

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

**[2019] NZREADT 46**

**READT 017/19**

IN THE MATTER OF	An appeal under section 111 of the Real Estate Agents Act 2008
BETWEEN	NEIL CLOUGH Appellant
AND	THE REAL ESTATE AGENTS AUTHORITY (CAC 520) First Respondent
AND	JENNY BUNN and JOHN CHRISTIANSEN Second Respondents
Hearing:	4 October 2019, at New Plymouth
Tribunal:	Hon P J Andrews, Chairperson Mr J Doogue, Member Mr N O'Connor, Member
Appearances:	Mr Clough, appellant Ms E Woolley, on behalf of the Authority Mr C Child, on behalf of Ms Bunn and Mr Christiansen
Date of Decision:	5 November 2019

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**DECISION OF THE TRIBUNAL**

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## **Introduction**

[1] Mr Clough has appealed against the decision of Complaints Assessment Committee 520 (“the Committee”), dated 24 May 2019, to take no further action on his complaints concerning Mr Christiansen and Ms Bunn.

[2] Mr Christiansen is a licensed agent and is the Principal of Team Taranaki Ltd, trading as Harcourts New Plymouth. Ms Bunn is a licensed salesperson and is the manager of the Harcourts Inglewood branch (“the Agency”).

## **Factual background**

[3] Mr Clough’s complaints concerned a property at Inglewood. It was bought in 1993 by Mr Clough, and Rachel Joanne Prouse. On 10 May 2004, a change of name for Ms Prouse to Rachel Joanne Clough was registered. At the same time, the property was transferred to Clough Investments Ltd. Mr Clough was the sole director and shareholder of Clough Investments Ltd.

[4] On 27 July 2011, an agreement was entered into with Sherryl Willis and Maree Linley, both then (but not now) licensed salespersons engaged at the Agency, to market the property (“the listing agreement”). The listing agreement recorded “Clough Investments (Neil & Rachel Clough)” as the “Vendors Names”. Both Mr and Mrs Clough signed and initialled the listing agreement.

[5] In a file note of a telephone call to Mr Clough on 16 November 2018, the Authority’s investigator recorded him as saying that the property was being sold as a result of the break-down of his and Mrs Clough’s relationship. At the hearing, Mr Clough told the Tribunal that neither he nor Mrs Clough advised Ms Linley or Ms Willis that there was any breakdown in their relationship, although it is evident from the listing agreement that Mr and Mrs Clough were at that time living at different addresses.

[6] An offer to purchase the property for \$180,000 was received on or about 22 August 2011. However, that offer was declined, as Mr Clough was able to re-finance the property, and the property was taken off the market. The listing agreement was cancelled.

[7] Mr and Mrs Clough were subsequently engaged in relationship property proceedings. The following letter on the Agency's letterhead, signed by Ms Linley, was produced by Mrs Clough at a Family Court hearing ("Ms Linley's letter"):

8 June 2013

To Whom It May Concern

Harcourts Inglewood marketed [the property] between 27<sup>th</sup> July 2011 and 22<sup>nd</sup> August 2011, during which time we obtained an offer of \$180,000 which was not accepted by the owners.

The property was then before it was withdrawn from the market at the request of the owners [sic].

Regards

Maree Linley

...

[8] In late 2016, Mr Clough made a complaint to the Authority against Ms Willis and Ms Linley (Complaint C17815). Mr Clough's complaint was that he and Mrs Clough had wrongly been required to sign the listing agreement, as the owner and vendor of the property was Clough Investments Ltd, and only Mr Clough had authority to sign the agreement for Clough Investments Ltd. He contended that Ms Willis and Ms Linley had failed to verify who had authority to sign the listing agreement, either at the time the agreement was signed, or subsequently. He also complained that Ms Linley had been wrong to provide the letter of 8 June 2013.

[9] Mr Clough later withdrew that complaint at a mediation hearing, on the basis that he lacked information.

[10] Mr Clough wrote to Ms Bunn (copied to Mr Christiansen) on 27 November 2017. He noted that the fact that Mrs Clough had signed the listing agreement was an oversight by all parties, which should have been picked up by the Agency. Mr Clough claimed that Ms Linley's letter resulted in the Family Court increasing its assessment

of the value of the property, at a direct cost to him of \$17,500. Mr Clough set out four questions:

- Who authorised [Ms Linley's letter] to be written and released?
- Was any attempt made to contact myself as the property owner regarding the release of private and confidential information?
- Was the information requested by any legal process?
- Is it standard Harcourt's practice to release such information to people walking in off the Street?

[11] Mr Christiansen advised Ms Bunn to ignore the complaint, on the grounds that a Complaints Assessment Committee was "dealing with it".<sup>1</sup>

[12] Mr Clough then raised his complaint with the Harcourts regional office. In a letter dated 14 September 2018, the Wellington Regional Manager of the Harcourts Group, Ms Balfour, advised Mr Clough that Mr Christiansen believed that the matter was closed and was not willing to correspond any further. In the light of Mr Christiansen's refusal to communicate, the regional office was not able to progress Mr Clough's complaint any further.

[13] Mr Clough complained to the Authority about Ms Bunn and Mr Christiansen on 23 October 2018. He recorded that it was his second complaint about the issue, saying that the first complaint had been withdrawn based on lack of information. He summarised his complaint as follows:

Harcourts have said due to [Mrs Clough's] signature being on the property information document that gave them the legal authority to release information.

I believe Harcourts have clearly failed to do the basic checks with the listing of this property. I would like the REAA to:

- Investigate that Harcourts failed to verify authority.
- Investigate Harcourts and the manner they released private and confidential information, considering it was not addressed to either party involved.

[14] Mr Clough told the Authority's Early Resolution Facilitator that he had relied on the licensees involved in listing the property to be professional and to know that only he, as the sole director of Clough Investments Ltd, should have signed the listing

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<sup>1</sup> We note Mr Clough's submission that at the time he wrote to Ms Bunn, his earlier complaint had been withdrawn, so there was nothing before a Complaints Assessment Committee.

agreement. He further said that Ms Linley's letter should not have been provided to his ex-wife without his authority or without a request from her lawyer to his. He said he believed that all licensees had breached their duty of confidentiality to him, and their fiduciary duty.

### **The Committee's investigation**

[15] Mr Christiansen provided a response to the complaint, for himself and on behalf of Ms Bunn and the Agency. He noted that neither Ms Linley nor Ms Willis were still engaged at the Agency. He said that he had spoken to Ms Linley.<sup>2</sup>

[16] In relation to Mrs Clough's having signed the listing agreement, Mr Christiansen said that it was apparent that both Mr and Mrs Clough intended Mrs Clough to be a party to the agreement, so that she could receive information from the Agency and provide instructions. In relation to Ms Linley's letter, Mr Christiansen said that the Agency had no knowledge of any dispute (Family Court proceedings or otherwise) between Mr and Mrs Clough, and had no reason to doubt that both of them were clients of the Agency and entitled to make information requests in relation to the property listing. He said that Mrs Clough "was a legal beneficiary of the property (it being matrimonial property) and was therefore entitled to be a party to the listing agreement".

[17] Mr Christiansen provided the following statement by Ms Linley:

[Ms Willis] did the listing form with the clients Neil and Rachel Clough. I was not present in the meeting room. I believe both parties were present at the time of signing the authority.

I was in the office at my desk when [Ms Willis] listed the property.

When [Mrs Clough] came in requesting confirmation about the offer I went straight to [Ms Bunn] my Manager for advice and instructions. I recall her phoning [Mr Christiansen] and she then advised me to write letter.

She approved the letter and I vaguely recall [Ms Bunn] giving the letter to [Mrs Clough], when she came in to collect it.

[Ms Bunn] advised me to write diary notes on the inside of the folder which I did.

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<sup>2</sup> The Agency's solicitors advised the Authority's investigator that Ms Bunn had taken an indefinite period of leave from work, on medical grounds.

[18] Mr Christiansen said that he and Ms Bunn had “no knowledge of Mrs Clough’s request for information prior to receiving Mr Clough’s complaint”, and that they “had no recollection of being consulted about this and cannot find any documentation corroborating her statement”.

[19] Mr Christiansen also referred to the fact that both Mr and Mrs Clough had signed the following warranty on the listing agreement:

I warrant that I have the authority of all owners of this property to sign this agency appointment. I have read, understood and agreed to the above terms. I am aware that I can, and may need to, seek legal and technical or other advice and information, and have had a reasonable opportunity to do so. I acknowledge that a duplicate of this agreement was left with me at signature, I agree that you may disclose the listing and sale details of this property for the legitimate conduct of your real estate agency business,

[20] Mr Christiansen said that the information requested was released in accordance with the listing agreement, to a client of the agency, and not to a third party to the property transaction.

### **The Committee’s decision**

[21] The Committee found that Mr Clough’s complaint regarding the signatures on the listing agreement was not proved. It noted that Mrs Clough was not an owner of the property (which was owned by Clough Investments Ltd) and could not have been a party to the sale of it. Although she was not required to sign the listing agreement, she did so. The Committee inferred from Mr Clough’s statement to the investigator that the listing agreement was signed at the time their relationship was ending that the listing licensee (Ms Willis) must have been aware of the ending of the relationship, and to have known or assumed that the property was relationship property. It found that having Mrs Clough sign the listing agreement made her a party to the agreement, and a client of the agency.<sup>3</sup>

[22] The Committee did not consider it unreasonable for the listing licensee to have permitted Mrs Clough to sign the listing agreement, and in the circumstances of the property being relationship property, it was a prudent thing for her to do.<sup>4</sup> The

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<sup>3</sup> Committee’s decision, at paragraph 3.17.

<sup>4</sup> At paragraph 3.19.

Committee concluded that if the complaint had been against the listing licensee it would have found it not proved. It then concluded that if it would not find a complaint proved against the listing licensee, it could not possibly find a complaint proved against Ms Bunn and Mr Christiansen, who had no specific involvement in the listing.<sup>5</sup>

[23] With respect to Mr Clough's complaint as to disclosure of confidential information, the Committee referred to Ms Linley's statement that she sought advice from Ms Bunn and Mr Christiansen before proceeding. The Committee also referred to Mr Christiansen's statement that he and Ms Bunn had no recollection of being asked for advice, and no knowledge of Mrs Clough's request for a letter. The Committee noted the conflict in the evidence but said there was no other evidence which assisted them to resolve the conflict.

[24] Accordingly, the Committee did not find that that Ms Bunn and Mr Christiansen had known about and approved Ms Linley's letter.<sup>6</sup> The Committee observed that even if it was inappropriate for the letter to be sent, if Ms Bunn and Mr Christiansen did know about and approve it, they could not be held responsible for the disclosure.<sup>7</sup>

[25] The Committee further found that by permitting his wife to sign the listing agreement, and not objecting to correspondence during the term of the agreement being addressed to her, Mr Clough had endorsed his wife as being a party to the agreement and a client of the Agency. As such, Mrs Clough had authority to request information, and Ms Linley's letter. The Committee stated that what she did with the information was not a matter than need concern the Agency.<sup>8</sup>

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<sup>5</sup> At paragraph 3.20.

<sup>6</sup> At paragraph 3.23.

<sup>7</sup> At paragraph 3.24.

<sup>8</sup> At paragraph 3.26.

## **Appeal submissions**

### *Mr Clough's submissions*

[26] Mr Clough submitted that the Committee was wrong to find that the Agency did not need to verify the authority of the signatories to the listing agreement, and wrong to find that his complaint concerning Ms Linley's letter was not proved.

[27] In respect of the listing agreement, Mr Clough submitted that the listing agents had an obligation to check the title to a property being sold, and if they had done so in this case, they would have understood that Mrs Clough was not part of Clough Investments Ltd, and should not be a party to the listing agreement. He submitted that they failed to comply with their obligation.

[28] Mr Clough also submitted that the Committee was wrong to find that it was "prudent" for the listing agents to have the listing agreement signed by both him and Mrs Clough. He submitted that neither Ms Bunn nor Mr Christiansen had provided any evidence that at the time the listing agreement was signed, the property was relationship property, and Mrs Clough had a beneficial interest in it. He submitted that the listing agreement was signed before he and Mrs Clough separated, so neither the listing agents nor Mr Bunn and Mr Christiansen could have had any knowledge that the property was (or could be) relationship property.

[29] Mr Clough further submitted that as the manager of the Agency, Ms Bunn had an obligation to ensure that they carried out their work properly.

[30] With respect to Ms Linley's letter, Mr Clough submitted that the Committee was wrong in not accepting Ms Linley's statement that she had asked Ms Bunn for advice when Mrs Clough asked for the letter, and that Ms Bunn approved the letter, after phoning Mr Christiansen, and that (as advised by Ms Bunn) she had written diary notes on the inside of the property file. He referred to the Committee's description of Mr Christiansen's statement as "not particularly useful", and its observation that no evidence was received from Ms Bunn, and submitted that the Committee should have requested the full property file from the Agency. He also submitted that up until the

time he complained to the Authority, neither Ms Bunn nor Mr Christiansen had denied knowing about Ms Linley's letter before it was sent.

[31] Mr Clough further submitted that the Committee failed to address the point that the letter was addressed to "To Whom It May Concern", not to Mrs Clough. He submitted that if the Agency felt it had legal authority to release information as to the purchase offer to Mrs Clough, they could simply have provided her with a copy of the offer itself. He submitted that as the offer was made to Clough Investments Ltd, the Agency knew that it could not provide a copy of the offer to Mrs Clough without breaking client confidentiality (the client being Clough Investments Ltd).

[32] Mr Clough also submitted that the Committee was wrong to conclude that the fact that Mrs Clough had signed the listing agreement, meant that she had full rights to information regarding the listing almost two years after it ended. He submitted that the Committee failed to address this issue, and failed to consider whether the Agency should have confirmed with him (the director of Clough Investments Ltd) that the information could be released.

*Submissions for Ms Bunn and Mr Christiansen*

[33] Mr Child submitted that the Committee was correct to decide to take no further action on Mr Clough's complaint concerning Mrs Clough's having signed the listing agreement. He submitted that both Ms Willis and Ms Linley were experienced salespersons, and not required to be subject to supervision. He submitted that any requirement for scrutiny of the listing agreement would be limited to ensuring that the owner of the property concerned was a party to the agreement, whether in person or by an authorised agent. That was satisfied in the present case by virtue of Mr Clough's having signed the agreement.

[34] He submitted that there was no requirement to prevent any other person from signing the agreement. In the present case, he submitted, there was no reason for Ms Willis to be concerned as to whether Mrs Clough signed the agreement. She came into the Agency for the purpose of entering into the listing agreement with Mr Clough, and there was at that time no suggestion of any disagreement or conflict between them.

They both signed the acknowledgment as to their authority to sign the agreement. He submitted that there was nothing out of the ordinary, and no “red flag”, raised concerning the listing agreement which could lead to a finding that Ms Bunn should have queried whether it was appropriate for Mrs Clough to sign it.

[35] Mr Child also submitted that the Committee made no error in deciding to take no further action regarding Ms Linley’s letter. He submitted that the Committee was presented with Ms Linley’s statement that she sought advice from Ms Bunn (who referred to Mr Christiansen), and Mr Christiansen’s statement that he and Ms Bunn did not recall being asked for advice, and did not know about the letter. He submitted that in the absence of any other evidence, the Committee was correct to find that the allegation that they knew of and approved the letter was not proved.

[36] Mr Child submitted that if the Tribunal were to conclude that the Committee was wrong in that finding, it was necessary to consider whether the letter was in breach of any licensees’ obligations. He submitted that as a client of the Agency, Mrs Clough had the same right as Mr Clough to receive information. He submitted that there would have been a breach of the obligation to be transparent, and not withhold information which should by law or in fairness be provided,<sup>9</sup> had Ms Linley’s letter of 8 June 2013 not been provided to Mrs Clough.

[37] Mr Child further submitted that, in the absence of any indication to the contrary, Ms Linley could reasonably have assumed that the request for the letter came from both Mr and Mrs Clough. In that event, she would not have had reason to consider whether Mr Clough was aware of Mrs Clough’s request for the letter.

[38] Mr Child also submitted that the Tribunal should take into account the fact that Mr Clough raised his issues with Ms Bunn more than six years after the property was listed with Ms Willis and Ms Linley, and more than four years after Ms Linley’s letter. He submitted that this delay had made it difficult for Ms Bunn and Mr Christiansen to respond.

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<sup>9</sup> Under r 6.4 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012. Mr Child also referred to the information privacy principles, as set out in s 6 of the Privacy Act 1993.

### *Submissions for the Authority*

[39] Ms Woolley submitted that it was open to the Committee to find that Mrs Clough was included as a signatory of the listing agreement with Mr Clough's consent, and that there was nothing out of the ordinary course that would indicate a need for Ms Bunn to have intervened as part of her supervisory function as Ms Willis's and Ms Linley's manager. She submitted that there is a clear difference between licensees' obligations regarding agreements for sale and purchase, and agency listing agreements. She submitted that the purpose of the latter is only to define who is the agency's client.

[40] With respect to the complaint concerning Ms Linley's letter, Ms Woolley submitted that as a party to the listing agreement (and therefore a client of the Agency), Mrs Clough was entitled to request information regarding the listing, and Ms Linley was not in breach of any obligation by virtue of providing her with that information.

[41] Ms Woolley further submitted that it was open to the Committee to prefer the evidence of Mr Christiansen and proceed on the basis that he and Ms Bunn did not know about Ms Linley's letter, over Ms Linley's statement that they did, and therefore find that Mr Christiansen and Ms Bunn could not be responsible for the disclosure.

[42] In oral submissions to the Tribunal, Ms Woolley acknowledged that the Committee had not addressed whether Ms Linley had an obligation to inform Mr Clough that Mrs Clough had requested the letter, in particular as the letter was requested nearly two years after the property was withdrawn from the market, and it was addressed to "To Whom It May Concern", rather than to Mrs Clough personally. Ms Woolley referred to licensees' obligations under rr 6.2, 6.4, 9.17, and 9.18 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 as matters that could be relevant to this issue.

### **Approach to appeal**

[43] Mr Child submitted that an appeal against a Complaints Assessment Committee's decision to take no further action under s 89(2)(c) of the Act is an appeal against the Committee's exercise of a discretionary decision. He submitted that the

appeal could be allowed only if the Tribunal is satisfied that the Committee made an error of law or principle, took into account irrelevant considerations or failed to take relevant considerations into account, or made findings that were plainly wrong.<sup>10</sup>

[44] We accept Ms Woolley's submission that the correct approach is that this is a general appeal. The Tribunal must arrive at its own assessment of the merits of the case. The onus is on Mr Clough to satisfy the Tribunal that the Committee was wrong to decide to take no further action on his complaints. If he satisfies the Tribunal that the Committee's decision was wrong, then the Tribunal may substitute its own finding for that of the Committee.<sup>11</sup>

**Was the Committee wrong to decide to take no further action on Mr Clough's complaint concerning Mrs Clough's signing the listing agreement?**

[45] It was not disputed that Mr and Mrs Clough attended at the Agency together in order to list the property. The fact that Mrs Clough was not a director of Clough Investments Ltd meant that she did not have authority to enter into an agreement to sell the property. However, that did not prevent her from being a party to the listing agreement.

[46] Mr Clough submitted that he and Mrs Clough had not separated at the time they listed the property. According to Mr Christiansen, Ms Willis and Ms Linley had no knowledge of any dispute between them. However, as noted at paragraph [5], above, Mr and Mrs Clough gave different residential addresses for the purposes of the listing agreement. That may have given Ms Willis (as the listing salesperson) cause to consider whether there was, or might be in the future, some issue as to relationship property.

[47] We are not persuaded that the Committee was wrong to decide to take no further action on Mr Clough's complaint concerning Mrs Clough's having signed the listing agreement. His appeal against that decision must be dismissed.

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<sup>10</sup> Citing *Kacem v Bashir* [2010] NZSC 112, [2011] 2 NZLR 1 (SC).

<sup>11</sup> See *Austin, Nichols & Co Inc v Stichtung Lodestar* [2007] NZSC 118, [2008] 2 NZLR 141, at [5] and [16]; *Edinburgh Realty Ltd v Scandrett* [2016] NZHC 2898, at [112].

**Was the Committee wrong to decide to take no further action on Mr Clough's complaint concerning Ms Linley's letter?**

[48] The Committee had before it a statement from Ms Linley (provided by Mr Christiansen) in which she clearly stated that she "went straight to [Ms Bunn], my Manager for advice and instructions", and that she recalled Ms Bunn "phoning [Mr Christiansen] and she then advised me to sign the letter". Ms Linley said that she "did what [Ms Bunn] instructed and prepared the letter", and that "[Ms Bunn] approved the letter". Ms Linley said that on Ms Bunn's advice she wrote "diary notes on the inside of the folder".

[49] The Committee also had before it Mr Christiansen's statements that "we [that is, he and Ms Bunn] had no knowledge of Mrs Clough's request for information before receiving Mr Clough's complaint" and that "we have no recollection of being consulted about this and cannot find any documentation corroborating her statement".

[50] The Authority's investigator spoke with Ms Linley on 28 February 2019. The investigator recorded that:

I explained to [Ms Linley] that there was a statement on file that was provided to us by [Mr Christiansen] relating to a complaint received from [Mr Clough].

I read out the statement to her and she confirmed that it was correct and that she had provided this to them.

She then reiterated to me that the contents of the statement were what had actually happened.

[51] We are satisfied that the Committee was wrong in not accepting Ms Linley's statement. Mr Christiansen's statement to the Authority was that he and Ms Bunn had "no recollection of being consulted" about Mrs Clough's request for the letter, and "cannot find any documentation corroborating" Ms Linley's statement that she consulted them. He did not say that they had not been consulted. Ms Linley was spoken to by the investigator, and confirmed that the statement she had provided to Mr Christiansen was correct, and that the contents of her statement were correct.

[52] We accept Ms Linley's evidence, and find that both Ms Bunn and Mr Christiansen knew of Mrs Clough's request for a letter, and that Ms Bunn advised Ms

Linley to write the letter, after speaking to Mr Christiansen about it. We find that Ms Bunn approved the letter prepared by Ms Linley.

[53] We are therefore required to consider whether in providing the letter to Mrs Clough, without informing Mr Clough that she was doing so, Ms Linley, Ms Bunn, and Mr Christiansen were in breach of any of their respective obligations to Mr Clough and Clough Investments Ltd.

[54] The following Rules are relevant:

- 6.1 A licensee must comply with fiduciary obligations to the licensee's client.
- 6.2 A licensee must act in good faith and deal fairly with all parties engaged in a transaction.
- 6.4 A licensee must not ... withhold information that should by law or in fairness be provided to a customer or client.
- 9.17 A licensee must not disclose confidential personal information to a client unless—
  - (a) the client consents in writing; or
  - (b) disclosure is necessary to answer or defend any complaint, claim, allegation, or proceedings against the licensee by the client; or
  - (c) the licensee is required by law to disclose the information; or
  - (d) the disclosure is consistent with the information privacy principles in section 6 of the Privacy Act 1993.
- 9.18 Where a licensee discloses information under rule 9.17(b), (c), or (d), it may be only to the appropriate person or entity and only to the extent necessary for the permitted purpose.

[55] Section 50 of the Act is also relevant:

**50 Salespersons must be supervised**

- (1) A salesperson must, in carrying out any agency work, be properly supervised and managed by an agent or branch manager.
- (2) In this section **properly supervised and managed** means that the agency work is carried out under such direction and control of either a branch manager or an agent as is sufficient to ensure—
  - (a) that the work is performed competently; and
  - (b) that the work complies with the requirements of this Act.

[56] In the present case, one of two clients of the Agency (Mrs Clough) requested a letter confirming that an offer was made to buy the property. The property was not owned by either Mr or Mrs Clough, it was owned by Clough Investments Ltd. The

request was made nearly two years after the property was withdrawn from the market and the listing agreement had ended. Ms Linley would have known that Mrs Clough already knew about the offer for the property, having been party to the agency agreement when the offer was made. Ms Linley would therefore have known that the letter was not needed to inform Mrs Clough of the offer, as she already knew about it. The purpose of the letter requested by Mrs Clough could only have been to disclose information about the offer to a third party.

[57] The letter provided to Mrs Clough was not addressed to her, or to Mr Clough, or to Clough Investments Ltd, it was addressed to “To Whom It May Concern”. Plainly, the letter was intended for delivery beyond Mrs Clough, Mr Clough, and Clough Investments Ltd. It was intended for anyone who might be concerned about the matters referred to in the letter, without limitation; that is, the world at large.

[58] By including the amount of the offer made to Clough Investments Ltd, the letter set out information that was confidential to Clough Investments Ltd, the owner of the property. By addressing the letter to “To Whom it May Concern”, Ms Linley placed no limit on further disclosure of the information, and was therefore disclosing confidential client information, beyond the extent of any permitted purpose.

[59] In the circumstances described above, it was reasonable for Ms Linley to seek advice from her manager, Ms Bunn, and that Ms Bunn in turn sought advice from Mr Christiansen. A reasonably competent manager advising Ms Linley would have known that care had to be taken before the requested letter was provided. On being asked for advice, Ms Bunn should have asked why the letter was required, and who its intended recipient(s) was, or were. Without such key information, Ms Bunn would not have been in a position to advise as to whether it was acceptable to provide the requested letter, in which confidential client information was able to be disclosed to a third party.

[60] Similarly Mr Christiansen, on being asked to advise Ms Linley, should have ensured that he was given the key information of what the letter was going to say, and to whom it was going to be addressed. He and Ms Bunn should have considered whether the Agency should seek further advice, whether Mrs Clough should be asked

why the information was required, and whether Ms Linley should be advised to inform Mr Clough that she had been asked to provide the letter. A reasonably competent manager would also have considered whether Ms Linley should be advised to decline Mrs Clough's request.

[61] We are satisfied that the provision of Ms Linley's letter to Mrs Clough, without informing Mr Clough, was in breach rr 6.1, 6.2, 6.4, 9.17. and 9.18. It was also a breach of Ms Bunn's and Mr Christiansen's obligations to provide proper supervision and management under s 50 of the Act. We find that Ms Bunn and Mr Christiansen engaged in unsatisfactory conduct.

## **Result**

[62] Mr Clough's appeal against the Committee's decision to take no further action on his complaint against Ms Bunn and Mr Christiansen concerning Mrs Clough's having signed the listing agreement is dismissed.

[63] Mr Clough's appeal against the Committee's decision to take no further action on his complaint against Ms Bunn and Mr Christiansen concerning Ms Linley's letter of 8 June 2013 is allowed. On that matter, we find each of Ms Bunn and Mr Christiansen have engaged in unsatisfactory conduct, under s 72 of the Act.

[64] The Tribunal will receive submissions from the parties as to what orders, if any, should be made pursuant to s 93 of the Act, as follows:

- [a] Submissions by Mr Clough: to be filed and served no later than 15 working days after the date of this decision;
- [b] Submissions for the Authority: to be filed and served no later than 15 working days after the date of Mr Clough's submissions;
- [c] Submissions for Ms Bunn and Mr Christiansen: to be filed and served no later than 15 working days after the date of the Authority's submissions.

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

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Hon P J Andrews  
Chairperson

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Mr J Doogue  
Member

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Mr N O'Connor  
Member