BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2016] NZREADT 5

READT 066/13 & 068/13

IN THE MATTER OF	appeals under s 111 of the Real Estate Agents Act 2008
BETWEEN	**EDINBURGH REALTY LTD & ORS**
	Appellant (READT 066/13)
	(Second respondent 068/13)
AND	**REAL ESTATE AGENTS AUTHORITY (CAC20004)**
	First respondent
AND	**GLENYS SCANDRETT**
	Second respondent (READT 066/13)
	Appellant (READT 068/13)

MEMBERS OF TRIBUNAL

Judge P F Barber - Chairperson
Mr J Gaukrodger - Member
Ms C Sandelin - Member

HEARD at DUNEDIN on 12 & 13 November 2015

DATE OF THIS DECISION 28 January 2016

COUNSEL

Mr C S Withnall QC, Counsel for Edinburgh Realty Ltd & Ors
Ms K Lawson-Bradshaw, for the Authority
Mr B Gray, for Ms G Scandrett

DECISION OF THE TRIBUNAL

Introduction

[1] Broadly, these appeals concern the state of knowledge of real estate agents about defects in a property they marketed for their Family Trust.

[2] On 18 October 2013, Complaints Assessment Committee 20004 issued a decision finding (*inter alia*) that Edinburgh Realty Ltd & Ors ("the Agency"), Barclay Sievwright, Lane Sievwright, Clayton Sievwright, and Matthew Shepherd, all licensees, engaged in unsatisfactory conduct.

[3] On 10 July 2014, that Committee made the following orders:

[a] Each licensee and the Agency were to be censured;

[b] The Agency was to pay a fine of $6,000 to the Authority; and

[c] Lane Sievwright, Clayton Sievwright and Barclay Sievwright were to pay a fine of $3,750 each to the Authority.

[4] We refer further below to the decision of the CAC. The Agency and the licensees (excluding Matthew Shepherd) appeal against the Committee's findings of unsatisfactory conduct. Glenys Scandrett ("the complainant") also cross-appeals against the decision of the Committee on a number of grounds which are covered below.

Background facts

General

[5] The Sievwright Family Trust owned a property at 12 Sim Street, Dunedin. The trustees were Ngaire Sievwright, Barclay Sievwright, and Lane Sievwright. The settlor of the trust was Barclay Sievwright and the beneficiaries were Barclay, his wife Ngaire, and their children Lane and Clayton.

[6] Barclay, Lane, and Clayton Sievwright are licensed salespersons.

[7] On 21 November 2009, the property was sold by the Agency to the complainant. There was no listing agreement and no appraisal document completed.

Condition of the house

[8] The Trust had purchased the property in September 2006. The appellant advised the Committee that the property had no mould when it was purchased by the Trust.

[9] In May or June 2007, the bedrooms, lounge, hallway, dining room and bathroom at the property were painted and various bedrooms re-carpeted. In October 2007, flashing was replaced along the front bedroom side of the house, a floor was repaired in that front bedroom and its ceiling was painted. Also, a leak was repaired in the passage skylight area and various curtains replaced.

[10] Not long after that, Barclay Sievwright was notified by a tenant that there was water staining from a roof leak on the ceiling and it was getting worse at the front corner of the main bedroom and the floor at that corner felt springy. A builder was sent to repair the floor and the whole ceiling was repainted and carpets lifted. The builder also put extra tantalised timber in place in the floor.

[11] From November 2007 to November 2008 the property was rented to a Ms Webster and two students. Ms Webster noticed an occasional musty smell and sometimes dampness in a wardrobe but did not mention these issues as she considered them normal for an older house.

[12] From December 2008 to December 2009 the property was rented to Jason Guthrie and his family. Mr Guthrie advised that the property occasionally smelt musty after it had been shut up and there was some dampness in a wardrobe of a bedroom following periods of rain. He did not mention these issues to the landlords as the musty smell disappeared after airing the property and dampness was not constant.

The sale of the property to the complainant/second respondent

[13] The complainant viewed the property on 21 November 2009. She raised with the agency's agent, Matthew Shepherd, that the property had a musty smell at the time and he advised her to obtain a building report to satisfy herself. Mr Shepherd gave the complainant names of two people who could prepare a building report, namely, Michael Rees and Keith Robinson. The complainant knew Mr Robinson and chose to use him.

[14] That same day the complainant signed a conditional (on a satisfactory building report) sale and purchase agreement for the property.

[15] Mr Robinson completed a limited inspection to assess the general condition of the property based on a visual inspection only. The price was subsequently reduced on the basis of issues raised by Mr Robinson.

[16] The property was due to settle on 21 December 2009 but, on that day, the complainant considered that the musty smell still existed. The settlement date was then extended. Mr Robinson did a second inspection that day. Barclay Sievwright suggested that, if there were still concerns, a hole could be cut in the flooring. Mr Robinson did this and found no issues. Barclay Sievwright fixed the hole at his own expense.

[17] The sale of the property from the Sievwright Family Trust to the complainant eventually settled on 23 December 2009.

Subsequent investigations

[18] Other building inspectors completed inspections on 29 January 2010 and 4 February 2010. The January inspection was limited to a section of the floor that had been removed in part under a wardrobe in the bedroom. The inspection found:

[a] Timber was in contact with the ground;

[b] Timber decay was readily apparent;

[c] Ground was moist immediately below the surface line causing the musty smell; and

[d] Floor framing had deteriorated substantially particularly in the bedroom of the northern face adjacent to the front door entry.

[19] The February 2010 inspection involved a floor defects report and noted:

[a] Floor support framing and structure to the building had significant decay and damage to perimeter wall lines particularly to the north and eastern faces;

[b] Likely to be decay and deterioration to the Western and Southern elevations as well;

[c] Significant remedial work was recommended; and

[d] Some under floor work had been done using non-tanalised timber.

[20] The complainant sold the property at a significant loss on 8 July 2011 and filed this complaint on 17 July 2012.

The Committee's decision

[21] The complaints made to the Authority were as follows:

[a] Failure by the licensees carrying out real estate agency work in respect of the property to disclose in writing whether or not that licensee, or persons related to the licensee, might benefit from the transaction and so breaching s 136 of the Real Estate Agents Act 2008;

[b] That the Trust and Matthew Shepherd knew the property was subject to underlying defects and failed to disclose those defects to her and that the vendors tried to conceal these defects;

[c] The agency arranged and promoted the work of a building inspector, Keith Robinson, who provided a report that misrepresented the condition of the building and that the agency ought to have disclosed the relationship between Keith, Shane, and Julie Robinson i.e. that Shane and his wife Julie were agents at the Agency and Shane was Keith Robinson's son; and

[d] The agency failed to adequately deal with the complainant's concerns.

Complaint about breach of s 136 of the Act

[22] The Committee held that the Family Trust and its beneficiaries (Lane, Clayton and Barclay) may have benefited financially from the sale of the property and as they were all employed by the agency at the time so that the agency had breached s 136 of the Act.

[23] The Committee also considered that as Lane and Clayton were the listing agents, they were carrying out real estate agency work in respect of the property, they had an obligation to disclose that they and their father might benefit financially from the transaction and breached s 136 of the Act by not disclosing this.

[24] In respect of Barclay, the Committee held that as he had his email address on the advertisement, he was also carrying out real estate agency work and breached s 136 of the Act by failing to so disclose.

[25] The Committee held that Matthew Shepherd had no disclosure obligation under s 136 as there was no evidence that the potential beneficiaries were his partners, they were not employed by him and they were not his branch manager or salespersons engaged by him.

Complaint about condition of the property

[26] The Committee held that the complainant had failed to establish that any of the licensees knew about the structural defects to the property or that they had concealed any defects.

Additional breaches

[27] The Committee also found that the Agency and each of the said licensees had breached rule 9.15 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009 ("the Rules") through the absence of an agency agreement, and rule 9.5 through the absence of an appraisal for the property.

Salient evidence adduced to us

Evidence for the agents

[28] Mr Barclay Sievwright covered that he is the father of Messrs Lane and Clayton Sievwright and that he and his wife, Ngaire, and Lane Sievwright are trustees of the Sievwright Family Trust which owned a number of rental properties in Dunedin, including the property now in issue. He covered the history of owning the property generally as outlined above and emphasised that, apart from the problems outlined above, he was unaware of any other issues with the property and tenants had never raised any such with him.

[29] He stated that there had been no formal listing authority obtained for selling 12 Sim Street, Dunedin, because he considered that the listing process for that property had been underway prior to the Real Estate Agents Act 2008 coming into force. He was also of the view at that time that, because he was both the vendor and the agent for a property, "*it was not necessary for us to sign up with ourselves*". He added that Lane and Clayton were effectively the selling agents for the property.

[30] He also stated that it did not seem necessary to prepare a formal market appraisal which would only tell the agency and the agents what they already knew, namely, that the asking price was based on their own market experience and comparable sales and was $5,000 less than the rateable value of $345,000. He also added "*as well as not being required under the Act at the time, I would be writing it myself and reading it myself*".

[31] He said he had put together a standard information pack for prospective buyers which clearly showed that he and his wife and their son Lane were the owners of the property and that Lane and Clayton were the selling agents. He was of the view that the agent Mr Shepherd had told Mrs Scandrett, the complainant, that they were the owners and she was negotiating with him (Mr Barclay Sievwright) on behalf of the Family Trust as vendor. He also emphasised that he knew that Mrs Scandrett had considerable experience in real estate herself but he never met or had discussions with her about this particular transaction. He maintains that his role was confined to being vendor and he did not act as a real estate agent on the sale to her.

[32] He was closely cross examined, especially by Mr Gray. At material times, the Trust owned 16 other properties and these seemed to be managed by a division of Edinburgh Realty Ltd, and repair and remedial work was carried out by contractors. The witness Mr B Sievwright knew of the leak at the property in 2007 because (he said) the tenant probably told him and he arranged for a plumber to fix the flashing above the leak and for other remedial work such as painting and the property was then re-carpeted. He said he had no knowledge of there being decay in the Northwestern bedroom nor that joists were badly decayed, that floor areas were infested by borer and that all led to a sponginess of the floor and smells. He emphasised that he did not know of any of that nor that the property rested on soil without ventilation which, apparently, was common for properties of its age.

[33] Mr Lane Sievwright then gave evidence. He was familiar with the property because he had lived next door to it for some years. He said that a factor in putting the property on the market in 2009 was that it was about to become vacant and Edinburgh Realty Ltd allowed agents to "*do one private sale a year without any commission being payable*". He and his brother Clayton were named as selling agents together with Mr Shepherd, another salesman employed by the company. Mr Lane Sievwright said that he took no part in actively selling or attempting to sell the property to anyone and had no communications with Mrs Scandrett.

[34] He stated categorically that he had no knowledge of any problems with mould in the house at the property. He was taken through the facts set out above and he understood that it was not until the second inspection by the building inspection, and well after settlement of the purchase by Mrs Scandrett, that the extent of the rot at the property was discovered.

[35] He maintains that at no stage was the vendor Trust a client of Edinburgh Realty Ltd and that the sale to Mrs Scandrett was "*made by the trustees of its own property on their own behalf*". He maintains that he was never "*in trade*" with the trustees as vendors of the property and nor were his father and brother. He maintained that none of them carried out any "*real estate agency work or agency work*" as defined in s 4 of the Act regarding the property. He said that all the work to achieve the sale transaction to Mrs Scandrett was carried out by Mr Shepherd but on the basis that there was no commission payable. Towards the end of his written evidence in chief he stated as follows:

> *"16. We did not and do not consider that it was necessary to prepare for ourselves as vendors, a written market appraisal. The rateable value of the property was $345,000, and the asking price was set at $340,000; see listing report at page 129 bundle of documents. As experienced sales people we were perfectly capable of making a realistic assessment of market value for ourselves, and did so. It was completely unnecessary for us to put this in writing to inform ourselves of an appropriate asking/selling price. Plus at the time the property was effectively listed for sale, it was not a requirement as the new Act had not come into force.*
>
> *17. Nor did we believe in these circumstances that it was necessary to have an appointment in writing addressed to Edinburgh. We were the vendors, there was no commission payable, and in any event, the sale on 21 November 2011, was only days after the 2008 Act came into force. I believe that the requirement to have an appointment in writing is for the protection of vendors and to prevent*

> *disputes over commission. We did not need any protection, there was no commission and therefore nothing to dispute, and we have no complaint about Edinburgh Realty. Plus as above there was not a requirement to have an appointment in writing as the new Act had not come into force."*

[36] Of course Mr Lane Sievwright was carefully taken through his evidence under cross examination by Mr Gray. *Inter alia*, he said that he never wandered around the interior of the property so that he had no idea of the sponginess of the floor or the musty smell which might indicate rot or leakages.

[37] Then there was evidence from Mr Clayton Sievwright. He said that his involvement in the sale of the property was limited to his name and photograph appearing on a 20 October 2009 advertising flyer as selling agent and he also attended open homes at the property on 21 and 28 November 2009. He met Mrs Scandrett when she came to the first open home but did not have any dealings with her and noted she was dealing with Mr Shepherd. He said he had absolutely no knowledge of any mould problems at the property nor was he aware of any odour of mustiness on the few occasions he was at the property.

[38] Mr P Wilson gave evidence as a director of Edinburgh Realty Ltd which employs the said Sievwrights, father and sons. He generally covered the nature of Mrs Scandrett's complaint and his company's reaction to that.

Evidence for the complainant

[39] Ms S Carr gave evidence about visiting the complainant at the property on 22 January 2010 and again on 28 January 2010. She was surprised at how damp and musty the house smelled although the day was sunny and warm. She said that was especially noticeable in the front bedroom and that the bedroom opposite also seemed damp and the floor spongy when they walked on it. On her second visit she felt that the complainant seemed breathless from the dampness in the house. She called at the house again in February 2010 when the floorboards had been taken up in the bedrooms and she could see how damaged the wooden joists were and, from her experience as a secretary in a construction firm in the United Kingdom, she considered that there were considerable signs of damp in those floor joists.

[40] Then we had detailed evidence from Mrs Scandrett, the complainant. Prior to purchasing this property she had purchased five properties in her lifetime but seemed to have sold only four of them at material times. She described all her communications with Mr Shepherd and others leading her to purchase 12 Sim Street, Dunedin.

[41] She said that, even prior to purchase, she had been very worried about the smell in the property so she contacted Mr Robinson, the building inspector. He examined the property and could not find any mould other than a small amount in the rear bedroom. She discussed matters with him and he advised that "*it's a good wee house*", so she went ahead with the purchase.

[42] Nevertheless, she had prepared a list of questions for the agents, including: "*Does the house need any urgent repairs?*"; "*Has this been a home?*"; "*Have there been any alterations?*"; "*Does the work have a consents and permit?*"; "*Have piles, plumbing and wiring been redone, and when?*" She said that both Clayton

Sievwright and Matt Shepherd simply responded to those questions: "*All covered by the building report*".

[43] She said that in late November 2009 Barclay Sievwright advised her that the problems identified by Mr Robinson had been fixed so she completed settlement of the purchase.

[44] She continued that, on taking possession, she almost immediately became concerned about the musty smell pervading the property which she found overpowering and very offensive. This led to her having Mr Robinson re-inspect the property and she detailed her dealings with Mr Robinson and builders and the appellants thereafter. It seemed that a builder sent by the Sievwrights came to fix a hole in the floor created by Mr Robinson in late December 2009 so that she could see the state of things under the floor and that the dampness and smell came from that and caused her to feel sick with headaches.

[45] By June 2011 she had decided to sell the property and did so for $237,000 with settlement on 7 October 2011. She felt that the state of the property had seriously affected her health.

[46] She had moved out of the property in September 2011 having stayed with her friend for a while. She had used one room of the property as an office for her work as a dance examiner/adjudicator and she slept in that room also.

[47] *Inter alia* a builder had lifted some flooring in the property in February 2010, as suggested by another building inspector, and she became shocked at the extent of the rot problem under the floor and a need to repair that and replace flooring. Eventually it seemed that the measure of damages to repair the property would be about $120,000 so she was advised to sell the property or demolish it and build a new home there. A quote to rebuild was $350,000 to $450,000. She then detailed her financial losses arising out of the purchase transaction with a view to seeking compensation of $133,466.05. The complainant also seeks compensation "*for the physical and mental impact on my health*".

[48] Of course, Ms Scandrett was cross examined in much detail.

[49] Further witnesses for the complainant gave corroborative evidence on various aspects of her evidence. One of those witnesses was Mr Phipps-Black, an Architectural Designer, who in September 2010 was contracted to complete a building consent for renovations to the property. The final paragraphs of his evidence in chief read:

> *"5. During this time it became obvious that there were major problems with moisture ingress to the sub-floor which needed remedial work and which was not part of the building consent. Remedial work does not require building consent.*
>
> *6. On one site visit I observed piles, bearers and joists being replaced to the front bedroom. I noted the floor level was set very close to the ground level at a tolerance which would not conform to today's building standards. I had also noted there was a lack of vents to the sub floor, seemingly plastered over at some point in the past. I also observed extensive work done to reduce the front yard ground level in order to remove soil away*

from the front of the house and to drain away any further moisture which would have been a major contributor toward moisture ingress and the deterioration of the sub floor structure.

7. *In conclusion the house had been suffering from a long standing problem of moisture ingress into the sub-floor which contributed to serious deterioration to bearers, joists and piles. Although I was not privy to the amount of work required to replace any sub floor deterioration it was clear that some major remedial would have been carried over the total build to rectify the problems. This was made easier and clearer by the necessity to strip out large amounts of wall and floor linings needed for the renovation."*

[50] Further corroborative evidence on various aspects was given by the complainant's brother, Mr S J Scandrett, because the complainant had asked him to look at the property in November 2009. The part of his evidence in chief reads:

"6. I went with my wife to the first advertised open home on 22 November 2009 and we were met by Clayton, given his card and shown through the property. Other parties were also visiting at that time. We both noted a strong musty smell in the house despite the fact that doors and windows were open as it was a warm sunny November day.

7. While standing at the front door of the property I overheard a woman ask about the front bedroom area Clayton replied that the owners had recently completed repairs to the floor.

8. As we were leaving I asked Clayton if there was anything to declare about the property. He immediately said no there was not. When pressed about the obvious smell he became visibly annoyed and replied 'absolutely nothing' (p20-21). The day after leaving the house we disposed of his flyer and card as we had no intention to buy. At no time did Clayton disclose that parts of the building were without consents or that the property was under contract. Neither was it mentioned that he had a relationship with the owners."

[51] Otherwise Mr Scandrett's evidence corroborated what he knew of the evidence already given by the complainant, his sister. It seems that from the outset he had mentioned to the complainant that there was a dreadful smell in the property which he found overpowering but that otherwise the property should suit her and he could not see anything obviously wrong with it. He had particularly asked Mr Clayton several times if he had anything to declare about the property because he knew that agents were obliged to declare all they knew about a property.

[52] There was further corroborative evidence on various aspects from Mr Kim Hamel, the Secretary of the Otago Times Education Trust, mainly about the distinct odour and presence of dampness in the air at the property, which he thought unusual during warm and sunny weather. He had also noticed that, in places, the floor felt uneven and spongy when walked over. From his own experience of owning properties, his general view was that it was obvious that 12 Sim Street at material times had been in a significant state of disrepair or damage directly relating to untreated damp conditions in the house's foundations.

[53] Further evidence was given for the complainant by Mr Alan Race because he had got to know the property when his parents lived there between 1988 and about 2007. He was therefore aware that at least from 1991 there were dampness and mould problems at the property which he detailed to quite some extent, and he covered remedial work done about that to some extent then for his parents.

[54] There was evidence from a Mr J de la Roche, a Dunedin Real Estate Agent of much experience. He had marketed the property for the complainant when she resold it. He said that when he viewed the property in about June 2011, prior to commencing any marketing, he considered it was very evident the home had a moisture problem and he detailed his reasons for that. He had decided that the property was probably only worth the value of its land but it had an excellent location, so that the complainant had him market the property with full disclosure to prospective buyers about its sad state. He said, on that basis, the property attracted much interest and was resold to a developer who, as it happens, has totally renovated it.

[55] Finally there was evidence for the complainant from Ms S J Alward, a Chartered Accountant. She had visited the complainant at the property for lunch on 21 December 2009 and made notes about the state of the property consistent with what has already been stated in this case. She had provided financial services to the complainant throughout this saga and invoiced her $1,380 for that.

Issues on Appeal

The Agency and Licensees' Appeal

[56] The Agency and the licensees appeal on the following grounds:

[a] The Agency appeals against the Committee's findings:

(i) That the Agency breached s 136 of the Act;

(ii) That the Agency breached rule 9.5 of the Rules;

(iii) That the Agency breached rule 9.15 of the Rules; and

(iv) That the Agency was guilty of unsatisfactory conduct.

[b] The licensees appeals against the Committee's findings:

(v) That they breached s 136 of the Act;

(vi) That they breached rule 9.15 of the Rules;

(vii) That they breached s 72(a) and (d) of the Act and were guilty of unsatisfactory conduct.

The complainant's appeal

[57] The complainant appeals on the following grounds:

[a] The Committee erred in finding that the Agency followed a complaints procedure;

[b] The Committee erred in finding that there was insufficient evidence to find that the licensees knew about the defects in the property;

[c] The Committee erred in not making findings on the lack of a formal listing of the property and that the vendor was able to avoid the responsibility of providing any warranty;

[d] The Committee failed to have a real estate representative as part of its Committee; and

[e] The complainant was disadvantaged further by the complaint not being dealt with in a timely manner.

Section 136 of the Act

General

[58] The Agency and the licensees argue that s 136 of the Act was not breached on the following grounds:

[a] To the extent that the Agency's facilities were utilised in the transaction, this occurred prior to the commencement of the Act and Rules, such that s 136 of the Act could not be breached; and

[b] The licensees were not involved in real estate agency work, were not to benefit financially and in any event, there had been sufficient disclosure.

[59] Section 136 of the Act provides:

136 Disclosure of other benefits that licensee stands to gain from transaction

(1) A licensee who carries out real estate agency work in respect of a transaction must disclose in writing to every prospective party to the transaction whether or not the licensee, or any person related to the licensee, may benefit financially from the transaction.

(2) Subsection (1) does not apply to any matter disclosed under ss 128 or 134.

(3) The licensee must make the disclosure required by subsection (1) before or at the time that the licensee provides the prospective party with any contractual documents that relate to the transaction.

(4) For the purposes of this section, an agent does not benefit financially from a transaction merely because of any commission payable to the agent under an agency agreement in respect of the transaction.

(5) A contract entered into in contravention of this section may not be cancelled merely because of that contravention.

Real estate agency work

[60] The first issue is whether the Agency and the licensees were undertaking real estate agency work.

[61] Real estate agency work is defined in s 4 of the Act as follows:

4 Real estate agency work or agency work—

(a) Means any work done or services provided, in trade, on behalf of another person for the purpose of bring about a transaction; and

(b) Includes any work done by a branch manager or salesperson under the direction of, or on behalf of an agent to enable the agent to do the work or provide the services described in paragraph (a); but

(c) does not include—

(i) the provision of general advice or materials to assist owners to locate and negotiate with potential buyers; or

(ii) the publication of newspapers, journals, magazines, or websites that include advertisements for the sale or other disposal of any land or business; or

(iii) the broadcasting of television or radio programmes that include advertisements for the sale or other disposal of any land or business; or

(iv) the lending of money on mortgage or otherwise; or

(v) the provision of investment advice; or

(vi) the provision of conveyancing services within the meaning of the Lawyers and Conveyancers Act 2006.

[62] Trade is not defined in the Act but s 2 of the Fair Trading Act 1986 defines "*trade*" as:

"*Trade means any trade, business, industry, profession, occupation, activity of commerce, or undertaking relating to the supply or acquisition of goods or services or to the disposition or acquisition of any interest in land."*

Submissions for the Authority

[63] Ms Lawson-Bradshaw submits that there is no requirement that the person undertaking real estate agency work make a profit. She puts it that, in respect of the Agency, it employed all three licensees at the time of the transaction. The property was marketed utilising the facilities and infrastructure of the Agency. The Authority submits that the Agency was undertaking services, in trade, on behalf of the Trust and for the purpose of bringing about a transaction.

[64] In respect of Lane and Clayton Sievwright, it is put that their role in the sale of the property was as follows:

[a] Their photographs and contact details were on advertisements as the marketing agents; and

[b] Clayton Sievwright attended two open homes on 21 and 28 November 2009. The complainant states that Clayton Sievwright was conducting the second open home and answered her questions.

[65] Barclay Sievwright's involvement was that his email address was included on the advertisements for the property (Barclay and Lane Sievwright shared the same email address).

[66] The Authority submits that, Barclay, Lane and Clayton Sievwright were all conducting real estate agency work as, in particular, the inclusion of their photographs and contact details was clearly for the purpose of bringing about the sale of the property; that we will be aware that it is not unusual for a number of agents to be involved in a transaction; and there is no basis to read down the obligations in s 136 to apply only to the specific licensee who introduces and conducts the negotiations with the eventual purchaser of a property.

Financial benefit

[67] The Agency and licensees have submitted that the Committee did not analyse whether the licensees or the Agency may have benefitted financially from the transaction.

[68] Counsel for the Authority notes that the beneficiaries of the Trust are Barclay, his wife, Lane and Clayton Sievwright. It is put that we should take a realistic approach to whether a licensee will benefit financially from a transaction where the vendor is an entity in which the licensee has an interest, as occurred in *Complaints Assessment Committee v Whiteford* [2011] NZREADT 16.

[69] Ms Lawson-Bradshaw also notes that the wording of s 136 simply requires that the licensee, or any person related to the licensee, may benefit financially from the transaction. There is no certainty of benefit required. It is submitted that Parliament clearly intended that disclosure be made if there was even a possibility of benefit, and that this is in keeping with the consumer protection purpose of the Act and principles of fully informed decision-making.

[70] The Authority submits that the Committee was correct to conclude that the Agency and licensees or any related persons may benefit financially from the sale of the property; and that it was the responsibility of the Agency to ensure that its agents made proper disclosure as required by the Act.

Insufficient disclosure

[71] As an alternative, the Agency and licensees have submitted that there was sufficient disclosure at the time of entering into the transaction. Barclay Sievwright discusses in his brief of evidence that there is little more they would have done in terms of disclosure and notes that everyone had been involved in the real estate industry for some time, Dunedin is small and he believed that the complainant had family connections to the real estate industry.

[72] The Authority notes that any informal discussion or implicit disclosure is insufficient in terms of s 136 that requires disclosure to be made in writing. We emphasised the importance of compliance with s 136 in *Real Estate Agents Authority v Chand* [2014] NZREADT 102.

> *"[59] However, we find that there has been unsatisfactory conduct because s 136 has simply not been complied with. The defendant failed to disclose in writing to the prospective purchaser of the property that he and his wife might (and/or their company) benefit financially from the transaction. In terms of s 136(3) that disclosure was required before any contractual documents were provided to the prospective purchaser. The principle in s 136 is very important for the property functioning of the real estate industry and its breach will almost always, we expect, amount to unsatisfactory conduct at least…."*

Application of Rules and Act

[73] The Act and the Rules came into force on 17 November 2009. The complainant entered into a conditional sale and purchase agreement on 21 November 2009.

[74] Despite the fact that the s 136 only came into force just before the agreement was signed, Ms Lawson-Bradshaw submits that s 136 still applies and as we have subsequently noted the disclosure obligation in s 136 is ongoing – refer *Real Estate Agents Authority v Clark* [2013] NZREADT 62 at [61].

[75] The Authority submits that the Committee was correct to conclude that s 136 was breached by both the Agency and the licensees.

[76] It is put that the Agency was a licensee, was carrying out real estate agency work in respect of the sale of the property, and failed to disclose that persons related to the Agent may benefit financially from the sale. The licensees were all carrying out real estate agency work (through the inclusion of their details on advertising materials) in respect of the sale of the property and they failed to disclose that they or persons related to them may benefit financially from the sale of the property.

[77] Ms Lawson-Bradshaw submits that there is no ability to read down the requirements in s 136 to being confined to the licensee completing the sale or that the mandatory requirements of disclosure in writing can be avoided; and that full and frank disclosure in order to promote consumer protection is the cornerstone of s 136.

Rules 9.5 and 9.15

[78] The Agency and the licensees submit that the Committee erred in finding breaches of rules 9.5 and 9.15 of the Rules on the basis that the Rules do not apply as they were not carrying out real estate agency work and dealing with clients and that it would have been absurd to require them to prepare an appraisal and listing agreement for themselves.

[79] Rule 3.2 of the Rules specifies that the practice rules set out the standard of conduct and client care that licensees are required to meet when carrying out real estate agency work and dealing with clients. Real estate agency work is defined in s 4 of the Act. The Authority submits that the Committee correctly concluded that both the Agency and the licensees were carrying out real estate agency work in respect of the sale of the property.

[80] Rule 9.5 requires that a licensee provide a written appraisal to a client and rule 9.15 provides that a licensee must not offer or market a property unless authorised by a client through an agency agreement.

[81] Section 4 of the Act defines client as the person on whose behalf an agent carries out real estate agency work. In this case, the client was the Trust. It may seem technical to require compliance with rules 9.5 and 9.15 in these circumstances but (Ms Lawson-Bradshaw submits) the Rules exist and are binding and if a licensee is going to market a property through its own agency (rather than conduct a private sale) then the Rules must be adhered to. The licensees chose to use the Agency to sell their property through and as such, they must comply with the Rules.

[82] Further, in relation to the Trust, there may be interests beyond the Agency and individual licensees, for example, Barclay Sievwright's wife, who is also a beneficiary of the Trust, who should have the benefit of a listing agreement and appraisal. A listing agreement is also the reference point for all details regarding the property for all licensees within the Agency and for the administration staff who are responsible for matters such as online advertising. The listing agreement is essential to communicate information to other licensees in the Agency who may wish to introduce their own prospective purchaser.

Condition of the property

[83] The Committee found that the complainant had failed to establish that any of the licensees knew about the structural defects to the property or that they had concealed any defects. Ms Lawson-Bradshaw observes that the ultimate question for us is whether we agree from the evidence that the licensees were not aware of the defects or if not, whether the licensees should have been aware of the defects.

Compensation and misconduct

[84] The Authority notes that the decision of *Quin v The Real Estate Agents Authority* [2012] NZHC 3557 precludes complainants being awarded compensation. The High Court held that committees (or this Tribunal on appeal) cannot order licensees to pay complainants money as compensation for errors or omission (compensatory damages) under s 93(1)(f) of the Act where there is (only) unsatisfactory conduct as distinct from misconduct.

[85] Ms Lawson-Bradshaw submits that the Committee correctly concluded that the Agency and licensees had breached s 136 of the Act, rules 9.5 and 9.15 of the Rules and as such they had committed unsatisfactory conduct.

The case for the complainant

[86] Essentially, counsel for the complainant (Mr B L Gray) puts it that she was the unwitting purchaser of a property which suffered from leaky house syndrome due to the failure of the licensees to comply with Rules 6.4 and 6.5 of the said Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009. There was also reference to Rule 3.3.

[87] Inter alia, Mr Gray submits that we do have jurisdiction over the licensees despite their argument that they were not engaged in real estate agency work or agency work, as defined under s 4 of the Act, when attempting the sale transaction of the property to the complainant. Mr Gray points out that the contract was entered into four days after commencement of the Real Estate Agents Act 2008 and makes submissions about the meaning of s 4 of the Act which we deal with below.

[88] He also addressed the licensees' submission that the trustees in selling the property were not acting for reward or gain in the course of business, and that to do so would be contrary to their function and obligation as trustees. He also referred to the submission for the licensees that none of the Sievwrights carried out any actual work or services on behalf of another person in the actual sale of the property to the complainant and disputes that in terms of the evidence adduced to us, but submits that it is irrelevant to the issue whether those licensees come under the jurisdiction of the Act and/or the Rules.

[89] Mr Gray submits that the Sievwrights and Mr Shepherd all breached their duties under s 136(1) to disclose in writing to the complainant, as a prospective party to the property transaction, whether or not any of them or any person related to any of them may have benefitted financially from the sale of the property.

[90] Mr Gray submits that the conduct covered above by the said agents is not merely unsatisfactory conduct but is misconduct in terms of the definition of "*misconduct*" in s 73 of the Act; so that we may award compensation for a sum not exceeding $100,000 by virtue of s 110(1)(g).

[91] Inter alia, Mr Gray submits there is overwhelming evidence before us that the property suffered from leaky building syndrome.

[92] Mr Gray completed his typed submissions with the following paragraphs:

> *"[94] In the present case the circumstantial evidence from which inferences can properly be drawn are:*
>
> *(i) There is clear neutral objective evidence from Mr Race regarding the state of the leaky building problem and any repairs undertaken on the property from 1988 to the time the trust purchased the property in June 2006.*
>
> *(ii) Barclay Sievwright admits being advised of a leaky building problem with the property by a tenant.*
>
> *(iii) The trust caused significant leaky building repairs to be done on the property which provides a strong inference that the trust knew or was likely to have known of the leaky building problem with the property.*
>
> *(iv) There was an obvious strong musty smell noticed by other people at the time immediately before and after the sale of the property to Ms Scandrett.*
>
> *(v) Clayton Sievwright when asked directly denied any problems regarding the obvious smell at the property.*
>
> *(vi) There is overwhelming evidence of leaky building syndrome contained in the Marlow reports and discovered by the subsequent purchaser.*
>
> *(vii) Complete lack of any effort to address the problem by the licensees when the problem was raised immediately by Ms Scandrett.*

[95] The Tribunal can be satisfied on the balance of probabilities that the only rational inference from the circumstantial evidence is that the licensee breached Rules 6.4 and 6.5.

[96] The evidence before the Tribunal is not only capable of giving rise to that inference it is the only inference available to be drawn.

[97] The Tribunal is invited to find the licensees guilty of misconduct under s 73 of the Act and make an order for compensation under s 110(1)(g) of the Act together with costs against the licensees.

[98] It is submitted that Ms Scandrett has suffered significant loss in excess of $133,000 by reason of the licensee's misconduct and she is entitled to such orders."

The Submissions for the Sievwrights and Edinburgh Realty Ltd

[93] Mr Withnall QC submits that because Mr P Wilson's evidence seemed to be accepted by the complainant, the complaint against Edinburgh Realty Ltd must be dismissed and that the only determination of the Committee which is left is that it was not shown to the Committee that Barclay Sievwright knew of the condition of the floor and subfloor at the property. Mr Withnall QC puts it that to be justiciable under the Act, Mr Barclay Sievwright must have been acting in his capacity as a licensee but that he was not and was acting only and entirely as a vendor. Mr Withnall submits that, in any case, the evidence does not establish knowledge on Mr Barclay Sievwright's part of the condition of the floor and subfloor of the property at material times.

[94] Mr Withnall QC also submits that knowledge or otherwise about that floor by Lane and/or Clayton Sievwright is irrelevant as there was no complaint against them and that cannot become a subject of an appeal before us, as an appeal can only be made to us against a determination of the Committee. However, the CAC records that Lane and Clayton were also the subject of the complaints.

[95] Mr Withnall QC then puts it:

"[6] The trust owned the property for about three years. It was tenanted. Barclay was seldom in the property. The tenants never drew his attention to any problem other that the North-east corner. When they did he sent trades people to fix it. When he was informed that Mrs Scandrett had raise a musty smell he suggested a condition as to building report. When there building report was obtained it raised a few issues including the roof. They were addressed.

[7] All maintenance work was carried out by tradespersons, including the bedrooms being re-carpeted. He simply engaged the professionals and left the work to them – as one would expect. In his own words he did not 'micro-manage' the work.

[8] To suggest he must have known of the work carried out by the previous owners in 1991 borders on the absurd."

[96] Mr Withnall QC puts it that the real purpose of the appeal by the complainant is to seek payment of damages or compensation but this, in terms of *Quin*, cannot be done unless we substitute a finding of misconduct for the Committee's finding of unsatisfactory conduct. As he puts it, we cannot do that ourselves at this stage and, if we felt that a charge of misconduct could be proved *prima facie*, we must refer the case back to the Committee to frame a charge of misconduct, which would then need to be heard in the usual way. We agree with Mr Withnall QC in terms of that potential procedural point.

[97] Mr Withnall QC then very helpfully dealt with the possible application of s 136 in this case and we deal with that below. He then dealt with the issue whether Rules 9.5 and 9.15 apply to the facts of this case and we also deal with that below.

Final Oral Submissions

[98] Mr Gray, as counsel for the complainant purchaser, emphasised that the complainant seeks compensation for her said losses.

[99] Mr Gray submits that, on the balance of probabilities, the vendor Trust must have known of the dampness and rot problems at the property covered in the evidence before us. He emphasises that, except for Mrs Sievwright, all the vendor trustees were experienced real estate agents familiar with dealing in renting property and with a detailed knowledge of the Dunedin property market.

[100] Mr Gray submitted that, over the Trust's years of ownership, its trustees had called for repairs to be done to the property because the Sievwright agents knew the true state of the property. He referred to the dampness and rot problems referred to above but also the evidence about borer and dry rot. He particularly referred to Mr Race's evidence about the remedial work needed back in 1991 before the Trust purchased the property.

[101] Mr Gray put it that the letters tendered for the licensees from three tenants of the property were all in almost identical wording (see extracts set out below) and that none of those tenants have been called to give evidence in this case. The first such tenant rented the property through Mr Lane Sievwright over a six month period from about November 2006 to May 2007 and stated that he and his partner had found no issues with the property but then went on to state:

> *"I can confirm with you that, on some occasions, there was a 'musty' smell noticeable within the house but it was in no way an offensive odour and the smell only ever emanated when we returned to the property having been away from the house for an extended period of time. It took no time at all to 'lose' the smell – simply opening the windows for 5-10 minutes dealt with it. At no time did we ever consider it an issue to raise with you, nor did we. We accepted that it was a dwelling that had been untouched for a significant period of time, it was an older dwelling and I would go so far saying that the 'mustiness' that we noticed was expected in the type of property it is. For us, it simply wasn't an issue and therefore we saw no reason at all to inform you of the matter."*

[102] There is a similar type of letter from another former tenant of the property over November 2007 until November 2008 and she states:

"Whilst living there I can confirm that a musty smell was occasionally noticed, after returning from periods away with work, and that moisture was sometimes present in the wardrobe.

At no time did I mention these issues to the landlord. I felt they did not warrant complaining about as it was what I expected from an older house and both issues were easily eliminated by keeping the room ventilated and a moisture control tub/dehumidifyer in the wardrobe."

[103] The third such letter was from a female tenant of the property over late 2008 to late 2009 in which she states:

"I can confirm that during my time at this address I became aware of an occasional musty smell following periods where the house had been shut up i.e. windows and doors closed. In addition, following periods of rain, I noticed some dampness in the wardrobe of the room occupied by my daughter.

At no time did I advise the landlord of either the occasional musty smell or the dampness. The reason I did not advise the landlord of these issues was that I considered such smells are to be expected with a dwelling of this vintage and that I did not see any evidence of damage being done to the property.

The musty smell invariable disappeared after airing the dwelling by opening windows and the dampness in the wardrobe was by no means constant.

At some stage after vacating the property I returned to collect some mail and I was asked directly by the new owner and her male friend whether or not I had informed the landlord of these issues. I explained to them that I had not advised the landlord and explained the reasons for that as outlined above."

[104] Inter alia Mr Gray referred to Ms Alward's evidence about the smell at the property being so intense that it caused the complainant health problems and yet the Sievwright agents say they knew nothing about a smell or odour, and certainly knew nothing about the state of the property. Mr Gray submits that it is very improbable and not credible in terms of the evidence. He submits that there has been a breach of Rule 6.5 to the extent that there is misconduct by those agents. He submits that, at material times, the 2008 Act and its Rules applied.

[105] He also submits that there can be no doubt that the Sievwright agents were engaged in real estate agency work in terms of the definition of that in the Act and that their client was the Sievwright Family Trust and not themselves whom they held out to be the real estate agents marketing the property.

[106] Mr Gray also put it that although Mr Shepherd was an agent marketing the property, he needed to get information and instructions from the Sievwright family and it was not correct that he was in charge of all the marketing or showing of the property to the complainant.

[107] Mr Gray also put it that the said response of Mr Clayton Sievwright to the question from the complainant's brother deliberately misled the complainant and that Mr Clayton Sievwright knew of the mould problems and the need for remedial work but he did not disclose this.

[108] Mr Gray submitted that the transaction to the complainant was not simply a private sale by the Sievwright agents and their mother, and that it is irrelevant that Edinburgh Realty Ltd apparently allowed agents to make one private sale a year without charging commission to the vendor. Mr Gray pointed out that Edinburgh Realty Ltd and the Sievwright agents were shown in advertising material as the selling agents for the property. He submits that this transaction cannot be regarded as a private sale as the vendor was the Sievwright Family Trust, and the Sievwright agents were beneficiaries of that Trust and so had a financial interest in the outcome of marketing the property. Mr Gray submits that, in any case, the Sievwright agents were operating "*in trade*" at all material times.

[109] Mr Gray submits that there can be no doubt that the agents have breached s 72 of the Act and are guilty of "*unsatisfactory conduct*", but also that the evidence is sufficient to show that they are guilty of "*misconduct*" in terms of the definition of that expression in s 73 of the Act. He submits that the particular breach of Rule 6.5 is disgraceful in the eyes of reasonable members of the public and other agents so as to amount to misconduct; and also that such experienced agents as the Sievwrights had a duty to disclose what they knew about the property and they failed to do that which resulted in a significant financial loss to the complainant purchaser and that is seriously negligent real estate agency work.

[110] Ms Lawson-Bradshaw submits for the Authority that a key issue is the definition of "*real estate agency work*" in s 4 of the Act but there can be no doubt that the 2008 Act and its Regulations were in force before the Sale and Purchase Agreement was signed in this case.

[111] She submits that that the sale transaction to the complainant was anything but a private sale. She noted it was advertised by Edinburgh Realty Ltd in the usual way, in flyers and in newspapers, and the Sievwright Family Trust was clearly using that agency to sell its property. She also noted that open homes were held in the usual way to find a buyer and there were no suggestions that anyone regarded this sale as a private sale; and Messrs Barclay and Lane Sievwright were identified as selling agents in the marketing material, although the actual dealing with prospective purchasers seemed to be handled by Mr Shepherd.

[112] Ms Lawson-Bradshaw has made submissions on the application of both Rules 9.5 and 9.15. She accepted that Mr Clayton Sievwright was not a trustee and so not a vendor and she emphasised that Mrs Sievwright was a trustee and was a vendor but, of course, was not a licensee. Ms Lawson-Bradshaw observed that the licensees had obligations to their mother as a vendor/trustee of the property.

[113] With regard to s 136 of the Act, Ms Lawson-Bradshaw adds that purchasers are entitled to know with whom they are dealing and that, in the present case, the transaction was not a normal arms-length one and that, even if there had been oral disclosure of the interests of the Sievwright agents, that is non-compliance with s 136 which requires written compliance.

[114] Ms Lawson-Bradshaw observed that even if the Sievwright licensees have not benefitted financially from the sale to Mrs Scandrett, that is not required by s 136 and it is only necessary that they "*may*" so benefit.

[115] She submits that, on the balance of probabilities, the Sievwright licensees must have known, or should have known, that the property was full of defects.

[116] Finally, Ms Lawson-Bradshaw referred to the cross-appeal from the complainant against the Committee for not having laid a charge of misconduct against the Sievwright licensees. She submits that from the evidence that there is a *prima facie* case of misconduct and under the structure of the Act we may not so find at this point, but must remit this case back to the Committee to lay charges without further investigation.

[117] In his final oral submissions, Mr Withnall QC put it that these appeals have now all reduced to the question of the complainant seeking compensation. He put that to lead to the issue of what "*knowledge*" the Sievwright agents had at material times. He submits that it has not been proved that they knew of the defects in the property.

[118] Inter alia Mr Withnall submits that there is no basis for us to regard the said three similar letters from tenants as contrived.

[119] Mr Withnall referred to evidence, such as that from Mr Race, that there was no smell of mould or mustiness on the property serious enough to alert the Sievwright agents of the need for remedial work at the property. He put it that, in any case, all maintenance work was done by tradespeople as contractors to the Family Trust so that the Sievwright agents had no personal knowledge of the state of the property which, as it happened, had been concealed from them and they did not know of it. Mr Withnall emphasised the evidence that the problems within this house were not evident. He submits that we have no jurisdiction to remit this matter back to the Committee for it to formulate and raise a charge against the Sievwright licensees. We disagree on that point.

[120] Mr Withnall repeated his submission that the transaction was a private sale and was not effected in the course of the business of Edinburgh Realty Ltd so that the Sievwright agents were not acting "*in trade*". He put it that there was no remuneration involved for Edinburgh Realty Ltd, despite its facilities being used, because the Sievwright trustees were selling the property to the complainant for the trustees of the Sievwright Family Trust, and Mr Withnall puts it that would be artificial to isolate Mrs Sievwright from that private transaction. In that latter respect we again disagree.

[121] Mr Withnall maintained that the conduct of the Sievwright trustees was not that of persons acting as licensees in the usual way, but that the Sievwright Family Trust had taken advantage of an employment term between Edinburgh Realty Ltd and the Sievwright agents to sell a property once a year free of commission, so that it is submitted for the Sievwright licensees that neither s 136 nor Rules 9.5 or 9.15 could apply.

[122] Finally, Mr Withnall submits that, in any case, the Committee should have resolved to take no further action and that should be our finding as the Sievwright agents were not selling the property for themselves and do not come within the Act or its Rules.

Our views

[123] In terms of Rule 9.5, a licensee must provide an appraisal of the property in writing to the vendor. That was not done in this case.

[124] Under Rule 9.15, a licensee may not advertise or market the property unless authorised by the vendor through an agency agreement. There was no agency agreement completed in this case.

[125] Under s 136 of the Act, a licensee who carries out real estate agency work in respect of a transaction must disclose in writing to every prospective purchaser whether or not that licensee or any person related to that licensee may benefit financially from the transaction. The family relationship between the Sievwright agents and Mrs Sievwright is covered by s 137(2) of the Act. All the Sievwright agents and Mrs Sievwright stood to benefit financially from the sale to the complainant because they were beneficiaries or potential beneficiaries from the vendor Trust and it was benefitting financially in the sense that it wished to sell the property for money and it did so. However, the necessary disclosure was not made in writing to the complainant purchaser so that there was a clear breach of s 136 of the Act.

[126] The transaction in issue was not a private sale. The licensees and their agency were marketing the property for the said Family Trust in the usual way. That activity was clearly real estate agency work as defined in s 4 of the Act. It was in the usual course of the licensees' and the Agency's trade. That concept is not abrogated from by the agency's in-house rule that some transactions need not incur commission. The benefit of that was to the Sievwright Family Trust and family including the licensees and Mrs Sievwright. The family trust was/is conducting the business of owning and renting out many residential properties.

[127] In terms of the issues put to us we find that the Agency and the licensees breached s 136 of the Act and rules 9.5 and 9.15 and were, at least, guilty of unsatisfactory conduct under s 72 of the Act. We consider the other complaints of Ms Scandrett to be of little significance in view of our main finding in this appeal set out below. Also, as Mr Withnall QC put it, Mr Wilson's evidence for the Agency was not challenged.

[128] We are not satisfied that there was anything improper about the involvement of Mr Robinson but it was unsatisfactory that his relationship with Shane and Julie Robinson was not disclosed.

[129] Generally, we agree with the submissions of Ms Lawson-Bradshaw for the Authority.

[130] Under s 89 of the Act, a Committee may make one or more of the determinations set out in s 89(2) of the Act. In this case, the Committee determined that there had been unsatisfactory conduct in relation to some of the complaints and that there be no further action taken with regard to other complaints. The Committee could have determined that the complaints be considered by us. Had it done that then, in terms of s 91 it needed to lay an appropriate charge before us in writing and give written notice of that determination and a copy of the charge to the relevant licensees. It is not appropriate for the current determinations of the Committee to remain standing if we find that the most just course is that the complaint be referred to us by way of an appropriate charge. We do so find the evidence adduced to us which was far more extensive than that before the Committee.

[131] Accordingly, we quash the findings of the Committee and refer the complaints back to it with our direction that the Committee now, forthwith, formulate an

appropriate charge or charges and lay it or them before us in terms of the procedures of the Act and its Regulations.

[132] We are conscious that one of our functions, in terms of s 102 of the Act, is to hear and determine any charge against a licensee brought by the Committee but the Act does not empower us to lay charges even though it might seem more cost-efficient that, having heard the complaints *de novo*, we make final determinations, perhaps, amounting to misconduct. There is no dispute that in terms of s 111(4) we may, after considering the appeal, confirm, reverse, or modify the determination of the Committee.

[133] Simply put, when we stand back and take an objective look at the evidence overall with sensible inferences, we do not find it credible that the Sievwright licensees were unaware of the state of the property at material times. We think that there is a *prima facie* case that their conduct would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful; or constitute seriously incompetent or seriously negligent real estate work; or consists of a wilful or reckless contravention of the Act and/or of its Regulations or Rules.

[134] Accordingly, we refer this case back to the Committee to a lay a charge or charges on the basis we have indicated above. We contemplate that when our Tribunal hears any such charges, none of the three of us will hear them.

[135] Pursuant to s 113 of the Act, we record that any person affected by this decision may appeal against it to the High Court by virtue of s 116 of the Act.

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Judge P F Barber
Chairperson

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Mr J Gaukrodger
Member

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Ms C Sandelin
Member