

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

**FINDINGS**

**in Complaint**

**by**

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

**against**

**MANUS GERARD TOLLAND,  
formerly of 38 Eastwoodmains  
Road, Clarkston, Glasgow and  
now at 7 Causeyside Street, Paisley**

1. A Complaint dated 13 February 2013 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Manus Gerard Tolland, formerly of 38 Eastwoodmains Road, Clarkston, Glasgow and now at 7 Causeyside Street, Paisley (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed a procedural hearing to be heard in respect of the Complaint on 26 June 2013 and notice thereof was duly served on the Respondent.
4. When the case called on 26 June 2013 the Complainers were represented by their Fiscal, Paul Reid, Solicitor Advocate, Glasgow. The

Respondent was present and represented himself. The Tribunal directed that Answers be lodged within 14 days of that date and fixed a further procedural hearing for 23 July 2013.

5. On 23 July 2013 the Complainers were represented by their fiscal Paul Reid, Solicitor Advocate, Glasgow. The Respondent was neither present nor represented. The fiscal explained to the Tribunal that he had received correspondence from the Respondent indicating that he could not appear or obtain representation for this date. The Respondent had asked the fiscal to represent both parties at the hearing. Answers had been lodged on behalf of the Respondent raising a preliminary plea, based on mora, taciturnity and acquiescence. The Tribunal continued the Complaint to 23 August 2013 for a further procedural hearing and diet of debate. Parties were ordered to lodge written notes of argument with copy authorities and a Joint Minute of Admissions with agreed facts for that date. Subsequently, the fiscal identified difficulties with his availability for the date fixed, and the Tribunal agreed to amend the diet to 11 September 2013. Notices thereof were duly served on the parties.
6. When the Complaint called on 11 September 2013 the Complainers were represented by their fiscal Paul Reid, Solicitor Advocate, Glasgow. The Respondent was absent but was represented by Stephen Winter, Advocate, and Iain Robertson, Solicitor, Paisley. The fiscal drew the Tribunal's attention to a lengthy Minute of Amendment which had only been intimated to him on 9 September 2013. He also indicated to the Tribunal that no Joint Minute had been agreed in advance of the debate. The Fiscal moved the Tribunal to continue the case to a further diet of debate to allow clarification of whether or not evidence would require to be led. Mr Winter indicated that he thought that the debate could proceed on this date. After hearing full submissions from both parties, the Tribunal fixed a procedural hearing for 24 October 2013, to allow the fiscal to obtain and forward affidavits of potential witnesses to the Respondent and thereafter for the parties to consider whether the debate would proceed and whether evidence would require to be led.

7. On 24 October 2013 the Complainers were represented by their fiscal Paul Reid, Solicitor Advocate, Glasgow. The Respondent was absent but represented by Stephen Winter, Advocate, and Iain Robertson, Solicitor, Paisley. Parties intimated to the Tribunal that the evidence necessary for the debate to proceed could not be agreed and that evidence would require to be led. After hearing submissions from both parties, the Tribunal considered that a Proof before Answer was the appropriate procedure in this case. The fiscal asked the Tribunal for further time to lodge Answers to the Respondent's Minute of Amendment. Mr Winter indicated that he required to carry out further investigations. The Tribunal allowed the fiscal 21 days to lodge Answers, and parties a further 21 days to adjust the pleadings. A procedural hearing was fixed for 19 December 2013.
8. When the Complaint called on 19 December 2013 the Complainers were represented by their fiscal Paul Reid, Solicitor Advocate, Glasgow. The Respondent was absent but was represented by Iain Robertson, Solicitor, Paisley. The fiscal asked the Tribunal to formally allow the amendments that had been made to the Complaint and Answers and thereafter to allow the fully adjusted Record to be received. This motion was granted by the Tribunal. Parties indicated that a Joint Minute was still not concluded, but was likely to be before the next hearing. Mr Robertson confirmed that a specification previously lodged on behalf of the Respondent was not being insisted upon and was formally withdrawn. A full hearing was fixed for 3<sup>rd</sup> and 4<sup>th</sup> February 2014 for evidence to be led followed by a Debate.
9. At the hearing on 3 February 2014 the Complainers were represented by their fiscal Paul Reid, Solicitor Advocate, Glasgow. The Respondent was present and was represented by Stephen Winter, Advocate and Iain Robertson, Solicitor, Paisley. A Joint Minute of Admissions agreeing most of the facts, and some of the averments of duty and professional misconduct in the adjusted Record was placed before the Tribunal. As the fiscal confirmed that this plea was acceptable to him and the

Respondent tacitly withdrew his preliminary plea, no evidence required to be led and the Tribunal heard submissions from both parties.

10. The Tribunal found the following facts established;-

10.1 The Respondent was born 2<sup>nd</sup> September 1956. He was admitted as a solicitor on 16<sup>th</sup> January 1981. He was enrolled as a solicitor in the Register of Solicitors practising in Scotland on 3<sup>rd</sup> February 1981. From 1<sup>st</sup> July 1987 until 31<sup>st</sup> March 2004 he was a partner in the firm of Robertson & Ross, Solicitors, Paisley. Thereafter from 1<sup>st</sup> April 2004 until 31<sup>st</sup> March 2005, he was employed as a partner with the firm Ferguson Dewar, Solicitors, Glasgow. Thereafter from 1<sup>st</sup> November 2005 until 23<sup>rd</sup> April 2006 he was employed with the firm PSM Law Group. On 22<sup>nd</sup> May 2007 until 2<sup>nd</sup> July 2009, he was employed with the firm Lyons Laing Solicitors. From 13<sup>th</sup> June 2011 to date he has been employed as a Director of the solicitors Robertson & Ross Solicitors Limited.

10.2 Financial Compliance Inspection

The Financial Compliance Department of the Complainers conducted an inspection of the books, financial records and accounts of the former firm Lyon Laing, Solicitors, Greenock. As a consequence of that inspection, a number of matters of concern were identified which led to the appointment of a Judicial Factor ad interim on 28<sup>th</sup> May 2009 which appointment was made permanent on 2<sup>nd</sup> July 2009. This inspection revealed that the Respondent was employed as an assistant with the firm from May 2007 until 2<sup>nd</sup> July 2009. A shortfall in the client account became apparent some weeks after the appointment of the Judicial Factor. The employment of the Respondent was terminated on 28<sup>th</sup> May 2009.

- 10.3 The Council of Mortgage Lenders is described as a not for profit organisation. It is a trade association for the mortgage lending industry whose members account for approximately 95% of the UK residential mortgage lending. One of its aims is to endeavour to foster a favourable operating environment in the UK housing and mortgage market. The CML Lenders Handbook is published on its website and provided guidance for conveyancing solicitors in respect of general practice and procedure when dealing with a lending institution which is a member of the CML.
- 10.4 As a consequence of the aforesaid inspection, a number of matters of concern arose in connection with the conduct of the Respondent, in particular in relation to his failure to comply with his obligations in terms of the CML Lenders Handbook for Scotland in relation to a number of conveyancing transactions and as a consequence of his failure to maintain a standard of honesty and probity in his dealings with Lenders to his clients in certain conveyancing transactions..
- 10.5 A review of the files maintained by the Respondent revealed the existence of a letter dated 3<sup>rd</sup> March 2009 from a separate firm of solicitors. The letter was headed "Company 1, Sale of residential plots at Property 1". The letter went on to state "We refer to recent discussions between our Mr A and your Manus Tolland in connection with the above. As you are aware, our client's company intends to purchase 40 residential units from Company 2, 20 of which are to be acquired no later than 20<sup>th</sup> March, the remaining 20 no later than 27<sup>th</sup> March. Our client will sell each individual unit contemporaneously on the same day as acquisition and we understand that you shall be representing the purchasers in this regard. We therefore look forward to sight of your formal offer to purchase by return. In the meantime we enclose copies of the Dispositions to be granted in our client's favour in relation to the first tranche of 20 units (ie. those that

will settle no later than 27<sup>th</sup> March) we shall exhibit the draft Disposition and Deed of Restriction as and when available”.

10.6 Purchase by Mr B of Property 2

The Respondent acted on behalf of the client, Mr B in connection with his purchase of Property 2. The file maintained by the Respondent was opened on or around 16<sup>th</sup> March 2009. The Respondent wrote to the client confirming 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 solicitor. A CML disclosure of incentives form is on the file dated 3<sup>rd</sup> March 2009. This had been signed by a Mr C who was designed as a Director of Company 1. 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.

10.7 The client had secured lending from the Cheltenham & Gloucester plc, a division of Lloyds TSB Bank plc. Loan instructions were issued to the Respondent on 25<sup>th</sup> 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.

10.8 A review of the file revealed an attendance note prepared by the Respondent dated 23<sup>rd</sup> 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 1 (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.”

- 10.9 The Respondent completed the Certificate of Title on 24<sup>th</sup> 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 the Respondent

Further examination of the file revealed that the Respondent wrote to the seller’s agents on 28<sup>th</sup> April 2009 confirming that the firm 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<sup>th</sup> May 2009 Dispositions relative to the property, firstly by Company 2 in favour of the sellers and a Disposition by the sellers in favour of the client. Copies of the executed Dispositions on the Respondent’s file revealed that the sellers had taken title to the property on 24<sup>th</sup> April 2009 for a consideration of £103,600 and thereafter the client took title from the sellers on 28<sup>th</sup> April 2009.

- 10.10 A further review of the Respondent’s file revealed a copy of a cheque ostensibly written in favour of the sellers by the client for £40,625 dated 7<sup>th</sup> 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 the Respondent

#### 10.11 Purchase by Mr D of Property 3

The Respondent acted on behalf of Mr D in connection with his purchase of Property 3. The inspection revealed that the file maintained by the Respondent was opened on or about 16<sup>th</sup> March 2009. On that date the Respondent 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 seller's agents. The inspection also revealed a CML disclosure of incentives form dated 18<sup>th</sup> March 2009. This had been signed by a Mr C who was designed as a Director of Company 1. 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

10.12 Loan instructions were issued to the firm on 23<sup>rd</sup> March 2009 by Cheltenham & 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.

- 10.13 A Certificate of Title was completed and signed by the Respondent on 24<sup>th</sup> 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 the Respondent.
- 10.14 The Respondent wrote to the agents for the seller on 28<sup>th</sup> 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<sup>th</sup> May 2009 the sellers agents delivered Dispositions relative to the property, being a Disposition by Company 2 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<sup>th</sup> April 2009 for a consideration of £119,200. The Respondent wrote to the sellers agents on 20<sup>th</sup> May 2009 noting that “on perusing the settlement items we note that the date of entry is stated as 22<sup>nd</sup> January when it should have been 28<sup>th</sup> 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.
- 10.15 The client ledger maintained by the firm in respect of this transaction disclosed that the only funds which passed through the firms 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.

10.16 Purchase of Mr E and Ms F of Property 4

The Respondent acted on behalf of Mr E and Ms F in connection with their purchase of Property 4. The inspection revealed that the Respondent opened a file in respect of this matter on 16<sup>th</sup> March 2009. On that date the Respondent wrote to Mr E confirming that he would be pleased to act on his behalf and enclosed 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<sup>rd</sup> March 2009. This had been signed by Mr C who was designed as a Director of Company 1. It provided that the incentives comprised £2,500 cashback and £1,000 in legal fees had been offered to the client.

10.17 Loan instructions were issued to the firm on 15<sup>th</sup> April 2009 by Cheltenham & 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 £125,000.

- 10.18 A review of the solicitor's file revealed an attendance note dated 23<sup>rd</sup> 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 1 (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."
- 10.19 The Certificate of Title was completed and signed by the Respondent on 24<sup>th</sup> 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 the Respondent.
- 10.20 The Respondent wrote to the sellers' agents on 28<sup>th</sup> 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<sup>th</sup> May 2009 Dispositions relative to the property being firstly by Company 2 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<sup>th</sup> April 2009 for a consideration of £85,600. The clients took title from the sellers on 28<sup>th</sup> April 2009.
- 10.21 A review of the client ledger maintained by the Respondent in respect of 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.

10.22 Purchase by Mr G of Property 5

The Respondent acted on behalf of the client, Mr G in connection with his purchase of Property 5. The Respondent opened a file in respect of this matter on or around 21<sup>st</sup> April 2009. An Offer to purchase was submitted by the Respondent to the sellers' agents on 24<sup>th</sup> April 2009. The price was stated to be £151,000. A review of the file revealed a disclosure of incentives form dated 3<sup>rd</sup> March 2009. This had been signed by Mr C, a Director of Company 1. The form revealed incentives comprising £2,500 cashback and £1,000 legal fees had been offered to the client.

10.23 Loan instructions were issued to the firm on 23<sup>rd</sup> 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 detail 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.

10.24 A review of the file maintained by the Respondent revealed the existence of two cheques ostensibly written in favour of the

sellers by the client. One for £37,750 and the other was for £37,500. Each cheque was dated 6<sup>th</sup> April 2009

- 10.25 A review of the solicitor's file revealed the existence of an attendance note dated 23<sup>rd</sup> 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 1 (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."
- 10.26 The Certificate of Title was completed and signed by the solicitor on 24<sup>th</sup> 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 the Respondent.
- 10.27 The solicitor wrote to the sellers' agents on 28<sup>th</sup> 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<sup>th</sup> May 2009, Dispositions relative to the property. Firstly a Disposition by Company 2 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 Respondent's file. It revealed that the sellers had taken title to the property on 24<sup>th</sup> April 2009 for a consideration of £94,600. The client took title from the sellers on 28<sup>th</sup> April 2009.

10.28 A review of the client ledger maintained by the Respondent 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 the control of the solicitor.

10.29 Purchase by Mr H of Property 6

The Respondent acted on behalf of the client, Mr H in connection with his purchase of Property 6. The file maintained by the Respondent in respect of this matter was opened on 16<sup>th</sup> March 2009. On that date the Respondent 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 of incentives form dated 3<sup>rd</sup> March 2009. This had been signed by Mr C who was designed as a Director of Company 1. 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

10.30 Loan instructions were issued to the firm on 8<sup>th</sup> 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 detail 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.

10.31 A review of the file maintained by the Respondent revealed an Attendance Note on the Respondent's file dated 23<sup>rd</sup> 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 1 (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."

10.32 The Certificate of Title was completed and signed by the Respondent on 24<sup>th</sup> 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 the Respondent.

10.33 The solicitor wrote to the sellers' agents on 28<sup>th</sup> 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<sup>th</sup> May 2009 Dispositions relative to the property. Firstly by Company 2 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 the Respondent. They revealed that the sellers had taken title to the property on 24<sup>th</sup> April 2009 for a consideration

of £104,800. The client took title from the sellers on 28<sup>th</sup> April 2009.

10.34 A review of the client ledger maintained by the Respondent 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.

10.35 Purchase by Ms I of Property 7

The Respondent acted on behalf of the client, Ms I in connection with her purchase of Property 7. The file maintained by the Respondent in respect of this matter was opened on 16<sup>th</sup> March 2009. On that date the Respondent 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<sup>th</sup> March 2009. This had been signed by Mr C who was designed as a Director of Company 1. 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 comprised £2,500 cashback and £1,000 legal fees.

10.36 An attendance note prepared by the Respondent dated 26<sup>th</sup> 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 1) who would also pay our fees and outlays. As she was an air hostess and was out of the country often she granted 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 instruction to settle when funds available”.

10.37 The Respondent wrote to the Royal Bank of Scotland plc on 7<sup>th</sup> 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.

10.38 Loan instructions were issued to the firm on 17<sup>th</sup> 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 £114,000 to Ms I 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 provided that the loan was based on a purchase price of £152,000.

10.39 The Certificate of Title was completed and signed by the Respondent on 24<sup>th</sup> April 2009. The Certificate included a declaration in terms of which the Respondent 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 Title is correct and the bank may rely on the accuracy of each and every statement"

10.40 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 a 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".

10.41 The Respondent wrote to the sellers' agent on 28<sup>th</sup> 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' agents duly delivered on 5<sup>th</sup> May 2009 Dispositions relative to the property. Firstly by Company 2 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 yet to take title to the property as at 20<sup>th</sup> March 2009 with a proposed consideration being £95,200.

- 10.42 A review of the Respondent's file revealed a copy of a cheque ostensibly written in favour of the sellers by a company called Company 3 for £18,000 dated 8<sup>th</sup> April 2009. Elsewhere on the file there was a letter to the Respondent from his client dated 20<sup>th</sup> March 2009 which stated "I Ms I have deposited the amount of £38,000 which is my inheritance into Company 1's bank account. The deposit is for Property 7".
- 10.43 The solicitor wrote to the client on 8<sup>th</sup> May 2009. The letter provided "I understand that you will be back in the country sometime next week. I confirm that the purchase settled on 28<sup>th</sup> April as I had received both the loan funds and also your inherited/invested funds from Mr J. 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".
- 10.44 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 J re Royal Bank transfer (invested funds held by Mr J I/T for Ms I)". 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.
- 10.45 Purchase by Mr K of Property 8

The Respondent acted on behalf of the client, Mr K in connection with his purchase of Property 8. The Respondent opened a file in respect of this matter on or about 16<sup>th</sup> March 2009. On that date the Respondent 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<sup>rd</sup> March 2009 by Mr C who was designed as a director of Company 1 noted that the agreed purchase price of the property was £135,000 and that incentives comprising £2,500 cashback and £1,000 legal fees had been offered to the client.

10.46 Loan instructions were issued to the firm on 3<sup>rd</sup> 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 K 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.

10.47 A review of the file maintained by the Respondent revealed an attendance note dated 23<sup>rd</sup> 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 1 (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 instruction to settle when funds available'.

10.48 The Lender's proforma Certificate of Title was completed and signed by the solicitor on 24<sup>th</sup> April 2009. The Certificate of Title included a declaration in terms of which the Respondent confirmed to the Lender on behalf of the firm that the Certificate

of Title was completed and signed by the Respondent on 24<sup>th</sup> April 2009. The Certificate included a declaration in terms of which the Respondent 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 Title is correct and the bank may rely on the accuracy of each and every statement".

10.49 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 a 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".

10.50 The Respondent wrote to the sellers' agents on 28<sup>th</sup> 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 Letter of Obligation. The sellers' agents duly delivered on 5<sup>th</sup> May 2009 Dispositions relative to the property firstly by Company 2 in favour of the sellers and 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<sup>th</sup> March 2009 with the proposed consideration being £85,000.

10.51 The Lender wrote to the firm, which by then had a Judicial Factor appointed, on 22<sup>nd</sup> 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.

10.52 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 J re Royal Bank transfer (invested funds held by Mr J i/t for Mr K)'. 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.

10.53 Purchase by Mr L of Property 9

The Respondent was instructed by the client, Mr L to act on his behalf in connection with the purchase of Property 9. The Respondent opened a file in respect of this matter in or about 21<sup>st</sup> April 2009. A review of the file revealed a CML disclosure of incentives form dated 30<sup>th</sup> March 2009 which had been signed by Mr C who was designed as a director of Company 1. 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. .

10.54 Loan instructions were issued to the Respondent on 17<sup>th</sup> 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 L 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 enclosure. 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.

10.55 A review of the file maintained by the Respondent revealed the existence of an attendance note dated 23<sup>rd</sup> 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 1 (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.’

10.56 The Lender’s proforma Certificate of Title was completed and signed by the solicitor on 24<sup>th</sup> April 2009. The Certificate of Title included a declaration in terms of which the Respondent confirmed to the Lender on behalf of the firm that the Certificate of Title was completed and signed by the Respondent on 24<sup>th</sup> April 2009. The Certificate included a declaration in terms of which the Respondent 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 Title is correct and the bank may rely on the accuracy of each and every statement".

10.57 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 a 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".

10.58 The Respondent wrote to the sellers' agents on 20th 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<sup>th</sup> May 2009 Dispositions

relative to the property firstly by Company 2 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<sup>th</sup> March 2009 with the proposed consideration being £84,400.

10.59 The Lender wrote to the firm which by then had a Judicial Factor appointed on 24<sup>th</sup> 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.

10.60 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.

10.61 Purchase by Mr G of Property 10

The Respondent acted on behalf of the client, Mr G in connection with his purchase of Property 10. The Respondent opened a file in respect of this matter on 16<sup>th</sup> March 2009. On that date the Respondent 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. The offer was initially for £151,000 and subsequently amended in terms of the Missives to that of £150,000.

10.62 Loan instructions were issued to the firm on 17<sup>th</sup> 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 M 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 enclosure. 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.

10.63 A review of the file maintained by the Respondent revealed an attendance note dated 23<sup>rd</sup> 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 1 (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'.

10.64 The lender's proforma The Lender's proforma Certificate of Title was completed and signed by the solicitor on 24<sup>th</sup> April 2009. The Certificate of Title included a declaration in terms of which the Respondent confirmed to the Lender on behalf of the firm that the Certificate of Title was completed and signed by the Respondent on 24<sup>th</sup> April 2009. The purchase price on the Certificate of Title was recorded as £151,000. The Certificate included a declaration in terms of which the Respondent 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 Title is correct and the bank may rely on the accuracy of each and every statement".

10.65 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 a 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".

10.66 A review of the file revealed that the Respondent wrote to the sellers' agents on 28<sup>th</sup> 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 sellers' agent's Letter of Obligation. The sellers' agents duly delivered on 5<sup>th</sup> May 2009 Dispositions relative to the property firstly by Company 2 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<sup>th</sup> March 2009 and the proposed consideration was £94,000.

10.67 A review of the file maintained by the Respondent revealed copies of two cheques ostensibly written in favour of the sellers by the client one for £37,750 and the other for £37,500. Each were dated 6<sup>th</sup> April 2009

10.68 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.

10.69 Purchase by Mr N of Property 11

The Respondent was instructed by the client, Mr N to act on his behalf in connection with the purchase of Property 11. The file of the Respondent was opened on 21<sup>st</sup> 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.

10.70. Loan instructions were issued to the Respondent 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 £114,750 to Mr N 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.

- 10.71 A review of the file maintained by the Respondent revealed a attendance note dated 23<sup>rd</sup> April 2009 which recorded that ‘MT attendance with client. Taking instructions to conclude missives. Considering loan instructions, explaining the 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 1 (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 instruction to settle when funds available’.
- 10.72 The review of the file revealed no Certificate of Title on the solicitor’s file but it seemed clear that the loan advance was received from the Lender. As loan 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 that of other Certificates of Titles referred to in the terms of these Findings.
- 10.73 The solicitor wrote to seller’s agents on 20<sup>th</sup> April 2009 confirming that the firm had that day remitted the sum of £114,720 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 sellers’ agents duly delivered on 5<sup>th</sup> May 2009 Dispositions relative to the property firstly by Company 2 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<sup>th</sup> March 2009 with the proposed consideration being £95,800.
- 10.74 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 of the balance of the purchase price was at any stage under the control of the solicitor.

10.75 Purchase by Mr O and Mr P of Property 12

The Respondent was instructed by the clients, Mr O and Mr P to act on their behalf in connection with the purchase Property 12. The Respondent's file on this matter was opened on 16<sup>th</sup> March 2009. On that date the Respondent 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 seller's 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<sup>rd</sup> March 2009 by Mr C who is designed as a Director of Company 1. It was noted that incentives comprised £2,500 cashback and £1,000 legal fees.

10.76 Loan instructions were issued to the firm on 22<sup>nd</sup> 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 O and Mr P 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.

10.77 A review of the file maintained by the Respondent revealed an attendance note dated 23<sup>rd</sup> 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 1 (seller) who were also to be responsible for payment of our fees and outlays and that the loan fund should be used as balancing payment of P/P. Confirming instruction to settle when funds available’.

10.78 The Certificate of Title was completed and signed by the Respondent on 24<sup>th</sup> April 2009. The Certificate included a declaration in terms of which the Respondent 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 Title is correct and the bank may rely on the accuracy of each and every statement”.

10.79 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 a 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”.

10.80 The Respondent wrote to the seller’s agents on 20<sup>th</sup> 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 agents Letter of Obligation. The seller’s agents duly delivered on 5<sup>th</sup> May 2009 Dispositions relative to the property firstly by Company 2 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<sup>th</sup> March 2009 and the proposed consideration was £80,200.

10.81 A further review of the file maintained by the Respondent revealed the existence of a copy cheque ostensibly written in favour of the sellers by ‘The partners t/a firm of Company 4’ for £1,250 dated 2<sup>nd</sup> April 2009. Elsewhere on the file there was a letter to the Respondent from the clients dated 20<sup>th</sup> March 2009 which stated, ‘We Mr O and Mr P have deposited the amount of £38,112 which is our inheritance into Company 1 bank account. The deposit is for Property 13”.

10.82 The Lender wrote to the firm which by then had a judicial factor appointed on 22<sup>nd</sup> 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.

10.83 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 J re Royal Bank transfer (invested funds held by Mr J i/t for Mr O and Mr P). 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.

10.84 Purchase by Mr Q of Property 14

The Respondent acted on behalf of the client, Mr Q in connection with his purchase of Property 14. The Respondent opened a file in respect of this matter on 16<sup>th</sup> March 2009. On that date the Respondent 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

10.85 Loan instructions were issued to the firm on 22<sup>nd</sup> 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 Q 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 in the CML website". Whereas a review of the file revealed no CML disclosure of 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.

10.86 A review of the file maintained the Respondent revealed an attendance note dated 23<sup>rd</sup> 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 and having same signed. Obtaining confirmation that deposit of funds were paid direct to Company 1 (Seller) who were also to be responsible for payment of our fees and outlays and that the loan fund should be used as balancing payment of P/P, confirming instruction to settle when funds available'.

10.87 The Certificate of Title was completed and signed by the Respondent on 24<sup>th</sup> April 2009. The Certificate included a declaration in terms of which the Respondent 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 Title is correct and the bank may rely on the accuracy of each and every statement".

10.88 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 a 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”.

10.89 The solicitor wrote to the seller’s agents on 28<sup>th</sup> 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. 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 agents duly delivered on 5<sup>th</sup> May 2009 Dispositions relative to the property firstly by Company 2 in favour of the seller and by the seller in favour of the client. A copy of the 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<sup>th</sup> March 2009 and with a proposed consideration being £120,400.

10.90 A review of the file maintained the Respondent revealed a copy of a cheque ostensibly written in favour of the seller by the client for £47,500 dated 24<sup>th</sup> April 2009. A review of the Respondent’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 of the purchase price was at any stage under the control of the solicitor.

10.91 Purchase by Mr R and Ms S of Property 15

The Respondent was instructed to act on behalf of the clients, Mr R and Ms S in connection with their purchase of Property 15. The Respondent opened a file on this matter on 21<sup>st</sup> April 2009. A review of the file revealed a CML disclosure of incentives form. This was executed on 18<sup>th</sup> March 2009 by Mr C who was designed as a Director of Company 1. 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.

10.92 Loan instructions were issued to the firm on 16<sup>th</sup> April 2009 by the Royal Bank of Scotland plc. Those instructions provided insofar as relevant as follows, 'We Royal Bank of Scotland plc have agreed to make available a loan of £138,750 to Ms S and Mr R in respect of the above property and you are instructed 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 set out 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.

10.93 A review of the file maintained by the Respondent revealed an attendance note dated 23<sup>rd</sup> April 2009 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 1 (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’.

10.94 The Certificate of Title was completed and signed by the Respondent on 24<sup>th</sup> April 2009. The Certificate included a declaration in terms of which the Respondent 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 Title is correct and the bank may rely on the accuracy of each and every statement”.

10.95 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 a 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.

10.96 The solicitor wrote to the seller's agents on 28<sup>th</sup> 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 agents duly delivered on 5<sup>th</sup> May 2009 Dispositions relative to the property firstly by Company 2 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<sup>th</sup> March 2009 with the proposed consideration being £120,400.

10.97 The Lender wrote to the firm which by that time had a judicial factor appointed on 24<sup>th</sup> 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.

10.98 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 J, re Royal Bank transfer (invested funds held by Mr J i/t for Mr R and Ms S)'. 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

10.99 Purchase by Ms T of Property 16

The Respondent was instructed by the client, Ms T to act on her behalf in connection with the purchase of Property 16. The Respondent opened a file in respect of this matter on 24<sup>th</sup> April 2009. An attendance note on the file revealed a meeting which

the client had attended with her husband. It revealed that she wished to purchase the subjects at an agreed price of £140,000 part of which would be funded by money coming from Hong Kong. The balance was to be paid by the client direct to the seller, Company 1.

11. Having carefully considered the foregoing facts and the submissions of both parties, the Tribunal found the Respondent guilty of professional misconduct in terms of Section 53 of the Solicitors (Scotland) Act 1980 in respect of his failure to a) comply with established practice and the common law standard applicable to a solicitor acting on behalf of a lender in a conveyancing transaction and in particular his failure to report to his client unusual circumstances which arose in relation to the conveyancing transactions narrated above; b) comply with the explicit instructions provided to him by his client, being those obligations imposed upon him by the CML Handbook applicable to Scotland; c) act with absolute propriety and to protect the interests of his client being the lender in respect of each transaction in that he failed to report to his client certain unusual circumstances which arose during the course of these transactions.

12. The Tribunal pronounced an Interlocutor in the following terms;-

Edinburgh 3 February 2014. The Tribunal having considered the amended Complaint at the instance of the Council of the Law Society of Scotland against Manus Gerard Tolland, formerly of 38 Eastwoodmains Road, Clarkston, Glasgow and now at 7 Causeyside Street, Paisley; Find the Respondent guilty of professional misconduct in respect of his failure a) to comply with established practice and the common law standard applicable to a solicitor acting on behalf of a lender in a conveyancing transaction, and in particular his failure to report to his client unusual circumstances which arose in relation to a

number of conveyancing transactions; b) to comply with explicit instructions provided to him by his client, being those obligations imposed upon him by the CML Handbook applicable to Scotland and c) to act with absolute propriety and to protect the interests of his client being the lender in respect of each transaction in that he failed to report to his client certain unusual circumstances which arose during the course of these transactions; Censure the Respondent; Fine him in the sum of £2,000 to be forfeit to Her Majesty; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of 5 years any practising certificate held or issued to the Respondent should be subject to such restriction as will limit him to practising in the area of criminal law; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and may but has no need to include the names of anyone other than the Respondent.

(signed)

**Kenneth Paterson**  
**Vice Chairman**

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

**IN THE NAME OF THE TRIBUNAL**

**Vice Chairman**

**NOTE**

This matter called as a hearing before the Tribunal on 3 February 2014. A fully adjusted Record had previously been allowed to be received. A number of productions had been lodged by both parties. The parties had entered into a Joint Minute agreeing all of the statements of fact, except one and most of the averments of duty and professional misconduct. The Respondent by implication withdrew his preliminary plea. No evidence required to be led and the hearing proceeded on the basis of submissions on behalf of both parties.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Reid apologised to the Tribunal for the Joint Minute not being in the usual format, and invited it to interpose authority thereto. Mr Winter concurred with the fiscal's motion and the Tribunal agreed to receive the Joint Minute.

Given the terms of the agreement between the parties, the fiscal indicated that he proposed only to offer some background to the case.

The fiscal indicated that the Respondent was 57 years old, was admitted as a solicitor in January 1981 and therefore had been in the profession for 33 years. Article 1.1 of the Record set out the employment history in detail. Latterly, the Respondent had been employed as a director of Robertson & Ross Solicitors Ltd.

Mr Reid confirmed that the Respondent had been before the Tribunal on two previous occasions; one for the failure to implement a mandate where he was Censured, the other for failing to progress an executry where his practising certificate was restricted.

The firm of Lyons Laing was inspected in the spring of 2009, as a result of which a Judicial Factor was appointed on 28 May 2009. The Respondent was employed as a conveyancing assistant by the firm. The matters before the Tribunal involved a series of transactions relating to a new build development. Production 19 was a letter dated 3 March 2009, that set out the background of the transactions outlined within the Record. In particular that letter makes reference to discussions between a person

called Mr A and the Respondent. The Respondent accepted instructions and proceeded to act on the basis of that letter. There were thirteen separate transactions and the Respondent acted for the purchaser in each transaction. Each purchaser had obtained mortgage finance and the Respondent accepted instructions to act for all of the lenders. Five of the transactions were funded by Cheltenham and Gloucester. Production 6 was an example of their loan instructions. That production makes specific reference to the CML Lenders Handbook for Scotland and indicates that the solicitor's instructions are subject to the handbook.

Production 8 before the Tribunal was an example of the Report of Title, signed by the Respondent giving a clear undertaking dated 24 April 2009 that the certificate was in accordance with the current CML Lenders Handbook for Scotland.

The other eight transactions were funded by the Royal Bank of Scotland. Production 108 before the Tribunal was an example of their loan instructions dated 17 April 2009 and addressed to the Respondent. In the fourth paragraph it states that the solicitor is instructed in terms of the CML Lenders Handbook for Scotland.

Production 109 was an example of a Report on Title signed by the Respondent. Mr Reid drew the Tribunal's attention to paragraph "a" of page 2 of that production which again makes specific reference to the solicitor having complied with the CML Lenders Handbook.

Each of the thirteen transactions were what could be called a back to back transaction – where the seller is selling the property on at a higher price than he paid, settling on the same day as his purchase and without registering title.

The Law Society had calculated that the seller here had made a net gain of approximately £178,000, excluding six transactions where paperwork was not available.

The fiscal submitted that a number of factors should have caused the Respondent to be concerned:-

1. The number of transactions

2. The fact that they were all settling on the same day
3. That they were all the same seller
4. That each had an increase in the price being paid
5. That the solicitors fees were being paid by the seller
6. All of the fee notes were addressed to an insurance broker

There were clear breaches of paragraph 5.1.1 of the CML Handbook. A report should have been made to the lender in writing to allow them to decide whether or not they wished to proceed.

The deposits paid in all of these transactions were also a concern. Mr Reid referred the Tribunal to Production 74 which was a series of correspondence covering what the purchaser should tell the lender regarding the deposits. A form of wording appeared to have been agreed – which was then used in Production 75. The wording says that the solicitor has seen evidence of the source of the funding, where the Respondent had in fact seen no such evidence.

A number of the transactions involved deposits being paid which were labelled as coming from inherited funds. All of the transactions involved deposits being paid direct to the seller, without the money going through the client ledger. The Respondent had given the lenders, in all of the transactions, an undertaking that all funds would go through the client account of the firm.

This presented a real risk that deposit cheques were never cashed but the lenders were in fact paying 100% of the price for the properties.

There was a complete lack of disclosure.

The fiscal indicated that it was likely to be advanced for the Respondent that he disclosed these things to the senior partners of the firm. The Law Society was not in a position to either prove or disprove this assertion. In Mr Reid's submission, at most, this assertion amounted to mitigation.

The fiscal invited the Tribunal to find the Respondent guilty of professional misconduct and to make the usual award of expenses.

### **SUBMISSIONS FOR THE RESPONDENT**

Mr Winter indicated that the Respondent was now working as a criminal practitioner on his own account. The Respondent is divorced and has three children. The youngest child is 19 and is still supported by her father as she pursues a university course.

He submitted that the Respondent wanted to express his remorse. The Respondent accepted in hindsight that he should have been more proactive with these matters. It was the Respondent's position that he was advised by the senior partners that the CML Handbook was being adhered to.

Mr Winter drew the Tribunal's attention to Productions 181 to 183. He explained that Production 181 was a letter from Mr U to the financial compliance department. On page 2 of that letter at item 7, Mr U indicated "we understand that both the RBS and C & G were aware of the nature of these transactions by the brokers who arranged the loan funds. This was made clear to us by the brokers who confirmed that the lenders knew exactly the nature of the transaction and that this was disclosed by the broker at the outset when the loan applications were made."

He further explained that Production 182 was a letter to Cheltenham & Gloucester bearing Mr U's initials and referring to this earlier disclosure.

Production 183 was a lengthy memorandum written by Mr V to the Respondent and again made reference to the nature of the transactions being intimated to the Royal Bank of Scotland by the broker.

It was the Respondent's position that at no point was he told that it was not alright for him to proceed with these transactions. He disclosed to the partners that the transactions involved property that had been held for less than six months and that not all of the purchase price was within the firms control. He was not told not to proceed.

The Respondent was then working under a restricted practising certificate. Where such a person is taken on by a firm, the firm requires to get permission from the Law Society and is told what supervision will be required. Mr U accepted the requirement of supervision on a daily basis, checking all incoming and outgoing correspondence. A firm employing such a solicitor as the Respondent, would require to describe the details of supervision. It was Mr Winter's understanding that Lyons Laing had done that and had consequently employed Mr Tolland.

Mr Winter submitted that this was a case of the firm failing to properly supervise the Respondent. Mr U accepted that he opened all mail, signed the Respondent's mail and took an active part in supervising the Respondent, including in these transactions.

He confirmed that there was a complaint outstanding against Mr U in relation to failing to supervise the Respondent. This was the overall responsibility of Mr U.

The Tribunal was asked to take into account that these transactions took place over a short period of time. Although there were a number of transactions, they were all part of one development. The seller was represented by a reputable firm of solicitors. None of the purchasers or lenders had made complaints. No financial loss was sustained by the lenders or the purchasers. The Respondent had made no personal gain. None of the fees were at all exaggerated.

It was emphasised that the Respondent was currently working on his own account as a criminal defence agent. He emphasised that neither of the previous findings related to this type of work. Mr Winter confirmed that the Respondent was happy to give an undertaking not to do any conveyancing work in future.

The certificates of title were all signed under the supervision of the partners of the firm. The Respondent had been caught up in a much bigger picture – inspections of the firm had identified a black hole in the client account amounting to £1,600,000 – of which Mr Tolland was completely unaware.

When the Respondent was made redundant by Lyons Laing he was unemployed and in receipt of benefit for two years.

Neither he nor Robertson & Ross were aware of this Complaint at the time he took up employment with them. The Respondent only became aware of the Complaint in June 2011.

Mr Winter submitted that the Respondent had co-operated with proceedings to a good extent. A Joint Minute with regard to the evidence was agreed last week, although it had been in contemplation for some time. The plea was tendered late because it was dependant on other information being investigated as late as the preceding weekend. As a result of these investigations, the Respondent had taken a view of proceedings. This view had saved time and expense to the Tribunal and witnesses.

Although the history of the case did not substantiate a plea of Mora, the matters had been outstanding for some time.

Submissions by Mr Winter with regard to expenses were interrupted by the Tribunal as being premature at this stage.

In answer to a question from the Chairman, Mr Winter confirmed that as far as he was aware all of the conveyancing had been completed properly. In response to further queries, Mr Winter confirmed that all of the Respondent's professional experience was in the area of conveyancing and criminal work. He conceded that the Respondent would be considered an experienced conveyancer.

Mr Winter invited the Tribunal not to strike the Respondent off but to Censure him and indicated that the Respondent was in a position to pay a fine.

It was submitted to the Tribunal that the Respondent signed all of the certificates of title under supervision. The Respondent had known he was subject to a restricted practising certificate and took instruction from both Mr U and Mr V.

## **DECISION**

As the Respondent explicitly withdrew his preliminary plea during submissions, this required no consideration by the Tribunal. Albeit the Respondent was conceding he was guilty of professional misconduct, it was for the Tribunal to assess whether the facts admitted amounted to professional misconduct.

The starting point for the Respondent in this case was that he was an experienced conveyancer. Although he may have been under supervision, it was he himself who was conducting these transactions. He was well aware of the requirements of the CML Handbook. The whole point of the CML Handbook is that the solicitor acting is required to put disclosure in writing to the lenders to allow them to consider their position. No written disclosure was produced. The Respondent had signed all of the certificates of title himself – in the clear knowledge of all of the matters that required to be disclosed. This represented a fundamental failure in the duty owed by a solicitor to his client. In particular, the irregularities in relation to the deposits being paid were of great concern.

The Respondent's conduct clearly fell well short of the conduct to be expected of a competent and reputable solicitor and could only be regarded as serious and reprehensible. Accordingly, the Tribunal found the Respondent guilty of professional misconduct.

Having been addressed in mitigation, the Tribunal then went on to consider disposal.

The Tribunal had to decide where on the scale of such misconduct this case lay.

There were thirteen separate transactions, each of which involved a failure to disclose a number of important pieces of information which were fundamental to the relationship between the purchaser and lender. These were matters that were obvious issues of disclosure regardless of the added requirements of the CML Handbook. The Respondent conceded they were recognised and understood by him.

However, this case did not include some of the aggravating factors that many of the CML Handbook cases do. The Respondent had met with each of the purchasers. There was now no suggestion of breaches of the Money Laundering Regulations.

Whilst there were thirteen transactions, they all arose from one introduction to the Respondent in relation to one new build development.

Taking all of these factors into consideration, the Tribunal held that this case fell within the middle of the range of this type of case.

The irregularities with regard to the payment of deposits caused particular concern. Because of the practice adopted by the Respondent it was impossible to tell if these deposits were ever in fact paid to the seller. Issues of protection of the public required that the Tribunal consider whether the Respondent should remain as a Principal in private practice. This was the Respondent's third appearance before the Tribunal. Although, it had to be noted that none of these appearances were in relation to his criminal practice. The Respondent was 57 years old and had been a solicitor for 33 years, mainly in the area of criminal law and conveyancing. It was also a significant factor that the Respondent was being supervised by the partners of Lyons Laing and the Fiscal did not dispute that the Respondent had intimated these matters of disclosure to them.

The Respondent had offered an undertaking not to practice conveyancing again. The Tribunal felt that if it were to adopt an approach of this type then any restriction had to be robust and enforceable. Balancing all of the above factors the Tribunal concluded that it was appropriate to restrict the Respondent's practising certificate limiting him to criminal work for a period of five years.

The Tribunal further concluded that it was appropriate to mark the seriousness of this case with a fine. Given the number of transactions and the extent of the complete lack of disclosure a Fine of £2,000 was considered appropriate.

It cannot be emphasised enough, that a lending institution is a client like any other and is owed the same duty of care.

**EXPENSES**

When the Tribunal reconvened it invited the parties to address it on the question of expenses.

**SUBMISSION FOR COMPLAINERS**

The fiscal submitted that there was no reason for the Tribunal to depart from the usual position with regard to expenses. He stated that a suggestion by Mr Winter that the expenses should be modified to take into account the adjournment on one occasion of a diet of debate was not well founded. Whilst Mr Reid accepted that he had asked for the adjournment, he referred to the lodging of a Minute of Amendment only shortly before the diet of debate by the Respondent. He indicated that the Minute of Amendment had been lengthy, extending to some 25 pages. Additionally, he indicated that at that stage he had considered that a Proof before Answer was the appropriate way to deal with the preliminary plea. In any event, he submitted that the Respondent had not insisted upon that plea today.

**SUBMISSIONS FOR THE RESPONDENT**

Mr Winter asked the Tribunal to modify the award of expenses to take into account the adjournment of the Diet of Debate on the motion of the fiscal. He conceded that a lengthy Minute of Amendment had been lodged late in the day on behalf of the Respondent. However, it was his position that the amendment only tidied up the pleadings for the Respondent and did not materially add to or change the pleadings. He indicated that the preliminary plea was clearly stated in the Answers for the Respondent from the outset. The Complainers had not stated their position with regard to the preliminary plea within the pleadings. Accordingly he submitted that it was appropriate that there should be a modification of expenses.

**DECISION**

Dates had been fixed in the course of proceedings simply to deal with the question of Mora, Taciturnity and Acquiescence. That plea had not been insisted upon by the Respondent at the hearing. Nothing had been said by the Respondent to justify a modification of expenses. Accordingly the Tribunal made the usual award of expenses.

Both parties confirmed they had no submissions to make regarding publicity and so the usual order was made.

**Kenneth Paterson**

**Vice Chairman**