) Rules 1999 before they can exclude an international student from the school. All other providers have an obligation to ensure that the processes involved in excluding students are fair, and comply with the rules of natural justice.

Regardless of the type of provider, students should be expelled only for serious misconduct. In all cases, a student should be given a fair hearing before being expelled. A fair process for expelling an international student will include the following:

- (a) Proper investigation of the conduct under complaint;**
- (b) One or more warnings issued to the student (depending on the seriousness of the situation);**
- (c) Notice given to the student of the allegations;**

- (d) A hearing at which the student has the opportunity to respond to the allegations; and
- (e) Appropriate support for the student at the hearing.

Failure to follow a fair process may constitute a breach of section 13.2 of the Code. Making a complaint to NZQA or the IEAA does not constitute grounds for expulsion or for threatening expulsion.

Case Note 9

In this case the Authority found that the student had not received adequate warning that her behaviour might lead to expulsion nor had she received details of the allegations against her prior to any "hearing".

M was a mature student from Korea.

She was enrolled in a 54 week general English Language programme at a private training establishment (PTE).

The PTE received complaints about her behaviour both from students and staff. Ultimately a staff member offered his resignation because of her behaviour.

On 7 February 2006 M was handed a letter informing her that she had been suspended for four weeks pending an investigation into allegations about her behaviour.

M was advised that after the investigation she would be invited to meet with the managing directors to discuss the outcome. In the meantime M was prohibited from entering the provider's premises.

M had not received any written warnings that she might be expelled, but had three months earlier received a verbal warning about harassing classmates and a lack of co-operation in class. She was not however warned that if she did not stop this behaviour she risked being suspended or expelled.

She heard nothing further from the school until she was invited to a meeting at the school on 6 March 2006. At this meeting she was handed a letter which stated that a decision had been made to expel her.

The Authority found that:

- M ought to have received a written warning specifying how she had breached the provider's rules and regulations and what she needed to do to change her behaviour. The PTE had not given M adequate warning that she was behaving in a way that constituted bullying and harassment, or that she was causing mental harm to other students and her teacher, or that she was acting disruptively in a way that was damaging the morale of the school.
- After a preliminary investigation the education provider should have given M all the material about the allegations against her and invited her to a meeting where she would have a chance to respond (a hearing).
- In this case the PTE had tried to put all the allegations to M at the meetings arranged to notify her of her suspension and later expulsion. However it did not provide enough details in advance of the meetings for the student to prepare sufficiently. Particularly where a student has poor English language ability, as was the case in this instance, a poor response from the student may well be due to a lack of preparedness for the hearing.
- Students should be able to bring a support representative e.g. guardian, homestay parent, interpreter, lawyer to any meetings or hearings with the education provider concerning disciplinary matters.
- The use of an independent interpreter would have been useful in this instance.
- In terminating the student's enrolment without proper warning and without giving the student an opportunity in advance of a hearing to know the details of the allegations against her, the PTE did not conduct its contractual and financial dealings with the student in a fair and reasonable manner. The PTE was therefore in breach of section 13.2 of the Code.

The Authority directed that the student receive a refund of the unused portion of her fees, i.e. \$4,625.60. The provider complied with this sanction following a final report.

Communicating with Parents

Section 15.7 of the Code requires providers to contact the parents of any prospective student under the age of 18 prior to enrolling the student.

Section 15.8 requires signatories to communicate regularly with parents of international students under the age of 18 years.

Case Note 10 (See also Case Note 8)

P (the student referred to in Case Note 8) was returned to Korea by his aunt following a homestay inspection.

When the school realised that P had not returned to school at the beginning of the second term, the school tried to establish contact with his parents. It was apparently unable to do so. It transpired that the school had not made contact with P's parents prior to his enrolment and had not communicated with them by the end of the first term.

The Authority found that in failing to establish contact with the student's parents the school was in breach of sections 15.7 and 15.8 of the Code.

The school was required to develop a system for communicating with students' parents prior to enrolment and subsequently on a regular basis as required by the Code.

Fair and Reasonable Conduct in Contractual and Financial Dealings

Section 13.2 of the Code of Practice provides that education providers and their agents must conduct their contractual and financial dealings with students in a fair and reasonable manner.

Section 13.3 requires that the contractual and financial arrangements must be recorded in writing, and students or their parents must be given a copy of any agreement they are party to.

Case Note 11

In this case the student enrolled and paid to study four papers in one semester. Studying four papers in one semester was subject to approval which was not given. The student sought a refund of the fees for the two papers he was not permitted to study. There was no reference in the contract documentation as to what the fees paid covered or the period of study they covered. It was difficult to determine the terms of the contract from the contract documentation.

A was enrolled in a Diploma of Business Administration offered by an offshore University through a private training establishment. He said that he had paid to study four papers in the first semester of 2005 but after paying his fees was advised that the University would only permit him to study two papers in the first semester.

The contract documentation consisted of an enrolment registration form, offer of place and receipt. It was not possible to determine from this documentation what the terms of the contract between the student and the provider were including the period of study or the number of papers to be studied. Furthermore the offer of place and receipt gave the student's address as care of an agency, and the receipt for fees was made out to that agency. The student said that his enrolment had not been carried out through an agent.

The Authority concluded that the agreement represented by the offer of place and payment of fees was conditional upon the university approving the programme of study. When the university did not approve the programme, what remained was an agreement for A to study two papers. At that point, the fees for the two papers he was not permitted to study ought to have been refunded to him. Failing to refund the fees constituted a breach of section 13.2 of the Code.

The Authority was also satisfied that the student's money had not been received from an agency and A was not enrolled through that agency. The failure of the contractual

documents to accurately reflect the contractual arrangements between the education provider and A was a breach of section 13.3 of the Code.

A had dealt with a person at the provider whose business card indicated that he was an assistant marketing manager. The student alleged this person had said he would receive a discount. The education provider said that the person concerned was not an assistant marketing manager but a student helper. The Authority was unable to determine who was telling the truth about this issue but found that it was important that students be given accurate information about the roles and responsibilities of the people dealing with them. If the person concerned was not an assistant marketing manager then his business card was highly misleading. The provision of misleading information constituted a breach of section 13.2 of the Code.

The Authority also considered that the provider had failed to provide the Authority with accurate information in the course of its investigation of the complaint in breach of section 25.7 of the Code.

The provider was required to refund fees of \$3,600.00 in respect of the breaches of section 13.2 of the Code and pay a penalty of \$250.00 in respect of the provision of misleading information to the student.

The provider complied with these requirements following a final report.

Case Note 12

In this case the student withdrew from a secondary school early in the year and sought a refund of fees of \$38,210.00. \$19,485.00 was refunded. The statement accompanying the refund contained a number of errors. The student had not been advised of the refund policies applicable to a number of the fees paid.

J was enrolled at a secondary school. Fees amounting to \$38,210.00 were paid. The fees included tuition, hostel accommodation, sports academy, mentoring and guardianship fees in respect of the 2006 school year.

The student withdrew from the school on 14 March 2006 and sought a refund of fees.

An initial refund of \$19,485.00 was paid. As a result, the student's mother complained to the Authority that the letter setting out the calculation of the refund contained inconsistent and confusing information and did not in fact provide the refund the student was entitled to. In the course of the investigation and prior to the preliminary assessment a further refund of \$5,625.00 was paid but initially no details as to how this amount was made up of were provided.

As a result of its investigation the Authority found that:

- The student's mother was entitled to receive a prompt and accurate account of the disbursement of the fees paid at the time the student was withdrawn from the school.
- The refund policy in relation to hostel accommodation fees advised to the student's agent at the time of his enrolment in the previous year differed from the provisions published in other places and applied in calculating the refund.
- No specific refund policy in relation to the sports academy fees, mentoring and guardianship fees had been provided.
- In calculating a refund of the mentoring fees the school had decided that these should be apportioned as to \$1,500.00 for each of terms 1, 2 and 3 (\$4,500) and \$500.00 for term 4. It was difficult to ascertain the basis for this given that a charge of \$2,500 had been made for terms 3, 2005 to term 1, 2000.
- Documentation of the contract between the student and his parents and the school was poor. Had the student and his family been provided with a comprehensive document setting out the contract much of the difficulty and confusion that subsequently arose could have been avoided.

The Authority directed that the school pay a further refund of \$875.00 in respect of the refunds due and that it take corrective action to provide accurate information about its refund policies and to ensure that contracts are properly documented. The school was directed to apologise to the student's mother for the time and trouble she had been put to

as a result of the inaccuracies contained in the initial refund letter and the delays in refunding her money.

The Authority also recommended that the Code Administrator carry out a thorough audit of the practices and procedures of the school's compliance with the Code of Practice.

The school accepted these requirements following the preliminary assessment.

Refunds under Section 236A of the Education Act 1989

The provisions of section 236A(1)(c) and (d) of the Education Act 1989 require that Private Training Establishments permit a student to withdraw from a course of more than three months at any time, within seven days after the first day of the course for which attendance of the student at the establishment is required. Students who withdraw may seek a refund of the fees paid.

Students are not required to give reasons for their decision to withdraw. Furthermore, the first day of the course for which attendance is required is the date from which time runs.

Similar considerations apply to the refund rules established by the NZQA Board in relation to short courses.

Case Note 13

In this case the student did not get a visa and in fact did not pay his fees until after the date of the commencement of his course specified in the offer of place. When he requested a refund within seven days of the date he actually started his course, the provider declined his request.

M enrolled in a National Diploma in Business Programme at a private training establishment (PTE) commencing on 13 July 2006. He paid his fees on 14 July 2006. His visa was issued on 19 July 2006. He arrived in New Zealand on 30 July 2006 and commenced his course on 31 July 2006. He sought to withdraw on 4 August 2006. His application that his fees be transferred to another provider was declined. The provider

argued that the student's course start date was 13 July and the student had delayed travelling to New Zealand for ten days after receiving his visa.

The Authority found that:

- Correspondence between the PTE and the Immigration Service indicated that the provider was willing to allow the student to commence study up until 2 August 2006. If the student had not received this information, and the refund policy had been explained to him properly, it was reasonable to infer that he would have sought a refund of his fees by 20 July.
- The PTE did not object to the student commencing study on 31 July 2006.
- There was a variation of contract whereby it was agreed that the student could commence his study at any time up until 2 August 2006. This variation of contract was necessitated by the fact that the student did not have a visa to travel to New Zealand until after the official commencement date of his course.
- Indeed he did not pay his fees until after the commencement date of the course. It was therefore reasonable to conclude that he had been advised that he could commence the course later than the official commencement date.
- It was not open to the provider to vary the commencement date of the contract for one purpose but then claim that the seven day refund period required by s.236A of the Education Act only applied in respect of the original commencement date.

The Authority directed the provider to refund all fees less \$500.00. The provider complied with this direction.

Case Note 14

In this case a student enrolled in a short course was advised that she could not receive a refund of fees because the provider did not accept her reasons for withdrawing.

H enrolled in a 12 week General English course commencing on 30 October 2006. The student advised of her intention to withdraw from the course on 2nd and 3rd of November 2006. The school declined to refund the student's fees and advised the Authority that it had done so because it did not accept the student's reason for withdrawing from the school which was based on the distance of the school from the student's home.

The Authority found that the rules established by the Board of the New Zealand Qualifications Authority do not require a student to give reasons for a decision to withdraw from a course or for the reasons to be reasonable. The student made her request for a refund within the five days of the commencement of the course permitted by the relevant rule.

The Authority directed the PTE to refund the fees to the student. The refund was paid following the preliminary assessment.

Multiple Issues and Judicial Review

Case Note 15

It is not uncommon for complaints considered by the Authority to raise more than one issue. This was one such case. The Authority upheld a number of the complaints made by the student, however the Authority's decision was judicially reviewed by the provider and a number of the findings made by the Authority were set aside.

L made an email enquiry about teacher training in New Zealand on Sunday 22 February 2004. She expressed a preference for primary school teaching in a subsequent email exchange with the agent who recruited her. On Tuesday 24 February she was interviewed and early on Wednesday 25 February she was given a conditional offer of place into a Graduate Diploma of Teaching (Secondary) Programme. She did not complete the College's official enrolment application. She supplied old references which were not checked. The usual Police vet check was not completed prior to a place being offered to her. She did not provide the personal statement usually provided in the official application form. At no stage was she asked to provide confidential referees.

She arrived in New Zealand on 28 February and commenced her course on 1 March.

By the time she arrived L had missed the main orientation programme but was given a tour of the campus on her first day by a staff member who also pointed out places of interest to L in the process of taking her to look at accommodation hostels over the ensuing days. This information was however provided at a time when classes had already commenced.

L moved out of her first homestay at the end of the first week and moved to the home of a staff member at a more distant location for a period of three weeks. She then moved to a flatting situation with another college student and developed a relationship with him. She became embroiled in issues with his former wife.

At the time she arrived in New Zealand and commenced study L did not have a student permit. She did not apply for a student permit until 15 April 2004 and a permit was not granted until 8 June 2004.

Within five weeks of her enrolment a practicum coordinator expressed concerns about her suitability for teaching. By the end of the first semester it was clear that L was failing the programme.

In August her enrolment was terminated on the basis of her lack of academic progress.

Following the termination of her enrolment at the college L sought a refund of fees. Her request was declined and she lodged a complaint with the Authority.

In her complaint L complained about the lack of information she received about costs prior to enrolment, lack of advice about refund provisions, her first homestay, lack of orientation, the failure to advise who the designated person responsible for the pastoral of international students was on the campus and the termination process, her practicum placement and failure to advise her about internal grievance procedures and the Code of Practice.

The Authority found:

- No information was given in either written or electronic format about course related costs prior to the student entering into any commitment.

- The agent had verbally provided a global cost of studying and working in New Zealand for the academic year. The figure given was \$CAN27,000.00. Translated into New Zealand dollars this amounted to approximately \$29,408.00. After payment of tuition fees and other costs it appeared that the figures quoted would have allowed the student \$265.00 per week for living expenses including the cost of homestay at \$180.00 per week.
- L had expressly requested information about the cost of living and studying in New Zealand. She had made it clear that the costs were of considerable importance to her. The Authority found that where information is sought it is important that the information provided be accurate and not likely to mislead. The Authority concluded that provision of the figure of CAN\$27,000.00 without qualification (e.g. that it was a bare minimum) or the provision of more detailed information about the cost of living in New Zealand was likely to mislead the student. The provision of misleading information was a breach of s.13.2 of the Code of Practice.
- In relation to the provision of information about refund provisions it was submitted on behalf of the college that the information was available on the college's website. The Authority found that the availability of information in a lengthy document posted on the Internet does not satisfy the requirements of section 4.2.4 of the Code unless steps are taken to specifically draw the refund provisions to the attention of the student in writing e.g. email or other written format. The Authority was not satisfied that the student received any information about the refund policy prior to entering into any commitment in breach of section 4.2.4 of the Code.
- It was not satisfied that there was any breach of the Code in relation to the homestay arrangements.
- Orientation and in particular orientation specific to the needs of international students is a significant factor in making international students feel welcome, spend less time worrying about basic information and will ensure that the student is able to start concentrating on their studies at an early stage. It must

have been apparent to those involved in enrolling L that she would not be able to participate in the main orientation programme and would have little or no time to familiarise herself with her new environment before commencing an intensive programme of study. Insufficient consideration appeared to have been given to this issue in making an offer of place to her. The Authority was satisfied that the college did endeavour to provide an orientation specific to the student's needs but concluded that insufficient consideration was given to the fact that the timing of the orientation might influence her ability to settle. Subsequent events suggest that the student was never able to settle into her studies.

- The College of Education was in breach of section 10.1.1 of the Code of Practice in permitting the student to commence and continue to study in circumstances where she did not hold the appropriate permit.
- The student was advised to contact M in the Student Contact Centre on her arrival at the college. The student handbook described the Contact Centre as the place students could go to for their administration requirements and named M as their international consultant. The College advised the Authority that M was the designated person pursuant to section 15.1 of the Code to whom enquiries about pastoral care were to be directed. The Authority found that while L was given advice to contact M on arrival she was not advised that M was the contact person for pastoral care. This was a breach of section 15.1 of the Code of Practice.
- L had access to a range of assistance although it was not clear that those services were geared towards the needs of international students. The Authority noted that it was possible that, had the college designated a single person responsible for the pastoral care of international students, then the difficulties experienced by L could have been addressed differently at an early stage. The Authority did not however find that there had been a breach of the Code in relation to the actual provision of pastoral care.
- There was room for improvement in the procedure adopted by the college in terminating the student's enrolment. However it did not consider that the

procedure used or the outcome to constitute a breach of section 13.2 of the Code.

- It did not consider there was anything inappropriate in the student's practicum placement.
- Information about the college's internal grievance procedure and the IEAA was contained in the College of Education's handbook "*Information for International Students*".
- That the college was more focused on obtaining the student's enrolment than ensuring that she had reasonable prospects of completing the course and attaining teacher registration. The college had taken less care than it would take in recruiting a domestic student. Little regard was paid to the issue of the impact of making an offer of place to the student in Canada a few days before the course was due to start. The late offer and therefore her late arrival in New Zealand would inevitably mean that she would not be able to participate in a full orientation programme, would have little opportunity to adjust to New Zealand and would therefore be starting on the back foot.
- In offering a place to L the College of Education failed to exercise reasonable care in assessing the extent to which the proficiencies and career intentions of the prospective international student were matched by the educational opportunities offered by the signatory. The College was therefore in breach of section 7.1 of the Code.
- That in failing to adequately assess the student's suitability for the course and the likely impact on her ability to settle without an adequate lead in time, the college failed to conduct its contractual and financial dealings with the student in a fair and reasonable manner and was in breach of section 13.2 of the Code.
- The Authority directed that the College refund the student's tuition fees, contribute to her legal costs and pay interest on the tuition fees.

The University of Auckland on behalf of the College of Education then sought to judicially review the Authority's decision in the High Court. The case is known as the *University of Auckland v the International Education Appeal Authority and Anor* HC AK CIV 2006-485-000063 21 December 2006 Venning J.

Acting on advice from the Crown Law Office the IEAA did not defend its decision.

The High Court found that:

- The complaint must define the extent of the investigation. The IEAA had fallen into error in going beyond the ambit of the area of complaint raised by the student.
- The IEAA's power does not extend to investigating possible breaches of the Code outside the ambit of the complaint with a view to improving best practice.
- Clause 7.1 of the Code requires no more than a good faith assessment or evaluation by the education provider as to the suitability of the applicant for a course. The mischief it is directed at is to ensure that the provider does not put someone into a course for its own economic benefit without considering whether there is a match between the student and the course. Unlike section 6.1 which requires a signatory to assess and be satisfied on reasonable grounds there is no requirement for a reasonable grounds assessment under section 7.1. The Authority was acting outside its jurisdiction in considering this issue in this case as it was not an issue raised the student. In any event the student would have met a reasonable grounds assessment.
- There was no basis in the evidence for finding that in its assessment of L and her ability to settle without an adequate lead in time the college failed to conduct its contractual dealings in an unfair or unreasonable manner.
- The finding by the IEAA that the college had failed to provide information about course related costs was open to the IEAA but the breach was minor.

- The IEAA erred in law by effectively requiring the plaintiff to disclose an estimate of living costs tailored to the second defendant when such was not required by the Code. The finding that the information was likely to mislead L was unreasonable and not one that was open to it on the evidence.
- Information concerning enrolment facilities, equipment, qualifications and refund provisions can be said to be provided in written or electronic format if it is available on the provider's website. Information on a website is easily and readily available to the prospective student. The IEAA was in error in concluding that the provision of information about refund provisions on a website was not sufficient compliance with clause 4.2.4 of the Code. The Court noted however that where "*advice*" is required then something more than provision of bare information on an Internet site may be required. NB: *Readers should be aware that the provisions s.228(8) of the Education Act 1989 which require tertiary providers to provide information about refunds in writing were not drawn to the Court's attention. Tertiary providers should therefore be cautious about relying on this aspect of the judgment.*
- The Court found that M was the college's designated contact person for pastoral care. It accepted that the student was not advised that M was the contact person for pastoral care. The Court found that this was however a technical breach of the Code.
- The IEAA was correct in finding that the College of Education was in breach of section 10.1 of the Code which related to the failure of the student to hold a current immigration permit but that the IEAA acted in excess of its powers by raising this as a basis for investigation when the complaint was not raised by the student.
- The term "*restitution*" used in section 26.2 of the Code does not readily extend to include payment of interest or legal costs. The IEAA does not have power to award interest or legal costs.

- The Court found that the breaches of the Code upheld by it did not justify requiring the university to refund the student's fees. It set the sanctions aside.