

**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**

**ALASDAIR JAMES GOODBAN,  
formerly of 76 Fairies Road, Perth  
and now 9 Greenbank Crescent,  
Morningside, Edinburgh**

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, Alasdair James Goodban, formerly of 76 Fairies Road, Perth and now 9 Greenbank Crescent, Morningside, Edinburgh (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was no Secondary Complainer.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
4. In terms of its Rules the Tribunal appointed the Complaint to be heard at a procedural hearing on 23 August 2013. The Respondent was not present but a medical certificate was lodged indicating that he had significant mental health problems and accordingly the Complaint was sisted for a period of six months. Further medical certificates were received by the Tribunal and the Complaint remained sisted until a

Motion was received from the Complainers asking the Tribunal to recall the sist, ordain the Respondent to lodge Answers and fix a full hearing in the Complaint. This Motion was served on the Respondent who did not reply.

5. The matter called for a procedural hearing on 21 August 2015 and the sist was recalled. The Respondent was given one last opportunity to lodge Answers and attend the Tribunal. A full hearing was fixed for 12 November 2015 at 10:30am.
6. When the case called on 12 November 2015, the Complainers were represented by their Fiscal Grant Knight, Solicitor, Edinburgh. The Respondent was present and represented himself.
7. The Respondent confirmed that he accepted all the averments in the Complaint. It was accordingly not necessary for any evidence to be led.
8. The Tribunal found the following facts established:-
  - 8.1 The Respondent is a solicitor enrolled in the Registers of Scotland. His date of birth is 2 February 1965 and he was enrolled as a solicitor on 11 December 1991. He was, until 1<sup>st</sup> September 2011, a partner in the firm of Neil Whittet, Solicitors, Perth. On said date that partnership and firm was dissolved. The Respondent had held a full practising certificate from 3<sup>rd</sup> February 1992. In light of the concerns raised regarding the Respondent's conduct, the Complainers withdrew the Respondent's practising certificate in terms of Section 40 of the Solicitors (Scotland) Act 1980 on 1 September 2011.
  - 8.2 The Council of Mortgage Lenders (hereinafter "CML") describes itself as a not for profit organisation and a trade association for the mortgage lending industry in the UK. Its members account for almost the entire residential mortgage

lending within the UK. Its aim is to help foster a favourable operating environment within the UK housing and mortgage markets. The organisation has produced a handbook referred to as the CML Lenders Handbook. This is published on their website and provides guidance to conveyancing solicitors in respect of general practice and procedure when dealing with an institution which is a member of the CML. It comprises a number of paragraphs. In particular:-

- a) Paragraph 1.1 directs that instructions from an individual lender will indicate whether a solicitor is being instructed by that lender in accordance with the provisions contained within the CML Lenders Handbook and if that is the case, directs that general provisions in part 1 of the handbook and any lender-specific requirements in terms of part 2 must be followed.
- b) Paragraph 1.4 states the standard of care they expect of a solicitor is that of a reasonable competent solicitor or independent qualified conveyancer acting on behalf of a heritable creditor.
- c) Paragraph 1.5 states that the solicitor must comply with any separate instructions received in connection with an individual loan.
- d) Paragraph 1.15 states that if there is any conflict of interest, the solicitor must not act and must return the instructions.
- e) Paragraph 2.3 narrates that "...if you need to report a matter to us you must do so as soon as you become aware of it so as to avoid any delay. If you do not

believe that a matter is adequately provided for in terms of the handbook you should identify the relevant handbook provision and the extent to which the matter is not covered by it. You should provide a concise summary of the legal risks and your recommendation of how we should protect our interests. After reporting the matter you should not complete the mortgage until you have received our further written instructions. We recommend that you report such matters before conclusion of missives because we may have to withdraw or change the mortgage offer.”

- f) Paragraph 3.1 directs that solicitors must follow the current Solicitors (Scotland) Account Rules and to the extent that they apply, comply with the Money Laundering Regulations and the Proceeds of Crime Act.
- g) Paragraph 5.1.1 narrates a requirement to report to the lender if the proprietor has owned the property for less than six months or the person selling to the borrower is not the proprietor unless the seller is (a) a personal representative of the proprietor or (b) an institutional heritable creditor exercising his power of the sale or (c) a receiver, trustee in sequestration or liquidator or (d) a developer of buildings selling a property acquired under the Part Exchange Scheme.
- h) Paragraph 5.1.2 narrates that if any matter comes to the attention of the fee earner dealing with the transaction which “...you should reasonably expect us to consider important in deciding whether or not to lend to the borrower (such as where the borrower has given misleading information to us or the information which you might reasonably expect to have been given to us is

no longer true) and you are unable to disclose that information to us because of a conflict of interest, you must cease to act for us and return our instructions stating that you consider a conflict of interest has arisen.”

- i) Paragraph 10.1 states that “...you should not submit your Certificate of Title unless it is unqualified or we have authorised you in writing to proceed notwithstanding any issues which you have raised with us.”
- j) Paragraph 11.2 narrates that “...you should explain to each borrower (and any other persons signing or executing the document) his responsibilities and liabilities under the documents referred to in paragraph 11.1 and any documents he is required to sign.”

8.3 The Financial Compliance Department of the Complainers conducted an inspection of the financial records, books, accounts and documentation of Neil Whittet, Solicitors, Perth on 9 and 10 May 2011. The Financial Compliance Department of the Complainers had previously conducted similar inspections of the said firm in June 2009 and July 2010 and following upon said inspections, the partners of the firm including the Respondent, were interviewed by the Guarantee Fund Committee of the Complainers. The said inspections in 2009 and 2010 identified a number of matters of serious concern regarding conveyancing transactions which involved back-to-back purchases and sales, third party deposits, and parties suspected of attempted mortgage fraud. Following the said interviews with the Complainer’s Guarantee Fund Committee and following upon said inspections, the partners of the firm including the Respondent gave assurances that those

concerns would be addressed. Following upon the said inspection in May 2011, serious concerns were again identified of a similar nature regarding, in particular, the Respondent's involvement in back-to-back conveyancing transactions and apparent breaches of the requirements of the CML Handbook and the accounts rules. Correspondence was entered into with the firm and the Respondent in an effort to resolve these concerns. The Respondent was interviewed by the Complainer's Guarantee Fund Committee on 4 August 2011. At said interview, the Respondent made a number of admissions regarding his conduct and as a consequence of the foregoing, a formal Complaint was intimated to the Respondent on 24 January 2012.

#### 8.4 PURCHASE OF PROPERTY 1

On 5 August 2010 the Respondent submitted an Offer on behalf of Mr A to purchase property situated at Property 1, at a price of £87,000 with a date of entry on 27 August 2010. The said Offer was subject to survey and was accepted. On 9 August the Respondent wrote to Mr A enclosing a copy of the successful Offer, his Money Laundering Regulations and Terms of Engagement letter. The Respondent never met this client but he wrote to the client and requested client identification documentation on 15 September. Loan instructions dated 17 August 2010 from National Westminster Building Society instructed the Respondent to act on their behalf and in accordance with the CML Lender's Handbook for Scotland and their part 2 instructions. The lenders were proposing to lend Mr A £60,900. On 17 September the Respondent wrote to the lender to advise that the deposit for the purchase would be provided by Mr A's wife, Mrs A, and requested the lender's confirmation that they were content to proceed. Missives were duly concluded with a date of entry being adjusted to 5 October

2010. On 23 September the sum of £60,870 was received from the lenders, and on 24 September the Respondent received the balance of the purchase price from Mrs A which was remitted via her bank account to the Respondent. Client identification documentation was obtained in relation to the said Mr and Mrs A which was certified by a solicitor with Messrs Caesar & Howie, Bathgate. On 5 October 2010 the Respondent transferred the sum of £87,000 to the seller's agents in settlement of the transaction. On 7 October, the Respondent sent a further letter to the lenders in identical terms to his letter of 17 September. No reply was forthcoming from the lenders.

8.5 In dealing with the foregoing transaction, the Respondent failed to comply with the obligations imposed upon him in terms of the CML Handbook and in terms of which he agreed to act on behalf of the lender. In particular the Respondent acted contrary to the terms of Rule 6(1)(c) of the Accounts Rules in that funds were advanced to his client account by a lender who was acting under the false apprehension that there existed no circumstances which the lender ought to have been informed of in terms of the instructions set out in the CML Handbook. The Respondent failed to obtain the requisite confirmation from the lenders that he could proceed to draw down the loan funds. The Respondent should not have drawn money from his client account without the full and informed authority of his client, being the lender.

8.6 PURCHASE OF PROPERTY 2

On or about 1 September 2010 the Respondent submitted an Offer on behalf of Mr B to purchase the property at Property 2, at a price of £65,000. On 3 September the Respondent sent a copy of the successful Offer together with a copy of his Money Laundering Regulations and Terms of Engagement letter and a

request for proof of identity of his client, the purchaser. The Respondent never met this client. Loan instructions dated 13 October 2010 from Birmingham Midshires instructed the Respondent to act on their behalf and in accordance with the CML Lenders Handbook for Scotland and their part 2 instructions. In those instructions the lenders were proposing to lend a Mrs B the sum of £48,750. On 22 October the Respondent forwarded a draft Disposition together with a revised Offer to the seller's agents reflecting that the offer to purchase was now to be in the name of Mr B's wife, Mrs B. On 22 October the Respondent wrote to Mrs B requesting the balance of the purchase price of £16,991.25. On 27 October the Respondent wrote to the lender to advise that the deposit for the purchase price was coming from her husband, Mr B's bank account and requesting confirmation that the lenders had no objection to matters proceeding. The Respondent received client identification documentation for both Mr and Mrs B duly certified by a firm of solicitors in Hornchurch, Essex. On 12 November 2010 the loan funds were received, the deposit received from Mr B and the purchase price of £65,000 made over to the seller's agents.

- 8.7 In dealing with the foregoing transaction, the Respondent failed to comply with the obligations imposed upon him in terms of the CML Handbook and in terms of which he agreed to act on behalf of the lender. In particular the Respondent acted contrary to the terms of Rule 6(1)(c) of the Accounts Rules in that funds were advanced to his client account by a lender who was acting under the false apprehension that there existed no circumstances which the lender ought to have been informed of in terms of the instructions set out in the CML Handbook. The Respondent failed to obtain the requisite confirmation from the lenders that he could proceed to draw down the loan funds. The Respondent should not have drawn money from his client

account without the full and informed authority of his client, being the lender.

#### 8.8 PURCHASE OF PROPERTY 3

On 18 November 2010 the Respondent submitted an offer on behalf of Mr C and Mr D to purchase the property at Property 3 and that at a price of £140,000. On 19 November the Respondent forwarded his Terms of Engagement letter to Mr D only and also requested documentation to verify his identification. Mr C was known to the Respondent, he having previously been instructed by him in back-to-back conveyancing transactions in or around August 2009. Client identification was thereafter provided to the Respondent but certified by an employee of Company 2, being a company who also employed Mr C. Loan instructions dated 25 November 2010 from Birmingham Midshires instructed the Respondent to act on their behalf and in accordance with the CML Lenders Handbook for Scotland and their part 2 instructions. The lenders were proposing to lend Mr C and Mr D £105,000. On 15 December the Respondent wrote to Mr C and Mr D enclosing the security documentation for signature and requesting the sum of £37,305.88 to settle the transaction. Said letter was addressed to them care of Company 2. On 16 December the Respondent advised the lenders of the terms of an arrangement via an Options Agreement with a company called Company 1 whereby part of the purchase price was to be paid to said company to secure a Discharge of a security held over the property, and that the purchasers were associated with said company. Mr C was a director of said company, and requested the lenders to confirm that they were content for the transaction to proceed. On 20 December the loan funds were received from the lenders, and missives concluded with a date of entry of 20 December. On 22 December the Respondent

received a payment from Mr D in the sum of £18,652.94. A further payment was received on 22 December in the same sum from Company 2 on behalf of Mr C. Settlement was effected on 23 December with a sum of £140,000 being paid over to the seller's solicitors.

8.9 In dealing with the foregoing transaction the Respondent failed to comply with the obligations imposed upon him in terms of the CML Handbook and in terms of which he agreed to act on behalf of the lender. In particular he failed to carry out proper due diligence and verification of the identity of his clients and thereby in breach of regulations 5 and 14 of the Money Laundering Regulations 2007, and further contrary to paragraph 3.1 of the CML Handbook. Further, the Respondent acted contrary to the terms of Rule 6(1)(c) of the Accounts Rules in that funds were advanced to his client account by a lender who was acting under the false apprehension that there existed no circumstances which the lender ought to have been informed of in terms of the instructions set out in the CML Handbook, and in particular the terms and circumstances of the Options Agreement. The Respondent failed to obtain the requisite confirmation from the lenders that he could proceed to draw down the loan funds. The Respondent should not have drawn money from his client account without the full and informed authority of his client, being the lender. Further, the Respondent acted contrary to the terms of Rule 24 of the Accounts Rules in that he failed to carry out proper due diligence and verification of the identity of his clients and was thereby in breach of regulations 5 and 14 of the Money Laundering Regulations 2007.

8.10 PURCHASE OF PROPERTY 4

On 21<sup>st</sup> October 2010 the Respondent submitted an Offer on behalf of Mr E to purchase the property at Property 4 at a price of £72,000. The instructions to submit that Offer initiated from a Mr D who is believed to be an employee of Company 2. On 25<sup>th</sup> October the Respondent sent a copy of the successful Offer together with a copy of his Money Laundering Regulations and Terms of Engagement letter and a request for proof of identity of his client, the Purchaser. The Respondent never met this client. Loan instructions dated on or about 14<sup>th</sup> December 2010 from Birmingham Midshires instructed the Respondent to act on their behalf and in accordance with the CML Lenders Handbook for Scotland and their part two instructions. On 14<sup>th</sup> December the Respondent wrote to Mr E enclosing the security documentation for signature and requesting the sum of £18,892.82 to settle the transaction. On 21<sup>st</sup> December Missives were concluded. On 6<sup>th</sup> January 2011 loan funds in the sum of £53,965.00 were received. On 6<sup>th</sup> January the Respondent advised the lenders of the terms of an arrangement via an Options Agreement with a company called Company 1 whereby part of the purchase price was to be paid to the said company to secure a Discharge of a security held over the property, and requested the lenders to confirm that they were content for the transaction to proceed. On 13<sup>th</sup> January the Respondent received a payment from Mr E in the sum of £8,144.24. Settlement was effected on 14<sup>th</sup> January with a sum of £72,918.22 being paid over to the sellers solicitors. There is no formal record of the balance of the purchase price being received from Mr E and how it was funded.

- 8.11 In dealing with the foregoing transaction the Respondent failed to comply with the obligations imposed upon him in terms of the CML Handbook and in terms of which he agreed to act on behalf of the lender. In particular he failed to carry out proper due diligence and verification of the identity of his client and

the party providing the deposit for the purchase price and thereby in breach of Regulations 5 and 14 of the Money Laundering Regulations 2007, and further contrary to paragraph 3.1 of the CML Handbook. Further, the Respondent acted contrary to the terms of Rule 6 (1)(c) of the Accounts Rules in that funds were advanced to his client account by a lender who was acting under the false apprehension that there existed no circumstances which the lender ought to have been informed of in terms of the instructions set out in the CML Handbook. The Respondent, in particular, failed to draw to their attention the full terms and circumstances of the options agreement. The Respondent failed to obtain the requisite confirmation from the lenders that he could proceed to draw down the loan funds. The Respondent should not have drawn money from his client account without the full and informed authority of his client, being the lender. Further, the Respondent acted contrary to the terms of Rule 24 of the Accounts Rules in that he failed to carry out proper due diligence and verification of the identity of his client and the party providing the balance of the purchase price, and was thereby in breach of regulations 5 and 14 of the Money Laundering Regulations 2007.

#### 8.12 PURCHASE OF PROPERTY 5

On 21<sup>st</sup> January 2011 the Respondent submitted an Offer on behalf of Mrs F and Mrs G to purchase the property at Property 5 at a price of £65,000. On 28<sup>th</sup> January the Respondent sent a copy of the successful Offer together with a copy of his Money Laundering Regulations and Terms of Engagement letter and a request for proof of identity of his clients, each of the purchasers. The Respondent never met these clients. Loan instructions dated 18<sup>th</sup> January 2011 from Birmingham Midshires instructed the Respondent to act on their behalf and

in accordance with the CML Lenders Handbook for Scotland and their part two instructions. In those instructions the lender were proposing to lend £48,700. On 28<sup>th</sup> January the Respondent wrote to Mrs F and Mrs G enclosing the security documentation for signature and requesting the sum of £17,353.80 to settle the transaction. On 31<sup>st</sup> January the Respondent wrote to the lender to advise that the deposit for the purchase price was being provided by Company 3 and enclosed a copy of a facility letter dated 11<sup>th</sup> January 2011 addressed to Mrs F. The facility letter narrated that the funds in that respect would be secured on property at Property 6. The Respondents requested confirmation that the lenders had no objection to matters proceeding in those circumstances. On 2<sup>nd</sup> February, the loan funds were received. On 10<sup>th</sup> February funds totalling £17,353.80 were received by way of bank transfer from Company 3. Missives were concluded on 14<sup>th</sup> February and the purchase price made over to the seller's agents.

- 8.13 In dealing with the foregoing transaction the Respondent failed to comply with the obligations imposed upon him in terms of the CML Handbook and in terms of which he agreed to act on behalf of the lender. In particular he failed to carry out proper due diligence and verification of the identity of his clients and the third party providing the deposit for the purchase price and thereby in breach of regulations 5 and 14 of the Money Laundering Regulations 2007, and further contrary to paragraph 3.1 of the CML Handbook. Further, the Respondent acted contrary to the terms of Rule 6 (1) (c) of the Accounts Rules in that funds were advanced to his client account by a lender who is acting under the false apprehension that there existed no circumstances which the lender ought to have been informed of in terms of the instructions set out in the CML Handbook. The Respondent failed to obtain the requisite confirmation from the lenders that he could proceed to draw

down the loan funds. The Respondent should not have drawn money from his client account without the full and informed authority of his client, being the lender. Further the Respondent acted contrary to the terms of Rule 24 of the Accounts Rules in that he failed to carry out proper due diligence and verification of the identity of his clients and the third party providing the deposit for the purchase price and was thereby in breach of Regulations 5 & 14 of the Money Laundering Regulations 2007.

#### 8.14 PURCHASE OF PROPERTY 7

On 29<sup>th</sup> November 2010 loan instructions from Birmingham Midshires instructed the Respondent to act on their behalf and in accordance with the CML Lenders Handbook for Scotland and their part two instructions in respect of their proposed loan to Mr H for the purchase of the property at Property 7. On 8<sup>th</sup> December 2010 the Respondent received an email from Mr D, who is believed to be an employee of Company 2, to submit an offer on behalf of Mr H for the purchase of said property at a price of £75,000. On 9<sup>th</sup> December the Respondent submitted an Offer in those terms. On 13<sup>th</sup> December the Respondent sent a copy of the successful Offer together with a copy of his Money Laundering Regulations and Terms of Engagement letter and a request for proof of identity of his client, the Purchaser. The Respondent never met this client. On 10<sup>th</sup> January 2011 the Respondent wrote to Mr H enclosing the security documentation and requesting the balance of the purchase price of £19,757.80. On 21<sup>st</sup> January the Respondent wrote to the lender to advise that the deposit for the purchase price was being provided by Company 4 and enclosed a copy of the facility letter issued to Mr H dated 17<sup>th</sup> January 2011 narrating that the security for the funds in that respect would be taken over the property at Property 8. Said property was not

the address at which the Respondent had been corresponding with his client. The said letter also requested confirmation that the lenders had no objection to matters proceeding. On 27<sup>th</sup> January the loan funds were received. On 14<sup>th</sup> February further funds were received from Company 4 totalling £18,880. The purchase price of £75,000 was made over to the sellers' agents on that date.

- 8.15 In dealing with the foregoing transaction the Respondent failed to comply with the obligations imposed upon him in terms of the CML Handbook and in terms of which he agreed to act on behalf of the lender. In particular he failed to carry out proper due diligence and verification of the identity of his clients and the third party providing the deposit for the purchase price and thereby in breach of regulations 5 and 14 of the Money Laundering Regulations 2007, and further contrary to paragraph 3.1 of the CML Handbook. Further, the Respondent acted contrary to the terms of Rule 6 (1) (c) of the Accounts Rules in that funds were advanced to his client account by a lender who is acting under the false apprehension that there existed no circumstances which the lender ought to have been informed of in terms of the instructions set out in the CML Handbook. The Respondent failed to obtain the requisite confirmation from the lenders that he could proceed to draw down the loan funds. The Respondent should not have drawn money from his client account without the full and informed authority of his client, being the lender. Further the Respondent acted contrary to the terms of Rule 24 of the Accounts Rules in that he failed to carry out proper due diligence and verification of the identity of his clients and the third party providing the deposit for the purchase price and was thereby in breach of Regulations 5 & 14 of the Money Laundering Regulations 2007.

8.16 PURCHASE OF PROPERTY 9

On 21<sup>st</sup> January 2011 the Respondent submitted an Offer on behalf of Mr I to purchase property situated at Property 9 at a price of £69,950. On 25<sup>th</sup> January the Respondent wrote to Mr I enclosing a copy of the successful Offer, his Money Laundering Regulations and Terms of Engagement letter. The Respondent never met this client and failed to obtain the requisite client identification documentation. Loan instructions dated 14<sup>th</sup> February 2011 from the Mortgage Works instructed the Respondent to act on their behalf and in accordance with the CML Lenders Handbook for Scotland and their part two instructions. The lenders were proposing to lend Mr I £52,462. On 10<sup>th</sup> March, the Respondent wrote to Mr I enclosing the security documentation for signature and requesting the sum of £18,475.80 to settle the transaction. On 16<sup>th</sup> March the sum of £52,397 was received from the lenders but those monies were returned to the lenders on 18<sup>th</sup> March due to a delay in the settlement of the transaction. Missives were concluded on 25<sup>th</sup> March and a sum of £52,297 was received from the lenders on that date. On 28<sup>th</sup> March, sums of £10,000 and £8,475.80 were paid into the Respondent's client account. The source of those funds was not verified. On 29<sup>th</sup> March, the Respondent transferred the sum of £69,950 to the sellers' agents in settlement of the transaction. On that date the Respondent wrote to the lenders to advise them that there was a second security over the property in favour of a Company 5 and that it was suspected that the deposit funds were being returned to the purchaser via that company although there was apparently no obvious connection with the borrower. Confirmation was requested that the loan funds could be utilised to settle the transaction. No reply was forthcoming from the lenders.

8.17 In dealing with the foregoing transaction, the Respondent failed to comply with the obligations imposed upon him in terms of the CML Handbook and in terms of which he agreed to act on behalf of the lender. In particular he failed to carry out proper due diligence and verification of the identity of his client and the third party providing the deposit for the purchase price and thereby in breach of regulations 5 and 14 of the Money Laundering Regulations 2007, and further contrary to paragraph 3.1 of the CML Handbook. Further, the Respondent acted contrary to the terms of Rule 6(1)(c) of the Accounts Rules in that funds were advanced to his client account by a lender who was acting under the false apprehension that there existed no circumstances which the lender ought to have been informed of in terms of the instructions set out in the CML Handbook. The Respondent failed to obtain the requisite confirmation from the lenders that he could proceed to draw down the loan funds. The Respondent should not have drawn money from his client account without the full and informed authority of his client, being the lender. Further, the Respondent acted contrary to the terms of Rule 24 of the Accounts Rules in that he failed to carry out proper due diligence and verification of the identity of his client and the third party providing the deposit for the purchase price and was thereby in breach of regulations 5 and 14 of the Money Laundering Regulations 2007.

8.18 PURCHASE OF PROPERTY 10

On 19<sup>th</sup> August 2010 the Respondent submitted an Offer on behalf of Mr J to purchase property situated at Property 10 at a price of £140,000. On 24<sup>th</sup> August the Respondent wrote to Mr J enclosing a copy of the successful Offer, his Money Laundering Regulations and Terms of Engagement letter. The Respondent never met this client and failed to obtain the

requisite client identification documentation. Loan instructions dated 19<sup>th</sup> October from Northern Rock instructed the Respondent to act on their behalf and in accordance with the CML Lenders Handbook for Scotland and their part two instructions. The lenders were proposing to lend Mr J £96,660. On 22<sup>nd</sup> October the Respondent wrote to Mr J enclosing the security documentation for signature and requesting some of £44,328.38 to settle the transaction. On 29<sup>th</sup> October the Respondent wrote to the lender to advise that the deposit for the purchase would be provided by Mr J's partner, Mr K and that the lenders were apparently made aware of the source of the deposit funds when the mortgage application was made but requested confirmation of the position. On 16<sup>th</sup> November, £96,660 was received from the lenders and on 19<sup>th</sup> November the Respondent transferred the sum of £140,000 to the sellers' agents in settlement of the transaction. On 9<sup>th</sup> December the Respondent wrote to the sellers' agents concluding Missives

- 8.19 In dealing with the foregoing transaction, the Respondent failed to comply with the obligations imposed upon him in terms of the CML Handbook and in terms of which he agreed to act on behalf of the lender. In particular he failed to carry out proper due diligence and verification of the identity of his client and the third party providing the deposit for the purchase price and thereby in breach of regulations 5 and 14 of the Money Laundering Regulations 2007, and further contrary to paragraph 3.1 of the CML Handbook. Further, the Respondent acted contrary to the terms of Rule 6(1)(c) of the Accounts Rules in that funds were advanced to his client account by a lender who was acting under the false apprehension that there existed no circumstances which the lender ought to have been informed of in terms of the instructions set out in the CML Handbook. The Respondent failed to obtain the requisite confirmation from the lenders that he could proceed to draw

down the loan funds. The Respondent should not have drawn money from his client account without the full and informed authority of his client, being the lender. Further, the Respondent acted contrary to the terms of Rule 24 of the Accounts Rules in that he failed to carry out proper due diligence and verification of the identity of his client and the third party providing the deposit for the purchase price and was thereby in breach of regulations 5 and 14 of the Money Laundering Regulations 2007.

#### 8.20 PURCHASE OF PROPERTY 11

On 21<sup>st</sup> September 2010 the Respondent submitted an Offer on behalf of Mr C to purchase the property at Property 11 and that at a price of £70,000. The Respondent had received instructions from Mr C to submit that Offer by way of an email dated 20<sup>th</sup> September which email emanated from Mr C's business address with Company 2. On 23<sup>rd</sup> September the Respondent wrote to Mr C enclosing a copy of the successful Offer and his Money Laundering Regulations and Terms of Engagement letter. Mr C was known to the Respondent, as hereinbefore averred. Loan instructions dated 24<sup>th</sup> September from Northern Rock instructed the Respondent to act on their behalf in accordance with CML Lenders Handbook for Scotland and their part two instructions. The lenders were proposing to lend Mr C £49,000. On 30<sup>th</sup> September the Respondent wrote to Mr C enclosing the security documentation for signature and requesting the sum of £21,770.87 to settle the transaction. On 8<sup>th</sup> October, the loan funds were received from the lenders in the sum of £49,000. Missives were concluded on 11<sup>th</sup> October and settlement was effected that day with a sum of £70,000 being paid over to the sellers' solicitors. No information is disclosed and no requisite client identification was obtained in relation to the deposit

required to fund the purchase. On 26<sup>th</sup> October the sellers' agents provided an executed Discharge of a Standard Security by Company 1. Mr C was a Director of said company.

8.21 In dealing with the foregoing transaction, the Respondent failed to comply with the obligations imposed upon him in terms of the CML Handbook and in terms of which he agreed to act on behalf of the lender. In particular he failed to carry out proper due diligence and verification of the identity of his client and the third party providing the deposit for the purchase price and thereby in breach of regulations 5 and 14 of the Money Laundering Regulations 2007, and further contrary to paragraph 3.1 of the CML Handbook. Further, the Respondent acted contrary to the terms of Rule 6(1)(c) of the Accounts Rules in that funds were advanced to his client account by a lender who was acting under the false apprehension that there existed no circumstances which the lender ought to have been informed of in terms of the instructions set out in the CML Handbook. The Respondent failed to obtain the requisite confirmation from the lenders that he could proceed to draw down the loan funds. The Respondent should not have drawn money from his client account without the full and informed authority of his client, being the lender. Further, the Respondent acted contrary to the terms of Rule 24 of the Accounts Rules in that he failed to carry out proper due diligence and verification of the identity of his client and the third party providing the deposit for the purchase price and was thereby in breach of regulations 5 and 14 of the Money Laundering Regulations 2007.

8.22 COMPANY 6

The Respondent acted on behalf of Mr L of Property 12 in the sale of his property at Property 13. Mr L had engaged a Mr M

of Company 6 in respect of the estate agency carried out by them in relation to the sale of the said property. Mr L signed an irrevocable mandate in favour of the said company for settlement of their fees in that respect to the extent of £1600 and that mandate was forwarded to the Respondent on 8<sup>th</sup> March 2010. The Respondent settled the said sale transaction on 21<sup>st</sup> May 2010 but failed to implement the terms of the irrevocable mandate and released the free proceeds of sale to Mr L. Mr M of Company 6 then wrote to the Respondent on 8<sup>th</sup> June and 15<sup>th</sup> October 2010 in respect of the Respondent's failure to implement the Mandate in their favour. In failing to implement the said Mandate, the Respondent breached the professional obligations incumbent upon him in terms of the Standard of Conduct Practice Rules 2008 and in particular Rules 1 and 9.

9. Having considered the aforementioned facts and having heard submissions from the Complainers and from the Respondent, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

9.1 his conduct amounting to a failure on his part to comply with the terms of the common law standard applicable to a solicitor acting on behalf of a lender in the conveyancing transaction. In particular, as a consequence of his failure to report to his client; his failure to comply with the explicit instructions provided to him by his client being the obligations imposed upon him as provided for within the CML Lenders Handbook applicable to Scotland; and his failure to act with absolute propriety and to protect the interests of his client, being the lender, in respect of each transaction.

- 9.2 his conduct amounting to a failing on his part to comply with the terms of Rule 6 of the Solicitors (Scotland) Accounts etc Rules 2001.
- 9.3 his failing to comply with the terms of the Accounts Rules insofar as they relate to Money Laundering Regulations, in particular Rule 24.
- 9.4 his failing to comply with Regulations 5 and 14 of the Money Laundering Regulations 2007.
- 9.5 his failing to implement the terms of an irrevocable mandate properly intimated to him, and thereby breaching the professional obligations incumbent upon him in terms of the Standard of Conduct Practice Rules 2008 and further his conduct lacking integrity and candour in his correspondence with the party in whose favour the mandate had been drawn in breach of Rules 1 and 9 as aforementioned.
10. After having heard mitigation from the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 12 November 2015. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Alasdair James Goodban formerly 76 Fairies Road, Perth and now 9 Greenbank Crescent, Morningside, Edinburgh; Find the Respondent guilty of professional misconduct in respect of his failure to comply with the common law standard applicable to a solicitor acting on behalf a lender in a conveyancing transaction and his failure to comply with the requirements of the CML Handbook for Scotland; his failure to act with absolute propriety and to protect the interests of his client being the lender in respect of a number of transactions, his failure to comply with Rules 6 and 24 of the Solicitors (Scotland) Accounts etc Rules 2001, his failure to comply with

Regulations 5 and 14 of the Money Laundering Regulations 2007 and his failure to implement the terms of an irrevocable mandate thereby breaching the professional obligations incumbent upon him in terms of the Standard of Conduct Practice Rules 2008 and his failure to act with integrity and candour in his correspondence with the party in whose favour the mandate had been drawn in breach of Rules 1 and 9 of the Standard of Conduct Practice Rules 2008; Censure the Respondent and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any practising certificate held or to be issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to (and to being supervised by) such employer or successive employers as maybe approved by the Council of the Law Society of Scotland or the Practising Certificate Sub Committee of the Council of the Law Society of Scotland and that for an aggregate period of five years; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and may but has no need to include the names of anyone other than the Respondent.

**(signed)**

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

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

**IN THE NAME OF THE TRIBUNAL**

**Dorothy Boyd  
Vice Chairman**

**NOTE**

The case had originally called before the Tribunal in 2013 but had been sisted due to the Respondent's ill-health. When the case called before the Tribunal on 12 November 2015 the Respondent was present and accepted all the averments in the Complaint. It was accordingly not necessary for the Fiscal to lead evidence before the Tribunal.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Knight advised that the first element in the Complaint related to the CML Handbook and the Accounts Rules. There was also a mandate that was not implemented. Mr Knight stated that there were nine conveyancing transactions between August 2010 and March 2011. There were common factors in these conveyancing transactions. The Respondent did not meet any of the clients except perhaps for Mr D and Mr C who introduced the clients. The only client identification that was obtained was in respect of one transaction that was not adequate. The deposits and balances were provided by third parties and there was not the appropriate documentation. Mr D and Mr C had connections to some of the companies involved in the transactions. Some of the transactions revealed an interest by third parties who were connected to the purchaser. Mr Knight submitted that the whole circumstances raised the spectre of the possibility of revolving deposits and mortgage schemes.

Mr Knight however indicated that the Respondent admitted these matters as early as 4 August 2011 before the Guarantee Fund Committee. Mr Knight stated that the Respondent did know about the issues and the dangers involved due to two previous inspections of his firm where he had given an undertaking not to be involved in such matters again. Mr Knight stated that the Respondent did not have any previous matters on his record and his practising certificate had been suspended in 2011 and he had not reapplied for one since. Mr Knight stated that he understood that the Respondent had health issues and he further understood that the Respondent did not intend to return to practise as a solicitor. Mr Knight asked the Tribunal to make a finding of professional misconduct in cumulo and made the usual request for expenses and publicity.

## **SUBMISSIONS FOR THE RESPONDENT**

The Respondent advised that at the time that the conduct had occurred he was drinking excessively which had clouded his judgement. He indicated that he had been a functioning alcoholic for 15 years but had been particularly bad in the 9 months preceding the transactions and had not been functioning at this time. The Respondent explained that he had been going through stress at home and had debts that he was unable to pay. He indicated that he had been unable to say no to Mr D and Mr C and that these matters had led to him having a breakdown. His practising certificate had been suspended and he indicated that after this he became a hopeless alcoholic. He had now been through residential rehabilitation and was a recovering alcoholic. He indicated that it was his job that had made him drink and he did not wish to go back to it or repeat the same errors as before. He indicated that he was now living with his parents and had been made bankrupt. He stated that he took no issue with the facts as set out by the Fiscal.

## **DECISION**

The Tribunal has made it clear on numerous occasions that solicitors have an obligation to comply with the requirements of the CML Handbook and have a duty to report to the lender any suspicious or unusual circumstances occurring in relation to the transaction. 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. The Tribunal note that in a number of these transactions the Respondent did report the matters to the lender but then proceeded to settle the transactions without having received any confirmation from the lender that he could proceed. There were 9 transactions involved in this case over an 8 month period. The Respondent did not comply with Rules 6 & 24 of the Accounts Rules and also failed to respond to a mandate. In the circumstances the Tribunal had no hesitation in making a finding of professional misconduct. The Tribunal was concerned that in this case the Respondent was failing in his obligation to comply with the CML Handbook and to carry out proper money laundering checks. The Respondent failed to act with

absolute propriety to protect the interests of his lender clients in respect of the 9 transactions. The Tribunal viewed the Respondent's conduct very seriously and considered suspending the Respondent from practice. The Tribunal however took account of the fact that the Respondent admitted his culpability at an early stage and had been suffering health difficulties at the time. The Tribunal also considered that the Respondent had shown insight into what had happened and clearly realises that being a principal in private practice is not for him. The Tribunal has to consider the protection of the public and was of the opinion that if the Respondent worked for an aggregate period of 5 years under supervision this could in fact provide more protection for the public than merely suspending his practising certificate for a period given the valuable experience he would gain. The Respondent will be required to work for a full 5 year period under supervision before he can apply to have a full practising certificate. At the end of this period it will be for the Respondent to show that his health problems are resolved and that he has gained the maturity and skills to be able to be a principal in private practice again.

The Tribunal noted the Respondent's financial position but saw no reason to deviate from the usual practice of awarding expenses against a solicitor who has been found guilty of professional misconduct. The Tribunal enquired of the Law Society Fiscal and the Respondent if there was any reason not to name any of the other people who are named in the Complaint and was advised that there was no reason not to do so. The Tribunal accordingly made the usual order with regard to publicity.

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