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

F I N D I N G S

in Complaint

by

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

COMPLAINERS

against

PETER MACINTOSH AIKMAN, Solicitor, Messrs Aikman Bell Solicitors.19 Cadzow Place, Edinburgh

RESPONDENT

1. A Complaint dated 1 May 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, Peter MacIntosh Aikman, Solicitor, Messrs Aikman Bell Solicitors.19 Cadzow Place, Edinburgh (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 heard on 17 July 2013 and notice thereof was duly served on the Respondent.

4. When the Complaint called on 17 July 2013, the Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow.

5. A Joint Minute was lodged on behalf of both parties, admitting the averments of fact, duty and professional misconduct in the Complaint. The Respondent also lodged an Inventory of Productions, containing two references for the Respondent. Given the extent of the agreement between the parties, evidence was not required and the Tribunal heard submissions from both parties.

6. The Tribunal found the following facts established:

6.1 The Respondent's date of birth is 2 November 1967. He was enrolled on the 11 October 1991. He was employed by MacBeth Currie Solicitors in Dunfermline from 25 October 1991 to September 1995. He was employed by Aikman Russell & Dunlop Solicitors on 2 October 1995 becoming a partner in 1999. He became a sole practitioner in Aikman Bell, Solicitors, on 18 February 2008.

6.2 The Complainers conducted a financial compliance review at the firm of Aikman Bell on 8 February 2011. Problems were identified with a number of issues including matters deemed to pose a serious risk to the Guarantee Fund relating to breaches of the Council of Mortgage Lenders Handbook and the Solicitors (Scotland) Accounts etc Rules 2001 Rule 6(1)(c) in six transactions. In five transactions there was a seller, a company which had bought from the seller (the mid purchaser) and a client for whom the Respondent acted (the end purchaser) who bought from the mid purchaser. In three transactions the mid purchaser was a company called Company 1 and in one transaction a company known as Company 2. These companies

shared a common address. In four transactions the same solicitor, John Lints, acted on behalf of the mid purchaser. In one transaction the missives were concluded on behalf of the end purchaser by another firm. In all of the transactions the Respondent acted during a short period of time between about late May and early October 2010. In all of the transactions, the loan instructions incorporated the CML Handbook for Scotland. In all of the transaction files there were Risk Assessment Forms and copy identification documentation but no evidence as to the provenance of that documentation. There was no information as to how the solicitor came to be instructed in five of the transactions. The matter was referred to the SLCC who considered the Complaint and, in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 Section 6, remitted the Complaint to the Complainers to investigate

6.3 By letter dated 8 November 2011 the Complainers wrote to the Respondent intimating their obligation under the 2007 Act Section 47(1) to investigate complaints relating to the conduct of enrolled Solicitors. The letter advised that the complaint was based on consideration of the information provided by the Complainers Financial Compliance department.

6.4 **MS A - PURCHASE OF PROPERTY 1**

By decree dated 20 April 2010 the Royal Bank of Scotland Plc (RBS) was granted possession and the power of sale of the subjects Property 1. They sold the subjects for £54,000 to Company 1 with entry on 15 September 2010. Ms A purchased the subjects from Company 1 with a mortgage through a buy to let scheme applied for on 19 August 2010. The sellers were represented by the Lints Partnership and had granted a power of attorney to John Graham Lints enabling him to act in all aspects of their various property transactions. The mortgage valuation report by DM Hall chartered surveyors dated 24 August 2010

instructed by Ms A valued the property for mortgage purposes at £90,000.

6.5 On 2 September 2010 the Respondent faxed the Lints Partnership an offer to purchase the subjects for £90,000 with the same date of entry namely 15 September 2010. The following day he wrote to the purchaser enclosing a copy of the offer, his Terms of Business letter and an estimate of the fees and outlays. On 3 September 2010 he received a copy of the Disposition by the RBS in favour of Company 1, together with a copy land certificate and the extract decree.

6.6 On 3 September Birmingham Midshires a division of the Bank of Scotland PLC sent the Respondent a copy of the terms of the Mortgage offer and confirmed their instructions to him to act on their behalf. The offer specified that he was instructed "*in accordance with the CML Lenders' Handbook for Scotland and our Part 2 instructions. The Second Edition of the CML Lender's Handbook for Scotland and our Part 2 instructions are only available on the CML website*." The lender offered a mortgage of £67,500 towards the purchase. The Respondent agreed to act in accordance with these instructions

6.7 On 7 September 2010 the Respondent wrote to the purchaser and invited her to arrange a suitable time to come to the office to sign the mortgage papers. He asked for a sum of £23,370 inclusive of Legal Fees, Vat and outlays to settle the deposit of £22,500. On 8 September 2010 the purchaser confirmed she would place cleared funds in the solicitor's account for Tuesday 14 September 2010. On 10 September 2010 the Respondent had a fifteen minute meeting with the purchaser who signed the standard letters. He signed then faxed the lender the unqualified Certificate of Title. He did not advise the lender of the unregistered link in title or that the mortgage advance of

£67,500 was more than the mid-purchaser was paying for the property on the same day. The lender released the mortgage advance to the firm on 13 September 2010 in reliance of the Certificate of Title. The Respondent failed to intimate the unusual circumstances of the transaction to the lender.

6.8 On 14 September 2010 Lints faxed the Respondent the Form 12 A Report. It showed that Company 1 had not registered title as at 24 hours before the date of settlement set down for 15 September 2010 and they were uninfeft proprietors. The report disclosed that Mr B and Ms C were the proprietors of the property with joint title registered on 28 December 2005. On 15 September 2010 the Respondent instructed transfer of the sum of £90,000 by CHAPS transfer in settlement of the purchase price of the subjects. The Respondent completed the registration and on 18 November 2010 sent the Title Deeds, namely the Land Certificate, Charge Certificate and Affidavit of the purchaser to the lender for safe keeping

6.9 The Complainers' Financial Compliance Team raised concerns about this and the other five transactions. The Respondent acknowledged that there was an unregistered middle link in title. He stated that he had not considered that to be a risk to his lender clients as the subjects had been sourced by a property management company at below market value and sold on at market value to be rented out. He advised that the property was surveyed and purchased at full market value and that after the inspection he had familiarised himself with the conditions set out in the CML handbook. He had consulted Mr. Lints and his accountant on the nature of the transactions. He advised that he and the accountant were unaware at the relevant time that the Respondent was required to report the back to back element to the lender clients in such circumstances.

6.10 **MR D – PURCHASE OF PROPERTY 2**

The Lints Partnership acted for Company 2 in the purchase of Property 2 from Mr E as executor dative of the late Mrs F. The price was £77,500 the entry date 17 September 2010. Company 2 did not register title to the subjects. Graham & Sibbald, Chartered Surveyors produced a scheme 1 Mortgage and Valuation Report on behalf of a Mr D after an inspection on 21 July 2010. The surveyors sent the Report dated 24 August 2010 to Company 2 and valued the subjects at £110,000. The Respondent held a copy of the report on his file.

6.11 On 31 August 2010 Birmingham Midshires sent the Respondent a copy of their mortgage offer to Mr D. The lender instructed the Respondent to act "*in accordance with the CML Lenders' Handbook for Scotland and our Part 2 instructions. The Second Edition of the CML Lender's Handbook for Scotland and our Part 2 instructions are only available on the CML website*.". The lender also enclosed a copy of the Offer with special conditions attached. The Respondent agreed to act in accordance with these instructions.

6.12 On 2 September 2010 the Respondent faxed an offer to purchase the subjects for Mr D at a price of £110,000, with a date of entry on 15 September 2010 to Lints. The following day he wrote to the purchaser enclosing a copy of the offer, a copy of his Terms of Business letter and an estimate of the fees and outlays. There was no record kept on his file of any instructions from the purchaser prior to the offer being submitted. On 6 September 2010 he wrote to the purchaser enclosing a copy of the mortgage offer from the lender offering a mortgage of £82,500 towards the purchase of the property and enclosed the Standard Security for signature. He asked that a sum of £28,470 to cover the deposit and the fees and outlays for the purchase be transferred to the firm's client account. He did not

obtain any evidence as to the source of the funding for the deposit. Mr. D signed the Standard Security in Glasgow in the presence of a Glasgow Solicitor.

6.13 On 6 September 2010 Lints sent the Respondent their qualified acceptance and their draft Disposition by Mr E to Company 2 with the purchase price of £77,500 and date of entry of 17 September 2010. They accepted the offer to purchase the subjects for £110,000 but with a date of entry of 17 September 2010. On 7 September 2010 the Respondent signed and faxed an unqualified Certificate of Title to the lender. He confirmed that the completion date was 16 September 2010. He did not advise the lender of the unregistered link in title or that the mortgage advance of £82,500 was more than the mid-purchaser was paying for the property on the same day.

6.14 On 15 September 2010 the lender notified the Respondent that the loan funds had been advanced to him. He received the Form 10A report dated 16 September 2010 which confirmed that as at 16 September 2010 the registered owner was Mr E. On 16 September 2010 the Respondent transferred the sum of £110,000 to the Lints account at the Bank of Scotland. The Respondent completed the registration and on 18 January 2011 wrote to the lender enclosing the Land Certificate and certified copy of the Charge Certificate, providing evidence that their interest had been secured by way of a First Ranking Standard Security.

6.15 **MS G - PURCHASE OF PROPERTY 3**

The Bank of Scotland obtained decree to repossess and sell Property 3. The Bank sold the subjects to Company 1. for the price of £72,000 with entry on 11 June 2010. The Lints Partnership acted for Company 1 in the sale of the subjects to Ms G who was represented by the Respondent. There was no

evidence on the Respondent's file as to how he obtained instructions to act on her behalf. On 23 June 2010 he submitted an offer on her behalf to buy the subjects at a price of £120,000. On 17 May 2010 e.surv chartered surveyors inspected the property. They valued it at £120,000. The Respondent had a copy of the valuation report.

6.16 The Halifax instructed the Respondent in the purchase on 21 June 2010 and enclosed their mortgage offer. The mortgage advance was for £102,000. The terms and conditions of his instructions were stated to be "*governed by and incorporate the current edition of the CML Lenders' Handbook applicable to the jurisdiction in which the property is located and our Part 2 instructions. The current Edition of the applicable CML Lender's Handbook for Scotland and our Part 2 instructions for each Handbook are only available on the CML website*". The lender enclosed copy of the Halifax mortgage conditions handbook 2007. The Respondent agreed to act in accordance with these instructions.

6.17 On 25 June 2010 the Respondent signed and faxed an unqualified Certificate of Title and request for mortgage funds to the Halifax. The Certificate of Title advised that the completion date was 28 June 2010. He did not advise the lender of the unregistered link in title, that the mortgage advance of £102,000 was more than the mid-purchaser had paid for the property less than a month earlier or that the full balance of the purchase price was not being paid from the purchaser's own funds. That same day the lender acknowledged receipt of the completed Certificate of Title and noted that the completion date was set for 28 June 2010. They advised that they could not release funds because the loan had not yet been approved by them.

6.18 On 28 June 2010 the Respondent wrote to the purchaser enclosing a copy of the Land Certificate. This was the only correspondence to her on his file. The Form 12A Report faxed to Lints and dated 30 June 2010 showed the registered title was in the name of Ms H. The Disposition by Company 1 in favour of the purchaser was signed on 1 July 2010 with a price of £120,000 and a date of entry of 30 June 2010.

6.19 On 2 July 2010 the Respondent again faxed the lender an unqualified Certificate of Title. He advised that the completion date was 2 July 2010 and that the mortgage advance was £102,000. He made no further disclosures of information held by him regarding the unusual aspects of transaction. That day the lender wrote to him to confirm that a mortgage offer had been issued. The lender released the mortgage advance for £102,000 to him on 2 July 2010 in reliance of the Certificate of Title, and the Respondent settled the transaction. The Registers of Scotland acknowledged the solicitor's application for registration of the deeds on 30 July 2010.

6.20 The balance of the price was £18,935 and was provided by a third party, named Mr I a director of Company 3. The Respondent held no due diligence identification for Mr. I or the company on his file. He held the due diligence identifications for Mr. I on a central office file. He did not have evidence on his file to show he had asked the purchaser for the funds. He had not established from the purchaser whether the funds introduced by Mr I were her own funds or a loan. He advised the Complainer's Financial Compliance team that he had relied on the information ingathered by Mr I who was the purchaser's financial adviser during the course of the mortgage application process with the lenders because he was FSA regulated and therefore a professional and regulated person. He maintained that the funds were held by Mr. I as the purchaser's agent and

came from her savings. There was no record on his file of any communication between the Respondent and Mr. I.

6.21 **MR J – PURCHASE OF PROPERTY 4**

On 21 October 2009 GE Money Home Lending Limited obtained decree to repossess and sell Property 4 and sold the subjects to Company 1 represented by The Lints Partnership. The sale price was £65,500 with an entry date on 25 June 2010. DM Hall, Chartered Surveyors prepared a Mortgage Valuation Report for a Mr J on 14 May 2010. They valued the subjects at £90,000. They highlighted severe problems from water penetration in the flat roof as the roof frame had been altered. It required to be reinstated. They gave a value upon completion of £100,000. A mortgage application dated 18 May 2010 for a buy to let mortgage was completed by the Mortgage Broker Mr I on behalf of Mr J the purchaser.

6.22 On 15 June 2010 Lints sent the Respondent documentation including the copy Land and Charge Certificates, Property Enquiry Certificate, Coal Authority Report, copy Disposition, copy decree, copy certificate of advertising and sellers' drafts. They requested a Disposition as a matter of urgency. On 17 June 2010 they faxed the concluded missives to the Respondent including correspondence from the purchaser's previous solicitors, Messrs Hughes Walker Property. Messrs Hughes Walker Property had submitted an offer from the purchaser to Lints to purchase the subjects for £100,000 on 31 May 2010. The offer was accepted by the seller on 2 June 2010. Missives were concluded. On 18 June 2010 the Respondent wrote to the purchaser stating "*I have been asked to take over the purchase of your property"*. He enclosed a terms of business letter, an estimate of his fees and outlays.

6.23 On 18 June 2010 Birmingham Midshires wrote to the Respondent instructing him to act for them "*in accordance with the CML Lenders' Handbook for Scotland and our Part 2 instructions. The Second Edition of the CML Lender's Handbook for Scotland and our Part 2 instructions are only available on the CML website*". The lender enclosed a copy of the offer letter which replaced the previous offer dated 9 June 2010. The offer referred to a mortgage of £77,150. The Respondent agreed to act in accordance with these instructions. On 22 June the Respondent returned the Titles, together with revised drafts to Lints. He enclosed a draft Disposition for revisal and return and advised that he had received their client's mortgage papers and proposed to settle the transaction by Friday 25 June 2010.

6.24 An unqualified Certificate of Title handwritten by the Respondent and dated 18 June 2010 was signed and faxed by him to the lender on 22 June 2010. The Certificate of Title specified that the purchaser had secured a mortgage advance of £75,000 for the subjects which were purchased at £100,000 with a completion date 24 June 2010. He did not advise the lender of the unregistered link in title or that the mortgage advance was more than the mid-purchaser was paying for the property on the same day. On 23 June 2010 the lender confirmed payment to the Respondent of the loan Advance. The Respondent sent a cheque for £100,000 to Lints on 24 June 2010 to be held pending the receipt of the Titles, Executed Disposition, Keys and Letter of Obligation.

6.25 The Form 12 A report dated 24 June 2010 disclosed that title to the property was registered to Ms K and Mr L. Company 1 never registered title. The Disposition by Company 1 in favour of the purchaser was in consideration of the sum of £100,000 with entry on 25 June 2010. The Disposition was signed on 25

June 2010. On 28 June 2010 Lints sent the Titles, signed Disposition in favour of the purchaser with a copy Power of Attorney and a signed Schedule and Letter of Obligation with draft to the Respondent. The Respondent completed the registration and on 27 September 2010 confirmed to the lender that the Land Certificate and Charge Certificate had been registered in the Land Register.

6.26 The Complainers' Financial Compliance Team raised concerns about the transaction and the Respondent acknowledged that there was an unregistered middle link in title. It was not reported to either the purchaser or the lender clients. The Respondent advised that the property had been purchased by a property and management letting company who sourced the repossessed properties at below market value, sold them on at market value for rental purposes and that the rent covered the mortgage. At the time he did not consider the unregistered middle link in title to be a risk to the lender. He advised that he had now familiarised himself with the CML handbook and produced a copy ledger for the transaction.

6.27 **MS M – PURCHASE OF PROPERTY 5**

Ms N purchased Property 5 from Company 5 who were represented by Messrs Hunter Robertson Solicitors. The Disposition in her favour was by the partners of the firm Company 4 Property at a price of £35,000 with a date of entry of 24 September 2010. On 23 August 2010 the Respondent submitted an offer to McCusker Cochrane & Gunn, Solicitors, Paisley (MCG), who acted for Ms N, to purchase the subjects on behalf of Ms M for a price of £50,000 with entry on 10 September 2010. On 24 August 2010 he sent a copy of the offer, together with his Terms of Business letter to the

purchaser. He asked for her passport to copy for ID purposes and a recent utility bill to confirm her address.

6.28 On 27 August 2010 MCG asked the Respondent if it was acceptable to use the Disposition in favour of their client as a link in title for the purchaser's application for registration. They sought confirmation that the purchaser would meet both the legal fees for Company 4 and MCG in connection with the transaction and indicated that Company 4 wanted settlement on 9 September 2010. On 2 September the Respondent wrote to the purchaser for confirmation that she would be covering MCG's legal costs. He sent her a copy of the formal written acceptance on 6 September 2010. On 9 September 2010 MCG faxed their formal letter in conclusion of missives and asked for the draft Disposition to be sent to them to arrange settlement.

6.29 On 9 September 2010 Birmingham Midshires wrote to the Respondent and instructed him to act for them. They enclosed a copy of the mortgage offer together with the terms and conditions and express confirmation of his instructions "*in accordance with the CML Lenders' Handbook for Scotland and our Part 2 instructions. The Second Edition of the CML Lender's Handbook for Scotland and our Part 2 instructions are only available on the CML website*." The Respondent agreed to act in accordance with these instructions.

6.30 On 14 September 2010 the Respondent told the purchaser he had received a mortgage offer from the lender offering £37,500 towards the purchase of the subjects. He asked that the sum of £13,276.50, the balance of the purchase price, together with the fees and outlays be transferred to his Client's bank account no later than 17 September 2010. He notified the company Penny Lane Ltd of the terms of this request. He received the balance of £13,276.50 from Company 5 and applied this to the balance of

the purchase price at settlement on 30 September 2010. He did hold evidence on the file to show he had applied customer due diligence to Company 5. He did not establish from the purchaser whether the funds introduced by Company 5 were her own funds or a loan.

6.31 On 14 September 2010 the Respondent faxed an unqualified Certificate of Title to the lender confirming that the purchaser required to borrow £37,500 to purchase the subjects and that the completion date was 16 September 2010. He did not advise the lender of the unregistered link in title, that the mortgage advance of £37,500 was more than the mid-purchaser was paying for the property in the same month or that the full balance of the purchase price was not being paid from the purchaser's own funds. On 15 September 2010 the lender advanced the agreed mortgage by telegraphic transfer to the firm's Client Account.

6.32 The Respondent sent the Disposition by Ms N in favour of the purchaser to MCG on 15 September 2010 with the date of entry altered to 17 September 2010. There was no Deed of Assumption in connection with Mr O's appointment as partner and Trustee of the firm Company 4. There was an accountant's letter confirming the current partnership and an extract Death Certificate for Ms P a former Partner at Company 4. MCG sent Form 12A and Property Enquiry Reports to the Respondent on 22 September 2010. The Form 12A Report disclosed that at 22 September 2010 title to the property was registered to Ms Q, Ms R and Mr O as the present Partners and Trustees of the firm Company 4. The Land Certificate showed Ms Q and partners and Trustees for the firm Company 4 had registered Title on 2 December 1998.

6.33 On 23 September 2010 the Respondent paid the purchase price of £50,000 to MCG's Client's bank account. He asked for the Titles, Executed Disposition, Letter of Obligation and keys. On 29 September 2010 MCG sent documents and advised that the keys had been uplifted by Ms T of Company 5 on behalf of the purchaser. The Respondent returned the signed Disposition by Ms N in favour of Ms M to MCG on 30 September 2010. The date of entry was 30 September 2010. On 18 February 2011 the Respondent forwarded a copy of the updated Land Certificate following registration to the lenders

6.34 The Respondent advised the Financial Compliance Team that the loan of £13,276.50 came from Company 5 a Property Management Company which acted as management agents in the purchase and provided funds for buy to let properties. He stated that the property was sourced for the purchaser by the company which provided the balance of the purchase price and had found a tenant for the property. The unregistered link in title was not reported to either the purchaser or the lender clients. The Respondent indicated that at the time he did not consider this to be a risk to the lender. He advised that he had now familiarised himself with the CML handbook and produced copy ledger for the transaction. On 10 May 2011 he provided the Financial Compliance Team with a copy of the company report for Company 5, previously known as Company 6, which confirmed the details of the Directors and beneficial owners.

MS U - PURCHASE OF PROPERTY 6

6.35 On 21 September 2010 the Respondent took instructions from his client Ms U who wished to purchase from her partner Mr V the property situated at Property 6 with a purchase price of £120,000 and a mortgage from the Scottish Building Society of

£96,000. Her Broker was Mr W. On 22 September 2010 the Respondent sent an offer to purchase the subjects to Mr. V's agents Mowat Hall Dick Solicitors (MHDS) for £120,000 with a date of entry of 22 October 2010 conditional upon the seller meeting the purchaser's legal fees and outlays of £935. On 23 September 2010 he sent a copy of the offer to the purchaser and sought proof of identification and proof of address from her.

6.36 On 23 September 2010 The Scottish Building Society instructed the Respondent to act, enclosed the mortgage offer and confirmation of his express instructions to act on the lender's behalf in accordance with the CML Lenders Handbook for Scotland including the lender's Part 2 instructions. The formal Offer of Advance sent by the lender to the Respondent had a section headed up "Special Conditions" at paragraph 123. This outlined the lender's knowledge of existing loans at the material time the lender approved the offer. It says "*The solicitor should ensure that existing loans (s) held by the Applicant with G E Money and Black Horse and the credit cards with Northern Rock and Barclaycard are repaid on or before completion of this mortgage"*. The Respondent agreed to act in accordance with these instructions.

6.37 On 4 October 2010 the Respondent told the purchaser that he had a mortgage offer from the Scottish Building Society for a mortgage of £96,000. He asked for transfer to the Firm's Client Account of £24,050 the balance of the purchase price to cover the deposit prior to the date of purchase scheduled for 27 October 2010. There is no record on the file as to the source of the payment for the balance. The firm received £24,000 from a third party, Mr X, and it was applied to the balance of the purchase price at settlement on 22 October 2010. The Respondent did not apply customer due diligence to Mr X or

establish from the purchaser whether the funds introduced by Mr X were her own funds or a loan.

6.38 On 11 October 2010 the Respondent submitted an unqualified Certificate of Title to the lender and confirmed *inter alia* "*3. This certificate is given in accordance with the CML Lenders' Handbook for Scotland and we have complied with the instructions and guidance contained therein..";* that the purchase price was £120,000 and advised the lender that the funds were required by bank transfer on 21 October 2010. He did not tell the lender that a third party was providing part of the purchase price. On 21 October 2010 the lender transferred to the firm bank account the sum of £95,950.00 and confirmed to the Respondent that the mortgage funds had been sent. On that date £118,955.00 was paid by the Respondent to the sellers who sent the title deeds, duly executed Disposition and letter of obligation with draft for comparison and return. They referred to keys being exchanged directly between the clients. The Respondent completed the transaction and on 22 December 2010 forwarded the title deeds to the lender for safekeeping.

6.39 The Respondent told the Financial Compliance team that the balance of the purchase price was provided by Mr X a Director of Company 7 by way of a loan arranged through the purchaser's mortgage broker. He did not have a copy of the loan agreement and had believed that the purchaser's broker, a professionally regulated individual, would inform the lender of this second loan. The file held no evidence of communication between the Respondent and the Broker, Mr. X or his company and had no customer due diligence identification for Mr X recorded in it. The Broker Mr W, Mr. X and Company 7 were not regulated by the Financial Services Authority.

6.40 The Complainers compiled an Investigation Report, a copy of which was intimated to the Respondent in a letter dated 30 August 2012. By letter dated 27 September 2012 the Complainers provided a Supplementary Report to the Respondent and intimated that the Complaint would be considered by the Professional Conduct Sub-Committee on 25 October 2012.

6.41 On 25 October 2012 the Complainers' Professional Conduct Committee considered the matter and determined that the Respondent's conduct appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor, that it appeared to be capable of being proved beyond reasonable doubt and could thus amount to professional misconduct. It further determined that the Respondent should be prosecuted before the Scottish Solicitors Discipline Tribunal.

7. Having given very careful consideration to the facts as admitted and the submissions made by both parties, the Tribunal found the Respondent guilty of professional misconduct in terms of Section 53 of the Solicitors (Scotland) Act 1980 in respect of;

7.1 On two occasions the Respondent drew money from his client account by using mortgage loan funds to pay the purchase price of properties, when he did not have his clients', the mortgage lenders, authority to do so in contravention of The Solicitors (Scotland) Accounts, etc, Rules 2001 rule 6(1). He failed to comply with the specific instructions of the clients.

7.2 In the purchase of Property 1 for Ms A prior to using the loan funds, the Respondent failed to advise his client Birmingham Midshires that the seller bought the property for £54,000 shortly before selling it to Ms A for £90,000, such failure being a breach

of paras. 5.1.1, 5.1.2 and 5.10.3 of the CML Handbook, and also a breach of Birmingham Midshires' specific stipulations that cases where the seller has owned the property for less than 6 months and back to back transactions were not acceptable.

7.3 In the purchase of Property 2 for Mr D prior to using the loan funds, the Respondent failed to advise his client Birmingham Midshires that the seller bought the property for £77,500 shortly before selling it to Mr D for £110,000, such failure being a breach of paras. 5.1.1, 5.1.2 and 5.10.3 of the CML Handbook, and also a breach of Birmingham Midshires' specific stipulations that cases where the seller has owned the property for less than 6 months and back to back transactions were not acceptable.

7.4 In the purchase of Property 3 for Ms G prior to using the loan funds, the Respondent failed to advise his client Halifax that (a) the seller bought the property for £72,000 shortly before selling it to Ms G for £120,000, such failure being a breach of paras. 5.1.1, 5.1.2 and 5.10.3 of the CML Handbook; and (b) that a third party, Mr I, provided £18,935 towards the balance of the purchase price, such failure being a breach of para. 5.9.1 of the CML Handbook.

7.5 In the purchase of Property 4 for Mr J prior to using the loan funds, the Respondent failed to advise his client Birmingham Midshires that the seller bought the property for £65,500 shortly before selling it to Mr J for £100,000, such failure being a breach of paras. 5.1.1, 5.1.2 and 5.10.3 of the CML Handbook, and also a breach of Birmingham Midshires' specific stipulations that cases where the seller has owned the property for less than 6 months and back to back transactions were not acceptable.

7.6 In the purchase of Property 5 for Ms M prior to using the loan funds, the Respondent failed to advise his client Birmingham

Midshires that (a) the seller bought the property for £35,000 shortly before selling it to Ms M for £50,000, such failure being a breach of paras. 5.1.1, 5.1.2 and 5.10.3 of the CML Handbook and also a breach of Birmingham Midshires' specific stipulations that cases where the seller has owned the property for less than 6 months and back to back transactions were not acceptable; and (b) a third party, Company 5, provided £13,276.50 towards the balance of the purchase price, such failure being a breach of para. 5.8 of the CML Handbook.

7.7 In the purchase of Property 6 for Ms U prior to using the loan funds, the Respondent failed to advise his client Scottish Building Society that a third party, Mr X, provided £24,000 towards the balance of the purchase price which was a loan obtained by the purchaser, such failure being a breach of para. 5.8 of the CML Handbook.

8. Having heard from the Respondent in mitigation, the Tribunal pronounced an interlocutor in the following terms:-

Edinburgh 17 July 2013 The Tribunal, having considered the Complaint dated 1 May 2013 at the instance of the Council of the Law Society of Scotland against Peter MacIntosh Aikman, Solicitor, Messrs Aikman Bell Solicitors, 19 Cadzow Place, Edinburgh; Find the Respondent guilty of Professional Misconduct in respect of; his breach on two occasions of Rule 6 (1) of the Solicitors (Scotland) Accounts Etc Rules 2001, his breach of his client's specific instructions, his breach on five occasions of paragraphs 5.1.1, 5.1.2 and 5.10.3 of the CML Handbook, his breach on one occasion of paragraph 5.9.1 of the CML Handbook, his breach on two occasions of the CML Handbook paragraph 5.8, his breach on four occasions of the Birmingham Midshire's specific stipulations that cases where the seller has owned the property for less than 6 months and back to back transactions were not acceptable; Censure the Respondent; Fine him in the sum of £1000 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.

(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

This matter called at a hearing before the Tribunal on 17 July 2013. A Joint Minute was lodged which reflected that the statements of fact, duty and professional misconduct were all agreed. No evidence therefor required to be led and the hearing could proceed on the basis of submissions on behalf of both parties.

SUBMISSION FOR THE COMPLAINERS

Mrs Johnston confirmed that a Joint Minute had been lodged. She indicated that there was one matter where there had been some discussion between herself, Mr Macreath, Mr Ritchie of the Law Society and the Respondent. They were aware that issues had been raised in the past in a number of cases regarding whether breaches of the CML Handbook amounted to a breach of Rule 6 of the Accounts Rules. Although she submitted the matter may well be arguable, for the purposes of this particular Tribunal it was agreed between the parties that the averments of breach of Rule 6 for Mr Aikman would be restricted to two occasions where the specific instructions from the building society's concerned were breached. The transactions that related to these breaches were the transaction for Mr D, which had involved the Halifax and the transaction for Ms U, which had involved the Scottish Building Society. In the case of the former there was a specific prohibition of intromitting with the lenders' funds unless the solicitor had complied with the CML Handbook and in the latter case there was a certificate of title signed by the Respondent where he had specifically indicated that he had complied with the terms of their instructions. The Complainers were relying solely on these two occasions in connection with Article 6.2 of the Complaint, setting out the allegations of professional misconduct on the part of the Respondent – restricting the averment to the specific instructions of the clients.

Whilst the Respondent was admitting that his conduct had amounted to professional misconduct, it was for the Tribunal to decide whether the conduct did in fact amount to professional misconduct.

The averments in the Complaint outlined six transactions in total. Five of these transactions were referrals from others and one transaction related to an existing client of his – Ms U. The five cases previously referred to were all back to back transactions – similar to many cases that had previously been before the Tribunal. These matters had come to light as a result of an inspection of the Respondent's firm in February 2011. This was clearly prior to the first case before the Tribunal – Joy Dunbar – involving the CML Handbook where the Complaint was dated May 2011. The transactions had taken place between 1 June 2010 and the end of December 2010. The CML Handbook had been in existence since 2006. It was clear from the Handbook that where transactions involved a seller who was not the owner or who had owned the property for less than 6 months, these matters had to be reported to the lenders. As long ago as 1989 the tribunal had found that it was misconduct on the part of a solicitor to fail to report a significant matter to a lender where the solicitor had not reported that the purchase price was £2000 less than the lender had expected.

In particular, a solicitor required to act with utmost propriety where he was acting for two parties where there was the inherent possibility of a conflict of interest. The Respondent has 20 year's experience. He had clearly felt at the time that something was not quite right in that he had raised issues with his accountant and Mr Lints.

In many of these cases it was not clear how the Respondent had received instructions. Offers were submitted without him speaking to the purchaser. In one instance he took over from another firm.

Although in these cases often risks can be taken thoughtlessly, these actions are then capitalised on by unscrupulous parties and that can lead to claims on the Master Policy. The CML Handbook was designed to prevent mortgage fraud. Mrs Johnston indicated that she had been involved as early as the 1980s in prosecutions relating to mortgage frauds and in some occasions they had even included respectable firms of surveyors.

In each of the cases involving the Respondent the end price was higher than the mid purchase and on three occasions the end purchase settled on the same day as the mid purchase. It must have been clear to the Respondent that the mortgage finance was

being used to finance the mid purchaser. It would appear that the Respondent had overlooked that the lenders were also his clients. It appeared that the Respondent had ignored the stricture that he must not withhold information from a lender and that he must act diligently and with utmost propriety. All practitioners should be aware of the significance of back to back transactions. There was plenty material in the Journal of the Law Society prior to these transactions drawing the significance of back to back transactions to the profession.

In the first transaction the mid purchaser had purchased the property for £54,000 and then sold it on to the end purchaser for £90,000 with the transactions settling on the same day. The loan finance amounted to £67,500 which was considerably more than was paid by the mid purchaser. In the second transaction the mid purchase was for £77,500 and the end purchase £110,000. The finance obtained was £82,500 – clearly more than the price paid by the mid purchaser. In the third transaction the price paid by the mid purchaser was £72,000 whilst the price paid by the end purchaser was £120,000 with finance of £102,000. The fourth transaction involved an initial purchase of £65,500 and then a second purchase of £100,000 with finance of either £71,150 or £75,000 – it was not clear from the paperwork. The fifth transaction involved an initial purchase of £35,000 and a second in the figure of £50,000 with finance of £37,500.

The final transaction involving Mrs U was not a back to back transaction but involved funds coming from a third party which was not advised to the lender.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath submitted to the Tribunal that the Respondent was contrite. Mr Macreath had first been consulted at the Guarantee Fund stage when he had explained to the Respondent the significance of the other cases. As a result from the very beginning the Respondent had accepted his misconduct and presented mitigation and accepted his non compliance. The Respondent had been waiting since that time for matters to come to a head and this was a long process.

The Respondent is 45, married with two teenage children. He has been in practice since 1991, completing his training with Messrs Macbeth Currie in Dunfermline, where he worked mainly as a court practitioner. He then was employed by his father's firm, becoming a partner there until he left in 2008.

The Tribunal has said on many occasions that breaches of the CML Handbook amount to professional misconduct, including in the cases of Joy Dunbar, Coogans, Christopher Campbell and Lints. By no means is this a new issue. The decision referred to by Mrs Johnston from 1989 – 748/89, which is reported in the text book "Procedures and Decisions" makes it obvious to all solicitors that material facts must be reported to clients as must all unusual features. The CML Handbook sits on top of that requirement and was introduced to help prevent fraud and to protect our reputation.

These transactions are the only transactions of this nature that the Respondent had been involved in. They occurred over a short period of approximately 6 months. His firm was reviewed in February 2011 with no issues being raised.

Mr Macreath accepted that where titles showed such increases in prices being paid for a property, a solicitor should be alerted to a possible problem. Even if a reputable company had been involved in valuing property there had been instances in the past of drive-by valuations.

Mr Macreath submitted that it must be emphasised on behalf of the Respondent that in each and every case he had met the clients involved face to face. In four of the cases he had been dealing with a well known broker who had referred the clients to him. Everything had been organised by that broker, including the price, valuation and financing.

The five back to back transactions involved sophisticated property owners who had extensive portfolios of property. Mr Lints had acted for the mid purchaser. The Respondent had no knowledge of Mr Lints's reputation at the time. He had made contact with Mr Lints to clarify circumstances and had also contacted Mr I to get comfort. Following contact with these two individuals there was no indication of any

problem. The mischief the Respondent had befallen was failing to make reports to the lenders – particularly as far as the Birmingham Midshires is concerned with regard to back to back transactions. Where a seller is connected to a purchaser then this must be reported to the lender. Deposits being provided by third parties should also be reported. Generally speaking, when these matters are reported to lenders then they are happy to continue. A solicitor must alert a lender to any circumstances that may cause the lender to reconsider their decision – the end price for instance may not be the accurate reflection of value of the property and might affect the value of loan.

The properties here were not new builds. Some of them were repossessions. Generally these properties were sold for the best price available at auction. Prices obtained at an auction are very keen. All of the cases involved reputable firms of surveyors. The question however was whether or not the Respondent had given thought to whether the lender had been persuaded to lend more than it would have if it had known the full circumstances.

Mr Macreath asked the Tribunal to draw a distinction in the degree of culpability in this case compared to others. It was with regret that he had to accept that there had been non-compliance with the CML Handbook in not reporting back to back transactions and the increases in price paid for the property. Deposits were a material fact that had to be disclosed to lenders and was relevant to the question of whether or not a borrower was accepting the risk. Whilst the solicitor is not a general insurer against problems for clients and consequently does not require to be a paragon in assessing the apparent risks, it is clear that any competent practitioner should be aware of his duties.

The Respondent had accepted Mr Macreath's advice from the outset and accepted that buy to let transactions were particularly vulnerable to fraud.

The Respondent had shown remorse to the Guarantee Fund Committee and had experienced a dramatic impact on his general wellbeing as a result of these transactions.

Mr Macreath drew the Tribunal's attention to the two letters that had been lodged with his Inventory of Productions. The letter from the Respondent's accountant confirmed that he had contacted his accountant to discuss issues with regard to these transactions at the time. The second letter was a letter from the Respondent's father, confirming his experience in working with his son over a considerable period of time. The Respondent runs a successful practice. He had no need to deliberately become involved in transactions of this nature. His business was busy. His practice turnover is approximately £130,000 and he keeps his overheads low.

It was drawn to the Tribunal's attention that Joy Dunbar has remained a sole practitioner in full time practice.

The Respondent had shown full contrition and there was no risk of any repetition. The Guarantee Fund Committee had understood that. Mr Macreath accepted that once the threshold of misconduct had been met then it was a matter for the Tribunal to assess the weight of mitigation. Mr Macreath asked the Tribunal to consider that this case had more in common with the Joy Dunbar and Christopher Campbell cases and should be distinguished from the cases of Lints, Coogans and Davidson which involved extreme behaviour where no steps had been taken to avoid this type of situation.

DECISION

The first issue for the tribunal was to decide whether the conduct admitted by the Respondent amounted to professional misconduct in terms of the test set down in the Sharp case.

It must be clearly obvious to any practitioner that he has a duty to report material and unusual features of any transaction to his client. In the transactions in this case the institutional lenders were clients of the Respondent in the same was as any other and were owed the same duties of care. The CML Handbook had been instituted to help prevent mortgage fraud and emphasise the reporting duties on the part of a solicitor. In each of the instances in this Complaint the lenders involved had explicitly advised the Respondent that he required to comply with the CML Handbook. It was perfectly

plain that the Respondent had a duty to report back to back transaction, increases in price, deposits being provided by third parties, and purchasers obtaining loans in addition to the finance being provided by the lenders. The Respondent had patently failed to report any of these matters. Additionally, on two occasions the Respondent had intromitted with the lender's finance where he had specific instruction from the lenders that he could only do so if he had complied with the CML Handbook which amounted to a clear breach of Rule 6 of the Accounts Rules. (Given the submission made on behalf of the Complainer with regard to the remaining transactions, the Tribunal did not require to consider the application of Rule 6 to these cases.)

The conduct described clearly fell below the standard of conduct expected of a competent and reputable solicitor and was so serious and reprehensible it amounted to professional misconduct.

In considering disposal, the Tribunal concluded that the Respondent's actions fell towards the lower end of the scale of conduct in cases of this type. In particular, the Respondent had met face to face with all of the purchasers, which was a major distinction from some of the other cases involving breaches of the CML Handbook. Additionally, the Respondent's transactions had not included many of the other serious aggravating factors present in many of these other CML Handbook cases for instance a lack of money laundering checks.

The Respondent had cooperated from the outset of proceedings. His dealings with the Law society clearly disclosed remorse upon his part. It appeared that he had taken steps to ensure such conduct would not be repeated. The conduct complained of had spanned some 6 months, where the Respondent had had an otherwise unblemished record spanning many years.

Given these factors, the Tribunal considered that there was no risk to the public of any repeat of this type of conduct and concluded that the matter could be dealt with by way of a Censure.

However, the Tribunal also considered that it was important to emphasise the seriousness with which it viewed the Respondent's conduct. Although the Dunbar

case had not been raised until 2011, the CML Handbook had been in existence since 2006, and simply restated what was an obvious duty of care to a solicitor's client. The matters not reported by the Respondent in this case were clearly obvious – alarm bells should have been ringing taking into account the increases in price, especially in the transactions where the mid purchase and end purchase settled on the same date. The Respondent had clearly had reservations regarding these transactions, otherwise he would not have approached his accountant or Mr Lints for clarification. The Respondent had over looked his duty of care to the lenders in circumstances that put the lenders and consequently the profession at risk.

Accordingly, the Tribunal felt that a fine in addition to Censure was appropriate. The Tribunal required to assess a level of fine that appropriately reflected the seriousness of the Respondent's conduct. Given the whole circumstances of this case the Tribunal considered a fine of £1000 to be appropriate.

Having heard the parties in relation to expenses and publicity, the usual orders were made.

Dorothy Boyd

Vice Chairman