BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2017] NZREADT 5

READT 032/15

IN THE MATTER OF	Charges laid under s 91 of the Real Estate Agents Act 2008
BROUGHT BY	COMPLAINTS ASSESSMENT COMMITTEE 302
AGAINST	KAREN CROCKETT Defendant
Hearing:	12 and 13 August 2016, at Auckland Final submissions received 29 November 2016
Tribunal:	Hon P J Andrews, Chairperson Mr J Gaukrodger, Member Ms C Sandelin, Member
Appearances:	Ms S Earl, on behalf of the Committee Mr T Rea and Ms C Eric, on behalf of Ms Crockett
Date of Decision:	26 January 2017

DECISION OF THE TRIBUNAL

Introduction

[1] Complaints Assessment Committee 302 ("the Committee") has laid charges of misconduct against Mrs Karen Crockett, in relation to her marketing a property at Manukau, Auckland ("the property") in early 2013. The charges were laid following a complaint to the Real Estate Agents Authority ("the Authority") by the purchaser of the property, Ms Jordan.

[2] The Committee alleges under s 73(c)(iii) of the Real Estate Agents Act 2008 ("the Act") that Mrs Crockett wilfully or recklessly breached rr 6.4 and 6.5 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009 ("the 2009 Rules"),[1] in the course of marketing the property. The Committee alleges that Mrs Crockett failed to disclose to Ms Jordan that the property had a risk of potential weathertightness issues. In the alternative, the Committee alleges that Mrs Crockett's conduct in failing to give such disclosure in writing amounted to unsatisfactory conduct under s 72(a) of the Act.

An outline of the background facts

[3] The exterior cladding of the property is a direct-fixed base sheet with a textured plaster coasting.

[4] Mrs Crockett, of Barfoot & Thompson ("the Agency"), was the listing salesperson for the property when it was marketed earlier in December 2010 and January 2011. At that time, the property was owned by Mrs Dougall. It was sold at auction on 1 February 2011 to Mr and Mrs Clegg, who subsequently transferred it to Ms Bradshaw and Mr Garnham.

[5] On 24 January 2013, Ms Bradshaw and Mr Garnham listed the property for sale with Mrs Crockett. Mrs Crockett conducted open homes over four weeks, commencing from 27 January 2013. Ms Jordan attended open homes on 3 and 10

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[1] The 2009 Rules were in force at the time of the alleged conduct. They were revoked and replaced as from 8 April 2013 by the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012. Rule 6.4 of the 2009 Rules was replaced by r 6.4 of the 2012 Rules. Rule 6.5 of the 2009 Rules has been replaced (in almost identical terms) by r 10.7 of the 2012 Rules.

February 2013, then purchased the property at auction on 26 February 2013. The purchase was settled on 28 March 2013.

[6] Shortly after moving in, Ms Jordan discovered dampness when she removed carpet prior to re-decoration. She formed the view that the property was a "leaky home". She subsequently sought legal advice then made a complaint to the Agency. On 1 November 2013, she made a complaint to the Authority

The issues

[7] The charges against Mrs Crockett are, in essence, that:

> [a] She was aware when she marketed the property in 2011 that it was alleged to have weathertightness issues[2] and did not disclose that to Ms Jordan when marketing the house in 2013; or
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> [b] She failed to disclose to Ms Jordan that because of the nature of its cladding, the property was of a type where there was a risk of potential weathertightness issues, and failed to recommend that she obtain a building inspection report.

[8] The charge is denied by Mrs Crockett. She contends that:

> [a] While she was aware in 2011 that there was a risk of potential weathertightness issues for the property, due to its construction and plaster cladding, she had no knowledge of any alleged actual weathertightness issues, and she informed all prospective purchasers of the risk and recommended they get a building inspection report; and
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> [b] In 2013, she informed Ms Jordan of the potential risk, and recommended that she obtain a building inspection report if she was interested in buying the property.

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[2] The term "weathertightness issues" refers to the possibility of water ingress into the property due to the nature of its construction and/or cladding. The terms "leaky building" and "leaky building syndrome" are to the same effect.

[9] Determining the issues requires the Tribunal to consider the relevant evidence and make credibility findings. As a preliminary point, we note that the Committee's case does not rest on the property *in fact* being a "leaky building".[3] The nub of the Committee's case is that Mrs Crockett either knew that the property was alleged to have weathertightness issues, or was aware of the risk of potential issues and, in both cases, failed to disclose that to Ms Jordan.

The relevant Rules

[10] Rules 6.4 and 6.5 of the 2009 Rules are particularly relevant to the charges against Mrs Crockett. They provided:

[a] Rule 6.4 (now r 6.4 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 ("the 2012 Rules")):

> A licensee must not mislead a customer or client, nor provide false information, nor withhold information that should by law or fairness be provided to a customer or client.

[b] Rule 6.5 (now, in almost identical terms, r 10.7 of the 2012 Rules"):

> A licensee is not required to discover hidden or underlying defects in land but must disclose known defects to a customer, Further, where it appears likely, on the basis of the licensee's knowledge and experience of the real estate market, that land may be subject to hidden or underlying defects,, the licensee must either–
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> (a) obtain confirmation from the client that the land in question is not subject to defect; or
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> (b) ensure that a customer is informed of any significant potential risk so that the customer can seek expert advice if the customer so chooses.

[c] The 2009 Rules provided, by way of a footnote to r 6.5 (repeated at r 10.7 of the 2012 Rules):

> For example, houses built within a particular period of time, and of particular materials, are or may be at risk of weathertightness problems. A licensee could reasonably be expected to know of this risk (whether or not a seller directly discloses any weathertightness problems). While a customer is expected to inquire into risks regarding a property and to

3 There was a dispute in the evidence as to whether the property actually had weathertightness issues.

> undertake the necessary inspections and seek advice, the licensee must not simply rely on *caveat emptor*. This example is provided by way of guidance only and does not limit the range of issues to be taken into account under r 6.4.

[11] We accept Ms Earl's submission for the Committee that the effect of r 6.5 (and now r 10.7) is that a licensee must disclose known defects and, where it appears likely that land *may* be subject to hidden or underlying defects, a licensee must inform customers of any significant potential risk and recommend that customers obtain a building inspection report.

[12] Regarding licensees' compliance with their disclosure obligations, the Tribunal repeats its comments in *Munley v Real Estate Agents Authority (CAC 402)*:[4]

> [42] Somewhat similar considerations apply in respect of advertising a property where it appears likely that there may be a weathertightness problem. A licensee, particularly an experienced licensee, should be able to read the signs of a building that needs maintenance and may have some issues associated with a plaster-type exterior. Real estate managers must be aware, from personal inspection, that a new property coming onto the market may require the licensees marketing the property to disclose issues, including (but not limited to) a possible weathertightness problem. As a matter of good practice in the advertising for such a property, a licensee should incorporate some wording which would alert a potential purchaser as to the possibility of such a problem. In the present case, although we express no firm view on this point, the advertisement may have achieved this by using the word "roughcast", given that it was highlighted in the listing agreement.
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> [53] Our consideration of the second aspect of the appeal (as to disclosure and advertising) leads us to draw licensees' attention to r 10.7. When licensees can see from their own knowledge and experience that a property may be subject to hidden or underlying defects (such as that it may be a leaky home), it is simply not sufficient for licensees to rely on representations from a vendor, and to recommend that potential buyers obtain their own building report.

[13] Ms Earl also relied on the Tribunal's decision in *Dixon v Complaints Assessment Committee 20004*,[5] where the Tribunal held that it is best practice for advice as to defects in a property to be given in writing. Mr Rea submitted that there is no requirement under the Act or Rules for such advice to be given in writing. However, it must be acknowledged that advice given or confirmed in writing reduces the possibility of doubt as to whether it was given.

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4 *Munley v Real Estate Agents Authority (CAC 402)* [2016] NZREADT 53, at [42] and [53].

5 *Dixon v Complaints Assessment Committee 20004* [2014] NZREADT 98, at [21] and [23].

The sale in 2011

[14] The Tribunal heard evidence as to the facts regarding this sale from Mrs Dougall, the vendor in 2011, Mr Back, a thermographer, and Mrs Crockett.

Mrs Dougall

[15] Mrs Dougall said in her written statement of evidence that having listed the property with Mrs Crockett, she had no dealings with anyone else from the Agency. She was aware that an "Asian woman" (whose name she did not know, but was later told was "Yooki"[6]) was interested in buying the property, and she believed that she visited it with a building inspector, sometime during the Auckland Anniversary weekend.

[16] In oral evidence, Mrs Dougall said it was a "late inspection of the property", and "the timeframe was compressed". The "Asian woman" decided against making a bid for the property. Mrs Dougall said Mrs Crockett told her after the sale that the reason why the Asian woman did not want to proceed with a bid was that the building report had revealed some issues with dampness in one part of a rear wall. This information did not seem to Mrs Dougall to be correct, as she had not been aware of any such issue over the 11 years she had lived in the property.

Mr Back

[17] Mr Back said he attended at the property in early 2011 and met his client "Yooki" there. He produced a diary note of the attendance, dated 1 February 2011. He said he saw a woman, whom his client identified as the real estate agent, and another woman, whom she identified as the owner. He said he found high readings of moisture ingress and advised his client of these. She then stopped the inspection as she had lost interest in the property. Mr Back said he then told the owner and the real estate agent of the very high moisture readings.

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[6] "Yooki" was later identified as Yooki Wikiriwhi. She did not give evidence at the hearing, although a statement of her evidence was obtained.

[18] Mr Rea submitted for Mrs Crockett that Mrs Dougall's evidence that "Yooki" and "the building inspector" visited the property "sometime during the Auckland Anniversary weekend", but she did not speak to him, was directly contrary to Mr Back's evidence that he spoke to both "the owner" and "the real estate agent" and significantly undermined the reliability of his evidence. Mr Rea submitted that it was implausible that, on Mr Back's evidence, his inspection (on 1 December 2013) was only two hours before the auction took place that day.

[19] Mr Rea further submitted that Mr Back had unreasonably asserted that he was "100 per cent certain" as to his evidence some five years after the event, Mr Back must have been uncertain in his identification of Mrs Crockett, (and may have spoken to another agent), and his description of the condition of the property was inconsistent with that given by Mrs Dougall, Mrs Crockett and her husband, and by the expert witnesses who were called by Mrs Crockett. He further submitted that Mr Back gave inconsistent evidence as to when he had inspected the property, having said it was in May 2011 in a statement he provided in March 2014, then saying it was on 1 February 2011 in a statement of evidence given in November 2015, after a diary note was located.

Mrs Crockett

[20] Mrs Crockett said that she had no record or recollection of Yooki Wikiriwhi or Mr Back visiting the property during the Auckland Anniversary weekend, or at any other time. According to her diary notes there was no open home on that day, and it would be contrary to her general practice to hold an open home on a weekday or a public holiday. She further said that there was no record of Ms Wikiriwhi being shown through the property by any other salesperson at the Agency, and there was no one of that name registered for the auction.

[21] Mrs Crockett also said that she was aware that the property may be at risk of potential weathertightness issues, due to its cladding/construction type, and asked Mrs Dougall if there were any "leaky issues". She said she was told that there were none. She said she recommended to all prospective purchasers who attended open

homes that they get their own building inspection, their own LIM report, and financial and legal advice if they were interested in the property.

[22] Mrs Crockett further said that when marketing the property in 2011, she became aware that a pole under a support beam had been removed from the garage under the living area of the house, apparently without Council consent. She said she advised all potential purchasers of this, and had a clause specifically relating to the support beam inserted in the terms of sale.

[23] We do not find Mrs Crockett's evidence that she "had no recollection or record" of Ms Wikiriwhi having been at the property to be reliable evidence as to whether Mr Back did or did not inspect the property in 2011. She no longer had the open home registers for that sale and, while she said she had no email record for Ms Wikiriwhi (from which she contended that it could be assumed that Ms Wikiriwhi had not visited the property), it was evident from the open home records for the 2013 sale that several people who attended them declined to provide an email address.

Factual findings as to the 2011 sale

[24] On the balance of probabilities we find that Mr Back inspected the property with Ms Wikiriwhi during the Auckland Anniversary weekend in 2011. That finding is based on his evidence, supported by his diary note, and Mrs Dougall's evidence (which we found to be credible and reliable) that she dealt only with Mrs Crockett, she was aware of "an Asian lady" at the property with "a building inspector" during the Auckland Anniversary weekend, that it was "a late inspection", and that "the time frames were compressed".

[25] However, we are not satisfied on the balance of probabilities that Mr Back told Mrs Crockett and Mrs Dougall of his findings. His evidence is not supported by Mrs Dougall's evidence that she did not speak to "the building inspector", and that she was told by Mrs Crockett after the auction that "the Asian woman" had not proceeded with a bid because of issues disclosed in a building report which revealed dampness.

[26] On the basis of her acknowledgement, we find that Mrs Crockett was aware of a risk of potential weathertightness issues due to the nature of the house's construction and cladding. That finding is relevant to our consideration of Mrs Crockett's compliance with her obligations under r 10.7 when she handled the sale of the property in 2013.

The sale to Ms Jordan in 2013

[27] The Tribunal heard evidence as to the facts of the 2013 sale from Ms Jordan and Mrs Crockett. The evidence for Mrs Crockett also included statements from other salespeople at the Agency, and people who had had dealings with her. This evidence was largely in the nature of support for Mrs Crockett's evidence as to her usual practice regarding disclosure, and character evidence.

Ms Jordan

[28] Ms Jordan's evidence was that Mrs Crockett did not tell her that the property might have weathertightness issues due to the nature of the house's construction and cladding. She said there was no mention of this at the two open homes she attended, there was nothing in any written material she was given, or in emails Mrs Crockett subsequently sent to her. Nor, she said, was she told that she should obtain her own builder's report.

[29] Ms Jordan said that after the second open home she attended, she requested further information concerning the property from Mrs Crockett. Mrs Crockett provided her with a copy of the Certificate of Title, a rental appraisal, and information concerning the impact of the road-widening project on the property. Mrs Crockett did not mention any risk of potential weathertightness issues.

[30] Mr Rea submitted that Ms Jordan's evidence was neither credible nor reliable. He submitted that her evidence that the only written information available at the open homes was a "sign in form" and "some Transit information" was entirely implausible, and undermined the reliability of her evidence. He also submitted that Ms Jordan's evidence that she was aware of "leaky building syndrome", but did not

believe that this related to the property as it had “a lumpy finish to the texture”, and was not aware that “purchasers obtained pre-purchase building reports” was inconsistent and lacked credibility.

[31] Mr Rea described Ms Jordan as a New Zealand citizen and an intelligent person, implying that as such, whether or not Mrs Crockett informed her of it, she must have been aware of the property’s potential risk of weathertightness issues, given the extent of publicity concerning leaky building syndrome, and plaster-clad properties. Mr Rea’s implicit submission that Ms Jordan should have been aware of these matters herself would be contrary to the express rejection of complete reliance on the principle of *caveat emptor* in the footnote to r 6.5 of the 2009 Rules.

[32] Mr Rea was also critical of Ms Jordan’s evidence as to her bidding at the auction of the property. He submitted that she had advised Mrs Crockett that she would not be bidding at the auction but then made a spontaneous decision to bid at the auction, and failed to provide any explanation for this. He submitted that this, and Ms Jordan’s failure to inform the Tribunal that she was due to receive compensation for the compulsory acquisition of the property under the road-widening project, significantly undermined the reliability of her evidence.

[33] We do not accept that either of Mr Rea’s particular criticisms of Ms Jordan’s evidence (relating to her bidding at the auction, and the matter of compensation) significantly undermined the reliability or credibility of her evidence. As to the first point, Ms Jordan’s evidence was that she told Mrs Crockett that she would be bidding at the auction. As to the second, we accept Ms Earl’s submission for the Committee that Ms Jordan answered the specific questions put to her. Neither point is relevant to the specific issue before us, which is whether Mrs Crockett complied with her disclosure obligations.

Mrs Crockett

[34] Mrs Crockett said she viewed the property before marketing it in 2013, and found it to be well maintained and tidy and in exactly the same condition as it had been when she sold it in 2011. She said she saw no cracks in the plaster cladding,

and there was no smell or sign of dampness inside the house. She advised the then owners that the property's cladding type was associated with possible weathertightness issues, and asked them if they were aware of any past or current issues in relation to the property (referring specifically to a de-humidifier she had seen). Their response was that there were none.

[35] Mrs Crockett agreed in cross-examination that it is critical to disclose the nature of a property's construction and cladding and any potential risk arising, and to advise potential purchasers of the need to obtain their own building report, particularly where the property has plaster cladding. She said her standard practice is to do all of this, that "with a building like this you always disclose potential risk", that "plaster construction is the Number 1 thing", and that she was "very very vocal" and "very dogmatic" about it. She said that, as was her standard practice, she recommended that Ms Jordan get a building inspection due to the cladding type of the property, and also advised Ms Jordan of a road-widening project of which she had been advised, which might affect the property.

Other evidence

[36] Mrs Crockett also called evidence from two expert witnesses, Mr Bayley and Mr Nelligan. Both gave evidence following inspections of the property in January 2016, and their review of statements of evidence adduced in this case. In particular, both commented on the present condition of the house, and Mr Back's assessment of the property as having weathertightness issues.

[37] The Committee's charges against Mrs Crockett were not founded on the property in fact being a "leaky home". The issues for determination are whether Mrs Crockett was aware of the potential risk of weathertightness issues due to the nature of its cladding and construction, and whether Mrs Crockett complied with the licensees' obligation to inform Ms Jordan of that risk, and to recommend that she obtain a building inspection report.[7] In the light of Mrs Crockett's acknowledgement that she was aware of the potential risk, the experts' evidence does not assist us.

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[7] See paragraph [9], above.

Was Mrs Crockett aware of the risk of potential weathertightness issues when she marketed the property in 2013?

[38] We found (in relation to the 2011 sale) that Mrs Crockett was aware that there was a risk of potential weathertightness issues with the property. That finding is endorsed by Mrs Crockett's evidence that she asked the owners in 2013 if they were aware of any such issues, and by Mrs Crockett's evidence that "plaster construction is the Number 1 thing", and that "with a building like this you always disclose potential risk". We find that Mrs Crockett was aware of the risk of a potential weathertightness issue with the property.

Did Mrs Crockett comply with her obligation to inform Ms Jordan of the risk of potential weathertightness issues, and recommend that she obtain a building inspection report?

[39] Mrs Crockett was adamant that, in accordance with her standard practice of being "very dogmatic" about disclosing the risk of potential weathertightness issues, she informed Ms Jordan of the potential risk. However, we cannot rely on Mrs Crockett's "standard practice" in order to find that in this particular instance, she gave that advice to Ms Jordan. There is no express record of such advice, and Mrs Crockett's assertion based on her "standard practice" is not supported by documentary evidence before us:

[a] Mrs Crockett accepted that there was nothing in the marketing flyer for the property concerning the Property's cladding. Mrs Crockett responded, when this was put to her, that she "thought it was self-evident". Mrs Crockett also accepted that she might not have had the opportunity to speak about the risk of potential weathertightness issues to everyone who attended an open home, although she said she did her best to talk to everyone.

[b] Information sought by Ms Jordan

[i] On 15 February 2013 (after attending a second open home), Ms Jordan requested further information concerning the property from Mrs Crockett. Mrs Crockett provided her with a copy of the

Certificate of Title, a rental appraisal, and information concerning the impact of the road-widening project on the property. It is apparent from the relevant emails produced by Ms Jordan that Mrs Crockett did not mention any potential risk of weathertightness issues.

[ii] Mrs Crockett accepted that this material mentioned the road-widening project, but did not mention the risk of potential weathertightness issues. She said this was because she had already talked about it, and it did not occur to her to refer Ms Jordan to an earlier discussion (although she does this now).

[c] Sale and Purchase Agreement Checklist:

[i] A "Sale and Purchase Agreement Checklist" was prepared by Mrs Crockett for the Agency after the 2013 sale. There is no record in the Checklist of advice being given of the risk of potential weathertightness issues.

[ii] The Checklist includes a section headed "What was discussed?" followed by a number of boxes which could be ticked. There is no box referring to "weathertightness issues". There is a note next to the "other" box, which states "Possible change to road". A further section is headed "Were any specific items discussed where you gave advice?" The note in this section reads "Which may affect property – advised to do own due diligence". There is no indication that this note is anything other than a continuation of Mrs Crockett's note as to the "road" issue.

[iii] We accept Ms Earl's submission that if Mrs Crockett had specifically raised the risk of weathertightness issues with Ms Jordan, she would have recorded it. This is particularly so, given the specific reference to weathertightness issues in the Rules, and Mrs Crockett's understanding of the importance of disclosure.

[iv] We note that the Checklist also contains a note of a discussion of the "pole" removed from the garage, and Mrs Crockett's recommendation of a building inspection, but no reference to advice as to the risk of weathertightness issues.

[d] The Agreement for Sale and Purchase:

[i] The Agreement for Sale and Purchase for the 2011 sale contains a clause in the "Further Terms of Sale" which provides:

> 18.0 The purchaser hereby (irrevocably) acknowledges that they have been advised by the agent to obtain a building inspection report from a registered builder to satisfy themselves that there are no issues in relation to the structural integrity and/or weather tightness of the building/s on the said property.

[ii] There is no clause to that effect in the Agreement for Sale and Purchase for the 2013 sale, although there is a clause referring to the proposal for road-widening.

[40] Mrs Crockett's evidence was that she informed Ms Jordan of the risk of potential weathertightness issues, in accordance with her standard practice. Ms Jordan's evidence was that in her particular case, Mrs Crockett did not inform her of that risk, and did not recommend that she obtain a building inspection report.

[41] On the balance of probabilities, we find that Mrs Crockett failed to inform Ms Jordan that the property had a risk of potential weathertightness issues, and to advise her that she should obtain a building inspection report. By failing to do so, Mrs Crockett was in breach of rr 6.4 and 6.5 of the 2009 Rules.

Did Mrs Crockett's conduct amount to misconduct under s 73 (c)(iii) or (in the alternative) unsatisfactory conduct under s 72(a) of the Act?

[42] Ms Earl submitted that in the light of the above findings, the Tribunal could find that Mrs Crockett's conduct amounted to misconduct, as she clearly knew that it was "critical" to disclose the potential risk of weathertightness issues, but did not do so. She submitted that Mrs Crockett's failure to make disclosure was a wilful or at

least reckless breach of the Rules. She submitted that a finding of misconduct under s 73(c)(iii) was justified.

[43] Ms Earl further submitted that if the Tribunal were unable to conclude that there was a wilful or reckless failure to disclose the risk of potential weathertightness issues to Ms Jordan, the Tribunal should find that Mrs Crockett's conduct amounted to unsatisfactory conduct, on the grounds that she did not give disclosure in writing.

[44] Mr Rea's closing submissions focussed on the factual issues. In respect of the first charge, he submitted that the Tribunal could not find it proved that Mrs Crockett had failed to disclose of the risk of potential weathertightness issues. In respect of the alternative charge, he submitted that as the Rules do not require disclosure to be given in writing, the Tribunal could not find that Mrs Crockett had engaged in unsatisfactory conduct.

[45] Nothing in the evidence before us, or counsel's submissions, gives grounds on which we could find that Mrs Crockett wilfully or recklessly failed to make disclosure of the risk of potential weathertightness issues. Further, whilst we have found that Mrs Crockett was aware of the risk, and did not disclose it to Ms Jordan, we are not satisfied on the balance of probabilities that her failure reached the standard of being "reckless". Rather, we have concluded that Mrs Crockett's failure to make disclosure to Ms Jordan (notwithstanding being aware of the risk and the importance of making disclosure) resulted from negligence, but not serious negligence as in s 73(b) if the Act.

[46] Pursuant to s 110(4) of the Act, if the Tribunal finds the alleged conduct proved, but does not consider it amounts to misconduct under s 73 of the Act, it make may a finding of unsatisfactory conduct and make orders accordingly. We consider that it is appropriate to follow that course in this case. In doing so, the Tribunal makes a finding of unsatisfactory conduct on the facts as we have found conduct to be proved, not on the grounds that disclosure of the risk of potential weathertightness issues was required to be given in writing.

Outcome

[47] The Tribunal finds under s 72(c) of the Act that Mrs Crockett engaged in unsatisfactory conduct in that, being aware of that the property was at risk of potential weathertightness issues, she failed to disclose the risk to Ms Jordan, and to recommend that she obtain a building inspection report. The same finding could be made under s 72(a) of the Act.

[48] Counsel are requested to confer and advise the Tribunal whether an oral hearing is required as to penalty. In the event that it is agreed that penalty may be dealt with on the papers, counsel are requested to file a joint memorandum setting out a timetable for submissions. In the event that an oral hearing is required, the Case Manager will schedule a telephone conference to set a hearing date and timetable for submissions.

[49] Pursuant to s 113 of the Real Estate Agents Act 2008, the Tribunal draws the parties' attention to s 116 of the Real Estate Agents Act 2008, 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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Mr J Gaukrodger
Member

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Ms C Sandelin
Member