

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

**[2017] NZREADT 8**

**READT 070/15**

IN THE MATTER OF An appeal under section 111 of the Real Estate Agents Act 2008

BETWEEN PARSOA (SHAUN) BAHRAMITASH  
Appellant

AND THE REAL ESTATE AGENTS  
AUTHORITY (CAC 402)  
First Respondent

AND RAJA RITESH  
Second Respondent

**READT 001/16**

BETWEEN SHALENDRA GOUNDAR  
Appellant

AND THE REAL ESTATE AGENTS  
AUTHORITY (CAC 402)  
Respondent

Hearing: 28 November 2016, at Auckland

Tribunal: Hon P J Andrews, Chairperson  
Ms N Dangen, Member  
Mr G Denley, Member

Appearances: Mr S Sharma and Ms S Anand, on behalf of  
Mr Bahramitash  
Mr J Simpson, on behalf of the Authority  
Mr S Goundar, on his own behalf  
No appearance by or on behalf of Mr Ritesh

Date of Decision: 21 February 2017

Recalled and re-issued: 23 March 2017

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**DECISION OF THE TRIBUNAL**

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## **Introduction**

[1] These two appeals are against decisions of Complaints Assessment Committee 402 (“the Committee”), both concerning the sale of a property at Flat Bush, Auckland (“the property”).

[2] In the appeal READT 070/15, Mr Bahramitash appeals against the Committee’s decisions dated 25 August 2015 in which it found, after inquiring into a complaint made against him by Mr R Ritesh (the second respondent in the appeal) that he had engaged in unsatisfactory conduct (“substantive decision”), and 9 October 2015 in which it ordered him to pay a fine of \$2,000 and to provide confirmation of having undertaken specified further training (“penalty decision”).

[3] In appeal 001/16, Mr Goundar appeals against the Committee’s decisions dated 3 November 2015 in which it found that he had engaged in unsatisfactory conduct (“substantive decision”), and 14 December 2015, in which it censured him, and ordered him to undergo further training, and to pay a fine of \$2,500.00 (“penalty decision”).

[4] The Committee’s substantive decision dated 3 November 2015 and its penalty decision dated 14 December 2015 concerned both Mr Goundar and the Agency. The Committee found that the Agency as well as Mr Goundar had engaged in unsatisfactory conduct and made penalty orders against it. Mr Goundar named the Agency as second appellant in the appeal 001/16. The Agency was sold after the appeal was filed. Its licence has not been renewed and the new owner has advised the Tribunal that he has no interest in pursuing its appeal. The appeal by the Agency is deemed to have been abandoned.

## **Background facts**

[5] At the time of the relevant events (over a period of two days, from 21 to 23 January 2015), Mr Bahramitash was engaged as a licensed salesperson at Main Realty Ltd (“the Agency”), of which Mr Goundar was Branch Manager. He was the

listing salesperson for the property for the vendors, Mr and Mrs Scott.<sup>1</sup> Mr Bahramitash appraised the property at \$340,000 to \$360,000 but after receiving feedback from “investor/speculator clients” the vendors and he agreed that the property would be listed at \$389,000.

[6] The property was advertised on the TradeMe website on 21 January 2015. Within one hour of the advertisement being posted Mr Bahramitash was contacted by Mr P Lawrence, who asked to view the property. Mr Bahramitash told him that as the property was tenanted, a viewing would be arranged with the tenants. Mr Bahramitash rang the tenants and arranged a viewing for 23 January.

[7] However, Mr Lawrence viewed the property from the outside later on 21 January and, without seeing the inside of the property, rang Mr Bahramitash later that evening evening saying that he was keen to make an offer. Mr Bahramitash arranged a meeting with Mr Lawrence the next day to prepare an offer.

[8] At around 8.50 am on 22 January the complainant, Mr Ritesh, contacted Mr Bahramitash about the property. Mr Ritesh is also a licensed salesperson, at a different real estate agency. Mr Bahramitash described the property and Mr Ritesh expressed interest at “the mid \$300,000s”. Mr Bahramitash’s response was that he expected interest at “the high \$300,000s” and that if Mr Ritesh wanted to be in the running, he would have to be at that level. Mr Bahramitash told Mr Ritesh that viewings were being arranged for 23 January.

[9] Mr Bahramitash and Mr Lawrence met at about 9 or 10 am on 22 January, and Mr Lawrence signed an offer of \$389,000, conditional on finance within seven days. Mr Bahramitash anticipated that Mr Lawrence would view the property within the seven-day finance period, and he was comfortable that Mr Lawrence was a genuine buyer.

[10] At around 10.30 am, Mr Ritesh rang Mr Bahramitash about the property. Mr Bahramitash told Mr Ritesh he was busy and could not talk.

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<sup>1</sup> Mr and Mrs Scott will generally be referred to as “the vendors”.

[11] There is some uncertainty as to Mr Bahramitash's next steps. His evidence was that soon after meeting with Mr Lawrence on 22 January, he rang the vendors and told them of Mr Lawrence's conditional offer at \$389,000. He said he also told the vendors that he had received calls from other potential viewers, and had arranged viewings for 23 January. Mr Bahramitash said that the vendors indicated in that conversation that they would accept the offer.

[12] At about 2.00 pm on 22 January Mr Ritesh rang Mr Bahramitash and asked how he had come up with his price. They debated sales of other properties. There is a conflict in the evidence as to this discussion. Mr Ritesh said in a statement to the Authority's investigator that he told Mr Bahramitash that he had a strong interest in buying the property and wanted to make an offer on it. There is no evidence that Mr Ritesh ever presented a written offer, or indicated at what price he had "strong interest", other than his earlier reference to the "mid-\$300,000s".

[13] Mr Bahramitash's evidence was that he told Mr Ritesh that no matter what he or Mr Ritesh thought, if Mr Ritesh "wanted to be in", he would have to come up to near the asking price, and that there was strong genuine interest at the asking price. He did not tell Mr Ritesh that any offer he made would have to be a back-up offer, because the vendors had not signed Mr Lawrence's offer. Mr Bahramitash had the impression that Mr Ritesh thought he was bluffing in order to get a higher offer. He said that Mr Ritesh gave no indication at that time that he would make a higher offer.

[14] Mr Scott signed Mr Lawrence's offer in the evening of 22 January, and Mrs Scott signed it at about 10 am on 23 January. Mr Bahramitash's evidence was that he told them that viewings had been arranged for later in the morning, and that any subsequent offers would "go as back-up offers". He did not consider the property to be off the market.

[15] Owing to a personal emergency, the tenants were not able to be present to allow access for the arranged viewings. Mr Bahramitash explained to the first person who arrived for a viewing that the property was not available for viewing, and that the vendors had accepted a conditional offer at \$389,000, so that any offer for the property would be a back-up offer. That person was not prepared to pay any more

than \$375,000, so left. The second person did not like the driveway set up or the location, and left shortly after arriving.

[16] Mr Ritesh was the third person to arrive for a viewing. Mr Bahramitash said that he told Mr Ritesh that the property was not available for viewing and that the vendors had accepted a conditional offer for \$389,000. He also said that Mr Ritesh did not indicate that he would like to make an offer at that level, or higher.

[17] Mr Lawrence's offer became unconditional on 5 February, and the purchase was settled on 19 March 2015.

### **Mr Ritesh's complaint**

[18] Mr Ritesh complained to the Agency and the Authority on 23 January. His complaint was that Mr Bahramitash had put him off making an offer until viewings could be arranged and that as Mr Bahramitash was aware there were other parties interested in buying the property he should have informed all of them before presenting Mr Lawrence's offer to the vendors. He said this should have become a multiple offer situation. Mr Ritesh further complained that the Agency and Mr Bahramitash had not responded to his complaint.

### **The Committee's decision**

[19] In its substantive decision concerning Mr Bahramitash, the Committee found that he had engaged in unsatisfactory conduct, in that he had not acted in the best interests of the vendors, had not advised Mr Ritesh that an offer was going to be presented to the vendors, and had not responded to Mr Ritesh's complaint.

[20] Regarding the first finding, the Committee concluded that Mr Bahramitash had not told the vendors that there was another person interested in making an offer when he presented Mr Lawrence's offer. The Committee found that Mr Bahramitash had failed to act in the vendors' best interest, in breach of r 9.1 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012. The Committee then found that Mr Bahramitash had presented Mr Lawrence's offer to the vendors when he

knew that there was another party who had a strong interest in making an offer. The Committee found this to be in breach of r 6.2. Finally, the Committee found that Mr Bahramitash had been advised by his branch manager (Mr Goundar) to respond directly to Mr Ritesh's complaint and had not done so. The Committee considered this to be unacceptable conduct.

[21] During the Committee's investigation into the complaint against Mr Bahramitash, the Committee instituted a further inquiry into the conduct of the Agency and Mr Goundar as its branch manager. In its substantive decision concerning Mr Goundar, the Committee found that both he and the Agency had engaged in unsatisfactory conduct in that both had failed to supervise Mr Bahramitash during the sale of the property and after Mr Ritesh's complaint. The Committee found this to be a breach of r 8.3 and s 50 of the Real Estate Agents Act 2008 ("the Act"). The Committee also found that the Agency and Mr Goundar had failed to respond to Mr Ritesh's complaint, and had failed to implement to Agency's disputes resolution process. The Committee found that this indicated a total lack of understanding of the Agency's and Mr Goundar's supervision and agency responsibilities, and brought into question their knowledge of the requirements of the Act.

### **Appeal hearing**

[22] Mr Bahramitash gave evidence and was cross-examined. Submissions were made on behalf of Mr Bahramitash and the Authority, and Mr Goundar made submissions on his own behalf. The Tribunal was also provided with a copy of an email exchange between Mr Bahramitash and the vendors that (as we understand it) was not before the Committee, and a copy of the Authority's advice to Mr Bahramitash that a complaint had been made against him.

[23] After the hearing, at the Tribunal's request, Mr Goundar provided a copy of the Agency's in-house policy for dealing with complaints.

## **Appeal by Mr Bahramitash**

[24] We consider each of the issues raised in Mr Bahramitash's appeal against the substantive decision against him, in turn. As a general comment, we observe that the Tribunal has had the benefit of evidence that was not available to the Committee. The Tribunal has also had the benefit of hearing from Mr Bahramitash in person. The nature and tone of Mr Bahramitash's response to Mr Ritesh's complaint, and to the Committee's investigation,<sup>2</sup> did not assist his cause. This was acknowledged by Mr Bahramitash in evidence and in submissions on his behalf.

(a) *Did Mr Bahramitash fail to act in the vendors' best interests?*

[25] The Committee's finding that Mr Bahramitash had breached r 9.1 was based on Mr Ritesh's evidence that he made it clear to Mr Bahramitash that he had "strong interest" in making an offer, and its factual finding that Mr Bahramitash did not tell the vendors that there was other interest in the property when he presented Mr Lawrence's offer.

[26] There was a conflict in the statements made to the Authority's investigator as to whether Mr Ritesh told Mr Bahramitash that he wanted to make an offer and if so, at what level. Mr Ritesh took no part in the appeal proceeding, and he did not appear at the appeal hearing. Having heard Mr Bahramitash's evidence, we have determined the conflict in Mr Bahramitash's favour. We find that when Mr Ritesh first spoke to Mr Bahramitash he indicated that he was prepared to pay in "the mid \$300,000s", to which Mr Bahramitash responded that bids were expected in "the high \$300,000s". We also find that when Mr Ritesh came to view the property he gave no indication that he would make an offer at or above the level of Mr Lawrence's offer.

[27] In the light of those findings, and Mr Bahramitash's evidence as to the responses from the other two viewers, we find that there was no serious interest

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<sup>2</sup> In its decision on the complaint against Mr Bahramitash, the Committee described him as showing "little respect for the complainant or the complaints process". In its decision as to Mr Goundar, the Committee said that Mr Bahramitash's attitude was "cavalier at best, entirely unprofessional and does not reflect well on the Agency or the industry as a whole". Those comments do not reflect Mr Bahramitash's appearance and submissions before the Tribunal.

(from Mr Ritesh or anyone else) in buying the property at around or above the level of Mr Lawrence's offer. In particular, there is no evidence that the "strong interest" Mr Ritesh professed to have was anywhere near Mr Lawrence's offer, which was at the vendors' asking price. Further, Mr Lawrence's offer was higher than the top of the range of Mr Bahramitash's appraisal.

[28] Mrs Scott (with Mr Scott present) was interviewed by the Authority's investigator. The investigator recorded:

- [a] "They recall [Mr Bahramitash] mentioning that he received a enquiries [sic], one in particular from an agent who wanted to view the house... around the same time [Mr Lawrence] put in his offer".
- [b] "They don't recall [Mr Bahramitash] mentioning other potential offers from any other purchasers".
- [c] "Mrs Scott says if at the time she was aware of potential purchasers who wanted to put in an offer then she could not agree to it because of signing the agreement with [Mr Lawrence] but she would have seen her solicitor about her options".
- [d] "Mr Scott said if they hadn't signed the Lawrence offer then it might have been a different story, he may have wanted a bit more because of other interest".
- [e] "Mrs Scott commented that [Mr Bahramitash] is 'very strict on keeping things on a level' so if he mentioned further interest of buyers then I would like to know and we would consult our solicitors about it. Mrs Scott said *"I'm pretty sure [Mr Bahramitash] did not mention further interest coming from buyers, it was the fact he mentioned the other agent who missed an opportunity to market the property."* (emphasis as in the investigator's report)



[29] Mr Bahramitash produced an email from Mrs Scott dated 23 November 2015 in which Mrs Scott said (as relevant to the appeal):

Well ... As we have said old age and time have blurred our recollections of this transaction but we can add the following.

Firstly, we were more than satisfied with your dealings regarding this sale and we never thought at any stage that you were not acting in our best interests. We were surprised but not concerned when you advised us on visiting your office that a complaint may be lodged by another agent. ...

On re-reading our statement to [the Authority] it has nudged our memory slightly in that we believe other interested parties may have been brought up, (certainly not agents in our understanding), but because we had what we considered a very good offer with little out clauses, we were more than happy. We somewhat recall other potential viewings being discussed but unsure whether these took place. As far as back-up offers being considered,, unfortunately our recollections are too vague.

[30] Having considered the evidence given by Mr Bahramitash and as recorded in Mrs Scott's interview and her email to Mr Bahramitash, we are satisfied that Mr Bahramitash informed the vendors that there was other interest in the property. It is irrelevant whether the "other interest" was from another agent or any other person. We are also satisfied that Mr Bahramitash informed the vendors that he had arranged viewings of the property. The vendors agreed that the viewings would proceed, and were aware that Mr Lawrence's offer could be withdrawn. It would have been preferable for Mr Bahramitash to have obtained specific instructions from the vendors that he not pursue the other interest, but we find that the Committee was wrong to find that he did not act in their best interests, and wrong to find that he breached r 9.1.

[31] In the course of his submissions for the Authority, Mr Simpson suggested that it might be appropriate for the Tribunal to give some guidance as to what licensees should discuss with their client vendors when presenting offers. We would not expect that market conditions, or that the position as to offers being made, indications of possible offers, or general expressions of interest, will be the same in every case. Nor could we assume that there would be a general expectation that these would even be similar in other cases. Therefore, except for observing that licensees must give careful consideration as to what should be raised and discussed with their client vendors when presenting an offer, we do not consider it appropriate for us to attempt to set out any generally applicable principles.

*(b) Did Mr Bahramitash fail to advise Mr Ritesh and others that an offer had been made, and should this have become a multi-offer situation??*

[32] We accept Mr Bahramitash's evidence and submission that as he had a written offer at a price that was acceptable to the vendors, and no indication of any other interest at the same or similar level (and in fact the only indication of interest was at a considerably lower level) this was not a multi-offer situation. Mr Simpson appropriately accepted that in those circumstances, this was not a case for a multi-offer process.

[33] We accept Mr Simpson's submission that the critical time period was the 24 hours from the vendors' oral acceptance of Mr Lawrence's offer in the morning of 22 January, and Mrs Scott's signing it at about 10 am on 23 January. We also accept that during this period any other potential purchaser was not aware that an offer was expected to be signed and that by the time they viewed the property, they could only make a back-up offer. Mr Simpson submitted that transparency was required in order for Mr Bahramitash to comply with his obligations of good faith and fairness (r 6.2), and not to mislead, provide false information, or withhold information (r 6.4).

[34] Against those obligations, Mr Bahramitash was required to comply with his fiduciary obligations to the vendors (r 6.1), his duty to act in the vendors' best interests (r 9.1), and his duty of confidentiality to the vendors (r 9.16). A licensee must therefore consider carefully what can be divulged to each side of the possible transaction.

[35] In this case, Mr Bahramitash had an offer that was well above his appraisal, it was acceptable to the vendors, but it had not been signed. Further, the indication he had from Mr Ritesh was of an offer well below Mr Lawrence's offer, and Mr Ritesh had given no indication of making a higher offer when told there was interest at close to the asking price.

[36] There was no evidence – given to the Committee or the Tribunal – that there was any interest in buying the property other than that expressed by Mr Ritesh. At the time Mr Bahramitash spoke with Mr Ritesh (after the vendors' oral acceptance of Mr Lawrence's offer) he did not have an offer accepted in writing, so he could not

have told Mr Ritesh, or any other viewer, that there had been an offer on the property. It follows that he could not tell Mr Ritesh that he could only make a back-up offer. If Mr Bahramitash had told Mr Ritesh that he could only make a back-up offer he would have been both divulging confidential information, and misleading him.

[37] On the facts as we have found them, we find that the Committee was wrong to find that Mr Bahramitash failed to act fairly towards Mr Ritesh. We find that he did act fairly in telling Mr Ritesh that he had strong interest at close to the asking price. That statement was truthful, whether or not Mr Ritesh believed it. Accordingly, we find that the Committee was wrong to find that Mr Bahramitash breached r 6.2.

*Was Mr Bahramitash's failure to respond to Mr Ritesh's complaint unacceptable?*

[38] Mr Bahramitash's evidence and submission was that Mr Ritesh's email setting out his complaint was not addressed to him, it was addressed to the Authority and copied to the Agency's "head office" and to the New Zealand Herald ("the Herald"). He said he discussed it with Mr Goundar and decided, on the grounds that the email had been copied to the Herald and he did not think he had done anything wrong, that it would be inappropriate to respond until such time as he heard from the Authority. He also noted that the Authority's notification of the complaint included:

You **do not** need to provide a response to the complaint at this stage, however, you must let your supervising agent know you have had a complaint made against you. (emphasis as in the original document)

[39] Mr Simpson submitted that it would have been prudent for Mr Bahramitash and the Agency to have sought clarification (we assume, from Mr Ritesh) as to whether a response was required, and to offer to engage the Agency's in-house complaints procedure.

[40] The Agency's in-house complaints procedure provides that the first step in dealing with a complaint is to send a "formal written acknowledgement of receipt of complaint within two working days". That did not happen in this case. Whatever Mr Bahramitash's views were as to the complaint, the manner in which it was made, and Mr Ritesh in general, a formal acknowledgement was required. We observe that the

in-house procedure does not include a requirement to offer to a complainant to engage in the complaints procedure, but it does appear to involve the complainant to some extent.

[41] We agree with the Committee that it was “unacceptable” for Mr Bahramitash not to acknowledge the complaint. We also agree with the Committee that Mr Bahramitash’s response to the Committee’s investigation was unprofessional. However, the Committee’s finding of unsatisfactory conduct was based primarily on its findings that Mr Bahramitash had breached rr 9.1 and 6.2. We have found that the Committee was wrong to find that Mr Bahramitash breached rr 9.1 and 6.2. We find that his unacceptable and unprofessional conduct, considered on its own, does not justify a finding of unsatisfactory conduct.

[42] Accordingly, Mr Bahramitash’s appeal against the Committee’s substantive decision must be allowed and its finding of unsatisfactory conduct quashed. It follows that his appeal against the Committee’s penalty decision must also be allowed. However, it is appropriate that Mr Bahramitash is admonished in respect of his unacceptable and unprofessional conduct.

### **Appeal by Mr Goundar**

[43] Mr Goundar appealed against the Committee’s substantive finding that he had demonstrated a lack of understanding of the requirement to supervise and train Mr Bahramitash in respect of his handling of the sale of the property, and his failure to acknowledge Mr Ritesh’s complaint or to engage in a complaints procedure, demonstrated a lack of understanding of his responsibility to supervise and train Mr Bahramitash, was in breach of r 8.3 and s 50 of the Act, and brought into question his knowledge of the requirements of the Act and the Rules.

[44] Mr Goundar submitted that Mr Bahramitash, as an experienced salesperson, did not require day to day supervision of his handling of listings. He submitted that such supervision would have been impracticable, (particularly in this case, as events were “running hot and rapid”). Regarding Mr Ritesh’s complaint Mr Goundar submitted, as had Mr Bahramitash, that having discussed the complaint and in the

“unique situation” of Mr Ritesh having copied it to the Herald, it was appropriate to leave it until something came from the Authority. Mr Goundar also submitted that the Committee was wrong to find that he advised Mr Bahramitash not to respond to Mr Ritesh. Mr Goundar referred the Tribunal to an email communication (which was before the Committee) in which he advised Mr Bahramitash to respond.

[45] Mr Simpson accepted that an experienced salesperson may require less supervision than others, but he submitted that there is nothing in either s 50 of the Act or r 8.3 to the effect that no supervision is required. He submitted that Mr Bahramitash required supervision during the “critical” 24-hour period (referred to at [33], above), as to communication with persons viewing the property, acting in the vendors best interests, failing to take steps in response to Mr Ritesh’s complaint, and his “unprofessional remarks” in response to the Committee’s investigation. He submitted that Mr Goundar had failed in his obligation to supervise Mr Bahramitash by having no involvement in the transaction until Mr Ritesh complained.

[46] In answer to a question from the Tribunal Mr Goundar said that his practice is to view every listing, and every Agreement for Sale and Purchase. However, there was no evidence that he had viewed the property when it was listed, or that he had any discussion with Mr Bahramitash concerning Mr Lawrence’s offer, Mr Ritesh’s indication of an offer, or other interest in the property. Further, his evidence was that he did not view the Agreement for Sale and Purchase. By way of explanation, Mr Goundar referred to having had to visit his father in Fiji who was ill, but he did not make it all clear when this was, or how long he was away.

[47] Regarding Mr Ritesh’s complaint, we observe that once a complaint is made to the Authority, the matter is beyond the point where it is practicable to attempt to engage the complainant in an agency’s in-house complaints procedure. In any event, notwithstanding the discussion between them, it was not for Mr Bahramitash to respond to the Authority or Mr Ritesh regarding the complaint. The response was required from Mr Goundar, as manager of the Agency.

[48] We accept that for an experienced salesperson a lesser degree of supervision may be sufficient to meet the obligation under the Act and Rules. However, we find

that the Committee was correct to find that Mr Goundar failed to meet his obligation to supervise Mr Bahramitash. Such supervision as there was, at any stage of the sale process and the subsequent complaint, was some distance away from what would have been sufficient, even for an experienced salesperson, and Mr Goundar failed to respond to the Mr Ritesh's complaint in the appropriate manner.

[49] We make this finding notwithstanding that we have allowed Mr Bahramitash's appeal against the Committee's finding of unsatisfactory conduct against him. Mr Goundar was required to comply with his obligation of supervision, no matter how Mr Bahramitash undertook his real estate agency work, and he was obliged to ensure that Mr Ritesh's complaint was responded to in the correct manner.

### **Outcome**

#### *(a) Mr Bahramitash*

[50] Mr Bahramitash's appeal against the Committee's substantive decision is allowed to the extent that its finding of unsatisfactory conduct is quashed.

[51] However, the Tribunal orders that Mr Bahramitash is admonished in respect of his unacceptable and unprofessional conduct in response to Mr Ritesh's complaint and in the Committee's investigation of it.

#### *(b) Mr Goundar*

[52] Mr Goundar's appeal against the Committee's substantive decision is dismissed.

[53] Mr Goundar's appeal against the Committee's penalty decision is dismissed.

[54] Pursuant to s 113 of the Act, the Tribunal draws the parties' attention to s 116 of the Act, which sets out appeal rights. Any appeal must be filed in the High Court

within 20 working days of the date on which the Tribunal's decision is served. 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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Ms N Dangen  
Member

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Mr G Denley  
Member