



Annual Report of the

REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

For the 12 months ended 30 June 2019

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 2019.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Pamela Andrews'.

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 Agents 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)
- Ms Nola Dangen
- Mr Garry Denley
- Ms Catherine Sandelin
- Mr Neil O'Connor

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 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 allegations 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

I reported in my Annual Report to 30 June 2018 that the Tribunals Powers and Procedures Legislation Bill was currently before Parliament. The bill received the Royal Assent on 13 November 2018. Many of the amendments to the Act effected by the Tribunals Powers and Procedures Act came into effect on 14 November 2018, including:

- (a) a new s 107A, allowing hearings “on the papers”;
- (b) a new s 108(4), establishing a penalty for breach of an order restricting publication;
- (c) a new s 109A, giving the Tribunal power to strike out a proceeding in whole or in part, determine a proceeding in the absence of a party, and to adjourn a hearing;
- (d) a new s 110A, giving the Tribunal the power to make orders as to costs;
- (e) an amendment to s 111(1), to the effect that there is no right of appeal against a Complaints Assessment Committee’s decision to refer a complaint or allegation to the Tribunal;
- (f) a new s 111(1A), giving the Tribunal power to accept a late appeal against a decision of a Complaints Assessment Committee, if leave is sought within 60 days of notice of the decision being given; and
- (g) a new s 153B, creating the offence of Contempt of the tribunal.

Other amendments to the Act will come into force on 29 October 2019. These include a new s 93(1)(h), giving a Committee power to refer a Licensee in respect of whom a finding of unsatisfactory conduct has been made to the Tribunal to consider whether to make an order for compensation, and new ss 110(4) and (5), giving the Tribunal power to make compensation orders following findings of unsatisfactory conduct.

CASES RECEIVED, DISPOSED AND ON HAND

Caseload

As noted below, the Tribunal received 43 new cases during 2018/19. This is a substantial decrease from the previous year, when we received 64 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 2018/19, the Tribunal disposed of 68 cases.

Cases received in 2018/19

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 2018/19, broken down by case type, and how the case type has changed over time.

Table 1: Cases received in 2018/19, by case type

Case type	Number	Percentage of total cases received
Notices of Appeal	31	72%
Charges	5	12%
Applications to Review	7	16%
TOTAL CASES RECEIVED	43	100%

Cases disposed in 2018/19

Table 2 sets out the outcome of the cases disposed by the Tribunal in 2018/19.

Table 2: Cases disposed in 2018/19, by outcome

Case outcome	Number	Percentage of total cases disposed of
Withdrawn or settled	12	18%
Tribunal made final decision	56	82%
TOTAL CASES DISPOSED	68	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 2017/2018 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 2018/2019, 19 appeals against decisions of a Complaints Assessment Committee were dismissed and 14 appeals were upheld.

Charges

Similarly, where multiple charges of misconduct are laid against one licensee, the outcome of each charge is recorded separately. In 2018/19, fourteen charges against thirteen 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 2018/2019, the Tribunal issued seven penalty decisions. Five charges had penalty included in their substantive decisions.

Applications to Review

One of the Registrar's decisions was quashed by the Tribunal and sent back to the Registrar for reconsideration. Four applications to review were dismissed, one had its previous Tribunal decision varied and another was received out of time

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 2018/2019, the Tribunal issued 19 such decisions or rulings. Eight rulings were regarding applications to adduce new evidence, and five were in regard to name suppression or non-publication of the Tribunal's decision. Three had their previous Tribunal decisions varied, one late application to appeal was declined, one had parts of the appeal remitted back to the CAC (with the remaining part determined by the Tribunal), the last ruling was charges proved for two of the three licensees the charges application was against however

because the charges matter for the third licensee is still pending, it has been recorded as a ruling.

Cases on hand at the end of 2018/19

At the end of 2018/19, the Tribunal had 19 cases on hand. These cases were either awaiting information from parties (5 cases), scheduled for hearing (9 cases) or reserved decisions (5 cases). Two cases were scheduled for a telephone conference with the intention of setting a hearing date.