

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

**[2021] NZREADT 43**

**READT 010/2021**

IN THE MATTER OF a charge laid under s 91 of the Real Estate Agents Act 2008

BROUGHT BY COMPLAINTS ASSESSMENT COMMITTEE  
1901

AGAINST YI WEI LOWNDES  
Defendant

Hearing 19 July 2021, at Auckland

Tribunal: Hon P J Andrews, Chairperson  
Mr N O'Connor, Member  
Ms F Mathieson, Member

Appearances: Mr T Wheeler, on behalf of the Committee  
Mr J Ussher, on behalf of Ms Lowndes

Date of Decision: 10 August 2021

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**DECISION OF THE TRIBUNAL**

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## **Introduction**

[1] On 3 May 2021 Complaints Assessment Committee 1901 (“the Committee”) charged the defendant, Ms Lowndes, with misconduct under s 73(b) of the Real Estate Agents Act 2008 (“the Act”). The Committee alleged that her conduct in relation to the sale and purchase of a property at Warkworth (“the transaction”) amounted to seriously incompetent or seriously negligent real estate agency work.

[2] In the alternative, the Committee alleged that if the Tribunal were not satisfied that Ms Lowndes’ conduct constituted misconduct, it constituted unsatisfactory conduct under s 72(a)–(d) of the Act.

[3] The charge was set down for hearing on 19 and 20 July 2021.

[4] On 18 July 2021 counsel for the Committee (Mr Wheeler) and Ms Lowndes (Mr Ussher) advised the Tribunal that it had reached an agreed resolution of the charge, subject to the approval of the Tribunal, pursuant to which the Committee would seek leave to withdraw the charge of misconduct and Ms Lowndes would admit a charge of unsatisfactory conduct, based on an agreed summary of facts.

[5] Having heard from Mr Wheeler and Mr Ussher, the Tribunal granted leave for the charge of misconduct to be withdrawn and formally recorded Ms Lowndes’ admission of the charge of unsatisfactory conduct. The Tribunal then heard submissions as to penalty.

## **Facts**

[6] We set out the agreed summary of facts, in full:

- 1 [Ms Lowndes] is a licensed agent under the Act. At the time of the relevant conduct she was employed by Barfoot and Thompson Royal Oak.
- 2 On 30 April 2015, Chris Drinnan entered into a sale and purchase agreement for 154 Matakana Road, Warkworth (the Property).
- 3 Around this date, [Ms Lowndes] discussed with Mr Drinnan if he would be willing to on-sell the Property.

- 4 At no point did [Ms Lowndes] and Mr Drinnan enter into an agency agreement concerning the Property.
- 5 Between April and 15 May 2015, [Ms Lowndes] offered the Property to Mr Yang for \$5,800,000.
- 6 On 20 May 2015, Mr Drinnan and Mr Yang entered into a sale and purchase agreement for the Property at a sale price of \$5.8 million, assisted by [Ms Lowndes].<sup>1</sup>
- 7 Prior to settlement [Ms Lowndes] agreed with Mr Yang that she would obtain a 10 percent interest in the Property.
- 8 [Ms Lowndes] disclosed to Mr Drinnan that she was acquiring a 10 percent interest in the Property and Mr Drinnan agreed to that.
- 9 However, [Ms Lowndes] acquired an interest in the Property without fulfilling the consent requirements of sections 134 and 135 of the Act in the prescribed form.
- 10 On 3 November 2015, the transaction for the Property settled.
- 11 [Ms Lowndes] received a finder's fee of \$1,243,617.50 in relation to the sale of the Property.
- 12 [Ms Lowndes] breached Rule 9.6 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 (the Rules) as she offered Mr Yang the Property without the appropriate authorisation through an agency agreement.
- 13 [Ms Lowndes] by failing to obtain consent from Mr Drinnan to her obtaining a 10 percent interest in the Property in the form prescribed pursuant to section 134 of the Act:
  - a) failed to comply with her fiduciary obligations to [her] client, in breach of rule 6.1 of the Rules;
  - b) failed to act in good faith with all parties engaged in the transaction, in breach of Rule 6.2 of the Rules;
  - (c) obtained an interest in land without effective consent in the prescribed form from her client, in breach of sections 134 and 135 of the Act.
- 14 [Ms Lowndes'] above failures demonstrate a lack of skill, care, competence, and diligence when carrying out real estate agency work in relation to the Property in breach of Rule [5.1].

[7] The Tribunal was advised that on 23 November 2017 Mr Yang and a company Karariki Ltd issued proceedings in the High Court at Auckland against Ms Lowndes, Mr Drinnan and his father, and a company Drinnan Properties Ltd. The proceedings were settled pursuant to a Deed of Settlement dated 9 May 2019.

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<sup>1</sup> The Tribunal notes that the agreement for sale and purchase recorded the sale as having been by "private treaty".

[8] The Tribunal notes that on 4 September 2019 the Committee decided (pursuant to s 78(b) of the Act) to inquire into whether Ms Lowndes had offered a property to a purchaser without authority via an agency, and subsequently acquired an interest in the property without disclosure as required under ss 134 and 135 of the Act.

[9] As at April 2015 Ms Lowndes had held a salesperson's licence for at least eight years.<sup>2</sup> The Tribunal records that it was advised that Ms Lowndes voluntarily suspended her licence in October 2018. It is currently suspended through to March 2022.

### **Finding**

[10] On the basis of her admission of the breaches of the Act and Rules and the charge of unsatisfactory conduct, and the agreed summary of facts, we find Ms Lowndes guilty of unsatisfactory conduct.

### **Penalty principles**

[11] The principal purpose of the Real Estate Agents Act 2008 is to “promote and protect the interests of consumers in respect of transactions that relate to real estate and to promote public confidence in the performance of real estate agency work.”<sup>3</sup> The Act achieves these purposes by regulating agents, branch managers, and salespersons, by raising industry standards, and by providing accountability through a disciplinary process that is independent, transparent, and effective.<sup>4</sup>

[12] In order to meet the purposes of the Act, penalties for misconduct and unsatisfactory conduct are determined bearing in mind the need to maintain a high standard of conduct in the industry, the need for consumer protection, the maintenance of confidence in the industry, and the need for deterrence.

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<sup>2</sup> The first entry in the Licence History provided to the Tribunal is a “Renewal Reminder”, followed by a “Licence Issue” as from 1 April 2007.

<sup>3</sup> Section 3(1) of the Act.

<sup>4</sup> Section 3(2).

[13] A penalty should be appropriate for the particular nature of the misbehaviour, and the Tribunal should endeavour to maintain consistency in penalties imposed for similar conduct, in similar circumstances. The Tribunal should impose the least punitive penalty that is appropriate in the circumstances. While there is an element of punishment, rehabilitation is an important consideration.<sup>5</sup>

[14] Pursuant to s 110(2) of the Act the Tribunal may make any of the orders that a Complaints Assessment Committee may make under s 93 of the Act (following a finding of unsatisfactory conduct), that is (as may be relevant to the present case):

- [a] an order censuring or reprimanding the licensee;
- [b] an order that a licensee undergo training or education;
- [c] order an individual licensee to pay a fine of up to \$10,000.

[15] Pursuant to s 110A of the Act, the Tribunal may also make any award as to costs that it thinks fit.

### **Submissions**

[16] Mr Wheeler submitted that Ms Lowndes' conduct was towards the upper end of the range of seriousness of unsatisfactory conduct. He submitted that her admitted failure to comply with the requirements of ss 134 and 135 and her admitted breaches of rr 6.1 and 6.2 of the Rules were serious breaches of specific consumer-protection provisions. He submitted that the additional factor of never having obtained an agency agreement and not working to any terms of engagement required a higher starting point for penalty.

[17] He submitted that at the time of the conduct, Ms Lowndes had considerable experience in the industry and should have been aware of her obligations under the Act and Rules, and the fundamentals of real estate agency work. He submitted that

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<sup>5</sup> See *Complaints Assessment Committee 10056 v Ferguson* [2013] NZREADT 30; *Morton-Jones v The Real Estate Agents Authority* [2016] NZHC 1804, at [128]; and *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1, at [97].

the fact that the agreement for sale and purchase between Mr Drinnan and Mr Yang was stated to be by private treaty did not absolve Ms Lowndes of her responsibilities and obligations under the Act.

[18] Mr Wheeler noted that penalties imposed by the Tribunal in previous cases for breaches of ss 134 and 135 had included an order for further training but submitted that such an order would not be appropriate in the present case, given that Ms Lowndes has not been working in the industry for some years and would be required to undertake further training if she were to seek to reactivate her licence.

[19] He submitted that the starting point for a fine should be in the range of \$7,000, with an end point, after taking into account allowances for her admission of the charge of unsatisfactory conduct, the time since the conduct occurred, and the fact that Mr Drinnan was aware of her personal interest, of \$4,000.

[20] Mr Ussher criticised the Committee for including an allegation in the charge that Ms Lowndes failed to disclose to Mr Drinnan that she was proposing to take a 10 percent share in the property, when it had never made any attempt to contact Mr Drinnan in the course of the investigation for an interview, or before the decision to lay charges.

[21] He submitted that notwithstanding the Committee's decision (on 4 September 2019) to inquire into whether Ms Lowndes had offered the property to Mr Yang without an agency agreement, and whether she had subsequently acquired an interest in the property without disclosures as required under ss 134 and 135 of the Act, the entire focus of the Committee's investigation was the circumstances surrounding Mr Yang, and the issue of non-compliance with ss 134 and 135 had never been put to Ms Lowndes.

[22] He submitted that as a result, Ms Lowndes would have had a strong case (signalled in his opening submissions) for seeking an order striking out the charge of misconduct on the basis that there was no evidential basis for it, had the Committee not agreed to withdraw it and proceed on the basis of a charge of unsatisfactory conduct. He submitted that the Committee had failed to follow the guidelines set out

in the Authority's "Policy for the Prosecution of Offences and Laying Charges before the READT"<sup>6</sup> by failing to apply the principles of natural justice.

[23] While an application to strike out the charge was not pursued at the hearing, Mr Ussher submitted that the Committee delayed for one year before laying the charge, causing stress, worry and anxiety to Ms Lowndes, and that should be taken into account when determining the penalty orders to be made against Ms Lowndes, and any orders as to costs.

[24] Mr Wheeler submitted in reply that Ms Lowndes had been asked to outline the relationship with Mr Drinnan and how the transaction occurred. He submitted that her initial statement was detailed but she did not provide the requested information either in that statement or a subsequent statement. He submitted that the evidence of non-compliance with ss 134 and 135 was the omission of any evidence of compliance.

[25] In relation to the allegation of delay, Mr Wheeler submitted that while the relevant conduct occurred in 2015, it was not brought to the Committee's attention until 2017, at which time Ms Lowndes sought a stay of the Committee's inquiry until 2019. He submitted that the period between the Committee's decision to inquire (in 4 September 2019) and the date the charge was laid (3 May 2021) was not excessive, and was in part explained by the impact of the six-week COVID level 4 lockdown in early 2020. He submitted that there had been no abuse of the Committee's powers.

## **Discussion**

*Mr Ussher's submissions as to the Committee's failure to put Ms Lowndes' failure to comply with ss 134 and 135 to her, and to interview Mr Drinnan*

[26] The Tribunal accepts that it would normally have been expected that the Committee would have interviewed, or sought comment from, Mr Drinnan. However, that is not the end of the matter.

[27] On 18 September 2019 the Authority's investigator wrote to Ms Lowndes (via her solicitor, Mr Ussher). He advised her that the Committee had decided to inquire

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<sup>6</sup> Published by the Authority in March 2019.

into “a complaint made by [Mr Yang] against [Ms Lowndes]”. The material before the tribunal does not include a copy of the Committee’s decision to inquire, and does not make clear whether a copy of the Committee’s decision to inquire was provided to Ms Lowndes.<sup>7</sup> The letter advised Ms Lowndes that a response was required on the following matters:<sup>8</sup>

**The Complaints Assessment Committee has decided to inquire into the following issues (Committee Issues):**

1. The relationship between [Ms Lowndes] and [Mr Yang] including the property dealings undertaken by [Ms Lowndes] on [Mr Yang’s] behalf.
2. [Ms Lowndes’] relationship with [Mr Drinnan and his father].
3. How the purchase price for the Property paid by [Mr Yang] eventuated.
4. The increase in price for the Property from [Mr Drinnan and his father] to [Mr Yang].

**What you need to do**

You need to provide a written response/explanation in relation to this complaint. This should be in the form of:

1. **A general narrative describing your involvement in this matter.**
2. **A chronological (record of events in order which occurred) timeline of events.**
3. **Please then address each of the above issues under a separate heading and provide your response to each issue.**
4. **Specifically can you also respond to the following questions:**
  - a) **Please have [Ms Lowndes] describe the relationship she has with [Mr Yang] and how many properties she has been involved in buying and selling with him including as selling agent or as co purchaser.**
  - b) **Please have [Ms Lowndes] describe her relationship with [Mr Drinnan and his father] and her involvement in this property purchase and on-sell. In particular, did [Ms Lowndes] own a share of this property.**
  - c) **Please have [Ms Lowndes] explain how the eventual purchase price came about.**
  - d) **Why [Ms Lowndes] told [Mr Yang] the Vendor would not sell to a Chinese buyer.**

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<sup>7</sup> We note that a link to the Authority’s initial referral report was provided in the letter.

<sup>8</sup> Setting out as in the investigator’s letter.



- e) Please have [Ms Lowndes] explain how she justifies the very significant increase in price from [Mr Drinnan and his father] to [Mr Yang].

In addition please also provide the following documents:

1. Full agency file for the Property.
2. All email and text correspondence between [Ms Lowndes] and [the Vendor].
3. All email and text correspondence between [Ms Lowndes] and [Mr Drinnan and his father].
4. All email and text correspondence between [Ms Lowndes] and [Mr Yang].
5. Document schedule (clearly identifying each document and correct order).

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[28] While the investigator's questions included questions about Mr Yang, Mr Ussher's submission that the "entire focus" of the investigation was on Mr Yang is not tenable. It is apparent from the material before the Tribunal that the questions asked of Ms Lowndes focussed as much on her dealings with Mr Drinnan and his father as they did on her dealings with Mr Yang.

[29] We note that the investigator's instructions do not refer to ss 134 and 135 of the Act, or ask Ms Lowndes to advise whether she had told Mr Drinnan that she was taking a 10 percent share in the property. However question (1) asked her to provide a general narrative of her involvement, and question 4(b) asked her to describe her relationship with Mr Drinnan and his father, her involvement in the property purchase and on-sale, and in particular, whether she owned a share of the property. She was also asked to provide a copy of the full Agency file for the property, and all email and text correspondence with Mr Drinnan and his father.

[30] Licensees are expected to know of their obligations under the Act and Rules, and as a licensee of several years' standing, Ms Lowndes would have been expected to understand that a question as to whether she owned a share of the property would raise an issue as to whether she had complied with her obligations under s 134 and 135 of the Act. Further, in the absence of any evidence of compliance with those obligations (for example, a Form 2 consent), it would be expected that Ms Lowndes would have explained the reason why that was so.

[31] It is well-established that the fact that a party to a transaction has consented to a licensee having a personal interest in it does not absolve the licensee from complying with the provisions of ss 134 and 135 and does not preclude a finding of misconduct when those provisions are not complied with. Further, the fact that a sale is described as a private sale is not determinative as to whether ss 134 and 135 must be complied with.<sup>9</sup> As the Tribunal said in *Complaints Assessment Committee 403 v Zhang*:<sup>10</sup>

... the obligations under ss 134 and 135 are fundamental to the Act's purpose of promoting public confidence in the performance of real estate agency work. ...

There can be no doubt that licensees are expected to know what their obligations are ... Licensees' obligations are emphasised initial and on-going training which they are required to complete.

[32] While it appears that Ms Lowndes was not expressly asked to comment on whether she had complied with ss 134 and 135, or had advised Mr Drinnan that she was taking a 10 percent share in the property, we are not persuaded that that has a significant impact on determination of the charge. She was asked open questions as to her involvement in the transaction, and as to whether she had a share in the property, and she was well able to include in her response whether she had complied with ss 134 and 135 (and if not, why that was so).

[33] Further, we do not accept Mr Ussher's submission that in the absence of Mr Drinnan having been interviewed, there was no evidential basis for the charge of misconduct. The evidential basis for the charge of failure to comply with the provisions of ss 134 and 135 was in the absence of any evidence as to compliance, by way of a Form 2 consent.

*Mr Ussher's submissions as to delay*

[34] The transaction occurred in 2015. It was not brought to the Authority's attention until 2017, at which time Ms Lowndes sought a stay of the Committee's inquiry during

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<sup>9</sup> See *Barfoot & Thompson Ltd v Real Estate Agents Authority* [2016] NZCA 105, [2016] NZAR 648; *Complaints Assessment Committee 402 v Dunham* [2016] NZREADT 49; *Complaints Assessment Committee 414 v Goyal* [2017] NZREADT 58; *Complaints Assessment Committee 403 v Zhang* [2018] NZREADT 30; *Complaints Assessment Committee v Reed* [2017] NZREADT 6; *Complaints Assessment Committee 412 v Manvinder Singh* [2019] NZREADT 4; and *Complaints Assessment Committee 1905 v Brady* [2021] NZREADT 18, at [74]–[83].

<sup>10</sup> *Complaints Assessment Committee 403 v Zhang*, fn 9, at [42]–[43].

the course of the High Court proceeding. The period between 4 September 2019 (when the Committee decided to inquire) and 3 May 2021 is in part accounted for by the COVID level 4 lockdown in early 2020, and we note the Committee's submission that it had taken legal advice.

[35] We accept Mr Ussher's submission that there was a significant delay, but we are not persuaded that it was at such a level as to be considered undue or inexcusable.

#### *Determining penalty*

[36] We accept Mr Wheeler's submission that as Ms Lowndes is not currently working in the industry, and her licence is suspended, the Tribunal's options as to penalty are limited to ordering her to pay a fine.

[37] Ms Lowndes' failure to comply with her obligations under ss 134 and 135 of the Act, and rr 5.1, 6.1 and 6.2 of the Rules cannot be regarded as a mere technicality. They are breaches of provisions that are properly regarded as obligations that are fundamental to achieving the consumer-protection purpose of the Act.

[38] For the purpose of determining penalty, we place Ms Lowndes' conduct at a moderate to high level of unsatisfactory conduct. The appropriate starting point for the fine to be imposed is \$7,000. We take into account that Ms Lowndes has admitted the charge of unsatisfactory conduct, that Mr Drinnan was in fact aware that she was taking a 10 percent share in the property, that it is now six years since the conduct occurred, and that Ms Lowndes is not currently working as a salesperson. She will be ordered to pay a fine of \$4,000.

#### **The Committee's application for costs**

##### *Relevant statutory provision*

[39] Section 110A of the Act provides (as relevant to this proceeding):

## 110A Costs

- (1) In any proceedings under this Act, the Disciplinary Tribunal may make any award as to costs that it thinks fit, whether or not it grants any other remedy.
- (2) Without limiting the matters that the Disciplinary Tribunal may consider in determining whether to make an award of costs under this section, the Disciplinary Tribunal may take into account whether, and to what extent, any party to the proceedings—
  - (a) has participated in good faith in the proceedings:
  - (b) has facilitated or obstructed the process of information gathering by the Disciplinary Tribunal:
  - (c) has acted in a manner that facilitated the resolution of the issues that were the subject of the proceedings.

....

### *Submissions*

[40] Mr Wheeler sought an order that Ms Lowndes contribute to the Committee's costs in relation to the prosecution. He advised the Tribunal that the prosecution had been dealt with by the Authority's in-house counsel, and that 32 hours had been spent on. He sought an order that Ms Lowndes meet 50 percent of the Committee's costs, at \$100 per hour, that is, \$1,600.

[41] Mr Ussher submitted that the Committee's failure to interview or seek comment from Mr Drinnan, and its delay in laying the charge, should result in there being no order for costs against her. He submitted that all costs (including Ms Lowndes' costs incurred in inquiring as to the Committee's progress) should lie where they fell.

### *Discussion*

[42] Since the introduction of s 110A into the Act the Tribunal has accepted that a licensee against whom disciplinary findings are made following charges laid by a Complaints Assessment Committee should generally (although not invariably) be ordered to pay a contribution towards the Committee's costs.<sup>11</sup> This reflects the purposes of the Act, in particular accountability through the disciplinary process, and

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<sup>11</sup> See *Complaints Assessment Committee v Wright* [2019] NZREADT 56, *Complaints Assessment Committee 1902 v Hanford* [2020] NZREADT 21, and *Complaints Assessment Committee 1901 v New Zealand LJ International Ltd & Zeng* [2021] NZREADT 28.

recognises that the costs associated with charges proceedings are borne by members of the industry.

[43] The Tribunal follows the principles set out by his Honour Justice Palmer in *TSM v A Professional Conduct Committee* as to orders for costs in professional disciplinary proceedings:<sup>12</sup>

- (a) professional groups should not be expected to bear all the costs of the disciplinary regime;
- (b) members who appeared on charges should make a “proper contribution” towards costs;
- (c) costs are not punitive;
- (d) the practitioner’s means, if known, are to be considered;
- (e) a practitioner’s defence should not be deterred by the risks of a costs order; and
- (f) in a general way 50 percent of reasonable costs is a guide to an appropriate costs order subject to a discretion to adjust upwards or downwards.

[44] In its decision in *Complaints Assessment Committee 1907 v Lindsay*, the Tribunal accepted that an award of costs can be made when a party is represented by in-house counsel.<sup>13</sup> The Tribunal also accepted that \$100 per hour is a reasonable rate for in-house counsel.<sup>14</sup>

[45] In the particular circumstances of this case, and for the reasons put forward by Mr Ussher, no order will be made as to costs.

### **Application for order restricting publication**

#### *Relevant statutory provision*

[46] Section 108 of the Act provides (as relevant):

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<sup>12</sup> *TSM v A Professional Conduct Committee* [2015] NZHC 3063, at [21], citing *Vatsayann v Professional Conduct Committee of The New Zealand Medical Council* [2012] NZHC 1138, at [34].

<sup>13</sup> *Complaints Assessment Committee 1907 v Lindsay* [2021] NZREADT 36, at [79]. See also *McGuire v Secretary for Justice* [2018] NZSC 116, at [88].

<sup>14</sup> See *Royal Forest and Bird Protection Society of New Zealand Inc v Northland Regional Council* [2019] NZHC 449, at [31].

## 108 Restrictions on publishing

- (1) If the Disciplinary Tribunal is of the opinion that it is proper to do so, having regard to the interest of any person (including (without limitation) the privacy of the complainant (if any)) and to the public interest, it may make 1 or more of the following orders:
  - (a) an order prohibiting the publication of any report or account of any part of any proceedings before it, whether held in public or in private:
  - (b) an order prohibiting the publication of the whole or any part of any books, papers, or documents produced at any hearing:
  - (c) an order prohibiting the publication of the name or any particulars of the affairs of the person charged or any other person.

### *Submissions*

[47] Mr Ussher submitted that Ms Lowndes had had to wait for a year for the Committee's decision to lay the charge of misconduct and that when that charge was laid, it had no evidential foundation. He submitted that this had an impact on the suffering and stress she had already suffered, and that publication of her name would compound that stress.

[48] He submitted that in this case the principle of open justice is overridden by what he submitted was a "gross derogation" of the Committee's prosecution and the facts that there is no "victim" of the offending and no complaint. He submitted that this is an unusual case, and restricting publication of Ms Lowndes' name and identifying details in this particular case would not open the floodgates for other applicants seeking to restrict publication of their names.

[49] Mr Wheeler submitted that none of the grounds put forward on behalf of Ms Lowndes reach the high threshold to support an order to restrict publication of her name. He submitted that the Committee's delay of one year in laying the charge is not so egregious as to alleviate the consequences of the finding against Ms Lowndes, and that the fact that the Committee accepted the lesser charge of unsatisfactory conduct does not mean that publication is not warranted. He submitted that the appropriate standards had not been met, and the regime as to publication where those standards have not been met is in place for the purpose of public protection and the maintenance of the public register.

[50] He further submitted that the fact that Ms Lowndes will suffer stress as a result of the publication, while unfortunate, is not sufficient to relieve her of the “almost inevitable” consequences of the adverse finding.

### *Discussion*

[51] Proceedings before the Tribunal focus on the fundamental purpose of the Act, as set out in s 3(1) of the Act, to “promote and protect the interests of consumers in respect of transactions that relate to real estate and to promote public confidence in the performance of real estate agency work. Section 3(2)(c) provides that one of the ways in which the Act achieves its purpose is by “providing accountability through a disciplinary process that is independent, transparent, and effective”.

[52] The starting point for any application for an order restricting publication is the principle of open justice. There is a clear public interest in disciplinary proceedings being transparent and open to public scrutiny.<sup>15</sup> The principles, and their relevance to proceedings before the Tribunal, were discussed in *X v Complaints Assessment Committee 10028*,<sup>16</sup> and *Graves v Real Estate Agents Authority (CAC 20003)*.<sup>17</sup> In those decisions, the Tribunal referred to the principles expressed in *Lewis v Wilson and Horton Ltd*,<sup>18</sup> *Director of Proceedings v I*,<sup>19</sup> and *S v Wellington District Law Society*.<sup>20</sup>

[53] We have rejected Mr Ussher’s submission that there was no evidential foundation for a charge of misconduct. The fact that the Committee, and the Tribunal, have accepted her admission of the lesser charge of unsatisfactory conduct does not constitute grounds for an order restricting publication. We have also rejected his submission that the Committee’s delay of one year before laying the charge was to such an extent as to be undue or inexcusable. The delay does not constitute grounds for restricting publication.

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<sup>15</sup> See *Complaints Assessment Committee 1902 v Hanford* [2020] NZREADT 21, at [61].

<sup>16</sup> *X v Complaints Assessment Committee 10028* [2011] NZREADT 2.

<sup>17</sup> *Graves v Real Estate Agents Authority (CAC 20003)* [2012] NZREADT 4.

<sup>18</sup> *Lewis v Wilson and Horton Ltd* [2000] NZCA 175, [2000] 3 NZLR 546.

<sup>19</sup> *Director of Proceedings v I* [2004] NZAR 635 (HC).

<sup>20</sup> *S v Wellington District Law Society* [2001] NZAR 465 (HC).

[54] It is acknowledged that the disciplinary process has caused stress for Ms Lowndes, and the finding of unsatisfactory conduct will also do so. That is, as Mr Wheeler submitted, an “almost inevitable” consequence of the disciplinary process, and does not reach the threshold for an order restricting publication.

### **Orders**

[55] Ms Lowndes is found guilty on the charge of unsatisfactory conduct under ss 72(a)–(d) of the Act. Ms Lowndes is censured and ordered to pay a fine of \$4,000. The fine is to be paid to the Authority within 20 working days of the date of this decision.

[56] No order is made as to costs.

[57] The application for an order restricting publication of Ms Lowndes’ name, or identifying details, is declined.

[58] Pursuant to s 113 of the Act, the Tribunal draws the parties’ attention to s 116 of the Act, which sets out the right of appeal to the High Court. The procedure to be followed is set out in part 20 of the High Court Rules.

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Hon P J Andrews  
Chairperson

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Mr N O’Connor  
Member

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Ms F Mathieson  
Member