



Annual Report of the

REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

For the 12 months ended 30 June 2020

Presented to the House of Representatives pursuant to regulation 17 (b) of the Real Estate Agents (Complaints and Discipline) Regulations 2009

Hon. Aupito Sio
Associate Minister of Justice

Pursuant to regulation 17(b) of the Real Estate Agents (Complaints and Discipline) Regulations 2009, I have pleasure in presenting the annual report of the Real Estate Agents Disciplinary Tribunal for the 12 months ended 30 June 2020.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Pamela Andrews', with a small flourish at the end.

Hon. Pamela Andrews CNZM
Chairperson
Real Estate Agents Disciplinary Tribunal

INTRODUCTION

The Real Estate Agents Disciplinary Tribunal (the Tribunal) was established in 2009 under the Real Estate Agents Act 2008. The Tribunal hears and determines charges against licensees laid by a Complaints Assessment Committee of the Real Estate Authority (the Authority), appeals against decisions made by a Complaints Assessment Committee, and reviews of determinations on licensing applications made by the Registrar of the Authority.

Membership

The current membership of the Tribunal is:

- Hon. Pamela Andrews CNZM (Chairperson)
- Mr Jeremy Doogue (Deputy Chairperson)
- Mr Garry Denley
- Ms Catherine Sandelin
- Mr Neil O'Connor
- Ms Fiona Mathieson

Ms Nola Dangen resigned from the Tribunal in August 2019, and Ms Fiona Mathieson was appointed to the Tribunal on 21 April 2020. Ms Dangen served as a member of the Tribunal for almost seven years. Her contribution to the Tribunal was highly valued. As Chairperson, I very much appreciate the experience, expertise, and commitment of all Tribunal members. The status of the Tribunal is enhanced by virtue of their membership.

I must also pay particular tribute to the Tribunal's administration team within the Tribunals Unit of the Ministry of Justice, for their commitment, expertise and assistance during the past year. Each member of the team has continued to give knowledgeable and enthusiastic support to the Tribunal. Those qualities are very much appreciated.

The Tribunal's function

The Tribunal is established pursuant to s 100 of the Real Estate Agents Act 2008. Its functions are set out in s 102 of the Act, and are:

- (a) to hear and determine any application made by a Complaints Assessment Committee for the suspension of the licence of a licensee pending the determination of a charge that the Committee has laid against the licensee
- (b) to hear and determine any charge against a licensee brought by the Committee
- (c) to hear any appeal under section 111 against a determination by the Committee (including a determination to take no action)
- (d) to conduct any review, under section 112 of a decision of the Registrar, and
- (e) any other functions conferred by the Act.

The major focus of the Tribunal's work is on hearing and determining charges brought by a Complaints Assessment Committee against a licensee, and on hearing and determining appeals against decisions of Complaints Assessment Committees.

Complaints Assessment Committees consider and determine complaints made to the Real Estate Authority about licensees' conduct in carrying out real estate agency work. If the Committee considers a complaint to be justified, it may find that a licensee has engaged in unsatisfactory conduct, pursuant to s 72 of the Act; that is that the licensee's conduct falls short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensee, contravenes a provision of the Act or regulations or rules made under the Act, is incompetent or negligent, or would reasonably be regarded by agents of good standard as being unacceptable. If it makes a finding of unsatisfactory conduct, a Complaints Assessment Committee can make one or more of the orders set out in s 93 of the Act. A person affected by the Committee's determination may appeal to the Tribunal, pursuant to s 111 of the Act.

One of the powers given to Complaints Assessment Committees is to determine that a complaint or allegation should be determined by the Tribunal. In that case, the Committee lays an appropriate charge of misconduct, under s 73 of the Act. Misconduct is, in very general terms, conduct that is more serious than unsatisfactory conduct. It is conduct that would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful; conduct that is seriously incompetent or seriously negligent; conduct that constitutes a wilful or reckless contravention of the Act, other Acts that apply to the conduct of licensees, or regulations or rules made under the Act; or conduct that constitutes an offence for which the licensee has been convicted, and which reflects adversely on the licensee's fitness to be a licensee.

Many of the cases that come before the Tribunal involve complex issues of law and/or fact, which require careful consideration. The Tribunal has built up a considerable body of precedent decisions, which provide guidance to Complaints Assessment Committees, and the industry as a whole.

Decisions of the High Court and Court of Appeal have added to the case law concerning the meaning and application of the provisions of the Act and the Rules.

Legislative matters

The Tribunal has now had a full year of working with the amended Act. The most significant changes have emerged as being the Tribunal's power to accept late appeals, and its power to make awards of costs. While there are cases where awards of costs are usually appropriate (in particular, following disciplinary charges against licensees), I am concerned that the possibility of an application for costs may deter some consumers from pursuing matters in the Tribunal. This has the potential to detract from the consumer-protection focus of the Act.

CASES RECEIVED, DISPOSED AND ON HAND

Caseload

As noted below, the Tribunal received 51 new cases during 2019/2020. This is an increase from the previous year, when we received 43 new cases. Without extensive research, I am not able to offer any comment as to why this should be, or whether it indicates a trend for the future.

In 2019/20, the Tribunal disposed of 42 cases.

Cases received in 2019/20

The Tribunal receives three types of cases:

- A **Notice of Appeal** is an appeal to the Tribunal against a determination made by a Complaints Assessment Committee of the Real Estate Authority.
- A **Charge** is a charge of misconduct against a licensee referred to the Tribunal by a Complaints Assessment Committee.
- An **Application to Review** is an application to the Tribunal to review a licensing application determination made by the Registrar of the Real Estate Authority.

Table 1 shows the number of cases received by the Tribunal in 2019/20, broken down by case type.

Table 1: Cases received in 2019/20, by case type

Case type	Number	Percentage of total cases received
Notices of Appeal	34	66%
Charges	9	18%
Applications to Review	8	16%
TOTAL CASES RECEIVED	51	100%

Cases disposed in 2019/20

Table 2 sets out the outcome of the cases disposed by the Tribunal in 2019/20.

Table 2: Cases disposed in 2019/20, by outcome

Case outcome	Number	Percentage of total cases disposed of
Withdrawn or settled	5	12%
Tribunal made final decision	38	88%
TOTAL CASES DISPOSED	42	100%

The percentage of cases in which the Tribunal made a final decision is consistent with previous years which have been 70-80%.

As was reported in my 2018/2019 Annual Report, the Tribunal has continued to reduce the average age of cases at disposal. All new cases are assigned a date for a Directions Telephone Conference immediately upon receipt by the Tribunal, a hearing date is set for the earliest available date, and that the Tribunal's decisions are issued within as short a time as is practicable. That said, there will always be cases that present particular difficulties in disposal.

Analysis of disposals, by case type

Notices of Appeal

Cases considered by the Tribunal may relate to a Complaints Assessment Committee's decision concerning one or more appellants and/or respondents. Where that occurs, the outcome of each appeal is recorded separately. In 2019/20, eight appeals against decisions of a Complaints Assessment Committee were dismissed and 13 appeals were upheld, five of which were upheld by consent and referred back to a Committee. Two appeals were dismissed but the Committee's decision on orders was amended and two appeals were struck out.

Charges

Similarly, where multiple charges of misconduct are laid against one licensee, the outcome of each charge is recorded separately. In 2019/20, 10 charges against 10 licensees were found proved and none were dismissed.

Penalty decisions

Penalty decisions were made by the Tribunal against licensees both following charges of misconduct being found proved against a licensee, and on appeals against findings of unsatisfactory conduct made by a Complaints Assessment Committee. In 2019/20, the Tribunal issued six penalty decisions (one penalty decision covered two charges applications). Six charges had penalty included in their substantive decisions.

Applications to Review

Two applications to review were dismissed, one was quashed and sent back to the Registrar for reconsideration.

Interim Decisions and Rulings

In any case before it, the Tribunal may be required to issue an interim decision or ruling; for example, an application for interim suppression of name, or as to the admissibility of evidence. In 2019/20, the Tribunal issued 22 such decisions or rulings. Eight rulings were regarding applications to adduce new evidence, one amended the charges laid, two ruled that three appeals were filed out of time, and a further ruling accepted the late filing of two of these appeals. One ruling declined a strike out application, one ruling declined an application to remit two appeals back to the Complaints Assessment Committee. One recalled and reissued a penalty decision. One ruling declined an application to disclose the Tribunal file to a third party.

There were three rulings on setting out the process for a party to apply for costs, and three decisions that ordered costs.

Cases on hand at the end of 2019/20

At the end of 2019/20, the Tribunal had 28 cases on hand. These cases were either awaiting information from parties (15 cases), scheduled for hearing (nine cases) or reserved decisions (four cases). Four of the "awaiting information" cases were scheduled for a telephone conference with the intention of setting a hearing date.

Eight scheduled oral hearings were directly impacted by the New Zealand COVID-19 alert level 4 restrictions. As at 30 June 2020, only one of these matters still required scheduling and this was a result of the appellant being stranded overseas without access to audio visual equipment. The seven others either continued as "on the papers" determinations or were scheduled for an oral hearing as soon as the alert level allowed.

All other matters that were active when NZ went into alert level 4 were able to resume their timetables when the Tribunal registry reopened on 14 April 2020 (during level 4).