

**THE SOLICITORS (SCOTLAND) ACT 1980  
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL  
(PROCEDURE RULES 2005)**

**FINDINGS**

**in Complaint**

**by**

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

**against**

**CRAIG ANDREW FRASER,  
Solicitor, residing at 70 Kennedy  
Crescent, Tranent**

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, Craig Andrew Fraser, Solicitor, residing at 70 Kennedy Crescent, Tranent (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. 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 set down for a procedural hearing on 12 January 2015 and notice thereof was duly served on the Respondent. The Respondent had indicated that he did not intend to lodge Answers and did not intend to attend the Tribunal. Mr Lynch, Fiscal for the Law Society asked the Tribunal to

allow the Law Society to proceed by way of Affidavit evidence. This was agreed.

5. The case called for a further procedural hearing on 26 March 2015. The Respondent had sent in a letter indicating that he did not intend to enter the proceedings but asked that the proceedings be heard in private. Mr Lynch indicated that he had no objection to this but explained that he had had difficulties contacting witnesses and accordingly the Tribunal adjourned the matter to a substantive hearing on 22 May 2015 for a hearing in private.
6. When the case called on 22 May 2015, the hearing proceeded in private. The Respondent had sent in an email indicating that he did not intend to appear and would not be represented. The Law Society was represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock.
7. The Tribunal heard evidence from one witness for the Complainers, noted the Productions lodged by the Complainers and noted the Affidavit lodged on behalf of the Complainers.
8. The Tribunal found the following facts established:-
  - 8.1 The Respondent resides at 70 Kennedy Crescent, Tranent EH33 1DP. He was born on 4 March 1967. He was enrolled as a solicitor on 11 September 1991. Between 1 February 2000 and 31 October 2008, the Respondent was a partner in Leslie Deans & Co. Thereafter, the Respondent was a partner in McEwan Fraser Legal, 32 Annandale Street, Edinburgh, EH4 4AN from 14 June 2010 until 17 September 2013. He was thereafter employed as a consultant with the same firm until 30 September 2013. He is not currently employed by any Scottish legal firm.

While he was a partner in Leslie Deans & Co, the Respondent acted for both purchaser and lender in the transactions hereinafter condescended upon. Unless otherwise stated, the Respondent's loan instructions contractually obliged him to follow the requirements of the Council of Mortgage Lenders' Handbook for Scotland ("the CML Handbook"). In each of the transactions, the seller of the property was Mr A who had acquired his interest in the properties immediately prior to the purchases condescended upon in "back to back" transactions. In each case the first seller of the property granted a disposition in favour of Mr. A. Mr. A then granted a fresh disposition in favour of the end purchaser. In none of the Respondents files is there retained a copy of the disposition in Mr. A's favour which would inform the price which he had paid for each of the properties. In dealing with the transactions condescended upon the Respondent acted or failed to act as follows:-

#### Transaction 1

The Respondent acted for Mr B, in the purchase of Property 1 from Mr A. He also acted for the lender, Cheltenham & Gloucester plc. His loan instructions required him to comply with the CML Handbook. The Respondent, immediately prior to settling the transaction, submitted to Cheltenham & Gloucester on 7<sup>th</sup> October 2007, a certificate of title declaring that he had complied with the requirements of the Handbook, the truth being that he had not.

The Respondent's instructions from Mr. B were contained in two emails dated 1<sup>st</sup> October 2007. The emails included a statement to the effect that Mr. B would be sending to the Respondent a mandate "...which the seller required validation

in order to conclude this sale.”

The Respondent held a mandate from Mr. B dated 1<sup>st</sup> October 2007. From its date until the settlement of the purchase of Property 1 Mr. B gave the Respondent an irrevocable instruction to retain the sum of £65,000, or the full balance of Mr. B’s funds, and to use these sums to settle the purchase of Property 1. The mandate went on to state that the funds should not be released to Mr. B or any other party unless the purchase of Property 1 did not settle within 14 days of 1<sup>st</sup> October 2007, in which event the funds covered by the mandate were to be transferred to Mr. A. The mandate continued that in the event that the settlement of the transaction was delayed and Mr. A were to give the Respondent authorisation to hold on to the funds for a further period, the Respondent should retain the funds until the purchase had settled or until Mr. A authorised the Respondent to transfer the funds to him to be used as a subsequent purchase from Mr. A. The mandate concluded that under no circumstances were the funds to be released back to Mr. B. In a separate letter dated 1<sup>st</sup> October 2007 Mr. B advised the Respondent that he (Mr. B) had agreed to purchase another property from Mr. A and that Mr. A would only reserve a second investment on condition that the transaction settled within 4 weeks or he receive a guarantee that the sum of £65,000 would be transferred to him as a part payment or deposit towards the sale of the other property by Mr. A to Mr. B.

No risk assessment was carried out by the Respondent for Money Laundering purposes.

The Respondent submitted an offer on 2<sup>nd</sup> October 2007. Entry took place some time between 8<sup>th</sup> and 10<sup>th</sup> October 2007. The file is unclear in this respect. The Respondent held

a Power of Attorney granted in his favour by Mr. B, whose address was in Bradford, which he used to execute the security documentation.

On or about 10<sup>th</sup> October 2007, prior to utilising the loan funds of £225,000 received from Cheltenham & Gloucester for the purchase of Property 1 on behalf of Mr. B from Mr A at a price of £250,000, the Respondent failed to:

- (i) Report to the lender that the seller had owned the property for less than six months and thus failed to comply with Clause 5.1.1 of the CML Handbook.
- (ii) Report to the lender that the borrower was not providing the balance of the purchase price from his own funds (the balance of £28,870 coming from Mr C) and thus failed to comply with Clause 5.8 of the CML Handbook.
- (iii) Report to the lender that the Seller was not the heritable proprietor of the of the security subjects, being uninfert, and that this was a “back to back” transaction and thus failed to comply with Clause 5.1.1 of the CML Handbook.

### Transaction 2

The Respondent acted for Ms D who was purchasing Property 2 from Mr A. He also acted for the lender, Bristol & West. The Respondent's loan instructions from Bristol & West did not incorporate the CML Handbook, but required the Respondent to advise Bristol & West of any changes to circumstances as soon as possible. The loan instructions were dated 3<sup>rd</sup> November 2007.

The Respondent held a mandate from Ms. D dated 30<sup>th</sup> November 2007 in the same terms *mutatis mutandis* as the

mandate condescended upon in relation to Transaction 1, save that the sum mentioned in the mandate was £16,500.

No risk assessment was carried out by the Respondent for Money Laundering purposes.

The Respondent submitted an unqualified certificate of title to Bristol & West in respect of Transaction 2.

The Respondents instructions were provided in an email from Ms D dated 21<sup>st</sup> November 2007. The address given for Ms D was a property elsewhere in the property. The offer was submitted on 22<sup>nd</sup> November 2007 with an original entry date of 28<sup>th</sup> November 2007 which was eventually changed to 4<sup>th</sup> January 2008. The Respondent held a Power of Attorney from Ms D which he used to execute the security documentation.

On or about 4<sup>th</sup> January 2008, prior to utilising the loan funds of £237,445 received from Bristol & West Mortgages for the purchase of Property 2, on behalf of Ms. D from Mr A at a price of £250,000, the Respondent failed to:

- (i) Report to the lender that the seller had owned the property for less than six months.
- (ii) Report to the lender that the borrower was not providing the balance of the purchase price from her own funds (the balance of £12,555 coming from Mr C).
- (iii) Report to the lender that the seller was not the heritable proprietor of the security subjects, being uninfected, and that this was a “back to back” transaction.

### Transaction 3

The Respondent acted for Mr. B who was purchasing Property 3 from Mr A. The Respondent also acted for the lender, Royal Bank of Scotland, whose loan instructions were dated 12<sup>th</sup> June 2008. The loan instructions required the Respondent to comply with the requirements of the CML Handbook. The Respondent, immediately before settling the transaction, submitted to the Royal Bank of Scotland a certificate of title declaring that he had complied with the requirements of the Handbook, the truth being that he had not.

No risk assessment was carried out by the Respondent for Money Laundering purposes.

The Respondents instructions from Mr. B consisted of an email dated 16<sup>th</sup> June 2008. Mr. B had addresses in Edinburgh and Bradford. The offer was submitted on 24<sup>th</sup> June 2008 and entry was stated to be 4<sup>th</sup> July 2008 although the transaction settled on 7<sup>th</sup> July 2008. The Respondent held a Power of Attorney from Mr. B which he used to execute the security documentation.

On or about 7<sup>th</sup> July 2008, prior to utilising the loan funds of £224,970 received from the Royal Bank of Scotland for the purchase of Property 3 on behalf of Mr. B from Mr A at a price of £265,000 the Respondent failed to:

- (i) Report to the lender that the seller had owned the property for less than six months and thus failed to comply with Clause 5.1.1 of the CML Handbook.
- (ii) Report to the lender that the borrower was not providing the balance of the purchase price from his own funds (the balance of £40,030 coming from Mr C) and thus failed to comply with Clause 5.8 of the CML Handbook.

(iii) Report to the lender that the seller was not the heritable proprietor of the of the security subjects, being uninfert, and that this was a “back to back” transaction and thus failed to comply with Clause 5.1.1 of the CML Handbook.

#### Transaction 4

The Respondent acted for Ms E in the purchase of Property 4 from Mr A. He also acted on behalf of the lender namely Birmingham Midshires. His loan instructions were dated 30<sup>th</sup> January 2008. The loan instructions required the Respondent to comply with the requirements of the CML Handbook. The Respondent, immediately prior to settling the transaction, submitted to Birmingham Midshires a certificate of title declaring that he has complied with the requirements of the Handbook, the truth being that he had not.

No risk assessment was carried out by the Respondent for Money Laundering purposes.

The Respondents instructions were contained in an email dated 29<sup>th</sup> November 2007 in which Ms. E instructed the Respondent to withdraw an offer which had been submitted on Ms. E behalf for another property in the property. In an email dated 10<sup>th</sup> December 2008 Ms. E indicated that she wished to have entry before Christmas. The offer was eventually submitted on the 30<sup>th</sup> January 2008 and entry took place on the same day. The given address for Ms. E was in Bradford. Ms. E granted a Power of Attorney in favour of the Respondent which he used to execute the security documentation.

On or about 30<sup>th</sup> January 2008, prior to utilising the funds of £233,965 received from Birmingham Midshires for the



purchase of property 4 on behalf of Ms E from Mr A at a price of £260,000 the Respondent failed to:

- (i) Report to the lender that the seller had owned the property for less than six months and thus failed to comply with Clause 5.1.1 of the CML Handbook.
- (ii) Report to the lender that the borrower was not providing the balance of the purchase price from her own funds (the balance of £26,035 coming from Mr C) and thus failed to comply with Clause 5.8 of the CML Handbook.
- (iii) Report to the lender that the seller was not the heritable proprietor of the of the security subjects, being uninfert, and that this was a “back to back” transaction and thus failed to comply with Clause 5.1.1 of the CML Handbook.

#### Transaction 5

The Respondent acted for Mr. F in connection with the purchase of Property 5 from Mr A. The Respondent also acted on behalf of The Mortgage Business who were lending to Mr. F. The Respondent’s loan instructions were dated 8<sup>th</sup> February 2008. They did not refer to the CML Handbook.

No risk assessment was carried out by the Respondent for Money Laundering purposes.

The Respondent submitted an unqualified report on title to The Mortgage Business.

The Respondent’s instructions were contained in an email from Mr. F dated 11<sup>th</sup> February 2008. An offer was submitted the same day and settlement took place on 19<sup>th</sup> February 2008. The given address for Mr. F was elsewhere in Edinburgh.

Settlement was effective on 19<sup>th</sup> February 2008. The Respondent held a Power of Attorney from Mr. F which he used to execute the security documentation.

On or about 12<sup>th</sup> February 2008, prior to utilising the loan funds of £238,470 received from the Mortgage Business plc for the purchase of property 5 of behalf of Mr F from Mr A at a price of £265,000 the Respondent failed to:

- (i) Report to the lender that the seller had owned the property for less than six months.
- (ii) Report to the lender that the borrower was not providing the balance of the purchase price from his own funds (the balance of £25,530 coming from Mr C).
- (iii) Report to the lender that the seller was not the heritable proprietor of the of the security subjects, being uninfert, and that this was a “back to back” transaction.

#### Transaction 6

The Respondent acted on behalf of Mr G in connection with the purchase of Property 6 from Mr A. The Respondent also acted on behalf of Royal Bank of Scotland who were lending in relation to the transaction. His loan instructions were dated 27<sup>th</sup> May 2008 and required him to act in accordance with the CML Handbook requirements. The Respondent received a mandate dated 29<sup>th</sup> May 2008 in the same terms, *mutatis mutandis* as that referred to in connection with Transaction 1, save that the sum of money mentioned in the mandate was £20,000. Immediately prior to settling the transaction, the Respondent submitted a certificate of title to Royal Bank of Scotland in which he stated that he complied with the requirements of the CML Handbook, the truth being that he had not.

The Respondents instructions were contained in an email from Mr. G dated 21<sup>st</sup> April 2008. The offer was submitted on 28<sup>th</sup> May 2008 and entry took place on 2<sup>nd</sup> June 2008. Mr. G granted a Power of Attorney in favour of the Respondent which he used to execute the security documentation.

On or about 2<sup>nd</sup> June 2008, prior to utilising the loan funds of £237,470 received from the Royal Bank of Scotland for the purchase of Property 6 on behalf of Mr G from Mr A at a price of £250,000 the Respondent failed to:

- (i) Report to the lender that the seller had owned the property for less than six months and thus failed to comply with Clause 5.1.1 of the CML Handbook.
- (ii) Report to the lender that the borrower was not providing the balance of the purchase price from his own funds (the balance of £12,530 coming from Mr C) and thus failed to comply with Clause 5.8 of the CML Handbook
- (iii) Report to the lender that the seller was not the heritable proprietor of the of the security subjects, being uninfert, and that this was a “back to back” transaction and thus failed to comply with Clause 5.1.1 of the CML Handbook.

#### Transaction 7

The Respondent acted on behalf of Ms H in connection with the purchase of Property 7. He also acted on behalf of the lenders, Bristol & West. His loan instructions were dated 13<sup>th</sup> February 2008. They did not specifically mention the CML Handbook but required the Respondent to advise the lender immediately of any material change in relation to the transaction. The Respondent was in receipt of a mandate from

Ms. H dated 21<sup>st</sup> February 2008 in the same terms, *mutatis mutandis* as that condescended upon in relation to Transaction 1, save that the sum of money mentioned in the mandate was £65,000. Immediately prior to settlement of the transaction the Respondent submitted an unqualified report on title to Bristol & West.

The Respondent's instructions were contained in an email from Ms H, dated 28<sup>th</sup> November 2007. The offer was submitted on 20<sup>th</sup> February 2008 and entry took place on 22<sup>nd</sup> February 2008. The given addresses on file for Ms H were in Bournemouth and Bradford. Ms H granted a Power of Attorney in favour of the Respondent which he used to execute the security documentation.

On or about 22<sup>nd</sup> February 2008, prior to utilising the loan funds of £256,445 received from Bristol & West Mortgages for the purchase of Property 7 on behalf of Ms H from Mr A at a price of £270,000 the Respondent failed to:

- (i) Report to the lender that the seller had owned the property for less than six months and thus failed to comply with Clause 5.1.1 of the CML Handbook.
- (ii) Report to the lender that the borrower was not providing the balance of the purchase price from her own funds (the balance of £25,530 coming from Mr C) and thus failed to comply with Clause 5.8 of the CML Handbook.
- (iii) Report to the lender that the seller was not the heritable proprietor of the of the security subjects, being uninfert, and that this was a "back to back" transaction and thus failed to comply with Clause 5.1.1 of the CML Handbook.

#### Transaction 8

The Respondent acted on behalf of Ms I in connection with the purchase of Property 8 from Mr A. The Respondent also acted on behalf of the lender, Cheltenham & Gloucester. Their loan instructions to the Respondent were dated 10<sup>th</sup> October 2007. They required that the Respondent comply with the requirements of the CML Handbook in relation to the transaction. The Respondent was in receipt of a mandate dated 12<sup>th</sup> October 2007 from Ms. I. The mandate was in the same terms as that condescended upon in relation to Transaction 1 except that the sum of money mentioned in the mandate was £65,000. Immediately prior to the settlement of the transaction the Respondent submitted a certificate of title to Cheltenham & Gloucester in which he stated that he had complied with the requirements of the CML Handbook, the truth being that he had not.

The Respondent's instructions were contained in an email dated 1<sup>0th</sup> October 2007. An offer was submitted dated 20<sup>th</sup> October 2007 and entry took place on 22<sup>nd</sup> October 2007. The given address for Ms I was in Derby. The Respondent held a Power of Attorney from Ms I which he used to execute the security documentation.

On or about 22<sup>nd</sup> October 2007, prior to utilising the loan funds of £198,000 received from Cheltenham & Gloucester for the purchase of property 8 on behalf of Ms I from Mr A at a price of £220,000 the Respondent failed to:

- (i) Report to the lender that the seller had owned the property for less than six months and thus failed to comply with Clause 5.1.1 of the CML Handbook.
- (ii) Report to the lender that the borrower was not providing the balance of the purchase price from her own funds (the

balance of £22,000 coming from Mr C) and thus failed to comply with Clause 5.8 of the CML Handbook.

- (iii) Report to the lender that the seller was not the heritable proprietor of the of the security subjects, being uninfert, and that this was a “back to back” transaction and thus failed to comply with Clause 5.1.1 of the CML Handbook.

#### Transaction 9

The Respondent acted on behalf of Ms J in relation to the purchase of Property 9 from Mr A. The Respondent also acted on behalf of the lender, GE Money Home Lending Limited. The Respondent’s loan instructions were dated 30<sup>th</sup> January 2008. They required the Respondent to comply with the CML Handbook in relation to the transaction. The Respondent was in receipt of a mandate from Ms. J dated 18<sup>th</sup> February 2008 in the same terms as that condescended upon in relation to Transaction 1, save that the sum of money mentioned in the mandate was £47,500. Immediately prior to settling the transaction the Respondent submitted a certificate of title to GE Money Home Lending Limited stating that he had complied with the requirements of the CML Handbook in relation to the transaction, the truth being that he had not.

The Respondent’s instructions were contained in an email from Ms J dated 21<sup>st</sup> November 2007. The offer was dated 13<sup>th</sup> February 2008 and entry took place on 20<sup>th</sup> February 2008. The given address for Ms J was in Bournemouth. The Respondent held a Power of Attorney from Ms J which he used to execute the security documentation.

On or about 20<sup>th</sup> February 2008, prior to utilising the loan funds of £315,000 received from GE Money Home Lending

Limited for the purchase of property 9 on behalf of Ms J from Mr A at a price of £350,000 the Respondent failed to:

- (i) Report to the lender that the seller had owned the property for less than six months and thus failed to comply with Clause 5.1.1 of the CML Handbook.
- (ii) Report to the lender that the borrower was not providing the balance of the purchase price from his own funds (the balance of £35,000 coming from Mr C) and thus failed to comply with Clause 5.8 of the CML Handbook.
- (iii) Report to the lender that the seller was not the heritable proprietor of the of the security subjects, being uninfert, and that this was a “back to back” transaction and thus failed to comply with Clause 5.1.1 of the CML Handbook.

#### Transaction 10

The Respondent acted on behalf of Mr K in connection with the purchase of Property 10 from Mr A. The Respondent also acted on behalf of the lenders, Bristol & West. The Respondent’s loan instructions were dated 18<sup>th</sup> April 2008. They did not refer to the CML Handbook, but stated that the lender might refuse to make the loan if they were provided with false or incomplete information, and required the Respondent to advise Bristol & West of any material change in relation to the transaction. The Respondent was in receipt of a mandate dated 23<sup>rd</sup> April 2008 from Mr. K. The mandate was in the same terms as that condescended upon in relation to Transaction 1; save that the sum of money mentioned in it was £30,000. Immediately prior to settling the transaction, the Respondent sent an unqualified certificate of title to Bristol & West.

The Respondent's instructions were contained in an email dated 21<sup>st</sup> April 2008 from Mr K. The offer was dated 21<sup>st</sup> April 2008 and entry took place 24<sup>th</sup> April 2008. The given addresses for Mr. K were in Bournemouth and West Linton. The Respondent held a Power of Attorney by Mr K which he used to execute the security documentation.

On or about 25<sup>th</sup> April 2008, prior to utilising the loan funds of £255,676 received from Bristol & West Mortgages for the purchase of property 10 on behalf of Mr K from Mr A at a price of £270,000 the Respondent failed to:

- (i) Report to the lender that the seller had owned the property for less than six months.
- (ii) Report to the lender that the borrower was not providing the balance of the purchase price from his own funds (the balance of £14,324 coming from Mr C).
- (iii) Report to the lender that the seller was not the heritable proprietor of the of the security subjects, being uninfert, and that this was a "back to back" transaction.

#### Transaction 11

The Respondent acted on behalf of Mr L in connection with the purchase of Property 11. The Respondent acted on behalf of Mr. L's lender who was Cheltenham & Gloucester. The Respondent's loan instructions were dated 14<sup>th</sup> May 2008. They made no specific reference to the CML Handbook. The Respondent was in receipt of a mandate from Mr. L dated 22<sup>nd</sup> May 2008. The mandate was in the same terms as that condescended upon in relation to Transaction 1, save that the sum of money mentioned in the mandate was £50,000. Immediately prior to the settlement of the transaction the



Respondent submitted an unqualified certificate of title to Cheltenham & Gloucester.

The Respondent's instructions were contained in an email from Mr L dated 22<sup>nd</sup> April 2008. The offer was submitted on 16<sup>th</sup> April 2008 and entry took place on 23<sup>rd</sup> May 2008. The given address for Mr. L was in London. The Respondent held a Power of Attorney from Mr. L which he used to execute the security documentation.

On or about 23rd May 2008, prior to utilising the loan funds of £314,100 received from Cheltenham & Gloucester for the purchase of Property 11 on behalf of Mr L from Mr A at a price of £349,000 the Respondent failed to:

- (i) Report to the lender that the seller had owned the property for less than six months.
- (ii) Report to the lender that the borrower was not providing the balance of the purchase price from his own funds (the balance of £34,900 coming from Mr C).
- (iii) Report to the lender that the seller was not the heritable proprietor of the of the security subjects, being uninfert, and that this was a "back to back" transaction.

#### Transaction 12

The Respondent acted on behalf of Mr M in respect of the purchase of Property 12 from Mr A. The Respondent also acted on behalf of the lender, Abbey National plc. The Respondent's loan instructions were dated 14<sup>th</sup> July 2008. They required the Respondent to comply with the requirements of the CML Handbook. Immediately prior to the settlement of the transaction the Respondent submitted a certificate of title to Abbey National plc in which he stated

that he had complied with the requirements of the CML Handbook, the truth being that he had not. Abbey National subsequently repossessed Property 12 and in doing so sustained a loss which they claim is in the amount of £105,209.

The Respondent's instructions were contained in an email dated 23<sup>rd</sup> July 2008. An offer was submitted on 24<sup>th</sup> July 2008 and entry was taken on 27<sup>th</sup> July 2008. The given address for Mr. M was in Edinburgh. The Respondent held a Power of Attorney from Mr. M which he used to execute the security documentation.

On or about 27<sup>th</sup> July 2008, prior to utilising the funds of £229,465 received from Abbey National for the purchase of Property 12 on behalf of Mr M from Mr A at a price of £270,000, the Respondent failed to:

- (i) Report to the lender that the seller had owned the property for less than six months and thus failed to comply with Clause 5.1.1 of the CML Handbook.
- (ii) Report to the lender that the seller had purchased the property for £185,000 on the same day as he sold it to the borrower for £270,000, this being a matter which he should reasonably have expected the lender to consider important in deciding whether to lend to the borrower and thus failed to comply with Clause 5.1.2 of the CML Handbook.
- (iii) Report to the lender that the borrower was not providing the balance of the purchase price from his own funds (the balance of £40,535 coming from Mr C) and thus failed to comply with Clause 5.8 of the CML Handbook
- (iv) Report to the lender that the seller was not the heritable proprietor of the security subjects, being uninfert, and that

this was a “back to back” transaction and thus failed to comply with Clause 5.1.1 of the CML Handbook.

9. Having heard submissions from the Fiscal on behalf of the Complainers the Tribunal found the Respondent guilty of professional misconduct in respect of:-
- a) his repeated failure to adhere to the requirements of the CML Handbook, by failing to disclose relevant information to his clients
  - b) his failure to comply with the requirements of the Code of Conduct for Scottish Solicitors 2002
  - c) his failure to comply with Rule 6 of the Solicitors (Scotland) Accounts Rules 2001
  - d) his failure in his duty at common law to act with the utmost propriety towards his lender clients and that by withholding from them the relevant information condescended upon above.
10. Having heard submissions from the Complainers and having noted the terms of the letter and email from the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 22 May 2015. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Craig Andrew Fraser, Solicitor, residing at 70 Kennedy Crescent, Tranent; Find the Respondent guilty of professional misconduct in respect of his: (1) repeated failure to adhere to the requirements of the CML Handbook, by failing to disclose relevant information to his clients; (2) failure to comply with the requirements of the Code of Conduct for Scottish Solicitors 2002; (3) failure to comply with Rule 6 of the Solicitors (Scotland) Accounts Rules 2001; and (4) failure in his duty at common law to act with the utmost propriety towards his lender clients, and that by withholding from them relevant information; Order that the name of

the Respondent, Craig Andrew Fraser, be struck from the Roll of Solicitors in Scotland; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and may but has no need to include the names of anyone other than the Respondent but such publicity will be deferred until the conclusion of any criminal proceedings which might be brought against the Respondent or intimation that no criminal proceedings are to be brought.

**(signed)**

**Alan McDonald**

**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**

**Alan McDonald**  
**Vice Chairman**

**NOTE**

The Respondent was not present or represented. He had sent an email to the Tribunal office confirming that he had received intimation of the hearing but he had nothing to add, would not be commenting further and that he would not be appearing and would not be represented. The Respondent asked that the hearing be held in private and asked that publicity in respect of the Findings be deferred.

Mr Lynch, Fiscal for the Law Society, stated that the Respondent was aware of all the hearings in this case and had made it clear that he did not wish to participate. Mr Lynch confirmed that he had intimated his List of Witnesses and Productions to the Respondent on 5 May 2015.

In the circumstances, the Tribunal considered that it was appropriate to proceed in the Respondent's absence.

**EVIDENCE FOR THE COMPLAINERS**

Mr Lynch referred the Tribunal to the signed Affidavit from Ian David Ritchie, witness for the Complainers. Mr Ritchie gave evidence and spoke to his Affidavit, the terms of which are as undernoted:-

In my role with the Law Society of Scotland I investigate complaints against solicitors.

1. I am a solicitor, having been admitted as such in 1977. Since 14 April 2003 I have been employed, initially, as a Complaints Investigator and, thereafter, as Clerk to the Professional Conduct Sub Committee by the Law Society of Scotland.
2. After being admitted as a solicitor I was employed by Messrs Burnett Walker between 1977 and 1981; Megson & Co between 1981 and 1982; Boyd Jameson/Henderson Boyd Jackson between 1982 and 1997; Karyn Watt & Co between 1997 and 1999 and Hasties between 2002 and 2003.

3. In my role with the Law Society of Scotland I am responsible for minuting meetings of the Professional Conduct Sub Committee and instructing the Society's fiscals in connection with prosecutions and appeals.
4. I have examined the records held by the Law Society of Scotland in relation to Craig Andrew Fraser, the respondent. These disclose that Mr Fraser was born on 4<sup>th</sup> March 1967. He was enrolled as a solicitor on 11<sup>th</sup> September 1991. Between 1<sup>st</sup> February 2000 and 31<sup>st</sup> October 2008 the respondent was a partner in Leslie Deans & Co, Solicitors, Edinburgh. Thereafter between 14<sup>th</sup> June 2010 and 17<sup>th</sup> September 2013 the respondent was a partner in McEwan Fraser Legal, Solicitors, Edinburgh. Between 18<sup>th</sup> September 2013 and 30<sup>th</sup> September 2013 and between 18 December 2013 and 1 December 2013 and 1 December 2014 Mr Fraser was employed as a consultant within that firm. So far as I am aware Mr Fraser is not currently employed by any Scottish Legal Firm although he does hold a current Practising Certificate.
5. In May 2010 the Society received information concerning the affairs of Leslie Deans & Co in the form of a letter written to the Society by an external firm of solicitors instructed by Leslie Deans & Co. This resulted in an investigation being carried out in relation to the activities of two partners or former partners of Leslie Deans & Co one of whom was the respondent Craig Andrew Fraser. In due course a complaint was intimated to Mr Fraser and proceeded through the Society's usual channels. At the end of that process a decision was taken that the respondent should be prosecuted before this tribunal.
6. I have examined twelve files in relation to conveyancing transaction which were handled by the respondent Craig Andrew Fraser. In each of these twelve transactions the respondent represented both the purchaser of the property and the lender. I examined each of the paper files maintained by the respondent and I have also, more recently, had access to electronic copies of these files which were made for the purposes of the current prosecution.

7. I turn now to deal with each of the individual transactions which for the purposes of this prosecution have been numbered as transactions 1 through to transaction 12. In respect of each of these transactions my examination of the files revealed the following:-

#### Transaction 1

The respondent acted for Mr B, in the purchase of Property 1 from Mr A. He also acted for the lender, Cheltenham & Gloucester plc. His loan instructions required him to comply with the CML Handbook. The respondent, immediately prior to settling the transaction, submitted to Cheltenham & Gloucester on 7<sup>th</sup> October 2007 a clear certificate of title.

The respondent's instructions from Mr. B were contained in two emails dated 1<sup>st</sup> October 2007. The emails included a statement to the effect that Mr. B would be sending to the respondent a mandate "...which the seller required validation in order to conclude this sale." The respondent held a mandate from Mr. B dated 1<sup>st</sup> October 2007. From its date until the settlement of the purchase of Property 1 Mr. B gave the respondent an irrevocable instruction to retain the sum of £65,000, or the full balance of Mr. B's funds, and to use these sums to settle the purchase of Property 1. The mandate went on to state that the funds should not be released to Mr. B or any other party unless the purchase of Property 1 did not settle within 14 days of 1<sup>st</sup> October 2007, in which event the funds covered by the mandate were to be transferred to Mr. A. The mandate continued that in the event that the settlement of the transaction was delayed and Mr. A were to give the respondent authorisation to hold on to the funds for a further period, the respondent should retain the funds until the purchase had settled or until Mr. A authorised the respondent to transfer the funds to him to be used as a subsequent purchase from Mr. A. The mandate concluded that under no circumstances were the funds to be released back to Mr. B. In a separate letter dated 1<sup>st</sup> October 2007 Mr. B advised the respondent that he (Mr. B) had agreed to purchase another property from Mr. A and that Mr. A would only reserve a second investment on condition that the transaction settled within 4 weeks or he receive a



guarantee that the sum of £65,000 would be transferred to him as a part payment or deposit towards the sale of the other property by Mr. A to Mr. B.

The respondent submitted an offer on 2<sup>nd</sup> October 2007. Entry took place some time between 8<sup>th</sup> and 10<sup>th</sup> October 2007. The file is unclear in this respect. The respondent held a Power of Attorney granted in his favour by Mr. B, whose address was in Bradford, which he used to execute the security documentation.

On or about 10<sup>th</sup> October 2007, prior to utilising the loan funds of £225,000 received from Cheltenham & Gloucester for the purchase of Property 1 on behalf of Mr. B from Mr A at a price of £250,000, the respondent failed to:

(iii) Report to the lender that the seller had owned the property for less than six months and thus failed to comply with Clause 5.1.1 of the CML Handbook.

(iv) Report to the lender that the borrower was not providing the balance of the purchase price from his own funds (the balance of £28,870 coming from Mr C) and thus failed to comply with Clause 5.8 of the CML Handbook.

(iii) Report to the lender that the Seller was not the heritable proprietor of the of the security subjects, being uninfert, and that this was a “back to back” transaction and thus failed to comply with Clause 5.1.1 of the CML Handbook.

I carried at a search in the ZOOPLA web site on 14 -15 May 2015 in respect of this and the other 11 transactions. The search disclosed that this property was sold on 24 August 2010 for a price of £134,950.

### Transaction 2

The respondent acted for Ms D who was purchasing Property 2 from Mr A. He also acted for the lender, Bristol & West. The respondent’s loan instructions from Bristol & West did not incorporate the CML Handbook,

but required the respondent to advise Bristol & West of any changes to circumstances as soon as possible. The loan instructions were dated 3<sup>rd</sup> November 2007.

The respondent held a mandate from Ms. D dated 30<sup>th</sup> November 2007 in the same terms *mutatis mutandis* as the mandate condescended upon in relation to Transaction 1, save that the sum mentioned in the mandate was £16,500.

The respondent submitted an unqualified certificate of title to Bristol & West in respect of Transaction 2.

The respondents instructions were provided in an email from Ms D dated 21<sup>st</sup> November 2007. The address given for Ms D was a property elsewhere in the property. The offer was submitted on 22<sup>nd</sup> November 2007 with an original entry date of 28<sup>th</sup> November 2007 which was eventually changed to 4<sup>th</sup> January 2008. The respondent held a Power of Attorney from Ms D which he used to execute the security documentation.

On or about 4<sup>th</sup> January 2008, prior to utilising the loan funds of £237,445 received from Bristol & West Mortgages for the purchase of property 2, on behalf of Ms. D from Mr A at a price of £250,000, the respondent failed to:

- (iv) Report to the lender that the seller had owned the property for less than six months.
- (v) Report to the lender that the borrower was not providing the balance of the purchase price from her own funds (the balance of £12,555 coming from Mr C).
- (vi) Report to the lender that the seller was not the heritable proprietor of the security subjects, being uninfert, and that this was a “back to back” transaction.

My search in ZOOPLA disclosed that the property was sold on 4 August 2010 at a price of £120,000.00.

### Transaction 3

The respondent acted for Mr. B who was purchasing Property 3 from Mr A. The respondent also acted for the lender, Royal Bank of Scotland, whose loan instructions were dated 12<sup>th</sup> June 2008. The loan instructions required the respondent to comply with the requirements of the CML Handbook. The respondent, immediately before settling the transaction, submitted to the Royal Bank of Scotland a certificate of title undertaking that he would comply fully with the Instructions and any other Requirements of the Bank and that he would hold the funds comprising the Loan to the order of the Bank and to apply them only when the Borrower has provided us with sufficient cleared funds in order to complete the transaction. He further certified that all the information in the Certificate of Title was accurate and that the Bank may rely on the accuracy of each and every statement, the truth being that it was not.

No risk assessment was carried out by the respondent for Money Laundering purposes.

The respondents instructions from Mr. B consisted of an email dated 16<sup>th</sup> June 2008. Mr. B had addresses in Edinburgh and Bradford. The offer was submitted on 24<sup>th</sup> June 2008 and entry was stated to be 4<sup>th</sup> July 2008 although the transaction settled on 7<sup>th</sup> July 2008. The respondent held a Power of Attorney from Mr. B which he used to execute the security documentation.

On or about 7<sup>th</sup> July 2008, prior to utilising the loan funds of £224,970 received from the Royal Bank of Scotland for the purchase of Property 3 on behalf of Mr. B from Mr A at a price of £265,000 the respondent failed to:

(iv) Report to the lender that the seller had owned the property for less than six months and thus failed to comply with Clause 5.1.1 of the CML Handbook.

(v) Report to the lender that the borrower was not providing the balance of the purchase price from his own funds (the balance of £40,030 coming from Mr C) and thus failed to comply with Clause 5.8 of the CML Handbook.

(vi) Report to the lender that the seller was not the heritable proprietor of the of the security subjects, being uninfected, and that this was a “back to back” transaction and thus failed to comply with Clause 5.1.1 of the CML Handbook.

My search in ZOOPLA disclosed that the property was sold on 4 September 2006 at a price of £209,600.00 and on 10 April 2007 at a price of £206,000.00.

#### Transaction 4

The respondent acted for Ms E in the purchase of Property 4 from Mr A. He also acted on behalf of the lender namely Birmingham Midshires. His loan instructions were dated 30<sup>th</sup> January 2008. The loan instructions required the respondent to comply with the requirements of the CML Handbook. The respondent, immediately prior to settling the transaction, submitted to Birmingham Midshires a clear certificate of title.

The respondents instructions were contained in an email dated 29<sup>th</sup> November 2007 in which Ms. E instructed the respondent to withdraw an offer which had been submitted on Ms. E behalf for another property in the property. In an email dated 10<sup>th</sup> December 2008 Ms. E indicated that she wished to have entry before Christmas. The offer was eventually submitted on the 30<sup>th</sup> January 2008 and entry took place on the same day. The given address for Ms. E was in Bradford. Ms. E granted a Power of Attorney in favour of the respondent which he used to execute the security documentation.

On or about 30<sup>th</sup> January 2008, prior to utilising the funds of £233,965 received from Birmingham Midshires for the purchase of Property 4 on behalf of Ms E from Mr A at a price of £260,000 the respondent failed to:

(iv) Report to the lender that the seller had owned the property for less than six months and thus failed to comply with Clause 5.1.1 of the CML Handbook.

(v) Report to the lender that the borrower was not providing the balance of the purchase price from her own funds (the balance of £26,035 coming from Mr C) and thus failed to comply with Clause 5.8 of the CML Handbook.

(vi) Report to the lender that the seller was not the heritable proprietor of the of the security subjects, being uninfest, and that this was a “back to back” transaction and thus failed to comply with Clause 5.1.1 of the CML Handbook.

My search in ZOOPLA disclosed that the property was sold on 31 August 2006 at a price of £196, 800.00.

#### Transaction 5

The respondent acted for Mr. F in connection with the purchase of Property 5 from Mr A. The respondent also acted on behalf of The Mortgage Business who were lending to Mr. F. The respondent’s loan instructions were dated 8<sup>th</sup> February 2008. They did not refer to the CML Handbook.

No risk assessment was carried out by the respondent for Money Laundering purposes.

The respondent submitted an unqualified report on title to The Mortgage Business.

The respondent’s instructions were contained in an email from Mr. F dated 11<sup>th</sup> February 2008. An offer was submitted the same day and settlement took place on 19<sup>th</sup> February 2008. The given address for Mr. F was elsewhere in Edinburgh. Settlement was effective on 19<sup>th</sup> February 2008. The respondent held a Power of Attorney from Mr. F which he used to execute the security documentation.

On or about 12<sup>th</sup> February 2008, prior to utilising the loan funds of £238,470 received from the Mortgage Business plc for the purchase of Property 5 of behalf of Mr F from Mr A at a price of £265,000 the respondent failed to:

- (iv) Report to the lender that the seller had owned the property for less than six months.
- (v) Report to the lender that the borrower was not providing the balance of the purchase price from his own funds (the balance of £25,530 coming from Mr C).
- (vi) Report to the lender that the seller was not the heritable proprietor of the of the security subjects, being uninfert, and that this was a “back to back” transaction.

My ZOOPLA search disclosed that the property was sold on 24 August 2010 at a price of £135,000.00.

#### Transaction 6

The respondent acted on behalf of Mr G in connection with the purchase of Property 6 from A. No risk assessment was carried out. No Risk Assessment Form was completed. The respondent also acted on behalf of Royal Bank of Scotland who were lending in relation to the transaction. His loan instructions were dated 27<sup>th</sup> May 2008 and required him to act in accordance with the CML Handbook requirements. The respondent received a mandate dated 29<sup>th</sup> May 2008 in the same terms, *mutatis mutandis* as that referred to in connection with Transaction 1, save that the sum of money mentioned in the mandate was £20,000. Immediately prior to settling the transaction, submitted to the Royal Bank of Scotland a certificate of title undertaking that he would comply fully with the Instructions and any other Requirements of the Bank and that he would hold the funds comprising the Loan to the order of the Bank and to apply them only when the Borrower has provided us with sufficient cleared funds in order to complete the transaction. He further certified that all the information in the Certificate of Title was accurate and that the Bank may rely on the accuracy of each and every statement, the truth being that it was not.

The respondents instructions were contained in an email from Mr. G dated 21<sup>st</sup> April 2008. The offer was submitted on 28<sup>th</sup> May 2008 and entry took place on 2<sup>nd</sup> June 2008. Mr. G granted a Power of Attorney in favour of the respondent which he used to execute the security documentation.

On or about 2<sup>nd</sup> June 2008, prior to utilising the loan funds of £237,470 received from the Royal Bank of Scotland for the purchase of Property 6 on behalf of Mr H from Mr A at a price of £250,000 the respondent failed to:

(iv) Report to the lender that the seller had owned the property for less than six months and thus failed to comply with Clause 5.1.1 of the CML Handbook.

(v) Report to the lender that the borrower was not providing the balance of the purchase price from his own funds (the balance of £12,530 coming from Mr C) and thus failed to comply with Clause 5.8 of the CML Handbook

(vi) Report to the lender that the seller was not the heritable proprietor of the of the security subjects, being uninfert, and that this was a “back to back” transaction and thus failed to comply with Clause 5.1.1 of the CML Handbook.

My ZOOPLA search disclosed that the property was sold on 12 September 2006 at a price of £224,000.00.

#### Transaction 7

The respondent acted on behalf of Ms H in connection with the purchase of Property 7. He also acted on behalf of the lenders, Bristol & West. His loan instructions were dated 13<sup>th</sup> February 2008. They did not specifically mention the CML Handbook but required the respondent to advise the lender immediately of any material change in relation to the transaction. The respondent was in receipt of a mandate from Ms. H dated 21<sup>st</sup> February 2008 in the same terms, *mutatis mutandis* as that condescended upon in relation to Transaction 1, save that the sum of money mentioned in the mandate was

£65,000. Immediately prior to settlement of the transaction the respondent submitted an unqualified report on title to Bristol & West.

The respondent's instructions were contained in an email from Ms H, dated 28<sup>th</sup> November 2007. The offer was submitted on 20<sup>th</sup> February 2008 and entry took place on 22<sup>nd</sup> February 2008. The given addresses on file for Ms H were in Bournemouth and Bradford. Ms H granted a Power of Attorney in favour of the respondent which he used to execute the security documentation.

On or about 22<sup>nd</sup> February 2008, prior to utilising the loan funds of £256,445 received from Bristol & West Mortgages for the purchase of Property 7 on behalf of Ms H from Mr A at a price of £270,000 the respondent failed to:

- (iv) Report to the lender that the seller had owned the property for less than six months and thus failed to comply with Clause 5.1.1 of the CML Handbook.
- (v) Report to the lender that the borrower was not providing the balance of the purchase price from her own funds (the balance of £25,530 coming from Mr C) and thus failed to comply with Clause 5.8 of the CML Handbook.
- (vi) Report to the lender that the seller was not the heritable proprietor of the of the security subjects, being uninfert, and that this was a "back to back" transaction and thus failed to comply with Clause 5.1.1 of the CML Handbook.

My ZOOPLA search disclosed that the property was sold on 31 August 2006 at a price of £214,400.00.

#### Transaction 8

The respondent acted on behalf of Ms I in connection with the purchase of Property 8 from Mr A. The respondent also acted on behalf of the lender, Cheltenham & Gloucester. Their loan instructions to the respondent were dated 10<sup>th</sup> October 2007. They required that the respondent comply with the requirements of the CML Handbook in relation to the transaction. The



respondent was in receipt of a mandate dated 12<sup>th</sup> October 2007 from Ms. I. The mandate was in the same terms as that condescended upon in relation to Transaction 1 except that the sum of money mentioned in the mandate was £65,000. Immediately prior to the settlement of the transaction the respondent submitted a clear certificate of title to Cheltenham & Gloucester. The respondent's instructions were contained in an email dated 1<sup>0th</sup> October 2007. An offer was submitted dated 20<sup>th</sup> October 2007 and entry took place on 22<sup>nd</sup> October 2007. The given address for Ms I was in Derby. The respondent held a Power of Attorney from Ms I which he used to execute the security documentation.

On or about 22<sup>nd</sup> October 2007, prior to utilising the loan funds of £198,000 received from Cheltenham & Gloucester for the purchase of Property 8 on behalf of Ms I from Mr A at a price of £220,000 the respondent failed to:

- (iv) Report to the lender that the seller had owned the property for less than six months and thus failed to comply with Clause 5.1.1 of the CML Handbook.
- (v) Report to the lender that the borrower was not providing the balance of the purchase price from her own funds (the balance of £22,000 coming from Mr C) and thus failed to comply with Clause 5.8 of the CML Handbook.
- (vi) Report to the lender that the seller was not the heritable proprietor of the of the security subjects, being uninfert, and that this was a "back to back" transaction and thus failed to comply with Clause 5.1.1 of the CML Handbook.

My ZOOPLA search disclosed that the property was sold on 26 August 2011 at a price of £121,000.00.

#### Transaction 9

The respondent acted on behalf of Ms J in relation to the purchase of Property 9 from Mr A. The respondent also acted on behalf of the lender, GE Money Home Lending Limited. The respondent's loan instructions were dated 30<sup>th</sup> January 2008. They required the respondent to comply with the

CML Handbook in relation to the transaction. The respondent was in receipt of a mandate from Ms. J dated 18<sup>th</sup> February 2008 in the same terms as that condescended upon in relation to Transaction 1, save that the sum of money mentioned in the mandate was £47,500. Immediately prior to settling the transaction the respondent submitted a certificate of title to GE Money Home Lending Limited stating that he had complied with the requirements of the CML Handbook in relation to the transaction, the truth being that he had not. The respondent's instructions were contained in an email from Ms J dated 21<sup>st</sup> November 2007. The offer was dated 13<sup>th</sup> February 2008 and entry took place on 20<sup>th</sup> February 2008. The given address for Ms J was in Bournemouth. The respondent held a Power of Attorney from Ms J which he used to execute the security documentation.

On or about 20<sup>th</sup> February 2008, prior to utilising the loan funds of £315,000 received from GE Money Home Lending Limited for the purchase of Property 9 on behalf of Ms J from Mr A at a price of £350,000 the respondent failed to:

- (i) Report to the lender that the seller had owned the property for less than six months and thus failed to comply with Clause 5.1.1 of the CML Handbook.
- (ii) Report to the lender that the borrower was not providing the balance of the purchase price from his own funds (the balance of £35,000 coming from Mr C) and thus failed to comply with Clause 5.8 of the CML Handbook.
- (iii) Report to the lender that the seller was not the heritable proprietor of the of the security subjects, being uninfert, and that this was a "back to back" transaction and thus failed to comply with Clause 5.1.1 of the CML Handbook.

My ZOOPLA search disclosed that the property was sold on 31 August 2010 at a price of £230,000.00

#### Transaction 10

The respondent acted on behalf of Mr K in connection with the purchase of Property 10 from Mr A. No Risk Assessment form was completed. The respondent also acted on behalf of the lenders, Bristol & West. The respondent's loan instructions were dated 18<sup>th</sup> April 2008. They did not refer to the CML Handbook, but stated that the lender might refuse to make the loan if they were provided with false or incomplete information, and required the respondent to advise Bristol & West of any material change in relation to the transaction. The respondent was in receipt of a mandate dated 23<sup>rd</sup> April 2008 from Mr. K. The mandate was in the same terms as that condescended upon in relation to Transaction 1; save that the sum of money mentioned in it was £30,000. Immediately prior to settling the transaction, the respondent sent an unqualified certificate of title to Bristol & West.

The respondent's instructions were contained in an email dated 21<sup>st</sup> April 2008 from Mr K. The offer was dated 21<sup>st</sup> April 2008 and entry took place 24<sup>th</sup> April 2008. The given addresses for Mr. K were in Bournemouth and West Linton. The respondent held a Power of Attorney by Mr K which he used to execute the security documentation.

On or about 25<sup>th</sup> April 2008, prior to utilising the loan funds of £255,676 received from Bristol & West Mortgages for the purchase of Property 10 on behalf of Mr K from Mr A at a price of £270,000 the respondent failed to:

- (iv) Report to the lender that the seller had owned the property for less than six months.
- (v) Report to the lender that the borrower was not providing the balance of the purchase price from his own funds (the balance of £14,324 coming from Mr C).
- (vi) Report to the lender that the seller was not the heritable proprietor of the of the security subjects, being uninfert, and that this was a "back to back" transaction.

My ZOOPLA search disclosed that the property was sold on 13 September 2010 at a price of £130,000.00

### Transaction 11

The respondent acted on behalf of Mr L in connection with the purchase of Property 11. No Risk Assessment form was completed. The respondent acted on behalf of Mr. L's lender who was Cheltenham & Gloucester. The respondent's loan instructions were dated 14<sup>th</sup> May 2008. They made no specific reference to the CML Handbook. The respondent was in receipt of a mandate from Mr. L dated 22<sup>nd</sup> May 2008. The mandate was in the same terms as that condescended upon in relation to Transaction 1, save that the sum of money mentioned in the mandate was £50,000. Immediately prior to the settlement of the transaction the respondent submitted an unqualified certificate of title to Cheltenham & Gloucester.

The respondent's instructions were contained in an email from Mr L dated 22<sup>nd</sup> April 2008. The offer was submitted on 16<sup>th</sup> April 2008 and entry took place on 23<sup>rd</sup> May 2008. The given address for Mr. L was in London. The respondent held a Power of Attorney from Mr. L which he used to execute the security documentation.

On or about 23rd May 2008, prior to utilising the loan funds of £314,100 received from Cheltenham & Gloucester for the purchase of Property 11 on behalf of Mr L from Mr A at a price of £349,000 the respondent failed to:

- (iv) Report to the lender that the seller had owned the property for less than six months.
- (v) Report to the lender that the borrower was not providing the balance of the purchase price from his own funds (the balance of £34,900 coming from Mr C).
- (vi) Report to the lender that the seller was not the heritable proprietor of the of the security subjects, being uninfest, and that this was a "back to back" transaction.

My ZOOPLA search disclosed that the property was sold on 8 June 2011 at a price of £146,100.00.

Transaction 12

The respondent acted on behalf of Mr M in respect of the purchase of Property 12 from Mr A. No Risk Assessment form was completed. The respondent also acted on behalf of the lender, Abbey National plc. The respondent's loan instructions were dated 14<sup>th</sup> July 2008. They required the respondent to comply with the requirements of the CML Handbook. Immediately prior to the settlement of the transaction the respondent submitted a certificate of title to Abbey National plc in which he stated that he had complied with the requirements of the CML Handbook, the truth being that he had not. Abbey National subsequently repossessed Property 12 and in doing so sustained a loss which they claim is in the amount of £105,209.

The respondent's instructions were contained in an email dated 23<sup>rd</sup> July 2008. An offer was submitted on 24<sup>th</sup> July 2008 and entry was taken on 27<sup>th</sup> July 2008. The given address for Mr. M was in Edinburgh. The respondent held a Power of Attorney from Mr. M which he used to execute the security documentation.

On or about 27<sup>th</sup> July 2008, prior to utilising the funds of £229,465 received from Abbey National for the purchase of Property 12 on behalf of Mr M from Mr A at a price of £270,000, the respondent failed to:

- (v) Report to the lender that the seller had owned the property for less than six months and thus failed to comply with Clause 5.1.1 of the CML Handbook.
- (vi) Report to the lender that the seller had purchased the property for £185,000 on the same day as he sold it to the borrower for £270,000, this being a matter which he should reasonably have expected the lender to consider important in deciding whether to lend to the borrower and thus failed to comply with Clause 5.1.2 of the CML Handbook.

(vii) Report to the lender that the borrower was not providing the balance of the purchase price from his own funds (the balance of £40,535 coming from Mr C) and thus failed to comply with Clause 5.8 of the CML Handbook

(viii) Report to the lender that the seller was not the heritable proprietor of the security subjects, being uninfected, and that this was a “back to back” transaction and thus failed to comply with Clause 5.1.1 of the CML Handbook.

8. The Council of Mortgage Lenders Handbook for Scotland, 2006 Edition, which was in force at all material times in relation to transactions 1 to 12 provided, inter alia as follows:-

“2.3 Where you are reporting a matter to us you must do so as soon as you become aware of it so as to avoid any delay. You should provide a concise summary and your recommendation. After reporting a matter you should not complete the mortgage until you have received our further instructions. We recommend that you report such matters before conclusion of missives because we may have to withdraw or change the mortgage offer.

5.1.1 Please report to us ... if the proprietor has owned the property for less than 6 months, or the persons selling to the borrower is not the proprietor...

5.1.2 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 whether 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.

5.8 You must ask the borrower how the purchase of the purchase price is being provided. If you become aware that the borrower is not providing the balance of the purchase price from his own funds and/or is proposing to give

a second charge over the property, you must report this to us if the borrower agrees..., failing which you must return our instructions and explain that you are unable to continue to act for us as there is a conflict of interest”.

9. On 17<sup>th</sup> August 2009 there was published in the Journal of the Law Society of Scotland an article by John Scott under the heading “Legitimate Funding or Mortgage Fraud?”. Mr Scott is a solicitor who had at the material time over 20 years experience of conveyancing practice who had recently joined the Society’s Professional Practice Department. The article dealt with so called “rebate schemes” which are also referred to as revolving deposits. The mechanism of the scheme was explained by Mr Scott as follows:-

“The purchaser offers a very full price, well above the seller’s realistic expectations. At the same time the purchaser arranges a mortgage with a mainstream lender (on the basis of a questionable valuation), and signs a contract with a loan company for a facility to fund the gap between the mortgage and this price. Missives are concluded on the basis of the full price and the transaction proceeds as normal. At settlement the purchaser’s solicitor sends the seller’s agent a cheque for the full amount. Then the seller’s agent pays back the deposit (and a fee) to the loan company in terms of an irrevocable mandate from the seller. This mandate removes any need for the company to have a postponed security over the property. The source of funding is not disclosed to the mortgage lender by the purchaser’s agent, so that the lender is effectively induced to lend the whole of the net price received by the seller.”

10. While I appreciate that the article post dates the activity of the respondent in the present case, it is obvious that any solicitor who is instructed to proceed in terms of the CML Handbook should have been aware of these issues and it is equally clear to me that the matters raised falls squarely within the duty of a solicitor at common law to disclose matter of concern to lenders and to act with the upmost propriety in relation to the lenders.

11. In case 748/89, which is quoted in Smith & Barton at pages 130-1 the Tribunal laid down that solicitors must act with the utmost diligence and propriety towards their lender clients. The Tribunal deemed that decision to be of such significance that it directed the Society to bring the decision to the attention of the profession and as a result the decision was published in the Journal of the Law Society of Scotland in July 1989 at pages 190-1.

Further guidance was provided to the profession in relation to the Accounts Rules by means of Guidelines to these Rules published in 2005. Of particular relevance was the guidance in respect of the risks in conveyancing from Money Laundering and these Guidelines could be found in the Parliament House Book at pages F1244-5 between 2005 and 2011.

Mr Lynch took Mr Ritchie through his Affidavit. Mr Ritchie confirmed that so far as he understood it the Respondent was not currently working but still held a practising certificate. Mr Ritchie explained that in respect of paragraph 5 of his Affidavit it was after the departure of the Respondent from the firm that a new person did an audit which led to an investigation which led to a letter being sent to the Law Society.

Mr Ritchie confirmed that he had read the files in this case on a number of occasions. Mr Ritchie stated that in respect of transaction 1 he saw the mandate in the file and thought it strange that the funds would not be released back to Mr B. The mandate led him to be suspicious that this was a revolving deposit scheme. Mr Ritchie explained that Mr C was a client of Leslie Deans and was the owner and landlord of the firm's Dunbar branch office. Mr C also appeared to pay the fees and outlays in respect of the case.

Mr Lynch took Mr Ritchie through the detail in respect of transaction 4. Mr Ritchie was referred to Production 1 being an email of instruction coming from Ms E on 29 November 2007. Production 26 was the certificate of title signed by Mr Fraser. Production 34 was a letter of 30 January 2008 confirming that the Respondent had complied with the terms of the CML Handbook. Mr Ritchie also referred to Production 47 being a copy of a newspaper advert dated 7 November 2007 showing



the property at property 4 being offered for sale at offers over £170,000. Mr Ritchie stated that he understood that this was a repossession. Production 46 showed that the property had been repossessed.

Mr Lynch also referred Mr Ritchie to Production 52 being the cash statement which showed a deposit of £35,111.25 being received from Mr C. Production 68 and 69 were Birmingham Midshires standard security and loan documentation signed by the Respondent. Production 84 was Form 4 which registered the title. This referred to six documents, one being the disposition to Mr A, one being the power of attorney, one being stamp duty land certificate, one being the standard security, one being an affidavit and one being the disposition in favour of Ms E. Mr Ritchie explained that Mr A was the seller but was not infert. There was a disposition to him which was used as a link in title which was competent and saved stamp duty and recording dues. This was a common feature in all the transactions.

Mr Lynch referred Mr Ritchie to Production 102 being the mandate from Ms E dated 29 January 2008 in favour of the Respondent authorising him to retain £67,500. Mr Ritchie stated that this was typical of the mandates that were in place in all the transactions.

Mr Ritchie stated that the purchasers in these transactions frequently lived in England and had more than one address. There was no evidence that the Respondent had ever met them or given them any advice. There was also no indication of the provenience of any of the documents provided.

In response to a question from the Chairman, Mr Ritchie stated that he did not know if the purchasers even existed. The loans were on an interest only basis. Mr Ritchie stated that in back to back transactions the facilitator, the solicitor and the mortgage broker would know what was going on.

In connection with transaction 12, Mr Lynch referred Mr Ritchie to Production 8 being a letter of 11 February 2010 from Aberdein Considine and Company to Leslie Deans & Co on behalf of Santander (previously Abbey National) being a complaint in connection with the breach of the CML Handbook. This narrated a price paid by Mr A

of £185,000 one month before and an uplift of £85,000. This letter confirmed that this information would have been of interest to their client and should have been reported to the lender. The letter indicated that if the lender had known this information the offer of loan would have been withdrawn. Mr N was in default and there was a repossession with a shortfall of more than £105,000. This was a similar price to that shown on Zoopla.

Mr Ritchie stated that the lenders had had to be involved in repossession proceedings in transactions 4, 5 and 7.

In response to a question from the Chairman, Mr Ritchie stated that in December 2007 the new Money Laundering Regulations had been brought into force and after that there was a requirement to risk assess and do due customer diligence. Mr Ritchie stated that as far as he understood it a number of individuals had been charged with offences under the Proceeds of Crime Act 2002. He was unaware of any current proceedings against the Respondent.

Mr Ritchie stated that distressed sellers were particularly vulnerable to these types of schemes.

### **SUBMISSIONS FOR THE COMPLAINERS**

Mr Lynch asked the Tribunal to make a finding of professional misconduct based on the oral evidence of Mr Ritchie, his signed Affidavit and the Productions lodged. Mr Lynch submitted that these disclosed a course of conduct by the Respondent which was a fragrant breach of regulations and his common law duty to the lender. Mr Lynch submitted that if you took account of the common seller and the way that the instructions had been obtained it must have been obvious to the Respondent that wrongdoing was taking place and he was facilitating this.

### **DECISION**

The Tribunal found Mr Ritchie a credible and reliable witness and accepted his oral and Affidavit evidence. The Tribunal was satisfied beyond reasonable doubt on the

basis of Mr Ritchie's oral and Affidavit evidence and the Productions lodged that all the facts in the Complaint were proved.

The ongoing flagrant course of conduct by the Respondent was clearly sufficient to amount to professional misconduct. The Tribunal has made it clear on numerous occasions that a solicitor acting for the lender owes the lender the same duty of care as any other client. In this case the Respondent withheld important information from his lender clients which would have affected their decision to lend. In numerous transactions the Respondent failed to advise his lender clients that the properties had been owned for less than six months, that they were back to back transactions and that there was a significant difference in the purchase price within a short timescale. It must have been abundantly clear to the Respondent that all was not right with these transactions especially given the powers of Attorney and mandates and yet he continued to act and did not report these matters to his lender clients. The Respondent clearly did not act in the best interests of his clients and in this case the Tribunal considered that the Respondent did not act with upmost propriety in respect of his clients and facilitated mortgage fraud. It is essential for the public to have confidence in the legal profession and that solicitors act with integrity and fulfil their professional duties in all cases. The Tribunal considered that the Respondent's conduct in deliberately turning a blind eye to potential mortgage fraud demonstrated his lack of integrity and has brought the legal profession into disrepute.

The Tribunal consider that the Respondent's conduct is at the higher end of the scale of professional misconduct and that the Respondent would be a danger to the public if he continued to practise as a solicitor. The Respondent did not enter the Tribunal process or provide the Tribunal with any mitigation on his own behalf. In the whole circumstances the Tribunal did not consider that the Respondent was a fit person to remain on the Roll of Solicitors in Scotland and accordingly struck his name from the Roll.

The Tribunal saw no reason to depart from the usual practice of awarding expenses against the Respondent. In connection with publicity, the Tribunal noted that there may be criminal proceedings arising out of these transactions and accordingly

deferred publicity until after any such criminal proceedings to avoid prejudicing any such proceedings.

**Alan McDonald**  
**Vice Chairman**