

REPORT OF THE INTERNATIONAL EDUCATION APPEAL AUTHORITY

1 OCTOBER 2004 TO 30 SEPTEMBER 2005

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1 October 2004 to 30 September 2005

Introduction

The Code of Practice for the Pastoral Care of International Students has been in place for three years. Education providers have now had time to become familiar with the requirements of the Code and how it should work in practice.

It is evident that many providers have in place excellent systems for dealing with their international students. From time to time, however, some providers appear to be acting with little regard for the requirements of the Code. It is disappointing to discover that even some large institutions are not fully meeting their obligations to provide appropriate services for their international students.

The Code sets minimum requirements for providers to comply with. Those requirements are designed to go some way to providing the conditions required for the experience of international education to be a positive one both for students and their host country.

If the international education sector is to flourish it is essential that providers enrol students who are well-informed about the courses they propose to participate in, that they select only those students who are going to be able to participate effectively in their courses, and that they provide appropriate support services once the students are in New Zealand.

Satisfied students talking about their positive experience in New Zealand will always be the best form of marketing.

Complaint Statistics

The Authority received 61 complaints in the period 1 October 2004 to 30 September 2005, a marked decrease from 101 in the previous year. However, in the previous period 18 of the complaints received were from the Code Administrator and related to non-compliance with the Administrator's requirements. Only four complaints were received from the Code Administrator during the 2004/2005 period. The lower number of complaints may also reflect the drop in student numbers. Student awareness of the Authority remains an issue.

Complaints were received from students or groups of students from Canada, China, Germany, India, Japan, Korea, Russia, Saudi Arabia, the United States of America.

The complaints related to 43 different providers. Two providers each had four complaints made against them.

Breakdown of complaints by provider type

2004/2005 Private Training		2003/2004 Private Training	
Establishments	41	Establishments	53
Universities	10	Universities	12
Secondary Schools	7	Secondary Schools	17
Intermediate Schools	1	Primary Schools	12
Polytechnics	2	Polytechnics	6
Colleges of Education	1		
Total	61	Total	101

Complaint type

As in previous years, requests for the refund of fees were the most common complaint type. The issues which led students to withdraw from a course and seek a refund of fees were varied. The issues raised by complaints included:

- Poor quality of homestay accommodation
- Poor course quality
- Inappropriate course placement
- Inadequate information about course costs
- Expulsion and threats of expulsion
- Provider failure to pay refunds under s.236A of the Education Act 1989
- Provider failure to record and maintain information about the student
- Lack of fairness in the way requests for refunds are dealt with

Resolution of complaints

Before a complaint can be investigated by the Authority it must first go through the education provider's internal grievance procedures. In those instances where a complaint comes to the Authority before this has occurred, it is the Authority's practice to refer the complaint back to the education provider for consideration pursuant to its internal grievance process.

In the first instance, the process of the Authority is inquisitorial rather than adversarial. Evidence is gathered by letter, email, telephone and individual interviews. Interpreters are used if necessary. The Authority then issues a preliminary assessment 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 has continued to use the expert opinion of those employed in the industry. I would like to thank those individuals who have freely given their ideas and advice when approached.

Complaints offer an opportunity for providers to see where their systems can be improved. The complaints mechanism should be regarded by providers primarily as a valuable learning tool.

Breakdown of Resolution of Complaints

No jurisdiction or complaint not accepted ¹	6
Complaint withdrawn/discontinued ²	21
Settled during investigation	34
Preliminary Assessment issued. No further action required	7
Final Report issued	16
Awaiting disposition	17
Total	101

¹Includes complaints referred back to the provider where the complaint has not been through an internal grievance procedure.

²The Authority does not accept complaints which are not in English, complaints lodged by an agent without the written authority of the student, or complaints where the complainant has not provided adequate contact details (such as a postal address).

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 directed that the name of Capital Language Academy be published in connection with the report of a particular complaint against it. (see Case Note 11).

Referral to the International Education Review Panel

Five referrals were made to the International Education Review Panel during the period 1 October 2004 to 30 September 2005. All referrals related to complaints received in the previous year.

Four of the referrals related to complaints from the Code Administrator. Further details of the complaints can be found in the report of the International Education Review Panel for the period 1 October 2004 to 30 September 2005.

Conclusion

While not all complaints received by the Authority were upheld, and others were withdrawn, the complaints received from students represent dissatisfaction with the services provided by an education provider. The number is modest but it is also likely that other concerns went unreported. Where education providers fail to cater adequately for their international students they undermine the efforts of others in the sector who are providing excellent service. In the face of declining international student numbers it would seem particularly important that New Zealand's reputation as an international education provider is protected. Needless to say, this requires an ongoing commitment from the entire sector to maintaining and improving its standards.

M A Wallace
International Education Appeal Authority

Appendix

This Appendix contains case notes of complaints received by the Authority which provide insights into problem areas. The case notes deal with the following issues:

- Provision of information
- Homestay
- Expulsion
- Fair and reasonable conduct in contractual and financial dealings
- Recording of information about students
- Fair and reasonable internal grievance procedures
- Provision of refunds
- Refunds under s.236A of the Education Act 1989 and NZQA rules for short courses
- Recording of contractual arrangements in writing

Provision of Information

Section 4 of the Code of Practice requires education providers to provide a variety of information to prospective international students before the student enters into any commitments. The information provided must be accurate. The Code specifically requires that the information must be provided in written or electronic format. Any information provided in addition to the information specified by the Code must not be misleading or potentially misleading. The provision of misleading information may be a breach of section 13.2 of the Code and also of the provisions of the Fair Trading Act 1986.

Case Note 1

H was enrolled in a National Diploma of Acupuncture programme at a PTE. She paid \$14,625 for tuition fees in respect of the 2005 academic year. H and other members of her class were due to finish the diploma programme at the end of the first semester of 2005. They had been told in 2004 that arrangements would be made for them to carry out internships in China and Korea in the second semester of 2005. The tuition fee they paid was to include the internship programme, but students were not advised about any additional costs associated with the internship programme. The offer of place they received made no reference to the internship programme.

When the student body returned at the beginning of 2005 there was still little or no clarity about the proposed internship programme.

As the semester progressed the students, led by H who was their elected representative, became increasingly concerned about a number of issues including the question of the arrangements that had been made for the internship programme. The students wanted to know what additional costs they would face, what the arrangements would be for their accommodation and tuition in China, and how they would obtain visas. This led to a number of meetings with management which ultimately resulted in threats to expel H.

After a letter signed by a number of students was sent to the PTE administration on 23 May, information about the internship programme was posted on a noticeboard.

It transpired that the PTE had only entered into a memorandum of understanding with a provider in China after the first semester had commenced.

The Authority considered that the PTE was in breach of s.4.2.1 of the Code in that it failed to provide H with information in writing about course-related costs for the internship programme prior to her paying her fees. In failing to provide information in written or electronic form about facilities, equipment, staffing, the availability and characteristics of living

accommodation and realistic estimates of the cost of accommodation prior to the student entering into a commitment, the PTE was in breach of s.4.2.6, 4.3.1 and 4.3.2 of the Code.

The Authority found that if details of the internship arrangement had not been finalised, and the costs were not known, fees for the course should not have been collected. The PTE should have only taken fees for the first semester and invited students to pay for the internship programme when the full details of the programme were known.

As a result of this lack of information and other issues raised by the case referred to in Case Note 10, the PTE was required to refund H's fees in respect of the second semester.

Case Note 2

B pre-enrolled in a summer course at a university for the summer of 2004/2005.

Ultimately her enrolment was not finalised as she had not paid the tuition fee. B alleged that it was her understanding that the course was covered by the flat fee paid by international students attending the university. She said her understanding came from information contained in the university's 2004 Enrolment Handbook.

B said that the Enrolment Handbook she had been sent prior to entering into a contract with the university provided that she was required to pay a "flat fee for up to 1.24 EFTS". B said that her understanding from this was that she would be permitted to take as many courses as she chose during 2004 as long as she stayed within the 1.24 EFTS limit. The summer course that she had enrolled in fell within this parameter.

The university alleged that the information relating to its summer programme for 2004/2005 was contained in its Summer Programme brochure. This made it clear that the international student annual flat fee did not cover summer programme courses.

The Authority found that there were a number of references to the summer programme in the university's Enrolment Handbook for 2004. These references appeared alongside information relating to the semester 1 and 2 programmes. The handbook set out information on fees for undergraduates, postgraduates and graduate diplomas for the 2004 year. The only information about the period the fees covered was that the fees quoted were for the 2004 year. There was nothing to suggest that a course in the summer programme which would be completed by the end of 2004 was not included in the flat fee.

While the summer programme at the university did not constitute a third 'semester' and was a separate operation to the first and second semesters, the enrolment handbook did not clearly state this to be the case. Although the Summer Programme brochure clearly indicated that summer programmes are excluded from the flat fee, that information came too late for students who had made their decision to study at the university and paid the flat fee on the basis of the information contained in the 2004 Enrolment Handbook.

The Authority found that references to the summer programme in the 2004 Enrolment Handbook and the failure to explain that the flat fee did not cover summer programme courses were potentially misleading and did not meet the requirements of section 4.2.1 of the Code.

However the Authority found that the information relating to the 1.24 EFTS limit applied to undergraduate students and did not apply to B who was enrolled in a Graduate Diploma programme. It was reasonable to infer that the flat fee she had paid covered a programme of courses necessary to complete the Graduate Diploma programme in 2004. As B had completed the requirements for her Post Graduate Diploma in Arts in November 2004 it was difficult to understand on what basis she thought that papers surplus to the programme would be included in the flat fee she had paid for her course.

The Authority was not satisfied that the student had suffered any loss. It did not require the university to pay any compensation to the student but recommended that the university amend its Enrolment Handbook.

Information About Refund Policy

Section 4.2.4 of the Code requires signatories to provide information about refund provisions in written or electronic format prior to the student entering into any commitment. The Authority has previously noted that it considers that this requires the education provider to provide information about its refund policy on every occasion a student enters into a new commitment.

Case Note 3

N was enrolled at a state secondary school in 2004. He withdrew partway through the year. He had previously been enrolled in 2003. N's mother said that there were a number of small problems which had led to her son withdrawing from the school including a dispute with a former homestay host, an inability to study economics at Year 13 level, a delay by the international student manager in changing the student's homestay, the homestay manager's lack of availability generally and the absences of the IT teacher from class. The school's refund policy provided that no refunds would be payable except in exceptional circumstances. The school had agreed to refund the fees paid for one term.

The Authority was not satisfied that the student was entitled to any further refund. However, the Authority noted that the student had not been advised of the school's refund provisions prior to entering into a commitment in respect of 2004 year. It noted that the contract between a student and a school ends at the conclusion of each year. An agreement for tuition in respect of the following year is in effect a new contract involving a new commitment between the parties. At the time the invoice for fees for the 2004 year was sent out the student and his parents ought to have again been provided with a statement about the refund policy. This would have served as a reminder of the issue for the student and his parents. It would have also ensured that there was no confusion about the refund provision.

The school was directed to pay \$250 to N by way of penalty for failing to provide information about the school's refund policy in written format at the time he entered into a commitment in respect of the 2004 school year.

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 secondary school age students require significantly more support and guidance than older students. It is essential that they are placed in homestays appropriate for under 18 year olds. 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.

It is also important that all involved in the provision of homestay accommodation remember that first impressions are very important.

Case Note 4

K was a 15 year old school boy from Japan. He enrolled in a short four-week course at a PTE in New Zealand during his summer holidays. Following his return to Japan his mother lodged a complaint about his homestay accommodation. She complained that his room was not ready for him when he arrived, and was cold and dark. No heater was provided. She also said that the house was dirty, the meals were inadequate, and that the homestay mother had allowed K to drink beer and stay out as late as he wanted.

The school and the homestay mother responded that the homestay mother was a very experienced homestay provider. She was renting a six bedroom house. K had a room to himself. It had a desk, drawers and wardrobe but did not have a heater. Unfortunately the student who had been occupying K's bedroom prior to his arrival had left only a few hours before he arrived and for that reason she was still organising the room, including changing the linen and dusting, when K arrived. The homestay mother said that she went out of her way to provide appropriate food for K and he had not raised any issues relating to food while he was with her.

There were two other students living at the homestay at the time K was staying there. On one occasion one of the other students, who was Italian, had two other Italian friends to visit. They bought pizza for dinner. The two visiting Italian boys had purchased beer and offered to share it around. K was asked if he would like a drink and he said he would. The homestay mother indicated to him that he could have one and no more. Sometime later K was noticed coming into the house with a plastic bag containing alcohol. The homestay mother told him it was against the law for him to buy alcohol and he was not permitted to have it in her home. This caused a dispute with K. The homestay mother said that she had no rules about K being home by any particular time but he was generally home by 10.00 pm.

The Authority found that some of the issues raised by K's mother had already been dealt with appropriately by the PTE at the time the issues arose. However the Authority noted:

- (i) The importance of first impressions and the importance of students' rooms being ready when they arrive.
- (ii) That providers should give instructions to their homestay hosts about alcohol consumption by students under the age of 18 years. The parents' wishes may need to be taken into account. Homestay placement with other international students whose parents might not object to alcohol consumption might be inappropriate for a student whose parents do not want their teenager to drink.
- (iii) It was a matter of concern that the homestay mother apparently did not have rules requiring K to be home by a certain time in the evening at weekends.
- (iv) The lack of rules around home-time and the homestay mother's agreement that the student could have a can of beer in a social situation might suggest that the homestay mother was used to dealing with more mature students.
- (v) K was apparently not used to the degree of freedom available to him. Whilst K did not abuse this freedom, his mother had a right to expect that he would be placed in a family situation where there was a degree of oversight relevant to a younger teenager rather than what might be appropriate for an older teenager.
- (vi) A room without a heater in an old style house in Wellington in the middle of winter would have been cold, and the monitoring of compliance in this regard appeared inadequate.
- (vii) No Police vet had been obtained in relation to the homestay mother's partner or her adult son who were also living at the property.

The Authority concluded that there had been:

- (a) A failure to obtain Police vet checks;
- (b) A failure to ensure that the room had a heater;
- (c) A failure on the homestay mother's part to lay down rules about the time to come home on the weekend;
- (d) A failure by the PTE to instruct the homestay mother on access to alcohol for an under 18 year old.

These failures indicated the PTE did not have in place robust systems for monitoring homestay carers and residences in breach of s.18.1 of the Code. It also found that the school was in breach of s.23.1 of the Code.

The Authority recommended that:

- (a) The school introduce a formal system for surveying students about their homestay one or two weeks after arrival. This would help to pick up concerns.
- (b) Guidance be given to homestay hosts about the provision of alcohol to under 18 year olds and rules about exit hours at the weekend.

The Authority directed that the PTE pay a sum of \$400 to the student's mother by way of penalty for breaches of the Code. It recommended that the PTE give consideration to contracting a homestay company specialised in assessing homestays suitable for under 18 year olds. The parties accepted these recommendations.

Fair and Reasonable Conduct in Contractual and Financial Dealings

Section 13.2 of the Code provides that education providers and their agents must conduct their contractual and financial dealings with students in a fair and reasonable manner. The Consumer Guarantees Act 1993 provides that services must be carried out with reasonable skill and care and that the services must be reasonably fit for any particular purpose and that they must be of such a nature and quality that they can reasonably be expected to achieve any particular result. A breach of the Consumer Guarantees Act 1993 may be a breach of s.13.2 of the Code.

Issues relating to course quality identified by NZQA may form the basis of a finding that a provider has breached s.13.2 of the Code. Likewise failure by a provider to comply with its own quality management systems may constitute a breach of s.13.2 of the Code.

Failure to provide the actual course the student contracted for may also be a breach of s.13.2 of the Code.

Case Note 5

W enrolled at a PTE in a National Diploma of Computing level 6 course for the 2005 academic year. The course started late. There was only one other student enrolled in the course (other students enrolled in 2004 had not re-enrolled due to concerns about course quality and facilities). Tutors who had taught the course the previous year had left. The only tutor engaged to teach the course had himself completed level 6 of the National Diploma of Computing six months previously.

On 29 March 2005 W lodged a complaint with NZQA about a number of matters relating to the course including the quality of the course. He eventually stopped attending the course.

On 17 May 2005 he received a letter purporting to expel him on the grounds that he had complained to the NZQA and on the grounds of his non-attendance.

The school ceased teaching the course on 24 June 2005.

At the time the PTE sought registration it provided documents to NZQA in relation to the policies and practices of its quality management system. These documents included the provision that in relation to the selection of staff:

“Minimum requirements will be qualifications and experience in advance of the level to be taught ... all teaching staff will have undergone, or be enrolled in, an appropriate programme of tutor training.”

A recent NZQA Quality Audit Report noted that the PTE did not employ any qualified assessors and that:

“The assessment procedures documented in the Quality Manual are not fully implemented and this has led to inconsistency in the way that assessments are marked and credits are awarded to learners. ... Internal moderation is carried out informally but no records are kept and no staff have been adequately trained in assessment and moderation processes.”

The Authority found that the sole tutor employed to teach the course did not have a qualification or experience in advance of the level he was employed to teach. He was therefore employed contrary to the staffing policies which the PTE had indicated it would comply with when it sought and was granted registration. Moreover there was no evidence to suggest that the tutor had any training in assessment and moderation at the time he commenced teaching the student in March 2005.

The Authority concluded that where a provider is registered by the NZQA on the basis that it will comply with certain quality management systems, then the student is entitled to expect that the provider will comply with the practices and policies which formed the basis of registration being granted.

The Authority found that in failing to provide a tutor whose qualifications and experience were in advance of the level he was required to teach and in failing to provide a tutor who was properly trained in assessment and moderation, the PTE was in breach of its contract with the student and s.13.2 of the Code of Practice.

The PTE was directed to refund the full amount of W's fees (\$13,500) together with interest at 11%. The PTE made this payment after the Authority's final report was issued.

Case Note 6

M was enrolled in a TOEIC programme at a PTE in order to improve her exam technique before sitting a TOEIC test. The contract documentation indicated that she was enrolled for an eight week course. M wanted to improve her TOEIC score so that when she returned to Japan she could apply for a job that utilised her English language skills. M said she enjoyed her studies for the first four weeks. However at the end of that period the TOEIC teacher told her that she was not intending to cover any new material in the second four weeks. She would simply repeat the first four weeks using the same textbook. The teacher recommended that M continue her studies elsewhere. The Japanese counsellor at the school also suggested that she move and said he would arrange for her fees to be refunded. However the Principal of the PTE indicated to M that she would not receive a refund as she had not withdrawn from the course within the first eight days. The PTE offered to place M in a General English class or a combined General English/IELTS class and allow her to continue working on TOEIC in those classes.

The Authority considered that while it was open to the PTE to negotiate a different programme of study with the student, if what was offered was substantially different from what M had contracted to purchase she could decline the offer and withdraw from the course. The Authority considered that what was offered by the PTE was substantially different from the service that M had contracted to buy. M was entitled to cancel the contract and did in fact communicate her decision to cancel the contract. She was entitled to a refund of the unused portion of her fees. Failure to refund her fees in these circumstances was a breach of s.13.2 of the Code.

The Authority also noted that the PTE's refund policy purported to contract out of the Consumer Guarantees Act 1993 and that this was an offence against section 13(1) of the Fair Trading Act 1986.

The provider was directed to refund the sum of \$1,120 to the student and to revise its refund policy to ensure that it accurately reflect the obligations and rights set out in the Consumer Guarantees Act 1993.

Case Note 7

P was enrolled in a programme at a PTE which involved a work placement and distance learning in the second trimester. Significant changes were made to the qualification being offered by the provider midway through the first trimester.

P failed a marketing paper delivered by distance learning in the second trimester. It was the first time the PTE had provided distance learning. In the course of investigating the complaint the PTE acknowledged that it had since made improvements in its delivery of distance education. P sought to resit the failed paper before commencing the third trimester of study. The provider declined this request.

The Authority considered that the provider had failed to conduct its contractual and financial dealings with the student in a fair and reasonable manner. As the student no longer wished to resume study with the provider the Authority directed that the PTE pay the student \$1,000. The PTE complied with this request.

Expulsion

State and integrated secondary schools are specifically 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 s.13.2 of the Code. Making a complaint to NZQA or the IEAA does not constitute grounds for expulsion or threatening expulsion.

Case Note 8

M was a mature student from Canada with postgraduate qualifications. She embarked on a course at a PTE in New Zealand. She had been enrolled in the course for more than three years when she was expelled less than six months before she was due to complete her qualification. The letter of termination, did not give reasons for termination, however the PTE advised the Authority that it had received allegations that M was engaged in bullying.

While the provider's enrolment handbook set out the basis on which a student could be dismissed, the information did not set out the procedures it would follow in expelling a student. The education provider conceded that M did not receive any written warnings prior to being expelled. The Authority was not satisfied that it was ever made clear to M that her behaviour warranted disciplinary action. In this regard the Authority noted that there was a difference between correction in class and a formal warning. The Authority found that M may have been corrected and even reprimanded in class but this did not amount to a warning unless she was left in no doubt that her behaviour had crossed a line and would lead to expulsion unless corrected.

The Authority found that the school did not give M notice or adequate warning of the allegations made against her.

The Authority also found that a meeting with the student at which she was handed a letter advising her of her expulsion was not a formal hearing. M was effectively ambushed at the meeting and the PTE had not acted fairly and reasonably in the manner in which it purported to terminate M's contract.

The PTE was required to adopt disciplinary procedures in line with those recommended by the Authority and to detail those procedures in its student handbook.

Compensation for M has not yet been resolved.

Recording Information about the Student

Sections 7.5 and 15.5 of the Code require signatories to record information about the student's current address, accommodation type, contact telephone number, passport and permit details and emergency contact person. This information must be held at all times. Failure to comply with these requirements led to a polytechnic receiving some unwelcome publicity in 2004.

Case Note 9

P was enrolled at a polytechnic in a Graduate Diploma in E-commerce commencing in February 2004.

He arrived in New Zealand and commenced his course. In April, P was the subject of a newspaper article and a photograph relating to his lack of money and his accommodation difficulties. P disclosed that he was living at the local Night Shelter. He was served with a revocation of his student permit a few days later.

P continued with his studies until the third term when he withdrew from the institution and sought a refund of his fees. He said he was withdrawing because of the difficulties he was experiencing in relation to his immigration status. His request for a refund was declined. He complained to the Authority.

P said that the polytechnic had not provided adequate orientation, had failed to give him assistance in opening a bank account, had failed to advise of the existence of the Appeal Authority and had discontinued the course in 2005. He also claimed that he had given verbal notice of his intention to withdraw from the course at the beginning of the second term.

P claimed that he had \$100 in his possession when he arrived in New Zealand and that he planned to open a bank account into which his overseas sponsors could transfer money for his living costs. He had approached a staff member responsible for international students at orientation and asked for assistance in opening a bank account. He was told she was too busy at the time and he should come back later. Banks had requested his student ID and Inland Revenue Department numbers and proof of his address. As he did not have insurance or an IRD number he could not get a student ID number.

P said he had no choice but to accommodate himself at the Night Shelter. No one had met with him to provide alternative accommodation options. He did not have appropriate current medical and travel insurance until after the newspaper article alerted the polytechnic to his situation. The polytechnic advised that it had since rectified the problem by including the amount of the insurance premium in its fees invoice.

Until P's circumstances came to light in the newspaper article, the polytechnic did not hold details of his current address, accommodation type, contact telephone number or emergency contact number.

The Authority concluded that the polytechnic did not have a robust system for collecting this information and it was due to this failure that its staff remained unaware that P was living in the night shelter. The polytechnic was in breach of sections 7.5 and 15.5 of the Code.

The polytechnic's refund policy was set out in the enrolment guide which the student received with the application for enrolment form. He had ticked the appropriate place to confirm that he had read and understood the refund policy.

The Authority found that had the polytechnic complied with the requirements of the Code the situation may have been avoided. It was equally clear that P did not seek assistance for his accommodation situation from the polytechnic and that he had chosen to come to the country disregarding his obligation to support himself while in New Zealand and in the knowledge that he had assured the Immigration Service that he was in a position to support himself while he was here.

The Authority concluded that P was interested primarily in obtaining employment and residence in New Zealand rather than completing his course at the polytechnic. The Authority did not consider there were any circumstances of an exceptional nature which might require the polytechnic to refund the third term fees to P, or that any payment should be made to the student for breaches of the Code.

However the Authority was concerned that the breaches of the Code did not go unrecognised and therefore directed that the polytechnic pay \$500 to the Night Shelter. It also recommended that the Code Administrator conduct a site visit to check the polytechnic's compliance with the Code. The polytechnic complied with the Authority's direction.

Fair and Reasonable Internal Grievance Procedure

Section 24.1 of the Code provides that signatories must ensure that international students are advised of, and have access to, adequate and fair internal procedures for dealing with their grievances.

Case Note 10 (also referred to in Case Note 1)

H was the elected representative of the students for her year. She was in her fourth year at a PTE. As part of her role in representing her class she met from time to time with the PTE administration to discuss the students' concerns.

In the first part of the first semester of 2005 the students voiced a number of concerns about the reporting of their credits to NZQA and also about the lack of information regarding an internship programme that the class was due to embark on in the second semester of 2005.

An incident had occurred when students arrived at class to find that their lockers had been cleared out and the contents placed on their desks. As the lecturer who was supposed to be taking the class had not arrived, the students left the school and held a meeting.

On 23 May 2005 the students delivered a letter to the PTE management outlining a series of concerns and seeking a response. A second letter was sent on 25 May 2005.

While the PTE responded in writing to some of the student's concerns, the Director of the school also interviewed the students individually and required them to sign a statement alleging that they had been pressured into signing the original letter of complaint. The PTE then issued a warning notice naming 11 students who had signed the letter of 25 May and noting that they were "*seriously in breach*" of the Rules and Regulations of the PTE. Students were advised that if a further warning was issued they could be expelled from the PTE and the NZIS notified. During a meeting held the following day between all students and the PTE management, H endeavoured to ask questions of the management. The PTE management became very angry with her.

The following day two other students were called to a meeting with the Director at which the Director allegedly said, amongst other things, that a vote would be held in the school on whether or not H should be expelled.

On 31 May 2005 a notice was posted on the noticeboard which contained further threats to expel H and notify the Immigration Service.

The Authority found that the students had some justification for raising the issues outlined in their letters of 23 and 25 May 2005. The PTE's response to the students' concerns was antagonistic and unreasonable. Posting a notice on the noticeboard threatening H with expulsion was an extraordinary action and completely inappropriate as a means of addressing the concerns of the students or implementing an adequate and fair internal procedure for dealing with their grievances. The Authority considered there was no justification for either warning H or threatening with her expulsion in such a public manner.

The Authority found that in failing to deal with the grievances set out in the students' letters of 23 and 25 May 2005 in an adequate and fair manner, the PTE failed to ensure that H had access to an adequate and fair internal grievance procedure in breach of s.24.1 of the Code.

The Authority also found that the PTE had failed to conduct its contractual and financial dealings with the student in a fair and reasonable manner in breach of s.13.2 of the Code.

The Authority considered that as a result of the PTE management's actions the relationship between it and H had completely broken down to the point where it was not practical for her to pursue her internship under the direction of the PTE.

The Authority directed that H's fees in respect of the second semester (\$7,312.50) and a graduation fee of \$450 be refunded to her. The PTE complied with this requirement following the delivery of a final report.

Providing Refunds

Section 13.2 of the Code of Practice requires that all contractual and financial dealings between signatories or their agents and international students must be conducted in a fair and reasonable manner. From time to time the Authority receives complaints where a student is entitled to receive a refund but payment has not been made or the provider has failed to have proper regard to its own refund policy in determining the refund payable.

Case Note 11

The Authority received a complaint from a student's agent on 26 April 2005 that she had enrolled a student at Capital Language Academy in a four week General English course and had paid a sum of \$3,277.34 in respect of the English Language course, homestay accommodation and an eight week farmstay experience. The student had been unable to obtain a visa and it had been agreed by Capital Language Academy that a refund would be paid. However no refund had been received since the initial request in early December 2004. The agent reported that the Academy responded to her enquiries with constant promises of payment.

Despite letters from the Authority (which went unanswered) the refund remained unpaid as at 29 June 2005.

The Authority then issued a preliminary assessment which directed Capital Language Academy to repay the total fees to the student, including the non-refundable amounts, and a further \$750 by way of compensation for failure to return the money promptly. The Authority also directed that Capital Language Academy's name be published in connection with any report of the case.

The Authority directed that a further \$500 be paid to the Code Administrator for failure to provide information to the IEAA promptly. Capital Language Academy complied with the Authority's requirements following the issue of a final report.

Case Note 12

K and her brother enrolled at a secondary school for the first term of 2004. They paid a total of \$2,500 each in fees.

They attended the school for three days before withdrawing due to transportation difficulties and an alleged timetable clash. They sought a refund of fees. The school's refund policy indicated that refunds would be given in the first half of the year, taking into account overhead costs. On the recommendation of the Principal, the Board of Trustees refunded \$625 to each student. K lodged a complaint with the Authority on behalf of herself and her brother.

The Authority sought information from the school as to how the overhead element of the refund had been calculated. The Principal who had originally dealt with the matter did not answer the Authority's questions and later left the school. Her replacement was unable to establish the overhead element but noted that the school had a relatively high number of staff supporting international students and the overhead element would be greater than usual.

The Authority noted that the Board of Trustees had accepted that there were special circumstances justifying a refund. The issue, then, was how the refund should be calculated. The Authority noted that where a school has a refund provision which provides for a refund to be made subject to the deduction of overheads, the Authority would expect the school to have an accurate idea of what those costs might be.

The Authority noted that because the students had withdrawn in the first three days of the year, the school would not have been obliged to pay the Government Levy. It was therefore difficult to accept that the overhead element would have amounted to 75% of the fees paid.

Taking into account all the circumstances, the Authority concluded that a refund of 50% of the fees paid would have been a fair and reasonable refund.

The Authority found that in failing to make a proper assessment of the overhead element in determining the amount of the fees refund, the school failed to conduct its contractual and financial dealings with the students in a fair and reasonable manner.

The school was directed to pay a further refund of \$625 to each student. The school complied with this requirement.

Case Note 13

F enrolled in an English Language course at a PTE for the second half of 2004.

The student returned to his home country a month before the end of his course. He requested a refund of the unused portion of his homestay fee, an amount of \$750. The provider refunded \$225. The student complained that this was incorrect. The PTE's refund policy relating to homestay fees stated that:

“Unused homestay fees may be refunded minus \$500 or 10% whichever is the lesser amount.”

The Authority found that in accordance with the PTE's refund policy the student should have received \$675, and that an amount of \$450 remained owing to the student. The Authority noted that homestay fees represent money belonging to the student and are held in trust by the PTE for the student. The retention of that money when a request for payment is made by the owner of the money is a matter of serious concern.

The Authority found that in failing to apply its refund provision, and delaying payment of the refund following the correct interpretation being pointed out to it, the PTE failed to conduct its contractual and financial dealings with the student in a fair and reasonable manner in breach of s.13.2 of the Code. The PTE was directed to pay the sum of \$450 to the student by way of refund and a further \$100 by way of penalty in respect of breaches of the Code. The PTE complied with the requirements.

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 must permit a student to withdraw from a course 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. This provision continues to be a source of dispute.

Case Note 14

Z was enrolled at a PTE for his second year of study in a computer course commencing on 14 February 2005. The student said that when he arrived at the school to begin his course there was no one there. A friend advised him that the course was not going to start until 28 February. Two friends who had been in the course the year before indicated that they had not paid their fees at that stage. They were not going to pay their fees until they had been given assurances about course quality and facilities. Z said that he returned on 28 February to commence his course. He was then advised that the course would not now start until 7 March because the other students had not paid their fees.

On 7 March 2005 Z arrived to start the class. He had a number of concerns. He had heard that the tutors employed in the previous year had not been re-employed and that the one tutor being employed was a student who had been studying computer technology at the local polytechnic in the previous year.

He went to see the Dean of the PTE about his concerns. Z said that almost every day during the first week he went to see the Dean and told him that he was not happy about the tutor or the course and that he wanted to withdraw and get his money back.

On 11 March he tried to see the Dean again. He was told that the Dean had left the country. He called the Dean on his cellphone and again advised him that he wished to withdraw. He was told that he would not receive a refund.

The student lodged a complaint with the Authority on 15 March 2005.

In the course of the investigation the Dean/owner of the PTE maintained that the course had started on 28 February 2005 and that Z was not therefore entitled to a refund of fees in terms of s.236A of the Education Act.

The Authority spoke to the tutor of the course the student was enrolled in, the PTE administrator and a group of students who had been at the PTE in the previous year. These students had, due to a lack of assurance about the quality of the course, decided at the last minute not to enrol in 2005. All confirmed that the course had commenced on 7 March 2005.

The Authority concluded that the course had started on 7 March 2005 and that within seven days of that date the student had clearly conveyed to the education provider that he wished to withdraw from the course.

The Authority expressed its concern that the education provider had attempted to mislead the Authority by advising that the course had started on 28 February 2005. The Authority noted that section 25.7 of the Code requires providers to provide accurate information to the Authority.

The Authority directed that the PTE refund Z \$10,500 together with interest calculated at the rate of 11% from 14 March 2005 to the date of payment. The PTE complied with this requirement.

Case Note 15

An agent arranged for P to enrol at a PTE in a New Zealand Diploma of Business course starting on 17 November 2003. The enrolment was arranged despite P indicating to the agent that he wished to return to China before commencing his course. P signed a "Holiday Application" form deferring the start date of his course to 26 January 2004. He made this application at the same time that he applied to enrol in the course commencing on 17 November. Following his return from China in January 2004, P advised the school that he wished to withdraw from the course and sought a refund of fees.

The PTE refunded half of the student's fees. The student's application for a full refund was declined on the basis that his course had commenced on 17 November 2003 and his request for a refund was outside the seven day refund period. The student then complained to the Authority.

The PTE argued that it clearly stated on the "Holiday Application" form that the student understood that if he decided to leave the school before the return date his tuition fees would not be refunded and his visa would be cancelled.

The Authority accepted P's evidence that he informed the school's agent at the outset that he wished to commence study in February 2004. The Authority noted that where an agency relationship exists the principal is bound by the act of his or her agents as if the principal had acted personally.

The documentation indicated that P completed the holiday application form on 25 September 2003. His fees were receipted by the PTE on 26 September 2003. The holiday application form was forwarded to the PTE at the same time as P's fees. The offer of place was issued on 26 September 2003 for a course commencing on 17 November 2003. The Authority concluded that both the agent and the PTE knew when the offer of place was issued that the student did not intend commencing his course on that date.

The Authority considered that it was unethical for the education provider to issue an offer of place for a course commencing on a date that the education provider knew did not suit the student's plans. Providers cannot contract out of section 236A(1)(c) and (d) of the Education Act, and the provision in the so-called "Holiday Application" form seeking to circumvent s.236A could not override the statutory provision. The Authority was of the view that the first day of the course for which the student's attendance at the PTE was required was 26 January 2004. The school was directed to refund a further \$6,500 to the student together with interest payable at the rate of 11%. The PTE complied with the Authority's directions.

Case Note 16

G enrolled in a 24 week certificate in General English at a PTE. The final Offer of Place issued noted that the course would start on 4 July 2005 and would finish on 16 December 2005.

NZIS granted G's visa on 27 June 2005 and G received her passport back from NZIS on 2 July 2005. G then discussed the start date of the course with the school's agent who told her that she did not need to worry as the school's General English course started every Monday. However she should not delay her travel to New Zealand unduly as she only had a six month visa.

On the basis of this advice G decided to start her course on 19 July 2005. This would still give her time to complete the full 24 weeks of study planned.

G arrived in New Zealand on 17 July and attended the school to start her course on 19 July.

G said she was immediately dissatisfied with the school.

G sought a refund of fees on the following day. Her request was declined. She then complained to the IEAA.

The PTE argued that G was not entitled to a refund because her course started on 4 July and she did not withdraw until 20 July. The school said that it did not know in advance that G would not be arriving on 4 July although it had received a fax from the agent in China asking that she be met at the airport on 17 July.

The PTE said that G's decision not to arrive in New Zealand until 17 July was her own choice. She could have travelled to New Zealand in time to start the course on 4 July.

The PTE argued that G had never genuinely intended to study in New Zealand but was simply exploiting the provider in order to circumvent the immigration process and obtain a student visa.

G pointed to the information on the school's website confirming that a student could commence a course on any Monday.

The Authority concluded that G believed she could start her course on any Monday and that it was not critical that she commence her course on 4 July.

The agent was aware that G would not be commencing her course until 19 July and that the student was still in China at the time her course commenced.

The Authority concluded that if the PTE required G to formally change the date of the commencement of her course then the PTE's agent should have advised G of this.

The Authority found that the PTE was responsible for the actions of its agent and responsible for any losses arising from the actions of its agent.

The PTE's agent knew the student would not be starting her course on 4 July and did not take any steps to obtain a formal deferral or inform the student that the refund period would still run from the date specified in the offer of place.

The PTE did not object to the student commencing her course on 19 July.

The Authority concluded that the first day of the course for which attendance by the student was required was 19 July. The student was therefore entitled to withdraw from the course within seven days from that date. The PTE was directed to refund the student's fees in accordance with the Act and its refund provisions. The PTE complied with this direction following a final report from the Authority.

Short Courses

The Qualifications Authority has issued directions under s.236(d)(iv) of the Education Act 1989 relating to the refund of fees in respect of short courses where a student withdraws at an early stage. Similar issues to those which arise in respect of s.236A have arisen. Disagreement over what constitutes the first day for which attendance at the course is required is one issue that frequently arises.

Case Note 17

L enrolled in a 12 week General English course at a PTE commencing on 31 January 2005. On 27 January 2005 L went to the school and completed a course delay application form to defer the starting date of her course to 21 February 2005. The PTE agreed to the deferral.

On 17 February L advised the PTE that she wished to withdraw from her course and sought a refund of her fees. She had enrolled in a nursing course elsewhere. Her application for refund was declined. She then complained to the Authority.

The PTE said that L was not a bona fide student and had "used their Visa" and the letter of offer of place while seeking enrolment at another institution. The PTE also noted that it had paid commission to the agent involved in the student's enrolment.

The Authority noted that NZQA has issued a direction that where an international student withdraws within the first five days from the date the student is required to attend a course which is less than three months but more than five weeks, the student shall receive a refund of fees less 25% of the payments made.

The Authority concluded that:

- (i) Where a PTE agrees to defer a course start date then a student cannot be said to be required to attend their course until the deferred start date.
- (ii) The school did not require the student to commence her course until 21 February 2005.
- (iii) The student notified her intention to withdraw from the course before the specified start date. She was therefore entitled to receive a refund of fees less 25%.

It considered that the PTE was in breach of s.13.2 of the Code. It required the PTE to refund a sum of \$922.50 to the student.

The PTE refunded L's fees as directed.

Recording Contractual Arrangements in Writing

Section 13.3 of the Code of Practice requires that all contractual and financial arrangements between signatories and their agents and international students must be recorded in writing and that international students or their parents must be given a copy of any agreement they are party to.

Case Note 18 (See also Case Note 15)

P's complaint to the Authority about the refund of his fees brought to light the PTE's failure to provide adequate documentation. P completed an application for enrolment at one provider (Provider A) and was issued with an offer of place by another provider (Provider B). The offer of place specified that fees should be paid to Provider A. The fees were in fact received by Provider B.

The Authority was of the view that it was essential that P have a clear understanding of who his contract was with.

The Authority also found that the Code requirement that a student be given a copy of any agreement that they are party to envisages that the education provider will have a single document setting out the names of the parties, the course the student is enrolled in, the obligations of the education provider, the obligations of the student, and any terms and conditions relating to the refund and payment of fees. The document must be provided to the student or his or her parents. Providing a document to an agent will not suffice as the student may not have an ongoing relationship with the agent. Moreover, the agent is often the agent of the provider. The student in this case appeared to have received little more than an offer of place.

The Authority found that in failing to provide P with a comprehensive written record of the contractual and financial arrangements between the signatory and the student, Provider A was in breach of s.13.3 of the Code of Practice.

The Authority recommended that the provider develop a comprehensive contract document which sets out the contractual and financial arrangements between itself and its students.

Case Note 19 (See Case Note 17)

L sought a deferral of her course start date. The provider agreed to this deferral. However the PTE declined to provide L with confirmation in writing of the agreed deferred start date.

The Authority found that in failing to record the variation of its contract with the student in writing and to provide the student with a copy of that variation in writing, the school was in breach of s.13.3 of the Code of Practice. It directed the PTE to pay the student \$100 for this breach of the Code.

Case Note 20 (See Case Note 1)

H had in effect paid the sum of \$14,625 for a one year programme. This programme included one semester of study to complete her diploma and one semester in an internship programme relevant to registration as an acupuncturist. H paid the fees for the full year but there was no reference in the contract documentation to the internship programme. The Authority found that in failing to record in writing the contractual arrangements between the PTE and H in relation to the internship programme, the PTE was in breach of s.13.3 of the Code of Practice.

Ten Key Points for Education Providers

1. Students must be given accurate information about the nature of the courses they wish to enrol in and the costs associated with those courses.
2. Students must be assessed as being able to participate effectively in a course before their enrolment is accepted.
3. Students must be given a written copy of the refund provisions before they pay their fees and therefore enter into a commitment.
4. The refund provisions must be clear.
5. Students must be given a written copy of the contract they are party to.
6. Education providers are responsible for the actions of their agents.
7. If an education provider wishes to exclude a student, the process must be fair.
8. Education providers must remember that international students have special pastoral care needs and must provide for those special needs.
9. Education providers must have robust systems for choosing and monitoring homestay arrangements.
10. Students must have access to a fair and reasonable internal grievance procedure.

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