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

F I N D I N G S

in Complaint

by

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

Complainers

against

DAVID RICHARD BLAIR LYONS. Greenways, Pacemuir Road, Kilmalcolm

First Respondent

and

DUNCAN HUGH DRUMMOND, residing at flat 1/2 , 80 Kirkcaldy Road, Pollokshields, Glasgow

Second Respondent

1. A Complaint dated 9 April 2015 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, David Richard Blair Lyons, residing at Greenways, Pacemuir Road, Kilmacolm (hereinafter referred to as "the First Respondent") and Duncan Hugh Drummond, residing at Flat 1/2, 80 Kirkcaldy Road, Pollockshields, Glasgow (hereinafter referred to as "the Second 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 fit.

2. The Tribunal caused a copy of the Complaint, as lodged, to be served upon both Respondents. No Answers were lodged on behalf of the First Respondent. Answers were lodged on behalf of the Second Respondent.

3. In terms of its rules the Tribunal appointed a procedural hearing to be heard in respect of the Complaint on 4 August 2015 and notice thereof was duly served on both Respondents.

4. When the case called on 4 August 2015 the Complainers were represented by their Fiscal Sean Lynch, Solicitor, Kilmarnock. The First Respondent was represented by Mr Adam on behalf of Mr Macreath, Solicitor, Glasgow. The First Respondent was not present. The Second Respondent was represented by Jim McCann, Solicitor, Clydebank. The Second Respondent was not present. The Tribunal was advised that the First Respondent did not intend to lodge Answers or enter the proceedings in any way. The Fiscal made a motion in terms of Rule 9 of the 2005 Tribunal Rules, to allow evidence against the First Respondent by way of affidavit. That motion was granted. Mr McCann indicated that the case for the Second Respondent was likely to resolve by way of a plea. The case was continued to a substantive hearing on 14 October 2015.

5. Formal notices of hearing were duly served upon the Respondents. On 13 October 2015 the Tribunal office received an email from Mr Macreath confirming that the First Respondent was aware of the date for the hearing and that the First Respondent's instructions remained that he would not be in attendance.

6. On 14 October 2015 the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The First Respondent was neither present nor represented. The Second Respondent was present and was represented by Jim McCann, Solicitor, Clydebank. A Joint Minute between the Complainers and the Second Respondent, agreeing the averments of fact and duties and agreeing the averments of professional

misconduct subject to the Answers and Plea in Mitigation for the Second Respondent, was lodged with the Tribunal. After hearing evidence from the Clerk, the Tribunal resolved in terms of Rule 8 of the 2005 Tribunal Rules, to proceed to hear and determine the Complaint in the absence of the First Respondent. The Fiscal lodged affidavits from 3 witnesses. He led evidence from the Second Respondent. Mr McCann lodged a written plea in mitigation on behalf of the Second Respondent, together with a list of Productions. Submissions were heard from both parties. .

7. The Tribunal found the following facts established

7.1 The First Respondent was formerly a partner in the firm of Messrs. Lyons Laing & Co., Solicitors, 5 George Square, Greenock PA15 1QP.

7.1(a) The Second Respondent was admitted as a solicitor and enrolled as such on 24 December 1980. He was formerly a partner in the firm of Lyons Laing and Co, Solicitors, 5 George Square, Greenock, PA15 1QP. He is no longer practising as a solicitor. He resides at Flat 1/2, 80 Kirkcaldy Road, Pollokshields, Glasgow, G41 4LD.

7.1(b) The First Respondent was the firm's cashroom partner. He was based at the Greenock Office where the cashroom was located. The Second Respondent worked principally from a branch office in Glasgow.

Mr A

7.2 The First Respondent's former client Mr A invoked the assistance of the Complainers. On 9th December 2008 the Complainers wrote to the First Respondent with details of Mr. A's Complaint. They drew the First Respondent's attention to Section 33 of the Law Reform (Miscellaneous

Provisions)(Scotland) Act 1990. They required the First Respondent to provide within twenty one days of 9th December 2008 a response to the Complaint along with details of fees charged and delivery of the First Respondent's file.

7.2(a) The First Respondent did not reply.

7.2(b) On 6th January 2009 the Complainers served upon the First Respondent notices in terms of Sections 15 and 42C of the Solicitors (Scotland) Act 1980. In terms thereof the First Respondent was required to provide to the Complainers a response to the Complaint, an explanation for his earlier failure to do so, and production of his files.

7.2(c) The First Respondent did not reply.

7.2(d) On 11th March 2009 the Complainers *ex proprio motu* intimated an additional Complaint to the First Respondent in respect of his failure to answer the previous letter and statutory notices condescended upon. The letter required the First Respondent to reply within twenty one days.

7.2(e) The First Respondent did not reply.

BANK OF IRELAND (1)

7.3 In 2005, the First Respondent acted for Company 1 in relation to a refinancing transaction covering three properties namely, Property 1, Property 2 and Property 3. These properties were subject to existing securities in favour of the Cumberland Building Society.

7.3(a) Morton Fraser LLP, Solicitors, were instructed by the Bank of Ireland to act on their behalf in the constitution of new securities over these three properties.

7.3(b) Company 1 was a private company limited by shares and registered under the Companies Acts with its registered office at 9 George Square, Greenock which was the offices of the firm Lyons Laing. The First Respondent was director and sole shareholder of the company. The company secretary was Ms B, the First Respondent's domestic partner and an employee of the firm Lyons Laing.

7.3(c) On completion of the loan transactions, the First Respondent granted a Letter of Obligation to Morton Fraser in relation to the property at Property 1, dated 4th August 2005. In terms of this Letter of Obligation, the firm of Lyons Laing undertook to deliver to Morton Fraser within twenty one days of that date a duly executed Discharge by Cumberland Building Society.

7.3(d) Also on 4 August 2005 the First Respondent granted a letter of obligation to Morton Fraser in respect of the property at Property 2 undertaking to deliver a duly recorded Discharge within six months of that date.

7.3(e) Also on 4 August 2005 the First Respondent granted a Letter of Obligation to Morton Fraser in connection with the property at Property 3 on the same dated undertaking to deliver within twenty one days of that date the duly executed discharge in respect of the property.

7.3(f) The three Letters of Obligation condescended upon were never implemented. By letter dated 13th October 2008, HBM

Sayers, Solicitors who by then acted for the Bank of Ireland, complained to the present Complainers.

7.3(g) Morton Fraser wrote to the First Respondent requesting that he implement the Letters of Obligation on 24th August, 22nd September, 4th and 20th October, 3rd and 25th November all 2005, 6th, 13th and 27th February, 6th and 13th March, 4th and 18th April, 15th May, 15th June, 19th July, 1st August, 29th September, 17th October, 8th and 21st November all 2006, 3rd January 2007 and 4th January 2008.

7.3(h) In response to the letter of 15th May condescended upon the First Respondent wrote a letter to Morton Fraser dated 16th May 2006 advising that he was checking the up to date situation with "our clients" and would reply shortly.

7.3(i) All the other letters condescended upon went unanswered.

7.3(j) After investigation the present Complainers intimated Complaints to the First and Second Respondents, and Mr C, a solicitor employed by the Respondents on 11th March 2009.

7.3(k) Mr. C replied to the Complainers by letter dated 16th March 2009. Mr. C explained that he dealt with the day to day administration of the transactions to settlement. Mr. C advised that it was an unusual situation because the First Respondent C was both "the client" and a partner in the firm. Mr C confirmed that he had concerns about the production of Discharges from the Cumberland Building Society and confirmed that he would normally have liaised direct with the Building Society to confirm that discharges would be made available. However he was instructed by his employers to proceed to settlement and to issue Letters of Obligation. Mr C advised that the outstanding matters were "in large part dealt

with by the First Respondent and Miss B who on account of their dual capacity were the persons best placed to liaise with Cumberland building Society to resolve the outstanding issues prerequisite to obtaining the discharges of their Standard Securities." Mr. C's letter of 16th March 2009 confirmed that Miss B was the company secretary of Company 1 and that she also worked in the respondents' office on a part time basis.

7.3(l) By letter of 30th March 2009, the Second Respondent replied to the Complainers and advised that he was the partner in charge of the Glasgow office of Lyons Laing and was unaware of the transactions condescended upon and did not sign the Letters of Obligation. The Second Respondent advised that he became aware of the situation when contacted by Morton Fraser in 2008. The Second Respondent stated that when he was advised of the situation he contacted the First Respondent and was advised that Company 1 were in the process of refinancing the sums due to the Bank of Ireland which would also result in the discharges being released by the Cumberland Building Society and that thereafter he was informed by the First Respondent that Company 1 had placed the properties at Property 1 and Property 2 for sale by auction but the sales did not complete and the refinancing had not yet been completed.

7.3(m) No reply was received from the First Respondent and accordingly Notices in terms of Section 15(2) (i) (i) and Section 42(c) of the Solicitors (Scotland) Act 1980 were issued to him dated 2nd April 2009.

7.3(n) On 22nd May 2009 the Complainers issued the second part of a Notice under Section 15 confirming that the First Respondent would require to give six weeks' notice of any

application for a new Practising Certificate for the year commencing in November 2009.

7.3(o) In June 2009, a Judicial Factor was appointed to the Respondents' firm. The issue of the discharges remained unresolved.

BANK OF IRELAND (2)

7.4 As hereinbefore condescended upon in 2005, the First Respondent acted for Company 1 in relation to a refinancing transaction over 3 properties, being:-

Property 1;
Property 2; and
Property 3.

These properties were subject to existing securities in favour of the Cumberland Building Society.

7.4(a) Miss B (Ms B) was an employee of the former firm, based in the Greenock office. She liaised with the Bank of Ireland in relation to the setting up of the loan arrangements as Company Secretary to Company 1.

On 29 April 2005, Bank of Ireland issued an offer for a term loan for 10 years for £1,010,000 in relation to the re-financing of existing loan facilities with the Cumberland Building Society and the release of cash for additional investment.

7.4(b) Ms B, as Company Secretary wrote to Mr D of Bank of Ireland on 10 May 2005 returning the Appendix to the letter of Offer and General Terms duly completed and stated that these had been "signed by David and myself….I confirm that

Duncan Drummond of Lyons Laing, 25 Newton Place, Glasgow G3 7PY (Tel:0141 -353 – 1422) will act on behalf of Company 1 and it is to him that Morton Fraser should address their correspondence."

The appendix was signed by the First Respondent and Ms B on 10 May 2005.

Clause 7 of the General Terms related to Security and Property and stated the following:-

"7.1 The Bank requires all Security to be perfected and priority arrangements in place to the satisfaction of the Bank and its Solicitors prior to drawdown. The Bank requires all Security and priorities to be in a form acceptable to the Bank and its Solicitors and to include such provision as the Bank may require for the preservation control and realisation of any Security including (but not limited to) covenants for further assurance powers of attorney negative pledges and events of default.

7.2 All Security held by the Bank at any time is to be available to provide security to the Bank for all and any indebtedness,

7.3 The Borrower must not (without the consent in writing of the Bank) create or permit to subsist any third party or other charge whether fixed or floating or permit to subsist any other third party encumbrance of any kind over or in relation to any Property…."

A Board resolution was attached to the appendix stating the Company Number, the Company Name to be Property 1 and

that Minutes of a Board Meeting of 10 May 2005 confirmed that the Facility letter of 29 April 2005 was accepted. The First Respondent and Ms B were authorised to sign and accept on behalf of the Company. The minute was signed by Ms B on 10 May 2005.

7.4(c) Morton Fraser LLP, Solicitors, (Morton Fraser) were instructed by the Bank of Ireland to act on their behalf in the setting up and creation of the new securities over the 3 properties.

7.4(d) On 11 May 2005 Ms B sent a fax to the Second Respondent at the Glasgow office in the following terms:-

> "Further to our telephone conversation this morning I confirm that we are proposing to refinance our existing borrowings with the Cumberland Building Society to the Bank of Ireland. I understand that the Bank of Ireland will be instructing Morton Fraser who will be in touch with you. The three properties which are to be refinanced are:-
>
> Property 1,
>
> Property 2
>
> Property 3.
>
> I wondered if you would be good enough to arrange to have the Titles ordered from the Cumberland so this matter can progress as soon as you hear from Morton Fraser."

7.4(e) On 12 May 2005 Morton Fraser sent a fax to the Second Respondent at the Glasgow office referring to an earlier conversation and stating that they had been instructed to act on behalf of the Bank of Ireland in taking security over "your

clients" properties at 3, 1 and 2. The relevant lease and title documentation were requested.

7.4(f) The Respondents' file contained further correspondence between Ms B as Company Secretary, and Mr D regarding the progress of the loan and completion of the necessary loan paperwork. The paperwork presented listed the registered office for Company 1 as 9 George Square, Greenock PA13 4JJ with its main business activity as property development. The First Respondent and Ms B were listed as Directors, residing at Greenways, Pacemuir Road, Kilmalcolm and the First Respondent was listed as the sole shareholder. Lyons Laing were listed as the solicitors with the contact name being the Second Respondent.

On 29 May 2005 Mr D wrote to the Directors of Company 1 with a fresh Letter of Offer Security, which stated that the Bank of Ireland securities should rank first on all 3 properties and that its Bond& Floating charge should rank *pari passu* with existing lenders. By letter of 2nd June 2005 Ms B returned the Letter of Offer, direct debit mandate and letter of authority to remit funds. She also stated that the Respondents had been "chasing" title deeds for the properties from the agents holding them on behalf of the Cumberland Building Society and that these would be sent to Morton Fraser as soon as received.

Mr D emailed Ms B on 13th June 2005 advising that Morton Fraser were "hard at work" having received information from the Respondents and he asked for details relating to historic entries at Glasgow Sheriff Court.

Ms B responded on 15 June 2005 providing information about historic matters and asking if the loan could be increased given the property valuations received.

Also on this date a letter was sent to the Deeds Department of the Cumberland Building Society from the Respondents' Greenock office, using the reference DHD/AAS and advising the recipient when telephoning to contact the Second Respondent. This letter was not held on file, but was provided by the Second Respondent. It stated:-

"As you are aware we have recently been appointed to your conveyancing panel having received instructions from our clients Company 1 in connection with the discharge of the Standard Securities in your favour over the above-mentioned properties. Accordingly, we would be obliged if you could forward us the Title Deeds together with an up to date redemption statement at your earliest possible convenience."

In addition, a letter was sent to Morton Fraser from the Respondents' Greenock office, using the reference DHD/AAS and advising the recipient when telephoning to contact Mr Drummond. This letter was not held on the file, but was later provided by the Second Respondent. It commented upon the title deed situation and it was stated in the letter that:-

"3) Our client's (sic) have advised us that their current intention is that the floating charge in favour of the Cumberland Building Society should remain in place. We will advise you if their intentions change.

4) Please note that in future this matter will be dealt with by Mr C of our Greenock office. He will respond to you more

fully regarding the issues raised by your letter dated 14th June 2005."

On 17 June 2005 a fresh Letter of Offer was issued, increasing the loan to £1,040,000.

7.4(g) On 5 July 2005 Morton Fraser sent a fax to Mr C at the Greenock office with observations on title.

On 27 July 2005 Morton Fraser wrote to the Respondents' Greenock office, ref DHD/AAS, with a list of outstanding matters.

7.4(h) The funds were released by Bank of Ireland on or about 4 August 2005 and separate Letters of Obligation, all dated 4 August 2005, in relation to the 3 properties were issued by the Respondents' firm to Morton Fraser.

In addition, there was a separate undertaking granted by the Respondents to Morton Fraser, also dated 4 August 2005, in the following terms:-

> "… we hereby undertake to apply the loan funds …… to redeem the Standard Securities in favour of the Building Society over the (3) properties … forthwith thereby allowing the Cumberland Building Society to grant discharges in respect of the same, which we will thereafter deliver to you together with relative Forms 2 & 4 and cheques for the registration dues thereof within 21 days of the date hereof."

The Respondents' reference on this Letter of Obligation was AAS (Mr C).

7.4(i) Mr C provided his recollection of the events relating to the remortgage transaction as set out in paragraph 7.3(k) above.

7.4(j) The Second Respondent wrote to the Complainers on 30 March 2009 providing his recollection of the events relating to the re-mortgage transaction as set out in paragraph 7.3(b).

7.4(k) From, *inter alia*, the loan funds received from Bank of Ireland and accrued interest the following payments were made by the First Respondent:-

Paid to Company 1, Bank of Scotland account Number 872925 – £583,848.71
Paid on behalf of Company 1 to pay debts etc. – £40,462.49
Paid on behalf of Company 1 to purchase property – £161,857.44
Paid to David Lyons - £127,887.94
Paid to John Lyons - £854.12
Paid to the former firm of Lyons Laing - £145,960.90

No payments were made to the Cumberland Building Society and no discharges of the existing standard securities were granted by them.

The First Respondent embezzled the sum of £1,040,000 condescended upon.

GROSS OVERCHARGING OF EXECUTRY FEES

7.5 In the executry of Mr E, the Respondents took fees totaling £15,950.00 excluding VAT during the period 21 June 2007 to 7 April 2009. A file audit by the Auditor of Court at Greenock assessed the fees due to the firm for that period to be £8,597.00

excluding VAT. The overcharge was 86%. The Second Respondent was principally in charge of this case.

7.5(a) In the executry of Mr AE, the Respondents took fees totaling £12,500.00 excluding VAT during the period 6 December 2004 and 26 June 2008. A file audit by the Auditor of Court at Greenock assessed the fees due to the firm for that period to be £4,338.05 excluding VAT. The overcharge was 188%. The First Respondent was principally in charge of this case.

7.5(b) In the executry of Mr F, the Respondents took fees totalling £15,700 excluding VAT during the period 3 April 2007 to 23rd December 2008. A file audit by the Auditor of Court at Greenock assessed the fees due to the firm for that period to be £2,350.00 excluding VAT. The overcharge was 568%. The Second Respondent was principally in charge of this case.

7.5(c) In the executry of Mrs G, the Respondents took fees totalling £13,100.00 excluding VAT during the period 12 April 2006 and 4 August 2008. A file audit by the Auditor of Court at Greenock assessed the fees due to the firm for that period to be £5,917.03 excluding VAT. The overcharge was 121%. The Second Respondent was principally in charge of this case.

7.5(d) In the executry of Mrs H, the Respondents took fees totalling £8,000.00 excluding VAT during the period 5 July 2007 and 6 April 2009. A file audit by the Auditor of Court at Greenock assessed the fees due to the firm for that period to be £4,642 excluding VAT. The overcharge was 72%. The Second Respondent was principally in charge of this case.

7.5(e) In the executry of Mr I, the Respondents took fees totalling £4,000.00 excluding VAT during the period 26 February 2008 to April 2009. A file audit by the Auditor of Court at

Glasgow assessed the fees due to the firm for that period to be £1,125 excluding VAT. The overcharge was 256%. The Second Respondent was principally in charge of this case.

7.5(f) In the executry of Mr J the Respondents took fees between November 2004 and May 2008 which exceeded by £90,000 or thereby the value of the work as assessed by the Auditor of Greenock sheriff court. The Second Respondent was principally in charge of this case.

7.5(g) In the executry of Mr K, the Respondents issued a fee note addressed to Mrs L on 6 March 2009 despite the fact that she was a beneficiary but not the executor. The amount of the fee note was £575. The respondents subsequently deducted a further fee of £2,012.50, in respect of which no fee note was ever rendered. At the time of the taking of these fees, very little work had been done in relation to the estate. The Second Respondent was principally in charge of this case.

7.5(h) In the executry of Mr M, the Respondents took fees of £2,000.00 plus VAT in December 2006 and £2,500.00 plus VAT in November 2007. On neither occasion did the Respondents issue a fee note. The Auditor of Court assessed the fees due to the Respondents as £3,397.00 plus VAT. The overcharge is therefore £603.00 plus VAT. The First Respondent was principally in charge of this case. Also in relation to this case, the assistance of the Complainers having been invoked by Ms N, the executor, and the files having been provided to the Complainers, on 15th August 2008 the First Respondent wrote to the Complainers asking for the files to be returned for Taxation. The files were sent to the First Respondent on 1st September 2008. Thereafter the Complainers wrote to the First Respondent requesting return of the files on 10th and 21st October 2008, 10th November

2008 and 7th January 2009. No response was ever sent by the First Respondent. On 16th January 2009 the Complainers issued a notice under Section 42C of the Solicitors (Scotland) Act 1980 requiring return of the file. The First Respondent did not return the file. The Complainers wrote with a list of conduct issues to the First Respondent on 25th February 2009 arising out of this executry. No response was ever received from the First Respondent. The files were eventually recovered from the Judicial Factor.

7.5(i) In the executry of Ms O between 20th May 2008 and 28th May 2009 the Respondents deducted fees without rendering fee notes to the executor, Mr P, in breach of Rule 6(d) of the Solicitors (Scotland) Accounts etc Rules 2001. The Second Respondent was principally in charge of this case.

7.5(j) In each of the cases in paragraph 7.5 to 7.5(i) inclusive the Respondents took fees from the executry estates without having rendered a fee note to the executors, in breach of Rule 6(1)(d) of the Solicitors (Scotland) Accounts Etc. Rules 2001.

7.5(k) In each of the cases in Paragraph 7.5 to 7.5(i) inclusive the Respondents firm deducted sums from the funds held for behalf of their clients by means of spurious fee notes and thereby appropriated said sums for their own or their former firm's use without any lawful authority so to do. In each of the cases above condescended upon the First Respondent was overcharging clients and thus unlawfully removing money from the client account.

7.5(l) The Second Respondent knew that his partner, the First Respondent, was overcharging clients and thus unlawfully removing monies from the client account and that the financial state of the firm was precarious, if not insolvent. The Second

Respondent sent an email to the First Respondent's secretary on 12 December 2008 in which he noted that the First Respondent had taken excessive fees from the Mr Q executry, saying that this had been done without his knowledge and that there would be "another shortfall." The Second Respondent contacted the Complainers in May 2009 to bring to their attention that he alleged that the First Respondent had been issuing fee notes at Greenock in relation to clients of the respondents' Glasgow office without his authority and that he was unlawfully deducting fees from funds held on behalf of clients. At the meeting when this disclosure was made by the Second Respondent he admitted that he had had this knowledge for about a year. Until he contacted the Complainers in May 2009, the Second Respondent failed to take any steps to remedy the situation. Instead, he took drawings from the firm account far in excess of his profit share which he knew or ought reasonably to have known were financed by misappropriation of client monies from the client account. Accounts prepared on behalf of the Respondents shortly before the appointment of the Judicial Factor suggested that the Second Respondent's capital account was overdrawn to the extent of approximately £100,000. Thus the Second Respondent knowingly benefitted indirectly from misappropriation by the First Respondent of monies belonging to the clients of the firm of which he was a partner

Mr R

7.6 The Second Respondent acted on behalf of Mr R in relation to the sale of Property 4. The transaction settled on 1st July 2004. The First Respondent repaid the mortgage, paid the estate agents account, took his own proper professional fee and outlays, and remitted the free proceeds of the sale to Mr R subject to a retention agreed with the purchaser's solicitors at

settlement. On 9th January 2008 the First Respondent took a fee of £352.50 from the balance held. On 12th March 2008 the First Respondent took a further fee of £1,448.05 from the balance held, extinguishing the balance. No work had been done by either respondent to justify the taking of these fees, and no fee notes were issued by the respondents to Mr R. The Second Respondent was unaware of this.

MANUS TOLLAND

7.7 Manus Tolland was employed by the firm of Lyons Laing under a restricted practising certificate. The said practising certificate was subject to inter alia condition that he was only entitled to act as a qualified conveyancing assistant dealing primarily with domestic conveyancing . He was not allowed to intromit with client funds. Both partners were equally responsible for the supervision of Mr Tolland but a letter was written to the Society advising that Mr Tolland was working and being supervised solely by the Second Respondent.

7.7(a) In each of cases number 1 to 13 in the Schedule to this Complaint **attached to these Findings** Mr Tolland failed to report to the lender that the seller, Company 2, had owned the property for less than six months, such failure being a breach of his instructions as provided by Clause 5.1.1 of the CML Handbook;

7.7(b) In each of the said 13 cases, Mr Tolland failed to report to the lender that the subjects had recently been purchased by the seller, Company 2, for a considerably lower price that the price notified to the lender as the price being paid by the purchaser/borrower to Company 2, such failure being a breach of his instructions as provided by Clause 5.1.2 of the CML Handbook;

7.7(c) In each of the said 13 cases, Mr Tolland failed to report to the lender that his firm did not have control over the payment of all of the purchase price, such failure being a breach of his instructions as provided by Clause 6.3.2 of the CML Handbook;

7.7(d) In four cases (nos. 6, 7, 11 and 13 of the Schedule hereto) out of the said 13 cases, Mr Tolland failed to report to the lender that the borrower was not providing the balance of the purchase price from his own funds, such failure, or alternatively failure to return the lender's instructions due to conflict of interest, being a breach of Clause 5.8 of the CML Handbook;

7.7(e) In each of cases numbered 1 to 13 in the Schedule to these Findings, Mr Tolland acted in breach of Rule 6 (1) (c) of the Solicitors (Scotland) Accounts etc Rules 2001, in that he drew money from the firm's client account in contravention of the authority given by his lender client.

7.7(f) In each of the transactions numbers 1 to 13 Mr Tolland acted for two parties whose interests conflicted, in breach of Rule 3 of the Solicitors (Scotland) Practice Rules 1986, namely, the lender and the purchaser/borrower, in the circumstances referred to thereby nullifying the proviso set out in Rule 5 (1) of said Rules which would otherwise have permitted him to do so; and

7.7(g) In each of cases numbered 1, 2, 3, 5, 8 and 10 in the Schedule attached hereto, he failed to obtain appropriate identification of the purchaser/borrower.

7.7(h) In each of the cases listed at nos. 6, 7, 11 and 13 in the Schedule hereto Mr Tolland failed to carry out customer due diligence measures as required under said Regulation 5 and in particular failed to take risk-sensitive measures to identify the source of the funds supplied in those cases by Mr S.

7.7(i) On 3rd February 2014 the Scottish Solicitor's Discipline Tribunal found Manus Tolland guilty of professional misconduct in respect of his actings condescended upon, censured him, and fined him in the sum of £2,000. They also restricted any practicing certificate to be held by the said Manus Tolland so that he would be entitled only to practice in the area of criminal law.

7.7(j) The Second Respondent failed to exercise supervision over Manus Tolland in breach of his undertaking

8. Having considered the foregoing circumstances and having heard submissions from both parties, the Tribunal found the Respondents guilty of professional misconduct as follows:-

(1) The First Respondent:-

(a) failed to respond to correspondence from the Complainers:

(b) failed to obtemper statutory notices;

(c) took grossly excessive fees from executry estates;

(d) failed to comply with the requirements of the Accounts Rules;

(e) took fees from the sale proceeds of a property to which he was not entitled;

(f) failed to obtemper letters of obligation;

(g) took fees without rendering fee notes;

(h) embezzled the sum of £1,040,000 from the Bank of Ireland;

(2) The Second Respondent:-

(a) took grossly excessive fees from executry estates;

(b) took fees without rendering fee notes;

(c) failed to comply with the requirements of the Accounts Rules; and

(d) failed to supervise his firm's assistant, in breach of the undertaking given by him to the Complainers.

9. Having heard submissions on behalf of the Complainers and the Second Respondent in mitigation and having noted three previous Findings of professional misconduct against the First Respondent and one previous Finding of professional misconduct against the Second Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 14 October 2015. The Tribunal having considered the Complaint dated 9 April 2015 at the instance of the Council of the Law Society of Scotland against David Richard Blair Lyons, residing at Greenways, Pacemuir Road, Kilmalcolm ("the First Respondent") and Duncan Hugh Drummond, residing at Flat 1/2, 80 Kirkcaldy Road, Pollockshields, Glasgow ("the Second Respondent"); Find the First Respondent guilty of professional misconduct in respect of his failure to respond to correspondence from the Complainers, his failure to obtemper statutory notices, his taking of grossly excessive fees from executry estates, his failure to comply with the requirements of the Accounts Rules, his taking of fees from the sale proceeds of a property to which he was not entitled, his failure to obtemper letters of obligation, his taking of fees without rendering fee notes, and his embezzlement of the sum of £1,040,000 from the Bank of Ireland; Find the Second Respondent guilty of professional misconduct in respect of his taking of grossly excessive fees from executry estates, his taking of fees without rendering fee notes, his failure to comply with the requirements of the Accounts Rules and his failure to supervise his firm's assistant, in breach of the undertaking given by him to the Complainers; Order that the name of the First Respondent be Struck Off the Roll of Solicitors in Scotland; Order that the name of

the Second Respondent be Struck Off the Roll of Solicitors in Scotland; Find the Respondents jointly and severally 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 names of the First and Second Respondents and may but has no need to include the names of anyone other than the First and Second Respondents.

(signed)

Nicholas Whyte

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 First and Second Respondents by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

Nicholas Whyte
Vice Chairman

NOTE

At the commencement of the hearing on 14 October 2015 the Complainers confirmed there was no need for any of the hearing to be in private. The First Respondent made no appearance at all. At the previous calling of the case the solicitor representing the First Respondent had confirmed that neither he nor his client would take any further part in the proceedings. At that time a Motion allowing the Fiscal for the Complainers to lead evidence against the First Respondent by way of Affidavit was granted. The Tribunal heard evidence under Oath on 14 October 2015 from the Depute Clerk confirming that at the procedural hearing of the case on 4 August 2015 the matter had been continued to the full hearing of the 14 October 2015. Formal Notices of Hearing were issued. An email had been received by the Clerk's office from the solicitor representing the First Respondent confirming that the First Respondent was aware of the date of the hearing and his instructions continued to be that he would not be entering proceedings. The Tribunal accordingly resolved to hear and determine the Complaint against the First Respondent in his absence.

The Second Respondent was present and represented. A Joint Minute between the Complainers and the Second Respondent was lodged. This Joint Minute agreed the averments of fact and duties and agreed the averments of professional misconduct subject to the proviso that the Second Respondent was guilty of professional misconduct *in cumulo* by complicity in the actings of the First Respondent as averred in Articles 9.2(1) to 9.2(4) inclusive (subject to what was said by the Second Respondent in his Answers and in his plea in mitigation) and in respect of his failure to supervise as averred in 9.2(5) of the Complaint. The Tribunal had before it the Complaint, the Answers lodged on behalf of the Second Respondent and a type-written plea in mitigation on behalf of the Second Respondent together with Productions on his behalf. The Complainers had lodged three Affidavits.

EVIDENCE FOR THE COMPLAINERS

The Fiscal indicated that he intended to proceed by taking the Tribunal firstly through the Complaint and Affidavits and thereafter by leading evidence from the Second Respondent regarding certain matters. The three Affidavits lodged by the

Complainers related to (1) Thomas George Christopher Davidson, a Complaints Investigator with the Law Society of Scotland; (2) Ian David Ritchie, Clerk to the Professional Conduct Sub Committee employed by the Law Society of Scotland; and (3) Morna Jean Grandison, Director of the Interventions Department of the Law Society of Scotland.

Mr Lynch referred the Tribunal to the Affidavit of Morna Grandison for general background information. In her Affidavit she confirmed that she had been appointed as Judicial Factor on the estates of Messrs Lyons Laing trading from premises at 25 Newton Place, Glasgow and 5 and 9 George Square, Greenock and on the estates of both Respondents as the individual partners of the firm. That appointment was made permanent on 30 June 2009. Her appointment had followed a series of inspections which had been carried out on the firm where concerns had arisen regarding involvement in mortgage fraud and apparent overcharging of executry fees resulting in shortages arising on the client account. The First Respondent was the designated cashroom partner and was based in the Greenock office. The Second Respondent was based in the Glasgow office. The cashroom was located within the Greenock office and the Glasgow office did not have immediate access to the ledgers which were not computerised. Preliminary investigations indicated that the firm was insolvent. Investigations revealed that substantial fees had been charged against individual executry accounts which were not justifiable and although the partners insisted there were sufficient funding this insistence appeared to be untenable. The Judicial Factor had had various interviews with both partners. She assessed that the failure of the partners to speak to one another and resolve matters resulted in substantial cash flow problems arising within the firm.

Mr Lynch indicated that he would come back to this Affidavit as he progressed through the Complaint.

He turned to averment number 2 in the Complaint and referred firstly to the Affidavit of Thomas Davidson that set out his first-hand knowledge of the issuing of correspondence and notices as set out therein. He referred to paragraph 3 of the Affidavit of Ian Ritchie confirming that Mr Ritchie had access to the records of the Law Society and thereafter in paragraphs 4 to 9, Mr Ritchie confirmed the sending of

correspondence and notices as outlined in averment number 2. Both witnesses confirmed that no responses were received from the First Respondent.

Mr Lynch then turned to Article 3 of the Complaint. This set out the history of the transactions to the Bank of Ireland. 9 George Square was the address of the Greenock office of the firm of Lyons Laing. Letters of obligation to deliver executed discharges of three standard securities were granted by the First Respondent. By the time Morna Grandison was appointed as Judicial Factor the issue had still not been resolved.

Mr Lynch drew the Tribunal's attention to the Affidavit of the witness Ian Ritchie. He submitted that paragraphs 10 to 25 of that Affidavit spoke to the averment number 3 on his Complaint. Mr Lynch referred the Tribunal to the Affidavit of the witness Morna Grandison and submitted that at paragraphs 24 to 27 of her Affidavit she confirmed the averments on the Complaint at 3.4, 3.5 and 3.6. At paragraph 5 of her Affidavit she confirmed that no payment was ever made to the Cumberland Building Society and no discharges were ever granted.

Mr Lynch then moved on to Article 4 of the Complaint which he submitted was the second and more serious aspect of the Bank of Ireland transaction, although both were interlinked. Mr Lynch summarised these articles. He said that the Bank of Ireland had originally offered a loan of £1,010,000 to the Company 1. That loan was increased later to £1,040,000. The Bank required that all securities be in place prior to the drawdown of funds. In particular Mr Lynch drew the Tribunal's attention to the general terms of the Bank article 7.3. There it was said *"the borrower must not "without the consent and writing of the bank" create of permit subsist any third party or other charge".* The funds were released on 4 August 2005. These funds were dispersed as outlined in Article 4.13 of the Complaint. None of these payments were to the Cumberland Building Society. Three payments were to the company of Company 1. The First Respondent was the sole shareholder and director of that company. A payment was made to the First Respondent and to his firm. Mr Lynch moved to delete from the Complaint reference to a payment to Company 3 and explained that payment had been made by Company 1 and so represented double accounting.

Mr Lynch referred to the Affidavit of the witness Morna Grandison. He submitted that paragraphs 21 to 44 of her Affidavit mirrored the Complaint. Paragraph 45 of her Affidavit confirmed that no payment was made to the Cumberland Building Society and no discharges of existing standard securities were granted by them. He drew the Tribunal's attention to the Affidavit of the witness Ian Ritchie which from paragraph 10 to 26 confirmed the terms of the Complaint. Mr Lynch referred to paragraph 26 of Mr Ritchie's Affidavit where it was stated that the loan funds were obtained from the Bank of Scotland. It was clear that this was a typographical error and the Bank of Ireland was referred to elsewhere in the Affidavit.

Mr Lynch then turned to Article 5 of the Complaint. He began by inviting the Tribunal to amend Article 5.7 to show that it was in fact the Second Respondent who was principally in charge of this case. Mr McCann indicated that he had no objection to that and pointed out to the Tribunal that the Second Respondent had already conceded this in his Answers.

Mr Lynch summarised the averments of the Complaint indicating that the overcharges in these executries amounted to 86%, 188%, 568%, 121%, 72%, 256%, £90,000 and £2012.50. Fees were deducted without fee notes being rendered in breach of rule 6.1.d of the Accounts Rules. The funds that were deducted were appropriated to the use of the firm.

Mr Lynch referred to the Affidavit of the witness Morna Grandison and submitted that paragraphs 48 to 58 of her Affidavit reflected the terms of the Complaint in relation to the question of overcharging. He referred to the Affidavit of the witness Ian Ritchie and submitted that paragraph 29 to 39 inclusive of his Affidavit reflected what was disclosed in the files of the firm. He indicated that he would come back to this when dealing with the evidence of Mr Drummond.

On turning to Article 6 of the Complaint the Fiscal confirmed to the Tribunal that it was his position that the First Respondent was acting alone in connection with this Article. No work was ever done justifying the removal of these funds and no fee notes were ever issued.

Mr Lynch referred to the Affidavit of the witness Ian Ritchie, paragraph 40 and the Affidavit of the witness Morna Grandison, paragraph 49 as evidence in relation to this Article.

Mr Lynch submitted to the Tribunal that although the Affidavits had evidential value against the Second Respondent in addition to the First Respondent, the Tribunal was to hear evidence from the Second Respondent and it was on that basis together with the Joint Minute between him and the Second Respondent that the Tribunal would be invited to proceed against the Second Respondent.

The Chairman asked the Fiscal if he could clarify what amount had actually been due to the Cumberland Building Society. Mr Lynch explained that no redemption sum was ever produced. It was his position that the loan funds were not used in any way for the purpose they were advanced and that they were not secured.

Mr Lynch called the Second Respondent as a witness. Mr McCann consented to his client giving evidence.

EVIDENCE OF DUNCAN HUGH DRUMMOND

Mr Drummond confirmed his age, address and that he was not currently practising as his practising certificate had been suspended. He confirmed that he was admitted as a solicitor on 24 December 1980. He had been a partner in the firm of Lyons Laing which had had offices in George Square in Greenock and in Glasgow. At one time the firm had had six or seven partners but by 2008 only two. The two partners were himself and David Lyons.

The firm had developed problems meeting its financial commitments following the departure of one of the partners who had left with a substantially overdrawn capital account. The cashroom department was based in Greenock. There were two cashiers who had been with the firm for a number of years. The Second Respondent would provide financial details to the Greenock office on a daily basis by fax or phone and the actual postings were made in Greenock. There was no computer access to any of the ledgers. The Glasgow office concentrated on private client and company work.

The Greenock office undertook every type of legal work. There was only one partner in Greenock and so certain areas had not been fulfilled in the same way. Criminal court work fell away when the partner previously referred to left the firm.

At the time of these matters the firm had five or six employees. There were two or three qualified solicitors. The First Respondent initially worked mainly in criminal court work and built up the practice on that basis.

The Second Respondent was asked what he knew about the Bank of Ireland transaction. He said he was aware that the Bank of Ireland were to issue an offer of loan that was to be used to take out the Cumberland Building Society. There were three properties owned by Company 1 subject to securities. Company 1 was a company wholly owned and run by the First Respondent. It owned properties in Greenock, it owned the Glasgow office and he thought other properties too. The Second Respondent did not see the actual offer of loan but understood that the lender was the Bank of Ireland. He received a fax from Ms B who was the company secretary for Company 1 to get the title deeds for the properties for re-financing. Ms B was also the domestic partner of the First Respondent. This was a re-financing exercise as far as the Second Respondent was aware. The conveyancing was done in the Greenock office. The Second Respondent had no reason to look further into it. After the Judicial Factor was appointed the Second Respondent had been alerted that something was wrong. A letter was sent to him indicating that the Cumberland Building Society had not been repaid. He could not remember who this letter came from. He had had no notification of where any of the funds had gone. It was only when he had seen the Complaint that he was aware that something had happened to the monies. He did not sign any of the letters of obligation. He was only aware of the deficiency of funds when the Complaint was served. He personally did not intromit with any of these funds.

Only the First Respondent in Greenock could sign cheques. With regard to electronic transfers, the Second Respondent thought that Ms B might occasionally have used David Lyons' authority. No one other than David Lyons in the Greenock office had authority to instruct a transfer.

The Second Respondent confirmed that the Judicial Factor was appointed to his firm and his estate at the end of May 2009. He indicated that he had made contact with the Law Society shortly before that. He had gone through to Edinburgh and met with three parties from the Guarantee Fund. The meeting had been arranged at his request. There were matters that he was keen to disclose to the Law Society relating to funds being taken from executry accounts and one other account. The meeting took place around 20 May 2009. He told representatives of the Law Society about various executries where he had had difficulty. Fees had been taken from these executries by the cashier instructed by the First Respondent without the Second Respondent's instructions. Most of the executries were in Glasgow and the Second Respondent was responsible for them. He was not able to say who would be responsible for the Greenock executries involved.

At the end of each month the First Respondent would ask for a print out of Glasgow balances. The First Respondent would then instruct the cashroom to remove fees from these balances. These charges did not reflect the work carried out at all and amounted to an overcharging of fees. In the first instance only one or two small executries were involved and the Second Respondent got the matter sorted with ongoing work. Difficulties arose when the Second Respondent could not get the money taken replaced and there was no additional work to justify the money taken. At the end of each executry, files would be audited. Sometimes the file were audited mid-executry.

Prior to going to the Law Society the Second Respondent had been aware of this for about a year. He accepted that in 2007 he had received one letter from the Law Society with concerns about the cashroom. He accepted that he had appeared before the Tribunal on 28 November 2008 with regard to matters relating to breaches of the Accounts Rules and that there were concerns regarding the cashroom. He explained that he had sent an email to the First Respondent on 12 December 2008 regarding the Mrs G executry. The subject of that email was the overcharging of fees and that he was not going to be responsible for these particular matters. He accepted that he said in the email that he had had no knowledge of the fee being taken and that it would result in another shortfall. He understood the significance of the phrase "another shortfall" but explained that there was still work to be done in some of the executries where fees had been charged.

The Second Respondent stated that he had pointed out to the First Respondent on many occasions that he could not carry on with this. The First Respondent at no stage denied taking unjustified fees.

In relation to the Mr R conveyancing transaction, the Second Respondent accepted that it was his transaction carried out in Glasgow. He had taken a retention regarding a factor's charge. The money he had retained was removed from the account without the Second Respondent's knowledge or consent. This was done by the First Respondent – it could not have been by anyone else.

The Second Respondent indicated that he himself did not knowingly take excessive fees but conceded that he may have on one occasion inadvertently done so.

If excessive fees were taken it could only have been by the First Respondent as there was no other partner.

He confirmed that his drawings in the last year of the business had been about £100,000 per year net of tax which would have been about £30,000. He had no idea how much the First Respondent had drawn. He had not made any enquiry into the sustainability of his level of drawings. The firm's accountants were the same as David Lyon's personal accountants. Accordingly, the Second Respondent did not have a working relationship with the firm accountants. He had consulted an accountant separately himself.

The Glasgow office was doing really well at that point in time and the Second Respondent thought everything would sort itself out. He accepted that the Greenock office was not doing well. He accepted that the last set of accounts prepared by the previous mentioned accountants was for the period ending 2007. In that year the net profit of the firm was just short of £210,000. His share would have been £105,000. He had drawn £151,752. That figure included tax. The First Respondent had drawn £92,000. The Glasgow office profit for that time period was on paper was £257,000. The Greenock office made a loss of £155,000.

He was asked if he had had concerns regarding the financial state of the firm. He responded that he deeply regretted not doing something sooner.

The Second Respondent indicated that Manus Tolland had been interviewed and employed by the First Respondent. Mr Tolland had previously worked in Paisley and the firm had previously had an office there. The First Respondent knew Mr Tolland from that. Mr Tolland was to be a conveyancing assistant in the Glasgow office. The Second Respondent understood that Mr Tolland had had difficulties to do with conveyancing and knew that his practising certificate was restricted to him acting as an assistant. The Second Respondent accepted that he had sent a letter to the Law Society signed by him that Mr Tolland would be supervised solely by the Second Respondent.

The Second Respondent confirmed that there had been 13 separate conveyancing transactions conducted by Mr Tolland involving significant CML breaches.

CROSS EXAMINATION

The Second Respondent confirmed that he had been on holiday and absent from the office between 18 to 25 April 2009. All of the certificates on title in relation to the 13 transactions had been submitted to the lenders in the Second Respondent's absence. The Second Respondent had not signed any of the missives. It would not normally be acceptable practice for an assistant to sign a certificate on title.

When the Second Respondent had gone on holiday the only matters on the various files were an offer to sell the property. The Second Respondent had instructed Mr Tolland that nothing could proceed until loan documents had been received or the further necessary documentation completed. Incomplete files had been turned into completed files by the time he returned. The First Respondent had made contact with Mr Tolland in relation to the 13 transactions as there was an availability of fees of about £500-£600 for each file. On his return from holiday these had all become done deals in breach of what he had said to Mr Tolland.

The Second Respondent confirmed that he had been aware of the build-up of an overdrawn capital account by the partner who had previously left. The First Respondent had indicated that he would deal with it. Court action was raised against the former partner but was unsuccessful because he had been made bankrupt.

The Second Respondent had had difficult relations with the First Respondent.

Everything in Company 1 was controlled by the First Respondent. The First Respondent spent a great deal of time dealing with the Company 1 affairs and he had worked for another company out of the office for about a year without the Second Respondent's consent. He had considered that the time spent out of the office by the First Respondent was unreasonable.

He was asked what more he could have done in relation to the overcharging cases. He explained that when he had sent the email to the First Respondent he was trying to make sure that the files were dealt with on a proper basis. Unfortunately the amounts that the First Respondent was taking got more and more. The Second Respondent deeply regretted not coming forward to the Law Society earlier and could only apologise to beneficiaries.

He was asked if he could have dissolved the firm and taken over the Glasgow business. The Second Respondent indicated that the First Respondent owned the office in Glasgow. On dissolution he would have been subject to ejection. Staff would have been affected. He thought that there was enough to keep on going. He had four children all at private school.

He accepted that in one or two cases he may have overestimated fees in an executry but had put funds back into the account. He had a very large executry practice.

He accepted that his previous case before the Tribunal had involved serious breaches of the Accounts Rules. These breaches had not amounted to clear dishonesty and so he had continued in partnership with the First Respondent. The geography of the cashroom in Greenock had continued to be a persistent problem for him.

The Second Respondent was made bankrupt regarding the bank overdraft on 29 April 2010. He had sold his former home and paid £240,000 to the Judicial Factor. Since then he had only been able to work with a wine firm as a consultant.

In response to a question from the Chairman, the Fiscal indicated that he accepted that any excessive fees taken by this Respondent had been taken inadvertently. Mr McCann emphasised that the basis of the Second Respondent's plea of guilty to misconduct was based on his failure to do enough.

In response to a further question from the Tribunal, the Second Respondent confirmed that it was unusual for there to be 13 completed conveyancing transactions in one week. He believed that the First Respondent had placed the assistant under pressure to complete the files as soon as possible to make fees available. The certificates of title had been sent off too early.

The Second Respondent was asked to clarify what the First Respondent had said with regard to his overcharging of fees. The witness indicated that the First Respondent had said little about it other than that he was dealing with it on the basis of covering staff costs.

In response to a further question from the Tribunal, the witness confirmed that the conveyancing transactions all settled on 28 or 29 April – after his return to the office. The witness denied that he had had involvement in the actual transactions other than to try and sort them out later. Funds had been paid to the sellers after the end of his holiday. The First Respondent had dealt with that. They had been settled by telegraphic transfer. The Second Respondent had not instructed the transfer of funds so far as he could remember.

The witness was asked by the Tribunal how he was able to access client ledgers during the currency of executries. He explained that copies of the ledgers would be faxed to him by the Greenock office. This would have shown any fees debited.

RE-EXAMINATION

The Second Respondent accepted that he had had hardly any involvement in any of these conveyancing transactions. He accepted that he had not been supervising Mr Tolland at all. He accepted that the conveyancing business was scarce by March 2009. He explained that he had not been in a great frame of mind at that time and that the First Respondent and Mr Tolland were dealing with these transactions. He had been aware that all 13 transactions were in the same development. He knew the source of each of the transactions was Mr Tolland. He knew that Mr Tolland had had professional difficulties and that he was supposed to supervise Mr Tolland. He was asked if all of this had not put him on notice. The witness indicated that there was a CML checklist that had come in from mortgage advisors. He had asked Mr Tolland about these and Mr Tolland had confirmed that the mortgage advisor was an individual he had known from the past. The witness accepted that by this point of time his office was perhaps only opening three files a week. He accepted that 16 files being opened in one day might have been too good to be true and that it was potentially a good bit of business.

The witness was asked to explain his delay in reporting matters to the Law Society. He explained that the firm had received the letter regarding an inspection from September 2008 which had covered a number of points which he thought would continue to be investigated. Following the other hearing before the Tribunal he thought matters would progress anyway. He accepted that he knew that his partner was stealing money from the client account. He was asked if he accepted that he was being financed by this conduct. He accepted that at that time he was drawing £8500 per month. He knew that his former partner was committing serious breaches of the Accounts Rules. He had been before the Tribunal in relation to other matters. He did not know why he had not gone to the police about these matters and could only apologise. He denied that he had not gone to the police because this conduct had financed his lifestyle. The witness said that he knew it would have to come to an end.

The Fiscal closed his case. Mr McCann indicated that he had no evidence to lead. He clarified that his case rested on the Joint Minute and scripted plea in mitigation and Answers.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal invited the Tribunal to accept that the evidence of the Second Respondent clarified the position with regard to the executry averments and put beyond doubt who was responsible for the undoubted dishonesty in the cashroom in Greenock.

The Fiscal invited the Tribunal to find the First Respondent guilty of professional misconduct in relation to his failure to respond to correspondence from the Complainers, his failure to obtemper statutory notices, and his failure to obtemper letters of obligation. In relation to the Bank of Ireland matters, he invited the Tribunal to convict the First Respondent misconduct in relation to his embezzlement of £1,040,000 from the Bank of Ireland. In relation the executry matters he invited the Tribunal to convict the First Respondent of misconduct in relation to taking grossly excessive fees from executry estates, failing to comply with the requirements of the Accounts Rules, and taking fees without rendering fee notes.

In relation to the taking of money in the Mr R case, he invited the Tribunal to convict the First Respondent of professional misconduct in relation to him taking fees from the sale proceeds of a property to which he was not entitled.

With regard to the Second Respondent, the Fiscal invited the Tribunal to convict him of professional misconduct in relation to taking grossly excessive fees from executry estates on the basis that he did so by being complicit and in the knowledge for at least 12 months before going to the Law Society that this was taking place.

Additionally the finding of misconduct against this Respondent should be in relation to being complicit with his partner taking fees without rendering fee notes and failing to comply with the requirements of the Accounts Rules. The Accounts Rules apply to all of the partners in the firm.

He invited the Tribunal to convict the Second Respondent of misconduct in relation to his failure to supervise his firm's assistant in breach of his undertaking given to the Law Society. He submitted that the evidence of the Second Respondent being on

holiday was a red herring and asked the Tribunal to hold that the Second Respondent had simply not exercised any supervision over Mr Tolland.

The Chairman sought clarification from the Fiscal that the admissions of professional misconduct in the Joint Minute were subject to the Answers and plea in mitigation. The Fiscal confirmed that that was the case and submitted that there was no inconsistency between that and the evidence actually given by the Second Respondent.

SUBMISSIONS FOR THE SECOND RESPONDENT

Mr McCann submitted to the Tribunal that the essence of his position was reflected in the terms of the Joint Minute. In considering the matter for the Second Respondent, he had turned around the question to whether it could be said that there was not professional misconduct in his lack of supervision of Manus Tolland or in his delay in dealing with the question of his partner stealing fees. In his submission the proper position was an admission of professional misconduct.

He asked the Tribunal to consider to what extent mitigation could be found from all the facts and circumstances and the narrative of the plea in mitigation. He asked the Tribunal to accept his written plea in mitigation as read into the record. The written plea in mitigation was as follows:-

"

1. The Second Respondent qualified in 1980 and prior to difficulties developing within the practice in 2007/2008 had a clear disciplinary record.

2. During 2007/2008 Inspections by the Complainers revealed fairly numerous difficulties with the administration of the firm and the Cash Department, and complaints dated 8th April 2008 and 22nd September 2008 were lodged with the Tribunal. These complaints were conjoined and heard on 19th November 2008 when the Second Respondent and his partner both tendered pleas of

guilty to professional misconduct in respect of various compliance and Accounts Rules failures.

3. The Second Respondent's situation at that time, and thereafter until the cessation of the firm remained that he worked in the Glasgow office of the firm. The administration of the firm and the entire Cash Department were operated from the Greenock office under the direct supervision of the First Respondent who was both Cashroom Partner and Money Laundering Compliance Officer. In the Hearing of the prior complaints on 19th November 2008 the Second Respondent accepted that as one of two partners in the firm he could not seek to abdicate from responsibility, although in mitigation it was sought to be emphasised that he was both geographically and administratively distant from the matters which had caused the Complainers to have concerns, and which led to the pleas of guilty. However the Tribunal on that occasion elected to make no distinction between the two partners and both were found guilty of professional misconduct and each fined £10,000.

4. The Second Respondent was wholly unaware, during the preparations for and in the period subsequent to the previous Hearing, that even more serious matters were beginning to develop in the practice, as set out in paragraphs 2.1 – 4.13 of the Complaint. The normal practice within the firm, in regard to executries which the Second Respondent was winding up in the Glasgow office, was for fees to be assessed by an Auditor in accordance with the widely followed practice in that type of work. The averments in 5.1 – 5.13 reflect a practice which originated in the Greenock office, and was operated entirely without notification to the Second Respondent, of taking fees from the executries over and above the normal fee charged on an estimated basis or on an Auditor's assessment. The normal procedures of the firm would require intimation by the Glasgow office to the Greenock office of the appropriate cash entries, and *vice versa.* A fee would not

normally be taken in any case by the Greenock office from a Glasgow file without the knowledge and consent of the Second Respondent Mr Drummond. He never had such information and did not know about, or consent to, the taking of these unjustified fees. As serious problems began to emerge, in regard to clients' enquiries and complaints, the Second Respondent on advice from his own Solicitor went to the Law Society on 20th May 2009 and explained his concerns. He co-operated fully with them in disclosure of the matters that he was concerned about. He subsequently co-operated fully with various Solicitors acting under the Master Policy, where they on a number of occasions asked for his Statement to assist them in their investigations. It is believed that his disclosures to the Law Society, along with suspicions which the Society may well already have developed as to the way the firm was being run, led to further intervention by the Law Society and to the appointment of a Judicial Factor**.**

5. Prior to the appointment of the Judicial Factor the most recent draft accounts for the firm that had been seen by the Second Respondent were for the year to 30th September 2007, and showed the Second Respondent's Glasgow office as generating gross receipts of £632,547 and profit of £425,135, with his drawings at £151,752 and the firm overdraft at about £81,000. The Second Respondent is shown in said Draft Accounts as overdrawn at 1st October 2006 by £58,960 and at 30th September 2007 by £105,915. However the Second Respondent had not accepted these accounts which were drawn by his partner's personal Accountants and the Second Respondent was continuing to argue for an enhanced profit sharing which would have reduced or extinguished his over-drawings. At that time, prior to the global financial crisis of 2008/9, the firm and particularly the Second Respondent's Glasgow office, appeared to be performing extremely well in a vibrant market, and there was no cause to suspect that the First Respondent would be driven to the matters now averred in the complaint against him.

6. The Second Respondent suffered seriously from the consequences of the Law Society's intervention. He was made bankrupt on a Petition at the instance of the Bank of Scotland Plc, at Dumbarton Sheriff Court on 29th April 2010. He lost his family home at 27 Thorn Road, Bearsden which required to be sold and his interest in the free proceeds was paid over to his Judicial Factor. The Second Respondent lost his entire lifetime professional career, and his income, and thereafter was only able to find work outside the profession as a salesman/consultant with a wine supplying firm.

7. It is respectfully submitted that although in the previous case the Tribunal elected to make no distinction between the two partners, in the circumstances of this Complaint there are significant reasons to make a clear distinction on the position of the Second Respondent, who was to a large extent the victim of the actings of the First Respondent at the Greenock office as set out 1.1 – 4.13.

8. In regard to paragraph 7.0 re Mr Manus Tolland, the Second Respondent has admitted professional misconduct by way of inadequate supervision. However he never signed any of the Reports on Title, or other documentation going to various lenders. His understanding was that when Mr Tolland came to the firm he mentioned at interview with Mr Lyons that he had certain contacts which would lead to an immediate referral to his new employers of a body of conveyancing work, or a transfer of cases already started. It is accepted that this type of CML breach was already being detected across the profession by 2008/9 and the Second Respondent wrongly assumed that there was compliance with the CML Conditions when that was not the case. He accepts that by more pro-active supervision he may well have detected and intervened in what was going on. Although there were warning articles to the profession from 2009 onwards in regard to similar matters, it is respectfully submitted that it was only after a period of several years from that date that clamant warnings from the Tribunal, and

from other sources, made it clear to the profession that the previously informal attitudes to CML conditions, where arrangements had been made outside the office for various types of commercial transaction, were wholly unacceptable for Solicitors receiving loan instructions.

9. The respondent had made it clear to Mr Tolland that missives were not to be completed until the firm had received the loan instructions so that they could be clear on the Lender's position on each transaction. The second respondent Mr Drummond discovered that after he had gone on holiday Mr Tolland and Mr Lyons had concluded missives, submitted the reports on title, and drawn down funds to settle all these transactions in breach of the CML [Council of Mortgage Lenders] conditions.

10. It is respectfully submitted it, in conclusion, that although this is undoubtedly one of the most serious cases that the Tribunal will have seen, viewed overall, a clear distinction has in fairness and in justice to be made between the position of the Second Respondent and the First Respondent. In particular [a] it is submitted that account has to be taken of his continuing disadvantage within the firm where, being continuously stationed in the Glasgow office he did not have access to what was going on at the Greenock office. While in the earlier complaint it could not be said in a two partner firm that one could avoid responsibility simply because he was administratively and geographically distant from the various Accounts Rules and compliance breaches that occurred, it is submitted that in this complaint the situation is wholly different. [b] Although accounts rules breaches are of themselves undoubtedly serious and properly treated as professional misconduct, there is a world of difference between such matters and deliberate dishonesty. [c] Also it is submitted that the Tribunal really has to take account of the situation of the second respondent as effectively "whistle blower" in going to

> his professional body on independent legal advice to express his concerns and inform his regulators of what was happening."

The Tribunal had been given an opportunity to form an impression of the Second Respondent from seeing him giving evidence.

Mr McCann referred to the extracts from Smith & Barton and Paterson & Ritchie which he had lodged with the Tribunal. These disclosed that there had been a chronic problem historically with the profession complying with the CML conditions. When the Second Respondent was involved in supervising Mr Tolland the picture was an evolving one. He asked the Tribunal to accept that it was dealing with issues that had happened six and a half years ago. He submitted that if the evidence as it had come out before the Tribunal today had been available to the Law Society from the outset it may well have been that the Second Respondent would not have been prosecuted. It was not his position that he was saying that this was not misconduct but in 2009 in his experience not every firm was prosecuted where the Law Society had found batches of conveyancing transactions of this type. He placed emphasis on the Second Respondent having been off on holiday when the First Respondent and the assistant had put these conveyancing transactions together.

Mr McCann drew the Tribunal's attention to the conclusion of the scripted plea and paragraph 10. He submitted that the Second Respondent was always at a disadvantage of being in Glasgow when the cashroom was situated in Greenock. It was difficult to see how any solicitor could deal with a partner guilty of blatant and rampant dishonesty. The Second Respondent had not done nothing. He had spoken to his partner several times. Eventually on the advice of Mr McCann, the Second Respondent had gone to the Law Society. He invited the Tribunal to consider how it could take account of the Second Respondent becoming evidence against himself effectively as a "whistle blower". He accepted that there was a duty to "shop" your colleague of any dishonesty. The difficulty was the balancing of this together with the nature of a partnership which was a relationship of ultimate faith. He asked the Tribunal to hold that it was not as easy as it might sound given the position the Second Respondent found himself in. He submitted that it surely had to be taken into

account that the Second Respondent volunteered information in order to encourage the profession in future.

Mr McCann asked the Tribunal to take into account that the Second Respondent had been out of the profession for a long period of time, that he had come to the Tribunal and given evidence and opened himself to robust questioning. He invited the Tribunal to reflect this by stopping short of striking the Second Respondent off the Roll of Solicitors. He submitted that a long period of restriction might have the desired effect. It was possible that the Second Respondent might want to go back to the profession but it could be that a period of restriction of some years might be sufficient to deal with the public interest.

DECISION

The Tribunal had before it a Complaint against two Respondents. In relation to the First Respondent evidence was required given the First Respondent lack of involvement in the hearing process. Evidence against the First Respondent was produced by way of three Affidavits and evidence from the Second Respondent. The Affidavits were extensive in their terms. Given the content of these Affidavits and the evidence of the Second Respondent the Tribunal was satisfied that the averments of fact as now noted above were proved beyond reasonable doubt in relation to the First Respondent.

These facts having been proved the question was then whether the Tribunal were satisfied that this conduct amounted to professional misconduct.

Without doubt the First Respondent was guilty of a serious catalogue of offending. He had misappropriated funds from executry accounts. He had embezzled over a million pounds from the Bank of Ireland. He had breached Accounts Rules and had failed to respond to correspondence and statutory notices from the Law Society. Each of these matters in their own right was extremely serious misconduct. Each in their own right satisfied the test of professional misconduct as described in the Sharp case. Accordingly, the Tribunal had no hesitation in convicting the First Respondent of professional misconduct.

With regard to the Second Respondent, a Joint Minute had been lodged agreeing the averments of fact. Additionally, the Tribunal had heard evidence from the Second Respondent himself.

The Second Respondent had admitted that for a period of 12 months he had been aware that his partner had been removing funds from the Second Respondent's clients' accounts with an explanation of using the funds to pay his firm's obligations. Most of these executries were clients of the Second Respondent himself. He had taken no real steps to protect his clients' interests. He was aware of the mechanics of the removal of the funds and that these were in breach of the Accounts Rules.

In his own right, the Second Respondent had issued a letter of undertaking to the Law Society that he would supervise an individual who had had his practising certificate restricted by the Discipline Tribunal. He admitted failing to supervise this individual.

The Second Respondent had admitted before the Tribunal that he was guilty of professional misconduct. The Tribunal required to consider itself whether the conduct admitted by the Second Respondent met the appropriate test. The conduct admitted by the Second Respondent represented serious and reprehensible departures from the standards of conduct to be expected of a competent and reputable solicitor. Accordingly, the Tribunal found the Second Respondent guilty of professional misconduct. This finding was not one *in cumulo*, the Tribunal taking the view that each of the elements amounted to misconduct in themselves.

MITIGATION

Following the intimation of the Tribunal's decision to convict both Respondents of professional misconduct, the Complainers and the Second Respondent were invited to make further submissions.

The Fiscal lodged with the Tribunal previous Findings of the Tribunal in relation to both Respondents. The First Respondent had been convicted of professional misconduct by the Tribunal on 19 August 2004 in relation to failing to deal with

correspondence with the Law Society and a breach of the Accounts Rules. The First Respondent had been convicted on 19 November 2008 of professional misconduct in respect of his failure to respond to correspondence and statutory notices from the Law Society. On 19 November 2008 both Respondents had been convicted by the Tribunal of professional misconduct in respect of breaches of the Accounts Rules and Professional Practice and Guarantee Fund Rules 2001 amongst other matters. In relation to the last case both Respondents had been fined £10,000, the maximum fine possible.

Mr McCann indicated to the Tribunal that the previous Finding was admitted for the Second Respondent. He indicated that he was adopting what he had already said to the Tribunal as mitigation, together with what was in the scripted plea in mitigation.

Mr Lynch asked for the usual order for expenses and submitted that there were no circumstances justifying the withholding of publicity. Mr McCann indicated that he had no motion regarding expenses or publicity. He indicated that the Second Respondent was still an undischarged bankrupt.

PENALTY

The Tribunal began by considering the position of the First Respondent. It concluded that the only possible disposal to reflect the serious nature of the offending by the First Respondent, and to provide protection to the public was to strike the name of the First Respondent from the Roll of Solicitors. This Respondent had been involved in clearly dishonest behaviour. There was no sign of any remorse or insight into his conduct. The course of conduct had been a protracted one. The First Respondent was a clear danger to the public and his conduct was extremely damaging to the reputation of the legal profession. He was clearly not a fit person to continue to be a solicitor.

With regard to the Second Respondent, the Tribunal had been asked to draw a distinction between the two and to demonstrate that by not striking off the Second Respondent.

Whilst the Tribunal accepted that there was a distinction that could be drawn between the two Respondents, the conduct here was extremely serious. The Second Respondent had admitted allowing his partner to continue to misappropriate money from executries of the Second Respondent's clients for a period of a year. The explanation given by the First Respondent was that the money was being used to pay the firm's obligations. Clearly, the Second Respondent must have been aware of the precarious financial position of the firm. He continued to draw funds himself where it was clear that there were cash flow difficulties. Whilst he did attend at the Law Society's office and provide information there was considerable delay in him doing this, and this was set against the background of the Law Society already investigating financial irregularities, "serious problems emerging in regard to clients' enquiries and complaints" and on the advice of his solicitor. For 12 months he had taken no real steps to protect the interests of his clients.

The Second Respondent had chosen to stay in business with his partner and had chosen to continue a business based on having a cashroom in Greenock. The Second Respondent had already appeared before the Tribunal in relation to what he had suggested were difficulties he faced in relation to this arrangement. He was aware of the other Findings by the Tribunal against his partner.

The Second Respondent had failed to supervise an assistant who had had his practising certificate restricted by the Tribunal, and that despite a written undertaking on his part.

The Tribunal considered the submissions on behalf of the Second Respondent that he had acted as a whistle blower but held that he had delayed for far too long in taking any steps to inform his professional body of his concerns over the actings of the First Respondent. Further the Tribunal noted that during the delay the Second Respondent continued to benefit from the conduct of the First Respondent.

Although he had shown some degree of insight and regret before the Tribunal, the conduct admitted was of the most serious and reprehensible nature. The Tribunal concluded that the only appropriate disposal for the Second Respondent was to strike his name from the Roll of Solicitors. Even if the Second Respondent had been

appearing on his own, and not with the First Respondent, the penalty would have been the same in order to protect the public.

With regard to the question of expenses, it was concluded that the appropriate order was one against both Respondents on a joint and several basis. The usual order was made with regard to publicity.

Nicholas Whyte
Vice Chairman

SCHEDULE TO THESE FINDINGS

01. Purchase by Mr AE of Property 16

Manus Tolland (MT) acted on behalf of the client, Mr AE in connection with his purchase of Property 16. The file maintained by MT was opened on or around 16 March 2009. MT wrote to the client confirming he would be pleased to act on his behalf and enclosed a copy of Offer to purchase the subjects which had been submitted to the sellers' solicitors. A CML disclosure of incentives form is on the file dated 3 March 2009. This had been signed by Mr V who was designed as a Director of Company 2. They were the sellers of the property. The form confirmed the purchase price of £162,500 and that incentives comprising £2,500 cashback and £1,000 legal fees had been offered to the client.

The client had secured lending from Cheltenham & Gloucester plc, a division of Lloyds TSB Bank Plc. Loan instructions were issued to MT on 25 March 2009. The loan instructions provided "On behalf of the Lender, Lloyds TSB Bank plc, we are pleased to instruct you in connection with the above C&G Mortgage advance. Lloyds TSB has adopted the CML Lenders Handbook for Scotland and you are therefore required to act in accordance with the instructions contained in it. General instructions and guidance are contained in Part 1 of the handbook and provisions which are specific to C&G Mortgages including detail of who you should contact with any queries are contained in Part 2". The Lenders instructions also provided that the loan had been agreed on the understanding that the purchase price of the property was £162,500.

A review of the file revealed an attendance note prepared by MT dated 23 April 2009 which recorded "MT attendance with client. Taking instructions to conclude missives. Considering loan instructions, explaining nature and effect of Standard Security and noting his understanding of same and having same signed. Obtaining confirmation that deposit funds were paid direct to Company 2 (Seller) who were also to be responsible for payment of our fees and outlays and that the loan funds should be used

as a balancing payment of P/P. Confirming instructions to settle when funds are available."

MT completed the completed the Certificate of Title on 24 April 2009 which was intimated to the Lender. This Certificate included a declaration to the effect that "We, the conveyancers named above give the Certificate of Title based on our investigation of the title in accordance with the current CML Lenders Handbook for Scotland." The authorised signatory on the Certificate of Title was MT.

Further examination of the file revealed that MT wrote to the seller's agents on 28 April 2009 confirming that the firms had that day remitted the sum of £121,875 to their client account in settlement of the balance of the purchase price of the property. The payment was noted to be conditional upon inter alia delivery of an executed Disposition in favour of the client and the sellers' agents Letter of Obligation. The sellers' agents duly delivered on 5 May 2009 Dispositions relative to the property, firstly by Company 6 in favour of the sellers and a Disposition by the Sellers in favour of the client. Copies of the executed Dispositions on MT's file revealed that the sellers had taken title to the property on 24 April 2009 for a consideration of £103,600 and thereafter the client took title from the sellers on 28 April 2009.

A further review of MT's file revealed a copy of a cheque ostensibly written in favour of the sellers by the client for £40,625 dated 7 April 2009. A review of the client ledger maintained by the firm in respect of this transaction disclosed that the only funds which passed through the client account of the firm were the amount of the loan from the Lender and the various fees which were incurred. There was no evidence that the balance of the purchase price was at any stage within the control of MT.

02. Purchase by Mr AG of Property 17

MT acted on behalf of Mr AG in connection with his purchase of Property 17. The inspection revealed that the file maintained by MT was opened on or about 16 March 2009. On that date MT wrote to the client and confirmed that he would be pleased to act on his behalf and enclosed a copy of an Offer to purchase the subjects which had been submitted to the sellers' agents. The inspection also revealed a CML disclosure

of incentives form dated 18 March 2009. This had been signed by a Mr V who was designed as a Director of Company 2. The form identified the purchase price of £188,000 and incentives comprising £2,500 cashback and £1,000 legal fees had been offered to the client.

Loan instructions were issued to the firm on 23 March 2009 by Cheltenham and Gloucester plc. The loan instructions provided "On behalf of the Lender, Lloyds TSB Bank Plc, we are pleased to instruct you in connection with the above C&G mortgage advance. Lloyds TSB has adopted the CML Lenders Handbook for Scotland and you are therefore required to act in accordance with the instructions contained in it. General instructions and guidance are contained in part 1 of the handbook and provisions which are specific to C&G Mortgages including detail of who you should contact with any queries are contained in part 2". The Lenders instructions also provided that the loan had been agreed on the understanding that the purchase price of the property was £188,000.

A Certificate of Title was completed and signed by MT on 24 April 2009 which was intimated to the Lender. This Certificate included a declaration to the effect that "We, the conveyancers named above give the Certificate of title based on our investigation of the title in accordance with the current CML Lenders Handbook for Scotland". The authorised signatory on the Certificate of Title was MT.

MT wrote to the agents for the sellers on 28 April 2009 confirming that the firm had that day remitted the sum of £141,000 to their client account in settlement of the balance of the purchase price of the property. The payment was conditional upon delivery of an executed Disposition in favour of the clients and the sellers' agents Letter of Obligation. On 5 May 2009 the sellers' agent delivered Dispositions relative to the property, being a Disposition by Company 6 in favour of the sellers and thereafter a Disposition by the sellers in favour of the client. Copies of the Dispositions were on the solicitors files. They revealed that the sellers' had taken title to the property on 24 April 2009 for a consideration of £119,200. MT wrote to the seller's agents on 20 May 2009 noting that "on perusing the settlement items we note that the date of entry is stated as 22 January when it should have been 28 April. We accordingly enclose a fresh engrossment for execution and return together with the

original Disposition for comparison purposes." An examination of the file revealed there was no response from the sellers agents received prior to the appointment of the Judicial Factor.

03. Purchase by Mr AH and Ms AI of Property 18

MT acted on behalf of Mr AH and Ms AI in connection with their purchase of Property 18. The inspection revealed that MT opened a file in respect of this matter on 16 March 2009. On that date MT wrote to Mr AH confirming that he would be pleased to act on his behalf and enclosing a copy Offer which had been submitted to the sellers' agents. The offer to purchase provided for a price of £135,000 which was subsequently revised by a formal letter from the sellers' agents to a figure of £125,000. A review of the file revealed a CML disclosure of incentives form dated 3 March 2009. This had been signed by Mr V who was designed as a Director of Company 2. It provided that the incentives comprised £2,500 cashback and £1,000 in legal fees had been offered to the client.

Loan instructions were issued to the firm on 15 April 2009 by Cheltenham and Gloucester plc. The loan instructions provided "On behalf of the Lender, Lloyds TSB Bank plc, we are pleased to instruct you in connection with the above C&G mortgage advance. Lloyds TSB has adopted the CML Lenders Handbook for Scotland and you are therefore required to act in accordance with the instructions contained in it. General instructions and guidance are contained in part 1 of the handbook and provisions which are specific to the C&G Mortgage including details of who you should contact with any queries are contained in part 2". The Lenders instructions also provide that the loan had been agreed on the understanding that the purchase price of the property was £125,000.

A review of the solicitor's file revealed an attendance note dated 23 April 2009 which recorded "MT attendance with client. Taking instructions, explaining nature and effect of Standard Security and noting their understanding of same and having same signed. Obtaining confirmation that the deposit funds were paid direct to Company 2 (Seller) who were also to be responsible for payment of our fees and outlays and that

the loan funds should be used as a balancing payment of P/P. Confirming instructions to settle when funds are available."

The Certificate of Title was completed and signed by MT on 24 April 2009. The Certificate included a declaration that, "We, the conveyancers named above give the Certificate of Title based on our investigation of the title in accordance with the current CML Lenders Handbook for Scotland". The authorised signatory on the Certificate of Title was MT.

MT wrote to the sellers' agents on 29 April 2009 confirming that the firm had that day remitted the sum of £93,750 to their client account in settlement of the balance of the purchase price of the property. The payment was conditional upon inter alia delivery of an executed Disposition in favour of the clients and the sellers' agents Letter of Obligation. The sellers' agents duly delivered on 5 May 2009 Dispositions relative to the property being firstly by Company 6 in favour of the sellers and by the sellers in favour of the clients. Copies of the executed Dispositions were on the solicitor's file. They revealed that the sellers had taken title to the property on 24 April 2009 for a consideration of £85,000. The clients took title from the sellers on 28 April 2009.

A review of the client ledger maintained by MT in respect of the transaction disclosed that the only funds which passed through the firm's client account were amount of the loan from the Lender and the various fees which were incurred. There was no evidence that the balance of the purchase price was at any stage under the control of the solicitor.

04. Purchase by Mr X of Property 15

MT acted on behalf of the client Mr X in connection with his purchase of property 15. MT opened a file in respect of this matter on or around 21 April 2009. An Offer to purchase was submitted by MT to the sellers' agent on 24 April 2009. The price was stated to be £151,000. A review of the file revealed a disclosure of incentives form dated 3 March 2009. This had been signed by Mr V, a Director of Company 2. The

form revealed incentives comprising £2,500 cashback and £1,000 legal fees had been offered to the client.

Loan instructions were issued to the firm on 23 April 2009 by Cheltenham & Gloucester plc (a division of Lloyds TSB Bank plc). The loan instructions provided "On behalf of the Lender, Lloyds TSB Bank plc, we are pleased to instruct you in connection with the above C&G mortgage advance. Lloyds TSB has adopted the CML Lenders Handbook for Scotland and you are therefore required to act in accordance with the instructions contained in it. General instructions and guidance are contained in part 1 of the handbook and provisions which are specific to C&G Mortgages including details of who you should contact with any queries are contained in part 2." The offer of loan itself set out that the proposed mortgage loan of £98,150 was based on a purchase price or estimate of the property's value of £151,000.

A review of the file maintained by MT revealed the existence of two cheques ostensibly written in favour of the sellers by the client. One was for £37,750 and the other was for £37,500. Each cheque was dated 6 April 2009.

A review of the solicitor's file revealed the existence of an attendance note dated 23 April 2009 which recorded "MT attendance with client. Taking instructions to conclude missives. Considering loan instructions, explaining nature and effect of Standard Security and noting his understanding of same and having same signed. Obtaining confirmation that deposit funds were paid direct to Company 2 (Seller) who were also to be responsible for payment of our fees and outlays and that the loan funds should be used as a balancing payment of p/p. Confirming instruction to settle when funds are available."

The Certificate of Title was completed and signed by the solicitors on 24 April 2009. The Certificate of Title included a declaration to the effect that "We, the conveyancers named above give the Certificate of Title based on our investigation of the title in accordance with the current CML Lenders Handbook for Scotland". The authorised signatory on the Certificate of Title was MT.

The solicitor wrote to the sellers' agents on 28 April 2009 confirming that the firm had that day remitted the sum of £98,150 to their client account in settlement of the balance of the purchase price of the property. The payment was noted to be conditional upon inter alia delivery of an executed Disposition in favour of the client and the sellers' agent's Letter of Obligation. The sellers' agents duly delivered on 5 May 2009, Dispositions relative to the property; firstly, a Disposition by Company 6 in favour of the sellers and then a Disposition by the sellers in favour of the client. Copies of the executed Dispositions were on MT's file. It revealed that the sellers had taken title to the property on 24 April 2009 for a consideration of £94,600. The client took title from the seller on 28 April 2009.

A review of the client ledger maintained by MT in respect of transaction disclosed that the only funds which passed through the firm's client account were the amount of the loan from the Lender and the various fees which were incurred. There was no evidence that the balance of the purchase price was at any stage under control of the solicitor.

05. Purchase by Mr AJ of Property 19

MT acted on behalf of the client, Mr AJ in connection with his purchase of Property 19. The file maintained by MT in respect of this matter was opened on 16 March 2009. On that date MT wrote to the client confirming that he would be pleased to act on his behalf and enclosed a copy of an Offer to purchase the subjects which had been submitted to the sellers' agents. A review of the file revealed a CML disclosure incentives form dated 3 March 2009. This had been signed by Mr V who was designed as a director of Company 2. The form provided that the agreed purchase price for the property was £164,500. The incentives comprised £2,500 cashback and £1,000 legal fees.

Loan instructions were issued to the firm on 8 April 2009 by Cheltenham & Gloucester plc (a division of Lloyds TSB Bank plc). The loan instructions provided "On behalf of the Lender. Lloyds TBS Bank plc, we are pleased to instruct you in connection with the above C&G mortgage advance. Lloyds TSB has adopted the CML Lenders Handbook for Scotland and you are therefore required to act in

accordance with the instructions contained in it. General instructions and guidance are contained in part 1 of the handbook and provisions which are specific to C&G Mortgages including details of who you should contact with any queries are contained in part 2". The instructions also provided that the loan had been agreed on the understanding that the purchase price of the property was £164,500.

A review of the file maintained by MT revealed an Attendance Note on MT's file dated 23 April 2009 recorded "MT attendance with client. Taking instructions to conclude missives. Considering loan instructions, explaining nature and effect of Standard Security and noting his understanding of same and having same signed. Obtaining confirmation that deposit funds were paid direct to Company 2 (Seller) who were also to be responsible for payment of our fees and outlays and that the loan funds should be used as a balancing payment of P/P. Confirming instructions to settle when funds are available."

The Certificate of Title was completed and signed by MT on 24 April 2009. The Certificate included a declaration to the effect that "We the conveyancers named above give the Certificate of Title based on our investigation of the title in accordance with the current CML Lenders Handbook for Scotland". The authorised signatory on the Certificate of Title was MT.

The solicitors wrote to the sellers' agent on 28 April 2009 confirming that the firm had that day remitted the sum of £123,375 to their client account in settlement of the balance of the purchase price of the property. The payment was noted to be conditional upon inter alia delivery of an executed Disposition in favour of the client and the sellers' agent's Letter of Obligation. The sellers' agents duly delivered on 5 May 2009 Dispositions relative to the property; firstly, by Company 6 in favour of the sellers and then a Disposition by the sellers in favour of the client. Copies of the executed Dispositions were on the file maintained by MT. They revealed that the sellers had taken title to the property on 24 April 2009 for a consideration of £104,800. The client took title from the sellers on 28 April 2009.

A review of the client ledger maintained by MT in respect of the transaction revealed that the only funds which passed through the firm's client account was the amount of

the loan from the Lender and the various fees which were incurred. There was no evidence that the balance of the purchase price was at any stage under the control of the solicitor.

06. Purchase by Ms T of Property 14

MT acted on behalf of the client, Ms T in connection with her purchase of Property 14. The file maintained by MT in respect of this matter was opened on 16 March 2009. On that date MT wrote to the client confirming that he would be pleased to act on her behalf and enclosed a copy of an Offer to purchase the subjects which had been submitted to the sellers' agents. A review of the file revealed a CML disclosure of incentives form dated 18 March 2009. This had been signed by Mr V who was designed as a Director of Company 2. The form revealed that the agreed purchase price of the property was £152,000. A discount of £24,185 had been agreed on the list price of £176,185. Incentives comprising £2,500 cashback and £1,000 legal fees.

An attendance note prepared by MT dated 26 March 2009 recorded "MT attendance with client. Noting that she wished to purchase the subjects at an agreed price of £152,000 part of which would be funded from inherited money and that she was obtaining a loan from RBS for £114,000. The balance of the deposit funds were to be paid by her to the seller (Company 2) who would also pay our fees and outlays. As she was an air hostess and was out of the country often she grated a Power of Attorney in my favour lest she was abroad when settlement became due so that I could execute the Standard Security on her behalf. Explaining nature and effect of Standard Security. Taking instructions to conclude Missives, provided loan instructions were in order. Confirming instructions to settle when funds available".

MT wrote to the Royal Bank of Scotland plc on 7 April 2009 confirming that the client would be providing the deposit funds for the purchase from inherited money which she had received and confirmed having seen evidence of the funds in question being due to the client.

Loan instructions were issued to the firm on 17 April 2009 by the Royal Bank of Scotland plc. These instructions provided as follows "We the Royal Bank of Scotland

plc have agreed to make available a loan of £144,000 to Miss T in respect of the above property and you are invited to act on our behalf in this transaction. If you are unable to accept the instructions for any reason please contact us immediately and return the enclosures. You are instructed in accordance with the CML Lender Handbook for Scotland (including our part 2 instructions). The current edition is only available on the CML website". The Lender's instructions provided that the loan was based on a purchase price of £152,000.

The Certificate of Title was completed and signed by MT on 24 April 2009. The Certificate included a declaration in terms of which MT confirmed to the Lender that:-

> (a) We have investigated title to the property in accordance with the bank's instructions set out in parts 1 and 2 of the Lenders handbook issued by the Council of Mortgage Lenders and that any other requirements of the bank and the borrower has acquired or will acquire on settlement a good and marketable title which is free of defect other than is detailed on the reverse hereof but which will constitute good security to the bank and may safely be accepted by the bank for mortgage purposed … (d) if the purpose of the loan is to assist in the purchase of a property the price is as stated in the offer of loan, the purchase monies including any deposit will pass through out firm's client account and will be paid in full to the sellers' solicitors. All of the information in this Certificate of Tile is correct and the bank may rely on the accuracy of each and every statement".

The Certificate of Title also provided that "We hereby undertake to the bank (1) to hold the funds comprising the loan strictly to the order of the bank and to apply them only when the borrower has provided us with sufficient cleared funds in order to complete the transaction and only then in order to secure the first ranking Standard security of the property in favour of the bank (2) to comply fully with the instructions and any other requirements of the bank both before and after settlement".

MT wrote to the sellers' agent on 28 April 2009 confirming that the firm had that day remitted the sum of £133,970 to their client account in settlement of the balance of the purchase price of the property. The payment was conditional upon delivery of an executed Disposition in favour of the client and the sellers' agent's Letter of Obligation. The sellers' agent duly delivered on 5 May 2009 Dispositions relative to the property; firstly, by Company 6 in favour of the sellers and secondly by the sellers in favour of the client. A copy of the draft Disposition in favour of the sellers showed that the seller had not yet taken title to the property as at 20 March 2009 with a proposed consideration being £95,200.

A review of MT's file revealed a copy of a cheque ostensibly written in favour of the sellers by a company called Company 5 Go Limited for £18,000 dated 8 April 2009. Elsewhere on the file there was a letter to MT from his client dated 20 March 2009 which stated "I Ms T have deposited the amount of £38,000 which is my inheritance into Company 2's bank account. The deposit is for Property 14".

MT wrote to the client on 8 May 2009. The letter provided "I understand that you will be back in the country some time next week. I confirm that the purchase settled on 28 April as I had received both the loan funds and also your inherited/invested funds from Mr S. The keys will be available from the site office when you return and should you have any difficulty in this respect, you should let me know immediately. Perhaps you could phone me in any event on your return as you may wish to consider revoking the Power of Attorney that you granted to me as there would seem to be no further need for same".

A review of the firm's ledger revealed that in addition to the loan funds received from the Lender the sum of £20,000 was received. The narrative read "From Mr S re Royal Bank transfer (invested funds held by Mr S I/T for Ms T)". These monies were applied to the balance of the purchase price paid by the firm to the seller's agents. There was no evidence that the remainder of the balance of the purchase price was at any stage under the control of the solicitor.

07. Purchase by Mr U of Property 5

MT acted on behalf of the client Mr U in connection with his purchase of Property 5. MT opened a file in respect of this matter on or about 16 March 2009. On that date MT wrote to the client confirming that he would be pleased to act on his behalf and enclosed a copy of an offer to purchase the subjects which had been submitted to the sellers' agents. A CML disclosure of incentives form on the file executed on 3 March 2009 by Mr V who was designed as a director of Company 2 noted that the agreed purchase price of the property was £135,000 and that the incentives comprising £2,500 cash back and £1,000 legal fees had been offered to the client.

Loan instructions were issued to the firm on 3 April 2009 by Royal Bank of Scotland plc. Those instructions provided "We the Royal Bank of Scotland plc have agreed to make available a loan of £101,250 to Mr U in respect of the above property and you are invited to act on our behalf in this transaction. If you are unable to accept the instructions for any reason please contact us immediately and return the enclosures. You are instructed in accordance with the CML Lenders Handbook for Scotland (including our part 2 instructions), the current edition is only available on the CML website. The loan instructions set out that the loan was based on a purchase price of £135,000.

A review of the file maintained by MT revealed an attendance note dated 23 April 2009 which recorded "MT attendance with client. Taking instructions to conclude Missives. Considering loan instructions, explaining nature and effect of Standard Security and noting his understanding of same and having same signed. Obtaining confirmation that the deposit funds were paid direct to Company 2 (seller) who were also to be responsible for payment of our fees and outlays and that loan funds should be used as balancing payment of P/P. Confirming instructions to settle when funds available"

The Lender's *pro forma* Certificate of Title was completed and signed by the solicitor on 24 April 2009. The Certificate of Title included a declaration in terms of which MT confirmed to the Lender on behalf of the firm that the Certificate of Title was completed and signed by MT on 24 April 2009. The Certificate included a declaration in terms of which MT confirmed to the Lender that:-

(a) We have investigated title to the property in accordance with the bank's instructions set out in parts 1 and 2 of the Lenders handbook issued by the Council of Mortgage Lenders and that any other requirements of the bank and the borrower has acquired or will acquire on settlement a good and marketable title which is free of defect other than is detailed on the reverse hereof but which will constitute good security to the bank and may safely be accepted by the bank for mortgage purposed … (d) if the purpose of the loan is to assist in the purchase of a property the price is as stated in the offer of loan, the purchase monies including any deposit will pass through out firm's client account and will be paid in full to the sellers' solicitors. All of the information in this Certificate of Tile is correct and the bank may rely on the accuracy of each and every statement".

The Certificate of Title also provided that "We hereby undertake to the bank (1) to hold the funds comprising the loan strictly to the order of the bank and to apply them only when the borrower has provided us with sufficient cleared funds in order to complete the transaction and only then in order to secure the first ranking Standard security of the property in favour of the bank (2) to comply fully with the instructions and any other requirements of the bank both before and after settlement".

MT wrote to the sellers' agents on 28 April 2009 confirming that the firm had that day remitted the sum of £121,220 to their client account in settlement of the balance of the purchase price of the property. The payment was conditional upon inter alia delivery of an executed Disposition in favour of the client and the sellers' agents duly delivered on 5 May 2009 Dispositions relative to the property firstly by Company 5 in favour of the sellers and then by the sellers in favour of the client. A copy of the Disposition in favour of the sellers was on the file. This revealed that they had yet to take title to the property as at 20 March 2009 with the proposed consideration being £85,000.

The Lender wrote to the firm, which by then had a Judicial Factor appointed, on 22 September 2009 noting that they had discovered that their Standard Security had not

yet been registered and inviting the Judicial Factor to investigate matters immediately and to notify their professional indemnity insurers.

A review of the firm's ledger revealed that in addition to the loan funds received from the Lender the sum of £20,000 was received. The entry was noted as follows "From Mr S re Royal Bank transfer (invested funds held by Mr S for Mr U)". These sums were applied to the balance of the purchase price paid by the firm to the sellers' agents. There was no evidence that the remainder of the balance of the purchase price was at any stage under the control of the solicitor.

08. Purchase by Mr W of Property 7

MT was instructed by the client, Mr W to act on his behalf in connection with the purchase of Property 7. MT opened a file in respect of this matter on or about 21 April 2009. A review of the file revealed a CML disclosure of incentives form dated 30 March 2009 which had been signed by Mr V who was designed as a director Company 2. This form noted that the agreed purchase price of the property was £120,000. A discount of £37,175 had been applied. Incentives comprising £2,500 cashback and £1,000 legal fees had been offered to the client.

Loan instructions were issued to MT on 17 April 2009 by the Royal Bank of Scotland plc. Those instructions provided "We the Royal Bank of Scotland plc have agreed to make available a loan of £90,000 to Mr W in respect of the above property and you are invited to act on our behalf in this transaction. If you are unable to accept the instructions for any reason please contact us immediately and return the enclosures. You are instructed in accordance with the CML Lenders Handbook for Scotland including our part 2 instructions. The current edition is only available on the CML website". The Lender's instructions set out that the loan was based on a purchase price of £127,500.

A review of the file maintained by MT revealed that existence of an attendance note dated 23 April 2009 which recorded "MT attendance with client. Taking instructions to conclude Missives. Considering loan instructions, explaining nature and effect of Standard Security and noting his understanding of same, and having same signed.

Obtaining conformation that deposit funds were paid direct to Company 2 (seller) who were also to be responsible for payment of our fees and outlays and that the loan funds should be used as balancing payment of P/P. Confirming instructions to settle when funds available".

The Lender's *pro forma* Certificate of Title was completed and signed by the solicitor on 24 April 2009. The Certificate of Title included a declaration in terms of which MT confirmed to the Lender on behalf of the firm that the Certificate of Title was completed and signed by MT on 24 April 2009. The Certificate included a declaration in terms of which MT confirmed to the Lender that:-

> (a) We have investigated title to the property in accordance with the bank's instructions set out in parts 1 and 2 of the Lenders handbook issued by the Council of Mortgage Lenders and that any other requirements of the bank and the borrower has acquired or will acquire on settlement a good and marketable title which is free of defect other than is detailed on the reverse hereof but which will constitute good security to the bank and may safely be accepted by the bank for mortgage purposed … (d) if the purpose of the loan is to assist in the purchase of a property the price is as stated in the offer of loan, the purchase monies including any deposit will pass through out firm's client account and will be paid in full to the sellers' solicitors. All of the information in this Certificate of Tile is correct and the bank may rely on the accuracy of each and every statement".

The Certificate of Title also provided that "We hereby undertake to the bank (1) to hold the funds comprising the loan strictly to the order of the bank and to apply them only when the borrower has provided us with sufficient cleared funds in order to complete the transaction and only then in order to secure the first ranking Standard security of the property in favour of the bank (2) to comply fully with the instructions and any other requirements of the bank both before and after settlement".

MT wrote to the sellers' agents on 20 April 2009 confirming that the firm had that day remitted the sum of £89,970 through their client account in settlement of the

balance of the purchase price of the property. The payment was noted to be conditional upon inter alia delivery of an executed Disposition in favour of the client and the sellers' agent's Letter of Obligation. The sellers' agents duly delivered on 5 May 2009 Dispositions relative to the property, firstly, by Company 5 in favour of the sellers and by the sellers in favour of the client. A copy of the Disposition in favour of the sellers themselves on the file revealed that they had yet to take title to the property as at 27 March 2009 with the proposed consideration being £84,400.

The Lender wrote to the firm which by then had a Judicial Factor appointed on 24 September 2009. That letter noted that the Lender had discovered their Standard Security had not yet been registered. The firm was invited to investigate matters immediately and to notify their professional indemnity insurers.

A review of the firm's ledger for the transaction disclosed that the only funds which passed through the firm's client account were the amount of the loan from the Lender and the various fees which were incurred. There was no evidence that the balance of the purchase price was at any stage under the control of the solicitor.

09. Purchase by Mr X of Property 8

MT acted on behalf of the client Mr X in connection with his purchase Property 8. MT opened a file in respect of this matter on 16 March 2009. On that date MT wrote to the client confirming that he would be pleased act on his behalf and enclosed a copy of an offer to purchase the subjects which had been submitted to the sellers' agents. The offer was initially for £151,000 and subsequently amended in terms of the Missives to that of £150,000.

Loan instructions were issued to the firm on 17 April 2009 by the Royal Bank of Scotland Plc. Those instructions provided as follows "We the Royal Bank of Scotland plc have agreed to make available a loan of £112,500 to Mr X in respect of the above property and you are invited to act on our behalf in this transaction. If you are unable to accept the instructions for any reason please contact us immediately and return the enclosures. You are instructed in accordance with the CML Lenders Handbook for Scotland (including our part 2 instructions), the current edition is only available on

the CML website". The Letter of Instruction set out that the loan was based on a purchase price of £195,000 albeit the offer of loan itself noted the estimated value of the property was £150,000.

A review of the file maintained by MT revealed an attendance note dated 23 April 2009 which recorded "MT attendance with client. Taking instructions to conclude Missives. Considering loan instructions, explaining nature and effect of Standard Security and noting his understanding of same and having same signed. Obtaining confirmation that deposit funds were paid direct to Company 2 (seller), who were also to be responsible for payment of out fees and outlays and that the loan funds should be used as balancing payment of P/P. Confirming instructions to settle when funds available".

The Lender's *pro forma* Certificate of Title was completed and signed by the solicitor on 24 April 2009. The Certificate of Title included a declaration in terms of which MT confirmed to the Lender on behalf of the firm that the Certificate of Title was completed and signed by MT on 24 April 2009. The purchase price on the Certificate of Title was recorded as £151,000. The Certificate included a declaration in terms of which MT confirmed to the Lender that:-

> (a) We have investigated title to the property in accordance with the bank's instructions set out in parts 1 and 2 of the Lenders handbook issued by the Council of Mortgage Lenders and that any other requirements of the bank and the borrower has acquired or will acquire on settlement a good and marketable title which is free of defect other than is detailed on the reverse hereof but which will constitute good security to the bank and may safely be accepted by the bank for mortgage purposes … (d) if the purpose of the loan is to assist in the purchase of a property the price is as stated in the offer of loan, the purchase monies including any deposit will pass through our firm's client account and will be paid in full to the sellers' solicitors. All of the information in this Certificate of Tile is correct and the bank may rely on the accuracy of each and every statement".

The Certificate of Title also provided that "We hereby undertake to the bank (1) to hold the funds comprising the loan strictly to the order of the bank and to apply them only when the borrower has provided us with sufficient cleared funds in order to complete the transaction and only then in order to secure the first ranking Standard security of the property in favour of the bank (2) to comply fully with the instructions and any other requirements of the bank both before and after settlement".

A review of the file revealed that MT wrote to the sellers' agent on 28 April 2009 confirming that the firm had that day remitted the sum of £112,470 to their client account in settlement of the balance of the purchase price of the property. The payment was noted to be conditional upon inter alia delivery of an executed Disposition in favour of the client and the seller's agent's Letter of Obligation. The sellers' agents duly delivered on 5 May 2009 Dispositions relative to the property firstly by Company 5 in favour of the sellers and by the sellers in favour of the client. A copy of the Disposition in favour of the sellers themselves revealed that they had yet to take title to the property as at 20 March 2009 and that proposed consideration was £94,000.

A review of the file maintained by MT revealed copies of two cheques ostensibly written in favour of the sellers by the client, one for £37,750 and the other for, £27,500. Both were dated 6 April 2009.

The firm's ledger was examined which revealed that the only funds which passed through the firm's client account were the amount of the loan from the Lender and the various fees which were incurred. There was no evidence that the balance of the purchase price was at any stage under the control of the solicitor.

10. Purchase by Mr Y of Property 9

MT was instructed by the client, Mr Y to act on his behalf in connection with the purchase of Property 9. The file of MT was opened on 21 April 2009. The solicitor wrote to the Royal Bank of Scotland plc confirming that the client would be providing

the deposit funds for the purchase from inheritance money which he had received and confirmed having seen evidence of the funds in question being due to the client.

Loan instructions were issued to MT on 20 April 2009 by the Lender. Those instructions provided "We the Royal Bank of Scotland Plc have agreed to make available a loan of £144,750 to Mr Y in respect of the above property and you are invited to act on our behalf in this transaction. If you are unable to accept the instructions for any reason please contact us immediately and return the enclosures. You are instructed in accordance with the CML Lenders Handbook for Scotland (including our part 2 instructions). The current edition is only available on the CML website". The Letter of Instruction set out the loan was based on a purchase price of £153,000.

A review of the file maintained by MT revealed an attendance note dated 23 April 2009 which recorded that "MT attendance with client. Taking instructions to conclude Missives. Considering loan instructions, explaining the nature of same and effect of Standard Security and noting his understanding of same, and having same signed. Obtaining confirmation that deposit funds were paid direct to Company 2 (seller), who were also to be responsible for payment of our fees and outlays and that the loan funds should be used as balancing payment of P/P. Confirming instructions to settle when funds available".

The review of the file revealed no Certificate of Title on the solicitor's file bit it was clear that the loan advance was received from the Lender. As monies were received from The Royal Bank of Scotland plc, it is reasonable to assume that a Certificate of Title was produced by the Lender in identical terms to these findings.

The solicitors wrote to the seller's agents on 20 April 2009 confirming that the firm had that day remitted the sum of £144,720 to their client account in settlement of the balance of the purchase price of the property. The payment was noted to be conditional upon inter alia delivery of an executed Disposition in favour of the client and the seller's agent's Letter of Obligation. The sellers' agents duly delivered on 5 May 2009 Disposition relative to the property, firstly, by Company 5 in favour of the sellers and the sellers in favour of the client. The copy of the draft Disposition in

favour of the sellers themselves was on the file. This revealed that they had yet to take title for the property as at 27 March 2009 with the proposed consideration being £95,800.

A review of the firm's ledger for the transaction disclosed that the only funds which passed through the firm's client account was the amount of the loan from the Lender and the various fees which were incurred. There was no evidence that the balance of the purchase price was at any stage under the control of the solicitor.

11. Purchase by Mr Z and Mr AA of Property 10

MT was instructed by the clients, Mr Z and Mr AA to act on their behalf in connection with the purchase of Property 10. MT's file on this matter was opened on 16 March 2009. On that date MT wrote separately to each of the clients confirming that he would be pleased to act on their behalf and enclosed a copy of an offer to purchase the subjects which had been submitted to the sellers' solicitors. The price on the offer was for £152,000. This was subsequently amended in the missives to £150,000. A CML disclosure of incentive form was on the file. This was executed on 3 March 2009 by Mr V who was designed as a Director of Company 2. It was noted that incentives comprised £2,500 cashback and £1,000 legal fees.

Loan instructions were issued to the firm on 22 April 2009 by the Royal Bank of Scotland plc. Those instructions provided insofar as relevant as follows: - "We the Royal Bank of Scotland plc have agreed to make available a loan of £93,750 to Mr Z and Mr AA in respect of the above property and you are invited to act on our behalf in this transaction. If you are unable to accept the instructions for any reason please contact us immediately and return the enclosures. You are instructed in accordance with the CML Lenders Handbook for Scotland (including our part 2 instructions), the current edition is only available on the CML website". The loan instructions further set out the loan was based on a purchase price of £125,000.

A review of the file maintained by MT revealed an attendance note dated 23 April 2009 which recorded, "MT attendance with client. Taking instructions to conclude missives. Considering loan instructions, explaining nature and effect of Standard

Security and noting their understanding of same and having same signed. Obtaining confirmation that deposit funds were paid direct to Company 2 (seller) who were also to be responsible for payment of our fees and outlays and that the loan funds should be used as balancing payment of P/P. Confirming instructions to settle when funds available.

The Certificate of Title was completed and signed by MT on 24 April 2009. The Certificate included a declaration in terms of which MT confirmed to the Lender that:-

> (a) We have investigated title to the property in accordance with the bank's instructions set out in parts 1 and 2 of the Lenders handbook issued by the Council of Mortgage Lenders and that any other requirements of the bank and the borrower has acquired or will acquire on settlement a good and marketable title which is free of defect other than is detailed on the reverse hereof but which will constitute good security to the bank and may safely be accepted by the bank for mortgage purposed … (d) if the purpose of the loan is to assist in the purchase of a property the price is as stated in the offer of loan, the purchase monies including any deposit will pass through out firm's client account and will be paid in full to the sellers' solicitors. All of the information in this Certificate of Tile is correct and the bank may rely on the accuracy of each and every statement".

The Certificate of Title also provided that "We hereby undertake to the bank (1) to hold the funds comprising the loan strictly to the order of the bank and to apply them only when the borrower has provided us with sufficient cleared funds in order to complete the transaction and only then in order to secure the first ranking Standard security of the property in favour of the bank (2) to comply fully with the instructions and any other requirements of the bank both before and after settlement".

MT wrote to the seller's agents on 20 April 2009 confirming that the firm had that day remitted the sum of £123,720 to their client account in settlement of the balance of the purchase price of the property. The payment was noted to be conditional upon

inter alia delivery of an executed Disposition in favour of the client and the seller's Letter of Obligation. The seller's agents duly delivered on 5 May 2009 Dispositions relative to the property, firstly, by Company 5 in favour of the sellers and by the sellers in favour of the client. A copy of the Disposition in favour of the sellers themselves was on the file. This revealed that they had yet to take title to the property as at 20 March 2009 and the proposed consideration was £80,200.

A further review of the file maintained by MT revealed the existence of copy cheques ostensibly written in favour of the sellers by "Company 4 for £1,250 dated 2 April 2009. Elsewhere on the file these was a letter to MT from the clients dated 20 March 2009 which stated "We Mr Z & Mr AA have deposited the amount of £38,112 which is our inheritance into Company 2 bank account. The deposit is for Property 11.

The Lender wrote to the firm which by then had a judicial factor appointed on 22 September 2009. This letter noted that the Lender had discovered their Standard Security had not yet been registered and invited them to investigate matters immediately and to notify their professional indemnity insurers.

A review of the firm's ledger revealed that in addition to the loan funds received from the Lender, the sum of £30,000 was received from Mr S re Royal Bank transfer (invested funds held by Mr S i/t for Mr Z). These sums were applied to the balance of the purchase price paid by the firm to the seller's agents. There was no evidence of the remainder of the balance of the purchase price was at any stage under the control of the solicitor.

12. Purchase by Mr AB of Property 12

MT acted on behalf of the client Mr AB in connection with his purchase of Property 12. MT opened a file in respect of this matter on 16 March 2009. On that date MT wrote to the client confirming that he would be pleased to act on his behalf and enclosed a copy of an offer to purchase the subjects which had been submitted to the seller's agents. The offer disclosed a price of £180,000.

Loan instructions were issued to the firm on 22 April 2009 by the Royal Bank of Scotland plc. Those instructions provided insofar as relevant as follows, "We the Royal Bank of Scotland Plc have agreed to make available a loan of £142,500 to Mr AB in respect of the above property and you are invited to act on our behalf in this transaction. If you are unable to accept the instructions for any reason please contact us immediately and return the enclosures. You are instructed in accordance with the CML Lenders Handbook for Scotland (including our part 2 instructions). The current edition is only available on the CML website". Whereas a review of the file revealed no CML disclosure incentives the valuation report on the file made reference to sales incentives of £35,895 having been disclosed to the Lender and having been taken into consideration in the offer of loan.

A review of the file maintained by MT revealed an attendance note dated 23 April 2009 which recorded "MT attendance with client. Taking instructions to conclude Missives, considering loan instructions and explaining nature and effect of Standard Security and noting his understanding of same having same signed. Obtaining confirmation the deposit funds were paid direct to Company 2 (seller) who were also to be responsible for payment of our fees and outlays and that the loan funds should be used as balancing payment of P/P. Confirming instructions to settle when funds available."

The Certificate of Title was completed and signed by MT on 24 April 2009. The Certificate included a declaration in terms of which MT confirmed to the Lender that:-

(a) We have investigated title to the property in accordance with the bank's instructions set out in parts 1 and 2 of the Lenders handbook issued by the Council of Mortgage Lenders and that any other requirements of the bank and the borrower has acquired or will acquire on settlement a good and marketable title which is free of defect other than is detailed on the reverse hereof but which will constitute good security to the bank and may safely be accepted by the bank for mortgage purposes … (d) if the purpose of the loan is to assist in the purchase of a property the price is as stated in the offer of

> loan, the purchase monies including any deposit will pass through our firm's client account and will be paid in full to the sellers' solicitors. All of the information in this Certificate of Tile is correct and the bank may rely on the accuracy of each and every statement".

The Certificate of Title also provided that "We hereby undertake to the bank (1) to hold the funds comprising the loan strictly to the order of the bank and to apply them only when the borrower has provided us with sufficient cleared funds in order to complete the transaction and only then in order to secure the first ranking Standard security of the property in favour of the bank (2) to comply fully with the instructions and any other requirements of the bank both before and after settlement".

The solicitor wrote to the seller's agents on 25 April 2009 confirming that the firm had that day remitted the sum of £142,470 to their client account in settlement of the balance of the purchase price of the property. They payment was noted to be conditional upon inter alia delivery of an executed Disposition in favour of the client and the seller's agents Letter of Obligation. The seller's agents duly delivered on 5 May 2009 Dispositions relative to the property, firstly, by Company 5 in favour of the seller and by the seller in favour of the client. A copy Disposition in favour of the seller itself was on the file showed that they had yet to take title to the property as at 20 March 2009 and with the proposed consideration being £120,400.

A review of the file maintained by MT revealed a copy of a cheque ostensibly written in favour of the seller by the client for £47,500 dated 24 April 2009. A review of MT's ledger for the transaction disclosed that the only funds which passed through the firm's client account were the amount of the loan from the Lender and the various fees which were incurred. There was no evidence of the balance that the purchase price was at any stage under the control of the solicitor.

13. Purchase by Mr AC and Ms AD of Property 13

MT was instructed to act on behalf of the clients, Mr AC and Ms AD in connection with their purchase of Property 13. MT opened a file on this matter on 21 April 2009. A review of the file revealed a CML disclosure of incentives form. This was executed

on 18 March 2009 by Mr V who was designed as a Director of Company 2. It was noted that the agreed purchase price for the property was £185,000. A discount of £35,000 had been applied. A further incentive comprising £1,850 SDLT, £2,500 cashback and £1,000 legal fees had been offered to the clients.

Loan instructions were issued to the firm on 16 April 2008 by the Royal Bank of Scotland plc. Those instructions provided insofar as relevant as follows, "We the Royal Bank of Scotland Plc have agreed to make available a loan of £138, 750 to Ms AD and Mr AC in respect of the above property and you are invited to act on our behalf in this transaction. If you are unable to accept the instructions for any reason please contact us immediately and return the enclosures. You are instructed in accordance with the CML Lenders Handbook for Scotland (including our part 2 instructions). The current edition is only available on the CML website". The Lender's instructions further stated that the loan was based on a purchase price of £188,000. There was noted elsewhere on the offer of loan an estimated value of £185,000 which corresponded with the formal valuation report.

A review of the file maintained by MT revealed an attendance note dated 23 April which recorded "MT attendance with client. Taking instructions to conclude Missives. Considering loan instructions, explaining the nature and effect of Standard Security and noting their understanding of same and having same signed. Obtaining confirmation that deposit funds were paid direct to Company 2 (seller) who were also to be responsible for payment of your fees and outlays and that the loan funds should be used as balancing payment of P/P. Confirming instructions to settle when funds available."

The Certificate of Title was completed and signed by MT on 24 April 2009. The Certificate included a declaration in terms of which MT confirmed to the Lender:-

(a) We have investigated title to the property in accordance with the bank's instructions set out in parts 1 and 2 of the Lenders handbook issued by the Council of Mortgage Lenders and that any other requirements of the bank and the borrower has acquired or will acquire on settlement a good and marketable title which is free of defect other

> than is detailed on the reverse hereof but which will constitute good security to the bank and may safely be accepted by the bank for mortgage purposes … (d) if the purpose of the loan is to assist in the purchase of a property the price is as stated in the offer of loan, the purchase monies including any deposit will pass through out firm's client account and will be paid in full to the sellers' solicitors. All of the information in this Certificate of Tile is correct and the bank may rely on the accuracy of each and every statement".

The Certificate of Title also provided that "We hereby undertake to the bank (1) to hold the funds comprising the loan strictly to the order of the bank and to apply them only when the borrower has provided us with sufficient cleared funds in order to complete the transaction and only then in order to secure the first ranking Standard security of the property in favour of the bank (2) to comply fully with the instructions and any other requirements of the bank both before and after settlement". The Certificate of Title also confirmed the purchase price as £185,000.

The solicitor wrote to the seller's agents on 28 April 2009 confirming that the firm had that day remitted the sum of £148,720 to their client account in settlement of the balance of the purchase price of the property. The payment was noted to be conditional upon inter alia delivery of an executed Disposition in favour of the client and the seller's agents Letter of Obligation. The seller's agent duly delivered on 5 May 2009 Dispositions relative to the property, firstly, by Company 5 in favour of the sellers and by the sellers in favour of the client. A copy of the draft Disposition in favour of the sellers itself on the file revealed that it had yet to take title to the property as at 27 March 2009 with the proposed consideration being £120,400.

The Lender wrote to the firm which by that time had a judicial factor appointed on 24 September 2009. The letter noted that the Lender had discovered that their Standard Security had not yet been registered and the firm was invited to investigate matters immediately and to notify their professional indemnity insurers.

A review of the firm's ledger revealed that in addition to the loan funds received from the Lender the sum of £10,000 was received "from Mr S, re Royal Bank transfer

(invested funds held by Mr S i/t for Mr AC/I Ms AD)". These sums were applied to the balance of the purchase price paid by the firm to the seller's agents. There is no evidence that the remainder of the balance of the purchase price was at any stage under the control of the solicitor.