

**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

**ALAN JOHN BAILLIE, Baillies
Law Limited, 37 Union Street,
Dundee**

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Alan John Baillie, Ballies Law Limited, 37 Union Street, Dundee (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 28 January 2014 and notice thereof was duly served on the Respondent.
4. The hearing took place on 28 January 2014. The Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was present and represented by Ian Ferguson, Solicitor, Glasgow. A Joint Minute was lodged admitting

some of the facts of the Complaint. The Fiscal withdrew some of the facts in the Complaint. The Tribunal then heard submissions from the Fiscal in connection with objections to the expert conveyancing witness who the Respondent wished to lead and also to the Respondent leading evidence in connection with opinions of the Law Society's members of staff. After hearing the submissions and Mr Ferguson's response, the Tribunal considered that this would not be a suitable case for expert evidence as the subject matter of the Complaint was not outwith the Tribunal's knowledge. The Tribunal accordingly heard evidence from the Complainers' first witness and the matter was then adjourned part-heard until 22 April 2014 at 10:30am.

5. When the case called the continued hearing on 22 April 2014, the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was present and represented by Jonathan Brown, Counsel.
6. An amended Complaint was lodged with the Tribunal together with a Joint Minute admitting the averments of fact, averments of duty and averments of professional misconduct in the amended Complaint. It was accordingly not necessary for any further evidence to be led.
7. In the circumstances the Tribunal found the following facts established as agreed between the parties:-

7.1 The Respondent is a solicitor enrolled in the Registers of Scotland on 2 October 1980. He has practised as a partner since 1 February 1988 and since 15 January 1990 as a sole practitioner under the business name of Baillies Law Limited, 37 Union Street, Dundee, DD1 4BS. He has been the Client Relations Partner since 17 August 2005; the Cash Room Partner since 3 August 2000; the Risk Partner since 1 November 2010 and the Money Laundering Reporting Officer since 1 November 2010.

7.2 At the relevant material times narrated below the Respondent acted for the following individuals:-

- A – Mr A
- B – Mr B.
- C - Mr C
- D - Mr & Mrs D
- E - Mr E and Ms I
- F – Mr & Mrs F
- G- Mr G
- H- Mrs H

7.3 At the relevant material times narrated below the Respondent also acted for the following mortgage lenders:-

- A - Santander (S) - Transaction 1
- B – Birmingham Midshires (BM) – Transactions 2, 6, 7, 8 and 10.
- C - Natwest (NW)-Transaction 3
- D - Clydesdale Bank (CB) –Transactions 4 & 5
- E - Mortgage Works (MW) –Transaction 9

Mr A - Purchase – Property 1 (“Transaction 1”)

7.4 In this transaction the Respondent acted for Mr A in relation to the purchase. He also acted for S as the lenders to Mr A.

7.5 By letter of 14 June 2010 Lints Partnership Solicitors (Lints) advised the Respondent that they “understood that you are to act on behalf of the purchaser”.

7.6 As at 14/15 June 2010 there was no evidence on the file to indicate that the Respondent had been instructed to so act

directly by the client and that this letter of 14 June 2010 was in fact a referral of business by Lints Partnership to the Respondent to act in this transaction. Said letter enclosed copy Land and Charge Certificates along with other documentation. The copy Land Certificate indicated that the owner was in fact a Ms J, not Mr K, detailed in the letter from Lints as the seller of the property for whom Lints were acting.

7.7 By letter of 15 June 2010 S wrote to the Respondent to act on its behalf in the purchase of the property and in doing so enclosed loan instructions for Mr A. The purchase price was detailed as £190,000 with an advance of £142,500 together with fees. Said loan instructions required the Respondent to act in accordance with the CML Lenders Handbook for Scotland including Parts 1 and 2. The letter of instruction also confirmed that the Respondent was instructed on the basis that the submission of the Certificate of Title would be confirmation that he had complied with all such instructions. The CML Lenders Handbook and part 2 instruction sets out:-

- (i) It does not affect any responsibilities the Respondent has to it under the general law or any practice rule or guidance issued by the Law Society of Scotland (Pt 1 1.3)
- (ii) The standard of care is that of a reasonably competent solicitor acting with reasonable care (Pt 1 1.4)
- (iii) The Respondent must comply with any separate instruction for an individual loan (Pt 1 1.5)
- (iv) If there is any conflict of interest, instructions should be returned (Pt1 1.15)
- (v) A matter should be reported as soon as the Respondent becomes aware of it and the mortgage should not be completed until further instructions are given (Pt 1 2.3)

(vi) Solicitors must comply with the Solicitors (Scotland) Accounts Rules, Money Laundering Regulations 2003 and the Proceeds of Crime Act 2002 (Pt1 3.1)

(vii) Report if the proprietor has owned the property for less than six months (Pts1 & 2 5.1.1)

(viii) If the Respondent becomes aware of any matter which he should reasonably expect the lender to consider important in considering lending but the Respondent cannot disclose it due to a conflict of interest, the Respondent must cease to act (Pt 1 5.1.2)

(ix) If the Respondent becomes aware that the borrower is not providing the balance of the purchase price from his own funds the solicitor must report this or return instructions (Pt1 5.8)

(x) The Respondent should explain to each borrower his responsibilities and liabilities under the standard security (Pt 1 11.2)

(xi) If the Respondent is aware that any transfer of the title to the property may be open to challenge as a gratuitous alienation then he must be satisfied that S would acquire it's interest in good faith and be protected under the relevant statutory provisions against it's security being set aside. (Pt 1 5.11.3)

7.8 As at 15/16 June 2010, the Respondent had not been instructed by Mr A. S was not so advised. The Respondent proceeded to act for S.

7.9 By letter dated 18 June 2010, the Respondent sent two letters to Mr A – one comprising a Letter of Engagement and the second indicating “I have been asked to act on your behalf in this transaction”. In doing so, he requested the client to confirm instructions to act.

- 7.10 By letter of 21 June 2010 the Respondent made an offer to Lints on behalf of Mr A for the property. There is nothing disclosed on file to indicate any instructions from Mr A or any communication to confirm his instructions to so proceed.
- 7.11 By letter of 23 June 2010 Lints responded to the offer with a qualification in relation to the date of entry. From the file, there is no evidence that the Respondent ever concluded Missives prior to settlement.
- 7.12 On 24 June 2010, the Respondent completed and submitted a Certificate of Title indicating, inter alia, compliance with the CML Lenders Handbook Scotland and indicating a wish to settle the transaction on 25 or 28 June 2010. A covering letter sent with it indicated that, inter alia , it was a back-to-back transaction in terms of the CML Handbook 5.1.1.
- 7.13 On 1 July 2010 the Respondent sent a settlement cheque in the sum of £190,000 to Lints to be held as undelivered pending funds being made available by S.
- 7.14 £142,500 funds were received from S.
- 7.15 Mr A transferred the balance of the purchase price to the Respondent. for the balance of the purchase price. The transaction then settled.
- 7.16 The Disposition executed by Mr K in favour of Mr A for £190,000 was executed on 25 June 2010. The Disposition by Ms J in favour of Mr K for the same property was executed by Ms J on 25 June 2010 in the sum of £121,000.
- 7.17 As at settlement, the Respondent's file disclosed and/or the Respondent failed to advise:-

- (1) no approval or consent by S for the transaction to proceed given it was a back-to-back transaction;
- (2) no notification to S that the back-to-back transaction actually meant a same day transaction;
- (3) no notification to S of the difference in the purchase price for settlement on the same day, namely £69,000;
- (4) no notification to S that the loan was more than £20,000 higher than the purchase by Mr K of the property on the same day;
- (5) that the Respondent had not carried out the appropriate money laundering checks as required;
- (6) no investigation as to the source of those funds;
- (7) that the Respondent had not given any advice to Mr A, in particular in relation to the actual ownership at the time the purchase transaction was underway or in relation to his liabilities and responsibilities under the Standard Security;
- (8) that S was advised that the client was introduced to the firm by a third party, being the firm representing the seller and was not an existing client. The deposit paid was substantial, £49,200 representing more than 25% of the value of the property being purchased;
- (9) that S was advised that the sale to Mr K was not one occurring in the open market ; had been sold on its face under market value; no reference to a home report all raising the issue of a potential challenge of a gratuitous alienation in relation to a transfer of title ultimately to Mr A;
- (10) that the Respondent did not advise S that he had not given any advice to Mr A, in particular in relation to his responsibilities and liabilities under the standard security.

7.18 The Respondent intromitted with the loan funds prior to permission from S.

- 7.19 The Respondent's file failed to disclose appropriate money laundering of Mr A after the date of settlement
- 7.20 The purchase comprised a high risk transaction from a money laundering perspective.

Mr B – purchase of Property 2 (“Transaction 2”)

- 7.21 In this transaction the Respondent acted for Mr B in relation to the purchase of the above property. He also acted for BM as lenders to Mr B.
- 7.22 The client was a referred client from a third party and was not an existing client. The client was introduced as part of a package which involved said third party in selecting both the purchaser and seller's solicitors in terms of a memorandum of sale subject to contract. The seller's solicitors were detailed as Lints.
- 7.23 By letter of 8 June 2010 the Respondent advised Lints that he was instructed in relation to the purchase on behalf of Mr B. By letter of 8 June 2010 the Respondent thanked Mr B for instructing him to act. Mr B was based in Cornwall. There was no evidence on the file of any such instructions from Mr B – either in correspondence or in telephone notes. By further letter of 8 June 2010, the Respondent advised Mr B that he had been asked by the Company 2 to take over the legal work on Mr B's behalf. Said letter did not include a request for Mr B to confirm said instructions.
- 7.24 By letter of 8 June 2010, the Respondent wrote to Hughes Walker Solicitors advising that they were taking over the transaction. Reference is made to a letter of 27 May 2010 from BM to Hughes Walker setting out requests for further

information in relation to the purchase by Mr B of the above property. By letter of 8 June, BM repeated said requests to the Respondent. The letter referred to loan instructions of the same date.

7.25 By letter of 16 June 2010, the Respondent replied to three of the queries raised by BM, namely providing full names of the sellers and their solicitor; confirmation of the agreed purchase price and that completion would take place subject to full vacant possession. The Respondent advised he would seek further information on the other requests namely :-

- (a) documentary evidence of the balance of the purchase price from the client's own funds;
- (b) the origin of such funds if not accumulated over a reasonable period; and
- (c) that there was no distressed sale/back to back sale/third party involvement in the transaction.

7.26 By letter of 10 June 2010, BM wrote to the Respondent in relation to his client Mr B with an offer of loan for this property. The amount of the loan was £86,250 in relation to the purchase price of £115,000. The Respondent proceeded to act for BM.

7.27 The loan instructions required the Respondent to act "in accordance with the CML Lenders Handbook for Scotland" and the Lenders "Part 2 instructions". The CML Lenders Handbook and Part 2 instruction sets out:-

- (i) A matter should be reported as soon as the Respondent becomes aware of it and the mortgage should not be completed until further instructions are given (Pt 1 2.3)

(ii) Solicitors must comply with the Solicitors (Scotland) Accounts Rules, Money Laundering Regulations 2003 and the Proceeds of Crime Act 2002 (Pt1 3.1)

(iii) If the Respondent becomes aware that the borrower is not providing the balance of the purchase price from his own funds the solicitor must report this or return instructions (Pt1 5.8)

(iv) The Respondent should explain to each borrower his responsibilities and liabilities under the standard security (Pt 1 11.2)

7.28 By letter of 17 June 2010 the Respondent requested Mr B to provide a copy of his bank building society statement which could be passed to BM.

7.29 By letter of 21 June 2010 the Respondent requested Mr B to provide the balance of purchase price of the transaction, namely £30,013.75 including expenses.

7.30 By letter of 28 June 2010 the Respondent sent off the signed Certificate of Title by him to BM. At that time, the file does not disclose any direct face-to-face communications with Mr B; any formal instructions emanating from him nor any communication from Mr B in relation to the deposit and/or the other issues raised by the Respondent in his letter of 21 June to enable the Respondent to comply with the Lenders requests in their letter of 8 June 2010.

7.31 By letter of 19 July, the Respondent advised BM that they had now received Mr. B's funds which were in his client account. He then requested release of the loan funds to enable completion on 22 July 2010. A copy Bank Statement of Mr B is held on the Respondent's file as at 2 June 2010.

There is no other evidence or communication on the file to support said statement or the transfer of the deposit funds.

- 7.32 The Respondent's file includes a "To Whom It May Concern" letter enclosing Mr B's bank statements for the past six months and signed by a Ms. L. The note is undated. The note is a copy and no statements are on file. There is nothing on the Respondent's file to show the authenticity of this information has been investigated.
- 7.33 By fax of 21 July 2010, the Respondent provided BM with a copy of "our client's bank statement" to respond to the requirement for evidence for the source of the account balance together with a full explanation for those if not provided from the Applicant's own resources. Said statements did not disclose clear evidence of the source of the funds. There is no other evidence on the Respondent's file to indicate investigation or provision to BM of suitable evidence of the source of funds.
- 7.34 By letter of 4 August 2010, BM advised that proof of the deposit was accepted. The loan was provided to the Respondent by BM on 11 August 2010. The transaction settled on or around 16 August 2010.
- 7.35 The Respondent's file does disclose a signed duplicate of the Respondent's Terms of Engagement. It also discloses certified copies of Mr B's passport and addressed correspondence certified by Mr M, solicitor in the firm of Nash & co, England. All these documents were sent to the Respondent under cover of a compliments slip from Company 1. The bank statements referred to in the preceding paragraph disclosed transfers from Company 1 to Mr B. No verification of any of this documentation; certifications of

said documentation; of the organisations or linking with Mr B is on the Respondent's file. There is no evidence of consent being sought by the Respondent from Mr M agreeing that his certification could be relied upon.

7.36 The Respondent's file disclosed and/or the Respondent failed to advise BM:-

(1) no direct face-to-face contact with the client and as such the transaction was high risk;

(2) no advice sought in relation to the risk assessment carried out by the Respondent for anti-money laundering given the score total was 13;

(3) no investigation into verification of any of the limited money laundering documentation received on behalf of the client;

(4) that the Respondent had not carried out the appropriate money laundering checks as required;

(5) no advice to Mr B, in particular in relation to his responsibilities and liabilities under the standard security;

(6) any intimation by the Respondent to BM that he had failed to give any advice to Mr B in relation to his responsibilities and liabilities under the standard security.

Mr C – purchase Property 3 (“Transaction 3”)

7.37 In this transaction the Respondent acted for Mr C in relation to the purchase of the above property. He also acted for NW as lenders to Mr C.

7.38 The client was a referred client from a third party and was not an existing client. By letter 7 June 2010 the Respondent advised Mr C he had been instructed to act for him and that

the lenders were NW. On 16 June 2010 copies of Mr C's passport; bank statement and a council tax bill were provided to the Respondent. Each had been certified as genuine by Mr T, solicitor in Edinburgh. Lints were acting for the seller, Mr K, in the transaction. The Respondent assessed the risk regarding money laundering as medium and marked the risk assessment for funds and ID "OK" despite no funds having been provided at that date; the transaction not being face to face and that the documentation had been certified by the seller's solicitor. Prior to settlement the Respondent carried out no further investigation in this regard. In particular he did not seek to confirm the authenticity of the certified documents from Mr T or his consent that such certification could be relied upon. In fact the transaction was high risk.

- 7.39 The transaction was a back to back transaction. It was apparent that the purchase price paid by the seller, Mr K, was less than the purchase price by Mr C. No enquiry was made by the Respondent regarding the price differential.
- 7.40 NW instructed the Respondent to act on its behalf in the purchase of the property and in doing so enclosed loan instructions for Mr C. The purchase price was detailed as £150,000 with an advance of around £110,000.
- 7.41 Said loan instructions required the Respondent to act in accordance with the CML Lenders Handbook for Scotland including Parts 1 and 2. The letter of instruction also confirmed that the Respondent was instructed on the basis that the submission of the Certificate of Title would be confirmation that he had complied with all such instructions. The CML Lenders Handbook and part 2 instruction sets out:-

- (i) It does not affect any responsibilities the Respondent has to it under the general law or any practice rule or guidance issued by the Law Society of Scotland (Pt 1 1.3)
- (ii) The standard of care is that of a reasonably competent solicitor acting with reasonable care (Pt 1 1.4)
- (iii) If there is any conflict of interest, instructions should be returned (Pt1 1.15)
- (iv) A matter should be reported as soon as the Respondent becomes aware of it and the mortgage should not be completed until further instructions are given (Pt 1 2.3)
- (v) Solicitors must comply with the Solicitors (Scotland) Accounts Rules, Money Laundering Regulations 2003 and the Proceeds of Crime Act 2002 (Pt1 3.1)
- (vi) Report if the proprietor has owned the property for less than six months (Pts1 & 2 5.1.1)
- (vii) If the Respondent becomes aware of any matter which he should reasonably expect the lender to consider important in considering lending but the Respondent cannot disclose it due to a conflict of interest, the Respondent must cease to act (Pt 1 5.1.2)
- (viii) If the Respondent becomes aware that the borrower is not providing the balance of the purchase price from his own funds the solicitor must report this or return instructions (Pt1 5.8)
- (ix) The Respondent should explain to each borrower his responsibilities and liabilities under the standard security (Pt 1 11.2)

7.42 A risk assessment carried out by the Respondent on 21 June 2010 scored the risk at 14, i.e. medium risk to discuss with MLRO. The Respondent was the MLRO. He did not seek external advice in relation to compliance and given the other circumstances detailed the risk on this transaction was high.

- 7.43 On 1 July 2010 the Respondent completed and submitted the Certificate of Title to NW and in his covering letter he made reference to the CML Handbook and advised the transaction was a back to back transaction. On 6 July 2010 the client provided the balance of the purchase price of £40,670. No evidence of the source of said funds was provided. Prior to settlement no investigation was carried out by the Respondent to satisfy himself or verify the source of said funds. Nor did he notify NW.
- 7.44 By letter of 8 July 2010 the Respondent advised Lints that he may be in funds for settlement as soon as 9 July 2010 and enclosed a cheque to be held as undelivered. On 8 July 2010 Lints advised that a CHAPS transfer would be required and on 12 July 2010 said transfer took place with settlement occurring on 13 July. The Disposition by Mr K in favour of Mr C was dated 7 July 2010 with entry as at 13 July 2010. The transaction settled on or around 15 July 2010. As at the date of settlement no authority had been given by NW to proceed to release said loan funds.
- 7.45 By letter dated 14 December 2010, the Respondent requested evidence from Mr C by way of a bank account statement to show the transfer of the funds of £40,670 on 6 July 2010. On 16 December 2010 Mr C attached a Statement from the Bank of Scotland confirming transfer from an account in his name of £40,695 (cash) with a transfer into him on the same day by CHAPS of £40,670. There is nothing on file to indicate the Respondent investigated the source of the transfer in by CHAPS.
- 7.46 The Respondent's file failed to disclose and/or the Respondent failed to advise NW at or before settlement:-

- (1) any investigation into the difference in price of the back to back transactions and in particular to ascertain the original purchase price paid by Mr K to compare with the loan from NW;
- (2) of the date of the back-to-back transaction;
- (3) that the money laundering documentation was certified by the solicitor acting on the other side of the transaction;
- (4) that the Respondent had not carried out the appropriate money laundering checks as required;
- (5) that the Respondent did not carry out the necessary investigations in relation to the authenticity of the money laundering documents given they were provided direct from the client nor consented to being relied upon by Mr T;
- (6) that the Respondent did not carry out the necessary investigations in relation to the source of the funds being provided by Mr C comprising a significant percentage of the purchase price;
- (7) any advice to Mr C in relation to his responsibilities and liabilities under the standard security;
- (8) any intimation by the Respondent to NW that he had failed to give any advice to Mr C in relation to his responsibilities and liabilities under the standard security.

Mr & Mrs D - Purchase – Property 4 (“Transaction 4”)

- 7.47 In this transaction the Respondent acted for Mr & Mrs D in relation to the purchase of the above property. He also acted for CB as lenders to Mr & Mrs D.
- 7.48 The clients were referred clients from a third party (Mr K and /or Company 2) and were not an existing clients. By letter 7 June 2010 Mr & Mrs D instructed the Respondent and provided money laundering documentation by email. On the Respondent’s file there is a colour copy passport of both

his clients uncertified and undated and without any evidence of investigation as to authenticity and verification.

- 7.49 On 8 June 2010 the Respondent issued a Terms of Business letter to the clients.
- 7.50 On 16 June 2010 the Respondent completed a risk assessment for money laundering purposes. This assessed the risk as medium –which would require involvement of the MLRO, The Respondent was the MLRO. There is no evidence to show he took external guidance in relation to compliance. In this form the Respondent marked the risk assessment for funds and ID “OK” despite the fact that no funds had been provided at that date; that the money laundering documentation had been provided uncertified by email direct from the client and that the transaction was not face to face. In all the circumstances the risk was in fact high.
- 7.51 By letter 18 June 2010 loan instructions were received by the Respondent from CB. The purchase price was £90,000 with an advance of £62,999. Said loan instructions required the Respondent to act “as set out in the CM Lenders Handbook appropriate to jurisdiction in which the property is situated.” The offer also, specifically drew attention to the limitations and who the Respondent may act for and the need to report to CB any matter which came to the Respondent’s attention which CB as his client ought to be made aware of prior to the drawdown of the loan. The CM Lenders Handbook and Part 2 instructions set out:-
- (i) It does not affect any responsibilities the Respondent has to it under the general law or any practice rule or guidance issued by the Law Society of Scotland (Pt 1 1.3)

- (ii) The standard of care is that of a reasonably competent solicitor acting with reasonable care (Pt 1 1.4)
- (iii) The Respondent must comply with any separate instruction for an individual loan (Pt 1 1.5)
- (iv) If there is any conflict of interest, instructions should be returned (Pt1 1.15)
- (v) A matter should be reported as soon as the Respondent becomes aware of it and the mortgage should not be completed until further instructions are given (Pt 1 2.3)
- (vi) Solicitors must comply with the Solicitors (Scotland) Accounts Rules, Money Laundering Regulations 2003 and the Proceeds of Crime Act 2002 (Pt1 3.1)
- (vii) Report if the proprietor has owned the property for less than six months (Pts1 & 2 5.1.1)
- (viii) If the Respondent becomes aware of any matter which he should reasonably expect the lender to consider important in considering lending but the Respondent cannot disclose it due to a conflict of interest, the Respondent must cease to act (Pt 1 5.1.2)
- (ix) If the Respondent becomes aware that the borrower is not providing the balance of the purchase price from his own funds the solicitor must report this or return instructions (Pt1 5.8)
- (x) The Respondent should explain to each borrower his/her responsibilities and liabilities under the standard security (Pt 1 11.2)

7.52 The value of the property as at 26 May 2010 was £90,000.

7.53 By letter of 22 June 2010 the Respondent wrote to his clients requesting the balance of £28,923.75 comprising £28,030 plus expenses of £893.75.

- 7.54 By letter of 22 June 2010 the Respondent advised CB that the seller had not owned the property for 6 months.
- 7.55 By letter of 28 June 2010 the Respondent sent a reminder to his clients for the balance required of £28,923.75. On 6 July 2010 the clients transferred the said funds. There is no evidence of any investigation by the Respondent as to the source of these funds on file.
- 7.56 On 28 June 2010 the Respondent sent his Certificate of Title to CB. In doing so, he certified that all matters requiring compliance under the CL Lenders Handbook had been or would be complied with. He also certified that there was nothing else within his knowledge of which CB ought to be aware that he had not told them of and that he had verified the identity of the Borrower (Mr & Mrs D) to his satisfaction. In doing so he misled CB, his clients.
- 7.57 On 2 July CB advised it had no issue with the property not being owned for more than six months.
- 7.58 By letter of 7 July 2010, the Respondent advised Lints that he was in funds to settle the transaction.
- 7.59 On 9 July 2010 the Respondent completed a CHAPS transfer for the purchase price of £90,000 to Lints Client Account.
- 7.60 The Disposition in favour of Mr K was dated 17 and 20 both May 2010 and the said Disposition was used as a link in Title at the time of registration of Mr. and Mrs. D's Title. Entry was indicated within the Disposition at 9 July 2010. The Purchase price by Mr K was £61,000.

7.61 By Disposition dated 23 June 2010, Mr K sold the property to Mr and Mrs D. Entry was indicated within the Disposition at 9 July 2010. The Purchase price by Mr & Mrs D was £90,000.

7.62 The Respondent's file disclosed and/or the Respondent failed to advise CB at or before settlement:-

1. that the appropriate money laundering of Mr and Mrs D had not been carried out;
2. that there had been no further correspondence from Mr and Mrs D save the initial e-mail of 7 June 2010;
3. that the sale and purchase by Mr K to Mr and Mrs D was a back to back transaction taking place on the same day as the purchase by Mr K.
4. that the loan was more than 100% of the original purchase price paid by Mr K on 9 July 2010;
5. of the substantial increase of £29,000 in the purchase price paid by Mr and Mrs D in a same day transaction;
6. the Respondent did not investigate the source of the balance of the purchase price;
7. that the transaction was a high risk transaction in all the circumstances;
8. that Mr K, the seller, was involved in the referral of the clients to the Respondent's as well as acting the seller;
9. no advice to Mr & Mrs D in relation to their respective responsibilities and liabilities under the standard security;
10. any intimation by the Respondent to CB that he had failed to give any advice to Mr & Mrs D in relation to their respective responsibilities and liabilities under the standard security.

Mr & Mrs D - Purchase – Property 5 (“Transaction 5”)

- 7.63 In this transaction the Respondent acted for Mr & Mrs D in relation to the purchase of the above property. He also acted for CB as lenders to Mr & Mrs D.
- 7.64 The clients were referred clients from a third party (Mr K and /or Company 2) and were not an existing clients. By letter 7 June 2010 Mr & Mrs D instructed the Respondent and provided money laundering documentation by email as per Transaction 4. On the Respondent's file there is a colour copy passport of both his clients uncertified and undated and without any evidence of investigation as to authenticity and verification.
- 7.65 On 8 June 2010 the Respondent issued a Terms of Business letter to the clients.
- 7.66 On 16 June 2010 the Respondent completed a risk assessment for money laundering purposes. This assessed the risk as medium, score 13 –which would require discussion with the MLRO. The Respondent was the MLRO. There is no evidence to show he took external guidance in relation to compliance. In this form the Respondent marked the risk assessment for funds and ID “OK” despite the fact , inter alia, that no funds had been provided at that date; that the money laundering documentation had been provided uncertified by email direct from the client and that the transaction was not face to face. In all the circumstances the risk was in fact high.
- 7.67 By letter 18 June 2010 loan instructions were received by the Respondent from CB. The purchase price was £95,000 with an advance of £65,000. Said loan instructions required the Respondent to act “as set out in the CM Lenders Handbook appropriate to jurisdiction in which the property is situated. The offer also, specifically drew attention to the limitations;

who the Respondent may act for and the need to report to CB any matter which came to the Respondent's attention which CB as his client ought to be made aware of prior to the drawdown of the loan. The CM Lenders Handbook and Part 2 instructions set out:-

- (i) It does not affect any responsibilities the Respondent has to it under the general law or any practice rule or guidance issued by the Law Society of Scotland (Pt 1 1.3)
- (ii) The standard of care is that of a reasonably competent solicitor acting with reasonable care (Pt 1 1.4)
- (iii) The Respondent must comply with any separate instruction for an individual loan (Pt 1 1.5)
- (iv) If there is any conflict of interest, instructions should be returned (Pt1 1.15)
- (v) A matter should be reported as soon as the Respondent becomes aware of it and the mortgage should not be completed until further instructions are given (Pt 1 2.3)
- (vi) Solicitors must comply with the Solicitors (Scotland) Accounts Rules, Money Laundering Regulations 2003 and the Proceeds of Crime Act 2002 (Pt1 3.1)
- (vii) Report if the proprietor has owned the property for less than six months (Pts1 & 2 5.1.1)
- (viii) If the Respondent becomes aware of any matter which he should reasonably expect the lender to consider important in considering lending but the Respondent cannot disclose it due to a conflict of interest, the Respondent must cease to act (Pt 1 5.1.2)
- (ix) If the Respondent becomes aware that the borrower is not providing the balance of the purchase price from his own funds the solicitor must report this or return instructions (Pt1 5.8)

(x) The Respondent should explain to each borrower his/her responsibilities and liabilities under the standard security (Pt 1 11.2)

- 7.68 The value of the property as at 24 May 2010 was £95,000.
- 7.69 By letter of 22 June 2010 the Respondent wrote to his clients requesting the balance of £30,453.75 comprising £30,000 plus expenses of £453.75.
- 7.70 By letter of 30 June 2010 the Respondent advised CB that the seller had not owned the property for 6 months. Under cover of that letter the Respondent sent his Certificate of Title to CB. In doing so, he certified that all matters requiring compliance under the CL Lenders Handbook had been or would be complied with. He certified that there was nothing else within his knowledge of which CB ought to be aware that he had not told them of and that he had verified the identity of the Borrower (Mr & Mrs D) to his satisfaction. In doing so he misled CB, his clients.
- 7.71 No correspondence is disclosed on the file from the clients in relation to the transaction after 7 June 2010. There is no correspondence to this date at all from the clients other than the initial e-mail of 7 June 2010.
- 7.72 By letter of 2 July 2010, the Respondent provided Lints with a settlement cheque to be held as undelivered. By letter 2 July 2010 Lints advised settlement was due on that date. By fax 5 July 2010 the Respondent advised CB that “entry has now been advanced to today”. In doing so he misled CB, his client.

7.73 On 7 July 2010 the Respondent completed a CHAPS transfer for the purchase price of £95,000 to Lints Client Account. There is no evidence on the Respondent's file that CB had approved intromission with the loan funds in light of the back-to-back transaction alert as at 7 July 2010 or any date thereafter. In terms of a Form 2 the date of entry was 9 July 2010. Despite this the client matter ledger disclosed transfer of the funds to purchase on 21 July 2010. There is no explanation for this and no evidence of any investigations in relation to the source of these funds.

7.74 The Disposition in favour of Mr K was dated 11 June 2010 and the said Disposition was used as a link in Title at the time of registration of Mr. and Mrs. D'S Title. Entry was indicated within the Disposition at 2 July 2010. The Purchase price by Mr K was £62,000.

7.75 The Respondent's file disclosed and/or the Respondent failed to advise CB at or before settlement:-

1. that the appropriate money laundering of Mr and Mrs D had not been carried out;
2. of no further correspondence from Mr and Mrs D save the initial e-mail of 7 June 2010;
3. that the sale and purchase by Mr K to Mr and Mrs D was a back to back transaction taking place within five days of Mr K taking entry;
4. that the loan was more than 100% of the original purchase price paid by Mr K on 9 July 2010;
5. of the substantial increase of £33,000 in the purchase price paid by Mr and Mrs D;
6. that he had intromitted with the loan funds without permission from CB given the back to back nature of the transaction;

7. the Respondent did not investigate the source of the balance of the purchase price;
8. that the transaction was a high risk transaction in all the circumstances;
9. that Mr K, the seller, was involved in the referral of the clients to the Respondent's as well as acting for the seller;
10. no advice to Mr & Mrs D in relation to their respective responsibilities and liabilities under the standard security;
11. any intimation by the Respondent to CB that he had failed to give any advice to Mr & Mrs D in relation to their respective responsibilities and liabilities under the standard security.

Mr E and Ms I – Purchase – Property 6 (“Transaction 6”)

- 7.76 In this transaction the Respondent acted for Mr E and Ms I in relation to the purchase of the above property. He also acted for BM as lenders to Mr E and Ms I.
- 7.77 The clients resided in Cyprus and were not existing clients. The clients were referred from a third party, Mr N. By letter of 12 July 2010 the Respondent enclosed Terms of Business. He also requested hard copies of their certified copy passports and documents showing their addresses. The certified copies of the passports were dated 12 January 2010 and certified by a Cypriot advocate. Ms I passport had expired and the utility documentation showed different addresses and were dated out with the three month period. No contact was made with the Cypriot advocate or the Cypriot Bar Association to verify the documentation and no further investigation or requests were made by the Respondent in relation to money laundering compliance.

- 7.78 By letter of 16 July 2010 BM instructed the Respondent to act on its behalf in relation to this transaction. The amount of the loan was £44,965 in relation to the purchase price of £60,000. The Respondent accepted instructions to act for BM.
- 7.79 The loan instructions required the Respondent to act “in accordance with the “CML Lenders Handbook for Scotland and the Lenders Part 2 instructions.” The CML Lenders Handbook and Part 2 instruction sets out:-
- (i) A matter should be reported as soon as the Respondent becomes aware of it and the mortgage should not be completed until further instructions are given (Pt 1 2.3)
 - (ii) Solicitors must comply with the Solicitors (Scotland) Accounts Rules, Money Laundering Regulations 2003 and the Proceeds of Crime Act 2002 (Pt1 3.1)
 - (iii) If the Respondent becomes aware that the borrower is not providing the balance of the purchase price from his own funds the solicitor must report this or return instructions (Pt1 5.8)
 - (iv) The Respondent should explain to each borrower his/her responsibilities and liabilities under the standard security (Pt 1 11.2)
- 7.80 By letter of 3 August 2010 the Respondent requested Mr E and Ms I to confirm when they expect to be able to remit the balance of the purchase price namely £15,035 and expenses of £776.25, totalling £15,811.25. Said funds were provided. The Respondent carried out no investigation as to the source of these funds. An email of 5 August 2010 is held on the

Respondent's file for Transaction 7 from the clients to Mr N in relation to the deposit for this Transaction 6.

7.81 On 9 August 2010 the Respondent signed the signed Certificate of Title and faxed it to BM. At that time, the file does not disclose any direct face-to-face communications with Mr E or Ms I; any formal instructions emanating from either of them nor any direct communication from either in relation to the deposit.. The money laundering and source of funds investigations had not taken place and indeed at the time of signing off the Certificate of Title the Respondent had not even carried out the risk assessment referred to following paragraph.

7.82 On 12 August 2010 the Respondent completed a risk assessment for money laundering purposes. This assessed the risk as medium, score 13 –which would require discussion with the MLRO. The Respondent was the effective MLRO. There is no evidence to show he took external guidance in relation to compliance. In this form the Respondent marked the risk assessment for funds and ID “OK” despite the fact , inter alia, that no funds had been provided at that date; that the money laundering documentation had been provided as detailed in the preceding paragraph; that the clients lived in Cyprus and that the transaction was not face to face. In all the circumstances the risk was in fact high.

7.83 The Respondent's file disclosed and/or the Respondent failed to advise BM :-

(1) of no direct face-to-face contact or communication with the clients ;

- (2) that the Respondent had sought no advice in relation to the risk assessment carried out by the Respondent for anti-money laundering given the score total was 13;
- (3) that there had been no investigation into verification of any of the limited money laundering documentation received on behalf of the client ;
- (4) that the Respondent had not carried out all the appropriate money laundering checks as required;
- (5) that the Respondent had not investigated the source of funds for the balance of the purchase price;
- (6) no advice to Mr E or Ms I in relation to their respective responsibilities and liabilities under the standard security;
- (7) any intimation by the Respondent to BM that he had failed to give any advice to Mr E or Ms I in relation to their respective responsibilities and liabilities under the standard security.

Mr E & Ms I -Purchase-Property 7("Transaction 7")

- 7.84 In this transaction the Respondent acted for Mr E and Ms I in relation to the purchase of the above property. He also acted for BM as lenders to Mr E and Ms I.
- 7.85 The clients resided in Cyprus and the instructions for this arrived at or around the same time as the instructions for Transaction 5. The clients again were referred from the third party, Mr N. By letter of 5 August 2010 the respondent sent the clients a copy of the offer to purchase on their behalf. By letter of 19 August 2010 the Respondent enclosed Terms of Business. He did not make any request for money laundering documentation and none is held on his file. He relied upon the inadequate documentation as detailed in Transaction 5. In particular the certified copies of the passports were dated 12 January 2010 and certified by a Cypriot advocate. Ms I

passport had expired and the utility documentation showed different addresses and were dated out with the three month period. No contact was made with the Cypriot advocate or the Cypriot Bar Association to verify the documentation and no further investigation or requests were made by the Respondent in relation to money laundering compliance.

7.86 By letter of 13 August 2010 BM instructed the Respondent to act on its behalf in relation to this transaction. The amount of the loan was £41,215 in relation to the purchase price of £55,000. The Respondent accepted instructions to act for BM.

7.87 The loan instructions required the Respondent to act “in accordance with the “CML Lenders Handbook for Scotland and the Lenders Part 2 instructions”. The CML Lenders Handbook and Part 2 instruction sets out:-

(i) A matter should be reported as soon as the Respondent becomes aware of it and the mortgage should not be completed until further instructions are given (Pt 1 2.3)

(ii) Solicitors must comply with the Solicitors (Scotland) Accounts Rules, Money Laundering Regulations 2003 and the Proceeds of Crime Act 2002 (Pt1 3.1)

(iii) If the Respondent becomes aware that the borrower is not providing the balance of the purchase price from his own funds the solicitor must report this or return instructions (Pt1 5.8)

(iv) The Respondent should explain to each borrower his/her responsibilities and liabilities under the standard security (Pt 1 11.2)

7.88 By letter of 19 August 2010 the Respondent requested Mr E and Ms I to confirm when they expect to be able to remit the balance of the purchase price, namely £13,875 and expenses of £776.25 totalling £13,951.25. Said funds were provided. The Respondent carried out no investigation as to the source of these funds.

7.89 On 19 August 2010 the Respondent completed a risk assessment for money laundering purposes. This assessed the risk as low, score 12. In this form the source of funds had been mark as a low risk but at that date no funds had been provided and no investigation had been carried out in that regard. In addition the money laundering documentation was inadequate; the clients lived in Cyprus and that the transaction again was not face to face. In fact there is no direct communication from the clients to the Respondent. All the clients' correspondence is directed through the third party referrer. In all the circumstances the risk was in fact high.

7.90 On 22 August 2010 the Respondent signed the signed Certificate of Title and faxed it to BM. At that time, the file does not disclose any direct face-to-face communications with Mr E or Ms I; any formal instructions emanating from either of them nor any communication from either in relation to the deposit. The money laundering and source of funds investigations had not taken place.

7.91 The Respondent's file disclosed and/or the Respondent failed to advise BM :-

(1) no direct face-to-face contact or communication with the client;

- (2) that there had been no investigation into verification of any of the limited money laundering documentation received on behalf of the client;
- (3) that the Respondent had not carried out all the appropriate money laundering checks as required;
- (4) that the Respondent had not investigated the source of funds for the balance of the purchase price;
- (5) no advice to Mr E or Ms I in relation to their respective responsibilities and liabilities under the standard security;
- (6) any intimation by the Respondent to BM that he had failed to give any advice to Mr E or Ms I in relation to their respective responsibilities and liabilities under the standard security.

Mr & Mrs F – Purchase – Property 8 (“Transaction 8”)

- 7.92 In this transaction the Respondent acted for Mr and Mrs F in relation to the purchase of the above property. He also acted for BM as lenders to Mr & Mrs F.
- 7.93 By email 15 July 2010 the clients were referred from a third party, Company 3, and were not existing clients. The clients’ were introduced as part of a package which involved said third party selecting these and the other clients solicitors.
- 7.94 By letter of 16 July the Respondent contacted Mr & Mrs F advising them that he had been asked to act for them; advising settlement would maybe the following Friday (23 July 2010) and would be “ a rush” and enclosing Terms of Business. Those Terms of Business include a section on Money Laundering and indicating “ We cannot act for you if we do not receive satisfactory ID”. Said letter did not

include a request for Mr & Mrs F to confirm said instructions.

7.95 By fax of 21 July 2010 the clients provided a valuation from Leeds Building Society placing a valuation on the property at £120,000 as at 3 June 2010.

7.96 By letter of 26 July 2010 BM instructed the Respondent to act on its behalf in relation to this transaction. The amount of the net loan was £77,965 in relation to the purchase price of £120,000. The Respondent accepted instructions to act for BM.

7.97 The loan instructions required the Respondent to act “in accordance with the “CML Lenders Handbook for Scotland” and the Lenders Part 2 instructions. The CML Lenders Handbook and Part 2 instruction sets out:-

(i) A matter should be reported as soon as the Respondent becomes aware of it and the mortgage should not be completed until further instructions are given (Pt 1 2.3)

(ii) Solicitors must comply with the Solicitors (Scotland) Accounts Rules, Money Laundering Regulations 2003 and the Proceeds of Crime Act 2002 (Pt1 3.1)

(iii) If the Respondent becomes aware that the borrower is not providing the balance of the purchase price from his own funds the solicitor must report this or return instructions (Pt1 5.8)

(iv) The Respondent should explain to each borrower his/her responsibilities and liabilities under the standard security (Pt 1 11.2)

7.98 By letter of 27 July 2010 the Respondent requested Mr & Mrs F to provide the balance of purchase price of the

transaction, namely £42,035.00 plus expenses £1,401.00, totalling £43,436.00 Said letter indicated the funds were required by the following day to settle.

- 7.99 By fax of 27 July 2010 the Respondent sent off the signed Certificate of Title by him to BM. At that time, the file does not disclose any direct face-to-face communications with Mr & Mrs F ; any formal instructions emanating from them. Said Certificate of Title was signed off before any Risk Assessment form was completed for Money Laundering purposes or before receiving funds from Mr & Mrs F or having satisfied himself as the source of said funds.
- 7.100 On 27 July 2010 the loan funds were released by BM in reliance on the Certificate of Title.
- 7.101 The Purchase price was transferred by CHAPS by the Respondent on 2 August 2010. The transaction appears to have settled on or around 2 August 2010.
- 7.102 A Risk Assessment on file was dated 2 August 2010. This assessed the risk as medium with a score of 13 –which would require discussion with the MLRO. The Respondent was the effective MLRO. There is no evidence to show he took external guidance in relation to compliance. In this form the Respondent marked the risk assessment for funds and ID “all seems ok” despite the fact , inter alia, the money laundering documentation provided was not compliant as detailed in the following paragraph; that the clients lived in England ; that the transaction was not face to face and there was no investigation as to the source of funds. In all the circumstances the risk was in fact high.

- 7.103 The Respondent's file discloses certified copies of Mr F'S passport and utility bill certified by a Ms O on behalf of Company 4. She was a fellow member of Accounting Technicians and a member of the Association of Taxation Technicians. There is no evidence she gave written consent to being relied upon.
- 7.104 In addition the Respondent's file discloses certified copies of Mrs F's passport and bank statement as certified by Ms P of Barclay's Bank. There is no designation of Ms P and there is no evidence the Respondent made any enquiries to confirm she was within a class of person's who could be relied upon to certify under and in terms of s17 of the Money Laundering Regulations and there is no evidence she gave written consent to being relied upon.
- 7.105 Furthermore all copy documents detailed in the preceding two paragraphs appear to have been sent under cover of an undated compliments slip by Company 4 with no explanation being sought for this by the Respondent.
- 7.106 The Respondent's file also discloses an undated note from Mrs F which states " Enclosed is a cheque as requested. Please can you acknowledge via email, so I can get this money back from IAPROPS." BM were not notified by the Respondent of this.
- 7.107 The Respondent's file disclosed and/or the Respondent failed to advise BM:-
- (1) no direct face-to-face contact with the clients and as such the transaction was high risk;

- (2) no advice sought in relation to the risk assessment carried out by the Respondent for anti-money laundering given the score total was 13;
- (3) no investigation into verification of any of the limited money laundering documentation received on behalf of the clients or consent of those so certifying the documents;
- (4) that the Respondent had not carried out the appropriate money laundering checks as required and in particular that he investigated the source of funds;
- (5) that the Respondent had not advised BM that the deposit was being repaid by a third party;
- (6) that the Respondent did not submit a report to SOCA in relation to the payment of a deposit by a third party;
- (7) no advice to Mr & Mrs F in relation to their respective responsibilities and liabilities under the standard security;
- (8) any intimation by the Respondent to CB that he had failed to give any advice to Mr & Mrs F in relation to their respective responsibilities and liabilities under the standard security.

Mr G – Purchase – Property 9 (“Transaction 9”)

- 7.108 In this transaction the Respondent acted for Mr G in relation to the purchase of the above property. He also initially acted for BM and then subsequently for MW, a subsidiary of Nationwide Building Society as lenders to Mr G.
- 7.109 The client was a referred client from a third party and was not an existing client. The client was introduced as part of a package which involved said third party in selecting both the purchaser and seller’s solicitors in terms of a memorandum of sale subject to contract. The seller’s solicitors were detailed as Lints.

- 7.110 By letter of 8 June, the Respondent advised Lints that he was instructed in relation to the purchase on behalf of Mr G and that settlement was imminent. By letter of 8 June 2010 the Respondent wrote to Mr G who was based in the West Midlands. In said letter the Respondent advised Mr G that he had been asked by the Company 2 to take over the legal work on Mr G's behalf. Said letter did not include a request for Mr G to confirm said instructions but sought money laundering documentation and enclosed a Terms of Business letter. Said Terms of Business confirmed that "we cannot act for you if we do not receive satisfactory ID"
- 7.111 By a business card, undated, Mr G appears to have provided "ID" to the Respondent and requested return of same. There is no information as to what was enclosed, whether originals or certified and if the latter by whom. There is no Risk Assessment on file. There is a copy of an uncertified copy passport and letter from HMRC of Mr G on the Respondent's file. There is nothing disclosed on file to show any investigation of any kind by the Respondent in relation to such documentation. By letter 15 June 2010 the Respondent thanked the client for his note and returned the enclosures which accompanied it.
- 7.112 By letter of 18 June 2010 BM wrote to the Respondent in relation to the client Mr G with an offer of loan for this property. The amount of the net loan was £63,715.00 in relation to the purchase price of £85,000. BM also sought confirmation of some further points including proof of deposit in a further letter of the same date. The client provided details in a letter of 28 June 2010. Said information was passed to BM by the Respondent under cover of a letter of 1 July 2010.

- 7.113 By letters of 21 and 29 June and 13 July all 2010 the Respondent confirmed the balance of the purchase price due was £21,285 plus expenses of £893.75, totalling £22,743.75 and sought transfer of said funds.
- 7.114 By letter 14 July 2010 withdrew the loan offer “following receipt of the additional information and further checks carried out by our head office”.
- 7.115 By letter 18 August 2010 MW wrote to the Respondent in relation to Mr G with an offer of loan for this property. The amount of the net loan was £67,990.00 in relation to the purchase price of £85,000.
- 7.116 The loan instructions required the Respondent to act in accordance with the CML Lenders Handbook for Solicitors and the Lenders Part 2 instructions. The CML Lenders Handbook and Part 2 instruction sets out:-
- (i) A matter should be reported as soon as the Respondent becomes aware of it and the mortgage should not be completed until further instructions are given (Pt 1 2.3)
 - (ii) Solicitors must comply with the Solicitors (Scotland) Accounts Rules, Money Laundering Regulations 2003 and the Proceeds of Crime Act 2002 (Pt1 3.1)
 - (iii) If the Respondent becomes aware that the borrower is not providing the balance of the purchase price from his own funds the solicitor must report this or return instructions (Pt1 5.8)
 - (iv) The Respondent should explain to each borrower his responsibilities and liabilities under the standard security (Pt 1 11.2)

7.117 By letter of 27 August 2010 the Respondent requested Mr G to provide the balance of purchase price of the transaction, namely £17,045.00 plus expenses of £1066.25, totalling £18,111.25.

7.118 By letter of 2 September 2010 the Respondent sent off the signed Certificate of Title by him to MW. Said Certificate of Title sets out that the Respondent has and will comply with MW's instructions "upon the terms set out in the CML Lenders Handbook for Scotland". It also certified that the Respondent was satisfied with the identity of the borrower. At that time, the file does not disclose any direct face-to-face communications with Mr G; any formal instructions emanating from him nor any investigations into the limited and uncertified money laundering documentation or source of funds and no advice in relation to his liabilities and responsibilities under the Standard Securities. Indeed as at 2 September 2010 the client's funds had not yet been received by the Respondent. He sought payment by letter 9 September 2010

On 9 September 2010 £18,111.25 was transferred into the client ledger from a "Ms Q". On that date the Respondent emailed Mr G for an explanation of the source of these funds and relevant ID for that party. He was advised on the same day by Mr G that it was a joint account and he had never had problems before. There is no evidence on the Respondent's file to indicate any follow up or further investigation into this payment from a third party or notification of same to MW prior to or indeed after settlement.

7.119 The Respondent's file disclosed and/or the Respondent failed to advise NW:-

- (1) no direct face-to-face contact with the client and as such the transaction was high risk;
- (2) no risk assessment was carried out by the Respondent for anti-money laundering .
- (3) no investigation into verification of any of the limited money laundering documentation received from the client;
- (4) that the Respondent had carried not out the appropriate money laundering checks as required and in particular that he investigated properly the source of funds from a third party and
- (5) that the Respondent had not advised NW that the balance of the purchase price was being paid by a third party.
- (6) no advice to Mr G in relation to his responsibilities and liabilities under the standard security;
- (7) any intimation by the Respondent to NW that he had failed to give any advice to Mr G in relation to his responsibilities and liabilities under the standard security.

Mrs H – Purchase – Property 10 (“Transaction 10”)

- 7.120 In this transaction the Respondent acted for Mrs H in relation to the purchase of the above property. He also acted for BM as lenders to Ms H.
- 7.121 The client was a referred client from a third party and was not an existing client. The client was introduced as part of a package which involved said third party in selecting both the purchaser and seller’s solicitors in terms of a memorandum of sale subject to contract. The seller’s solicitors were detailed as Lints.
- 7.122 On 8 June 2010 the Respondent completed a risk assessment form in relation to this transaction. This assessed the risk as medium with a score of 14 –which would require discussion

with the MLRO. The Respondent was the effective MLRO. There is no evidence to show he took external guidance in relation to compliance. In this form the Respondent marked the risk assessment “ID and funds seem ok” despite the fact, inter alia, no money laundering documentation had been provided at all; he did not even make the request for such documentation until 9 June 2010 as set out in the following paragraph; that the transaction was not face to face and at that stage there had been no investigation as to the source of funds. In all the circumstances the risk was in fact high.

7.123 By letter of 9 June 2010 the Respondent advised Mrs H that he had been asked to take over the legal work on Mrs H’s behalf. Said letter did not include a request for Mrs H to confirm said instructions but sought money laundering documentation and enclosed a Terms of Business letter. Said Terms of Business confirmed that “ we cannot act for you if we do not receive satisfactory ID” There was no evidence on the file of any such instructions from Mrs H to the Respondent to act for her in relation to this purchase – either in correspondence or in telephone notes.

7.124 By letter of 14 June 2010 BM to the Respondent , BM set out requests for further information in relation to the purchase by Mrs H of the above property, namely:-

- (i) evidence of the deposit monies from Mrs H’s own resources together with the origination of these monies if not accumulated over a reasonable period of time;
- (ii) how Mrs H sourced the property and particulars of sale if via an agent;
- (iii) written confirmation of the vendor’s name and details of the vendors solicitors and

(iv) written confirmation of the agreed purchase price; whether it is a distressed sale/back to back sale or third party involvement in the transaction.

7.125 By letter 24 June 2010 the Respondent passed said letter to Mrs H and requested a call to deal with items (i) and (ii) in the preceding paragraph.

7.126 By email 29 June 2010 Mrs H's husband responded to the questions in the preceding paragraph. There was no contact by Mrs H. Only one of the Bank statements produced was in Mrs H's name alone. The others were in joint names with her husband or a trading name alongside that of her husband only. The Respondent provided these to BM describing these as "our client's bank statement". Such a statement was incorrect and misleading. In addition he failed to disclose to BM the details of the alleged source of funds as provided by Mr H which disclosed the balance of the purchase price had not all been accumulated over a reasonable period of time. Such a failure was also misleading and in addition with this knowledge the Respondent failed to investigate the origin of such funds as requested and required.

7.127 By letter of 5 August 2010 BM wrote to the Respondent in relation to the client Mrs H with an offer of loan for this property. The amount of the net loan was £101,215 in relation to the purchase price of £135,000. The Respondent accepted instructions to act for BM.

7.128 The loan instructions required the Respondent to act "in accordance with the "CML Lenders Handbook for Scotland" and the Lenders "Part 2 instructions". The CML Lenders Handbook and Part 2 instruction sets out:-

(i) A matter should be reported as soon as the Respondent becomes aware of it and the mortgage should not be completed until further instructions are given (Pt 1 2.3)

(ii) Solicitors must comply with the Solicitors (Scotland) Accounts Rules, Money Laundering Regulations 2003 and the Proceeds of Crime Act 2002 (Pt1 3.1)

(iii) If the Respondent becomes aware that the borrower is not providing the balance of the purchase price from his own funds the solicitor must report this or return instructions (Pt1 5.8)

(iv) The Respondent should explain to each borrower her responsibilities and liabilities under the standard security (Pt 1 11.2)

7.129 By letter of 10 August 2010 the Respondent requested Mrs H to provide the balance of purchase price of the transaction, namely £33,785 along with expenses of £2,578,75, totalling £36,363.75. Said funds were transferred on 18 August 2010 from a joint account of Mr and Mrs H. BM was not advised of this.

7.130 On 11 August 2011 BM released the loan funds to the Respondent. Whilst there is no Certificate of Title on file BM would not have released said sums without such a signed Certificate of Title. At that time, the file does not disclose any direct face-to-face communications with Mrs H; any formal instructions emanating from her nor any direct communication from Mrs H in relation to the deposit and/or the other issues raised by the Respondent in his letter of 24 June 2010 to enable the Respondent to comply with BM's requests in it's letter of 14 June 2010 ; any money laundering documentation or investigation into same or investigation as to the source of funds or any intimation to

BM of these omissions or any advice in relation to her responsibilities and liabilities under the Standard Security.

7.131 The transaction settled on or about 18 August 2010 without any money laundering compliance.

7.132 The Respondent's file disclosed and/or the Respondent failed to advise BM:-

(1) no direct face-to-face contact with the client and as such the transaction was high risk;

(2) no advice sought in relation to the risk assessment carried out by the Respondent for anti-money laundering given the score total was 14;

(3) that the Respondent had carried not out any of the appropriate money laundering checks as required both in relation to verification of identity and source of funds;

(4) no notification to BM of the above omissions or the information provided by a third party, Mrs H's husband;

(5) any advice to Mrs H in relation to her responsibilities and liabilities under the standard security;

(6) any intimation by the Respondent to BM that he had failed to give any advice to Mrs H in relation to her responsibilities and liabilities under the standard security.

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

8.1 In terms of the Code of Conduct 2002 / Practice Rules 2008 in relation to

A - Transaction 1 he failed to advise his client, S, that :-

(i) Whilst having advised S that the proprietor(s) of the subjects being purchased had not owned the subjects for 6 months did not

advise that in fact it was a same day transaction. (CML Handbook 5.1.1);

(ii) had not investigated the source of funds for the balance of the purchase price (CML Handbook 5.8);

(iii) the loan was more than 100% of the original purchase price paid by the original purchaser.

(iv) there was a substantial increase in value for the transaction (CML Part 1 2.3.)

(v) that he intromitted with the loan funds without SB's permission (CML Handbook 5.1.2)

(vi) he had not carried out the appropriate money laundering checks as required in the transaction, including verification of documentation and source of funds (CML Part 1 3.1).

(vii) he had not explained to the borrower the responsibilities and liabilities under the Standard Security. (CML Handbook 11.2)

B -Transaction 2 he failed to advise his client, BM, that:-

(i) he had not carried out the appropriate money laundering checks as required in the transaction, including verification of documentation and source of funds (CML Part 1 3.1 and 5.8).

(ii) he had not explained to the borrower/s the responsibilities and liabilities under the Standard Security.(CML Handbook 11.2)

C-Transaction 3 he failed to advise his client, NW, that:-

- (i) the proprietor(s) of the subjects being purchased had not owned the subjects for 6 months and that in fact it was, at best, a same day transaction. (CML Handbook 5.1.1);
- (ii) that the seller was involved in the referral of the clients to him; there had been no correspondence from the clients since the initial email of 7 June 2010 (CML Handbook Part 1 2.3).
- (iii) the loan was more than 100% of the original purchase price paid by the original purchaser. (CML Handbook Part 1 2.3)
- (iv) the substantial increase in value for the transaction (CML Part 1 2.3.)
- (v) that he intromitted with the loan funds without CB's permission (CML Handbook 5.1.2)
- (vi) he had not carried out the appropriate money laundering checks as required in the transaction, including verification of documentation and source of funds (CML Part 1 3.1 and 5.8).
- (vii) he had not explained to the borrower/s the responsibilities and liabilities under the Standard Security. (CML Handbook 11.2)

D-Transactions 4 & 5 he failed to advise his client, CB, that:-

- (i) there were substantial increases in value for each of the transactions and no inquiries were made (CML Part 1 2.3.)
- (ii) each loan was more than 100% of the original purchase price paid by the original purchaser;
- (iii) The original purchaser, now seller, was involved in the referral of these clients for these transactions to the Respondent;

- (iv) the source of the balance of the purchase price on each transaction was not investigated (CML Handbook 5.8);
- (v) that he intromitted with the loan funds without CB's permission (CML Handbook 2.3/5.1.2)
- (vi) he had not explained to the borrower/s the responsibilities and liabilities under the Standard Security. (CML Handbook 11.2)
- (vii) he had not carried out the appropriate money laundering checks as required in either of the transactions, including verification of documentation and source of funds (CML Part 1 3.1 and 5.8).

E-Transactions 6 & 7 he failed to advise his client BM that:-

- (i) he had not carried out the appropriate money laundering checks as required in either of the transactions, including verification of documentation and source of funds (CML Part 1 3.1).
- (ii) he had not explained to the borrower the responsibilities and liabilities under the Standard Security. (CML Handbook 11.2)

F -Transaction 8 he failed to advise his client BM that:-

- (i) he had not carried out the appropriate money laundering checks as required in the transaction, including verification of documentation and source of funds (CML Handbook Part 1 3.1);
- (ii) of the possibility of a revolving deposit scheme and/or the balance of the purchase price was effectively being made by a third party (CML Handbook 5.8).

- (iii) he had not explained to the borrower/s the responsibilities and liabilities under the Standard Security. (CML Handbook 11.2)

G-Transaction 9 he failed to advise BM that:-

- (i) he had not carried out the appropriate money laundering checks as required in the transactions, including carrying out a risk assessment ; verifying documentation and source of funds (CML Part 1 3.1).
- (ii) the balance of the purchase price was made by a third party (CML Handbook 5.8).
- (iii) he had not explained to the borrower/s the responsibilities and liabilities under the Standard Security. (CML Handbook 11.2)

H-Transaction 10 he failed to advise BM that:-

- (i) the only material correspondence he had was from a third party;
- (ii) he had not carried out the appropriate money laundering checks as required, including seeking guidance on the risk assessment ; verifying documentation and source of funds (CML Part 1 3.1).
- (iii) he had not explained to the borrower/s the responsibilities and liabilities under the Standard Security. (CML Handbook 11.2)

8.2 In terms of the Code of Conduct 2002 / Practice Rules 2008, in relation to some or all of his individual clients, that he:

- (i) did not communicate effectively with said clients in some or all of the transactions,
- (ii) acted in a conflict or potential conflict of interest in each, of the transactions.

- (iii) knowingly mislead:-
 - (a) each of the lenders in signing Certificates of Title when he had not complied with his obligations to each Lender prior to doing so and;
 - (b) CB in relation to the settlement date in Transaction 6.

8.3 In terms of The Solicitors (Scotland) Accounts, Account Certificate, Professional Practice and Guarantee Fund Rules 2001 (“The Accounts Rules”) his breach of Rule 24 - in relation to all of the transactions the Respondent failed to comply with some or all of Regulations 7, 8, 9, 14 and 20 of the Money Laundering Regulations 2007.

8.4 In terms of The Proceeds of Crime Act 2002, part 7 section 330 in that the Respondent failed to report Transaction 8 to the Serious Organised Crime Agency.

8.5 In terms of The Solicitors’ (Scotland) Practice Rules 1986 he acted in a conflict of interest in some or all of the transactions.

9. Having heard the Solicitor for the Respondent in mitigation and having noted the references lodged, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 22 April 2014. The Tribunal having considered the amended Complaint at the instance of the Council of the Law Society of Scotland against Alan John Baillie, Baillies Law Limited, 37 Union Street, Dundee; Find the Respondent guilty of Professional Misconduct in respect of his breach of the Code of Conduct 2002 and Practice Rules 2008 in respect of a number of transactions including numerous breaches of the CML Handbook, his failure to communicate effectively with clients and misleading lender clients, his acting in conflict or potential conflict of interest situations, his breach of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and

Guarantee Fund Rules 2001 in respect of his failure to comply with the Money Laundering Regulations, his failure to comply with the Proceeds of Crime Act 2002 in respect of transaction 8 and his failure to comply with the Solicitors (Scotland) Practice Rules 1996; Censure the Respondent; Fine him in the sum of £10,000 to be forfeit to Her Majesty; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and may but has no need to include the names of anyone other than the Respondent.

(signed)

Malcolm McPherson

Vice Chairman

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

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

The case called before the Tribunal on 28 January 2014 for a full hearing. A Joint Minute of Admissions was lodged admitting some of the facts which were admitted in the Answers and also some additional facts. The Complainers also deleted one or two sentences in relation to the facts. The Tribunal then heard submissions from the Complainers and the Respondent in connection with the Complainers' objection to the Respondent's witnesses. The Tribunal considered that the issues being dealt with were well-known to the Tribunal and within the competence of the Tribunal. The Tribunal would not normally hear expert evidence and the Tribunal considered that it would be totally inappropriate to allow one party to lead the evidence of an expert witness at a Tribunal hearing where no report had been produced and the other side had no prior notice of what the expert was to say. The Tribunal accordingly did not think it appropriate to allow evidence from the Respondent's expert witness.

The Respondent also wished to lead evidence from Law Society witnesses by way of opinion evidence. The Tribunal did not consider it appropriate to hear evidence from members of the Law Society as to what their opinion of the Respondent's conduct was given that this would be a matter for the Tribunal to decide.

The Tribunal then heard from the Complainers' first witness being Iain Ritchie, Clerk of the Professional Conduct Sub Committee. Mr Ritchie's evidence took up the remainder of the Tribunal's day on 28 January 2014.

The case was then adjourned part-heard to 22 April 2014.

When the case called on 22 April 2014 the Respondent had since instructed Counsel and was represented by Jonathan Brown.

Ms Motion lodged a new amended Complaint with the Tribunal which included the deletions made to the Complaint when the case last called with two further small deletions. Thereafter a Joint Minute was lodged admitting the facts, averments of duty and averments of misconduct in the amended Complaint. The Tribunal allowed this amended Complaint to be accepted.

SUBMISSIONS FOR THE COMPLAINERS

Ms Motion stated that it was not necessary to go through the documents as the Tribunal had already been referred to them when the case last called. Ms Motion stated that there were 10 transactions involved between June and September 2010. In only one of these cases was there a face to face meeting with the client. Five of the ten clients were outwith Scotland. Ms Motion stated that it was not clear what experience the Respondent had of dealing with clients outwith Scotland. All the clients were new clients and the Respondent acted for both the client and the lender. The Respondent was clearly aware of some of his obligations for example he reported that it was a back to back transaction in respect of transaction 1. The Respondent submitted certificates of title in each of the cases. Two of the offers of loan specifically said that the certificate of title was certifying that the Respondent had complied with the terms of the CML Handbook. In four of the 10 transactions the property had been owned for less than six months. In transactions 1 and 3 the back to back transactions took place on the same day. In three of the transactions there was a significant increase in the price. In transaction 1 the price went from £121,000 to £190,000 and these transactions took place on the same day. In transaction 4, the price increased from £61,000 to £90,000 and in transaction 5, £62,000 to £95,000. In transaction 3 there was a clear increase in the price but this was not checked or investigated. In three of the transactions the loan amounts were more than 100% higher than the first purchase price. In transaction 1, the purchase price was £121,000 with a loan of £142,000. Transaction 4, the purchase price was £61,000, the loan was £63,000 and transaction 5 the purchase price was £62,000 and the loan was £65,000. There was no investigation with regard to the source of funds and the Respondent failed to comply with the Money Laundering Regulations.

Despite the Money Laundering Regulations having been in place for many years, the Respondent was either unaware of his obligations or ignored them. He did not seek help and he did risk assessment forms for all the transactions but these were filed and not looked at again and some looked as if they had been completed before all the information necessary to complete them could have been obtained. In transaction 1 the risk assessment was done on 21 June 2010 and the price was not paid until 1 July

2010. The driving licence was not seen until January 2011 which was after settlement. In transaction 2, he did not have the balance of the purchase price when he did the risk assessment. In transaction 3, money laundering documents were signed and sent by the selling solicitor and no further checks were made. In transactions 6 and 7, the couple were in Cyprus. Money laundering documents were certified by an Advocate in Cyprus but the Respondent did not check with the Advocate that he gave his authority for this and the passport for the lady had expired. There were also different utility addresses.

In respect of transaction 8, the client was from Somerset and the certificate of title was sent before the risk assessment was carried out and before the funds were received. A third party paid part of the deposit and yet there was no review of this. In transaction 10, this settled with no money laundering documentation.

In all the transactions there is no evidence of the individuals having been given advice on their obligations and liabilities under the standard securities and nothing in the file to suggest that this was unnecessary. In respect of transaction 8, he failed to report matters to SOCA. Transactions 9 and 10, the balance of the purchase price was paid by a third party.

Ms Motion pointed out that there was very limited correspondence in the file from the client. In transactions 4 and 5 there was nothing nor was there in transactions 6 and 7. In transaction 10, everything was from the client's husband rather than directly from the client and there was no authority from the client that he could correspond with her husband on her behalf.

Ms Motion stated that it was accepted that the Respondent advised the lenders in four of the cases that they were back to back transactions, but he should have gone further and advised that two of them were on the same day and two of them were in very close proximity. In three cases he did not wait for formal approval from the building society before releasing the funds. In transaction 3 where approval was given, this was given on the basis of the limited information he had given to the building society. In all the cases the lenders were not advised of anything except that they were back to back transactions in four of them. Ms Motion submitted that each transaction was

sufficient to amount to professional misconduct. She further submitted that the Money Laundering Regulations had been in place for many years as had the CML Handbook and the Respondent, as an experienced conveyancer, should have been aware of his obligations. Any prudent solicitor would also be aware of his obligation to report to SOCA. Ms Motion referred the Tribunal to Productions 138 to 141 being the Articles in the Journal warning the profession about these issues. There were also Tribunal Journal Reports in the Law Society Journal in respect of Mr Pervez in 2009 and Mr Taylor in July 2010. Ms Motion further referred to the Tribunal case in 1989, case reference 748/89 pointing out that the Respondent had a professional duty to act with utmost propriety for his client, the lender.

Ms Motion stated that she was not saying that this conduct was at the highest end of the scale of professional misconduct but nor was it at the lowest end. She asked the Tribunal to take account of the pattern and the course of conduct. There had not been an early plea, it had not had been until last week that the plea had been tendered, prior to that the case had been defended. Ms Motion submitted that there has been no remorse or insight. There had been limited cooperation with the Fiscal and the Tribunal until last week.

Ms Motion advised that these issues had come to light as a result of a Law Society inspection in 2011. There had been a repeat inspection in 2012 and no similar issues had been found. Ms Motion stated that she was aware that the Respondent had sought and obtained external help. Ms Motion asked if the Tribunal were considering a fine to consider the number of transactions involved. She also indicated that she was seeking expenses against the Respondent and asked the Tribunal to consider whether in the particular circumstances of this case, the solicitor Mr Ferguson, should be found liable for part of the expenses. Ms Motion stated that if Mr Brown had been involved from the beginning a lot of the expense could have been avoided. Ms Motion asked the Tribunal to make the usual order with regard to publicity.

SUBMISSIONS FOR THE RESPONDENT

Mr Brown confirmed that the Respondent pled guilty to professional misconduct in cumulo on the basis of the amended Complaint. Mr Brown explained that he had only

been instructed one week ago. He submitted that there was an element of the same failures being repeated file by file. He explained that the origin of these matters was that Mr Baillie's name was put forward by Company 5 to brokers who were arranging the transactions. He was phoned and asked if he would take over the transactions. An Edinburgh firm had been dealing with them but there was a split within the firm and they lost their conveyancer. This meant that these files came to the Respondent as a job lot contained in a number of boxes. The transactions had varying degrees of urgency. Some were past the date of settlement and he dealt with them as best he could. Mr Brown submitted that brokers were often involved in putting buyers and sellers together in a depressed market. They would match buyers to sellers and there was some opportunism and profit taking involved in this.

Mr Brown stated that it was accepted that there were a number of failures in respect of failing to get proper identification where there was no face to face contact. The Respondent had placed reliance on ostensible legitimate authentication by third parties. In respect of transaction 2, the passport and utility bills were certified by an English solicitor. The Respondent took this at face value but he should have checked with the English solicitor and got him to confirm that he could rely on the certification. The documentation however from the English solicitor came in after the Respondent had emailed the request for identification to the client. Mr Brown pointed out that the letter was from the client's business. The client was trying to be helpful. When he was told that x was required he went and got it. Mr Brown submitted that in this case the Tribunal was dealing with sloppy, naïve and inexperienced behaviour on the part of the Respondent in relation to non-face to face transactions. The files were sparse because the Respondent's secretarial cover was at a minimum level due to the recession and this was the reality explanation for the lack of file notes.

The CML breaches arose from what was a recurring misconception amongst solicitors who got themselves into difficulty. The solicitor – client relationship was a contractual one and the terms of the CML Handbook were contractual. This had been hammered into the profession from inception and solicitors could not ignore it. There was a misconception however in the assumption that solicitors could look at the Handbook and it would stop there. There were fiduciary obligations and solicitors required to disclose everything of interest or importance to the lender. The

Respondent in this case had had a tick box mentality so that the report mirrored the terms of the Handbook and this was erroneously viewed as complying with the Handbook. The Respondent did make the same report in a number of other cases which led to the lender not proceeding to lend the funds. Mr Brown however accepted that there was a duty to make a full report and that the price difference etc. was highly relevant to the decision of the lender on whether or not to lend. If there was a same day transaction and two very different values, obviously questions had to be asked. It was accepted that the reports made here were not adequate or objectively defensible. The Handbook had a catch all question asking if there were any other matters the lender should know about. However the Respondent thought that he was complying and this was a superficial naïve approach but there was nothing sinister about it.

In respect of transaction 1, there was a face to face meeting and the Respondent had previously acted for a relative so the lack of identification document often was a formality. There was a report to the lender and in connection with the source of the funds he did not look behind the funds coming from a clearing bank. This was necessary but not sufficient and this was the same with transaction 2.

In connection with transaction 8, it was accepted that the Respondent should have been alerted by the terms of the email which showed that there might be more to the transaction that met the eye. However the Respondent did not appreciate the significance of the email. In respect of transaction 10, the instructions were from his client's husband, which is not uncommon, and there is a view that it is legitimate to take instructions from a spouse. This view may now be open to doubt and it was accepted that the Respondent should have obtained his client's authorisation to allow him to deal with her husband. Mr Brown however pointed out that they were spouses and it was not some random person acting on behalf of his client.

In respect of the Cypriot transactions and the expired passport, the clients appeared to have been internationally mobile which called for further enquiries. However something bearing to be compliance had come in and the Respondent took this as compliance.

Mr Brown stated that cumulatively it was accepted that the Respondent's conduct amounted to professional misconduct but he invited the Tribunal to take a particular view in a wider context. The Respondent has had a lengthy and successful career in the profession for 30 years without coming to the adverse attention of the Law Society. All the difficulties related to a cluster of files which had come from a common source where the point of reference was a reputable firm of surveyors. There was also a plausible explanation for why the instructions were passed onto the Respondent. It was at the time of the recession and secretarial cover was low. The Respondent was acting in transactions beyond his comfort zone. Mr Brown pointed out that it was thought that all the clients were who they purported to be. There had been no claim by any lender or purchaser for any loss in respect of the transactions. All but one of the properties remained with the purchasing client. Mr Brown stated that he accepted that the Tribunal would be concerned with systemic risk but pointed out that in this case there was no actual loss.

Mr Brown emphasised that there had been a re-inspection of the Respondent's firm in 2012 and there was no continuing cause for concern. The Respondent had taken advice from the Professional Practice Department of the Law Society and from Professor S from the University of Dundee who had come in to the Respondent's firm and advised the Respondent and his staff on procedures. Mr Brown referred the Tribunal to the numerous testimonials from senior members of the profession.

Mr Brown stated that the Tribunal would be concerned primarily with protection of the public and preservation of the reputation of the profession. Mr Brown submitted that the Respondent had earned trust over a period of 30 years. He submitted that this conduct was not at the highest or the lowest end of the scale but emphasised that there were ten linked files rather than ten random files which would have been more concerning.

Mr Brown explained that at the time of these transactions in 2010 the difficulty with Lints was not known. The Respondent had been a principal in his own firm since 1990 dealing with conveyancing and private client work. He had never had a significant professional indemnity claim and was well respected within Dundee. He had been on the Board of Tayside Solicitors Property Centre since 1996. Mr Brown

asked the Tribunal to assess the relative gravity and thereafter assess the risk of reoccurrence. He emphasised that the medicine had been taken and the Respondent had learnt his lesson. He invited the Tribunal to deal with the matter by way of a Censure and Fine and submitted that there was no need to go beyond that for public protection. He indicated that he could not make any submissions on expenses or publicity and felt that he had insufficient knowledge of what had happened prior to his instructions to make submissions in respect of the Fiscal's request for expenses to be awarded against Mr Ferguson. He suggested that if the Tribunal was so minded then it might be necessary to have the opportunity for further written submissions on this issue.

In response to a question from the Tribunal, Mr Brown confirmed that the Respondent was not suffering from financial hardship despite business being difficult and would be able to pay the maximum fine although this would not be without pain.

DECISION

It was quite clear to the Tribunal that the Respondent's conduct was sufficiently serious and reprehensible so as to amount to professional misconduct. The Tribunal has emphasised on repeated occasions that solicitors must always act in the best interests of their clients including their lender clients. In this case the Respondent breached his obligations in terms of the CML Handbook and the Money Laundering Regulations in ten different transactions. In nine of these transactions he did not meet the clients face to face. As an experienced conveyancing solicitor the Respondent must have been aware of his obligations in terms of the CML Handbook and the Money Laundering Regulations. In this case the Respondent seriously let down his clients, the lenders. In these transactions there were numerous signs that should have alerted the Respondent to the fact that further checks required to be carried out. The Money Laundering Regulations have been in force for many years and solicitors obligations in terms of the CML Handbook were highlighted in the Law Society Journal in 2009. It appears that the Respondent paid lip service to his obligations in terms of the CML Handbook. He now accepts that he had an obligation to disclose all relevant matters to the lenders to enable them to make an informed decision about whether or not to lend in these particular transactions. The differences in the purchase

price in respect of the transactions which settled on the same day and the deposit being paid by a third party in transaction 8 caused the Tribunal particular concern. The Respondent failed to report matters to SOCA.

The Tribunal noted that the Respondent did advise the building society that back to back transactions were involved in four of the transactions and did receive some form of identification documents for some of the transactions but he did not look behind these and do the checks that he should have done. In the circumstances the Tribunal consider that the Respondent's conduct fell in the middle range of professional misconduct.

The Tribunal seriously considered imposing a Restriction on the Respondent's practising certificate in order to ensure protection of the public should anything similar arise in the future. The Tribunal however took into account the fact that these matters arose as result of a Law Society inspection and that apart from these ten files which were cluster files, introduced by the same source, there did not appear to be any further problems with the Respondent's practice. The Tribunal also noted that the Respondent has been in practice for 30 years with an unblemished record and has run his own firm since 1990. The ten transactions concerned were introduced by reputable firm of surveyors. The Tribunal further noted the references lodged on behalf of the Respondent which show that he is held in high regard by senior solicitors within Dundee. Most significantly however the Tribunal took account of the fact that since these matters had been brought to light the Respondent had brought in Professor S to look at the systems within his firm and train his staff to ensure that nothing similar happens again. It appears to the Tribunal that this training has worked given that there was another Law Society inspection in 2012 which highlighted no concerns. The Respondent has also shown insight by his plea, albeit late. Due to these considerations the Tribunal, on balance, consider that there would not be a risk to the public if the Respondent was allowed to continue with an unrestricted practising certificate. The Tribunal also took account of the fact that to restrict the Respondent's practising certificate when he is a sole practitioner who has been in business on his own account since 1990 would be a severe sanction.

Given the number of transactions and number of breaches of duty involved however, the Tribunal considered it necessary to impose the maximum Fine in addition to a Censure to show the seriousness with which the Tribunal views the Respondent's conduct.

The Tribunal made the usual order with regard to publicity. The Tribunal did have concerns with regard to the late plea which was occasioned by the change of representative at a late stage in the proceedings. The Tribunal considered the Fiscal's request that there be an award of expenses personally against Mr Ferguson. However on the first day of the hearing when a serious issue with regard to unauthorised witness citations arose, the Tribunal confirmed directly with the Respondent that he understood that what Mr Ferguson had done in connection with the citations was contrary to the terms of the Act, and he confirmed that he still wished Mr Ferguson to represent him. The Tribunal also note that the Respondent is a solicitor and the Tribunal has no means of measuring the relationship between him and Mr Ferguson being unaware of the details of the Respondent's instructions. In these circumstances the Tribunal did not consider it appropriate to make any award of expenses against Mr Ferguson personally. The Tribunal accordingly found the Respondent liable in the expenses of the procedure in the normal way.

Malcolm McPherson
Vice Chairman