

**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

**JAMES WILLIAM CRAIG, 270
Dumbarton Road, Partick,
Glasgow**

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, James William Craig, 270 Dumbarton Road, Partick, Glasgow (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. The matter was set down for a procedural hearing on 29 August 2013. On this date parties advised that they were still involved in detailed discussions and a further procedural hearing was fixed for 15 October 2013.
4. When the case called for a procedural hearing on 15 October 2013 the Law Society were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The Respondent was represented by James McCann,

Solicitor, Clydebank. A full hearing was fixed for 12 December 2013 with an intermediate procedural hearing on 15 November 2013 to ascertain the outcome of the case against Mr H.

5. The procedural hearing on 15 November 2013 was discharged as the case against Mr H had not yet been dealt with. A further procedural hearing took place on 26 November 2013 when the Law Society were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The Respondent was represented by James McCann, Solicitor, Clydebank. The Tribunal allowed adjusted Answers to be lodged. The hearing set for 12 December 2013 was discharged and a fresh hearing fixed for 25 February 2014. Both parties indicated that it was hoped that agreement could be reached between the parties resulting in a Joint Minute being lodged.
6. When the case called on 25 February 2014 the Respondent was present and represented by Nicholas Ellis QC. The Law Society were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh.
7. An amended Complaint was lodged with the Tribunal and accepted by the Tribunal. The Respondent then pled guilty to the averments of fact, averments of duty and averments of professional misconduct in the amended Complaint. There was accordingly no requirement for any evidence to be led.
8. After having heard submissions from both parties, the Tribunal found the following facts established:-
 - 8.1 The Respondent is a Solicitor enrolled in the Registers of Scotland. His date of birth is 26 July 1964 and he was enrolled as Solicitor on 23 September 1986. He is a Partner, the Risk Partner, Client Relations Partner and Cashroom Partner of Messrs Archibald Sharp & Son, Solicitors, 270 Dumbarton

Road, Partick, Glasgow. In addition he is the Money Laundering Reporting Officer for said firm.

- 8.2 The Financial Compliance Department of the Complainers conducted an inspection of the Respondents' financial records, books, accounts and documentation on 4 and 5 April 2011. This inspection identified matters of serious concern including his involvement in conveyancing transactions where issues were raised regarding The Solicitors (Scotland) Accounts Rules and the Money Laundering Regulations. The Respondent was interviewed by the Complainers Guarantee Fund Committee on 21 July 2011. The Respondent failed to address the issues and concerns which were raised to the satisfaction of the Complainers and as a consequence of which a formal complaint was intimated to the Respondent.

Purchase of Property 1

- 8.3 On 13 October 2010 the Respondent was invited by email from Mr A to accept instructions to act on behalf of Company 1 of Property 2, whose beneficial owner was Mr B in relation to the property at Property 1. Said instructions would be to the effect *inter alia* that Company 1 was to purchase said property for said company for £42,500 from Mr A and further that said property was then to be part exchanged with another property with that other property being dealt with by another firm of solicitors. On 21 October the Respondent submitted an offer on behalf of Company 1 to The Lints Partnership to purchase the property at Property 1, at a price of £42,500 with a date of entry of 18 November 2010. Also on said date the Respondent issued his money laundering and Terms of Engagement letter to Company 1. A copy of said offer was also emailed to Mr A on 21 October. The Respondent completed a Money Laundering Risk

Assessment form in which he categorised the risk level in respect of said instructions as low.

8.4 On 7 November the Respondent received a further email from Mr A. Said email also bore to have been sent to The Lints Partnership, Mr C, Mr H of Company 4 and another firm of solicitors hereinafter referred to as “JMCC”. The subject matter of said email was “Disposition by Limited Company “and it attached a copy of a draft Disposition to be used in all part exchange transactions. Said email narrated *inter alia* that JMCC was to submit an offer to purchase a property at Property 3 to The Lints Partnership on behalf of Company 2. The Respondent, acting for Company 1, was noted as having submitted an offer to The Lints Partnership for the property at Property 1. Reference is made to paragraph 8.3. The Respondent and JMCC were then to part-exchange the two properties with the consideration for Property 3 being Property 1, plus the receipt of £4,500 and the consideration for Property 1, being Property 3 plus a payment of £4.500. The Respondent and JMCC were then to register the titles detailing the part-exchange details which would then satisfy the requirements of CT who was acting for the end-purchasers. Said email also narrated that funding had been offered for each property with a limited lifespan and requesting that the transactions be prioritised.

8.5 On 16 November the Respondent wrote to The Lints Partnership with an engrossed Disposition and draft Forms 2 and 4 for revisal and return and said letter requested sight of a Form 12 Report and a draft Form 13. By email dated 16 November the Respondent wrote to Macallister White LLP, the company solicitors acting for Company 1, requesting a copy of the certificate of incorporation and details of the Directors, Secretary and Shareholders. By letter dated 18 November, The

Lints Partnership exhibited to the Respondent a Form 12 report disclosing that Mr A had acquired the property on 10 August 2010 for a price of £42,500. By letter dated 29 November The Lints Partnership issued a Qualified Acceptance on behalf of Mr A altering the date of entry to 3 December. On 3 December the Respondent received an email from Mr A requesting confirmation of when Company 1 could complete the purchase of Property 1 so that Mr A could contact Mr B to organise the funds transfer. By email dated 13 December, the Respondent's assistant wrote to The Lints Partnership, JMCC, Mr A and Company 3 asking Mr B about funding to proceed with the purchase transaction. It also noted that Mr B had already been sent a note of the sums required. By email dated 15 December sent to Company 3 and the Respondent, Mr A requests the transfer of funds be sent by Mr B to the Respondent. On 16 December a sum of £42,555 was credited to the Respondent's client account by bank transfer on the order of Company 3. By email on said date addressed to Company 3 and Mr A, the Respondent's assistant noted that the funds should have been transmitted by Company 1 and requested confirmation of the relationship between Company 3 and Company 1. A reply to said email was received on the same date from Mr B in which he advised that he was the sole owner and Director of both companies and that Company 3 was lending the funds to Company 1 for the purchase transaction. A Form 12A dated 15 December was exhibited to the Respondent disclosing a Standard Security by Mr A in favour of Ms D and registered on 9 December 2010. By letter dated 21 December the Respondent wrote to The Lints Partnership issuing a further qualifying missive altering the date of entry to 17 December. By letter dated 22 December The Lints Partnership concluded the bargain. Notwithstanding the foregoing dates, the purchase price for said property had been remitted to The Lints Partnership on 17 December. The Disposition by Mr A in

favour Company 1 narrated a date of entry of 17 December 2010 and was submitted to the Registers of Scotland for registration on 23 December 2010. The Registers of Scotland acknowledged the application for registration on 24 December 2010.

Part-exchange of Property 1 and Property 3

8.6 On 17 November 2010 the Respondent submitted an offer on behalf of Company 1 to purchase the property at Property 3, with the consideration being made by way of a transfer of title from Company 1 to Company 2 of the Property 1 and a sum of £4,500, and with a date of entry specified as 10 December 2010. By letter dated 16 December, Messrs McCusker Cochrane & Gunn, Solicitors confirmed that they had completed the purchase on behalf of their clients, Company 2 of the said property and enclosed Land and Charge Certificates together with a copy of the Disposition in their client's favour. Said documentation disclosed that the property had been purchased by Mr C on 30 June 2010 for a sum of £47,000. Mr C was one of the parties to whom the email from Mr A dated 7 November 2010 had been sent. The Respondent knew of him as a business partner of Mr A. By letter dated 17 December Messrs McCusker Cochrane and Gunn enclosed a copy of the acknowledgement from the Registers of Scotland confirming receipt of the application for registration of the Disposition in favour of Company 2. Said company had purchased the said property from Mr C for a sum of £47,500 with a date of entry of 16 December 2010. Further missives were entered into altering the date of entry to 21 January 2011. Missives were concluded on that date. The Respondent had received on 20 January a sum of £4,500 by way of bank transfer and said sum was made over to McCusker Cochrane & Gunn in settlement of the transaction on 21 January.

8.7 On 16 December 2010 the Respondent wrote to Messrs McCusker Cochrane & Gunn enclosing a copy of the Land Certificate in respect of Property 1 and by letter dated 21 December the Respondent wrote to said solicitors enclosing a copy Disposition in favour of Company 1. The said Disposition disclosed that Mr A had sold said property to Company 1 for a sum of £42,500 with a date of entry of 17 December 2010. Said correspondence had been issued by the Respondent in furtherance of the part-exchange of said property with Property 3. By letter dated 13 January 2011 Messrs McCusker Cochrane & Gunn Solicitors, on behalf of their clients Company 2, submitted an offer to the Respondent for said company to purchase from the Respondent's clients, Company 1, the property at Property 1 with the price being made up of the transfer of title from Company 2 to Company 1 of the subjects at Property 3. The Respondent issued a Qualified Acceptance to said offer on 21 January. Further missives were issued on 21 January qualifying the date of entry to 21 January and the bargain was concluded on said date. The Respondent prepared a Disposition whereby Company 1 disposed in favour of Company 2 the property at Property 3 for the consideration of £4,500 and the conveyance of the property at Property 1. Said Disposition was emailed to Mr B at Company 3 on 19 January for his signature. The transaction settled on 21 January.

End Sale – Property 3

8.8 By letter dated 14 January 2011 Company 4 on behalf of their client, Mr E, submitted an offer to the Respondents offering to purchase the property at Property 3 for a price of £88,000 with a date of entry of 21 January 2011. Company 4 also acted on behalf of the lender providing funding for the purchase by Mr E. On 17 January the Respondent wrote to Company 4

enclosing the title deeds. On 18 January the Respondent wrote to Company 4 enclosing a copy of the acknowledgement from the Registers of Scotland in respect of the Disposition in favour of Company 2 being the Disposition by Mr C in favour of said company for a price of £47,500. By email dated 21 January the Respondent wrote to Mr B at Company 3 enclosing the Disposition for signature in respect of the proposed sale of said property. By letter dated 21 January Company 4 wrote to the Respondent in which they requested confirmation of their understanding that the Respondent's clients were a property development company who had acquired the property as a part-exchange and therefore that Company 4 need not concern themselves that the property had not been owned by the Respondent's clients for a six month period. Although, so far as the Respondent was aware, Company 4 had received the email dated 7 November 2010 and were thus aware of most of the pertinent facts about the relative transactions. Said six month period refers to the obligations incumbent upon Company 4 in terms of the CML Handbook. On 24 January the Respondent issued a Qualified Acceptance amending the date of entry to 26 January. By email dated 28 January the Respondent advised Company 4 that their clients, Company 1, were developers and builders selling the property acquired under a part-exchange scheme. By letter dated 1 February, Company 4 issued a further qualifying missive to the Respondent amending the date of entry to 1 February. By letter of even date, the Respondent duly concluded missives. The Respondent obtained a Form 12A report dated 31 January 2011 which they exhibited to Company 4 and which disclosed the property being purchased by Mr C registered on 17 August 2010, the Disposition by Mr C to Company 2 registered on 17 December 2010 and the Disposition by Company 2 in favour of Company 1 registered on 24 January 2011. The Respondent received into his client account by way of bank transfer the sale price of £88,000.

- 8.9 The Respondent then prepared a State for Settlement for his clients, Company 1, in connection with the purchase and sale of Property 1 and the purchase and sale of Property 3. Following the end sale of the property at Property 3, net free proceeds of sale remained in the sum of £85,137. By fax letter dated 4 February, Mr B of Company 1 instructed the net proceeds of sale to be forwarded to the client account of The Lints Partnership. By email dated 7 February, the Respondent advised Mr A that the said net free proceeds had been transferred to The Lints Partnership and enclosed his firm's receipted fee note and cash statement for his information.
- 8.10 In dealing with the foregoing transactions, the Respondent acted contrary to Rule 24 of the Accounts Rules in that he failed to carry out proper due diligence and verification in relation to the identity of his clients and the third party who provided the purchase price for the property at Property 1. Further, and in particular, the Respondent failed to comply with the provisions of the Money Laundering Regulations and Part 7 of the Proceeds of Crime Act 2002. The Respondent was made aware that the solicitors acting for the end-purchasers were obtaining lending facilities to complete those end-purchases. The Respondent ought to have suspected, having regard to the facts and circumstances as made known, the possibility that the transactions in which he was instructed had been designed to facilitate the obtaining of mortgage funding by deception. The net free proceeds of the sale of the property at Property 3 were transferred by the Respondent to The Lints Partnership. The Respondent subsequently recognised and accepted that a formal report ought to have been made to SOCA. A retrospective report was submitted by the Respondent after his interview with the Complainers Guarantee Fund Committee on 21 July 2011

9. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

- (a) a failing on his part to comply with the terms of the Accounts Rules insofar as they relate to Money Laundering Regulations, in particular rule 24.
- (b) a failing on his part to comply with regulations 5 and 14 of the Money Laundering Regulations 2007.
- (c) a failing on his part to comply with Part 7 of the Proceeds of Crime Act 2002 and in particular Section 330.

10. Having heard Counsel for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 25 February 2014. The Tribunal having considered the amended Complaint at the instance of the Council of the Law Society of Scotland against James William Craig, 270 Dumbarton Road, Partick, Glasgow; Find the Respondent guilty of Professional Misconduct in respect of his failure to comply with the terms of the Accounts Rules insofar as they relate to the Money Laundering Regulations and in particular Rule 24, his failure to comply with Regulations 5 and 14 of the Money Laundering Regulations 2007 and his failure to comply with Part 7 of the Proceeds of Crime Act 2002 in particular Section 330; Censure the Respondent; Fine him in the sum of £2,500 to be forfeit to Her Majesty; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including 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 and

may but has no need to include the names of anyone other than the Respondent.

(signed)

Malcolm McPherson

Vice Chairman

11. 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

Malcolm McPherson
Vice Chairman

NOTE

Mr Knight advised the Tribunal that following extensive discussions, agreement had been reached between the parties. Mr Knight lodged a fresh amended Complaint with the Tribunal which was accepted by the Tribunal.

Mr Ellis confirmed that his client pled guilty to the averments of fact, averments of duty and averments of professional misconduct in the amended Complaint.

SUBMISSIONS FOR THE COMPLAINERS

Mr Knight confirmed that the Complainers' Productions still stood and referred to a Secondary Inventory of Productions lodged today. He indicated that he would asking the Tribunal to make a finding of professional misconduct.

Mr Knight submitted that the Complaint involved three transactions in a chain of five transactions. These transactions were proposed in August 2010 and the proposal was that solicitors (including the Respondent) would do the legal work. The first instruction came in an email dated 13/14 October 2010 being Production 2 of the Complainers' First Inventory of Productions. The email at Production 7 provided the detail with regard to the emailed instructions. It outlines five transactions and sets out which solicitor would do what. Mr Knight stated that this email should have alerted the Respondent to the possibility that there was a fraud involved. Mr Knight however emphasised that there was no suggestion of any dishonesty by the Respondent.

Mr Knight further confirmed that the Law Society accepted that the Respondent had not fully comprehended what the full picture was at the time but as a result of this Complaint and the discussions which followed, the Respondent now was aware of the full picture.

Mr Knight explained what had happened in these transactions.

The first transaction was a purchase by Company 1 of Property 1. The Lints Partnership was selling on behalf of Mr A. It settled on 17 December 2010. Mr A had

acquired the property for the same price on 10 August 2010. The purchase price was paid by Company 3, a finance company and Mr B was the principal behind both the finance company and Company 1. Mr Knight stated that Mr Lints would be known to the Tribunal.

The second transaction was done by JMCC who acted for Company 2 in connection with Property 3. Lints acted for the seller, a Mr C and the transaction settled on 16 December 2010. Mr C had acquired the property on 17 August 2010.

The third transaction was a part exchange of two properties done between the Respondent and JMCC. The exchange was Property 3 for, Property 1 plus £4,500 cash which came from Company 1 on 21 January 2011.

In the fourth transaction the Respondent acted in the sale of Property 3 to Mr E for £88,000 and Mr H acted for Mr E and the Respondent knew that Mr E was obtaining loan funding. Birmingham Midshires lent £56,000 in this transaction which settled on 1 February 2011.

On 7 February 2011 the Respondent sends £85,137 to Lints Partnership on the instruction of Mr B, the principal behind Company 1.

The fifth transaction was where JMCC solicitor sells Property 1 to Ms F for £70,000. Mr H acts for Ms F who has loan funding. The Halifax provided £52,470 and this transaction settled on 2 February 2011.

Mr Knight stated that it was accepted that the Respondent did not know this at the time but Mr A provided £18,000 to allow Ms F to complete the purchase. £85,000 went back to Mr A and Mr C. The Respondent received fees of £2,200 plus VAT in respect of the three transactions.

Mr Knight stated that the Complainer's position was that the Respondent should have known better. He submitted that solicitors had been warned about this type of thing and referred to Articles in the Law Journal in January and August 2009. The Respondent was an experienced conveyancer and had an obligation to carry out due

diligence where necessary. He should have declined to act or have reported the matter to SOCA which eventually did happen. Mr Knight however confirmed that the Law Society had had no previous concerns with regard to the Respondent and that there had been no further adverse matters with the Respondent's firm since this conduct occurred.

SUBMISSIONS FOR THE RESPONDENT

Mr Ellis referred to his written submissions and added to these in oral submissions.

1. Mr Craig has no prior conduct allegation or difficulty with the professional body. He qualified in 1986 and has been continuously involved in a very busy general practice involving substantial amounts of conveyancing and property work, since he joined the firm of Archibald Sharp in 1999, as an assistant until 2004 and as a partner since that date. Since the retirement of his senior partner Mr G Mr Craig is the senior partner, assisted by one other partner and eleven staff.
2. He is a married man with four children. His wife is unable to work due to significant medical disability in the form of type 1 diabetes. All the children are currently in full-time education, either at school or university, and accordingly the whole family is entirely dependent on his professional earnings.
3. He has always tried to maintain the best of relationships with clients and colleagues and to comply with the relevant regulations. Appropriate References are produced as to his general behaviour within and outside the profession. Mr Ellis stated that it was clear from the references provided that it was extremely unlikely that there would be any repetition of this conduct.
4. The Respondent genuinely but regrettably did not see the suspicious features of the transactions which are the subject of this complaint before the Tribunal. The files were complete and made available to the Law Society including the e-mail from Mr A setting out the nature of the transfers here. There was no question of dissembling or disguising the features of these linked transactions. There was a clear paper trail in the file and nothing was hidden and Mr Ellis

emphasised that there was no allegation of dishonesty in this case. Mr Ellis stated that the detailed plan to ensure that matters fell within the exception to the CML Handbook and the difference in price ought to have alerted the Respondent to the fact that something was not right. This was however easy to say with hindsight and Mr Ellis pointed out that Mr H was the one who owed duties to the lender. The Respondent reasonably believed that Mr H had seen the email at Complainers' Production 7. The Respondent had acted for Mr B previously and had also acted for Mr A and knew them to be involved in various property dealings with no cause, so far as he was aware, for suspicion.

5. The Respondent had met with the other Solicitors involved including Mr H who was present at a meeting, and who later acted for the two eventual purchasers of the two properties, and for their lenders. All four Solicitors were experienced and did not see that the transactions were necessarily suspicious and they agreed to act. The Respondent's thinking at the time, along with the others, was that this was an effort by these business people to fit within that part of the CML Conditions under which no disclosure of any transactions within six months required to take place. Mr Ellis pointed out that the properties were not in the most desirable area and therefore there was a possible explanation for the low sale value. Mr Ellis submitted that these transactions were not classic revolving deposits schemes and were a unique series of transactions.
6. The various Solicitors involved each appear to have failed to appreciate, wrongly, that the wider picture, of which the transfer of these various properties as narrated in the complaint formed part, ought to have given rise to a Suspicious Activity Report being submitted to the Serious and Organised Crime Organisation. From Mr. Craig's point of view he believed that the solicitor acting for the ultimate lender, and thus the lender was aware of all the cardinal features of the transactions. He formed this belief from Mr H being present at a meeting where the features were set out at or about 6pm on 17 August 2010 and from an email dated 7 November 2010 on which Mr H was a named recipient. Further he was aware that Mr A was in circumstances where he needed to raise finance and was therefore not alerted to the risks by the lower

value of the property at the time of the exchange which preceded the ultimate sale.

7. In regard to the firm's client Mr B and his company, Company 1 the Respondent did make enquiries of people in the property business and made enquiries of an English firm of solicitors to confirm that the company indeed existed and that Mr B was regarded as a regular and legitimate businessman operating in the property market. Mr Ellis referred to Complainers' Production 9 being an email of 16 November 2010 asking for a copy of the Certificate of Incorporation. There was no reply to this and it was accepted that this should have been picked up. The Respondent however did intend to take steps to obtain reassurance with regard to the source of the funds. Mr Ellis also referred the Tribunal to the Respondent's Second Inventory of Productions, Production R2 being an email of 18 November 2010 including a Certificate of Incorporation obtained for Company 1. The Respondent had intended that the funds for the first payment would be provided through a bank account in name of Company 1 but noticed that when funds arrived they came from another company. The other company was also owned by Mr B. Reference is made to an email dated 16 December 2012. The transaction was then being handled by an assistant and he thus failed to ensure that funds came from the purchaser. In other words this not a case where a non-genuine or fictional client obtained the benefit of a solicitor's services due to inadequate CML compliance. The Respondent's failure to appreciate properly the risks in the transactions also may have contributed to a less than assiduous application of the Regulations. Mr Ellis pointed out that the Respondent had obtained ID for Mr B and referred to the Respondent's Second Inventory of Productions, Production R4 but it was accepted that this was obtained too late.
8. The Respondent acknowledges that failing to submit a SOCA Report was a serious error. He has co-operated throughout in responses to the Law Society. On taking legal advice and on hearing the Law Society's concerns after the Guarantee Fund Interview a SOCA Report was duly made. It is understood that no police enquiry, or prosecution, or court case of any sort either civil or criminal, or complaint by client or lender or anyone else, has resulted. So far as

the Respondent is aware the purchasers of the properties continue to own them and the mortgages are being serviced. The Respondent did not act dishonestly but acknowledges that he ought to have had suspicions in the circumstances, which simply did not occur to him at the time. Mr Ellis pointed out that in this case the money was paid on the instructions of the Respondent's client and referred the Tribunal to Production 46. Mr Ellis also pointed out that the Respondent did not have the full information available to him at that time.

9. It is believed that this is the first case in which the Law Society of Scotland have prosecuted a Solicitor who was selling the property, in a situation where the Society was concerned at the failure of the buying solicitor to comply with CML and common law obligations to tell the lender about all relevant features of the property and its title. It is known that in this case the Law Society have already prosecuted the Solicitor drawing down the funds and making the necessary Report to the Building Society, and where he admitted that he did not reveal the full features of the transactions, in breach of the CML Conditions. Mr Ellis pointed out that Mr H had already been dealt with by the Tribunal and his case involved five properties whereas the Respondent was only involved with two of the properties.

10. It is believed that the Law Society have seen very large numbers of transactions including cases where the presence of a major discount in the purchase price was evident to the selling Solicitor as well as to the purchasing Solicitor who had primary duties to the lender under the CML and common law duties falling upon the purchasing Solicitor. The Law Society have access to information about the activities of persons and transactions which are not available to the ordinary solicitor and are thus sometimes in a better position to notice activity which may be suspicious. They appear for example to be better informed about Mr. A's activities in general and in respect of the relevant transactions than the Respondent was or is today. Mr Ellis submitted that the profession had been slow to update itself with regard to the law in connection with suspicious activities. The extent of duties on a solicitor other than those duties imposed by the CML Handbook were presently being discussed within the profession and Mr Ellis submitted that it is not yet clear exactly how far the duties extend

(although it was accepted that the Respondent in this case did breach his duties). Mr Ellis referred to the Respondent's First Inventory of Productions and the Article in the Gazette in March 2013 in this respect.

11. The Respondent has been extremely anxious, remorseful, and contrite throughout the long period of time since the Law Society Inspection in April 2011. He is fully aware of the need for enhanced diligence and scrutiny when any feature of a property transaction might seem unusual. There is no prospect of any re-offending on the part of the Respondent, and he will be strict in future in securing compliance within his firm in future.
12. Mr Ellis emphasised that although the Respondent had only pled guilty recently he had been extremely concerned about this matter for some time. Mr Ellis submitted that in this case the sins were of omission, there was no breach of the duty to a client and Mr Ellis submitted that it was not a case where it was appropriate to impose any restriction on the Respondent's practising certificate. He suggested that a Censure maybe sufficient penalty and would send the necessary message to the profession. Mr Ellis said following the principle of comparative justice, the fact that Mr H had been Censured and Fined £2,500 should be taken into account by the Tribunal.

The Chairman pointed out that Mr H's Findings have not yet become final but it was confirmed that parties did not intend to appeal.

In response to a question from the Tribunal, Mr Ellis confirmed that the Respondent had had prior dealings with Mr A and with Company 1.

DECISION

The Tribunal considered that the circumstances of this case were such that the Respondent should have spotted that there was something obviously suspicious about the nature of the transactions involved. Given the terms of the email of 7 November 2010 at Complainers' Production 7, the Tribunal do not accept that the Respondent, who is an extremely experienced conveyancer, could have been naïve enough not to

realise that questions required to be asked. The issues of money laundering and possible mortgage fraud were highlighted in the Law Society Journal in January and August 2009 and were topical within the profession at that time. The Tribunal accordingly had no hesitation in making a finding of professional misconduct.

The Tribunal find it very concerning that a solicitor who was such an experienced conveyancer and who was risk partner, client relations partner and money laundering reporting officer for his firm was not alerted to the possibility that these transactions may have been designed to facilitate the obtaining of mortgage funding by deception. The Tribunal however took note of the references lodged and accepted that the Respondent was remorseful for what had happened and now understood the serious implications. The Tribunal also took account of the fact that the Respondent had a previous unblemished record in the profession and that the Law Society have had no further cause for concern with the Respondent's firm since these transactions occurred. The Tribunal accordingly do not consider that there would be any risk to the public if the Respondent is allowed to continue with a full practising certificate.

The Tribunal however considered that it was necessary to impose a Fine in addition to a Censure to show the seriousness with which the Tribunal views this type of conduct. The Tribunal noted that Mr H, who was also involved in these transactions, had recently been dealt with by the Tribunal and had been Censured and Fined £2,500. The Tribunal considered that similar sanction would be appropriate in this case and imposed a Censure and a Fine in the sum of £2,500.

There were no submissions made asking the Tribunal to deviate from the usual course of awarding expenses against the solicitor who has been found guilty of professional misconduct and ordering publicity. The Tribunal accordingly made the usual orders with regard to publicity and expenses.

Malcolm McPherson
Vice Chairman