

**THE SOLICITORS (SCOTLAND) ACT 1980  
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL  
(PROCEDURE RULES 2008)**

**FINDINGS**

**in Complaint**

**by**

**THE COUNCIL OF THE LAW  
SOCIETY of SCOTLAND, 26  
Drumsheugh Gardens, Edinburgh**

**against**

**SCOTT CAMPBELL, Solicitor,  
11/13 Crichton Street, Dundee**

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Scott Campbell, Solicitor, of 11/13 Crichton Street, Dundee (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be set down for a procedural hearing on 18 April 2013 and notice thereof was duly served on the Respondent.
4. When the Complaint called on 18 April 2013, the Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The Respondent was present and represented by Mr Ian Ferguson, Solicitor, Glasgow.

5. An amended Complaint was lodged on behalf of the Complainers and thereafter a Joint Minute was lodged, admitting the averments of fact and duty set out in the aforesaid amended Complaint. The Fiscal for the Complainers confirmed that the averments regarding professional misconduct were not agreed and that submissions would be directed to the question of whether the facts agreed amounted to professional misconduct.
6. The Tribunal heard submissions from both parties and the agent for the Respondent lodged written representations and a list of authorities for the Respondent.
7. The Tribunal found the following facts admitted:
  - 7.1 The Respondent is a Solicitor enrolled in the Registers of Scotland. His date of birth is 5 November 1970 and he was enrolled as Solicitor on 27 January 2000. He operates as a sole practitioner under the name of The Chamber Practice (hereinafter “TCP”) and has a place of business at 11/13 Crichton Street, Dundee, DD1 3AP. The Respondent is the Cashroom Partner and the Money Laundering Compliance Partner in his firm.
  - 7.2 The Council of Mortgage Lenders (hereinafter “CML”) describes itself as a not for profit organisation and a trade association for the mortgage lending industry in the UK. Its members account for almost the entire residential mortgage lending within the UK. Its aim is to help foster a favourable operating environment within the UK housing and mortgage markets. The organisation has produced a handbook referred to as the CML Lenders Handbook. This is published on their website and provides guidance to conveyancing solicitors in respect of general practice and procedure when dealing with an

institution which is a member of the CML. It comprises a number of paragraphs. In particular:-

- (a) Paragraph 1.1 directs that instructions from an individual lender will indicate whether a solicitor is being instructed by that lender in accordance with the provisions contained within the CML Lenders Handbook and if that is the case, directs that general provision in part 1 of the handbook and any lender-specific requirements in terms of part 2 must be followed.
- (b) Paragraph 1.4 states the standard of care they expect of a solicitor is that of a reasonable competent solicitor or independent qualified conveyancer acting on behalf of a heritable creditor.
- (c) Paragraph 1.5 states that the solicitor must comply with any separate instructions received in connection with an individual loan.
- (d) Paragraph 1.15 states that if there is any conflict of interests, the solicitor must not act and must return the instructions.
- (e) Paragraph 2.3 narrates that "...if you need to report a matter to us you must do so as soon as you become aware of it so as to avoid any delay. If you do not believe that a matter is adequately provided for in terms of the handbook you should identify the relevant handbook provision and the extent which the matter is not covered by it. You should provide a concise summary of the legal risks and your recommendation of how we should protect our interests. After reporting the matter you should not complete the mortgage until you have received our further written instructions. We recommend that report such matters

before conclusion of missives because we may have to withdraw or change the mortgage offer.”

- (f) Paragraph 3.1 directs that solicitors must follow the current Solicitor (Scotland) Account Rules and to the extent that they apply, comply with the Money Laundering Regulations and the Proceeds of Crime Act.
- (g) Paragraph 5.1.1 narrates a requirement to report to the lender if the proprietor has owned the property for less than six months or the person selling to the borrower is not the proprietor unless the seller is (a) a personal representative of the proprietor or (b) an institutional heritable creditor exercising his power of the sale or (c) a receiver, trustee in sequestration or liquidator or (d) a developer of buildings selling a property acquired under Part Exchange Scheme.
- (h) Paragraph 5.1.2 narrates that if any matter comes to the attention of the fee earner dealing with the transaction which “...you should reasonably expect us to consider important in deciding whether or not to lend to the borrower (such as where the borrower has given misleading information to us or the information which you might reasonable expect to have been given to us is no longer true) and you are unable to disclose that information to us because of a conflict of interest, you must cease to act for us and return our instructions stating that you consider a conflict of interest has arisen.”
- (i) Paragraph 10.1 states that “...you should not submit your Certificate of Title unless it is unqualified or we have authorised you in writing to proceed notwithstanding any issues which you have raised with us.”

(j) Paragraph 11.2 narrates that "...you should explain to each borrower (and any other persons signing or executing the document, his responsibilities and liabilities under the documents referred to in paragraph 11.1 and any documents he is required to sign."

7.3 The Financial Compliance Department of the Complainers conducted an inspection of the Respondent's financial records, books, accounts and documentation on 16 November 2009. This inspection identified a number of matters of serious concern including his involvement in "back-to-back" conveyancing transactions. Correspondence was entered into with the Respondent in an effort to resolve these concerns. The Respondent was interviewed by the Complainer's Guarantee Fund Committee on 18 February 2010. A further inspection of the Respondent's practice was carried out on 6 September 2010. The Complainers were not satisfied that the Respondent had adequately addressed the issues and concerns which were raised at the said inspection and as a consequence a formal complaint was intimated to the Respondent.

7.4 The Respondent acted on behalf of a purchaser in connection with nine separate conveyancing transactions, detailed hereinafter. In each of those transactions, the Respondent acted on behalf of his client in purchasing from a company known as Company 1. The business of these transactions had been introduced to the Respondent by Ms R who was an independent Qualified Conveyancer. In each of the transactions, Company 1 were the mid-purchasers. The transactions were dealt with by the Respondent's Paralegal in the Respondent's employ and under his supervision.

7.5 Purchase of Property 1

Elmslies, Solicitors, Edinburgh, acted for Company 1 which was purchasing Property 1 from Ms B at a price of £50,000. They sent a copy of Ms B's Land Certificate to TCP on 28 August 2009. On 31 August 2009 Ms C emailed the Respondent confirming her instructions and attaching identification. On 31 August 2009 TCP faxed an offer to Elmslies on behalf of Ms C offering to purchase the property at a price of £75,000 but with no Date of Entry being specified. Loan instructions dated 2 September 2009 from Bank of Scotland plc instructed TCP to act on their behalf and in accordance with the CML Lenders Handbook for Scotland and their part 2 instructions. The lenders were proposing to lend Ms C £56,250 and that based on a purchase price of £75,000. TCP faxed a missive to Messrs Elmslies on 9 September 2009 providing for the Date of Entry to be taken no later than 11 September and Messrs Elmslie's duly concluded the contract on that date. A clear Certificate of Title, signed by the Respondent, was sent to the lender on 10 September 2009. Ms C confirmed by email on 10 September that the source of funds for the deposit and remainder of the purchase price had come from a company owned by her husband and whilst copies of documentation were provided by her, said documentation was not certified. Two payments of £9,875 were received by the Respondent from Ms C on 11 September. The Respondent received the mortgage funds from the lender on 10 September 2009. TCP transferred the purchase price of £75,000 on 11 September 2009. The conveyancing documentation was delivered to the Respondent and the same was then submitted on behalf of Ms C to the Land Register. Ms C's Land and Charge Certificates were issued by the Registers of Scotland on 15 November 2009.

In dealing with the foregoing transaction, the Respondent failed to comply with the obligations imposed upon him in terms of

the CML Handbook and in terms of which he agreed to act on behalf of the lender. In particular he failed to report to the lender that: a) this was a “back-to-back” transaction whereby the seller had not owned the property for a period in excess of six months, contrary to paragraph 5.1.1 of the CML Handbook; b) the balance of the purchase price and deposit had been received from a third party, contrary to paragraph 5.1.2 of the CML Handbook; and c) there was a 50% uplift in the price between the price paid by the mid-purchaser and by his client and the amount of loan being provided exceeded the price paid by the mid-purchaser of the property, contrary to paragraph 5.1.2 of the CML Handbook. Further, the Respondent acted contrary to the terms of Rule 24 of the Accounts Rules in that he failed to obtain the relevant certified documentation in relation to the identity of the third party providing the deposit for the purchase price and thereafter in breach of Regulation 5 of the Money Laundering Regulations 2007.

#### 7.6 Purchase of Property 2

A Mr D of Company 1 emailed the Respondent on 28 July 2009 advising that Ms R had made an offer on behalf of COMPANY 1 to purchase Property 2 at a price of £44,000 and that the Respondent was to act on behalf of Ms E whose address and contact details were provided to submit an offer to Ms R for the purchase of the property from Company 1 but that at a price of £75,000. The Respondent was also advised that the deposit for the property was being provided by a limited company known as NDI. Loan instructions dated 29 July 2009 from Bank of Scotland plc instructed TCP to act on their behalf and in accordance with the CML Lenders Handbook for Scotland and their part 2 instructions. The Lenders were proposing to lend Ms E £56,250 based on a purchase price of £75,000. On 6 August 2009 TCP faxed a missive to Ms R offering to purchase the property for £75,000 but with no Date

of Entry being specified. Ms R issued a Qualified Acceptance on 11 August providing for entry as at 28 August 2009. Settlement of the transaction was delayed past that date pending further instructions being received from Ms E, payment of the deposit and confirmation of the source of funds for that deposit. On 29 September 2009 the Respondent was advised that the deposit was coming via an equity release scheme operated by NDI and TCP sent a fax to the lenders advising of the circumstances, enclosing a copy of the loan agreement and requesting the lenders confirmation that they were content to proceed. The lenders duly agreed. TCP then issued a further missive providing for entry as at 2 October and Ms R duly concluded the contract by return. A clear certificate of title signed by the Respondent was sent to the lender on 1 October 2009. The loan funds were duly received as were the funds from NDI for the deposit and the transaction duly settled on 2 October. The conveyancing documentation was delivered to the Respondent and the same was then submitted on behalf of Ms E to the Land Register. Ms E's Land and Charge Certificates were issued by the Registers of Scotland on 2 November 2009.

In dealing with the foregoing transaction, the Respondent failed to comply with the obligations imposed upon him in terms of the CML Handbook and in terms of which he agreed to act on behalf of the lender. In particular he failed to report to the lender that; a) this was a "back-to-back" transaction whereby the seller had not owned the property for a period in excess of six months contrary to paragraph 5.1.1 of the CML Handbook; and b) there was an approximate 70% uplift in the price between the price paid by the mid purchaser and by his client and that the amount of loan being provided exceeded the price paid by the mid purchaser of the property, contrary to 5.1.2 of the CML Handbook.



### 7.7 Purchase of Property 4

Mr D of Company 1 emailed the Respondent on 9 September 2009 advising that MS R had made an offer on behalf of Company 1 to purchase Property 4 at a price of £45,000 and that the Respondent was to submit an offer on behalf of his client, Mr F to purchase the property from Company 1 at a price of £65,000. NDI were to provide the deposit. The Respondent submitted said offer to MS R on 10 September 2009 at said price but with no Date of Entry being specified. Loan instructions dated 7 September 2009 from the Bank of Scotland plc instructed TCP to act on their behalf and in accordance with the CML Lenders Handbook for Scotland and their part 2 instructions. The lenders were proposing to lend Mr F £48,750 and that based on a purchase price of £65,000. On 16 September 2009 a further set of loan instructions was received from the Bank of Scotland plc in identical terms. Ms R issued a Qualified Acceptance on 23 September 2009 providing for entry to be granted on 5 October 2009. On 6 October 2009 TCP wrote to the lenders advising that the deposit was being provided via an equity release agreement and attached a copy of the loan agreement and requested the lenders to confirm that they had no objection to matters proceeding. TCP then issued a formal missive providing for entry to be granted on 9 October 2009. A clear Certificate of Title signed by the Respondent was sent to the lender on 8 October 2009. MS R faxed a missive on 12 October stipulating the Date of Entry to be granted that day and TCP then concluded the contract. The Respondent received the mortgage funds from the lender and duly transferred the purchase price. The conveyancing documentation was delivered to the Respondent and the same was then submitted on behalf of Mr F to the Land Register. Mr F's Land and Charge Certificates were issued by the Registers of Scotland on 16 November 2009.

In dealing with the foregoing transaction, the Respondent failed to comply with the obligations imposed upon him in terms of the CML Handbook and in terms of which he agreed to act on behalf of the lender. In particular he failed to report to the lender that; a) this was a “back-to-back” transaction whereby the seller had not owned the property for a period in excess of six months and that contrary to paragraph 5.1.1 of the CML Handbook; and b) there was an approximate 50% uplift in the price between the price paid by the mid purchaser and by his client and that the amount of loan being provided exceeded the price paid by the mid purchaser of the property, contrary to 5.1.2 of the CML Handbook.

#### 7.8 Purchase of Property 5

Mr D of Company 1 emailed the Respondent on 9 September 2009 advising that Ms R had made an offer on behalf of said company to purchase the property at a price of £33,000 and that the Respondent was to submit an offer to MS R for his client, for his client, Mr G to purchase said property and that at a price of £55,000. The deposit was to be provided by NDI. On 10 September 2009 TCP faxed an offer to Ms R on behalf of Mr G offering to purchase the property at a price of £55,000 but with no Date of Entry being specified. Loan instructions dated 8 September 2009 from National Westminster Home Loans Limited instructed TCP to act on their behalf and in accordance with the CML Lenders Handbook for Scotland and their part 2 instructions. The lenders were proposing to lend Mr G £41,250 and that based on a purchase price of £55,000. Ms R issued a Qualified Acceptance dated 23 September 2009 which provided the Date of Entry being 30 September 2009. On 2 October 2009 TCP advised the lenders that the deposit was coming via an equity release agreement, attached a copy of the agreement and requested the lenders to confirm that they were

content for the transaction to proceed. The lenders responded on 12 October confirming that they were indeed content to proceed. TCP then faxed a missive to Ms R on 12 October providing for the Date of Entry to be no later than 19 October and MS R immediately concluded the contract. A clear Certificate of Title signed by the Respondent was sent to the lender on 12 October 2009. Said Certificate confirmed that the Respondent had investigated the title to the property in accordance with the lender's instructions and the CML Handbook. The Respondent received the mortgage funds from the lender on 13 October 2009 and the Respondent received the deposit from NDI on 14 October 2009. TCP transferred the purchase price on 15 October 2009. The conveyancing documentation was delivered to the Respondent and the same then submitted on behalf of Mr G for the Land Register. Mr G's Land and Charge Certificates were issued by the Registers of Scotland on 26 November 2009.

In dealing with the foregoing transaction, the Respondent failed to comply with the obligations imposed upon him in terms of the CML Handbook and in terms of which he agreed to act on behalf of the lender. In particular he failed to report to the lender that; a) this was a "back-to-back" transaction whereby the seller had not owned the property for a period in excess of six months and that contrary to paragraph 5.1.1 of the CML Handbook; and b) there was an approximate 60% uplift in the price between the price paid by the mid purchaser and by his client and that the amount of loan being provided exceeded the price paid by the mid purchaser of the property, contrary to 5.1.2 of the CML Handbook

#### 7.9 Purchase of Property 6

Mr D of Company 1 emailed the Respondent on 28 August 2009 advising that Elmslies, Solicitors, Edinburgh had

submitted an offer on behalf of said company to purchase Property 6 from Mr H at a price of £55,000 and that the Respondent was to act on behalf of Mr I and Ms J and to submit an offer on their behalf to Elmslies to purchase the said property at a price of £80,000. NDI would be providing the deposit. On 31 August 2009 TCP faxed an offer to Elmslies on behalf of Mr I and Ms J offering to purchase the property at a price of £80,000 but with no Date of Entry being specified. On 29 September 2009 TCP sent a fax to Birmingham Midshires advising that the deposit for the transaction was being provided being an equity release agreement, attaching a copy of the loan agreement and requesting the lenders to confirm that they were content to proceed with the transaction on this basis. The lenders confirmed their agreement by letter dated 5 October 2009. Loan instructions dated 8 October 2009 from Bank of Scotland plc instructed TCP to act on their behalf and in accordance with the CML Lenders Handbook for Scotland and their part 2 instructions. The Lenders were proposing to lend Mr I and Ms J £59,965 and that based on a purchase price of £80,000. TCP faxed a missive to Elmslies on 15 October providing for the Date of Entry to be taken no later than 23 October and Messrs Elmslies duly concluded the contract on that date. A clear Certificate of Title signed by the Respondent was sent to the lenders on 15 October 2009. The Respondent received the mortgage funds from the lender and the funds from NDI for the deposit on 19 October 2009. TCP transferred the purchase price of £80,000 on 20 October 2009. The conveyancing documentation was delivered to the Respondent and the same was then submitted on behalf of Mr I and Ms J to the Land Register. Land and Charge Certificates were duly issued by the Registers of Scotland on 5 January 2010. At the date of settlement, Elmslies advised TCP that the seller was to be renting to the property back from their clients so no keys were to be delivered at settlement.

In dealing with the foregoing transaction, the Respondent failed to comply with the obligations imposed upon him in terms of the CML Handbook and in terms of which he agreed to act on behalf of the lender. In particular he failed to report to the lender that; a) this was a “back-to-back” transaction whereby the seller had not owned the property for a period in excess of six months contrary to paragraph 5.1.1 of the CML Handbook; b) there was an approximate 60% uplift in the price between the price paid by the mid purchaser and by his client and that the amount of loan being provided exceeded the price paid by the mid purchaser of the property; and c) the property was apparently being leased back by his clients to the seller of the property, all contrary to 5.1.2 of the CML Handbook.

#### 7.10 Purchase of Property 7

By letter dated 9 October 2009, Company 1 wrote to the Respondent instructing him to act on behalf of Mr and Mrs K in their purchase of the property at property 7 at a price of £78,000. Ms R were acting on behalf of Company 1 in the purchase of said property from Ms L at a price of £49,000. On 10 October TCP sent a formal letter to MS R offering to purchase the property on behalf of Mr and Mrs K at a price of £78,000 but with no Date of Entry being specified and the offer was also made subject to survey. Loan instructions dated 7 September 2009 from Bank of Scotland plc instructed TCP to ac on their behalf and in accordance with the CML Lenders Handbook for Scotland and their part 2 instructions. The lender proposing to lend Mr and Mrs K £58,500 and that based on a purchase price of £78,000. The majority of the deposit was being providing by NDI. A letter dated 29 September was faxed to the lender on 14 October by TCP advising that the deposit was being provided via an equity release agreement, attaching a copy of the loan agreement and requesting the

lenders confirmation that they were content for the transaction to proceed. The lenders responded on 16 October confirming that they were content with matters. Ms R had issued a Qualified Acceptance on 15 October providing for the Date of Entry to be 13 November 2009. On 19 October TCP faxed a missive to AW providing for the Date of Entry to be 23 October 2009 and Ms R concluded the contract on 20 October. That date Mr and Mrs K provided a sum of £1,035 towards the deposit, the Respondent received the mortgage funds from the lender on 22 October and on 23 October NDI transferred the balance of the deposit to allow the transaction to settle on that date. The conveyancing documentation was delivered to the Respondent and the same then submitted on behalf of Mr and Mrs K to the Land Register and their Lands and Charge Certificates were issued by the Registers of Scotland on 25 November 2009.

In dealing with the foregoing transaction, the Respondent failed to comply with the obligations imposed upon him in terms of the CML Handbook and in terms of which he agreed to act on behalf of the lender. In particular he failed to report to the lender that; a) this was a “back-to-back” transaction whereby the seller had not owned the property for a period in excess of six months contrary to paragraph 5.1.1 of the CML Handbook; and b) there was an approximate 60% uplift in the price between the price paid by the mid purchaser and by his clients and that the amount of loan being provided exceeded the price paid by the mid purchasers of the property, contrary to 5.1.2 of the CML Handbook.

#### 7.11 Purchase of Property 8

Mr D of PCW emailed the Respondent on 25 August 2009 advising that Ms R had made an offer on the company’s behalf to purchase Property 8 from Mr M at a price of £33,000. The

Respondent was instructed to act on behalf of Ms N to submit an offer on behalf of his client to Ms R to purchase the said property at a price of £60,000. NDI would be providing the deposit. On 25 August 2009 TCP faxed a formal offer to Ms R on behalf of Ms N offering to purchase the property at a price of £60,000 but with no Date of Entry being specified. The offer was also to be subject to survey. Loan instructions dated 12 August 2009 from Bank of Scotland plc instructed TCP to act on their behalf and in accordance with CML Lenders Handbook for Scotland and their part 2 instructions. The lenders were proposing to lend Ms N £42,000 based on a purchase price of £56,000. Ms R issued a Qualified Acceptance amending the purchase price to £56,000. On 28 September 2009 Ms N advised that she was paying a small part of the deposit from her savings and that the remainder was being provided by an equity release scheme with NDI. On 29 September TCP sent a fax to the lenders advising that the deposit was being provided via an equity release scheme, attaching a copy of the loan agreement and requesting the lender's confirmation that it was content to proceed in that manner. On 1 October the lenders provided their confirmation in that regard. TCP issued a missive dated 2 October 2009 providing that the purchase price would be £56,000 with a Date of Entry of 7 October. Ms R concluded the contract on 6 October. A clear Certificate of Title signed by the Respondent was sent to the lender on 5 October. The Respondent received the mortgage funds from the lender on 6 October and the deposit on 7 October. TCP duly transferred the purchase price and the transaction settled on that date. The conveyancing documentation was delivered to the Respondent and the same was then submitted on behalf Ms N to the Land Register.

In dealing with the foregoing transaction, the Respondent failed to comply with the obligations imposed upon him in terms of

the CML Handbook and in terms of which he agreed to act on behalf of the lender. In particular he failed to report to the lender that: a) this was a “back-to-back” transaction whereby the seller had not owned the property for a period in excess of six months and that contrary to paragraph 5.1.1 of the CML Handbook; and b) there was an approximate 70% uplift in the price between the price paid by the mid purchaser and by his client and that the amount of loan being provided exceeded the price paid by the mid purchaser of the property, contrary to 5.1.2 of the CML Handbook.

#### 7.12 Purchase of Property 9

Ms R acted for Company 1 which was purchasing Property 9 Glasgow from Mr P at a price of £114,000. They sent a copy of Mr P’s Land Certificate to TCP on 8 September 2009. TCP had on 7 September submitted an offer to Ms R on behalf of Mr O offering to purchase the property at price of £145,000 but with no Date of Entry being specified and the offer was declared to be subject to survey. Loan instructions dated 14 October 2009 from Bank of Scotland plc instructed TCP to act on their behalf and in accordance with the CML Lenders Handbook for Scotland their part 2 instructions. The lenders were proposing to lend Mr O £108,665 and that based on a purchase price of £145,000. In addition, a special condition narrated that the lenders would not accept any amendment to the Certificate of Title. On 16 October Mr O advised that the balance of the purchase price was being provided by NDI. TCP then faxed the lenders on 19 October indicating that the deposit was being provided via an equity release scheme, forwarding a copy of the loan agreement and requesting the lender’s confirmation that they were contact to proceed in that manner. The lenders confirmed the following date that they were content to proceed. A clear Certificate of title signed by the Respondent was sent to the lender on 27 October 2009. The



Respondent received the mortgage funds from the lender on 28 October 2009 and the deposit from NDI and a small additional amount from the client and the transaction duly settled on that date. The conveyancing documentation was delivered to the Respondent and the same was then submitted on Mr O to the Land Register. Mr O's Land and Charge Certificates were issued by the Registers of Scotland on 24 November 2009.

In dealing with the foregoing transaction, the Respondent failed to comply with the obligations imposed upon him in terms of the CML Handbook and in terms of which he agreed to act on behalf of the lender. In particular he failed to report to the lender that: a) this was a "back-to-back" transaction whereby the seller had not owned the property for a period in excess of six months contrary to paragraph 5.1.1 of the CML Handbook; and b) there was an approximate 30% uplift in the price between the price paid by the mid purchaser and by his client and that the amount of loan being provided exceeded the price paid by the mid purchaser of the property, contrary to 5.1.2 of the CML Handbook.

#### 7.13 Purchase of Property 10

Mr D of Company 1 emailed the Respondent on 24 July 2009 advising that Ms R had submitted an offer on behalf of the company to purchase property 10 at a price of £50,000 and instructing the Respondent to submit an offer on behalf of his client, Mr Q to purchase the said property from the company at a price of £75,000. NDI would be providing the deposit. On 24 July 2009 TCP submitted an offer to Ms R on behalf of Mr Q offering to purchase the property at a price of £75,000 but with no Date of Entry being specified. Loan instructions dated 30 July 2009 from the Mortgage Works instructed TCP to act on their behalf and in accordance with the CML Lenders Handbook for Scotland and their part 2 instructions. Further,

TCP were instructed subject to the Respondent's firm having a minimum of two full time partners. The lenders were proposing to lend Mr Q £52,440 based on a purchase price of £75,000. Ms R issued a Qualified Acceptance on 4 August 2009 providing for the Date of Entry to be 28 August 2009. Settlement of the transaction was delayed as difficulties arose in relation to the funding of the deposit. On 29 September 2009 TCP sent a fax to the lenders advising that the deposit was being provided via an equity release agreement, attaching a copy of the loan agreement and requesting the lenders confirmation that they were content to proceed in that manner. The lenders confirmed their agreement on 1 October. A clear Certificate of Title signed by the Respondent was sent to the lender on 2 October 2009. Said Certificate confirmed that the Respondent had complied with the lender's instructions and all in accordance with the CML Handbook. On the same date TCP faxed a missive to Ms R providing for the Date of Entry to be 7 October. Ms R issued a formal letter concluding the contract on 6 October. The Respondent received the mortgage funds from the lender on 5 October and the deposit from NDI on 7 October. TCP then duly transferred the purchase price of £75,000. The conveyancing documentation was delivered to the Respondent and the same was then submitted on behalf of Mr Q to the Land Register. Mr Q's Land and Charge Certificates were issued by the Registers of Scotland on 22 December 2009.

In dealing with the foregoing transaction, the Respondent failed to comply with the obligations imposed upon him in terms of the CML Handbook and in terms of which he agreed to act on behalf of the lender. In particular he failed to report to the lender that; a) this was a "back-to-back" transaction whereby the seller had not owned the property for a period in excess of six months contrary to paragraph 5.1.1 of the CML Handbook;

and b) there was an approximate 50% uplift in the price between the price paid by the mid purchaser and by his client and that the amount of loan being provided exceeded the price paid by the mid purchaser of the property, contrary to 5.1.2 of the CML Handbook.

8. Having given very careful consideration to the submissions made by both parties in respect of whether the admitted facts were sufficiently serious and reprehensible to amount to professional misconduct, the Tribunal found the Respondent guilty of professional misconduct in cumulo in respect of;

- a) His failure to comply with the terms of the common law standard applicable to a solicitor acting on behalf of a lender in a conveyancing transaction. In particular his failure to i) report to his client, an unusual circumstance ii) comply with the explicit instructions provided to him by his client, being the obligations imposed upon him as provided for within the CML Handbook applicable to Scotland and iii) act with absolute propriety and to protect the interests of his client, that being the lender, in respect of each transaction.
- b) His failure to comply with Regulations 5 and 14 of the Money Laundering Regulations 2007 and Rule 24 of the Solicitors (Scotland) Accounts Etc Rules 2001.
- c) His failure in these transactions, where he had overall supervisory responsibility for the said transactions, to properly and adequately supervise the actings of those to whom the files were delegated, namely a paralegal in his employ.

9. Having heard both parties in mitigation, the Tribunal pronounced an interlocutor in the following terms:-

Edinburgh 18 April 2013. The Tribunal having considered the amended Complaint at the instance of the Council of the Law Society of Scotland against Scott Campbell, Solicitor of 11/13 Crichton Street, Dundee; Find the Respondent guilty of Professional Misconduct in cumulo in respect of his failure to comply with the common law standard applicable to a solicitor acting on behalf of a lender in a conveyancing transaction and in particular his failure to report to his client an unusual circumstance and to comply with the explicit instructions provided to him by his client being the obligations imposed on him as provided for within the CML Handbook applicable to Scotland; His failure to act with absolute propriety and to protect the interest of his client being the lender in respect of each transaction; His failure to comply with Regulations 5 and 14 of the Money Laundering Regulations 2007 and Rule 24 of the Solicitors (Scotland) Accounts Etc Rules 2001 and his failure to properly and adequately supervise a paralegal in his employ; Censure the Respondent and find the Respondent liable for the expenses of the Complainers and of the Tribunal including the expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

**(signed)**

**Dorothy Boyd**  
**Vice Chairman**

10. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on

**IN THE NAME OF THE TRIBUNAL**

**Vice Chairman**

**NOTE**

This matter called as a hearing before the Tribunal on 18 April 2013. An amended Complaint and Joint Minute were both lodged at this time. The Joint Minute reflected that everything in the amended Complaint, apart from the averments relating to professional misconduct were agreed. No evidence therefore required to be led and the hearing could proceed on the basis of submissions on behalf of both parties

**SUBMISSION FOR THE COMPLAINERS**

Mr Knight invited the Tribunal to hold that this was a case of professional misconduct. He indicated that this case was one of the failure by the Respondent to report back to back transactions, failure to supervise a paralegal and on one occasion inadequate client identification being obtained. The case involved nine conveyancing transactions in total. All of the transactions were introduced to the Respondent by a third party – the person identified in paragraph 2.4 of the Complaint, who was a qualified conveyancer. Mr Campbell accepts that his firm received these instructions and that these transactions were delegated to a paralegal. All of the Missives and Certificates of Title sent to the lenders were signed by the Respondent. In two of the transactions in particular (Property 5 and Property 10) the lender's instructions require that the Certificates of Title confirm total compliance with the CML Handbook. Eight of the transactions took place over a period of 28 days. Concerns were raised during an inspection by the Law Society on 16 November 2009. The Respondent was then interviewed by the Guarantee Fund Committee in February 2010. Another inspection took place in September 2010. The Law Society felt that prosecution was appropriate.

All nine transactions involved the same mid purchaser – Company 1. In eight of the transactions the deposits were being financed by NDI. Subsequently it has been discovered that there is in fact a connection between the two companies. The two companies have a common director – Mr D. It is conceded by the Complainers that at the time of the instructions, however, this connection was not known and the Complainers were not suggesting that the Respondent should have made the

connection at that stage. Original suggestions of the failure of the Respondent to identify NDI were no longer part of the Complainer's case.

Additionally, in the amended Complaint only one matter involved issues to do with money laundering checks. That was the transaction noted in paragraphs 3 and 3.01 of the Complaint. In that case although the Respondent had obtained documents, the documents were not certified. The Respondent was accepting that he had not fully complied with his duties in terms of the Money Laundering Regulations.

All nine of the transactions involved back to back transactions. The Respondent failed to report any of them to the lenders. The complainers did accept that the Respondent had reported to the lenders that NDI was providing the deposits in some of the cases. In all nine cases the Respondent failed to report 1) that the seller had not owned the property for six months, 2) that there were significant uplifts in the prices and 3) that the amount of the loan exceeded the price paid by the mid purchaser. These were all matters of fact and matters of agreement. Mr Knight was aware that the Respondent was going to argue that at best these admissions amounted to unsatisfactory professional conduct. He was inviting the Tribunal to hold that these failures amounted to professional misconduct. He referred briefly to the cases of Christopher Campbell, Campbell Joss and Douglas Kerr.

## **SUBMISSIONS FOR THE RESPONDENT**

Mr Ferguson emphasised to the Tribunal that the Respondent had, prior to these matters, a good reputation. He indicated that he considered the Respondent to be "one of the good guys". The Respondent was genuinely contrite.

Although nine incidents sounded a lot, these transactions took place close together over a very short period. There had been three transactions where there were no issues and had been straightforward. The transactions covered by the Complaint were the following nine which had been delegated by the Respondent to his paralegal.

Mr Ferguson submitted that not every breach of a Rule is professional misconduct. He made particular reference to the case of Sharp and emphasised that in each case it

was “essential to consider the whole circumstances and degree of culpability which ought properly to be attached to the individual”. It was his position that the Tribunal had to consider the whole thing in all its aspects. It was not the Respondent’s position that he did not know that he had to report these issues. It was his position that the Respondent had had no suspicions about these transactions. His only concerns about the nine transactions were that deposits were being financed by NDI. Necessary enquiries were made and confirmed that these deposits appeared legitimate. These matters were reported to the lenders. In his submission, the fact that the Respondent had reported the deposits being financed by NDI put the failures to report that the transactions were back to back transaction into context. A lower category of offence, namely unsatisfactory professional conduct was introduced in 2007. This involved conduct “which is not the standard which could reasonably be expected of a competent and reputable conveyancing practitioner”. The Tribunal in this case requires to consider whether the conduct complained of amounts to professional misconduct, unsatisfactory professional conduct or neither. He referred to the case of CLSS-v-Euan Charles Chisholm, 17 June 2009 where the Tribunal held that a single incident was not enough to meet the Sharp test where they were looking for deliberate conduct rather than an oversight. It was conceded that at the end of the day there was a breach here but it was not conceded that it required to be dealt with and if it did require to be dealt with it should be treated as unsatisfactory professional conduct rather than professional misconduct. This case now involved the failure to supervise an employee and not direct or deliberate acts by the Respondent himself. He submitted that there was no reckless conduct in this case and that the conduct complained of did not disclose culpability on the part of the Respondent. Mr Ferguson referred to the book by Paterson and Ritchie, “Practice and Conduct for Solicitors” where it was said that misconduct would require mens rea, recklessness or negligence. None of these things were disclosed in this case. It should be emphasised that no client has complained about the Respondent – even though, since these matters came to light, the Respondent has written to each of the lenders indicating what had not previously been disclosed. Even since then the lenders have kept the Respondent’s name on their approved panels.

This was the first occasion where the Respondent had dealt with business of this type, where transactions were referred to him from an outside third party. The Respondent



had completed three cases personally. He was aware of the potential pitfalls connected with this type of business. When he got these transactions he was careful to check how they were funded. The Respondent did report the issues to do with NDI Finance. He had however failed to spot that the transactions passed to the paralegal were back to back transactions. It should be pointed out that these transactions took place four years ago. It was easier to see the issues now because there has been lots of publicity. The Joy Dunbar case had caused lots of concern in the profession. Prior to that case members of the profession had been unaware of their obligations under the CML Handbook. An indication of how slow the profession had been to recognise their obligations under the Handbook was the approach to Standard Clauses in Missives. It was not until 2011 that the Standard Missives in Glasgow were amended to reflect the six month rule and the Standard Clauses and Missives were considered by four professors of conveyancing.

In answer to a question by the Chairman as to whether or not the Respondent was aware that such matters required to be reported, Mr Ferguson conceded that the Respondent was so aware. In response to a question from the Chairman regarding the state of knowledge of the paralegal Mr Ferguson indicated that she had been with the firm since 2001 and had completed the paralegal course with Strathclyde shortly prior to these transactions. The Respondent himself interjected and confirmed that the paralegal had no experience of back to back transactions and had no knowledge of the requirement to report. He conceded that he should have gone through this with her. He further conceded that had he been dealing with these nine transactions he would have seen these issues.

The Tribunal pointed out to Mr Ferguson that the instructing emails in many of the transactions identified that these were back to back transactions and involved inflated prices. The Respondent himself confirmed that looking at the emails there were clear signs that these were back to back transactions. The Respondent indicated that he had allowed his secretary to deal with these emails and had specified that they were to go directly to the paralegal. He conceded that his failure was not spending time looking at the instructions and accepted that looking back at them now there were clear signs that at the time he did not notice.

Mr Ferguson submitted that if the paralegal had no experience of back to back transactions then it would be difficult to spot. In this case the Respondent had fallen into a trap. The three transactions that he had dealt with did not raise any issues. The Respondent had failed to appreciate the details of the nine transactions involved in this Complaint.

He emphasised that back to back transactions are not illegal. There is no question of the Proceeds of Crime Act being involved here. All of the mortgage lenders have forgiven the Respondent for his lapses.

The Chairman asked Mr Ferguson if he did not find it surprising that the paralegal had not remarked on the increases in price between the two purchasers. In particular in one case there was a 70% uplift in a flat conveyancing market. Mr Ferguson responded that the paralegal had not recognised any difficulty with that issue. These transactions were required to move quickly. He emphasised that there was no indication of any crime being committed here. The only issue was that these were back to back transactions.

Mr Ferguson indicated that he would draw a sharp distinction between the case of Scott Campbell and the other reported cases of breaches of the CML Handbook. He referred to the case of Kevin Davidson where there were systematic ongoing failings and these failings had gone on over a long period and there had been three Law Society inspections with continuing difficulties. This case was of a different order. The case of Joy Dunbar involved a deliberate decision 'not to report'. This involved a case where a paralegal had not brought to the Respondent's attention that there was a back to back aspect. No other issues were raised here. The Respondent had intimated to the lenders that deposits were being funded by third parties. Proper valuations from respectable surveyors had been obtained.

There continues to be ignorance on the part of the profession with regard to the contents and significance of the CML Handbook as disclosed by remarks made by a Council member at the Law Society of Scotland AGM in March.

In conclusion Mr Ferguson emphasised that the test for professional misconduct depended upon the whole circumstances of each case. The present case is unusual and there appeared to be few authorities dealing with issues of lack of supervision. Breaches of the CML Handbook are being taken by the Tribunal to be very serious and some are. In Mr Ferguson's submission, this case was different. Not all cases had to be treated as so serious. This was a unique case where the Tribunal had the power to treat it as a lower level breach.

The Tribunal sought clarification with regard to the matters reported since the issues had come to light. The Respondent confirmed that he had been advised by the Law Society to write to the lenders and tell them that the transactions had been back to back. The Tribunal also sought clarification with regard to the significance of the repeat inspection. The Respondent confirmed that the second inspection had not disclosed any further incidents and that he had yet another inspection where no concerns of this kind had been raised. The Respondent also confirmed for the Tribunal that the levels of fees charged for the work carried out in these transactions had not been out of the ordinary.

## **DECISION**

The Tribunal gave very careful consideration to the submissions on behalf of both parties. The issues were quite clear. There had been nine transactions between July 2009 and October 2009. Each transaction had been a back to back transaction and each had involved a considerable uplift in the price to be paid on the second purchase. Each transaction had been referred to the Respondent by an outside source. All of the transactions were delegated to the same paralegal to deal with. No intimation had been made to any of the lenders that these were back to back transactions, involving price uplifts. In at least six of these transactions, the original letter/email of instruction identified the transaction as a back to back transaction with a significant price uplift.

When a solicitor takes instructions from a lender he owes that lender the same duties of care as to any other client. If that solicitor delegates the work he remains ultimately responsible for the standard of any work actually carried out. Consequently, he is under a duty to appropriately supervise the individual directly involved. The nine

transactions described in the amended Complaint disclosed a complete lack of supervision on the part of the Respondent, to such a degree that his conduct could be described as nothing less than reckless.

The Respondent had conceded that these instructions were unusual for his firm as he had normally dealt with repeat business from known clients. These transactions were all introduced to him by an outside source. The Respondent accepted that the letters of instruction were all passed directly by a secretary to a paralegal, who had only recently completed her qualification. In all of the transactions it was perfectly clear that matters required to be intimated to mortgage lenders that in fact were not. If the matters that required to be intimated were not immediately identified in a letter of instruction, they were clearly obvious in the early course of the transactions. It was the complete failure on the part of the Respondent to offer any supervision to his paralegal that led to a multiplicity of failures to report significant issues to mortgage lenders.

The Tribunal accepted that the conduct complained of in the amended Complaint did not suggest any degree of criminality or wilfulness on the part of the Respondent himself. It was quite clear that the Respondent had reported some significant issues to the lenders concerned. However his complete failure to supervise his staff had led to a series of extremely significant matters not being reported to his clients. The CML Handbook is a fundamental part of the lenders instructions. The conditions set out in the Handbook are there to safeguard the lenders. Condition 5.1.1 makes it perfectly plain that back to back transactions are to be reported to the lender involved. The price uplifts in all of these transactions were all substantial and affected the amount of loan offered. They clearly required to be reported in terms of Condition 5.1.2 of the Handbook. The Respondent himself had conceded that he knew that such matters were important and required to be reported. He conceded that if he had been aware of these issues he would have reported them. If he had exercised the appropriate level of supervision then these issues would have been obvious to him. Such failures to comply with these Conditions are damaging to the reputation of the profession and led to a failure to safeguard the lenders' interests.

Given the number and nature of these transactions, and the complete failure on the part of the Respondent to supervise his paralegal, the Tribunal concluded that the standard of recklessness on the part of the Respondent demonstrated a complete departure from the standards of conduct expected of a competent and reputable solicitor was of a level that was so serious and reprehensible that it should be categorised as professional misconduct.

With regard to the breaches of the Solicitors Accounts Rules and the Money Laundering Regulations, the Tribunal took the view that the one incident described in isolation would not have been sufficient to amount to professional misconduct, but in this case it did contribute to a finding of professional misconduct in cumulo.

## **MITIGATION**

The Tribunal reconvened and indicated its finding of professional misconduct to the Respondent. Both parties were invited to address the Tribunal with regard to penalty. The Respondent referred to his earlier submissions with regard to factors to be taken into account in mitigation. Mr Ferguson lodged a number of references that had been submitted on behalf of the Respondent. He drew the Tribunal's attention in particular to one of the references that had been volunteered by a local solicitor. He emphasised that all of the references demonstrated that the Respondent was seen as a diligent and well respected colleague. The fees charged in this case had not been high and since these matters had been drawn to his attention by the Law Society the Respondent has not accepted any more of this kind of work.

Mr Knight indicated to the Tribunal that he had agreed with Mr Ferguson to draw mitigating factors to the attention of the Tribunal. He confirmed that it was the Law Society who had discovered these matters in the inspection in 2009. The Respondent has been inspected twice since then with no further repetitions. The Law Society took the view that the Respondent had "taken his eye off the ball". He appeared to have learned a salutary lesson. Those instructing Mr Knight were indicating that they were not seeking to have the Respondent's certificate restricted or removed.

Mr Ferguson concluded by confirming that if the Respondent's certificate were to be restricted then that would mean the end of his career.

## **PENALTY**

The Tribunal took account of the following factors in considering penalty:-

1. The Respondent had fully cooperated with the Law Society and had entered in to a Joint Minute for the hearing on 18 April 2013.
2. The Respondent showed remorse and demonstrated insight into the failures of his conduct.
3. There had been no repetition of this type of incident since the first inspection by the Law Society.
4. There was clear evidence, including a number of references from colleagues, of good character and no previous problems.
5. His conduct did not appear to be deliberate or premeditated.

All of these factors together indicated that there was no on-going risk to the public from the Respondent and that there was no need for any requirement for supervision.

Taking into account all that had been said on behalf of the Respondent, his misconduct could be seen to fall at the lower end of the scale of professional misconduct and as such a Censure would be an appropriate penalty. The Tribunal made the usual order with regard to publicity and followed the usual practice of awarding expenses where a Respondent is found guilty of professional misconduct.

**Dorothy Boyd**  
**Vice Chairman**