



# Real Estate

## Continuing Professional Development

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# Supervision

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## Learning outcomes

At the end of this topic, you will be able to:

- explain the agency’s obligations regarding supervision and management of salespersons
- explain the obligations of the designated supervisor of a salesperson.

## Terms used in this guide

In this guide, we will use various terms related to real estate agency work and complaints processes. This table will explain key terms.

Term/abbreviation	Notes
CAC	The Complaints Assessment Committee.
Client	A person on whose behalf an agent carries out real estate agency work under a signed agreement.  In this guide, we will consider that the agency has a client relationship with the seller and, therefore, that seller is their ‘client,’ and any buyer or potential buyers are ‘customers’.
Code of Conduct	The Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012.
Consumer	Customers and clients and potential customers and clients in the real estate sale and purchase process, and lessors and lessees and potential lessors and lessees in the commercial leasing process.
CRM	Client Relationship Management system.

	This is software used as a tool for managing your agency's relationships and interactions with potential clients, clients and customers.
Customer	A person who is a party or a potential party to a transaction and excludes a client or potential client (as defined in rule 4.1 of the Code of Conduct)
Disciplinary Tribunal	The Real Estate Agents Disciplinary Tribunal.
Lease	A contract in which the owner of the property (the lessor) permits another person or organisation (the lessee) to exclusively use and occupy the property for a period in exchange for payment of a specified sum of money. Ground leases are a form of tenure and relate to underlying land; premises leases relate to land and buildings that are occupied by a lessee/tenant.
Lessee	A person who enters into a lease agreement to exclusively use and occupy the lessor's property The lessee is the tenant.
Lessor	A person who enters into a lease agreement to allow a lessee to exclusively use or occupy the lessor's property The lessor is the landlord.
Purchaser/Buyer	The person buying the property
REA	The Real Estate Authority.
REAA	The Real Estate Agents Act 2008.
Supervisor	A licensed agent or licensed branch manager with sufficient skill and experience to provide effective supervision to a salesperson under the REAA.
Salesperson Supervisee	A licensed salesperson that carries out any agency work requires the supervision of a licensed agent or licensed branch manager as per section 50 of the REAA.
Supervision Plan/Agreement	A plan or agreement that clearly identifies the supervisor and salesperson and sets out the roles, responsibilities and practical steps that the supervisor and salesperson will take to ensure the supervision agreement is implemented and maintained.
Vendor/Seller	The person selling the property.

**Note:**

The sale and purchase agreement most agencies use is the *ADLS/REINZ Agreement for Sale and Purchase of Real Estate*. However, some agencies use other agreement forms. Although we will reference the ADLS/REINZ form, the comments will be relevant to those using other forms.

In this guide, we will reference the *ADLS/REINZ Agreement for Sale and Purchase of Real Estate - Tenth Edition 2019 (2)*.

## Preface

In the ever-changing COVID-19 environment agencies, supervisors and supervisees have had to adapt and make changes to their business practices. During this time, REA's role has been to provide guidelines to the sector and information to consumers, applying public health requirements in a real estate context. The primary objective of these guidelines and information is to prevent and limit the risk of infection and transmission of COVID-19.

Through all of this, supervisors play a key role in the sector by ensuring that salespeople are aware of their obligations and are complying with the COVID-19 public health requirements when conducting real estate agency work. This helps to ensure compliance with public health requirements by the sector and to support the safety of licensees and the public.

It is important to understand that supervision statutory obligations have not changed during these unprecedented times. It is the responsibility of the agency and the supervisor to ensure that the salesperson is properly supervised and managed as required under the Real Estate Agents Act and the *Professional Standard on Supervision* issued by REA. Salespeople also have a responsibility to ensure they are regularly communicating with and keeping their supervisor updated on their activities, to help enable the supervisor to meet their obligations.

Although we've had to adapt the way we conduct business in the COVID-19 environment, the responsibilities required to maintain a robust supervision plan/process and carry out supervision obligations have not changed. Supervisors and supervisees have needed to adapt their ways of engagement to ensure that supervision expectations are met, including the use of remote and other methods.

Additionally, over the last 5+ years, we have seen a change in real estate business models and methods, and steady decline in the number of branch managers and agents. Total licensee numbers have increased by 5% since 2020 and new licence applications have increased by 54%.

However, that growth has been largely in the salesperson licence class. In our 2021 annual licensee survey we asked licensees if they have a supervision plan - 54% of salespeople said yes, 30% said no and 15% said they didn't know.<sup>1</sup>

For these reasons, Supervision has been identified as an area of focus for REA over the coming year. Firstly, we want to ensure we understand how supervision is being applied across the sector including across different agency models and within the COVID-19 environment. Following that review, an update to REA's expectations on supervision may be issued.

For the time being however, this topic, read together with the [Professional Standard on Supervision](#) provides guidance to all licensees about their obligations in regard to supervision under the Act and the Code of Professional Conduct and Client Care. All salespeople, regardless of their level of experience, must be supervised and managed by an agent or a branch manager.

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<sup>1</sup> 2021 REA Annual Licensee Survey

## Introduction

When operating as a business, agents operating as supervisors have an obligation to ensure all salespersons employed or engaged by them are properly supervised and managed.

As supervisors, agents and branch managers hold a key role in real estate agencies. A good supervisor is one of the most effective ways we can promote mana (prestige) and professionalism in the industry. The complexity of a supervisory role requires a high level of knowledge and experience.

This is why our legislation requires a licensed agent or branch manager to be responsible for 'properly supervising and managing' salespeople.

Supervisors are the caretakers of the real estate profession.

They are kaiarataki (leaders) who give guidance to the people they work with, to share their knowledge and experience gained from hard work, perseverance, and dedication to the real estate sector.

As a supervisor, you have the opportunity to actively contribute to the development of your supervisee to assist them in their real estate journey. Active involvement in your supervisee's development is an integral part of the supervision process, with supervision being tailored to individual ability and performance.

In turn, it is also important to have engagement from the supervisee who provides their supervisor with support. Improved knowledge of supervision is also beneficial for salespersons and will assist with their understanding of how their actions impact those that hold ultimate responsibility.

In this guide, we will examine obligations and case law that has further defined and clarified the nature of supervision required and the level in which it should be exercised.

## Agent's obligation regarding supervision and management of salespersons

Real estate agencies have the following legal obligations regarding the supervision and management of salespersons.

### Legal requirements for supervision

Section 50 of the Real Estate Agents Act 2008 (REAA) is central to the requirements for supervision and management of salespersons in a real estate agency.

#### 50 Salespersons must be supervised

- (1) A salesperson must, in carrying out any agency work, be properly supervised and managed by an agent or a 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.

The 'Interpretation' section of the REAA defines the terms 'agent' and 'branch manager'.

#### 4 Interpretation

- (1) In this Act, unless the context otherwise requires, —

.....

**agent** means a real estate agent who holds, or is deemed to hold, a current licence as an agent under this Act.

.....

**branch manager** means a person who holds, or is deemed to hold, a current licence as a branch manager under this Act.

In some agencies, a person is called a 'Branch Manager'<sup>2</sup> when they do not hold a Branch Manager licence. However, the legal requirements are clear. All salespersons must be 'properly supervised and managed' by someone holding a Branch Manager licence or an agent licence. One of the requirements to hold the Branch Manager licence or agent licence is that they have obtained the required qualification.

This means people who are in roles such as the following and who do not hold a Branch Manager licence or an agent licence **will not meet the requirements of a supervisor** under s 50 of the REAA:

- Sales Manager
- Experienced Salesperson

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<sup>2</sup> The prescribed qualifications for a Branch Manager's license are set out in r12(1)(b) of the Real Estate Agents (Licensing) Regulations 2009.



- Lead Salesperson (who has Sales Associates)
- Office Manager.

Rule 8.3 of the Code of Conduct reinforces the obligations of agents regarding supervision and management of salespersons.

**8.3** *An agent who is operating as a business must ensure that all salespersons employed or engaged by the agent are properly supervised and managed.*

Salespersons must be supervised whether they are engaged as an employee or independent contractor. Agents are responsible for all salespersons, no matter whether they are engaged as employees or contractors.

**Failure to supervise salespersons to the required standard can result in disciplinary consequences for both the agency and the individual supervisor licensee(s).**

### **Responsibility for supervision lies with the agency and supervisor**

Under rule 5.1, a licensee *'must exercise skill, care, competence, and diligence at all times when carrying out real estate agency work'*. This means they need to take care in their work and contact their supervisor to assist where required. Sometimes, for example, when the salesperson is rushing a transaction through or is new to the industry, this doesn't happen. It is critical that the supervisor is involved in all transactions. For example, the supervisor checking documentation could mean they pick up incorrect wording or the omission of important information, and a serious issue is avoided.

Note that although salespersons need to seek advice from their supervisor when required, **the responsibility is on the agency and the supervisor to ensure they provide the salesperson with the required supervision.**

## Professional standard on supervision

REA's website has a significant amount of information on supervision on the webpage <https://www.rea.govt.nz/real-estate-professionals/obligations/supervision/>

Information on this page includes a video and a link to REA's *Professional Standard on Supervision*.

REA's *Professional Standard on Supervision* describes best practices in supervision of salespersons.

### REA's Professional Standard on Supervision

The purpose of the *Professional Standard on Supervision* is to provide guidance to all licensees about their obligations regarding supervision under the REAA and the Code of Conduct.

The standard is principle based, so it does not prescribe specific requirements or steps to be followed. However, it details guiding principles and information to assist licensees in understanding how to meet their legal obligations in terms of supervision and achieve general objectives.

Licensees are expected to use and apply the standard in the context of their own circumstances when:

- first establishing a supervision arrangement, and then
- on an ongoing basis as a salesperson's experience and competence increases.

This standard defines the nature of 'effective supervision'. It states that supervision must be actual and tailored to the circumstances of the salesperson and the transactions in which they are involved.

The standard also states that to be 'properly supervised and managed' requires the supervisor to use **sufficient direction and control** to ensure the agency work carried out by a salesperson is performed competently and complies with the requirements of the REAA.

The text of the *Professional Standard on Supervision* is provided in Appendix 4.

## Difference between line management and supervision

It is important to note that line management is not the same as supervision.

### Meaning of supervision

The purpose of supervision is to ensure the salesperson is performing real estate agency work competently and that the work meets the requirements of the REAA. This is what being 'properly supervised and managed' under s 50 of the REAA means.

Examples of supervision work are:

- monitoring the performance of salespersons in drafting agreements to ensure required standards are maintained
- signing off AML requirements
- reviewing agency agreements
- understanding any issues with properties the salesperson is marketing and discussing these with them
- asking questions of the salesperson about the compliance of work done on the property they are marketing.

These all relate to performing **real estate agency work** competently. Performing real estate work competently ensures the best interests of the client are met and complaints are avoided.

### Meaning of line management

In the *Professional Standard on Supervision*, a 'line manager' is defined as the person who directly manages the employee. They may also be the supervisor in terms of s 50 of the REAA, or the salesperson may have a separate supervisor and line manager.

Examples of line management of salespersons include:

- ensuring the salesperson has a current licence
- ensuring the salesperson is meeting legal requirements for their continuing professional development (CPD) obligations.

**It is important for all parties to be clear that supervision under the REAA is not the same as management of an employment relationship.**

**Anyone may act as a salesperson's line manager, but only a licensed agent or licensed branch manager may act as a salesperson's supervisor.**

If a licensee is not an Agent licensee or Branch Manager licensee, they have no supervisory authority and require supervision themselves. This is irrespective of their experience or competency.

## Supervision of new and inexperienced salespersons

Requirements for supervision refer to a 'new salesperson' and an 'inexperienced salesperson'. These terms are described in the *Professional Standard on Supervision*:

- A '**new salesperson**' means a salesperson with less than six months' real estate agency experience.
- An '**inexperienced salesperson**' means any salesperson (including a new salesperson) with limited experience in real estate agency work or specific aspects of real estate agency work.

### Supervision of new salespersons

Under s36(2A) of the Lawyers and Conveyancers Act 2006, **new salespersons with less than six months' real estate agency work cannot:**

- prepare sale and purchase agreements; or
- provide advice to clients or customers about their legal rights and obligations that are 'incidental' (related) to the preparing of those agreements.

Newly licensed salespersons can do other real estate agency work during their first six months, including:

- lead generation
- undertaking comparative market analysis and providing appraisals for prospective clients
- signing up clients on behalf of their agent (obtaining agency agreements)
- marketing activities
- conducting property viewings
- conducting open homes and doing follow-up calls
- building a client database.

However, this work will need to be supervised to meet the supervision requirements.

**As the supervisor for a new salesperson, you will need to prepare any agreement for sale and purchase and give any advice about legal rights and obligations to clients and customers.**



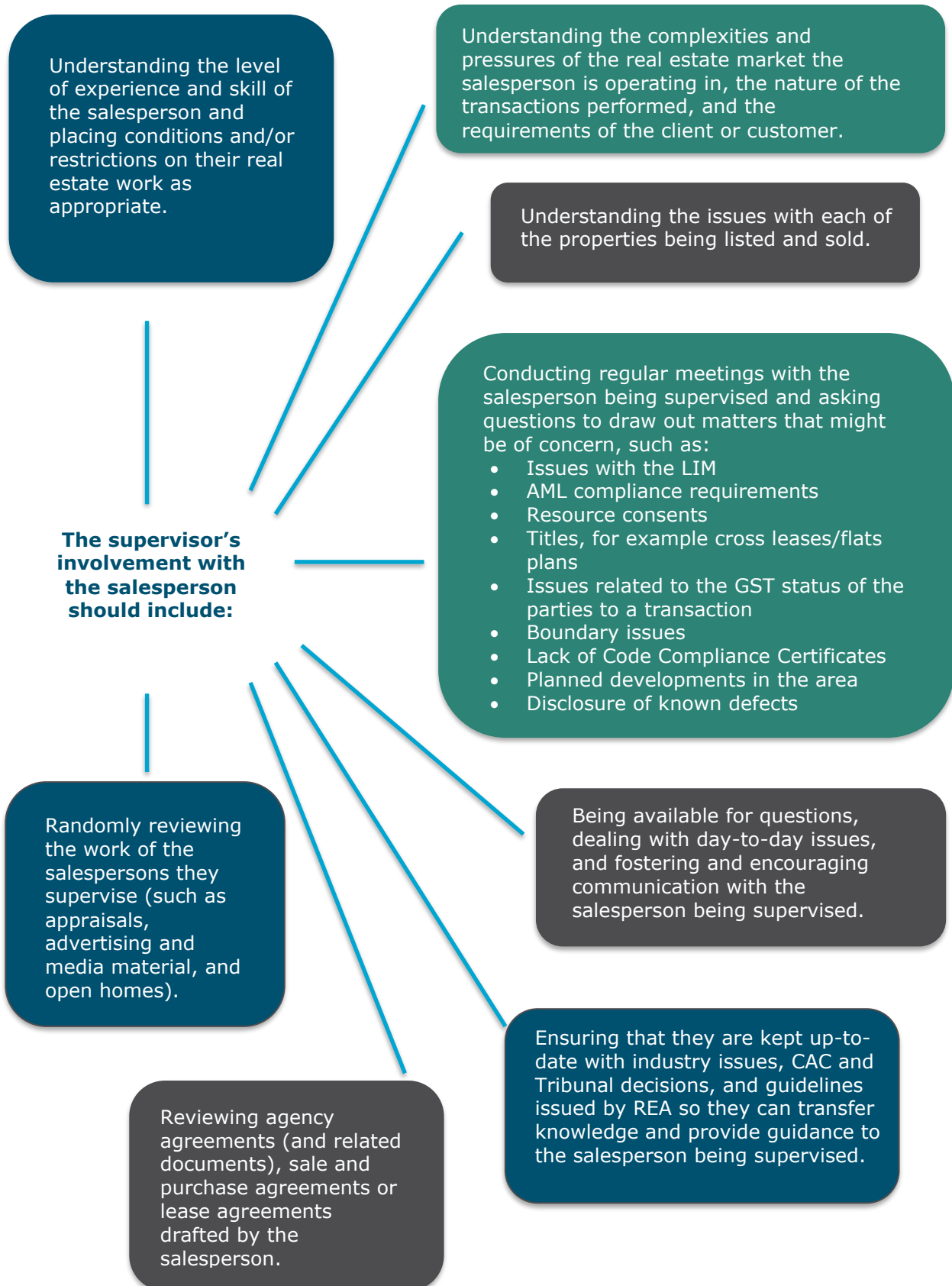
### Best practice

Have new salespersons observe contractual discussions carried out by their supervisor or other experienced salespersons to demonstrate good practice and develop their experience.

Even after the six-month restriction on new salespersons expires, supervisors should take care to ensure that all agreements prepared by inexperienced salespersons are subject to appropriate review. You need to be satisfied that they are carrying out real estate agency work competently.

## **The nature of 'actual' supervision**

The infographic on the following page shows the nature of the supervisor's involvement with the salesperson.



### Supervision requirements when completing agency agreements before processing

Supervisors need to review completed agency agreements before they are processed. If the salesperson makes a mistake at this stage, it can have a 'flow-on' effect in later stages of the sales process. For example, it can lead to errors in the sale and purchase agreement or incorrect information in advertising material.

### Supervision requirements when drafting sale and purchase agreements

Supervisors need to monitor the performance of salespersons in drafting agreements to ensure high standards are maintained and that they are maintained consistently. Agreements should be well written, with clauses that suit their intended purpose and are clear, unambiguous and easily understood. The supervisor should be alert to identifying potential problems rather than waiting for a salesperson to identify them.

As New Zealand's population becomes more ethnically diverse, supervision should include an assessment of the competence of a salesperson to draft an agreement in English. If necessary, additional oversight and assistance should be provided, including translation.

**Supervisors should review every agreement from salespersons, regardless of their level of experience and competence.** The supervisor will need to judge the time and degree of review required in each circumstance.

**Supervisors must be actively involved in agreements drafted by inexperienced salespersons or those not maintaining a consistently high standard of drafting.** This includes reviewing agreements before the parties sign them.



#### Best practice

It is best practice to have a sign off procedure in place for the supervisor to verify that

- they have reviewed the documentation related to the transaction (such as agency agreements and sale and purchase agreements); and
- all documents related to the transaction are complete; and
- all documents related to the transaction are included in the property file.

### **Role of supervision in advising salesperson to seek specialist advice**

The supervisor should be alert regarding when they need to refer the salesperson to a third party for specialist advice because the query is beyond their knowledge. For example, for rural licensees, the recent changes to apportioning rules are outside the knowledge of a general salesperson. In this case, the best practice would be for the supervisor to direct the salesperson to the client's lawyer for assistance. **The supervisor should give a clear directive on who the salesperson should approach to get accurate information.**

### **Tailoring supervision to the salesperson's experience**

There is no 'one size fits all' model for supervision requirements. The frequency, mode and intensity of supervision may vary case by case.

The supervisor is expected to exercise judgement that takes into account:

- the salesperson's experience and training
- the salesperson's understanding when English is a second language
- the complexities and pressures of the real estate market in which they are operating
- the nature of the transactions performed
- the requirements of the client or customer.

The nature of a salesperson's supervision will depend on their experience and competence and the broader operating conditions.

Supervision should be tailored to the circumstances of the salesperson and the transactions in which they are involved. Tailoring the supervision means that if the salesperson is involved in a complex transaction, the supervision may need to be more involved. The supervisor may need to take a more active part in assisting the salesperson.

Special care should be taken when supervising salespersons who

- have less than six months experience in real estate agency work; or
- have six months experience in real estate agency work but are still relatively new to the industry; or
- whose English competence is an issue; or
- are otherwise not performing to the expected standard.

These salespersons will need their work reviewed and checked more closely.

### **New or inexperienced salespersons**

Particular care is required in the supervision of new salespersons and inexperienced salespersons.

The infographic on the next page highlights the tasks that a supervisor of a new and/or inexperienced salesperson should be carrying out.



Tasks for a supervisor of new /inexperienced salespersons	
 <p><b>Review and assist with documentation</b></p> <p>Review and assist with the preparation of appraisals and agency agreements.</p>	 <p><b>Ensure compliance requirements are met</b></p> <p>Ensure salesperson understands compliance requirements and check compliance as required (e.g., meeting AML requirements)</p>
 <p><b>Review agency agreements and sale and purchase/lease agreements</b></p> <p>Review completed agency agreements before processing. Review every sale and purchase agreement/lease agreement prepared by an inexperienced salesperson. (A newly licensed salesperson with less than six months of real estate agency work experience cannot prepare sale and purchase agreements.)</p>	 <p><b>Check written communications</b></p> <p>Periodically check written communications to ensure consistently high standards of professionalism are maintained and that disclosures and representations are fair and accurate.</p>
 <p><b>Review documentation for new listings</b></p> <p>Review documentation such as titles, Title Plans, and LIMs for new listings.</p>	 <p><b>Talk to the salesperson before open homes</b></p> <p>Engage with the salesperson before they run open homes to ensure they are knowledgeable about the property and have information on hand to assist customers.</p>
 <p><b>Periodically attend their open homes</b></p> <p>Periodically attend the salesperson's open homes to observe their performance and follow with a discussion/guidance.</p>	 <p><b>Have regular 1-on-1 meetings</b></p> <p>Have regular one-on-one meetings to discuss any questions or problems the salesperson may be having.</p>
 <p><b>Sit in on conversations with consumers</b></p> <p>Periodically sit in on phone and face-to-face conversations to observe how the salesperson interacts with clients and customers.</p>	 <p><b>Review other work of the salesperson</b></p> <p>Periodically review the salesperson's work (such as appraisals and advertising, including text and media material) to check it meets the agency's compliance standards. Record the review.</p>

As a salesperson demonstrates increased competence and experience, and the supervisor is satisfied the salesperson is conducting real estate agency work in a competent and legally compliant manner, they may change the nature and degree of supervision.

### **Supervision of salespersons operating in a new sector or property type**

It is important that a salesperson is closely supervised when they start operating in a new real estate sector or begin selling a different property type, no matter how experienced they are. Examples may be a residential salesperson selling a lifestyle property for the first time or a residential salesperson starting to sell house and land packages in a new subdivision.

These new sectors/property types introduce complexities to the sales process that they will not have encountered before. The salesperson needs to be supervised by someone who has broad experience in the type of property they are beginning to sell.

**Supervisors should not be supervising in areas that are unfamiliar to them.**

## **The supervision role**

### **Developing a rapport with the salesperson you are supervising**

It is essential for the salesperson to advise their supervisor immediately if an issue or complaint arises. Salespersons need to know when to take advice and when they need to elevate a situation to the next level (for example, to their supervisor). It should be made clear to salespersons what type of issues/situations need to be escalated and to whom. It is a good idea to give scenarios to clarify this.

If the people the salesperson is dealing with (such as tenants, clients or customers) become difficult or aggressive, they must involve their supervisor. Salespersons need to know when to call on their supervisor before an issue or situation escalates. The supervisor will have strategies to deal with difficult or aggressive people.

Supervisors need to build their relationship with the salespersons they are supervising so they feel they can ask for help and advice. They need to feel empowered to say when they need guidance and when they have concerns about the level of supervision.

### **The role of supervision in maintaining the reputation of the industry**

Rule 6.3 has significance to the supervisory role.

**6.3** *A licensee must not engage in any conduct likely to bring the industry into disrepute.*

The effectiveness of the supervision of salespeople is critical to ensuring the salesperson's work is performed competently and complies with the requirements of the REAA. This, in turn, contributes to the positive reputation of the industry.

Read the following case study and answer the questions that follow.

(**Note:** Fictional names have been used to make the case easier to follow.)

## Case study 1

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This case relates to the supervision and management provided at a franchise real estate agency. The charges concerned one branch of the agency ( 'the branch').

Matthew was the sole director of the company that purchased the franchise. He didn't hold any licence under the Act. When he purchased the franchise, he received some training from the franchisor in relation to the Act and Rules.

A CAC investigated the agency's compliance with its obligations as to the supervision and management of salespersons engaged or employed by it. The CAC subsequently charged the agency with failure to comply with its supervision obligations, referring the matter to the Disciplinary Tribunal to determine whether the agency was guilty of misconduct or unsatisfactory conduct.

### Background

- Between 30 March 2016 and 30 November 2017, a licensed agent, Kylie, was employed as licensee agent for the agency. At this time, she was based in Whangarei and worked from there.
- When the agency first engaged Kylie, Harry was the manager at the branch, which was in Auckland. He was a licensed agent and provided day to day supervision of salespersons at the branch. However, Harry was demoted from his position as manager in May 2017 and subsequently left the company.
- A licensed salesperson, Brent, was appointed to the branch in May 2017. The agency employed him from 10 May 2017 to 21 September 2018. Kylie was not involved with Brent's appointment and was advised of it by Matthew. She understood he was a licensed branch manager and would provide supervision, as Harry had done. However, Kylie became concerned that she was being "cut out" from involvement with the branch over time. In about July or August 2017, she submitted her resignation. She was asked and agreed to stay on while the agency found a replacement licensee agent.
- She later learned that registration with the Real Estate Institute of New Zealand had been completed by Brent, as branch manager, and that the agency had advised the Institute that he was the branch manager. On investigation, she found that Brent held a salesperson's licence, not a branch manager's licence.
- Kylie spoke with Matthew and told him she had been relying on Brent to provide supervision, as she could not provide supervision herself from Whangarei. She followed this with an email dated 11 October 2017, which had the Institute's Information Sheet on supervision attached.
- Matthew took advice from the franchisor and approached two people suggested by them, neither of whom could replace Kylie. He then found a licensee agent who was able to start on 1 December 2017.
- Kylie continued as licensee agent until 30 November 2017.

## Determination by the Disciplinary Tribunal

### Supervision under the Act

Under Section 50 of the Act and rule 8.3 of the Code of Conduct, the agency, as an agent operating a business, was required to ensure that all the salespersons employed or engaged by it were 'properly supervised and managed'.

The Tribunal referred to the decision in *Hutt City Ltd v Real Estate Agents Authority (CAC 20002)* [2013] NZREADT 109, where the Tribunal said '*Simply put, in terms of s 50 of the Act a salesperson must be properly supervised and managed by an agent or branch manager in the sense that the salesperson's work is carried out under some experienced direction. This is to ensure that the salesperson's work is performed competently and complies with the requirements of the Act.*'

The Tribunal also referred to the decision in *Maserow v Real Estate Agents Authority (CAC 404)* [2016] NZREADT 19, where the Tribunal said in respect of supervision:

*'Supervision must be actual, it must be tailored to the circumstances of the agent and the property being sold, it must involve active involvement by the branch manager with the agent(s), including a knowledge and understanding of the issues with each of the properties being sold by the agency, if any. It should include an assessment of the competence of an agent to draft an agreement in English. As New Zealand's population becomes more ethnically diverse the number of agents for whom English is not a first language will grow. While this offers a better service to vendors and purchasers who speak the same language it may also mean that the branch manager needs to be more actively involved in the drafting of agreements. Agencies must demonstrate that agreements which are drafted by all agents are well written and the clauses on their face sensible and understandable. The branch manager should be alert to identifying potential problems rather than waiting for a possibly inexperienced agent to identify them. At regular meetings of staff branch managers should ask questions to elicit matters which might be of concern such as issues with the boundary, lack of code compliance, and disclosure of known defects and issues with the LIM. All of these matters should be considered by the branch manager and agent when a property is listed for sale and in regular reviews relating to the sale process.'*

The agency admitted that during the period from May to December 2017, the following breaches of its supervision obligations occurred:

- Brent was responsible for requiring salespersons employed or engaged by the agency to carry out all necessary tasks on transactions and to audit checklists and documents provided. He was providing supervision when, as a licensed salesperson, he was not licensed to do so.
- Brent advised the CAC that he held regular conversations with Ewen, a licensed salesperson at the branch, about his real estate activities. Brent advised the CAC that he had regular "1 on 1 meetings" with Ewen. Ewen was the salesperson whose actions prompted the original complaint to REA. Again, this was providing supervision when not licensed to do so.
- Brent signed off an agency agreement for Ewen, dated 7 June 2017, regarding a property at Waiuku.
- Brent signed off transaction reports for Ewen's sales of two lots in property in Waiuku.
- Brent signed off a further agency agreement for Ewen, dated 26 July 2017, in relation to another property.

- Brent signed off eight of his own agency agreements in the space provided for the branch manager's signature.

Brent was providing supervision when not licensed to do so.

### **Dispute as to Kylie and Brent's roles**

The Tribunal accepted that at no time was it Kylie's obligation to provide supervision and management of salespersons at the agency. She was engaged as a licensee agent to enable the agency to hold an agent's licence. She had overall oversight of the branch but was not able to provide supervision of salespersons. The Tribunal found that supervision was first provided by Harry and that Kylie understood that Brent was providing supervision after Harry's demotion.

At the hearing, Matthew said that Brent was managing the sales team. He described Brent as "sales manager". The Tribunal was provided with a copy of Brent's employment contract. His position title was "Head of Sales and Operations". Included in his "Duties and Responsibilities" was to *'ensure an effective compliance and risk management plan and procedures are in place, including licensee supervision as required by the Real Estate Agents Act as the supervising Agent in charge. You are empowered with the Authority to bind the company in this regard.'* The office manager of the branch advised the Real Estate Institute on 12 June 2017 that Brent was the new branch manager.

In a statement to the CAC, Brent referred to his supervision of Ewen as follows, *"In my role as Sales (line) manager [Ewen] is supervised on a daily basis..."* In an email to Kylie on 16 November 2017, Brent described himself as "General Manager".

The Tribunal found that Brent was, in essence, providing supervision of salespersons. However, as a licensed salesperson, his supervision was not in compliance with rule 8.3. It resulted in the agency being in breach of rule 8.3.

### **Did [the agency]'s failure to ensure that salespersons were properly supervised and managed constitute misconduct?**

The Tribunal determined that between May and November 2017, the agency did not ensure that there was an organisational structure permitting adequate supervision of salespersons at the branch.

The Tribunal accepted that there appears to have been some confusion as to the term "branch manager". They noted that it is defined under s 4 of the Act as "a person who holds, or is deemed to hold, a current licence as a branch manager", and under s 50 of the Act, salespersons must be "properly supervised and managed by an agent or branch manager". However, the term may also apply more generally to a person who manages a branch of a commercial entity. They concluded that this confusion led to Kylie's understanding that Brent was providing the required supervision at the branch and Matthew's understanding that he was performing a different role while "managing" the sales team.

However, the Tribunal's view was that it was clearly the agency's responsibility, under rule 8.3 of the Code of Conduct and s 50 of the Act, to ensure that all of its salespersons were properly supervised and managed. That Tribunal noted that this 'cannot be said to be a novel obligation'. While REA's *"Professional Standard on Supervision"* was effective from 1 July 2017, the issue of supervision had been canvassed by the Tribunal much earlier (referring to the decision in *Hutt City Ltd v Real Estate Agents Authority* [2013] NZREADT 109). The Tribunal determined that the agency's breach persisted during the period from Harry's departure until the new agent licensee commenced on 1 December 2017. The branch continued to trade after 11 October without supervision in accordance with the Act and Code of Conduct after being put on notice by Kylie as to what was required.

The Tribunal accepted that Matthew was advised by the franchisor, contacted possible agents who could take over the role of licensee agent, appointed a licensee agent to start on 1 December 2017, and arranged for Kylie to stay on until the new licensee agent was able to start, so there was a licensed agent in the company, enabling compliance with s 44(2).

The Tribunal was satisfied that the proper finding was one of unsatisfactory conduct.

### Orders

The Tribunal ordered the agency be censured and pay a fine of \$5,500 to REA.

**Complaint number: C23638**

**Disciplinary Tribunal reference: [2020] NZREADT 23**

Date: 12 June 2020

You can read about this complaint and decision in the REA decisions database at [rea.govt.nz](http://rea.govt.nz)



## Questions

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Answer the following questions.

1. Numerous titles were used to describe Brent's role at the branch. What were these titles?

2. Why did the agency breach rule 8.3 (ensure all salespersons are properly supervised and managed)?

3. The Tribunal referred to the decision in *Hutt City Ltd v Real Estate Agents Authority* (CAC 20002) [2013] NZREADT 109 to explain the requirement under s 50 of the REAA. What did this decision say about proper supervision and management of salespersons?

4. The Tribunal referred to the decision in *Maserow v Real Estate Agents Authority* (CAC 404) [2016] NZREADT 19.

What did this decision say about what 'supervision' must be or should include?

5. The Tribunal noted that the agency having the responsibility to ensure that all its salespersons were 'properly supervised and managed' was not 'novel' (new). What two documents did they give as examples of earlier guidance given to agencies regarding 'proper supervision and management'?

**Note the following comments from the Disciplinary Tribunal:**

- [para 19] “In its decision in *Hutt City Ltd v Real Estate Agents Authority (CAC 20002)*, issued on 9 December 2013, the Tribunal accepted that *‘the supervision of salespersons is imperative for the proper functioning of the real estate industry’*.<sup>1</sup> The Tribunal went on to say:<sup>2</sup> *‘Simply put, in terms of s 50 of the Act a salesperson must be properly supervised and managed by an agent or branch manager in the sense that the salesperson’s work is carried out under some experienced direction. This is to ensure that the salesperson’s work is performed competently and complies with the requirements of the Act.’*”
- [para 20] “In *Maserow v Real Estate Agents Authority (CAC 404)*, issued on 24 February 2016, The Tribunal said in respect of supervision:<sup>3</sup> *‘Supervision must be actual, it must be tailored to the circumstances of the agent and the property being sold, it must involve active involvement by the branch manager with the agent(s), including a knowledge and understanding of the issues with each of the properties being sold by the agency, if any. It should include an assessment of the competence of an agent to draft an agreement in English. As New Zealand’s population becomes more ethnically diverse the number of agents for whom English is not a first language will grow. While this offers a better service to vendors and purchasers who speak the same language it may also mean that the branch manager needs to be more actively involved in the drafting of agreements. Agencies must demonstrate that agreements which are drafted by all agents are well written and the clauses on their face sensible and understandable. The branch manager should be alert to identifying potential problems rather than waiting for a possibly inexperienced agent to identify them. At regular meetings of staff branch managers should ask questions to elicit matters which might be of concern such as issues with the boundary, lack of code compliance, and disclosure of known defects and issues with the LIM. All of these matters should be considered by the branch manager and agent when a property is listed for sale and in regular reviews relating to the sale process.’*”
- [para 14] [Mr C] took advice from [the franchisor], and approached two people suggested by them, neither of whom was in a position to replace [the licensed agent]. He then spoke to [Mr B], a licensed agent, who was available to work at [the branch], but not immediately. [Mr B] was appointed the licensee agent for [the agency] as from 1 December 2017.
- [para 51] “that said, it was clearly [the agency]’s responsibility under r 8.3 and s 50 to ensure that all of its salespersons were properly supervised and managed. It cannot be said to be a novel obligation. While the Authority’s “Professional Standard on Supervision” was effective from 1 July 2017, the issue of supervision had been canvassed by the Tribunal much earlier.<sup>4</sup>”

<sup>1</sup> *Hutt City Ltd v Real Estate Agents Authority (CAC 2002) [2013] NZREADT 109*, at [35].

<sup>2</sup> At [42].

<sup>3</sup> *Maserow v Real Estate Agents Authority (CAC 404) [2016] NZREADT 19*, at [25].

<sup>4</sup> For example, in *Hutt City*, in 2013: above, fn 5.



## Identifying supervisors and defining the supervision plan

Although the *Professional Standard on Supervision* has been published to provide guidance to agencies and supervisors, it is a principle-based document. It is up to agencies to put these principles into action by having systems, policies and procedures in place for the supervision and management of their salespersons.

The agency should have specific, well understood and documented processes regarding the requirements of the salesperson and supervisor when carrying out supervision tasks. One aspect of this is by developing a supervision plan/agreement for each salesperson at the agency.

The supervision plan/agreement should be in writing. It should:

- identify the designated supervisor and salesperson
- set out the roles, responsibilities and practical steps that the supervisor and salesperson will take to ensure the supervision arrangements are implemented.

**The form and method(s) of supervision, incorporating the lines of supervision (including the designated supervisor) should be clear to the salesperson, their supervisor and any separate line manager. The lines of supervision should be in writing, in the supervision plan.**

Both the salesperson and the supervisor should clearly understand the supervision structure that is in place for the salesperson.

A written supervision plan/agreement may be part of, or separate from, an employment agreement or contract between the salesperson and the licensed agent or agency.

### Recording temporary arrangements when the supervisor is unavailable

If a temporary supervisor(s) is assigned to a salesperson due to the designated supervisor being temporarily unavailable or on leave, the temporary arrangements should be recorded. This means they are clear to the salesperson, the temporary supervisor, and the designated supervisor.

### Example of a supervision plan

The section on 'Supervision' on the REA website provides an example of a supervision plan – from NZ Sotheby. Here is a summary of what that plan includes:

#### Supervision outline

The plan starts with a key document. The main elements of this part are:

- a statement detailing who the supervisor and the salesperson are
- the date the supervision arrangement starts
- the level of supervision the salesperson requires (from level 1 for less-experienced salespersons to level 3 for very experienced salespersons)

- the signatures of both the supervisor and the salesperson.

### **Requirements at each level**

- the number of weekly sales meetings the staff member is required to attend
- the frequency of one-on-one meetings with supervisors
- the types of appraisal that need to be reviewed by the supervisor (such as all appraisals or only very complex appraisals)
- the level of oversight required for preparing marketing plans and budgets for clients
- whether the sale and purchase agreements can be drafted, and what level of review is required.

### **Key documents included with the supervision plan for the salesperson**

- a chart showing the line managers and supervisors at different branches
- a detailed explanation of why supervision is required and important and a description of how to determine what level of supervision a salesperson requires
- the agency's in-house complaints process
- the REA 2017 *Professional Standard on Supervision*
- the REINZ 2018 information sheet on supervision
- a template for recording the agenda and minutes of supervision meetings.

The text of the REA website section with details of the NZ Sotheby supervision policy and plan is provided in Appendix 5.

### **Ensuring supervision plans are tailored to the individual**

Each agency will have its own systems, policies, and procedures in place to ensure it meets its supervision and management obligations. However, here are some best practices to ensure supervision plans are tailored to the individual.

These best practices are outlined in the infographic on the next page.

## Best practices to tailor supervision plan to the individual

### Appropriate for the level of knowledge

The supervisor understands the level of knowledge and strengths and weaknesses of the people they supervise, and the plan is appropriate for that level of knowledge.



### Outlines responsibility of the salesperson

The plan specifies when the salesperson must escalate issues or seek advice.



### Outlines expectations of supervisor in terms of reviewing salesperson's work

The plan clearly outlines the supervisor's role in terms of reviewing documentation and practice. (e.g., agency agreement, sale and purchase agreement, AML documentation, appraisals, advertising, open homes). Reviewing includes periodic random reviews of aspects of their work.



### Reflected in employment contracts

Employment contracts include details of the supervising agent or branch manager and are reviewed and updated as situations change.



### Modified as salesperson's level of knowledge changes

The supervisor recognises changes in the salespersons' knowledge/strengths/weaknesses and changes and adjusts the plan accordingly.



### Specifies the regularity of 1-on-1 sessions

The plan sets out how often 1-on-1 supervision sessions will occur.



### Outlines requirements for training and development

The plan sets out requirements for the salesperson's training and development plan and how the training and development plan outcomes will be recorded.



### Plan for staff working remotely differs

The plan for staff working remotely differs from those where the supervisor works in the same office.



### Implications of the agency being a franchisee

Depending on the franchise agreement, it is usually the franchisee company's responsibility to ensure compliance with supervision requirements. In most cases, the franchisor will provide guidance to assist franchisees with compliance. However, the franchisee is responsible for applying guidelines and other relevant systems in line with their franchise agreement to ensure their agency complies with requirements.

### Investigation into the nature and quality of supervision

Where a complaint against a licensee raises issues about the nature and quality of their supervision, the supervision may be investigated by REA. In *Martin v REA* (CAC416) [2018] NZREADT 69, the Tribunal upheld the CAC's unsatisfactory conduct decision related to supervision failures and made useful comments about supervision. The Tribunal accepted that an error by a licensee does not necessarily demonstrate the failure to have an adequate supervision structure. In this case, it accepted that the agency's policies and procedures set up a suitable supervision structure.

### The number of salespersons able to be supervised by a supervisor

Supervisors may supervise more than one salesperson. The number of salespersons they can supervise will depend on the supervisor's capacity and capability and the level of experience and competence of each salesperson being supervised. However, **for all salespersons they supervise**, the supervisor must be able to:

- conduct active supervision
- fulfil supervision obligations for any new or inexperienced salespersons
- exercise sufficient direction and control to ensure the agency work the salespersons carry out is performed competently and complies with the requirements of the REAA.

**The supervisor will have to judge how many salespersons they can appropriately and effectively supervise and manage at any one time.**

### Where an experienced and competent salesperson assists the supervisor

An experienced and competent salesperson may assist a supervisor with the oversight of the day to day tasks carried out by less-experienced salespersons. The supervisor should determine what day to day tasks this person can assist with, taking into account:

- the experience and competence of both the salesperson assisting and the salesperson under supervision
- that the supervision of the salesperson **must involve sufficient direction and control from them** to ensure the salesperson's work is carried out competently and complies with the REAA.

As noted by his Honour Justice Toogood in *Wang v Real Estate Agents Authority* [2015] NZHC 1011, **the statutory obligation of supervision cannot be delegated to a salesperson.**

Although an experienced and competent salesperson may assist a supervisor, **the ultimate responsibility for supervision sits with the designated supervisor.**

The designated supervisor **must raise and deal with any issue with the salespersons concerned.**

Even if they have an experienced and competent salesperson to assist, **the supervision of the salesperson must be actual, active and tailored to the circumstances, and they should be regularly involved with the salesperson's activities.**

## Salespersons who work at a different location to their supervisor

Supervision provided where there is a regular or occasional physical distance between a supervisor and salesperson is commonly referred to as 'remote supervision'. Remote supervision presents practical challenges (such as being involved in the salesperson's consumer interactions) and considerable risks for the supervisor who has ultimate responsibility for the salesperson.

Some supervision may be required to be conducted remotely where:

- the salesperson carries out real estate agency work in an isolated area
- the supervisor is based in a different town from the salesperson they supervise.

Particular care is needed to establish remote supervision, especially designing supervision arrangements and building an effective relationship. Regular communication between the salesperson and the supervisor is essential.

No matter where the salesperson and supervisor are physically located, the supervisor is responsible for the supervision of the salesperson. They must ensure the salesperson is 'properly supervised and managed' by them, meaning they must provide sufficient 'direction and control' to ensure competence and compliance with the REAA.

Technology can be utilised so that the degree of supervision required is achieved. This includes:

- sharing appraisals, agency agreements, advertising wording, sale and purchase agreements, and transaction reports in electronic form for review by the supervisor; and
- prompt video conferencing where an issue with a transaction has been highlighted.

The agency must ensure there are clear policies around remote supervision, for example, requiring that:

- an agency agreement is not processed until the supervisor has reviewed it; and
- a transaction is not moved forward until the supervisor has reviewed the sale and purchase agreement.

## Keeping supervision records

Supervisors should keep supervision records in addition to any supervision plan/agreement that may be used. Up-to-date supervision records are important to demonstrate compliance, particularly if the adequacy of supervision is a consideration when REA receives a complaint about a salesperson.



### Best practice

Agencies should have a record management system where supervisors must keep

- all written records of their supervision sessions; and
- records of any training and compliance matters discussed with the salespersons they supervise in addition to those sessions.

Supervision records should include:

- the time and date of the interaction and whether face to face or online
- details of the discussion around the properties they are dealing with (both listings and potential listings), including:
  - the address of the property
  - a summary of the discussion
  - any agreed actions related to the listing
- a summary of other points discussed (such as coaching points or reminders about compliance with agency policy or procedures)
- a list of items that need to be discussed at the next supervision session (such as follow up on any agreed actions)
- the signatures of the supervisor and the salesperson and the date signed.

Supervisors must ensure they only use the company email to communicate compliance-related matters. Examples are:

- reminders or warnings to salespersons regarding actions they need to take to comply with agency policy; or
- communications with the agency Compliance Officer about the actions of a salesperson they supervise.

Read the following case study and answer the questions that follow.

(**Note:** Fictional names have been used to make the case easier to follow.)

## Case study 2

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The complaint relates to the sale of a residential property and the actions of Kate, a salesperson licensee, her supervisor, Nigel, who was an agent licensee and their Agency. The complainants were the buyers of the property.

The case also refers to Kate's office manager, Denise, who was a salesperson licensee.

The CAC found Kate, Nigel and the Agency guilty of unsatisfactory conduct, and the case was referred to the Disciplinary Tribunal under appeal.

### Background

The complaint was that:

- Kate misrepresented the property as having H5 treated timber, misrepresented the stud height of the property's living areas, and represented that a pool could be installed in the grounds of the property when it likely could not.
- Nigel failed to address the misrepresentations adequately or to take appropriate actions in respect of the complaint.

In this case study, we will focus on the aspects of the complaint related to Nigel's supervision of Kate.

### Investigation of the complaint by the CAC

The CAC made one finding against Nigel in that he had failed to ensure Kate's agency work was performed competently and complied with the Act.

The CAC also made two findings against the Agency for failing to ensure the Agency's salespersons were properly supervised and managed and for misleading regarding Denise's role as a manager.

### Determination by the Disciplinary Tribunal

#### [Nigel]'s appeal against the CAC's substantive decision

On behalf of REA, it was submitted that Nigel had delegated the bulk of his supervision responsibilities to Denise, who was the office manager. As a salesperson's licence holder, she was not qualified to provide the supervision required by s 50. The REA further submitted that such supervision as Nigel did provide was reactive (dealing with issues brought to his attention), but that was insufficient to comply with s 50. This was especially so in respect of the express representation in marketing material as to timber treatment, which was a representation that the agency would not normally make. The REA submitted that this was such an "obvious pitfall" and "flashing red light" that reasonably competent supervision should have picked it up.

The Tribunal accepted that not every breach of the Act or Rules by a salesperson would inevitably lead to a finding of a failure of supervision.

The Tribunal noted the case *Wang v Real Estate Agents Authority* [2015] NZHC 1011 highlighted that the statutory obligation of supervision could not be delegated to a salesperson. In response to an inquiry from REA's investigator, Nigel's lawyers advised:

*[Nigel] actively supervises the salespeople at the [A] branch, including [Denise]. [Denise] is the Regional General Manager Eastern Bays and she and [Nigel] ensure that all salespeople are adequately supervised on a day to day basis. [Nigel] has delegated general day to day supervision to [Denise] who oversees all listings by way of weekly meetings, ensures that all licensees report issues promptly, reviews listings and agreements for sale and purchase, and ensures that licensees receive regular training. [Denise] is also available should any issues arise and encourages all salespeople to immediately report any concerns, even if minor. [Denise] reports to [Nigel] on a daily basis. [Nigel], as the supervising agent, provides sufficient oversight, direction, and control to ensure that all salespeople are adequately supervised by:*

1. *Delegating day to day supervision to [Denise] who has 16 years' experience at [the agency], is a leader and representative in the real estate industry, is one of [the agency]'s highest performers, exceeds the industry's standards for a management position, and who has now gained her branch manager qualification (as of 19 September 2018);*
2. *Telephoning [Denise] on a daily basis to discuss new listings (particularly those that are not straightforward), any issues that have arisen with properties, any complaints, potential complaints, any problems that salespeople have encountered, and training requirements etc;*
3. *Meeting with [Denise] on a weekly basis; and*
4. *Requiring [Denise] to immediately report any issues, complaints, complicated instructions, or inconsistencies.*

*[Nigel], on behalf of the agency, takes an active role as Compliance Manager in ensuring that all licensees are adequately supervised, [Nigel] is available to all salespeople and is able to provide them with advice. In particular, [the agency] provides sufficient direction and control through its processes, training, and staff appointments to ensure that all salespeople are properly supervised and managed.*

The Tribunal accepted the REA's submission that Nigel's supervision was reactive rather than proactive. He relied on being advised of potential issues by Denise or Kate. The Tribunal's view was that the description of the supervision structure (as described in italics above) does not indicate any personal oversight by Nigel of Kate or any of her work.

The Tribunal noted that despite her previous experience in the industry, [Kate] was reasonably new to the Agency at the time. They also noted that a finding of unsatisfactory conduct was made against her around the time she was marketing the property. They believed this should have alerted her supervisor to a need for more than reactive supervision (relying on [Kate] to raise an issue).

In addition, the marketing material included positive representations on matters not normally included by the agency in marketing material (in particular, in relation to the use of treated timber and stud height). The Tribunal was **not** persuaded that the CAC was wrong to find that the inclusion of the timber treatment and stud height in the advertising material when it was not



detailed in the listing agreement should have been a red flag to an alert supervisor to make further enquiries and discover the incorrect information prior to the marketing commencing.

The Tribunal was **not** persuaded that the CAC was wrong to find that [Nigel] failed to provide proper supervision and management of [Kate], in breach of s 50 of the Act.

### **[Nigel]'s appeal against the penalty**

The Tribunal did not accept [Nigel]'s submission that his conduct should have been assessed as being at the low end of the scale of unsatisfactory conduct. However, they concluded that the CAC did not sufficiently recognise [Nigel]'s unblemished disciplinary history. The Tribunal quashed the order to pay a fine of \$4,000 and replaced it with an order that [Nigel] pay a fine of \$3,000.

### **The Agency's appeal**

The CAC noted that the Agency was obliged to ensure that its licensees were properly supervised and managed under r 8.3 of the Code of Conduct. It found that the Agency had failed to ensure all its salespeople were properly supervised and managed by a branch manager or agent, in breach of r 8.3. It also found that the Agency had misled the complainants regarding [Denise]'s role as manager, in breach of r 6.4.

The CAC was concerned that at the time REA received the complainant's complaint in July 2017, more than one year after the conduct, [Denise] was still active in the role of day to day supervisor (while she completed her branch manager qualification). It noted that she did not obtain a branch manager qualification until 19 September 2018.

The Tribunal was concerned regarding the Agency's submission that the Agency was not aware before the CAC's decision on 23 May 2016 that experienced salespersons could not manage staff. They noted that s 50 of the Act had been in effect since 17 November 2009, and they didn't consider there to be any ambiguity in the provision that *"a salesperson must, in carrying out real estate agency work, be properly supervised and managed by an agent or branch manager"*.

The CAC's concern was that while Denise was undertaking the training, she remained active in the role of day-to-day supervisor at the [A] branch office, in breach of s 50. It regarded this as a serious continuing breach. The Tribunal was **not** persuaded that the CAC was wrong to do so.

### **Orders**

The CAC ordered censure and imposed a "mid-level fine of \$10,000". The Tribunal overturned this decision in part and ordered the Agency to be censured and the Agency to pay a fine of \$8,000.

**Complaint number: C20756**

**Disciplinary Tribunal reference: [2019] NZREADT 26**

Date: 20 June 2019

You can read about this complaint and decision in the REA decisions database at [rea.govt.nz](http://rea.govt.nz)



## Questions

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Answer the following questions.

6. Why did the Tribunal describe Nigel's supervision as 'reactive'?

7. What did the Tribunal agree with the CAC that should have been a 'red flag' to an alert supervisor?

8. What did the Tribunal agree with the CAC that an 'alert supervisor' should do when they saw a 'red flag' such as this one in the advertising material?

9. What was the Tribunal's concern regarding the nature of supervision at [A] branch office in the period between the agency receiving the complainant's complaint in July 2017 and Denise obtaining a branch manager qualification on 19 September 2018?

10. What was the Tribunal’s concern regarding the agency’s lawyer’s submission that the agency was not aware before the CAC’s decision on 23 May 2016 that experienced salespersons could not manage staff?

**Note the following comments from the Disciplinary Tribunal:**

- [para 90]            “We accept [Mr H]’s submission that [Nigel]’s supervision was reactive, rather than proactive. He relied on being advised of potential issues by [Denise] or [Kate]. The description of the supervision structure set out above does not indicate any personal oversight by [Nigel] of [Kate], or any of her work.”
- [para 92]            “Notwithstanding her previous experience in the industry, [Kate] was at the time reasonably new to the agency. A finding of unsatisfactory conduct was made against her around the time she was marketing the property. This should have alerted [Kate]’s supervisor to a need for more than reactive supervision (relying on her to raise an issue). Further, the marketing material included positive representations on matters not normally included by the agency in marketing material (in particular, in relation to the use of treated timber and stud height). We are not persuaded that the Committee was wrong to find that the inclusion of the timber treatment and stud height in the advertising material when it was not detailed in the listing agreement should have been a red flag to an alert supervisor to make further enquiries and discover the incorrect information prior to marketing commencing.”
- [para 100]           In relation to penalty in the present case, the Committee acknowledged that the conduct complained of had occurred around March 2014, and that the agency had taken positive steps to upskill its licensees since the decision in Complaint C10557 was issued in May 2016. However, it was concerned that at the time the agency received [the complainants]’ complaint in July 2017, more than one year after that decision, [Denise] was still actively in the role of day to day supervisor. It noted that she did not obtain a branch manager qualification until 19 September 2018.
- [para 106]           “The Tribunal is concerned as to the submission that the agency was not aware, before CAC409’s decision in Complaint C10557 on 23 May 2016, that experienced salespersons could not manage staff. Pursuant to s2(2) of the Act, s 50 has been in effect since 17 November 2009. We do not consider there to be any ambiguity in the provision that *‘a salesperson must, in carrying out real estate agency work, be properly supervised and managed by an agent or branch manager.’*”



## Putting my learning into practice

How has this topic improved your knowledge and understanding of 'Supervision'?

Describe at least one change you will make to the way you work as a result of this topic.

## Appendix 1: Text of *Professional Standard on Supervision*

In this appendix we will provide the text of REA's *Professional Standard on Supervision*. The published document can be downloaded from REA's website on this webpage:

<https://www.rea.govt.nz/real-estate-professionals/education-and-obligations/supervision/>

### Professional Standard on Supervision

Set by the Real Estate Authority under section 12(1)(i) of the Real Estate Agents Act 2008.

Version 1: Effective 1 July 2017

The law requires that a salesperson carrying out agency work must be properly supervised and managed by an agent or branch manager.

This Standard details the guiding principles and information to assist licensees to understand how to meet their legal obligations.

#### 1 Introduction

- 1.1** The Real Estate Agents Act 2008 (The Act) and the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 ("the Code of Professional Conduct and Client Care") include several important obligations relating to supervision. Section 50(1) of the Act provides that a salesperson must be "properly supervised and managed" by a licensed agent or licensed branch manager ("the supervisor") when carrying out agency work.
- 1.2** The Real Estate Authority ("REA") has issued this professional standard ("the Standard") to provide guidance to all licensees about their obligations in regard to supervision under the Act and the Code of Professional Conduct and Client Care.
- 1.3** This Standard applies to:
  - a) licensed agents supervising salespersons
  - b) licensed branch managers supervising salespersons
  - c) all salespersons<sup>3</sup>
  - d) agencies that employ or engage salespersons.
- 1.4** The Standard is concerned with all salespersons, whether they are employees or contractors, and regardless of their level of experience.
- 1.5** The Standard is principle based. That is, it does not prescribe specific requirements or steps to be followed. Rather, it outlines general objectives to be achieved. Licensees are expected to use and apply the Standard in the context of their own circumstances when first establishing a supervision arrangement and then on an ongoing basis as a salesperson's experience and competence increases.

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<sup>3</sup> Where a licensed agent is employed or engaged as a salesperson, they are not legally required to be supervised. However, we recommend that, in such circumstances, the agent and their employer/principal still apply this Standard.

- 1.6** The Standard does not create any binding rules of law that are directly enforceable against licensees. However, it will be used by REA in respect of its compliance and enforcement decision making. It is anticipated that Complaints Assessment Committees and the Real Estate Agents Disciplinary Tribunal will also have regard to the Standard when considering matters that raise supervision issues.
- 1.7** The Standard may be reviewed and amended by REA from time to time.

## 2 Properly supervised and managed

- 2.1** Section 50 of the Act provides that a salesperson must, in carrying out any agency work, be properly supervised and managed by a licensed agent or licensed branch manager.

All salespersons must be supervised and managed by an agent or a branch manager.

- 2.2** “Properly supervised and managed” means the agency work is carried out under such direction and control of the supervisor as is sufficient to ensure that the work is performed competently and complies with the requirements of the Act.<sup>4</sup> Rule 8.3 of the Code of Professional Conduct and Client Care requires agents operating as a business to ensure that all salespersons employed or engaged by them are properly supervised and managed.

Properly supervised and managed requires direction and control sufficient to ensure the agency work carried out by a salesperson is performed competently and complied with the requirements of the Act.

## 3 Supervision is not the same as employment line management

- 3.1** Supervision is focused on ensuring that the salesperson is performing real estate agency work competently and that the work meets the requirements of the Act.
- 3.2** A salesperson’s line manager<sup>5</sup> may also be their supervisor, or a salesperson may have a separate supervisor and line manager. Whatever the situation, it is important that all parties are clear that supervision under the Act is not the same as management of an employment relationship. For example, ensuring that all salespersons working at an agency have a current licence, understand their statutory obligations and meet their continuing legal education requirements are responsibilities that properly rest with a manager rather than the salesperson’s supervisor (see Rule 8.4 of the code of Professional Conduct and Client Care).
- 3.3** Anyone may act as a salesperson’s line manager, but only a licensed agent or licensed branch manager may supervise a salesperson.

Only a licensed agent or licensed branch manager may be a supervisor.

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<sup>4</sup> Refer to section 50(2) of the Act.

<sup>5</sup> For the purposes of this Standard, “line manager” means the person who directly manages the employee.

**3.4** Each salesperson must have a clearly designated supervisor.

The supervisor needs to be a licensed agent or licensed branch manager with sufficient skill and experience to provide effective supervision to the salesperson(s) they are responsible for supervising. Although the Standard contemplates a traditional model of a single designated supervisor, it does not mean that other licensed agents and licensed branch managers cannot provide supervision, oversight and guidance as and when required. However, it must be clear to the salesperson who is supervising them at any particular point in time.

**Each salesperson must have a clearly defined designated supervisor or supervisors.**

**3.5** A written supervision plan/agreement is desirable. An effective supervision plan/agreement should clearly identify the supervisor and salesperson and set out the roles, responsibilities and practical steps that the supervisor and salesperson will take to ensure the supervision arrangement is implemented. The plan/agreement can also be used to ensure that the form and method(s) of supervision are clear to the supervisor, salesperson and any separate line manager. Such a document may be part of, or separate to, any employment agreement or contractual arrangement in place between the salesperson and the licensed agent or agency.

**A written supervision plan/agreement is an effective means of ensuring a salesperson is aware of who their supervisor is and how supervision will operate.**

**3.6** The ultimate responsibility for supervision sits with the designated supervisor. It is incumbent on them to raise and deal with any issues with the salesperson concerned. However, an experienced and competent salesperson may assist a supervisor with the oversight of day-to-day tasks<sup>6</sup> carried out by less-experienced salespersons.

**3.7** A supervisor may put temporary supervision arrangements in place in the event they are, or may become, unavailable, but only a licensed branch manager or licensed agent may undertake the supervision.

## 4 Actual, active and tailored to the circumstances

**4.1** The Standard contemplates effective supervision. Supervision must be actual and tailored to the circumstances of the salesperson and the transactions in which they are involved.

**4.2** Agencies should have systems, policies and procedures in place to supervise and manage their salespersons. However, these cannot be a substitute for actual and effective supervision by a designated supervisor providing direction and control that takes account of the circumstances of their salespersons and the property being sold.

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<sup>6</sup> The day-to-day tasks that may be overseen should be determined by the supervisor, having regard to the experience and competence of both the salesperson assisting and the salesperson under supervision.

**4.3** The frequency, mode and intensity of supervision may vary in each case. The supervisor is expected to exercise judgement that takes account of each salesperson’s experience and training, the complexities of the real estate market in which they are operating, the nature of the transactions performed and the requirements of the client or customer.

**4.4** Supervisors are not expected to sight and direct every aspect of a salesperson’s real estate agency work. However, a supervisor should be actively and regularly involved with a salesperson’s activity. Ultimately, what is required is an exercise of judgement as to the nature and degree of supervision that is appropriate in each case to ensure effective supervision.

The nature and degree of supervision will vary from salesperson to salesperson; based on their experience, competence and wider operating conditions.

- 4.5** The supervisor must be actively involved with the salesperson, which means:
- a) understanding the level of experience and skill of the salesperson and placing conditions and/or restrictions on their real estate work as appropriate
  - b) understanding the issues with each of the properties being listed and sold
  - c) conducting regular meetings with the salesperson being supervised and asking questions to draw out matters that might be of concern (such as resource consents, boundary issues, lack of Code Compliance Certificates, planned developments in the area and disclosure of known defects and issues with the Land Information Memorandum)
  - d) being available for questions, dealing with day-to-day issues, and fostering and encouraging communication with the salesperson being supervised
  - e) ensuring that they keep up-to-date with industry issues, Tribunal decisions and guidelines issued by REA so they can transfer knowledge and provide guidance to the salesperson being supervised.

## 5 Drafting sale and purchase agreements

**5.1** “Agreement” means any agreement for sale and purchase of land or any interest in land or of the goodwill of a business or of chattels.<sup>7</sup>

**5.2** Supervisors need to monitor the performance of salespersons in drafting agreements to ensure high standards are maintained. Agreements should be well written, with clauses that suit their intended purpose and are clear, unambiguous and easily understood. The supervisor should be alert to identifying potential problems rather than waiting for a salesperson to identify them.

**5.3** As New Zealand’s population becomes more ethnically diverse, supervision should include an assessment of the competence of a salesperson to draft an agreement in English. If necessary, additional oversight and assistance should be provided, including translation.

**5.4** Every agreement should be reviewed by the supervisor. The timing and degree of review required in each case is a judgement call for the supervisor to make.

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<sup>7</sup> Refer to section 36(2) of the Lawyers and Conveyancers Act 2006.



Supervisors must be actively involved in agreements drafted by inexperienced salespersons or those not maintaining a consistently high standard of drafting. This includes reviewing agreements before the parties sign them.

**5.5** Under section 36(2A) of the Lawyers and Conveyancers Act 2006, new salespersons<sup>8</sup> with less than six months' real estate agency work experience cannot prepare sale and purchase agreements or advise clients or customers about their legal rights and obligations that are incidental to the preparing of those agreements. Having a salesperson observe contractual discussions conducted by their supervisor or other salespersons is an effective way of demonstrating good practice and developing their experience.

**5.6** Even after the six-month restriction on new salespersons set out in paragraph 5.5 is no longer applicable, supervisors should take care to ensure that all agreements prepared by inexperienced<sup>9</sup> salespersons are subject to appropriate review.

**A salesperson with less than six months' real estate agency work experience cannot prepare sale and purchase agreements or provide advice to clients about their legal rights and obligations.**

## 6 New and/or inexperienced salespersons

**6.1** Supervisors must take extra care when supervising a new and/or inexperienced salesperson. In practice, a supervisor should:

- a) review and assist with the preparation of appraisals and agency agreements
- b) engage with the salesperson before they run open homes to ensure they are knowledgeable about the property and have information on hand to assist customers and periodically attend their open homes to observe the salesperson's performance
- c) have regular one-on-one meetings to discuss any questions or problems the salesperson may be having
- d) periodically sit in on phone and face-to-face conversations to observe how the salesperson interacts with clients and customers
- e) periodically check written communications to ensure consistently high standards of professionalism are maintained and that disclosures and representations are fair and accurate.

**6.2** When the supervisor is satisfied the salesperson is conducting real estate agency work in a competent and legally compliant manner, they may adjust how they supervise the salesperson to a way that reflects supervision of a more experienced and competent salesperson.

**Supervisors may change the nature and degree of supervision as a salesperson demonstrates increased competence and experience.**

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<sup>8</sup> For the purposes of this Standard, "new salesperson" means a salesperson with less than six months' real estate agency experience.

<sup>9</sup> For the purposes of this Standard, "inexperienced salesperson" means any salesperson (including a new salesperson) with limited experience in real estate agency work or certain aspects of real estate agency work.

## 7 Salespersons who work at a different location to their supervisor

- 7.1** The law does not require a supervisor to be physically present in the same location as the salesperson at all times or for all supervision to be conducted face to face.
- 7.2** It does not matter where the supervisor and salesperson are physically located, the requirement is the same. The salesperson must be “properly supervised and managed”, which means working under sufficient “direction and control” to ensure competence and compliance with the Act.<sup>10</sup>

The law does not require a salesperson to be supervised in the presence of the supervisor. However, at all times, supervision requires the salesperson to be under sufficient direction.

- 7.3** Whether the supervisor can exercise sufficient direction and control will depend on:
- a) the experience of the salesperson and the supervisor
  - b) the availability of experienced salespersons to assist with the oversight of day-to-day activities
  - c) whether the supervisor manages their own listings
  - d) how many other salespersons the supervisor is responsible for
  - e) the policies, systems and procedures in place at the agency.
- 7.4** Exercising sufficient direction and control where a salesperson is working in a different location to their supervisor, or where physical supervision is not available (or regularly available) will require careful planning and systems.
- 7.5** Supervision provided where there is regular or occasional physical distance between a supervisor and salesperson is commonly referred to as “remote supervision”. Remote supervision can mean different things to different people because it occurs to varying degrees and is used in a variety of circumstances. It is not practicable or reasonable to define in this Standard what form or extent of remote supervision is appropriate, as this will always vary from case to case.
- 7.6** Remote supervision presents significant practical challenges (such as being involved in the salesperson’s consumer interactions) and considerable risks for the supervisor who has ultimate responsibility for the salesperson. Any remote supervision, particularly in the case of a new or inexperienced salesperson, is likely to require substantial extra planning and contingencies to be put in place.
- 7.7** Forms of remote supervision may be acceptable as part of wider supervision arrangements in place between a supervisor and a salesperson. If any form of remote supervision is to feature as part of a supervision arrangement, it may be helpful to have this reflected in a written supervision plan/agreement.
- 7.8** Supervisors are encouraged to use available technology (such as Skype and instant messaging applications) to ensure a salesperson is properly supervised and managed on a regular basis. Any technological solution used should be as effective as face-to-face contact.

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<sup>10</sup> Refer to section 50 of the Act.

Remote supervision is not prohibited, but care must be taken. More effort may need to be put into the design of the supervision arrangement and then making the relationship work. Regular communication between the salesperson and the supervisor is imperative.

## 8 Number of salespersons that may be supervised by a supervisor

- 8.1** There is no set ratio or maximum number of salespersons that a supervisor may supervise. However, supervisors should consider the matters identified in paragraph 4.5 (about conducting active supervision), paragraph 6.1 (about new and/or inexperienced salespersons) and paragraph 7.2 (about exercising sufficient direction and control) and exercise their own judgement about whether they are capable of supervising multiple salespersons and, if so, how many salespersons they can appropriately and effectively supervise and manage at any one time.

Supervisors may supervise more than one salesperson. How many will depend on the supervisor's capacity and capability and take account of the level of experience and competence of each salesperson being supervised.

## 9 Record keeping

- 9.1** It is recommended that supervisors keep supervision records in addition to any supervision plan/agreement that may be used. The form and extent of record keeping should reflect the nature of the supervision (for example, supervision of a new salesperson might be expected to require a greater level of record keeping than might be involved for an experienced salesperson).
- 9.2** Where REA receives a complaint about a salesperson, the adequacy of supervision will be considered. If supervision is, or appears to be, an issue, the supervisor will be provided an opportunity to demonstrate how they have complied with this Standard. Up-to-date supervision records are important to demonstrate compliance. If the supervisor is not able to produce records or otherwise demonstrate they have complied with this Standard, this will be relevant to REA's compliance and enforcement decision making.

## Appendix 2: REA website text on what a good supervision policy and plan looks like

Source: The author/implementor is Lyn Beere (Sotheby's National Compliance Manager).

### What does a good supervision policy and plan look like?

Agencies often ask us how to implement the supervision requirements of section 50 at their agency. We don't have a standard supervision plan for agencies to use because our supervision standard explains that supervision should be tailored to the needs of the person being supervised.

This article gives an overview of a useful example and a Tribunal decision. Thank you to NZ Sotheby's International Realty for letting us share details of its plan.

#### NZ Sotheby's plan

The NZ Sotheby's plan starts with a key document explaining who the supervisor and salesperson are and the date the supervision arrangement starts. This document is signed by the supervisor and the salesperson and sets out what level of supervision the salesperson requires – from level 1 to 3. Level 1 supervision is for less-experienced salespeople, and level 3 is for very experienced salespeople. A salesperson can move between the levels with the agreement of their supervisor.

The next document [in the Sotheby's plan] details what is required for each level, for example:

- the number of weekly sales meetings the staff member is required to attend
- the frequency of one-on-one meetings with supervisors or line managers
- the types of appraisal that need to be reviewed by the supervisor, for example, all appraisals or only very complex appraisals
- the level of oversight required for preparing marketing plans and budgets for clients
- whether sale and purchase agreements can be drafted, and what level of review is required.
- Key documents are included with the supervision plan for the salesperson:
- A flow chart of the line managers and supervisors in the different branches or offices across New Zealand.
- A detailed explanation of why supervision is required and important and a description of how to determine what level of supervision a salesperson requires (levels 1–3 as above).
- The agency's in-house complaint process.
- The REA 2017 Professional Standard on Supervision.
- The REINZ 2018 information sheet on supervision.
- A template for recording the agenda and minutes of supervision meetings.

### ***The importance of communication***

It's important to remember supervision is about more than having a plan in place. The supervisor and salesperson need to have regular conversations and raise issues with each other.

In *Martin v REA (CAC416)* [2018] NZREADT 69 the Tribunal upheld the Committee's unsatisfactory conduct decision which related to supervision failures and made useful comments about supervision that have wider relevance. The Tribunal accepted that an error by a licensee does not necessarily demonstrate the failure to have an adequate supervision structure. In this case, it accepted that the agency's policies and procedures set up a suitable supervision structure.

However, the Tribunal noted that neither section 50 nor rule 8.3 refer to supervision structures, policies or practices, but they use the phrase "properly supervised and managed", and the key question is whether there has been adequate supervision in the particular case. It noted that "adequate supervision is not provided by relying on an agency's policies and practices, and waiting for licensees to approach their manager with particular questions or issues" and that "supervision should be proactive, and ongoing". In this case, there were a number of red flags and proactive supervision was required but not provided.

This information is found on the REA website at <https://www.rea.govt.nz/news/industry-newsletters/rea-newsletter-december-2018/what-might-a-good-supervision-policy-and-plan-look-like/>

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