

**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

**JOHN RAYMUND
MACDONALD, Solicitor, 69
Carnethie Street, Rosewell,
Midlothian**

1. A Complaint dated 13 February 2013 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland (hereinafter referred to as "the Complainers") requesting that, John Raymund MacDonald, Solicitor, 69 Carnethie Street, Rosewell, Midlothian (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. No Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be set down for a hearing on 16 May 2013 and notice thereof was duly served on the Respondent.
4. When the Complaint called on 16 May 2013 a fresh amended Complaint dated 24 April 2013 was substituted for the original Complaint. The

Complainers were represented by their Fiscal, Paul Reid, Solicitor Advocate, Glasgow. The Respondent was present and represented by John Taylor, Solicitor, Edinburgh.

5. It was confirmed that the Respondent pled guilty to the averments of fact, averments of duty and averments of professional misconduct in the amended Complaint.
6. The Tribunal found the following facts established:

- 6.1 The Respondent was born 5th February 1951. He was enrolled as a solicitor on the Register of Solicitors practising in Scotland on 23rd January 1976. From 1st March 1985 until 12th June 1992 he was employed as a partner with the firm, Raymund Pemberton-Leigh & Co. From 15th June 1992 until 19th February 2010, he was associated with the firm Jardines Solicitors firstly as an associate, then as an employee and from 1st November 2003 until 19th February 2010 as a partner. He is currently suspended from practice.

Purchase of Property 1

- 6.2 The Respondent acted on behalf of the client, Mr A in connection with his purchase of the heritable subjects at property 1. A review of the file maintained by the Respondent reveals an offer of loan for Mr A from Nationwide Building Society dated 21st August 2009. The offer provides that the purchase price of the property is £125,000. The loan required is £93,750 together with product fees. The offer of loan provides that the Respondent was instructed on the basis of the CML Lenders Handbook relevant to the time of the offer of loan.

- 6.3 The completed Certificate of Title was on the file. It was signed by the Respondent on 22nd September 2009. It confirmed to the Building Society that the purchase price was £125,000 and he had “complied with the instructions and guidance contained in the CML Lenders Handbook for Scotland” and further “the purchase price stated...is the actual price payable by the borrower...”.
- 6.4 A facsimile transmission from the Respondents firms bank, Clydesdale Bank plc, confirmed that £93,750 was transferred to the sellers agents client account on 25th September 2009. A letter from the firm, bearing the Respondents reference dated 25th September 2009 advised that the loan funds had been telegraphically transferred to the sellers agents whilst enclosing a cheque in respect of the deposit.
- 6.5 A review of the file revealed a copy of a signed Disposition by Company 1 in favour of Company 2 in respect of the subjects detailing a purchase price of £85,600 with a date of entry being 30th September 2009. There was also a copy of a signed Disposition by Company 2 in favour of the client in respect of the subjects for a purchase price of £125,000. The date of entry is stated as 7th October 2009.
- 6.6 The Respondent wrote to the Nationwide Building Society on 12th January 2010 advising
- “We refer to the above transaction and note that when we submitted the Report on Title to yourselves, we omitted to advise that this property had been acquired by the party selling to our clients at a price of £85,600 within six months of the date of our clients acquisition, our client acquiring at the price of £125,000.

We also have to report that when the transaction settled the balance of the price between the loan and the purchase price was settled by means of a cheque given to us by the purchaser payable to the seller and did not actually pass through our bank account”.

- 6.7 A telephone attendance note detailed a telephone conversation between the Respondent and a staff member of the Nationwide Building Society staff on 18th January 2010. The note advised that the solicitor confirmed that the Standard Security had been registered and that an “oversight” had led to the information not originally being disclosed to the lender. A further letter from the Respondent to the Nationwide Building Society on 3rd February 2010 advised the lenders that the cheque payable to the seller had not been presented for payment.
- 6.8 A search of the Land Register on 16th May 2012 confirmed that the client was the proprietor of the property with a date of entry being 7th October 2009. The Standard Security in favour of the Lender is also registered although it is postponed to two prior ranking securities granted by Company 1 in favour of the Bank of Scotland. Following the matter being investigated by the Complainers, the Respondent produced a copy of a Deed of Disburdenment executed by the Bank of Scotland along with copy registration forms completed by the firm of Mclay, Murray and Spens, Solicitors in terms of which the security over this property would be discharged. That deed was on a general file discovered by the Respondent when investigating his defence to the terms of this Complaint. It is not known whether the deed has been presented for registration

Purchase of Property 2

- 6.9 The Respondent acted on behalf of the client, Mr B in connection with his purchase of the heritable subjects at property 2. A review of the file maintained by the Respondent reveals an offer of loan for the client from the Nationwide Building Society dated 21st August 2009. The offer states that the purchase price of the property is £120,000. The loan required is £90,000 together with product fees. The offer of loan provides that the Respondent was instructed on the basis of the CML Lenders Handbook relevant to the time of the offer of loan.
- 6.10 The completed Certificate of Title was on the file. It was signed by the Respondent on 22nd September 2009. It confirmed to the lender that the purchase price was £120,000 and that he had “complied with the instructions and guidance contained in the CML Lenders Handbook for Scotland” and further “the purchase price stated...is the actual price payable by the borrower...”
- 6.11 A facsimile transmission from the firms bankers, Clydesdale Bank plc, confirmed that £90,000 was transferred to the sellers agents client account on 25th September 2009. There was a letter from the Respondent bearing his reference dated 25th September 2009 which stated that the loan funds had been telegraphically transferred to the sellers agents whilst enclosing a cheque in respect of the deposit.
- 6.12 There was a copy of an unsigned Disposition by Company 1 in favour of Company 2 in respect of the subjects detailing a purchase price of £77,200. There was a copy of a signed Disposition by Company 2 in favour of the client in respect of the subjects for a purchase price of £120,000. The date of entry is stated as 7th October 2009.

- 6.13 On 12th January 2010 the Respondent wrote to the Nationwide Building Society advising:-

“We refer to the above transaction and note that when we submitted the Report on Title to yourselves, we omitted to advise that this property had been acquired by the parties selling to our clients at a price of £77,200 within six months of the date of our clients acquisition, our client acquiring at the price of £120,000.

We also have to report that when the transaction settled the balance of the price between the loan and the purchase price was settled by means of a cheque given to us by the purchaser payable to the seller and did not actually pass through our bank account”.

- 6.14 A further letter from the Respondent to the lender on 3rd February 2010 advised the lender that the cheque payable to the seller had not been presented for payment. A search of the Land Register on 16th May 2012 confirmed that the client was the proprietor of the property with a date of entry of 7th October 2009. The Standard Security in favour of the Nationwide Building Society is also registered although it was postponed to two prior ranking Standard Securities granted by Company 1 in favour of the Bank of Scotland. Following the matter being investigated by the Complainers, the Respondent produced a copy of a Deed of Disburdenment executed by the Bank of Scotland along with copy registration forms completed by the firm of Mclay, Murray and Spens, Solicitors in terms of which the security over this property would be discharged. That deed was on a general file discovered by the Respondent when investigating his defence to the terms of this Complaint. It is not known whether the deed has been presented for registration.

Purchase of Property 3

- 6.15 The Respondent acted on behalf of the client Mr C in connection with his purchase of heritable subjects at property 3. A review of the file maintained by the Respondent revealed an offer of loan from the Nationwide Building Society dated 30th July 2009. The offer provided that the purchase price of the property is £137,000. The loan required was £102,750 together with product fees. The offer of loan provided that the solicitor was instructed on the basis of the CML Lenders Handbook relevant to the time of the offer of loan.
- 6.16 The completed Certificate of Title was on file. It was signed by the Respondent on 31st July 2009. It confirmed to the lender that the purchase price was £137,000 and that he had “complied with the instructions and guidance contained in the CML Lenders Handbook for Scotland” and further that “the purchase price stated...is the actual price payable to the borrower...”.
- 6.17 A review of the file revealed a facsimile transmission from the firm’s bankers, Clydesdale Bank plc, confirming that the sum of £102,750 was transferred to the sellers agents client account on 3rd August 2009. A letter from the Respondent bearing his reference dated 3rd August 2009 advised that the loan funds had been telegraphically transferred to the sellers agents whilst enclosing the clients cheque in respect of the deposit.
- 6.18 A review of the file revealed a copy of a signed disposition by Company 1 in favour of Company 2 in respect of the heritable subjects detailing a purchase price of £80,800. The date of entry is stated as being 4th August 2009. There was a copy of a signed disposition by Company 2 in favour of the client in respect of the subjects for a purchase price of £137,000. The date of entry is stated as 4th August 2009.

6.19 On 12th January 2010 the Respondent wrote to the lender advising:-

“We refer to the above transaction and note that when we submitted the Report on Title to yourselves, we omitted to advise that this property had been acquired by the parties selling to our clients at a price of £80,000 within six months of the date of our clients acquisition, our client acquiring at the price of £137,000.

We also have to report that when the transaction settled the balance of the price between the loan and the purchase price was settled by means of a cheque given to us by the purchaser payable to the seller and did not actually pass through our bank account”.

6.20 A review of the file revealed a further letter from the Respondent to the lender on 3rd February 2010 advising the lender that the cheque payable to the seller had not been presented for payment.

6.21 A search of the Land Register on 16th May 2012 confirmed that the client was the proprietor of the heritable subjects with a date of entry being 4th August 2009.

Purchase of Property 4

6.22 The Respondent acted on behalf of the client Mr D in connection with his purchase of the heritable subjects at property 4. A review of the file revealed a manuscript note from a Ms E which read “this is to certify that I, Ms E, is gifting the sum of £47,750 to Mr D for a deposit for his flat”.

- 6.23 There is an offer of loan from the Royal Bank of Scotland Plc addressed to the firm dated 21st July 2009. The offer provides that the purchase price of the property is £191,000. The loan required is £143,250 together with product fees. The offer of loan states that the solicitor is instructed on the basis of the CML Lenders Handbook and the banks part two instructions.
- 6.24 The completed Certificate of Title was on the file. It was signed by the Respondent on 30th July 2009. It confirmed to the lender that the purchase price was £191,000 and that “all conditions of the offer of loan to the borrower...have been or will be complied with before settlement”.
- 6.25 A review of the file revealed a facsimile transmission from the firms bankers, Clydesdale Bank plc, confirming that the sum of £143,220 was telegraphically transferred to the sellers agents client account on 31st July 2009. A letter from the Respondent bearing his reference dated 3rd August 2009 advised that the loan funds had been telegraphically transferred to the sellers agents whilst enclosing the clients cheque in respect of the deposit.
- 6.26 A review of the file revealed a copy of a Disposition by Company 1 in favour of Company 2 in respect of the heritable subjects detailing a purchase price of £121,000. The date of entry is stated as being 4th August 2009. There was also a copy of a signed Disposition by Company 2 in favour of the client in respect of the subjects for a purchase price of £191,000. The date of entry was provided as 4th August 2009.
- 6.27 On 12th January 2010 the Respondent wrote to the lender advising:-

“We refer to the above transaction and note that when we submitted the Report on Title to yourselves, we omitted to advise that this property had been acquired by the parties selling to our clients at a price of £121,000 within six months of the date of our clients acquisition, our client acquiring at the price of £191,000.

We also have to report that when the transaction settled the balance of the price between the loan and the purchase price was settled by means of a cheque given to us by the purchaser payable to the seller and did not actually pass through our bank account”

- 6.28 A search of the Land Register on 16th May 2012 confirmed that the client was the proprietor of the heritable subjects with a date of entry of 4th August 2009.

Purchase of Property 5

- 6.29 The Respondent acted on behalf of the client, Mr F in connection with his purchase of the heritable subjects property 5. A review of the file maintained by the Respondent revealed an offer of loan from the Royal Bank of Scotland Plc dated 17th September 2009. The offer provides that the purchase price of the property is £137,000. The loan required is £102,750 together with product fees. The offer of loan provides that the Respondent was instructed on the basis of the CML Lenders Handbook and the banks part two instructions.
- 6.30 The completed Certificate of Title was on the file. It was signed by the Respondent on 23rd September 2009. It confirmed to the lender that the purchase price was £137,000 and that “all conditions of the offer of loan to the borrower have been or will be complied with before settlement”.

- 6.31 A review of the file revealed a facsimile transmission from the firm's bankers, Clydesdale Bank plc, confirming that the sum of £102,750 was transferred to the sellers agents client account on 25th September 2009. There was a letter from the Respondent bearing his reference dated 25th September 2009 advising that the loan funds had been telegraphically transferred to the sellers agents whilst enclosing a cheque in respect of the deposit.
- 6.32 A review of the file revealed a copy of a signed Disposition by Company 1 in favour of Company 2 in respect of the heritable subjects detailing a purchase price of £85,600. The date of entry is stated as being 30th September 2009. There was also a copy of a signed Disposition by Company 2 in favour of the client in respect of the heritable subjects for a purchase price of £137,000. The date of entry provided was 7th October 2009.
- 6.33 On 12th January 2010 the Respondent wrote to the lender advising

“We refer to the above transaction and note that when we submitted the Report on Title to yourselves, we omitted to advise that this property had been acquired by the parties selling to our clients at a price of £85,600 within six months of the date of our clients acquisition, our client acquiring at the price of £137,000.

We also have to report that when the transaction settled the balance of the price between the loan and the purchase price was settled by means of a cheque given to us by the purchaser payable to the seller and did not actually pass through our bank account”.

6.34 A search of the Land Register on 16th May 2012 confirmed that the client was the proprietor of the heritable subjects with the date of entry being 7th October 2009. The Standard Security in favour of the lender is also registered although it is postponed to two prior ranking Standard Securities granted by Company 1 in favour of the Bank of Scotland. Following the matter being investigated by the Complainers, the Respondent produced a copy of a Deed of Disburdenment executed by the Bank of Scotland along with copy registration forms completed by the firm of Mclay, Murray and Spens, Solicitors in terms of which the security over this property would be discharged. That deed was on a general file discovered by the Respondent when investigating his defence to the terms of this Complaint. It is not known whether the deed has been presented for registration.

Purchase of Property 6

6.35 The Respondent acted on behalf of the client, Mr G in connection with his purchase of heritable subjects at property 6. A review of the file revealed a CML Disclosure of Incentives Form. The form has been completed by Company 2 in its capacity as seller of the subjects. The form advises that the list price for the property is £215,220 with a discount of £30,220, leaving an agreed sale price of £185,000. The form also notes that the client was offered £2,500 cashback and £1,000 towards his legal fees.

6.36 There was an email from Ms H, apparently a representative of the selling company 2 dated 3rd June 2009 addressed to the Respondent advising that she would provide the Respondent with copies of the clients identification documentation for the client.

6.37 There is an offer of loan from the Royal Bank of Scotland Plc addressed to the Respondent dated 3rd June 2009. The offer of loan provided that the purchase price of the property was £185,000. The loan required is £120,250 together with product fees. The offer of loan provides that the Respondent was instructed on the basis of the CML Lenders Handbook and the banks part two instructions.

6.38 The completed Certificate of Title was on file. It was signed by the Respondent on 12th June 2009 confirming to the lender that the purchase price was £185,000 and that “all conditions of the offer of loan to the borrower...have been or will be complied with before settlement”.

6.39 There is an undated manuscript letter from Ms H to the solicitor which advised:-

“Please find enclosed a cheque for the deposit of the flat being purchased by Mr G addressed to our company, Company 2.

Mr I asked me to pass this on to you...”.

6.40 There was a facsimile transmission from the firms bankers, Clydesdale Bank plc, confirming that the sum of £120,220 was transferred to the sellers agents client account on 17th June 2009. There was a letter from the Respondent bearing his reference dated 16th June 2009 advised that the loan funds had been telegraphically transferred to the sellers agents whilst enclosing Mr G’s cheque in respect of the deposit.

6.41 A review of the file revealed a copy of a signed Disposition by Company 1 in favour of Company 2 in respect of the subjects detailing a purchase price of £117,400. The date of entry was stated as being 20th March 2009. There was a copy of a signed

Disposition by Company 2 in favour of the client in respect of the heritable subjects for a purchase price of £185,000. The date of entry is stated as 17th June 2009.

6.42 On 12th January 2010 the Respondent wrote to the lender advising:

“We refer to the above transaction and note that when we submitted the Report on Title to yourselves, we omitted to advise that this property had been acquired by the parties selling to our clients at a price of £117,400 within six months of the date of our clients acquisition, our client acquiring at the price of £185,000.

We also have to report that when the transaction settled the balance of the price between the loan and the purchase price was settled by means of a cheque given to us by the purchaser payable to the seller and did not actually pass through our bank account”.

6.43 A further letter from the Respondent to the Royal Bank of Scotland Plc on 3rd February 2010 advised the lender that the cheque payable to the seller had not been presented for payment.

Purchase of Property 7

6.44 The Respondent acted on behalf of the client, Mr I in connection with his purchase of property 7. There was an Offer of Loan from the Royal Bank of Scotland Plc addressed to the Respondent dated 3rd June 2009. The offer provided that the purchase price of the property was £181,500. The loan required was £136,125 together with product fees. The Offer of Loan provided that the solicitor was instructed on the basis

of the CML Lenders Handbook and the banks part two instructions.

- 6.45 The completed Certificate of Title was on the file. It was signed by the Respondent on 12th June 2009. It confirmed to the lender that the purchase price was £181,500 and that “all conditions of the Offer of Loan to the borrower...have been or will be complied with before settlement”.
- 6.46 A review of the file revealed a facsimile transmission from the firm’s bankers, Clydesdale Bank plc, confirming that the sum of £136,125 was transferred to the sellers agents client account on 17th June 2009. A letter from the Respondent bearing his reference dated 16th June 2009 advised that the loan funds had been telegraphically transferred to the sellers agents solicitors whilst enclosing the clients cheque in respect of the deposit.
- 6.47 A review of the file revealed a copy of a signed Disposition by Company 1 in favour of Company 2 in respect of the heritable subjects detailing a purchase price of £128,200. The date of entry is provided as being 17th June 2009. The plot however is designed as being Property 8 and not Property 7. There was a copy of a signed Disposition by Company 2 in favour of the client in respect of the heritable subjects for a purchase price of £181,500. The date of entry is stated as 17th June 2009.
- 6.48 On 12th June 2010 the Respondent wrote to the lender advising:
- “We refer to the above transaction and note that when we submitted the Report on Title to yourselves, we omitted to advise that this property had been acquired by the parties selling to our clients at a price of £128,200 within six months of the date of our clients acquisition, our client acquiring at the price of £181,500.

We also have to report that when the transaction settled the balance of the price between the loan and the purchase price was settled by means of a cheque given to us by the purchaser payable to the seller and did not actually pass through our bank account”.

- 6.49 A review of the file revealed a letter from the Respondent to the lender on 3rd February 2010 advising the lender that the cheque payable to the seller had not been presented for payment.

Purchase of Property 9

- 6.50 The Respondent acted on behalf of the client Ms K in connection with her purchase of Property 9. There was an Offer of Loan on the file from the Royal Bank of Scotland Plc dated 9th July 2009. The offer provided that the purchase price of the property is £165,000. The loan required is £123,750 together with product fees. The Offer of Loan states that the Respondent was instructed on the basis of the CML Lenders Handbook and the banks part two instructions.
- 6.51 There is an unsigned Certificate of Title on the file. It confirmed to the lender that the purchase price was £165,000.
- 6.52 There was a facsimile transmission from the firms bankers, Clydesdale Bank plc, confirming that the sum of £123,720 was transferred to the sellers agents client account on 17th June 2009.
- 6.53 There was a letter from the Respondent bearing his reference dated 3rd August 2009 advising that loan funds had been telegraphically transferred to the sellers agents client account whilst enclosing the clients cheque in respect of the deposit.

6.54 There was a copy of a signed Disposition by Company 1 in favour of Company 2 in respect of the heritable subjects detailing a purchase price of £105,400. The date of entry is stated as being 20th March 2009. There was a copy of a signed Disposition by Company 2 in favour of the client in respect of the heritable subjects for a purchase price of £165,000. The date of entry is stated as 4th August 2009.

6.55 On 12th January 2010 the Respondent wrote to the lender advising:

“We refer to the above transaction and note that when we submitted the Report on Title to yourselves, we omitted to advise that this property had been acquired by the parties selling to our clients at a price of £105,500 within six months of the date of our clients acquisition, our client acquiring at the price of £165,000.

We also have to report that when the transaction settled the balance of the price between the loan and the purchase price was settled by means of a cheque given to us by the purchaser payable to the seller and did not actually pass through our bank account”.

6.56 A review of the file revealed a further letter from the Respondent to the lender on 3rd February 2010 advising the lender that the cheque payable to the seller had not been presented for payment.

6.57 A search in the Land Register on 16th May 2012 confirmed that the client was the proprietor of the heritable subjects with a date of entry of 4th August 2009. The Standard Security in favour of the lender was also registered. This security was

postponed in favour of a Standard Security granted by Company 3 in favour of the Bank of Scotland. Company 3 was the previous name of Company 1.

Purchase of Property 10

- 6.58 The Respondent acted on behalf of the client Mr L in connection with his purchase of the heritable subjects at property 10. There was a faxed copy of the Offer of Loan from National Westminster Bank addressed to the Respondent dated 17th June 2009. The Offer of Loan provided that the purchase price of the property is £170,000. The loan required is £106,275 together with product fees. The Offer of Loan provided that the Respondent was instructed on the basis of the CML Lenders Handbook and the banks part two instructions.
- 6.59 There was an unsigned copy of the Certificate of Title on the file which confirmed the purchase price of £170,000.
- 6.60 There was a facsimile transmission from the firms bankers, Clydesdale Bank plc, confirming that £106,245 was transferred to the sellers agents client account on 3rd August 2009. There was a letter from the Respondent bearing his reference dated 3rd August 2009 advising that the loan funds had been telegraphically transferred to the sellers agents client account whilst enclosing the clients cheque in respect of the deposit.
- 6.61 There was a copy of a signed Disposition by Company 1 in favour of Company 2 in respect of the subjects detailing a purchase price of £104,200. The date of entry is provided as being 20th March 2009. There was a copy of a signed Disposition by Company 2 in favour of the client in respect of the heritable subjects for a purchase price of £170,000. The date of entry was stated as 4th August 2009.

6.62 On 12th January 2010 the Respondent wrote to the lender advising:

“We refer to the above transaction and note that when we submitted the Report on Title to yourselves, we omitted to advise that this property had been acquired by the parties selling to our clients at a price of £104,200 within six months of the date of our clients acquisition, our client acquiring at the price of £170,000.

We also have to report that when the transaction settled the balance of the price between the loan and the purchase price was settled by means of a cheque given to us by the purchaser payable to the seller and did not actually pass through our bank account”.

6.63 A review of the file revealed a further letter from the Respondent to the lender dated 3rd February 2010 which advised the lender that the cheque payable to the seller had not been presented for payment.

Purchase of Property 11

6.64 The Respondent acted on behalf of the client Mr L in connection with his purchase of heritable subjects at property 11. A review of the file maintained by the Respondent revealed a faxed copy of the Offer of Loan from National Westminster addressed to the firm dated 14th June 2009. The offer provides that the purchase price of the property is £180,000. The loan required is £106,666 together with product fees. The Offer of Loan provides that the Respondent was instructed on the basis of the CML Lenders Handbook and the banks part two instructions.

- 6.65 There was an email from Ms H of Company 2 dated 23rd June 2009 which attached copies of the clients passport and proof of address.
- 6.66 There was an unsigned copy of the Certificate of Title on the file. It confirmed a purchase price of £180,000.
- 6.67 There was a facsimile transmission from the firms bankers, Clydesdale Bank plc, confirming that the sum of £106,636 was transferred to the sellers agents client account on 3rd August 2009. There was a letter from the Respondent bearing his reference dated 3rd August 2009 advising that the loan funds had been telegraphically transferred to the sellers agents whilst enclosing the clients cheque in respect of the deposit.
- 6.68 A review of the file revealed a copy of a signed Disposition by Company 1 in favour of Company 2 in respect of the heritable subjects detailing a purchase price of £119,800. The date of entry was provided as 20th March 2009. There was a copy of a signed Disposition by Company 2 in favour of the client in respect of the heritable subjects for a purchase price of £180,000. The date of entry is stated as 4th August 2009.
- 6.69 On 12th January 2010 the Respondent wrote to the lender advising;-

“We refer to the above transaction and note that when we submitted the Report on Title to yourselves, we omitted to advise that this property had been acquired by the parties selling to our clients at a price of £119,800 within six months of the date of our clients acquisition, our client acquiring at the price of £180,000.

We also have to report that when the transaction settled the balance of the price between the loan and the purchase price was settled by means of a cheque given to us by the purchaser payable to the seller and did not actually pass through our bank account”.

- 6.70 A review of the file revealed a letter from the Respondent to the lender dated 3rd February 2010 which advised the lender that the cheque payable to the seller had not been presented for payment.

Purchase of Property 12

- 6.71 The Respondent acted on behalf of the client Ms M in connection with her purchase of the heritable subjects at property 12. A review of the file maintained by the Respondent revealed an e-mail from Ms H of Company 2 to the Respondent dated 23rd June 2009 which advised that a copy of the clients passport and proof of address were attached. There was an Offer of Loan from the Royal Bank of Scotland Plc addressed to the firm dated 24th June 2009. The offer provided that the purchase price of the property was £137,000. The loan required was £102,750 together with product fees. The Offer of Loan provides that the solicitor is instructed on the basis of the CML Lenders Handbook and the banks part two instructions.
- 6.72 There was an unsigned copy of the Certificate of Title which confirmed to the lender the purchase price of £137,000. There was a facsimile transmission from the firms bankers, Clydesdale Bank plc, confirming that the sum of £102,720 was transferred to the sellers agents client account on 30th June 2009. There was a letter from the Respondent bearing his reference dated 30th June 2009 advising that the loan funds had

been telegraphically transferred to the sellers agents whilst enclosing a cheque in respect of the deposit.

6.73 There was a copy of a signed Disposition by Company 1 in favour of Company 2 in respect of the heritable subjects detailing a purchase price of £86,800. The date of entry was provided as being 24th April 2009. There was also a copy of a signed Disposition by Company 2 in favour of the client in respect of the heritable subjects for a purchase price of £137,000. The date of entry was provided as 30th June 2009.

6.74 On 12th January 2010 the Respondent wrote to the lender advising:-

“We refer to the above transaction and note that when we submitted the Report on Title to yourselves, we omitted to advise that this property had been acquired by the parties selling to our clients at a price of £86,800 within six months of the date of our clients acquisition, our client acquiring at the price of £137,000.

We also have to report that when the transaction settled the balance of the price between the loan and the purchase price was settled by means of a cheque given to us by the purchaser payable to the seller and did not actually pass through our bank account”.

6.75 A review of the file revealed a further letter from the Respondent to the lender dated 3rd February 2010 advising the lender that the cheque payable to the seller had not been presented for payment.

Purchase of Property 13

- 6.76 The Respondent acted on behalf of the client Mr N in connection with his purchase of the heritable subjects at property 13. A review of the file revealed an offer of loan from the Halifax division of the Bank of Scotland plc addressed to the Respondent dated 10th August 2009. The Offer of Loan stated that the purchase price of the property was £180,000. The loan required is £135,000 together with product fees. The Offer of Loan provides that the solicitor is instructed on the basis of the CML Lenders Handbook and the banks part two instructions.
- 6.77 There was a copy of the Certificate of Title on the file which was signed by the Respondent on 22nd September 2009. It confirmed to the lender that the purchase price was £180,000.
- 6.78 There was a letter from a Mr O dated 18th August 2009 which advised that he was providing his brother-in-law Mr N with a gift of £45,000 in respect of the deposit required for the purchase of the heritable subjects.
- 6.79 There was a facsimile transmission from the firms bankers Clydesdale Bank Plc confirming that £135,000 was transferred to the sellers agents client account on 25th September 2009. There was a letter from the Respondent bearing his reference dated 25th September 2009 advising that the loan funds had been telegraphically transferred to the sellers agents whilst enclosing a cheque in respect of the deposit.
- 6.80 A review of the file revealed a copy of a signed Disposition by Company 1 in favour of Company 2 in respect of the heritable subjects detailing a purchase price of £127,600. The date of entry was provided as 30th September 2009. There was a copy of a signed Disposition by Company 2 in favour of the client in

respect of the heritable subjects for a purchase price of £127,600. The date of entry was stated as 7th October 2009.

6.81 On 12th January 2010 the Respondent wrote to the lender advising:

“We refer to the above transaction and note that when we submitted the Report on Title to yourselves, we omitted to advise that this property had been acquired by the parties selling to our clients at a price of £127,600 within six months of the date of our clients acquisition, our client acquiring at the price of £180,000.

We also have to report that when the transaction settled the balance of the price between the loan and the purchase price was settled by means of a cheque given to us by the purchaser payable to the seller and did not actually pass through our bank account”.

6.82 A review of the file revealed a letter from the Respondent to the lender dated 3rd February 2010 where he advised the lender that the cheque payable to the seller had not been presented for payment.

6.83 There was a manuscript note on the headed notepaper of Company 2 addressed to the Respondent which attached a cheque in respect of the clients deposit for his purchase.

6.84 A search of the Land Register on 16th May 2012 confirmed that the client was the proprietor of the heritable subjects with a date of entry being 7th October 2009 at a price of £127,600. The Standard Security in favour of lender is also registered although it was postponed to two prior ranking securities granted by Company 1 in favour of the Bank of Scotland.

Following the matter being investigated by the Complainers, the Respondent produced a Deed of Disburdenment executed by the Bank of Scotland in terms of which the security over this property would be discharged. That deed was on a general file discovered by the Respondent when investigating his defence to the terms of this Complaint. It is not known whether the deed has been presented for registration. Following the matter being investigated by the Complainers, the Respondent produced a copy of a Deed of Disburdenment executed by the Bank of Scotland along with copy registration forms completed by the firm of Mclay, Murray and Spens, Solicitors in terms of which the security over this property would be discharged. That deed was on a general file discovered by the Respondent when investigating his defence to the terms of this Complaint. It is not known whether the deed has been presented for registration.

Purchase of Property 14

- 6.85 The Respondent acted on behalf of the client Mr P in connection with his purchase of the heritable subjects at property 14. A review of the file maintained by the Respondent revealed an Offer of Loan from the Alliance & Leicester plc addressed to the firm dated 13th July 2009. The offer stated the purchase price of the property was £137,000. The loan required is £95,900 together with product fees. The Offer of Loan stated that “instructions to the firm are based on the conditions set out in the CML Lenders Handbook for Scotland (as amended from time to time) to which we subscribe. The firm is to refer to the handbook in the first instance as this covers many of the issues conveyancers raise with the Alliance & Leicester plc”.

- 6.86 A review of the file revealed a letter from an Mr Q dated 3rd August 2009 advising that he was providing his brother-in-law Mr P with a gift of £41,100 in respect of the deposit required for the purchase of his plot.
- 6.87 There was an unsigned copy of the Certificate of Title on the file. This confirmed the purchase price was £137,000.
- 6.88 There was a facsimile transmission from the firms bankers Clydesdale Bank plc confirming that the sum of £95,870 had been transferred to the sellers agents client account on 3rd August 2009. There was a letter from the Respondent bearing his reference dated 13th August 2009 which advised that the loan funds had been telegraphically transferred to the sellers agents whilst enclosing the clients cheque in respect of the deposit.
- 6.89 A review of the file revealed a copy of a signed Disposition by Company 1 in favour of Company 2 in respect of the heritable subjects detailing a purchase price of £85,000. The date of entry provided was 24th April 2009. There was a copy of a signed Disposition by Company 2 in favour of the client in respect of the heritable subjects for a purchase price of £137,000. The date of entry was provided as 13th August 2009.
- 6.90 There was a copy of a screen print from Mr I's online banking profile with Barclays Bank plc which confirmed that a payment was made to the firms client account on 18th August 2009 in the sum of £860 bearing the reference of the client. This sum represented payment of a professional fee.
- 6.91 On 12th January 2010 the Respondent wrote to lender advising:

“We refer to the above transaction and note that when we submitted the Report on Title to yourselves, we omitted to advise that this property had been acquired by the parties selling to our clients at a price of £85,000 within six months of the date of our clients acquisition, our client acquiring at the price of £137,000.

We also have to report that when the transaction settled the balance of the price between the loan and the purchase price was settled by means of a cheque given to us by the purchaser payable to the seller and did not actually pass through our bank account”.

- 6.92 A review of the file revealed a letter from the Respondent to lender dated 3rd February 2010 in which he advised the lender that the cheque payable to the seller had not been presented for payment.
- 6.93 A search of the Land Register on 16th May 2012 confirmed that the client was the proprietor of the heritable subjects with a date of entry of 30th August 2009. The Standard Security in favour of Alliance & Leicester plc was also registered.

Purchase of Property 15

- 6.94 The Respondent acted on behalf of Ms R in connection with her purchase of the heritable subjects at property 15. The Respondent received an offer to sell the plot from a firm of solicitors acting on behalf of the clients Company 4 dated 21st August 2009. The price was to be £127,000 with a date of entry of 3rd September 2009. An offer of loan was received from the Woolwich plc being the mortgage division of Barclays Bank plc dated 20th August 2009. The Respondent identified that the offer of loan related to English transactions and there is

a letter from the Respondent requesting the appropriate Scottish documentation dated 27th August 2009.

- 6.95 A Form 12A Report dated 9th September 2009 supplied by the selling agents discloses that a company 5 is the owner of the subjects their title having been registered in their favour on 29th March 2009.
- 6.96 A copy of the Certificate of Title completed by the Respondent dated 16th September 2009 making reference to loan instructions dated 20th August 2009 confirms that the mortgage advance was £102,599 and that the price to be stated in the Disposition was £127,000. The Respondent confirmed “We the conveyancers named below, certify that we have complied with all of the matters set out in the CML Lenders Handbook for Scotland (so far as they are relevant) and confirm that title to the property is good and marketable”.
- 6.97 The Respondent wrote to his client on 16th September 2009 enclosing the Standard Security and SDLT Form for her signature and return. He also requested that she transfer the deposit of £26,751.50 to the firms client account.
- 6.98 There was a facsimile transmission from the firms bankers Clydesdale Bank plc confirming that £127,200 was transferred to the sellers agents client account on 23rd September 2009.
- 6.99 A review of the file revealed a copy of a draft Disposition granted by Company 4 in favour of the client detailing a purchase price of £127,000.
- 6.100 There was a letter dated 29th September 2009 addressed to the Respondent from the seller’s agents enclosing a copy of the Disposition by Company 5 in favour of Company 4.

- 6.101 There was a facsimile transmission dated 23rd September 2009 from the firms bankers Clydesdale Bank plc advising that the firms client account was credited with £70,617.50 from a Mr S of property 16. A manuscript note on the facsimile transmission details that £26,751.50 is to be allocated to the ledger of his client Ms R. The sum of £37,551.50 is to be allocated to a ledger in the name of Ms T and thereafter an overpayment of £6,314.50 had occurred.
- 6.102 There was a copy of the signed Disposition granted by Company 4 in favour of the client on the file which confirmed a purchase price of £127,000 and a date of entry of 23rd September 2009.
- 6.103 On 13th January 2010 the Respondent wrote to the lender stating that
- “We refer to the above transaction and note that when we submitted the report on title to yourselves, we omitted to advise that this property had been acquired by the parties selling to our clients at a substantially lower price within six months of the date of our clients acquisition, our client acquiring at the price of £127,200. We must also advise that although we understand that the balance of the price has come from the clients own funds they were remitted to us through a third party”.
- 6.104 A search of the Land Register on 16th May 2012 confirmed that the client was the proprietor of the heritable subjects with a date of entry of 23rd September 2009. The Standard Security in favour of Barclays Bank plc is also registered.

Purchase of Property 17

- 6.105 The Respondent acted on behalf of the client Ms T in connection with her purchase of the heritable subjects at property 17. A review of the file maintained by the Respondent reveals an offer to sell the plot from the sellers agents Company 6 dated 25th August 2009. The price was £145,000 with an intended date of entry of 14th September 2009.
- 6.106 The Respondent received an email from a Mr U of Company 7 on 16th September 2009 enclosing an Offer of Loan from Birmingham Midshires Building Society in favour of the client.
- 6.107 The Offer of Loan is dated 16th September 2009. The Offer of Loan notes that the purchase price will be £145,000 and a loan of £108,750 with product fees is required to complete the purchase. The Offer of Loan states that the firm is “instructed in accordance with the CML Lenders Handbook for Scotland and Birmingham Midshires part two instructions”.
- 6.108 A copy of the Certificate of Title signed by the Respondent on 18th September 2009 confirms that the mortgage advance was £108,750 and that the price to be stated in the transfer was £145,000.
- 6.109 There is a facsimile transmission from the firms bankers Clydesdale Bank plc confirming that £145,100 was transferred to the sellers agents client account on 24th September 2009.
- 6.110 There was a copy of a signed Disposition granted by Company 6 in favour of the client detailing a purchase price of £145,000 and a date of entry of 24th September 2009.
- 6.111 There was a letter dated 5th October 2009 from the sellers agents addressed to the Respondent enclosing a Disposition in

favour of their clients Company 6. There was no copy of this deed in the file.

6.112 The Respondent wrote to the lender on 13th January 2010 providing that “We refer to the above transaction and note that when we submitted the report on title to yourselves we omitted to advise that this property had been acquired by the parties selling to our clients at a substantially lower price within six months of the date of our clients acquisition, our client acquiring at the price of £145,000. We must also advise that although we understand that the balance of the price has come from the clients own funds they were remitted to us through a third party”.

6.113 A search of the Land Register on 16th May 2012 confirmed that the client was the proprietor of the heritable subjects with the date of entry being 24th September 2009. The Standard Security in favour of the Bank of Scotland plc is also registered.

Purchase of Property 18

6.114 The Respondent acted on behalf of the client Ms V in connection with her purchase of the heritable subjects at property 18. A review of the file maintained by the Respondent reveals an offer to sell from the agents on behalf of their clients Company 6 dated 25th August 2009. The price was to be £145,000 with an intended date of entry of 16th September 2009.

6.115 There is a facsimile transmission from the firms bankers Clydesdale Bank plc confirming that £10,764 was transferred to the firms client account from the client on 29th September 2009.

- 6.116 There is a facsimile transmission from the firms bankers Clydesdale Bank plc confirming that the sum of £41,147.50 was transferred to the firms client account from a Mr S of property 16 on 30th September 2009.
- 6.117 An Offer of Loan was received from The Mortgage Works dated 21st September 2009. The offer provides that the purchase price will be £145,000 and a loan of £94,500 with product fees is required to complete the purchase. The instructions provide that the solicitor is “instructed on our behalf in accordance with the CML Lenders Handbook for solicitors and licensed conveyancers and their part two instructions”.
- 6.118 There was a copy of the Certificate of Title signed by the Respondent on 28th September 2009. This confirmed that the Respondent had confirmed the identity of his client and that he had complied with the terms of the lenders instructions set out in the CML Lenders Handbook for Scotland.
- 6.119 There was a facsimile transmission from the firms bankers Clydesdale Bank plc confirming that a sum of £145,150 was transferred to the sellers agents account on 2nd October 2009.
- 6.120 There was a copy of the signed Disposition granted by Company 6 in favour of the client on the file detailing a purchase price of £145,000 and a date of entry of 1st October 2009.
- 6.121 There was a letter dated 5th October 2009 from the sellers agents enclosing a Disposition in favour of their client. There was no copy of this deed in the file.

- 6.122 On 13th January 2010 the Respondent wrote to the lender stating that “We refer to the above transaction and note that when we submitted the report on title to yourselves we omitted to advise that this property had been acquired by the parties selling to our clients at a substantially lower price within six months of the date of our clients acquisition, our client acquiring at the price of £145,000”.
- 6.123 A search of the Land Register on 16th May 2012 confirmed that the client was the proprietor of the heritable subjects with a date of entry of 1st October 2009. The Standard Security in favour of the lender was also registered.

Purchase of Property 19

- 6.124 The Respondent acted on behalf of the client Mr W in connection with his purchase of the heritable subjects at property 19. An Offer of Loan was received from Birmingham Midshires dated 8th September 2009. The Offer of Loan states that the purchase price will be £150,000 and a loan of £112,500 with product fees is required to complete the purchase. The offer of loan states that the firm is “instructed in accordance with the CML Lenders Handbook for Scotland and Birmingham Midshires part two instructions.
- 6.125 There was a copy of the Certificate of Title signed by the Respondent on 9th September 2009 on the file confirming the mortgage advance was £112,500 and that the price to be stated in the transfer was £150,000.
- 6.126 There was a Form 12a Report dated 10th September 2009 detailing that the proprietor of the subjects was Company 8. Their title having been registered in its favour on 8th November 2005. A facsimile transmission from the firms bankers

Clydesdale Bank plc confirmed that the sum of £38,836.50 was received by the firms client account on 14th September 2009 from a Mr X of Manchester.

6.127 A facsimile transmission from the firms bankers Clydesdale Bank plc confirmed that £150,150 was transferred to the sellers agents account on 14th September 2009.

6.128 A review of the file revealed a copy of a signed Disposition of the heritable subjects by company 8 in favour of Company 6. The Disposition is blank as to the price paid for the plot but the date of entry is stated as being 21st August 2009. There was also a copy of a signed Disposition granted by Company 6 in favour of the client detailing a purchase price of £150,000 and a date of entry of 10th September 2009.

6.129 On 13th January 2010 the Respondent wrote to the lender advising “We refer to the above transaction and note that when we submitted the report on title to yourselves, we omitted to advise that this property had been acquired by the parties selling to our clients at a substantially lower price within six months of the date of our clients acquisition, our client acquiring at the price of £150,000. We must also advise that although we understand that the balance of the price has come from the clients own funds they were remitted to us through a third party”.

6.130 A search of the Land Register on 16th May 2012 confirmed that the client was the proprietor of the heritable subjects with a date of entry of 10th September 2009. The Standard Security in favour of the Bank of Scotland plc was also registered.

Purchase of Property 20

- 6.131 The Respondent acted on behalf of the client Mr Y in connection with his purchase of the heritable subjects at property 20. The Respondent received an offer to sell the heritable subjects from a firm on behalf of the client Company 6 dated 15th September 2009. The price was £145,000. The date of entry is 18th September 2009.
- 6.132 Loan instructions were received from Birmingham Midshires dated 2nd October 2009. The loan instructions noted that the purchase price would be £145,000 and a loan of £108,750 with product fees is required to complete the purchase. The offer of loan states that the firm is “instructed in accordance with the CML Lenders Handbook for Scotland and Birmingham Midshires part two instructions”.
- 6.133 A copy of the Certificate of Title signed by the Respondent on 7th October 2009 confirmed the mortgage advance was £108,750 and that the price to be stated in the transfer was £145,000.
- 6.134 A facsimile transmission from the firms bankers Clydesdale Bank plc confirmed that £9,000 was received in the firms client account on 9th October from the commercial entity Company 4.
- 6.135 A facsimile transmission from the firms bankers Clydesdale Bank plc confirmed that the sum of £9,586 was received in the firms client account on 9th October 2009 from a Mr Z of Cheshire.
- 6.136 A facsimile transmission from the firms bankers Clydesdale Bank plc confirmed that the sum of £145,150 was transferred to the sellers agents client account on 9th October 2009.

6.137 A copy of a signed Disposition for the plot by Company 8 in favour of Company 6 was on the file. The Disposition stated the price paid for the plot was £87,500 with the date of entry being 18th September 2009. A copy of the Disposition granted by Company 6 in favour of the client was on the file detailing a purchase price of £145,000 and a date of entry of 9th October 2009.

6.138 A search of the Land Register on 16th May 2012 confirmed that the client was the proprietor of the property with a date of entry of 9th October 2009. The Standard Security in favour of the Bank of Scotland plc was also registered.

7. Having heard submissions and having given very careful consideration to the Complaint, the Tribunal found the Respondent guilty of professional misconduct in respect of;

- (a) His failure to inform the various lenders prior to intromitting with the loan funds over properties that the sellers of the properties to the client of the Respondent had owned the various properties for a period less than six months despite an obligation to inform the lenders in terms of Clause 5.1.1 of the CML Lenders Handbook.
- (b) His failure to inform the various lenders prior to intromitting with the loan funds over the properties that neither he nor the firm had control over all of the funds paid to the selling agents in respect of the purchase prices of the various transactions despite an obligation to do so in terms of the CML Lenders Handbook.
- (c) His failure to inform the various lenders prior to intromitting with the loan funds that his clients were paying much higher prices for the various properties than the sellers paid when they acquired the properties despite a requirement to do so in terms of the Clauses 5.1.2 and 5.10.3 of the CML Lenders Handbook.

- (d) His failure to submit a suspicious activity report to SOCA in advance of settling the transactions as he was required to do so in terms of the Proceeds of Crime Regulations.
 - (e) His, having been appointed by the lenders to act on their behalf and owing duties to them as his clients, failure to comply with their lending instructions and the principles of CML Handbook, and failure to act diligently and with the utmost propriety.
8. Edinburgh 16 May 2013. The Tribunal having considered the amended Complaint dated 24 April 2013 at the instance of the Council of the Law Society of Scotland against John Raymund MacDonald, Solicitor, 69 Carnethie Street, Rosewell, Midlothian; Find the Respondent guilty of Professional Misconduct in respect of; his failure to inform various lenders, prior to intromitting with loan funds over properties, that the sellers of the properties to the client of the Respondent had owned the various properties for a period less than 6 months contrary to Clause 5.1.1 of the CML Lender's Handbook; his failure to inform the various lenders prior to intromitting with loan funds over the properties that neither he nor the firm had control over all of the funds paid to the selling agents in respect of the purchase prices of the various transactions, contrary to the CML Lender's Handbook; his failure to inform the various lenders prior to intromitting with the loan funds that his clients were paying much higher prices for the various properties than the sellers had paid when they acquired the properties, despite a requirement to do so in terms of the CML Lender's Handbook; his failure to submit a suspicious activity report to SOCA in advance of settling the transactions as he was required to do in terms of the Proceeds of Crime Regulations and his failure to comply with the instructions from his clients, the lenders and failure to comply with the principles of the CML Lender's Handbook and failure to act diligently and with the utmost propriety; Order that the name of the Respondent, John Raymond MacDonald, be struck off the Roll of Solicitors in Scotland; 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.

(signed)

Dorothy Boyd
Vice Chairman

9. 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

The parties advised that there had been discussions between them which had resulted in an adjusted Complaint being lodged with the Tribunal. The Respondent pled guilty to the adjusted Complaint. No evidence was led.

SUBMISSION FOR THE COMPLAINERS

Mr Reid explained that the matter arose due to the Law Society's interest in another solicitor's firm which then went out of business and the transactions were transferred to the Respondent. There were 18 back to back transactions which took place between June 2009 and September 2009. Mr Reid pointed out that in August 2009 there was an article in The Law Journal alerting the profession to the difficulties with the CML Handbook. In these transactions the same sellers were involved, each transaction had unusual circumstances, some securities were not recorded or were postponed to other existing securities. The same parties were involved and the sellers sold on at an uplifted price. There was an outside source behind all the companies and the Respondent was not instructed directly by the client. Mr Reid pointed out that in cumulo the amount of funds which were loaned were £1,986,315. Mr Reid explained that it had not been possible to find out whether or not any claim had been intimated to the Guarantee Fund. Mr Reid pointed out that the conveyancing market at the time had collapsed. When the issue was discovered the Respondent wrote to the lenders. Mr Reid submitted that the profit made in this case could have amounted to £721,600 but as some of the deposit cheques were never cashed it could have been a lesser figure than this. Mr Reid invited the Tribunal to make a finding of professional misconduct due to the flagrant breaches of the CML Lender's Handbook and a failure to comply with the duty not to withhold information from the lenders. Mr Reid submitted that the Respondent had failed to comply with the lender's instructions and had not acted with absolute propriety. Mr Reid referred the Tribunal to Smith & Barton at page 130-131 where some time ago the Tribunal had established that failing to advise a change of price amounted to professional misconduct. The Respondent in this case also breached the Money Laundering Regulations and did not report the matter to SOCA. He also had little contact with his clients. Mr Reid

pointed out that the Respondent had pled guilty at an early stage and saved time and expense and had also recognised that he was wrong early in the Law Society's investigations.

SUBMISSIONS FOR THE RESPONDENT

Mr Taylor stated that what had happened here was highly regrettable. The Respondent was 62 years old and at the twilight of his professional career. He was single with no dependants but was sole carer for his elderly mother who was suffering from Alzheimers.

In connection with the Complaint the specific transactions came from the same source, a Mr AA. They related to small developments. Mr Taylor stated that the other parts of the Respondent's practice were not similarly affected. He pointed out that there was no allegation of dishonesty and that it was a regulatory failure. The only benefit to the Respondent was a modest conveyancing fee. Mr Taylor submitted that the Respondent took his eye off the ball and with the increase in the regulatory regimes he was finding it difficult to stay current. It would appear that there had not so far been any loss or any claims on the Guarantee Fund, despite matters happening 3½ years ago. Mr Taylor accordingly submitted that it was less likely that there would now be any claims. Mr Taylor advised that when matters came to light 3½ years ago the Respondent was suspended from practice and had not worked since. This had led to inevitable consequences resulting in the loss of his practice and the firm losing its business. The Respondent had lost contact with his client base which had implications for his marketability within the profession, given his age. The Respondent had been involved in the case of Wilson-v-RBS, which was a lucrative case but he had had to withdraw due to being suspended. This had significant consequences in connection with loss of business. Mr Taylor advised that the Respondent's firm had been generating £120,000 to £140,000 of fee income per year and he had had a good client base with a high retention rate. The Respondent is now receiving Tax Credits and a small local government pension. The Respondent owned his house jointly with his mother but it is mortgaged and he now has considerable debts and is on the verge of insolvency. His suspension had had disastrous financial consequences for him. Mr Taylor asked the Tribunal to take account of the fact that

the Respondent had already been without his practising certificate for 3½ years. The Respondent would also have the expenses of these proceedings to pay. Mr Taylor submitted that the Respondent had suffered substantially for no financial gain and asked the Tribunal to consider allowing him to retain a restricted practising certificate.

Mr Taylor stated that the facts were not in dispute but pointed out that a letter of obligation had been obtained from the selling agent undertaking to discharge the previous securities. The Law Society's intervention came before these were followed up as would have been in the normal course of events.

In response to a question from the Chairman, Mr Reid confirmed that the Respondent was suspended in February 2010 in terms of Section 40 of the Solicitors' (Scotland) Act 1980 because the Law Society considered that he had breached Rule 6 of the Accounts Rules. Mr Reid explained that the Law Society had this power where it was felt that it was necessary to protect client's funds. In this case the Law Society considered that the Respondent had breached Rule 6 of the Accounts Rules by intruding with clients funds without the written consent of the lenders. In these particular cases all the lenders did have included in their certificates of title, a declaration to the effect that the CML Lender's Handbook requirements had been complied with. The suspension would continue until the Respondent was able to rectify the breach of the accounts Rules. The Chairman enquired as to what the Respondent would have to do to have the suspension lifted. Mr Taylor stated that if the Respondent was working on a restricted practising certificate this may be sufficient. In response to a further question from the Chairman it was clarified that the onus was on the Respondent to apply to the Law Society and demonstrate that he had complied with the Accounts Rules, but he had not approached the Law Society. Mr Taylor indicated that a lot would depend on what happened at the Tribunal today.

DECISION

A solicitor when acting for both lender and borrower in a conveyancing transaction requires to act with absolute propriety and to protect the interests of the lender with the same degree of care and responsibility as is given to a purchaser. In this case the Respondent failed to act in accordance with the conditions of the loans. The

Respondent had a duty to report the unusual circumstances of these transactions to the lenders to afford the lenders the option to consider whether they should be lending in these circumstances or whether there was a possibility that a seller was participating in a gratuitous alienation which could later be challenged, which might affect the validity and legality of the standard security in favour of the lenders. In this case there were a large number of transactions over a 3 month period. The Tribunal considered that it must have been clear to the Respondent that there was something very odd, given that the price had gone up so dramatically, especially post 2007, given the state of the conveyancing market. In numerous transactions the loan amount exceeded the price paid by the mid purchaser. The Respondent also failed to ensure that the lenders obtained a first ranking security in some cases. The Tribunal considered that this was completely unacceptable. The Tribunal considered that the Respondent's conduct fell significantly below the standard expected of a competent and reputable solicitor and would be extremely damaging to the reputation of the profession. The Tribunal had no hesitation of making a finding of professional misconduct.

The Tribunal took account of the fact that the Respondent had tendered a plea at an early stage and also considered that it was possible that the Respondent was persuaded into doing something which was not absolutely right. However, the Respondent was personally responsible for a large number of transactions involving multiple lenders and more than one development. He flagrantly breached the terms of the CML Handbook, did not ensure prior securities were cleared and failed in some of the cases to comply with his obligations under the Money Laundering Regulations. The Respondent also failed to report the circumstances to SOCA, which the Tribunal considers to be a very serious matter. The Respondent only sent letters to the various lenders trying to rectify the situation after the Law Society raised the issue with him.

The Tribunal considered restricting the Respondent's practising certificate but did not feel that this would be sufficient to ensure protection of the public. The Tribunal also considered suspending the Respondent from practice and took account of the fact that he has already been suspended for 3½ years. However, it must have been obvious to the Respondent that there was some kind of scheme taking place given the number of back to back transactions, the huge increase in price in a short space of time between

the first sale and the second sale and the fact that the firm did not have control over all the funds paid to the selling agents. Despite this the Respondent did not report matters to SOCA. The obligation to report is necessary, having regard to the importance of not facilitating mortgage fraud. Given the number of transactions involved together with his failure to comply with the Money Laundering Regulations and his failure to report matters to SOCA, the Tribunal did not consider that the Respondent was a fit and proper person to remain on the Roll of Solicitors

The Tribunal noted the Respondent's unfortunate circumstances but considered that the reputation of the profession and the protection of the public are of paramount importance and given the serious nature of the Respondent's conduct in this case the Tribunal considered it had no alternative other than to strike the Respondent's name from the Roll of Solicitors in Scotland. The Tribunal made the usual order with regard to publicity and expenses.

Dorothy Boyd
Vice Chairman