

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

[2022] NZREADT 23

Reference No: READT 013/2020

**IN THE MATTER OF**

Charges laid under s 91 of the Real Estate Agents Act 2008

**BROUGHT BY**

**COMPLAINTS ASSESSMENT  
COMMITTEE 1904**

**AGAINST**

**MURRAY ALFRED BRIGHT**  
Defendant

Hearing in Auckland on 17–18 October 2022

Tribunal:

D J Plunkett (Chair)  
G J Denley (Member)  
F J Mathieson (Member)

Appearances:

Counsel for the Committee:	R McCoubrey, J Ah Koy
The Defendant:	Self-represented
Counsel appointed by the Tribunal:	T Cooper

**SUBJECT TO NON-PUBLICATION ORDER**

---

**DECISION**  
**Dated 8 November 2022**

---

## INTRODUCTION

[1] Murray Alfred Bright, the defendant, was a licensed agent under the Real Estate Agents Act 2008 (the Act).

[2] [Deleted], the complainant, was a prospective purchaser who viewed a property with Mr Bright.

[3] Mr Bright has been charged by Complaints Assessment Committee 1904 (the Committee) with misconduct. The particulars of the charge are:<sup>1</sup>

1. On 3 July 2019, the complainant viewed the property (and one other property) with Mr Bright, travelling in his vehicle.
2. The complainant and Mr Bright were not acquainted prior to the viewing.
3. The complainant and Mr Bright were the only people present at the viewing.
4. During the viewing of the property, in the master bedroom, Mr Bright:
  - (a) hugged the complainant, without her permission; and
  - (b) kissed the complainant, more than once, without her permission.

[4] It is alleged that Mr Bright's actions would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful (pursuant to s 73(a) of the Act).

[5] In the alternative, Mr Bright is charged with misconduct (pursuant to s 73(c)(iii) of the Act) in that he wilfully or recklessly contravened r 6.3 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 (the Rules) during the viewing of the property, while in the master bedroom, by:

- (a) inviting the complainant to sit on the bed and sitting next to her on the bed;
- (b) hugging the complainant; and
- (c) kissing the complainant on the cheek.

---

<sup>1</sup> Amended charge (11 June 2020). Leave to amend granted Minute (3 July 2020) at [2].

[6] Rule 6.3 requires a licensee not to engage in conduct likely to bring the industry into disrepute.

[7] Mr Bright denies both charges, but admits hugging the complainant by consent.

## **BACKGROUND**

[8] Mr Bright was at the relevant time employed by Bay of Islands Realty Limited, t/a Harcourts Coopers Beach (the agency).

[9] On 2 July 2019, the complainant went to the agency's office at Coopers Beach and met with Mr Bright for the first time. They arranged to view two properties the following day, including one on the Karikari Peninsula (the property). He showed them to her on a large screen on the external wall of the agency's office.

[10] At 11 am on the following day, 3 July 2019, the complainant met Mr Bright at the agency's office. She was introduced to his colleague, Lyn Jordan, who was in the office. Mr Bright and the complainant travelled in Mr Bright's vehicle. They viewed the first property. The viewing was uneventful. The relevant property was about another 30 minutes away. The journey out was via a beach. On the way, Mr Bright stopped once to pick up a sign on another property.

[11] They arrived at the property. While viewing the master bedroom, Mr Bright hugged and allegedly kissed the complainant.

[12] At the conclusion of the viewing, Mr Bright drove them back to the agency's office. They came back a different route, via the main road.

[13] On the next day, 4 July 2019, the complainant made a verbal complaint to Ms Jordan. She said that Mr Bright had made her feel very uncomfortable, but she did not divulge details of the complaint. Ms Jordan sent an email that afternoon to Tom Rutherford, the agency's owner and manager, alerting him to a possible complaint by a woman against Mr Bright. Ms Jordan sent an email to the complainant on 6 July 2019 setting out the contact details of the manager and the Authority for complaints.

[14] On 17 July 2019, the complainant initiated a complaint by email to Mr Rutherford, Harcourts and the Authority. She said that while viewing the master bedroom of the property, Mr Bright grabbed her in a bear hug and kissed her very quickly several times full on the lips.

[15] Mr Rutherford met with Mr Bright on 18 July 2019. On the next day, Mr Rutherford sent an email to the complainant formally acknowledging her complaint email and outlining what action he had taken.

[16] Mr Bright was suspended by Mr Rutherford on 22 July 2019 and his engagement with Mr Rutherford's agency was terminated on 26 July 2019.

[17] The Committee produced evidence from a number of witnesses.

### *The complainant*

[18] There is a statement (10 December 2019) from the complainant, following an interview with an investigator from the Authority on the same day. She also gave oral evidence to the Tribunal.

[19] It is relevant to note the complainant is of small stature, at just under [deleted].

[20] The complainant recounts going to the agency's office on 2 July 2019 and arranging with Mr Bright to view two properties the next day. He showed her the properties on a large screen.

[21] The complainant met Mr Bright at 11 am on 3 July 2019 at the agency's office. She was introduced to Ms Jordan. He suggested they go in his vehicle.

[22] They viewed the first property. The viewing was uneventful.

[23] The relevant property was a long way out. At one stage Mr Bright drove off road onto the beach and asked her, "Do you trust me?" She thought this was odd and it made her uncomfortable. She replied that she does not trust anyone. On the journey, he remarked on her bubbly personality and infectious smile. She was not comfortable with this.

[24] They arrived at the property. As she alighted from his vehicle, Mr Bright made a peculiar comment asking her, "What would you do if I drove off and left you here by yourself?" She was taken aback and was a bit on edge after that.

[25] As they entered the house, Mr Bright grabbed the top of both her shoulders with some force, at the same time instructing her in a strong voice, "Don't come through until I say". She was shocked. He then went inside to open the curtains. Shortly after, he told her to come inside.

[26] Inside the house, the complainant could not remember the order of rooms viewed. She went onto the deck to admire the beautiful sea view. She then went back inside the house.

[27] They went into the master bedroom.<sup>2</sup> They were standing within about half a metre apart near the ranch slider looking out at the sea. She said he asked her to imagine how it would be to wake up to this every morning. Then the unbelievable happened. As the complainant turned to answer him and without any encouragement from her, he suddenly grabbed her in a bear hug and kissed her very quickly on the lips. His arms were right around her and would have been touching. His hands were on her shoulders. The complainant describes it as Mr Bright swooping in and kissing her in one action. She pulled back from him but he pulled her back in and kissed her again. He did this again, kissing her at least four times in total. She had to physically push him away, giving him a great big push.

[28] Mr Bright did not say anything at the time. Nor did she say anything as she did not want to challenge him. She remained calm. When she broke free, she went onto the deck through the ranch slider.

[29] The complainant said she was stunned. She had not done anything to give him that impression. She felt highly disturbed and very vulnerable. The property was very remote. She did not have her car and she did not know the area. While at the property, she was not aware of anyone else in the area.

[30] According to the complainant, her work in de-escalating situations (she works in mental health) reminded her to remain calm and to speak and behave quietly. This is her professional routine. She continued as if nothing had happened. Mr Bright also continued as if nothing had happened. He did not apologise. He talked about the property.

[31] On the drive home, Mr Bright did not mention the incident. She was pressed against the passenger door trying to keep away from him. He elbowed her two or three times in a “matey” way.

[32] When they got back to the agency’s office, the complainant spoke to Mr Bright outside his vehicle, then got in her car and drove off. She was really shaken, but was able to hold it together. She drove south, wanting to get out of there. She pulled over

---

<sup>2</sup> See photographs at 111–112 of the bundle.

and cried. The complainant tried to telephone her daughter but could not reach her. Later at about 7:30 pm, she phoned a friend, [deleted], to get some advice.

[33] The following day, the complainant made a verbal complaint to Ms Jordan. She said Mr Bright had made her feel uncomfortable. Ms Jordan advised her to make an official complaint. The complainant asked that Mr Bright be told not to make further contact with her and that he delete her contact details. At some point, the complainant made a complaint to the Police but they did not prosecute.

*[Deleted]*

[34] There is a statement from [deleted] (12 September 2019), following an interview with an investigator from the Authority on 28 August 2019. [Deleted] gave oral evidence to the Tribunal.

[35] [Deleted] said the complainant had been [deleted]. He regarded himself as a friend of both her and [deleted]. He has a lodge where she was staying before viewing the properties.

[36] The complainant rang him and said she had been out to see some properties. She said she had not had a very good experience with the real estate agent. He had made a pass at her. He had grabbed her and kissed or tried to kiss her. It happened more than once. They were sitting looking at the view at the time. She pushed him away. He encouraged her to talk to somebody about it.

*Ms Jordan*

[37] Lyn Marion Jordan signed a statement (7 August 2020), prepared from an interview with an investigator on 28 August 2019.

[38] Ms Jordan is a licensed agent working at the agency.

[39] The complainant came into the office in the morning of 3 July 2019 and went out with Mr Bright in his vehicle to view properties. She was sitting in the office when they returned. She noticed them pulling up and Mr Bright parking his car in the usual place. He spoke to the complainant for two to three minutes and then came into the office. The complainant left. There was nothing in their interaction which stuck out. She could see them both clearly and it seemed to be a standard farewell.

[40] On the following day, 4 July 2019, the complainant rang. She was obviously quite upset. She said she was uncomfortable with Mr Bright and did not want to deal with him anymore. She said he had taken advantage of her. They talked for a few minutes and Ms Jordan told her that if she was unhappy, the process would be for a formal complaint to be made to the agency.

[41] That night, Ms Jordan telephoned Mr Rutherford to tell him there was the chance of a complaint.

[42] The complainant made contact by email over the next two or three days and wanted her details taken off the database. About four or five days later, the complainant asked Ms Jordan for the details of the agency's complaint process.

#### *Mr Rutherford*

[43] There is a statement from Tom Charles Rutherford (3 August 2020), following an interview with an investigator from the Authority on 27 August 2019.

[44] Mr Rutherford is the franchise owner.

[45] Ms Jordan initially advised him that a woman was not happy with Mr Bright's conduct. The complainant then sent an email to him with a four-page complaint attached. It had been emailed to the Authority.

[46] Mr Rutherford contacted Mr Bright. They met. Mr Bright told him that the complainant had shared a lot of personal information with him. She told him that she had been [deleted]. Mr Bright recounted the details of the incident.

[47] Mr Rutherford subsequently advised Mr Bright that he was going to be suspended.

#### *Mr Bright*

[48] Mr Bright attended the hearing to give evidence in his defence. There is also an unsigned statement from him, in the form of a Response to Complaint (31 July 2019) sent by his former lawyer to the Authority's investigator on 17 October 2019.<sup>3</sup>

---

<sup>3</sup> Bundle of documents at 8–9, 16–18.

[49] Mr Bright has more than 20 years' experience in real estate. He had previously owned the agency. There have been no other complaints against him. Mr Bright stands at 6' 2" (188 cm).

[50] Mr Bright states that when the complainant walked into the agency's office on 2 July 2019, that was the first time he had met her. The complainant said she wanted a sea view. She gave him a budget. They arranged to meet the next day at 11 am.

[51] They duly met on 3 July 2019 and travelled to the two properties in his vehicle, which is not uncommon. He has done it hundreds of times. He offered to drive her out because of the distance and her unfamiliarity with the area. He has a large ute. It looks to the Tribunal like a large tradesman's pickup.<sup>4</sup> The internal space is wide. It is branded with Harcourts, his name, phone number and email address.

[52] The viewing of the first property was uneventful. The Karikari Peninsula property was 30 minutes away. There were two routes they could take, the main road or via the beach. He had in mind taking her via the beach but bringing her back on the main road, so she could get an appreciation of the area. He asked her and she agreed. They went via the beach. On the way, he collected a sign on another property.

[53] Mr Bright denies asking her if she trusted him. Nor did he ask her what she would do if he drove off and left her there. Nor did he remark on her bubbly personality.

[54] When they got to the property, Mr Bright says he went into the house ahead of her. He asked her to remove her shoes and remain in the laundry while he opened up the house. He did not touch her at all. He then proceeded through the house turning on the lights and opening the curtains, so she could see the very impressive view.

[55] The complainant first went through the lounge onto the deck to admire the view. She then went back into the house and followed him through other rooms and into the master bedroom. She went straight to the ranch slider and looked at the view. While she was standing by the ranch slider, he suggested that she sit on the bed (which is very close to the ranch slider) and imagine waking up to the amazing view every morning. She started talking about her life in the town where she lives.

[56] In order to be at her eye level while talking, Mr Bright sat at the other corner of that end of the bed (there was no chair in the room). He sat away from the complainant.

---

<sup>4</sup> See the photograph at 118 of the bundle.



He never encroaches within one metre of someone's face. He respects private space. He has a strong view about invading other people's space.

[57] The complainant then got up and went out through the ranch slider back onto the deck.

[58] Mr Bright says that while the complainant was back on the deck, he was standing at the doorway of the master bedroom leading onto the deck. The complainant walked past him and came back into the master bedroom. Without any prompting from him, she went and sat on the end of the bed close to where she had been sitting before. She started talking again, so he also sat on the bed along the side closest to the ranch slider.

[59] It is Mr Bright's evidence that the complainant then told him of the hard time she had had over the last few years and that she was looking to come north to start afresh. She had recently [deleted]. She was not crying but her eyes were welling. She was in a sad state. Mr Bright regarded these as spontaneous disclosures of very personal events. He found it quite an overwhelming conversation and he empathised.

[60] According to Mr Bright, he asked her, "Would you like a hug?", not thinking of the protocol. She then twisted her torso from where she was sitting on the bed and leaned towards him with her arms out to initiate the hug and he did likewise. They both leaned in. His arms were on the back of her shoulder area or midback. He gave her a short peck on the cheek, though his lips did not touch her cheek. Their cheeks came together. As both of them pulled back and released, their lips accidentally brushed. The way their bodies were twisted and the angles of their moving heads resulted in his lips accidentally brushing across hers as they sat upright moving back towards their original positions. There was no intention on his part for his lips to touch hers. The episode lasted two to three seconds.

[61] Nothing was said and both of them felt a little uneasy and embarrassed. They got up. Mr Bright closed and locked up the house. They walked back to his vehicle together. As they were doing so, another vehicle drove past. The driver waved at him, so he waved back. He unlocked the ute and opened the door for the complainant. They departed. He did not elbow her on the way back. His elbow would struggle to reach halfway across the console if resting there, let alone reach her. The complainant sat normally in the seat. There were not any long periods of silence or any other indication that she was uncomfortable or unhappy in any way. They discussed the two properties. She said she was not ready to buy, as she first needed to get a job up north. It came as a bit of a bombshell that she was not going to buy anyway.

[62] Once they returned to the office, they got out and stood at the rear of his vehicle where they had a discussion for two or three minutes. He gave her a leaflet on the property, which he had in the ute. He asked her if she wanted to go on the database for their monthly listings. She said that would be good and provided her email address.

## CHARGES

### *Jurisdiction and principles*

[63] The Committee has brought a charge of misconduct against Mr Bright. Misconduct is defined in the Act:

#### **73 Misconduct**

For the purposes of this Act, a licensee is guilty of misconduct if the licensee's conduct—

- (a) would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful; or
- (b) constitutes seriously incompetent or seriously negligent real estate agency work; or
- (c) consists of a wilful or reckless contravention of—
  - (i) this Act; or
  - (ii) other Acts that apply to the conduct of licensees; or
  - (iii) regulations or rules made under this Act; or
- (d) constitutes an offence for which the licensee has been convicted, being an offence that reflects adversely on the licensee's fitness to be a licensee.

[64] The Tribunal may regulate its procedures as it thinks fit, though it is subject to the rules of natural justice.<sup>5</sup>

[65] The Tribunal may receive any document or information that may, in its opinion, assist it, whether or not that document or information would be admissible in a court.<sup>6</sup> Subject to that and other matters, the Evidence Act 2006 applies.<sup>7</sup>

---

<sup>5</sup> Real Estate Agents Act 2008, s 105.

<sup>6</sup> Section 109(1).

<sup>7</sup> Section 109(4).

[66] It is the civil standard of proof, the balance of probabilities, that is applicable.<sup>8</sup> However, the quality of the evidence required to meet that standard may differ in cogency, depending on the gravity of the charges.<sup>9</sup>

[67] The first charge of misconduct is framed as disgraceful conduct under s 73(a). This has been considered by the High Court in *Morton-Jones*:<sup>10</sup>

[28] Charges 1, 2 and 3 alleged “disgraceful conduct”. On the meaning of this expression, the Tribunal referred to a Tribunal decision in *CAC v Downtown Apartments Ltd*.<sup>5</sup> In that case the Tribunal said:

[55] The word disgraceful is in no sense a term of art. In accordance with the usual rules it is to be given its natural and popular meaning in the ordinary sense of the word. But s 73(a) qualifies the ordinary meaning by reference to the reasonable regard of agents of good standing or reasonable members of the public.

[56] The use of those words by way of qualification to the ordinary meaning of the word disgraceful make it clear that the test of disgraceful conduct is an objective one for this Tribunal to assess. See *Blake v Preliminary Proceedings Committee of the Medical Council of New Zealand*, [1997] 1 NZLR 71.

[57] The ‘reasonable person’ is a legal fiction of common law representing an objective standard against which individual conduct can be measured but under s 73(a) that reasonable person is qualified to be an agent of good standing or a member of the public.

[58] So while the reasonable person is a mythical ideal person, the Tribunal can consider, inter alia, the standards that an agent of good standing should aspire to including any special knowledge, skill, training or experience such person may have when assessing the conduct of the ... defendant.

[59] So, in summary, the Tribunal must find on balance of probabilities that the conduct of the ... defendant represented a marked or serious departure from the standards of an agent of good standing or a reasonable member of the public.

[29] Subject to one qualification I agree with that analysis. The qualification relates to the observation in [59]. It is a restatement of what is clearly expressed in s 73(a). In my opinion the restatement does not accurately reflect the words used. If the charge is under s 73(a) the critical enquiry is whether the conduct is “disgraceful”. Conduct which involves a marked and serious departure from the requisite standards must be assessed as “disgraceful”, rather than some other form of misconduct which may also involve a marked and serious departure from the standards. The point is more than one of semantics because s 73 refers to more than one type of misconduct. In particular, s 73(b) refers to “seriously incompetent or seriously negligent real estate agency work”. Work of that nature would also involve a marked and serious departure from particular standards; the

---

<sup>8</sup> Section 110.

<sup>9</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [101]–[102], & [112].

<sup>10</sup> *Morton-Jones v Real Estate Agents Authority* [2016] NZHC 1804.

standards to which s 73(b) is directed are those relating to competence and care in conducting real estate agency work.

[30] This is not to say that s 73(a) could not apply to work carried out by a licensee so incompetently or negligently as to amount to disgraceful conduct according to the s 73(a) tests. If the work was not real estate agency work, but the person doing the work was a licensee, the appropriate provision for a charge would be s 73(a). This is a point more fully discussed below when considering the appellant's argument that the Act did not apply to his property management work.

<sup>5</sup> *Complaints Assessment Committee (CAC 10024) v Downtown Apartments Ltd (in Liq)* [2010] NZREADT 6.

[68] The second alternative charge of misconduct is framed as wilful or reckless contravention of r 6.3 of the Rules, under s 73(c). The wilful or reckless contravention of a rule was considered by the Tribunal in *Clark*, where it approved the principles set out in the Australian case of *Zaitman*:<sup>11</sup>

[51] But in this instance Parliament has used both the words “wilful” and “reckless” in the definition of “misconduct” and so some meaning must be given to each. In those circumstances, and in view especially of what was said by Hardie, J in *Hodgekiss* in a not dissimilar legislative context, the word “wilful” in para(a) of the definition in s2A should surely be taken to make it an offence for a solicitor, who knows that it is a contravention of the Act (or the rules or regulations, as the case may be) for him to do or to fail to do some particular thing, intentionally to do that thing or fail or omit to do it. On the other hand, the word “reckless” should be taken as requiring no more than that the solicitor be shown to have acted, not in the knowledge just described, but with reckless indifference, not caring whether what he does, or fails or omits to do (as the case may be) is a contravention of the Act, the rules or the regulations. The solicitor must, I think, have appreciated the possibility that his conduct (whether it be act or omission) might amount to a breach of the Act, the rules or the regulations; for otherwise it is difficult to say that he acted with the necessary reckless indifference. To put that in another way, the solicitor must, I think, be shown to have known of the risk and to have intended to take that risk.

[52] It is implicit in what I have just said that, while the solicitor, who does not KNOWINGLY act in contravention, must be shown to have foreseen that what he was doing MIGHT amount to a relevant contravention, there is no need to go further and establish that the solicitor foresaw the contravention as “probable”; it is enough that he foresaw it as “possible” and then went ahead without checking. That was how the relevant concept of “recklessness” was approached by Bramwell, J in *Lewis*, as drawn upon by Kitto, J in *Neale Edwards*, and I think it must be so here too. Iannella demonstrates that the word “wilful” or “wilfully” will take its meaning from the context of the particular statute in which it falls to be considered; and it is surely the same with “reckless” or “recklessly”. In the context of this legislation, and having regard to its purpose and the nature of the disciplinary offences created, and especially the professional duty which I think is cast upon solicitors to keep abreast of the rules – at the very least in a general way, which is all that has to be considered in the case of this appellant – it will be enough if the solicitor (if his conduct is not in “wilful contravention”) is shown to have been aware of the possibility that what he was doing or failing to do might be a contravention and then to have proceeded with reckless indifference as to

---

<sup>11</sup> *Zaitman v Law Institute of Victoria* BC9401319 (9 December 1994) (VSC) per Justice Phillips, approved in *Real Estate Agents Authority (CAC 20004) v Clark* [2013] NZREADT 62 at [70]–[71].

whether it was so or not. Indeed, to conclude otherwise would all too obviously put a premium on ignorance.

[69] It is also useful to consider the principles set out by the High Court in *Brown* as to the gravity of misconduct in s 73 generally:<sup>12</sup>

[21] The Tribunal's finding was grounded on s 73(b). It concluded that Mrs Brown's conduct constituted "seriously negligent real estate agency work". It is worth observing that s 73 clearly focuses on actions which are at the upper end of misconduct by licensees. The four discrete subsections focus on conduct which is "disgraceful", an adjective which carries with it a high degree of opprobrium; incompetent or negligent conduct which must justify the adverb "seriously"; contravention of statutory provisions, which must be "wilful or reckless"; and an offence (clearly a criminal offence) which must reflect "adversely" on a licensee's fitness. Given s 73's spread over this range of seriousness, the Tribunal was obliged to consider whether Mrs Brown's conduct reached that level. It is also pertinent to observe that the types of misconduct specified in s 73 are qualitatively different. One would not expect an identical legal threshold to apply to all. Conduct which a reasonable member of the public would regard as disgraceful would obviously be qualitatively different from serious incompetence or wilful contravention of the Act.

[22] This touchstone of seriousness is reinforced when one examines the preceding section, s 72, which provides:

...

[23] A comparison with the subsections of s 73 is instructive. Conduct must fall short of the standard a reasonable member of the public might expect (no reference to agents of good standing, regarding conduct as being "disgraceful"). There must be mere contravention of the Act rather than qualifying conduct which is "wilful or reckless". The incompetence or negligence need not be serious. And subs (d) returns to one of the limbs of s 73(a) – the conduct must be regarded as unacceptable by agents of good standing, rather than disgraceful.

[footnotes omitted]

[70] It is r 6.3 which Mr Bright is alleged to have wilfully or recklessly contravened. Rule 6.3 stipulates:

A licensee must not engage in any conduct likely to bring the industry into disrepute.

[71] This was considered by the Tribunal in *Goundar* where it found, relying on an earlier decision, that a breach of r 6.3 would be justified by conduct which:<sup>13</sup>

... if known by the public generally, would lead them to think that licensees should not condone it or find it to be acceptable. Acceptance that such conduct is acceptable would ... tend to lower the standing and reputation of the industry.

<sup>12</sup> *Brown v The Real Estate Agents Authority* [2013] NZHC 3309.

<sup>13</sup> *Complaints Assessment Committee 403 v Goundar* [2017] NZREADT 52 at [83].

### *Procedure*

[72] Following a decision of the High Court, the Tribunal directed on 5 July 2021 that counsel be appointed to assist the Tribunal for the purpose of cross-examining the complainant.<sup>14</sup> Ms Cooper was duly appointed. On 28 October 2021, the Tribunal issued Minute 2 making certain directions concerning the hearing. Further directions were made in Minute 4 on 12 October 2022.

[73] The parties made submissions at the hearing. In addition, the Tribunal received written opening submissions (3 February 2022) from the Committee.

### **ASSESSMENT**

[74] It is the complainant's evidence that Mr Bright forcibly hugged and kissed her on the lips four or more times without consent and without encouragement from her. They were strangers to each other. This occurred in a master bedroom of a house in a remote location. The incident, as alleged, has sexual connotations. It is plainly a serious allegation and the quality of the evidence in support must reflect such gravity.<sup>15</sup>

[75] Mr Bright denies the event as alleged, but accepts one hug by consent in the way he describes. They were both sitting on the bed in the master bedroom. He says he was responding empathetically to the complainant disclosing to him what he regarded as her sad circumstances. [Deleted]. He asked if she wanted a hug and she indicated consent by opening her arms and leaning towards him. He gave her a short peck on the cheek, though his lips did not touch her cheek. Their cheeks touched. As they pulled away from each other, he says, their lips brushed.

[76] The critical issue for the Tribunal is the credibility of the complainant's narrative. The onus lies with the Committee.

[77] For the reasons now set out, we find the complainant's description of the incident to be a fabrication. Aspects of her story are implausible and in one material respect, her description of the event is inconsistent with that of [deleted]. We also found an important aspect of her evidence to be evasive.

[78] There are a number of acts, as described by the complainant, which are highly improbable and cumulatively they make for an implausible narrative:

---

<sup>14</sup> *Complaints Assessment Committee 1904 v Bright* [2021] NZHC 1019, *Complaints Assessment Committee 1904 v Bright* [2021] NZREADT 34.

<sup>15</sup> Z, above n 9.

1. It is not at all likely that, as the complainant entered the house, Mr Bright grabbed both of her shoulders with some force and instructed her in a loud voice not to enter until he said she could. Bearing in mind that Mr Bright is trying to encourage her to buy a house, it is far more likely that his version of the event is true. Without touching her, he politely asked her to take off her shoes and wait there while he opened up the house, so that the inside was lit and the view could be immediately seen. The complainant's description does not even sit comfortably with her later narrative as to the events in the bedroom, if Mr Bright had some amorous intent in mind.
2. If Mr Bright had treated her on the journey to the house and at the entrance to the house in the various ways described by her which made her uncomfortable, on edge or had shocked her, then she would not have given him the very personal information concerning her health, as we find she did. As we remark later, Mr Bright can only have known such details from her. The information [deleted] bears no relation to any circumstance the complainant would have thought useful to impart in order for the agent to understand her property requirements. The complainant plainly felt comfortable with Mr Bright in imparting such personal information.
3. The incident in the bedroom is not plausible. It is conceivable that a man might forcibly grab a woman in a hug and kiss her without consent, but it is extremely improbable that if she pushed away, he would then pull her back in at least three more times to hug and kiss her in the way described. The complainant is a mature woman of some confidence and despite the disparity in size and being taken by surprise the first time, she would not have meekly allowed herself to be repeatedly drawn in for hugs and kisses. Even if she could not have broken free, she could have just put her face down in such a way that Mr Bright could not kiss her on the lips. She is [deleted] shorter than he is, so he could not kiss her on the lips if she angled her head and hence face down.
4. It is not accepted that Mr Bright could have elbowed the complainant several times on the drive back to the office without leaning towards her at an acute angle and jeopardising his control of the vehicle. He has a wide vehicle and he would not have been able to readily reach her if she had been cowering against the passenger door as she describes.

5. Nor do we accept that, if the conduct as described by the complainant occurred, she would have given her email address to Mr Bright standing outside the office on their return. By then she was in a safe place, a public carpark at a set of shops. Her claimed need to remain calm after the event and not to aggravate her assailant cannot explain her conduct once the journey was over. She could easily have politely declined receipt of the monthly newsletter, having already told him she could not buy at that time because she needed to find a local job. It is inherently improbable that a woman so treated would give her email address to the alleged offender.

[79] Furthermore, there is a stark and material inconsistency between the complainant's description of the incident and that of [deleted] whose only knowledge of the event came from her. According to the complainant, she and Mr Bright were standing when the assault took place. At no time were they sitting. [Deleted], on the other hand, says they were sitting. It is conceivable that [deleted] misheard, but given the other unsatisfactory aspects of the narrative, we find it more likely that the complainant's story is fabricated.

[80] We also found the complainant's oral evidence concerning whether she told Mr Bright of her health issues, [deleted], to be evasive. She initially said she could not remember discussing personal information with him. She denied talking to him about her life. Then she said she did not know if she had mentioned the episode. Next the complainant said she may have discussed it with him, following which she said she did not remember talking about [deleted], finally accepting that she did tell him of the episode.

[81] Accordingly, we do not accept that the incident unfolded in the way described by the complainant. It occurred as described by Mr Bright. His narrative from the commencement of the journey until its conclusion back at the office carpark is consistent and plausible. It is notable that Mr Bright knew details about the complainant's personal history ([deleted]) which could only have come from the complainant. We accept that in seeking to respond compassionately to being informed of the complainant's circumstances, Mr Bright offered a hug which was accepted.

[82] Given the complainant's consent, the incident as narrated by Mr Bright could not be characterised as disgraceful. There is not such a high degree of opprobrium. The first charge will be dismissed. This is not, however, the end of the case against him. This is because the Committee has charged him in the alternative with the wilful or



reckless contravention of a rule, another branch of misconduct. This charge is based on Mr Bright's own description of the event.

[83] The next issue for the Tribunal is therefore whether a consensual hug, initiated by Mr Bright in the circumstances he describes, together with a peck on the cheek (without his lips touching her cheek), their cheeks touching and the accidental brushing of their lips, could amount to a contravention (wilful or reckless) of r 6.3. It is useful to set out r 6.3 again:

A licensee must not engage in any conduct likely to bring the industry into disrepute.

[84] Having regard to all the circumstances, we find that r 6.3 is contravened:

1. Mr Bright is a very experienced licensee.
2. The complainant and Mr Bright are strangers. Mr Bright's relationship with her is professional. This is the context in which they were together.
3. They were alone at the property.
4. The complainant is vulnerable for two reasons. First, this was at a remote location with which the complainant was unfamiliar and she had travelled there in Mr Bright's vehicle. She would have to travel back to the office, at least 30 minutes away, with him. Second, there is the significant disparity in their size.
5. They were in someone else's house and significantly, sitting on a bed in the master bedroom, with the innuendo any physical touching might convey.
6. The physical contact was initiated by Mr Bright.
7. There were obvious other means of Mr Bright showing empathy to the complainant's situation. He could have verbally expressed sympathy and/or asked if she was 'OK' and/or asked her if she wanted a moment on her own and/or offered a coffee on the way back to the office.

[85] We find that the totality of these factors establish that Mr Bright's conduct would likely bring the industry into disrepute in this age, where 'private space' is critical in work or professional relationships.

[86] Mr Bright himself in the earlier stages of this complaint, through his former solicitor, conceded that his conduct was unprofessional:<sup>16</sup>

Mr Bright acknowledges a momentary lapse in judgment when he offered to hug [the complainant] and that in the circumstances as described in his statement his actions were out of character and fell below his high standard which has underpinned his career in real estate. He with the benefit of hindsight acknowledges he has let down [the complainant], his family and his profession.

[87] Mr Bright now resiles from that concession. When asked to explain this concession, he told the Tribunal that he could not afford a lawyer to defend the charges, so the lawyer proposed some 'give and take' whereby he would deny the serious charge but make concessions. We doubt this explanation for the earlier acknowledgement of unprofessional conduct and note that on about 7 July 2020, Mr Bright directly sent to the Tribunal a response to the amended charges (having dismissed his lawyer) in which he said:<sup>17</sup>

I accept that asking for a Hug and allowing our cheeks to touch was unprofessional ...

[88] In any event, whether or not Mr Bright now or at any time has accepted that his conduct was unprofessional and lacked judgement, we find that it was. He overstepped the professional boundaries. Indeed, in the circumstances of the complainant and Mr Bright at the time, the consensual hug coupled with a peck on the cheek (only their cheeks touching) which gave rise to an accidental brushing of lips, is a marked and serious departure from the standards required.

[89] While not disgraceful, there was a reckless indifference to the rules. As a highly experienced licensee and former owner of an agency, he would have known at the time it was inappropriate in the circumstances, yet he was indifferent to whether it would bring the profession into disrepute. Mr Bright emphatically told the Tribunal he does understand and respect private space. It was a momentary lapse, as correctly described by his former lawyer, but a lapse it was and a serious one at that. Members of the public would not find such physical contact acceptable in the context in which it occurred here, irrespective of the compassionate circumstances. If it was accepted, it would lower the standing and reputation of the profession.

---

<sup>16</sup> Response to Complaint (17 October 2019) at 17 of the bundle of documents (see also at 8).

<sup>17</sup> Bundle of documents at 12.

## ORDERS

[90] The charge of misconduct (the reckless contravention of r 6.3), pursuant to s 73(c)(iii) of the Act, is upheld.

[91] The penalty orders will be determined on the papers. The Committee's written submissions are to be filed and served by **30 November 2022**. Mr Bright's submissions are to be filed and served by **21 December 2022**.

[92] Pursuant to s 113 of the Act, the Tribunal draws the parties' attention to s 116, setting out the right of appeal to the High Court.

## PUBLICATION

[93] Having regard to the privacy of the complainant and the interests of the public, it is appropriate to order publication of this decision without identifying the complainant.<sup>18</sup>

---

D J Plunkett  
Chair

---

G J Denley  
Member

---

F J Mathieson  
Member

---

<sup>18</sup> Real Estate Agents Act 2008, s 108.