

REPORT OF THE INTERNATIONAL EDUCATION APPEAL AUTHORITY IN RESPECT OF PERIOD 1 OCTOBER 2002 TO 1 OCTOBER 2003

1. On 1 October 2002 the mandatory Code of Practice for the Pastoral Care of International Students replaced the voluntary Code of Practice for the Recruitment, Welfare and Support of International Students. This is the first report of the International Education Appeal Authority since the new Code came into effect.
2. The introduction of the mandatory Code has seen a significant increase in the number of complaints received by the Authority in its first year. In the year 1 October 2001 to 1 October 2002 15 complaints were received under the voluntary Code of Practice; in the year 1 October 2002 to 1 October 2003 69 new complaints were received. This increase can be attributed to a number of factors: the requirement that all education providers become signatories to the Code; monitoring by the Code Administrator to ensure that providers inform students about the existence of the Code and the complaint process; and the increased publicity surrounding the introduction of the new Code. Eleven of the complaints received in the first few months under the mandatory Code related to events which had occurred prior to the education provider becoming a signatory to the Code. This suggests that before the introduction of the mandatory Code students were unable to obtain satisfactory resolution of their disputes with their education providers.
3. The majority of complaints received in the first year of the mandatory Code's operation relate to Private Training Establishments (PTEs). In part this may reflect the small size of many PTEs and their lack of well-developed internal procedures which other institutions such as polytechnics or universities have for complaint resolution. The frequency with which complaints regarding PTEs are resolved when this Authority or the Qualifications Authority becomes involved indicates in some circumstances a disturbing disregard by some PTEs for their statutory and contractual obligations.

Breakdown of complaints by provider type

Private training establishments	46
Polytechnics	8
Private registered schools	5
State and integrated secondary schools	6
University	3
Primary school	1
Total complaints	69

Complaint type

4. The majority of complaints (55 cases) related to disputes over requests for refunds of fees. As the Authority noted in the report of its activities under the Code of Practice for the Recruitment, Welfare and Support of International Students, the issues which lead a student to withdraw from a course and seek a refund are varied. They include the failure of the education provider to have proper regard to the terms of the contract with the student, inappropriate recruitment, inadequate or misleading information or inadequate

orientation.

5. The second most common cause of complaint related to the expulsion of the student by the education provider (5 cases) followed by complaints relating to the provision of misleading information (4 cases).

Resolution of Complaints

6. The Authority conducts a complaints process similar to the mechanisms used in other areas of consumer dispute such as the process adopted by the Banking Ombudsman in relation to complaints under the Code of Banking Practice. No formal hearing is held. Investigation of the complaint is primarily by email, telephone and letter. From time to time the circumstances of a particular case may require that the student or the staff of the education provider be interviewed in person. Interpreters are used when necessary. Following its investigation the Authority issues a preliminary assessment of the complaint with recommendations. The student and the education provider have an opportunity to comment on the assessment. If the parties agree on the recommendations contained in the preliminary assessment the matter goes no further. If the parties do not agree, further submissions from the parties are considered and a final report is written. The Code provides that in serious cases, or where the signatory fails to comply with the sanctions imposed by the Authority, the Authority may recommend to the International Education Review Panel that the signatory be suspended or removed from the Code. In the first 12 months of the mandatory Code no complaints have been referred to the International Education Review Panel.
7. In fact a significant portion of complaints (24) were settled during the investigation process prior to either a preliminary assessment or final report being written.

Breakdown of disposal of complaints received during the Report period (Status as at 30 January 2004)

No Jurisdiction	11
Complaint withdrawn/or discontinued due to lack of contact	12
Settled during investigation stage	24
Settled upon issue of preliminary assessment	12
Settled upon issue of final report	3
Under investigation/awaiting report	7
Total	69

8.	In conjunction with the monitoring and professional development programmes carried out by the Code Administrator, the complaints mechanism contained in the Code aims to assist providers to develop best practice in the marketing, recruitment and support of international students.
9.	When a complaint involves issues relating to best practice, as a general rule the Authority consults with people working in the relevant education sector. I would like to take the opportunity to thank those people who have provided assistance in this way.

10.	The international education industry produces significant financial benefits for New Zealand. It also creates valuable relationships in the personal contacts made between international students and New Zealand residents, whether they be the staff of education providers, homestay families or other personal contacts. Needless to say, these personal relationships are valuable only when the contact is positive.
11.	As at 30 September 2003 there were 1,200 education providers in New Zealand who had become signatories to the Code. The complaints received related to only 52 of those institutions. It is estimated that there were some 126,000 international students in New Zealand during 2003. These statistics would suggest that the majority of providers maintain high standards in dealing with their international students. However, international students in New Zealand are predominantly young, unfamiliar with the local culture and practices and far from home. The cases outlined in the appendix to this report highlight the vulnerability of their situation.
12.	For the protection of both the students and the industry's reputation, it is important that all education providers adopt high standards in the provision of services for international students. Ultimately the success of the industry rests upon the satisfaction and wellbeing of the students it services.

Marilyn Wallace

International Education Appeal Authority

Appendix

13. This appendix contains case notes of a number of complaints received by the Authority. These include cases considered under the voluntary Code of Practice for the Recruitment, Welfare and Support of International Students not included in the Authority's report under that Code. The case notes deal with the following issues:
- Inappropriate recruitment of students;
 - Misleading information;
 - Expulsion procedures;
 - Inadequate orientation;
 - Loss arising when course not registered with the Qualifications Authority;
 - Contract documentation;
 - Obligations of Private Training Establishments under section 236A of the Education Act 1989.

Inappropriate Recruitment of Students

14. The Authority is concerned that many education providers are not giving consideration to the suitability of a course for a particular student. From time to time it appears that providers are concerned solely with enrolment numbers. Clauses 6.1 and 7.1 of the Code of Practice refer to the requirements for assessment and appropriate recruitment of international students. The Consumer Guarantees Act 1990 places obligations on education providers to ensure that the services they contract to provide are fit for the purpose for which they are intended.

Case Note 1

15. E enrolled in Year 13 at a state secondary school for the 2003 school year. She sat her final secondary school examinations in Hong Kong in Chinese History, Chinese Culture, Chinese Literature, World History and English. Her results were not good enough to enable her to obtain entry to a university in Hong Kong. An agent in Hong Kong explained to her that if she passed the Bursary examination in New Zealand she would be able to obtain entry to university. The agent enrolled the student in an English

language course for the period October 2002 to January 2003, and in Year 13 at a state secondary school for the 2003 school year. She completed her English language course and commenced study at the secondary school. On the first day at secondary school a discussion took place regarding the subjects she would take. Following the advice of the Principal the student was enrolled in Mathematics with Statistics, Mathematics with Calculus, Accounting, and physics at Year 13 level in addition to IELTS English. The student had not studied Physics for four or five years. She had never previously studied Accounting. The Principal advised the student against studying English and History because of the language difficulties. This left the student with little choice in relation to other subjects. The student said that in the first week she encountered problems with studying Accounting. She said she could not do her homework because the subject was so unfamiliar. Her homestay mother was not able to assist her. She spoke with the Dean and was permitted to drop accounting.

16. The student was also concerned about a number of unpleasant incidents involving local students at the school. After a number of discussions with school staff relating to her situation, the student advised the Principal on 13 February 2003 that she wished to leave. The student sought a refund of fees. Her request was declined.
17. In its decision the Authority noted that the enrolment application received by the school made it clear that the student was applying to enrol in Year 13. Her Hong Kong school-record transcript indicated she was not a science student and that the subjects she had studied in previous years were language-based. The Authority considered that the school ought to have questioned whether a Year 13 course at a New Zealand school was appropriate for the student at the time of her enrolment application. The offer of place specified a one year course in Year 13. There was no suggestion in the documentation that the student's enrolment was subject to any conditions. At the point the fees were paid the school had a binding contract to provide tuition at Year 13 level.
18. After consulting with a number of secondary school personnel the Authority was satisfied that, generally speaking, it is not appropriate for an international student to be enrolled in Year 13 for a Bursary programme. Exception should be made only for students of exceptional ability or where the school is satisfied that the student's prior knowledge of the subjects to be studied and standard of English is such that he or she has a reasonable chance of success. The Authority was satisfied that the school did not address the issues relating to the student's enrolment in Year 13. The Authority found that the choice of a programme of subjects which the student had either not studied at all or had not studied recently, must have left the student with serious misgivings as to her prospects for success in Year 13. Indeed, it seemed that the programme the student enrolled in was highly likely to lead to failure.
19. The Authority found that the school's failure to assess the student's prior knowledge and English language ability was unprofessional and showed little regard for the welfare of the student. The Authority recommended that the school refund a sum of \$7,200 to the student. It also recommended that all International Student enrolments in Year 13 at the school for the 2004 academic year be subject to the approval of the Code Administrator. The recommendations were accepted by the parties.

Case Note 2

20. J enrolled in a National Certificate in Pharmacy–Technician course at a polytechnic commencing in February 2003. On 4 February 2003 the polytechnic advised the agent who had enrolled the student that they no longer offered the course the student was enrolled in but advised that a National Certificate in Pharmacy-Assistant programme would be commencing on 17 February 2003 and the student could join the class when he arrived in New Zealand. Information provided to the polytechnic and the Authority

suggested that J held a Bachelor of Pharmacy from an Indian university and that he had been registered as a pharmacist in India. In his application for enrolment J was described as “*manager – retail pharmacist*”.

21. The student subsequently advised the polytechnic that he had arrived in New Zealand on 18 February but that he had decided not to study at the polytechnic and he would be returning to India. He sought a refund of his fees (\$13,000). The polytechnic declined to refund the student’s fees in accordance with its refund policy which provided that generally speaking no refund of fees will be made after a course commences.
22. The Authority found that the polytechnic’s conduct when it discovered that the student was enrolled in a course which it was not in a position to offer was most unsatisfactory. When the polytechnic discovered it had enrolled a student in a course which it no longer offered, the first step ought to have been to advise the student of the matter and offer a refund of fees. If the Polytechnic wished to offer an alternative course to the student then its primary consideration ought to have been the suitability of this course in relation to the student’s abilities and career intentions.
23. The student had indicated to the polytechnic that he held a Bachelor of Pharmacy degree and was a registered pharmacist. The polytechnic did not explain how a course aimed at qualifying a person to act as a shop assistant in a pharmacy could be appropriate for someone with the student’s alleged qualifications and career intentions.
24. The Authority was not satisfied on the evidence that the student had agreed to enrol in the Pharmacy-Assistant course. The Authority found that the polytechnic had breached the Code of Practice:
 - a) in failing to assess the extent to which the proficiencies and career intentions of the student were matched by the educational opportunities offered by the polytechnic; and
 - b) that in failing to refund the course fee when requested to do so on 25 February 2003 the polytechnic had failed to conduct its contractual and financial dealings with the student in a fair and reasonable manner.
25. The Authority recommended that the polytechnic refund the fees of \$13,000 together with interest and an amount of \$500 towards the costs incurred by the student in obtaining assistance in seeking a refund of fees. The recommendations were accepted by the polytechnic.

Case Note 3¹

26. D enrolled in a General English and High School Preparation course for 50 weeks at Canterbury Language College.² She paid tuition fees of \$15,750 calculated on the basis of \$315 per week for 50 weeks. Her ultimate objective was to obtain entrance to university in New Zealand.
27. D was aged 18 years at the time she arrived in New Zealand. She had done well at school in China. Prior to coming to New Zealand she had been learning English for nearly 8 years. She had attended extra classes in addition to school English classes and was always placed among the top 3 to 5 students in her class.
28. On her arrival at Canterbury Language College she was placed in the advanced class after taking the entrance test. She advised staff of her desire to undertake tertiary study.
29. Two months after arriving in New Zealand D sat the IELTS examination and obtained a score of 6.5. She concluded that there was little point in her spending a further 30+ weeks studying only English language. She sought a refund of fees. Her application

¹ The education provider is identified in this case as a result of its failure to make the recommended refund to the student.

² Case considered under the voluntary Code of Practice.

- was declined.
30. There was a dispute between the parties regarding the advice the student received prior to her enrolment about the length of the course required.
 31. The Authority was satisfied that the student relied on advice given by the education provider, and in particular its agent. In general a principal is liable for the actions of its agent. The advice given by the agent was misleading and designed to induce the student to enrol in a course that was longer than necessary. Canterbury Language College accepted that neither the College nor its agent in China had carried out any assessment of the student's ability and requirements for English language tuition prior to her enrolment being accepted.
 32. Had a proper assessment of the student's English language ability been carried out by the College prior to her enrolment, the College would have been well placed to give the student and her parents clear guidance on the appropriate length of the course.
 33. The Authority was satisfied that Canterbury Language College had breached the voluntary Code of Practice in accepting D's enrolment in a 50 week English language course without making a proper assessment of the extent to which the proficiencies and aspirations of the student matched the educational opportunities offered by the provider. The Authority also considered that in accepting the enrolment for 50 weeks in circumstances where the length of the course was inappropriate, Canterbury Language College failed to act in an ethical and responsible manner in the recruitment of the student (Clause 2.1 of the voluntary Code).
 34. The Authority considered that it would have been more appropriate to enrol the student for 6 months with a view to re-enrolling her for a further 3 or 6 months if necessary.
 35. Canterbury Language College also accepted that its agent had failed to provide D's mother with a copy of the refund provisions. The agent merely showed the student's mother a copy of the refund provision in English. The Authority considered that this was not adequate to discharge the College's obligations under the voluntary Code.
 36. The Authority recommended that the College refund a sum equivalent to 25 weeks' tuition fees. The College agreed to take steps to ensure that students enrolling on courses of 6 months or more were assessed. However it declined to pay the refund of fees.
 37. The Authority notes that under the mandatory Code of Practice this case would have been referred to the International Education Review Panel.

Case Note 4

38. C was enrolled at a primary school for Term 4 of 2002 and the 2003 school year. C was aged 8 years 6 months at the time of his enrolment at the school. C was sent to New Zealand on his own to an agent who had not previously met him. The agent arranged for C's enrolment at the school. At the request of C's mother he was withdrawn from the school in March 2003 by a second agent/guardian. The second guardian discovered that C was hyper-active, wet his bed, and at times wet his pants during the day. He was very homesick. As a result, the guardian persuaded C's mother that C should return to Korea.
39. The student's second guardian sought a refund of the fees paid in respect of the 2003 school year on the basis of a refund provision relating to local students. The school declined to refund the fees.
40. The school noted that its primary concern in enrolling C was that C and his parents supported the particular ethos of the school. The Principal was not concerned that the student was in New Zealand on his own. The Principal confirmed that C was hyper-active and that there had been discipline problems initially.

41. C's homestay mother confirmed that C had been a challenging child, that he wet his bed at nights and there were also problems with wet pants during the day.
42. The Authority found that although C had apparently been interviewed prior to an offer of place being made, his enrolment at the school appeared to have been accepted with minimal inquiry into his background, achievements to date, whether he had any special needs, or the reason why education was being sought for him in New Zealand.
43. The Authority found that school staff ought to have considered the impact of education in a foreign country on an 8 year old child separated from his family. The school ought to have taken these factors into account in deciding whether or not to accept the application for enrolment. In the Authority's view, in the absence of any special factors such as a previous association with New Zealand and relatives available for his care and support, it was difficult to see how an 8 year old child from another culture could effectively participate in a programme of study. Under these circumstances it did not appear that the course offered by the school was suitable for the educational advancement of the student.
44. Furthermore, once the student commenced school and his particular difficulties became apparent, the Authority was of the view that the school ought to have taken stock of the situation and discussed with C's parent or agent his return to Korea. Indeed, contrary to the provisions of clause 15.7 and 15.8 of the Code, at no time did the school appear to have established contact with the student's parents.
45. In arranging for D to be returned to Korea, the second guardian undertook an action that staff at the school should have initiated much earlier.
46. The Authority considered that in accepting the student's enrolment the school was in breach of clauses 4.1 and 5.1 of the Code and section 29 of the Consumer Guarantees Act. It required the school to refund three terms' fees in respect of the 2003 academic year.

Misleading information

47. International students enrolling from outside New Zealand are almost always in the position of purchasing a service which they have not seen. They rely heavily on the information they are given by the education provider.

Case Note 5

48. B enrolled at a PTE offering a course in Oriental Medicine commencing on 3 March 2003. She paid the course fee of \$13,723 in advance. The course in fact commenced on 10 March 2003. In the first few days of the course B formed the view that she had been misled over the nature of the education provider and the course it offered, and she ceased attending the course. She sought a refund of fees. Her request for a refund was declined.
49. The provider's prospectus included on its front cover a photograph of the local university. Inside the brochure and on its website, photographs of the local polytechnic were displayed. This information and reference to the education provider's 'campus' led the student to believe that the college was located on a large university-type campus. In addition, the student alleged that the Korean character for 'university' or 'college' had been used in describing the provider in the Korean version of its website. In fact the provider's administration office was located in a multi-storey building on the main street of the city. Classrooms were located above shops a short distance away.
50. The Authority formed the view that it was not surprising that an international student perusing the prospectus would be led to believe that the photographs displayed were of the provider's facilities and that these facilities were substantial with a park-like campus. The Authority formed the view that the combination of the photographs contained in the prospectus and statements contained in the prospectus and on the

internet site were highly misleading with regard to the nature of the facility offered by the provider.

51. The Authority directed that the provider repay the student's fees together with interest at 11% from 18 March 2003. The provider was directed to pay the sum of \$1,600 in respect of the student's air fare and \$500 to the student as compensation for stress. In addition the provider was required to remove all photographs of educational institutions which were not its own facilities from its internet site and its prospectus. The provider was required to meet the cost of employing an independent person appointed by the Authority to scrutinise the Korean version of its internet site for potentially misleading information.

Expulsion

52. The expulsion of international students from their education providers can have serious consequences for international students. This is particularly the case where the student's permit is, as a consequence of expulsion, revoked by the Immigration Service and the student is required to leave New Zealand. For that reason particular care needs to be taken to ensure that the process involved is fair and that students are expelled only in cases of serious misconduct. State secondary and integrated schools are reminded that before an international student can be removed from a state or state-integrated school the Stand Down, Suspension, Exclusion and Expulsion Rules 1999 and the relevant provisions of the Education Act 1989 must be complied with.

Case Note 6

53. P was a 16 year old student enrolled at state secondary school. Prior to the commencement of the 2003 academic year he had successfully completed a course at an English language school in New Zealand. His attendance and performance had been exemplary.
54. P formed a bad impression of his secondary school on his first day of attendance and told his homestay mother and the Dean of International Students within the first week that he wished to change schools. (This case also involved issues relating to adequate orientation. See Case Note 8). The school declined his request. Subsequently the student's attendance at school began to cause concern. There was an incident between P and the son of his homestay host and an incident where P left an angry note on a train seat after a dispute with a train conductor. This later incident resulted in the student being warned about his behaviour in the first term. In the second term there were continued concerns about the student's attendance and about his purchase of cellphones for resale on the internet. Finally, without initiating any disciplinary proceedings the Dean of International Students contacted the Immigration Service and requested the Immigration Service to "*take action to revoke the visa immediately and inform me of the revocation*". The following day the Immigration Service revoked the student's permit noting "*you are no longer attending the educational institute for which your permit was expressly granted*".
55. Following the intervention of the student's homestay mother/agent and the Authority, a formal notice of suspension was sent to the student on 24 June 2003. A Board of Trustees disciplinary meeting was convened and the student was expelled by the Board of Trustees.
56. The Authority found that section 4 of the Education Act 1989 provides that once enrolled at a state school a foreign student has the same rights to remain enrolled and to tuition at the school as a domestic student. In short, the student can only be excluded from the school pursuant to the stand down, suspension and expulsion requirements contained in section 14 of the Education Act 1989 and the associated Rules. High Court judgments and Ministry guidelines make it clear that expulsion should occur only in the

most serious cases.

57. In this case the student had not ceased attending school, there was no suggestion that he misbehaved when he was at school and his homestay family remained supportive throughout.
58. The Authority was satisfied that in contacting the Immigration Service the school attempted to exclude the student without going through the proper process. The school's request that the Immigration Service revoke the student's permit without first giving any formal notification of its intent to terminate the contractual arrangement between the student and the school, and without initiating the stand down and suspension procedure, was inappropriate and a breach of clauses 11.1, 11.2 and 15.4 of the Code of Practice.
59. The Authority then considered whether the school's action of formally suspending the student and putting the issue to the Board of Trustees remedied the situation.
60. The Authority noted that the Principal and the Dean of International Students submitted reports to the Board of Trustees which contained matters which were not relevant to the situation. In the Authority's view these reports were coloured by a wish to ensure that the Board retrospectively ratified the school's earlier actions in contacting the Immigration Service in order to have the student removed from New Zealand without going through any formal process.
61. The Authority noted moreover that the "*continued disobedience*" referred to in section 14 of the Education Act 1989 does not stand on its own. It must be linked to and be seen as being "*a harmful or dangerous example to other students at the school*".
62. The Authority made no final judgment on whether or not the student's conduct constituted grounds for expulsion as specified by section 14 of the Education Act. However, it noted that the student had made it clear over a lengthy period of time that he was not happy at the school and wished to attend another school. His supportive homestay situation, the fact that he was not disruptive at school, the reports of his teachers and the fact that he had regularly attended and successfully completed an English language course prior to his attendance at the school, all cast doubt on whether this was a case for expulsion. Generally speaking expulsion should only occur in the most serious of circumstances.
63. The Authority concluded that the school's attempt to go through the correct processes had been tainted by its initial failure to adopt an appropriate process. It inappropriately involved the Immigration Service as a mechanism for terminating the contract with the student and his parents.
64. There was no evidence in this case that the Principal made any attempt to provide the guidance and counselling that were reasonable and practical in the circumstances in accordance with section 17A of the Education Act. Indeed, the Authority noted that it appeared likely that the Principal only spoke to the student on two occasions in his time at the school and not at all in the period immediately prior to the student's expulsion.
65. The Authority directed the school to pay a sum of \$5,000 to the student's parents. Both parties accepted this recommendation.

Case Note 7

66. The appropriate procedure to be adopted where a student is expelled from an English language school was considered by the Authority in E's case. E was a 17 year old student from China. He received his first suspension notice for poor behaviour in the classroom 11 days after commencing his course (slightly before his 17th birthday). A second warning was given on 19 November 2002. The student was informed that the complaint about his behaviour related to his sexual harassment of the teacher in one of his classes and his encouragement of other students to misbehave. An incident occurred

- on 10 January 2003 involving the student playing with a cigarette lighter in class. On 13 January the student was called to the office of the Director of the college. The Director indicated to the student that he was going to be expelled. The student asked for an interpreter and asked for a further chance. The student was told to wait outside while his guardian in New Zealand was contacted. Once the guardian arrived the interpreter was called in and the student was handed an expulsion notice. The interpreter explained the expulsion notice and why he was being expelled. The same day the Immigration Service served the student with a notice revoking his student permit. The student's guardian confirmed that she did not have any opportunity to speak to the student before the meeting with the Director. Her impression was that the decision to expel him had already been made by the time she was called to the meeting.
67. The Authority found that the college's disciplinary proceedings were clearly set out and appeared fair up to the point of the procedure relating to expulsion. The Authority was satisfied that the two earlier warnings had been appropriate. While there was some dispute over the precise nature of the incident in January, it clearly indicated further disruptive behaviour on the part of the student.
 68. The issue of concern to the Authority was whether the procedure adopted by the Director in expelling the student was fair and reasonable.
 69. The Authority formed the view that once the Director had received the teacher's report of the incident on 10 January it would have been appropriate for her to investigate the incident. Not only was it regarded as a serious incident by the school, but in view of the previous warnings given to the student it had serious consequences for him. The Authority found that the Director did not investigate the incident.
 70. The Authority found that where a student is likely to be expelled the student is entitled to fair hearing. The first requirement of a fair hearing is that the student be given adequate notice of the hearing. E ought to have been given a minimum of 24 hours notice that a hearing would take place which could result in his expulsion. In addition, the student ought to have been advised of his right to have an advocate/support person to assist him at the hearing and a right to call on others to give evidence in his support.
 71. At the hearing the case against the student should be put and the student and/or his advocate should have an opportunity to respond with regard to the factual details of the incident and also to the wider issues relating to the justification for expulsion.
 72. Following the hearing, and after due consideration, the decision-maker should then consider whether the behaviour complained of and the previous warnings given constitute a breach of contract by the student such that the contract should be terminated by the expulsion of the student.
 73. The Authority was of the view that the student had not been afforded a fair hearing in relation to the very serious issue of his expulsion from the college.
 74. The Authority recommended that the college refund half of the unused portion of the student's fees and that the college rewrite its disciplinary procedure to include explicit provision for a fair hearing prior to a student being expelled. The college accepted these recommendations.
 75. The Authority suggests that hearings relating to expulsion in English language colleges be considered by a panel of senior staff members.

Orientation

Case Note 8

76. The issue of adequate orientation in secondary schools was considered in P's case. (Also see Case Note 6).
77. P was taken to school by his homestay mother on 29 January 2003 to meet the school's Dean of International Students, choose his subjects and arrange a uniform. On the day

school commenced on 31 January 2003 he was given a timetable by his form teacher. He followed the timetable for the rest of the day. The student said he was not shown around the school either on 29 or 31 January. He did not recall any orientation type activities for international students on the first day of school although there was an ESOL class and members of the ESOL class introduced themselves. The Dean of International Students said she spent approximately 4 hours with the student and his homestay mother on 29 January. She noted that she operated an international club which international students were required to attend every Thursday lunchtime.

78. The Authority sought advice from a number of secondary schools regarding their orientation programmes for international students.
79. The Authority concluded that an adequate orientation programme for international students in secondary schools is essential to the process of settling the student into his or her new situation. An adequate orientation programme involves more than assisting a student to choose a programme of study, arranging a uniform and giving the student an orientation handbook. This is the case even where the student already has a good level of English and has spent a period studying at an English language school in New Zealand prior to entering secondary school.
80. It is difficult to specify detailed rules for an orientation programme as needs may differ according to the size of the school, the number of international students enrolling and the time of the year the student arrives at the school.
81. However, the Authority noted that it would expect that there would be a programme which
 - a) offers the student information about living and studying in New Zealand, and
 - b) aims to develop relationships between the student, the school staff, other international students and local students.

Achieving these objectives may involve providing activities specifically for international students as a group, either immediately prior to the commencement of the school year or in the first few days of the school term, a buddy system, or both.

82. First impressions and a good orientation programme have a significant impact on the way in which an international student settles into a school. The Authority concluded that P's introduction to the school did not include any orientation which might give him a sense of belonging to the school. There was no specific meeting or activity for international students on their first day at the school. It is likely that the lack of a comprehensive orientation programme in this case contributed to the student failing to settle into the school and failing to feel part of the student body in a way that would have given him a sense of commitment and belonging to the school.

Consequential Loss - Course not registered with Qualifications Authority and the Obligation to advise of the existence of the International Educational Appeal Authority

83. Providers are reminded that their actions can cause students significant loss.

Case Note 9³

84. In H's case the student enrolled at a PTE for a New Zealand Diploma in Business commencing on 4 February 2002. The course did not have NZQA accreditation at the time it was due to commence and subsequently failed to obtain accreditation. The course was discontinued on 10 May 2002. All students were offered a fee refund and compensation of \$2,000 by the education provider. The student accepted the refund but was not satisfied with the level of compensation and sought an additional sum by way of compensation. He sought the advice of a lawyer in this regard.

³ Considered under the voluntary Code of Practice.

85. The Authority noted that there was a contractual relationship between the student and the education provider whereby the education provider undertook to provide a particular course to the student. When the course was discontinued, the education provider was clearly in breach of its contract with the student and was liable to the student for any damages flowing from that breach.
86. The effect of continuing to run the course and then abandoning it was that the student lost a semester of study and was obliged to incur living costs for a further semester without being able to earn an income. The Authority found that the education provider should reimburse the student for his living costs over a 23 week period. This amounted to \$8,280.
87. The Authority also found that the education provider had failed to inform the student of the existence of the International Education Appeal Authority. The student had sought advice from a lawyer and had incurred expenses totalling \$2,493. The Authority found that had the education provider advised the student of the existence of the Appeal Authority as it was required to do under the Code, the student may well have avoided these expenses. The education provider was required to pay the student's legal fees of \$2,493.
88. The education provider agreed to pay the recommended amounts.

Inadequate contract documentation

89. Signatories to the Code of Practice are required to provide copies of their contract documentation to the Code Administrator as a condition of becoming a signatory to the Code. However, provision of the documentation and acceptance of an application to become a signatory to the Code does not guarantee that the Authority will accept that a provider's documentation meets the standard required by the Code.

Case Note 10

90. L sought a refund of fees prior to the commencement of his course at a polytechnic. After completing the necessary documentation 75% of the student's fees were transferred to another provider. The student complained that he ought to have received a 90% refund of his fees. The polytechnic submitted that the student's agent had misinterpreted or misunderstood the refund policy. It said that the 90% refund provision applied only if the student had given up study in New Zealand, had his or her student permit cancelled and returned to his or her home country.
91. The student argued that as he had withdrawn from his course prior to the course commencing he was entitled to a 90% refund of fees.
92. The polytechnic's refund provision provided:
 - (b) *If a student wishes to withdraw their application and notice is received by the International Education Centre prior to the course commencement, a refund of 90% of tuition fees paid will be given (10% is retained for administrative purposes).*
 - (c) *If a student wishes to transfer to another institution and notice is received by the International Education Centre prior to course commencement, 75% of the tuition fees will be refunded. An offer letter from the other institution will be required for the refund to be arranged.*
93. The Authority noted that the reader of the refund provision might wonder why the refund offered to a student who wished to transfer to another institution was less than the refund offered if the student simply wished to withdraw from the course prior to commencement. However, students, their parents and agents, should not be left to guess the circumstances in which the two different provisions might apply.
94. The Authority noted that the provision clearly stated that the student would receive 90%

of the fees paid if he withdrew from the polytechnic. There was no reference in the provision to a requirement that the student return to his or her home country. In this case the polytechnic ought to have refunded 90% of the fees paid by the student without further delay. The polytechnic was directed to refund to the student the difference between the 75% refund already paid and 90% of his tuition fees.

Case Note 11

95. In the case of K, the provider, which was a private secondary school, did not use an enrolment contract at the time the student commenced study at the school in 2001. While the school now has an enrolment contract, neither the student nor his parents were required to complete any contract documentation in respect of the student's enrolment in the 2003 school year. The student paid a tuition fee of \$32,335. Information relating to the school's refund policy was contained in the International Student Handbook and was known to the student, the agent involved in the student's enrolment, and the student's parents. The student withdrew from the school in the first term of 2003 and sought a refund of fees. The school declined his request.
96. The Authority was of the view that the contractual and financial arrangements between the education provider and the student and his parents were not adequately recorded in writing, nor was the student or his representative given a copy of the agreement he was party to as required by clause 11.3 of the Code of Practice.
97. The Authority noted that had the contract between the school and the student been properly documented as specified by the Code, the student's parents would have had a better opportunity to ascertain the refund provisions of the contract and make a decision on the risks involved. The requirement in the Code that the contract be in writing with a copy provided to the student or his parents is a means of ensuring that parents and students are fully informed of their rights and obligations.
98. The Authority found that the school had breached clause 11.3 of the Code and recommended that the school pay the sum of \$5,000 to the student's parents by way of refund of fees. The school agreed to this recommendation.
99. The Authority also noted that the student's guardian was an agent for the school. The Authority considered that there was a potential conflict of interest for such a person. For that reason the Authority suggested that the school ensure that in future the enrolment agreement be completed by the student's parents and that the parents acknowledge that they understand the agreement.

Case Note 12

100. In the case of B, the Authority found that the education provider had provided adequate contract documentation. B withdrew from a private secondary school and the school sought to recover a term's fees in lieu of a term's notice of withdrawal. The school had required the student's parents to sign a simple acceptance of place form which stated "*In the case of withdrawal a term's notice is necessary otherwise the school is entitled to charge a term's fee*".
101. The Authority found that the student's mother had signed an acknowledgement that she accepted the school's notice requirements on two occasions. If she did not understand the relatively clear statement at the time then it seemed reasonable to assume that she would have had the ability to ask a Korean speaking person with a good understanding of English to explain it to her.
102. The Authority did not accept that the student's mother was not aware of the requirement that a term's fee was required in lieu of notice. The Authority found there had not been a breach of the Code.

Obligations of Private Training Establishments under s 236A of the Education Act 1989

103. Many of the cases which have come before the Authority relate to the interpretation and application of the provisions in section 236A(1)(c) and (1)(d) of the Education Act 1989. These provisions allow a student to withdraw from a course at any time within 7 days after the first day of the course for which attendance of the student at the establishment is required and to seek a refund of the tuition fees paid.
104. As noted previously, students enrolling with education providers in New Zealand are almost always buying a product that they have not had the opportunity to see. The refund provision in s 236A(1)(d) provides an important safeguard for students enrolling in Private Training Establishments. Whilst many PTE contracts endeavour to place limits on the circumstances in which a refund will be given where a student withdraws from a course, such as requiring evidence of an offer of place from another education provider, s 236A does not place conditions on the circumstances in which a refund must be given beyond the provision that withdrawal must occur within 7 days of the first day of their course.
105. The Authority understands the frustration of PTEs when students are ‘poached’ on arrival in New Zealand or do not turn out not to be genuine students. However, these matters do not entitle the education provider to retain the student’s fees. Moreover, more careful recruitment of students would go some way to ensuring that only genuine prospective students were enrolled.

Case Note 13

106. G arrived in New Zealand on 17 June 2003. He commenced his course on 19 June 2003. He gave verbal notice of his wish to withdraw from the course on 25 June 2003 and gave written notice of his wish to withdraw from the course on 26 June 2003.
107. The education provider argued that it had instructed the student to commence his course on 18 June and that because written advice of his intention to withdraw was not received until 26 June 2003 he was not entitled to a refund.
108. On the basis of the evidence the Authority was satisfied that for the purposes of calculating the refund period the student’s course commenced on 19 June 2003. It noted that section 236A(1)(c) of the Education Act 1989 does not stipulate the manner in which a student must communicate his withdrawal from a course and request a refund of fees. The provision permitting a student to withdraw is mandatory. If a student withdraws within 7 days of the first day of commencement of the course, the education provider is obliged to refund fees. There is nothing in the Education Act 1989 which allows the education provider and student to contract out of the provisions of the Act. A contract which endeavours to limit the provisions of section 236A(1)(c) and (d) is unenforceable and the provisions of the statute must prevail.
109. The Authority concluded that while it may be desirable that notice is given in writing to ensure that disputes over the date of notification do not arise, the Act does not require notice to be given in writing. Where notice of intention to withdraw has been clearly verbally communicated to the education provider then in the Authority’s view this will suffice.
110. The student clearly conveyed to the education provider that he was withdrawing from the course within 7 days of 19 June. The education provider was directed to refund the student’s fees less \$500.
NB - the Authority has on occasion found that a student has not communicated an intention to withdraw from the course within the 7 day period and declined to recommend a refund.

Case Note 14

111. In the case of R, the student enrolled in a course offered by a PTE which was taught every second weekend. The student attended an orientation weekend on 17/18 May 2003. Because of the intervention of Queen's Birthday weekend the first formal class was not scheduled until the weekend of 7/8 June. The student advised his intention to withdraw from the course and seek a refund of fees on 13 June 2003, i.e. some 4 weeks after the orientation weekend. His request for a refund was declined.
112. The Authority was satisfied that the orientation programme was an integral part of the student's course and that his course commenced on 17 May 2003. However, the Authority noted that students enrolling in this particular course pay a significant fee for a product they have had only a modest opportunity to judge in terms of its suitability prior to their coming to New Zealand. The provisions of section 236A of the Education Act 1989 afford some protection for students in this regard in that they offer students a brief window of opportunity to make some assessment of the suitability of the course for their purposes following the commencement of the course.
113. In the case of the student enrolled in this programme, the refund period expired on 25 May 2003. Because of the way the programme was structured, the student had only two days experience of the orientation programme with which to make a judgment about the suitability of the course. In the particular circumstances of the case it was important that the student have a genuine 7 day period to assess whether or not the course would meet his needs. Whilst it was accepted that the 7 day period expired on 25 May, it did not appear to the Authority that a strict interpretation on this point accorded with the spirit and intention of section 236A of the Education Act. The section in effect anticipates that a student will generally have 6 actual days of orientation and tuition in which to assess the suitability of a course. The student in this case had only 2 days. The Authority found that the PTE was in breach of clause 11.2 of the Code and directed that the education provider make a refund of tuition fees less 10%. As the student's case did not fall strictly within the provisions of section 236A, the recommendation was based on what was considered to be fair and reasonable in the circumstances. The PTE accepted the Authority's recommendation.

Case Note 15

114. The Authority has on a number of occasions considered the situation where a student has enrolled with a PTE for an English language course prior to commencing some other course offered by the same provider. In J's case the student was enrolled in a 24-week English language course to be followed by a university Foundation Studies programme lasting one academic year. Prior to the commencement of the Foundation Studies programme the student sought to withdraw from that course and requested a refund of fees. Her request for a refund was declined.
115. The education provider alleged that the student was enrolled in a course of study comprising "*General English and Foundation Studies*" of a minimum duration of 24 weeks plus one academic year. The Authority found that there was no suggestion that the content of the English language course was particularly tailored to the needs of the university Foundation Studies programme or that only students enrolled in the English language course would enrol in the Foundation Studies programme.
116. The Authority was satisfied that the student was enrolled in two distinctly different series of lectures. She was, in effect, enrolled in two separate courses in respect of which she paid two separate fees. The Authority directed the education provider to refund the student's fees for the university Foundation Studies programme less \$500, as provided for in s 236A(1)(d) of the Education Act 1989.

Case Note 16⁴

117. J withdrew from an English language school within 7 days of the commencement of his course. Initially the PTE indicated the sum of \$1,200 would be deducted from the student's fees. A letter from the Principal stated that the money would be refunded to the student's agent in China and the refund would only be made on the receipt of a copy of the student's amended visa, copies of an offer of place from another education provider and receipt of fees paid. The subsequent refund made to the student indicated that the provider had retained \$2,420 from the money paid. It transpired that the PTE had deducted a sum of \$1,320 in respect of an agency fee which it said was payable to its agent in China.
118. The Authority noted that section 236A of the Act does not contain a provision which might enable the education provider to deduct agency commission. The refund must be made to the student and the statutory provision does not require that the student produce evidence of enrolment at another education provider or evidence that they have amended their student permit.
119. Any agreement the education provider has with its agent for the payment of commission needs to conform with the provisions of section 236A of the Education Act 1989. Moreover if the education provider wishes to deduct a fee for a particular service, this needs to be reflected in the contract between the education provider and the student. There was no provision in the contract suggesting that the student would pay an agency fee (he had paid one prior to leaving China in any event).
120. The Authority noted that the failure of the PTE to have regard to the terms of its contract with the student and the provisions of the Education Act in calculating the refund payable to the student was a matter of considerable concern. The Authority calculated that a further \$1,720 was due to be refunded by the education provider to the student. The further refund was paid by the education provider.

⁴ Considered under the voluntary Code.