THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL

F I N D I N G S

in Complaint

by

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

against

WILLIAM CHRISTOPHER TULIPS, Muirbrow Chambers, 118 Cadzow Street, Hamilton

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, William Christopher Tulips, Muirbrow Chambers, 118 Cadzow Street, Hamilton (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.

2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.

3. In terms of its Rules the Tribunal appointed the Complaint to be heard at a procedural hearing on 29 August 2013 and notice thereof was duly served on the Respondent.

4. A procedural hearing took place on 29 August 2013. The Complainers were represented by their Fiscal Grant Knight, Solicitor, Edinburgh. The Respondent was represented by William Macreath, Solicitor, Glasgow.

The matter was continued to a further procedural hearing on 15 October 2013.

5. A further procedural hearing took place on 15 October 2013. The Complainers were represented by their Fiscal Grant Knight, Solicitor, Edinburgh. The Respondent was represented by William Macreath, Solicitor, Glasgow. A further procedural hearing was fixed for 15 November 2013. That procedural hearing was subsequently discharged and a substantive hearing fixed for 6 December 2013.

6. The substantive hearing took place on 6 December 2013. The Complainers were represented by their Fiscal Grant Knight, Solicitor, Edinburgh. The Respondent was present and was represented by William Macreath, Solicitor, Glasgow.

7. Mr Knight advised that there was a typographical error in the Complaint at Article 2.1. He stated that the Respondent's date of birth should be 22 April and not 24 April.

8. Mr Macreath confirmed that the Respondent pled guilty to the averments of fact, averments of duty and averments of professional misconduct in the Complaint as amended. No evidence required to be led.

9. After having heard submissions from both parties in respect of the Complaint, the Tribunal found the following facts established

   9.1 The Respondent was born on 22 April 1960 and he was enrolled as Solicitor on 25 November 1982. He was formerly a Partner and Cashroom partner in the firm Strefford Tulips and is now the Cashroom Partner and a Director of Strefford Tulips Limited which has a place of business at Muirbrow Chambers, 118 Cadzow Street, Hamilton. The Money Laundering Reporting Officer in respect of said practice is Mr A.

9.2 The Council of Mortgage Lenders (hereinafter "CML") describes itself as a not for profit organisation and a trade association for the mortgage lending industry in the UK. Its members account for almost the entire residential mortgage lending within the UK. Its aim is to help foster a favourable operating environment within the UK housing and mortgage markets. The organisation has produced a handbook referred to as the CML Lenders Handbook. This is published on their website and provides guidance to conveyancing solicitors in respect of general practice and procedure when dealing with an institution which is a member of the CML. It comprises a number of paragraphs. In particular:-

(a) Paragraph 1.1 directs that instructions from an individual lender will indicate whether a solicitor is being instructed by that lender in accordance with the provisions contained within the CML Lenders Handbook and if that is the case, directs that general provision in part 1 of the handbook and any lender-specific requirements in terms of part 2 must be followed.

(b) Paragraph 1.4 states the standard of care they expect of a solicitor is that of a reasonable competent solicitor or independent qualified conveyancer acting on behalf of a heritable creditor.

(c) Paragraph 1.5 states that the solicitor must comply with any separate instructions received in connection with an individual loan.

(d) Paragraph 1.15 states that if there is any conflict of interests, the solicitor must not act and must return the instructions.

(e) Paragraph 2.3 narrates that "…if you need to report a matter to us you must do so as soon as you become aware of it so as to avoid any delay. If you do not believe that a matter is adequately provided for in terms of the handbook you should identify the relevant handbook provision and the extent which the matter is not covered by it. You should provide a concise summary of the legal risks and your recommendation of how we should protect our interests. After reporting the matter you should not complete the mortgage until you have received our further written instructions. We recommend that report such matters before conclusion of missives because we may have to withdraw or change the mortgage offer."

(f) Paragraph 3.1 directs that solicitors must follow the current Solicitors (Scotland) Account Rules and to the extent that they apply, comply with the Money Laundering Regulations and the Proceeds of Crime Act.

(g) Paragraph 5.1.1 narrates a requirement to report to the lender if the proprietor has owned the property for less than six months or the person selling to the borrower is not the proprietor unless the seller is (a) a personal representative of the proprietor or (b) an institutional heritable creditor exercising his power of the sale or (c) a receiver, trustee in sequestration or liquidator or (d) a developer of buildings selling a property acquired under Part Exchange Scheme.

(h) Paragraph 5.1.2 narrates that if any matter comes to the attention of the fee earner dealing with the transaction which "…you should reasonably expect us to consider important in deciding whether or not to lend to the borrower (such as where the borrower has given misleading information to us or the information which you might reasonable expect to have been given to us is no longer true) and you are unable to disclose that

information to us because of a conflict of interest, you must cease to act for us and return our instructions stating that you consider a conflict of interest has arisen."

(i) Paragraph 10.1 states that "…you should not submit your Certificate of Title unless it is unqualified or we have authorised you in writing to proceed notwithstanding any issues which you have raised with us."

(j) Paragraph 11.2 narrates that "…you should explain to each borrower (and any other persons signing or executing the document, his responsibilities and liabilities under the documents referred to in paragraph 11.1 and any documents he is required to sign."

9.3 The Financial Compliance Department of the Complainers conducted an inspection of the Respondent's financial records, books, accounts and documentation on 12 April 2011. This inspection identified a number of matters of serious concern including the Respondent's involvement in conveyancing transactions where issues were raised regarding compliance with heritable lenders' instructions, the Solicitors (Scotland) Accounts Rules ("Accounts Rules") and the Money Laundering Regulations. The Respondent was interviewed by the Complainers' Guarantee Fund Committee on 23 June 2011. The Respondent failed to adequately address the issues and concerns which were raised to the satisfaction of the Complainers as a consequence of which a formal Complaint was intimated to the Respondent.

Purchase of Property 1

9.4 On 28 September 2010 the Respondent submitted an offer on behalf of Ms B to purchase property 1 at a price of £75,000

with a date of entry of 20 January 2011. Said offer was addressed to Conveyancing Direct. Said offer did not proceed. On 3 December 2010 the Respondent received an email from Ms C, the Manager of a company known as Company 1. Said company also traded from an address at property 2. Said email confirmed that Ms B was seeking to purchase the said property but at a sum of £50,000. The Respondent then submitted an offer dated 11 December 2010 on behalf of the said client for the said property to Messrs Archibald Sharp Solicitors but that in the sum of £50,000. The Respondent had written to Ms B on 28 September enclosing his money laundering and terms of engagement letter. The Respondent never met this client. Loan instructions dated 19 January 2011 from National Westminster Home Loans Limited instructed the Respondent to act on their behalf and in accordance with the CML Lenders Handbook for Scotland and their part 2 instructions. The lenders were proposing to lend £37,500 plus a further £1,499 in respect of fees and outlays and that based on the value of the property being £50,000. On 24 January 2011 the Respondent wrote to the lender to advise that he understood the lenders were aware that the purchasers were financing the deposit for the property by way of an equity release on their existing property and requesting the lender's confirmation that they were content to proceed. Said letter was accompanied by an unqualified certificate of title signed by the Respondent, which specifically confirmed that the Respondent had fully complied with the terms of his instructions and the relative provisions of the CML Handbook. On 26 January 2011 the Respondent wrote to Ms B and requested the sum of £13,562 to allow him to settle the transaction. Said letter also enclosed the Standard Security for execution. In terms of the loan instructions the Respondent was required to explain to the client the obligations and import of the said security. On 27 January 2011 a fax was received by the Respondent from Company 2 whose address was stated to at

property 2. Said fax was a copy of a Facility Letter dated 25 January narrating that an amount of £13,562 was being offered for loan to Ms B for the purpose of the purchase transaction with a security being taken over another property situated at property 3. Said address was not the home address of the client, that being property 4. There is no such limited company known as Company 2 with a business address in Paisley. A company known as Company 3 trades from an address at property 2 which is also the trading address of the said Company 1. The Respondent received the mortgage funds from the lender on 27 January and also on said date received the sum of £13,562 from Company 1 representing the equity release funds for property 4, not property 3, as aforesaid. Missives were duly concluded on 31 January with the purchase price being made over to the seller's agents in settlement of the transaction. On 23 August 2011 the Respondent sent a reminder to the lenders in respect of his letter dated 24 January 2011. A further reminder was sent in that regard on 13 September 2011. The lenders finally responded in a letter dated 12 October confirming that they were aware that the purchaser had raised her deposit by way of an equity release on her existing property and that they had no objection to the loan funds being released for the transaction in question.

9.5 In dealing with the foregoing transaction, the Respondent failed to comply with the obligations imposed upon him in terms of the CML Handbook, and in terms of which he agreed to act on behalf of the lender. In particular the Respondent failed to advise his purchasing client of the obligations and import of the Standard Security. Further the Respondent acted contrary to the terms of Rule 6(1)(c) of the Accounts Rules in that funds were advanced to his client account by a lender who was acting under the false apprehension that there existed no circumstances which the lender ought to have been informed of in terms of the

instructions set out in the CML Handbook, namely the full circumstances surrounding the provision of the deposit. The Respondent failed to obtain the requisite confirmation from the lenders that he could proceed to draw down the loan funds before doing so. The Respondent should not have drawn money from his client account without the full and informed authority of his client, being the lender, prior to settlement. Further, the Respondent acted contrary to the terms of Rule 24 of the Accounts Rules in that he failed to obtain the relevant certified documentation in relation to the identity of the third party providing the deposit for the purchase and was thereafter in breach of regulation 5 of the Money Laundering Regulations 2007.

Purchase of Property 5

9.6 On 8 November 2010 National Westminster Home Loans Limited instructed the Respondent to act on their behalf and in accordance with the CML Lenders Handbook for Scotland and their part 2 instructions in respect of the purchase by Ms D of the property 5. The lenders were proposing to lend Ms D £48,750. Said instructions and offer of loan were received prior to the Respondent receiving any instructions from the purchasing client. The Purchasing client was the sister-in-law of a client of the Respondent, Mr E. The purchasing client resided in Northern Ireland. By email dated 10 November the Respondent wrote to Mr E advising he had received said loan instructions and requested instructions from him as to when he wished an offer to be submitted. On 25 November 2010 the Respondent submitted an offer to Messrs Archibald Sharp & Sons to purchase the said property in the sum of £65,000. No formal instructions were received direct from the purchasing client to submit said offer. Said offer did not proceed. A subsequent offer in identical terms was thereafter submitted on

7 January 2011 to the Lints Partnership. On 12 January 2011 the Lints Partnership accepted the said offer on behalf of their client, Mr E, and a date of entry was assigned for 24 January 2011. On 14 January the Respondent wrote to Ms D enclosing documentation for her signature and return, including the Standard Security and enclosed his firm's cash statement highlighting a balance due of £17,252. Said letter also requested evidence from her as to the source of those funds and that in line with the money laundering regulations. He specifically requested a copy of the bank statement from where the monies would be transferred. He also forwarded to Ms D his Terms of Engagement letter. In terms of the loan instructions the Respondent was required to explain to the client the obligations and import of the said security. On 14 January the Respondent wrote to the Lints Partnership enclosing the draft Disposition which narrated *inter alia* that the property was being disponed by the said Mr E to his client for a sum of £65,000. On 21 January Ms D deposited the sum of £17,252 by CHAPS Bank Transfer to the Respondent's client account. On 24 January the Respondent signed and sent to the lender an unqualified certificate of title, which specifically confirmed that the Respondent had fully complied with the terms of his instructions and the relative provisions of the CML Handbook. The said certificate of title narrated that the purchase price was to be £70,000. That day the lenders deposited a sum of £48,720 in the Respondent's client account being the loan funds. On 25 January the Respondent sent an email to Mr E to advise that the Disposition had gone missing, attached a further copy for him to print off and sign, and requested source of funds documentation. On 26 January the Lints Partnership sent to the Respondent a Form 12A dated 25 January which disclosed *inter alia* that Mr E had taken title to the said property on 2 August 2010. Also on said date, the sum of £65,000 was sent to the seller's solicitors and missives were concluded on that same

date. By letter dated 26 January Mr E wrote to the Respondent to confirm that he had gifted the sum of £17,252 to his sister-in-law to enable her to purchase the subjects from him. On 4 July 2011 the Respondent wrote to the lenders to advise that following investigation, he had noted an error in the certificate of title and he confirmed to the lender that the correct purchase price paid for the subjects was £65,000 and not £70,000 as previously stated on the certificate of title.

9.7 In dealing with the foregoing transaction, the Respondent failed to comply with the obligations imposed upon him in terms of the CML Handbook and in terms of which he agreed to act on behalf of the lender. In particular the Respondent failed to advise his purchasing client of the obligations and import of the Standard Security. Further the Respondent failed to report to the lender that this was a "back-to-back" transaction whereby the seller had not owned the property for a period in excess of six months and that contrary to paragraph 5.1.1 of the CML Handbook. Further the Respondent acted contrary to terms of Rule 6 (1) (c) of the Accounts Rules in that funds were advanced to his client account by the lender who was acting under the false apprehension that their existed no circumstances which the lender ought to have been informed of in terms of the instructions set out in the CML Handbook. The Respondent failed to obtain the requisite confirmation from the lenders that he could proceed to draw down the loan funds. The Respondent should not have drawn money from his client account without the full and informed authority of his client being the lender. The Respondent failed to report to the lender the connection between the seller and the purchaser and that the seller was assisting with the deposit for the purchase of the property from him. Further, the Respondent acted contrary to the terms of Rule 24 of the Accounts Rules in that he failed to carry out proper due diligence and verification of the identity of his

client, and the third party who was providing the deposit for the purchase price, and thereby in breach of regulations 5 and 14 of the Money Laundering Regulations.

Purchase of Property 6

9.8 The Respondent received instructions to act on behalf of Mr F and Ms G in respect of their proposed purchase of property 6 for a price of £72,500. The clients were referred to the Respondent by a Broker. On 21 September 2010 the Respondent submitted an offer to Archibald Sharp, Solicitors offering to purchase the subjects for £72,000. On 24 September the Respondent wrote to the purchasers enclosing his Terms of Business letter. Also on that date the Respondent had received the title deeds to the property which included a Standard Security by the seller in favour of Company 4 dated 12 May 2010. Loan instructions dated 30 September from Birmingham Midshires instructed the Respondent to act on their behalf and in accordance with the CML Lenders Handbook for Scotland and their part 2 instructions. The lenders were proposing to lend £54,375 and that based on a purchase price of £72,500. On 30 September the Respondent wrote to the lenders advising that the deposit was being provided via an equity release agreement and requested the lenders to confirm that they had no objection to matters proceeding. On 1 October, the lenders confirmed that they were aware of the deposit being provided by way of equity release and that they would rely upon the Respondent's professional judgement to consider whether their interests were fully protected by way of the unqualified certificate of title. On 4 October, a qualified acceptance of the purchaser's offer was received and on 5 October the Respondent wrote to the seller's agents concluding missives. On 5 October the Respondent signed an unqualified certificate of title and forwarded it to the lenders. On that date the Respondent wrote to the purchasers

enclosing a copy of his firm's cash statement and seeking the balance due of £19,927.50 which sum included provision for the seller's legal fees. On 6 October the Respondent received the mortgage funds in the sum of £54,340 and on 8 October, the Respondent received a sum of £19,927.50 from Company 4 in connection with the equity release funds. The purchase price of £73,379.37 was paid to the seller's agents on that date. On 8 October, prior to settlement, the Respondent received by fax a Form 13A which again disclosed a Standard Security granted by the seller in favour of Company 4 dated 12 May 2010 which security was in the course of registration. The Respondent sought a discharge of said security as part of his obligations to his client in said transaction. Said discharge was subsequently delivered on 13 October 2010.

9.9 In dealing with the foregoing transaction, the Respondent failed to comply with the obligations imposed upon him in terms of the CML Handbook and in terms of which he agreed to act on behalf of the lender. In particular the Respondent acted contrary to the terms of Rule 6(1)(c) of the Accounts Rules in that funds were advanced to his client account by a lender who was acting under the false apprehension that there existed no circumstances which the lender ought to have been informed of in terms of the instructions set out in the CML Handbook. The Respondent failed to advise the lender of the connection between the third party providing the deposit for the purchase price and the same third party providing a Discharge in favour of the seller in the transaction, all indicating a potential revolving deposit scheme. The Respondent failed to obtain the requisite confirmation from the lenders that he could proceed to draw down the loan funds in those circumstances. The Respondent should not have drawn money from his client account without the full and informed authority of his client, being the lender. Further, the Respondent acted contrary to the

terms of Rule 24 of the Accounts Rules in that he failed to carry out properly due diligence and verification of the identity of the third party providing the deposit for the purchase price and was thereby in breach of Regulations 5 and 14 of the Money Laundering Regulations 2007.

Purchase of Property 7

9.10 On 24 November 2010, Mr E instructed the Respondent to submit an offer on behalf of Mr H to purchase property 7, for a price of £90,000. The Respondent submitted an offer to Archibald Sharp, Solicitors on 25 November but said offer did not proceed. On 13 January 2011, Mr E instructed the Respondent to submit an offer on behalf of Mr I to purchase said property at a price of £88,000. On 14 January the Respondent wrote to Archibald Sharp, Solicitors submitting an offer to purchase the property at a price of £88,000 and with a date of entry of 21 January 2011. Messrs Archibald Sharp were acting on behalf of Company 5. By letter dated 17 January they forwarded the titles to the Respondent which disclosed that their clients had recently acquired the property from Company 6 for a sum of £4,500. By letter dated 18 January they forwarded an acknowledgement from the Registers of Scotland and a Form 12A Report which disclosed that the title to the property had been acquired by Mr J on 17 August 2010, sold to Company 6 on 17 December 2010 and then sold to Company 5 in January 2011. Mr J was designed in his title at the same address as Mr E. Company 5 and Company 6 have the same registered office and the same sole director, a Mr K. On 21 January the Respondent wrote to Archibald Sharp and requested them to confirm whether their clients were a property development company and noted that their clients had acquired the subjects as part of the part-exchange of property and if that were the case the Respondent would have to consider whether the

property had not been owned by the seller for a six month period. On 27 January the Respondent again wrote to Archibald Sharp and requested confirmation of whether the selling client was a developer or builder selling the property acquired under a part-exchange scheme. On that date, loan instructions from Birmingham Midshires were received instructing the Respondent to act on their behalf and in accordance with the CML Lenders Handbook for Scotland and their part 2 instructions. The lenders were proposing to lend Mr I £66,000 based on a valuation of £88,000. On 28 January Archibald Sharp & Sons advised the Respondent that the selling client was a developer and that the property had been acquired under a part-exchange scheme. On 28 January the Respondent wrote to Mr I enclosing certain documents for his signature together with a cash statement requesting the balance due by him to complete the purchase transaction of £23,007. On 28 January the Respondent sent an unqualified certificate of title to the lender. On 28 January a sum of £23,079.23 was received by the Respondent from Mr I. Mr I provided a photocopy of a bank statement showing a sort code and account number from where the payment was made but said statement did not contain Mr I's name. Loan funds of £65,965 were received on 31 January and missives were thereafter concluded on 1 February. The purchase price of £88,000 was transmitted to the seller's agents on that date. An updated Form 12A exhibited prior to settlement disclosed that Mr J had acquired title to the property on 17 August 2010, disponed it to Company 6 on 17 December 2010 for a price of £47,500, who in turn disponed it to Company 5 on 24 January 2011 for a price of £4,500.

9.11 In dealing with the foregoing transaction, the Respondent failed to comply with the obligations imposed upon him in terms of the CML Handbook and in terms of which he agreed to act on behalf of the lender. In particular he failed to report to the

lender that this was a "back-to-back" transaction whereby the seller had not owned the property for a period in excess of six months and that contrary to paragraph 5.1.1 of the CML Handbook. He failed to advise that there was a substantial uplift in the price paid by the purchaser compared with the prices paid by the two previous purchasers or that the value of the loan exceeded the price paid by any of these two previous purchasers. He failed to advise that the property had been disponed on two separate occasions within the six month period prior to his client purchasing the property. He failed to advise of the connection between Mr J and Mr E, all contrary to paragraph 5.1.2 of the CML Handbook. Further, the Respondent acted contrary to the terms of Rule 6(1)(c) of the Accounts Rules in that funds were advanced to his client account by a lender who was acting under the false apprehension that there existed no circumstances which the lender ought to have been informed of in terms of the instructions set out in the CML Handbook. The Respondent should not have drawn money from his client account without the full and informed authority of his client, being the lender. Further, the Respondent acted contrary to the terms of Rule 24 of the Accounts Rules in that he failed to carry out properly due diligence and verification of the identity of his client, the purchaser, and the source of the funds for the deposit for the purchase price and thereby in breach of Regulations 5 and 14 of the Money Laundering Regulations 2007.

Purchase of Property 8

9.12 On 9 September 2010 the Respondent received loan instructions from Halifax plc in respect of the purchase of property 8 by Mrs L at a price of £75,000. On 16 September the Respondent wrote to Mrs L in connection with her said purchase and sought her instructions. On 21 September the Respondent submitted an

offer to Archibald Sharp, Solicitors, to purchase said property for £75,000. Said offer did not proceed. On 25 November 2010 the Respondent submitted a further offer to Messrs McCusker Cochrane & Gunn, Solicitors, seeking to purchase the property but at a price of £70,000. On 20 January 2011 Messrs McCusker Cochrane & Gunn, who were instructed to act for Company 6, wrote to the Respondent enclosing a copy of a Land Certificate, a copy Disposition from Company 5 in favour of Company 6, and other conveyancing documentation. Said letter advised the Respondent that the sale in favour of Company 6 was imminent. Company 5 and Company 6 are companies with the same registered office and place of business and are controlled by the same sole director, a Mr K. Said documents disclosed that Mr E had purchased the property on 22 September 2010 and then sold it for £42,500 to Company 5 on 16 December 2010. Company 6 had purchased the property from Company 5 for a consideration of £4,500 together with the conveyance of a property at property 7. The Respondent had been instructed to act in the purchase of the said property at property 7. Reference is made to paragraph 9.10 above. On 25 January the Respondent wrote to Mrs L enclosing documents for signature and also his cash statement seeking the balance of the purchase price amounting to £23,472. On that date the Respondent wrote to Messrs McCusker Cochrane & Gunn requesting confirmation that the sellers were a developer or builder who had acquired property under a part-exchange scheme. Also on that date the Respondent received a copy of a discharged standard security in favour of Mr E. Mr E had previously purchased the subjects for £42,500 and said subjects had been burdened with a Standard Security in favour of Ms M. Also on that date the Respondent wrote to Halifax plc to confirm to the lenders that the purchase price for the subjects was £70,000 and not £75,000 as contained within the offer of loan. Missives were also concluded on that date. On 26 January

the Respondent received confirmation from McCusker Cochrane & Gunn that Company 6 had acquired the property as part of a part-exchange basis and a copy letter from said company signed by Mr K. By letter dated 27 January Mr E advised that he had gifted the sum of £18,472 to Mrs L, a close personal friend, to enable her to proceed with the purchase of the said property and that said sum was a gift. Mrs L provided a copy of her bank statement indicating that a sum of cash in the sum of £18,472 had been deposited into her bank account and the same day transferred to the Respondent's client account. She also confirmed that position in a telephone call on 28 January. On 27 January the Respondent issued an unqualified certificate of title to the lender. On 28 January loan funds of £52,470 were received in the Respondent's client account. The transaction settled on 2 February 2011 with the purchase of £70,000 being made over to the seller's agents.

9.13 In dealing with the foregoing transaction, the Respondent failed to comply with the obligations imposed upon him in terms of the CML Handbook and in terms of which he agreed to act on behalf of the lender. In particular he failed to report to the lender that this was a "back-to-back" transaction whereby the seller had not owned the property for a period in excess of six months and that contrary to paragraph 5.1.1 of the CML Handbook. He failed to advise that there was a significant uplift in the price between the price paid by the previous heritable proprietors and the price paid by his client and that the amount of loan being provided exceeded the price paid by the previous two purchasers of the property. He failed to advise that the property had been disponed on two separate occasions within the six month period prior to his client purchasing the property. He failed to advise of the connection between his client and Mr E, all contrary to 5.1.2 of the CML Handbook. Further the Respondent acted contrary to the terms of Rule

6(1)(c) of the Accounts Rules in that funds were advanced to his client account by a lender who was acting under the false apprehension that there existed no circumstances which the lender ought to have been informed of in terms of the instructions set out in the CML Handbook. The Respondent should not have drawn money from his client account without the full and informed authority of his client, being the lender. Further, the Respondent acted contrary to the terms of Rule 24 of the Accounts Rules in that he failed to carry out proper due diligence and verification in relation to the identity of the third party who was providing the deposit for the purchase price and also the source of those funds and thereby in breach of Regulations 5 and 14 of the Money Laundering Regulations 2007.

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

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

10.2 His failure to comply with the terms of Rule 6 of the Accounts Rules;

10.3 His failure to comply with the terms of the Accounts Rules in so far as they relate to Money Laundering Regulations, in particular Rule 24; and

10.4 His failure to comply with Regulations 5 and 14 of the Money Laundering Regulations 2007.

11. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 6 December 2013. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against William Christopher Tulips, Muirbrow Chambers, 118 Cadzow Street, Hamilton; Find the Respondent guilty of Professional Misconduct in respect of (1) his failure to comply with the terms of the common law standard applicable to a solicitor acting on behalf of a lender in a conveyancing transaction, in particular, his failure to report to his client, his failure to comply with the explicit instructions provided to him by his client being the obligations imposed on him as provided for within the CML Lenders Handbook applicable to Scotland and his failure to act with absolute propriety and to protect the interests of his client, being the lender, in respect of each transaction; (2) his failure to comply with the terms of Rule 6 of the Solicitors (Scotland) Accounts etc Rules 2001; (3) his failure to comply with the terms of the said Accounts Rules in so far as they relate to Money Laundering Regulations, in particular Rule 24; and (4) his failure to comply with Regulations 5 and 14 of the Money Laundering Regulations 2007; Censure the Respondent; Fine him in the sum of £2,500 to be forfeit to Her Majesty; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and

may but has no need to include the names of anyone other than the Respondent.

(signed)
Douglas McKinnon
Vice Chairman

12. 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

There were two procedural hearings on 29 August 2013 and 15 October 2013. A further procedural hearing was fixed for 15 November 2013 however that was discharged by the Chairman and a substantive hearing was fixed for 6 December 2013.

Two Inventories of Productions were lodged, one on behalf of the Complainers and the other on behalf of the Respondent.

Mr Knight indicated that he wished to amend a typographical error in the Complaint to change the Respondent's date of birth. After that amendment was made, Mr Macreath advised that the Respondent pled guilty to the averments of fact, averments of duty and averments of professional misconduct in the Complaint.

SUBMISSIONS FOR THE COMPLAINERS

Mr Knight stated that the terms of the Complaint together with the productions were largely self-explanatory. He invited the Tribunal to make a finding of professional misconduct in cumulo. He advised that the Respondent's Law Society record card had been lodged in the Inventory of Productions which confirmed that the Respondent had not come to the adverse attention of the Complainers or the Tribunal before.

Mr Knight advised that the background to this Complaint is that the CML Handbook is there to protect lenders against potential fraud. He submitted that the Tribunal has commented in the past that if the CML Handbook is not complied with this can lead to serious implications for clients and the profession at large. Mr Knight advised that the Respondent's firm has been inspected again in 2012 and no adverse issues were found at that inspection and stated that he was able to confirm in particular that no further matters of the type detailed in this Complaint were found.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath referred the Tribunal to Production 2 of the Respondent's Inventory of Productions, an email dated 7 November 2010 from Mr E to Mr N. He advised that this email had not been seen by the Respondent when it was sent despite it appearing that it had been copied to him. Mr Macreath advised that the Respondent first saw the email at the Guarantee Fund Committee meeting in 2012. Mr Macreath advised the Tribunal that the email relates to Articles 6 and 7 of the Complaint. He advised that the transactions referred to in Articles 6 and 7 were complex involving a part exchange by a company and then the properties being sold on to the Respondent's client. Mr Macreath wished to make it clear to the Tribunal members that Mr Knight accepts that the Respondent did not see that email until it was produced at the Guarantee Fund meeting and that the Respondent was very shocked when he saw it. Mr Macreath stated that these transactions did not involve a scheme to get round the CML Handbook in a way that Mr N and Mr E were doing. He advised that it was accepted by the Law Society that there was no suggestion of any dishonest behaviour on behalf of the Respondent.

Mr Macreath advised that it was well known to the Tribunal that in residential conveyancing cases within Scotland where lenders are involved the CML Handbook imposes clear obligations on behalf of solicitors acting for lenders and purchasers. He advised that the Handbook imposes express reporting obligations amongst which is a duty to report when a seller has owned a property for less than six months, as in these cases. There is also an obligation to report to the lender where a seller is connected to a purchaser as in the case of Ms D and Mr E, or if a third party are paying a deposit that must also be reported under the Money Laundering Regulations. In addition, if the funds are being provided by way of equity release this must be reported also. Mr Macreath advised that lenders expressly prohibit back to back transactions. He advised that at one stage these were allowed by some lenders such as the Birmingham Midshires but are no longer permitted.

Mr Macreath stated that in some cases the effect of back to back transactions is that the end price is not a reliable indicator of market value and this has frequently been seen across Scotland particularly in relation to new build properties. Mr Macreath advised that the Tribunal had dealt with such cases recently and understood that these involved serious issues for the profession. Mr Macreath advised that in some of the cases involving a breach of the CML Handbook that the Tribunal has dealt with properties had been erroneously valued over their market value in order for the potential purchaser to borrow the whole purchase price. However, he advised this is not the case in these cases.

Mr Macreath stated that it was a matter of admission that the Respondent did not comply with the reporting requirements under the common law or in terms of the CML Handbook. Mr Macreath advised that this was accepted at a meeting of the Guarantee Fund Committee by the Respondent and he agreed to more inspections of his firm and gave an undertaking that he would no longer be involved in equity release transactions and he would no longer take instructions from Mr E. Mr Macreath advised that when a lawyer attends a Guarantee Fund interview it is like a police interview. He is told that information given by him could be used against him. Mr Macreath advised that the Respondent attended that meeting with his two partners to indicate how seriously the firm were taking these matters. He was very candid in relation to his failures.

Mr Macreath advised that the five matters contained in the Complaint were the "red flag" matters which the Committee was concerned about during that meeting. Mr Macreath emphasised that there was no suggestion of any dishonesty on the part of the Respondent and that this was accepted by the Law Society.

Mr Macreath referred to the judgement of Lord Justice Bingham in the case of Eckersley-v-Binnie [1988] SLR 1 at page 79.

"…a professional man should command that the corpus of knowledge which forms part of the professional equipment of the ordinary member of his profession. He should not lag behind other ordinarily assiduous and intelligent members of his profession in knowledge of new advances, discoveries and developments in his field.

He should have such awareness as an ordinarily competent practitioner would have of his efficiencies in his knowledge and the limitation on his skill. He should be alert to the hazards and risks inherent in any professional task he undertakes to the extent that other ordinarily competent members of the profession would be alert. He must bring to any professional task he undertakes no less expertise, skill and care than other ordinarily competent members of his profession would be bring, but need bring no more. The standard is that of the reasonable average. The law does not require of a professional man that he be a paragon, combining the qualities of polymath and prophet."

Mr Macreath stated that Lord Bingham was saying that all professionals, and in this case solicitors, should be aware of their own deficiencies and developments in their field when people come to see them. Mr Macreath referred the Tribunal to the Findings of the Tribunal in Case 748/89. He advised that in that case the Tribunal found that solicitors were under a common law obligation to disclose to a lender the correct value of a property. Mr Macreath stated that this was therefore not a new requirement.

Mr Macreath referred the Tribunal to Article 3 of the Complaint at page 4 and advised that the file in relation to that transaction was organised and managed well. He submitted that the transaction was conducted in a diligent manner with appropriate enquiries made. He advised that the lenders were aware that it was an equity release transaction and homologated that position after he pressed them on it. Mr Macreath conceded that there was nothing in the file to confirm that the lenders were aware that the purchaser, who was an experienced purchaser and had a large buy to let portfolio, was purchasing with the assistance of an equity release from another property. Mr Macreath conceded that this should have been formally disclosed to the lenders even though they knew it was an equity release transaction. He advised that the Respondent was under the impression that as the funds involved came from his client he did not need to disclose the matter. Mr Macreath stated that the Respondent now accepts that this was not correct.

In relation to the second transaction Mr E's sister-in-law was purchasing a property from him. Mr E was gifting an amount of money to allow her to buy the property. Mr

Macreath referred the Tribunal to Article 4.1 of the Complaint and stated that the Respondent had failed to advise his purchasing client of the obligations and the import of the standard security and further failed to report to the lender that the seller had not owned the property for a period in excess of six months. Mr Macreath submitted that although it was a sale of property within six months it was not strictly a back to back transaction. However he conceded that the family circumstances should have been disclosed. He stated that the letter from Mr E confirming the gift of the money should have been disclosed to the lenders.

In relation to the third transaction Mr Macreath referred the Tribunal to Article 5 of the Complaint. Mr Macreath submitted that the file was well organised and that the business had been referred to the Respondent by a broker. Mr Macreath stated that this was a "red flag" transaction involving a revolving deposit. Mr Macreath advised that the Respondent did not understand what was happening in this case. Due diligence should have been carried out as a third party was providing a deposit. Mr Macreath advised that the firm now has a sophisticated risk management system involving checks at the beginning, middle and end of the transaction. Mr Macreath advised that this firm was created after the partners left Ballantine and Copeland and they built up a busy residential conveyancing business. However when the financial crash came in 2008/2009 the firm sustained major losses. Mr Macreath advised that the firm were not alert to the risks in the property market at that time. Mr Macreath conceded that the enquiries made regarding the source of the funding were not sufficient in this case at all.

Mr Macreath stated that Articles 6 and 7 were inextricably linked. He advised that at this time there were those in the profession seeking to find a way round the part exchange reporting requirements of the CML Handbook. Mr Macreath advised that the part exchange reporting requirements were originally created in relation to part exchange transactions being carried by big house builders. Mr Macreath submitted that this was a one off transaction involving a part exchange and the Respondent did not appreciate that this transaction was more complex than it originally appeared. He advised that in these cases the property was sold on to a company which then carries out an excambion with a small amount of money and then the property is sold on to

the final purchaser. Mr Macreath stated that all these issues were red flag issues to be reported to the lenders.

In relation to the reference in Article 6 to the bank statement provided by Mr I, Mr Macreath stated that not all documentation in a firm is given to solicitors for checking. He advised that this statement was given to a paralegal in the cashroom and whilst it was the Respondent's responsibility to supervise it, this error was not picked up.

Mr Macreath submitted that the Respondent acted in good faith and to some extent became a pawn in a larger fraudulent scheme. Mr Macreath advised that the Respondent erred in his understanding of what he was required to do and was not as alert to the risks and hazards as he should have been.

Mr Macreath advised that the Respondent is 53 and has been in the profession for 30 years. He advised that Strefford Tulips was a highly busy and successful residential conveyancing firm which was hit hard by the financial downturn. Mr Macreath tendered two testimonial letters, one from Mr O who was fully appraised of the terms of the Complaint and was prepared to give a testimonial to the Respondent's integrity.

Mr Macreath stated that the last 18 months have been a difficult period for the Respondent and during that time he has been assiduous in attending at consultations regarding this matter and has taken the time to go through every file with Mr Macreath. He has attended at two Guarantee Fund meetings and the Law Society have inspected his practice. He has also given the undertakings previously referred to.

Mr Macreath submitted that many people in the profession were involved in breaches of the CML Handbook and did not appreciate the risks and the hazards. Mr Macreath advised that from his own personal knowledge there are still similar cases being investigated by the Law Society which may come to the Tribunal. Mr Macreath stated that the Respondent has shown true contrition and is expecting a severe penalty however he wished the Tribunal to take into account that there was no dishonesty alleged in this case. He also wished the Tribunal to take into account the fact that the Respondent is not a sole practitioner. He has the support of his partners and therefore

there is no risk to clients. Mr Macreath stated that he had checked regarding the properties involved and none have been repossessed and therefore there is no loss to members of the public. Mr Macreath advised that Mr E has disappeared and cannot be traced even though there have been attempts to find him. Mr Macreath advised that as a result of this matter the Respondent no longer deals with certain firms. Mr Macreath stated that the Respondent was supported by two excellent partners and the firm has 18 staff including five fully trained paralegals. Mr Macreath advised that the income of the firm is much reduced but is doing reasonably well in undertaking conveyancing, some commercial work and some trusts and executries.

Mr Macreath asked the Tribunal to refrain from restricting the Respondent's practising certificate. He stated that there was no risk to the public and that this had been confirmed by a recent inspection. Mr Macreath asked the Tribunal to take into account the early intervention carried out after the Guarantee Fund interview. He asked the Tribunal to accept that the Respondent took heed of this warning and recognised that there would be a consequence in respect of these failures.

In response to a question from the Tribunal, Mr Macreath advised that the Respondent had been a conveyancer for his whole legal career.

In response to a question from the Tribunal as to whether there was any reason why the Respondent should not have been aware of these issues, Mr Macreath advised that the Respondent along with many practitioners did not appreciate the full responsibilities of acting for the lender during the property boom times. Mr Macreath advised that for many conveyancers it was only seeing cases like this come before the Tribunal that alerted them to the risks. Mr Macreath advised that there was a lack of knowledge regarding money laundering generally within the profession.

DECISION

The Tribunal noted that the Complaint against the Respondent involved five transactions between September and November 2010. Each transaction involved a failure by the Respondent to report to the lenders in terms of the common law standard as well as in relation under the obligations imposed on him as provided for

within the CML Handbook and a failure to act with absolute propriety and to protect the interests of his client, being the lender in respect of each transaction. Three of the five transactions involved back to back transactions. In all five transactions there was a failure to comply with the Accounts Rules and the Money Laundering Regulations.

When a solicitor takes instructions from a lender he owes that lender the same duties of care as any other client. The five transactions detailed in the Complaint disclosed a failure to report properly to the lenders to such a degree that his conduct could be described as nothing less than reckless. In view of this the Tribunal considered that the failures admitted by the Respondent amounted to professional misconduct in terms of the test set down in the Sharp case.

The Tribunal noted that it was accepted by the Complainers that there was no suggestion of any dishonesty on the part of the Respondent. However the CML Handbook is a fundamental part of the lender's instructions. The conditions set out in the Handbook are there to safeguard the lenders.

In considering penalty, the Tribunal took account of the fact that the five transactions were undertaken over a very short period of time. In addition, the Tribunal noted the Respondent had fully cooperated with the Law Society from the stage of his first Guarantee Fund interview and had accepted that he was guilty of professional misconduct. In addition, the Tribunal noted that the Respondent showed remorse and demonstrated tangible insight into his failures. In particular the Tribunal noted that there had been a Law Society inspection in 2012 which had not disclosed any further repetition of these failures. The Tribunal took account of the references on behalf of the Respondent and his previously lengthy unblemished record within the profession.

In view of these factors, the Tribunal considered that there was no ongoing risk to the public and that there was therefore no requirement for supervision.

However the Tribunal considered that it was important to emphasis the seriousness with which it viewed the Respondent's conduct. As an experienced conveyancer the Respondent should have been well aware of his responsibilities in terms of the CML Handbook. The failures to report by the Respondent should have been obvious. The

Tribunal considered that the Respondent’s failures to protect the lenders involved put the lenders and consequently the profession at risk.

Accordingly the Tribunal was of the opinion that a Fine in addition to a Censure was appropriate. Having considered the whole circumstances of this case the Tribunal considered a Fine of £2,500 to be appropriate. The Tribunal made the usual orders in respect of publicity and expenses.

Vice Chairman