THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(COMPLAINT UNDER THE 2005 AND 2008 RULES)

F I N D I N G S

in Complaint

by

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

against

KEVIN WALLACE ALEXANDER DAVIDSON of K.W. A. D., Brodie Point, 133-137 Holburn Street, Aberdeen

1. Two Complaints dated 11 August 2011 were lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Kevin Wallace Alexander Davidson of K.W.A.D., Brodie Point, 133-137 Holburn Street, Aberdeen (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 Complaints as lodged to be served upon the Respondent. Answers were lodged for the Respondent in respect of both Complaints.

3. In terms of its Rules the Tribunal appointed a procedural hearing in respect of both Complaints to be heard on 3 November 2011.

4. On 3 November 2011 the matters were continued to a further procedural hearing on 15 December 2011.

5. When the Complaints called on 15 December 2011 the Complainers were represented by their Fiscal Paul Reid, Solicitor Advocate, Glasgow. The Respondent was present and represented by Jonathan Brown, Advocate.

6. Mr Brown confirmed that the Respondent now pled guilty to both Complaints as libelled. No evidence was led.

7. The Tribunal found the following facts established

7.1 The Respondent was born 27th December 1968. He was admitted as a solicitor and enrolled as a solicitor on Register of Solicitors practising in Scotland in October 1991. From on or about October 1991 until 30th November 2001, he was associated with the firm A C Morrison & Richards, Solicitors of 18 Bon Accord Crescent, Aberdeen initially as an employee, then an associate and latterly as a partner. Thereafter from 7th August 2002 to date, he has practiced as the firm K.W.A.D. Solicitors of Brodie Point, 133/137 Holburn Street, Aberdeen.

Failure to Supervise

7.2 The background to the allegations contained in this complaint arise as a consequence of inspections carried out by the complainers of the financial records, books and documentation of the Respondent. As a consequence of these inspections, a number of unusual conveyancing transactions were identified. Such was the concern on the part of the complainers they carried out repeated and frequent inspections of the financial records, books and documentation of the Respondent and as a result of issues identified, the Respondent was invited to attend the Guarantee Fund Interview Panel of the complainers for interview on three occasions. The first of these interviews occurred in January 2007 following an inspection which occurred in October

2006. At this interview a number of matters of concern were raised with the Respondent, who at its conclusion undertook to deal appropriately with the matters of concern. In particular it was brought to his attention a repeated failure on the part of his firm to advise lenders in conveyancing transactions of the correct and accurate facts and circumstances of the particular transaction. Despite this assurance, subsequent inspections of the financial records, books and documentation of the Respondent identified that unusual practices occurring in conveyancing transactions carried out by his firm were continuing. In particular, following an inspection in February 2008, a number of transactions were identified where lenders in the transactions were not being advised of the true price passing between the parties. These occurred in transactions where the property was being bought and sold simultaneously on the same day, with a significant increase in price and with no evidence on the file maintained by the Respondent's firm that the full amount of the higher price was in actual fact being paid. The Respondent attended a further interview before the Guarantee Fund Interview Panel in May 2008. At this interview, the Respondent was warned that these practices were improper and was advised to put in place appropriate procedures to ensure that they did not occur again. The Respondent was reminded of his obligations as a conveyancing practitioner acting on behalf of lenders in transactions and was advised to have in place practices which would maintain accurate information being passed to the lender. A further inspection of the financial records, books and documentation of the Respondent took place in September 2008. This inspection again identified a repeated failure on the part of the Respondent's firm to disclose the true and accurate circumstances of conveyancing transactions to lenders. The Respondent was again invited to attend for interview with the Guarantee Fund Interview Panel. At this interview the Respondent advised that he had by then intimated 109

circumstances to the Master Policy Insurers. In March 2009, the convenor of the Guarantee Fund Committee personally reviewed three files of the Respondent's firm relating to the affairs of one client. This client had been identified as being involved in unusual conveyancing transactions in an earlier inspection. It was clear from the review of these files that the requirements of the lender in the transaction were not being complied with. As a consequence a complaint was intimated to the Scottish Legal Complaints Commission regarding the conduct of the Respondent and his firm in respect of these transactions.

7.3 The Respondent's firm acted on behalf of Mrs A. A review of the file maintained by the Respondent revealed an offer was sent by solicitors acting on behalf of the developer to the client, Mrs A on 5th December 2007 to sell Property 1 (with the provisional postal address of Property 2) at a price of £299,000. The said offer provided that if the transaction settled prior to 20th December 2007 there would be a discount on the price of £52,325. The price in the Disposition to be delivered would reflect the reduced sum. Further, the missives provided that the purchaser would warrant that they had disclosed the discount to their mortgage lender. A qualified acceptance dated 31st December 2007 was issued by the Respondent's firm. It provided that the purchaser was to be Mr B and not Mrs A, It further provided that the date of entry would be 31st December 2007. The qualified acceptance advised that Mr B did not have a mortgage lender. The solicitors on behalf of the developer issued a letter in conclusion of the bargain that day. On the same date, being 31st December 2007, the Respondent's firm issued an offer on behalf of Mrs A to purchase the property from Mr B at a price of £299,000 with a date of entry being 31st December 2007. Mr B accepted this offer. At settlement of the transaction, the developer executed and delivered a Disposition in favour of Mrs A. The Disposition revealed a consideration having been paid

by her of £246,675. She granted a Standard Security in favour of Mortgage Express plc in respect of a loan of £269,900. The Respondent's firm acted on behalf of the lender. In so doing, the Respondent's firm owed the lender certain duties, in particular a duty to secure a valid security over the subjects and to comply with their instructions. Following completion of the transaction, the Respondent deducted his professional fees and outlays from the mortgage proceeds and remitted to Mrs A a balance of £13,014.03. A review of the file maintained by the Respondent's firm identified a letter dated 27th December 2007 addressed to the lender advising that the original price of the property was £246,675 and that the subjects were sold on immediately to Mrs A for the price of £299,000 as reflected in the Disposition in her favour. In concluding the transaction in this manner, the Respondent had failed to abide by the obligations imposed upon him in terms of the Council of Mortgage Lenders Handbook for Scotland, in particular Clause 5.1.1 and 6.3.2. Although the Respondent advised the lender of the unusual nature of the transaction by letter dated 27th December 2007, there was no evidence that the lender had received this letter or acknowledged receipt of same and provided confirmation to the Respondent to proceed with the transaction. Moreover the information provided in that letter with regard to price in the Disposition was incorrect. In addition the balance of the price due to Mr B did not pass via the Respondent's firm but privately between the parties.

7.4 The Respondent's firm acted on behalf of the client, Mrs A. She consulted with the Respondent regarding the purchase of Property 3 (with a provisional postal address of Property 4). Solicitors acting on behalf of the developer sent to Mrs A an offer to sell Property 3 at a price of £310,000 by formal offer dated 30th November 2007. The offer provided that if settlement was effected no later than 20th December 2007 then there would

be a discount on the price of £62,000. The missives further provided that the purchaser would warrant that she had disclosed the discount to her mortgage lender and that the price stated in the Disposition would reflect this reduced sum. In reply the Respondent issued a qualified acceptance dated 31st December 2007 advising that the client who was to purchase the property was Mr B and that the date of entry was to coincide with the date of that qualified acceptance. They further advised that Mr B had no mortgage lender and confirmed that any lender of Mrs A had been advised of the circumstances of the transaction. The solicitors for the developer issued a formal letter that day concluding the bargain. Separately on 31st December 2007, the Respondent's firm issued an offer on behalf of Mrs A to purchase the property from Mr B at a price of £310,000 with a date of entry being 31st December 2007. The developers executed and delivered a Disposition in favour of Mrs A. A review of the file maintained by the Respondent revealed a Land Certificate in favour of Mrs A identifying a consideration being paid by her of £310,000 along with her having granted a Standard Security in favour of Mortgage Express plc for a loan of £279,000. The Respondent's firm acted on behalf of the lender. In so doing, the Respondent's firm owed the lender certain duties, in particular a duty to secure a valid security over the subjects and to comply with their instructions. Following completion of the transaction, the Respondent deducted his fees and outlays from the mortgage proceeds and remitted to Mrs A a balance of £21,159.03. The Respondent did not advise the lender of the discount offered on the price. The Respondent did not advise the lender that Mr B had bought and sold the property on the same day. The Respondent did not advise the lender that the balance of the purchase price did not pass through his firm. In concluding the transaction in this manner the Respondent had failed to abide by the obligations imposed upon him in terms of

the Council of Mortgage Lenders Handbook for Scotland, in particular Clause 5.1.1. and 6.3.2.

7.5 The Respondent's firm acted on behalf of the client, Mr C. On 5th December 2007 solicitors acting for a developer sent to Mr C an offer to sell to him the subjects at Property 5 (with a provisional postal address of Property 6) at a price of £215,000. The said offer provided that if the transaction was settled prior to 19th December 2007, there would be a discount on the price of £37,625. The offer provided that the price identified in the Disposition would reflect the reduced sum and that the purchaser would warrant that they had disclosed the discount to their mortgage lender. The Respondent's firm issued a qualified acceptance dated 31st December 2007 indicating that they were acting on behalf of a Mrs D and that the date of entry in relation to the transaction was to coincide with the date of their qualified acceptance. They further advised that Mrs D did not have a mortgage lender and confirmed that any lender of Mr C had been advised of the circumstances of the transaction. The solicitors for the developer issued a formal letter that day concluding the bargain. Simultaneously on 31st December 2007, the Respondent issued an offer on behalf of Mr C to purchase the property from Mrs D at a price of £215,000 with a date of entry being 31st December 2007. A Disposition was executed and delivered by the developers in favour of Mr C. The Respondent's firm acted on behalf of the lender. In so doing, the Respondent's firm owed the lender certain duties, in particular a duty to secure a valid security over the subjects and to comply with their instructions. The Respondent wrote to the lender, Mortgage Express plc on 27th December 2007 advising that the original price had been £177,375 and that the property had immediately been sold to Mr C for the sum of £215,000 as reflected in the Disposition. Following completion of the transaction, the Respondent deducted his fees and outlays from the mortgage proceeds and

thereafter remitted the balance of £5,224.91 to Mr C. Although the Respondent apparently advised the lender of the discounted price and immediate re-sale by Mr C, shortly prior to settlement, there is no evidence on the file maintained by the Respondent that the lender acknowledged receipt and confirmed a willingness for the transaction to proceed as required. Separately, the Respondent did not advise the lender that the balance of the price did not pass through his firm. In concluding the transaction in this manner the Respondent had failed to abide by the obligations imposed upon him in terms of the Council of Mortgage Lenders Handbook for Scotland, in particular Clause 5.1.1. and 6.3.2.

7.6 The Respondent's firm acted on behalf of a Mr E. Solicitors for the developer sent to Mr E a formal offer dated 17th May 2007 to sell to him Property 7 (with a provisional postal address of Property 8) at a price of £295,600. The said offer provided that if the transaction settled no later than 2nd July 2007 there would be a discount on the price of £70,800. Any Disposition delivered would reflect as the price the reduced sum and separately the purchaser would warrant that they had disclosed the discount to their mortgage lender. The Respondent issued a qualified acceptance dated 31st December 2007 indicating that the purchaser would be a Miss F. Said qualified acceptance identified a date of entry as being 31st December 2007. On that date, the solicitor for the developer issued a letter formally concluding the bargain. The said Miss F obtained lending finance to facilitate the purchase with Mortgage Express plc. The Respondent's firm acted on behalf of the lender. In so doing, the Respondent's firm owed the lender certain duties, in particular a duty to secure a valid security over the subjects and to comply with their instructions. The Respondent's firm returned a report on title to the lender which was unqualified and made no mention of the discounted price. At the conclusion of

the transaction the Respondent deducted his professional fees and outlays from the proceeds of the mortgage funds and remitted to Miss F the balance of £16,941.87. The Respondent failed to advise the lender as to the discount of £70,800 on the price. In concluding the transaction in this manner the Respondent had failed to abide by the obligations imposed upon him in terms of the Council of Mortgage Lenders Handbook for Scotland, in particular Clause 5.1.1. and 5.1.2.

7.7 The Respondent's firm acted on behalf of the client, Miss F. Solicitors acting on behalf of a developer sent an offer dated 13th March 2007 to a Mr G offering to sell to him Property 9 (with a provisional postal address of Property 10) at a price of £242,000. The missives provided that in the event the transaction settled prior to 30th March 2007, there would be a discount on the price of £48,400. The price in the Disposition would be for the reduced sum and the purchaser would warrant that they had disclosed the discount to their mortgage lender. The Respondent's firm issued a qualified acceptance dated 29th June 2007 advising that the property would be purchased by Miss F instead of Mr G and indicated a discount would be applied of £58,080 provided entry occurred on 29th June 2007. The solicitor acting on behalf of the developer accepted the qualified acceptance and issued a letter in conclusion of the bargain that day. Miss F was obtaining lending finance from the Halifax plc. In so doing, the Respondent's firm owed the lender certain duties, in particular a duty to secure a valid security over the subjects and to comply with their instructions. A certificate of title was sent to the lender by the Respondent's firm on 29th June 2007 which was without qualification. It stated that the price on the transfer was £242,000. At the conclusion of the transaction the Respondent deducted his professional fee and outlays from the mortgage proceeds and remitted to the said Miss F the balance of £7,345.37. The Respondent failed to advise the

lender of the discount of £58,080 on the price or of the correct price paid. In concluding the transaction in this manner the Respondent had failed to abide by the obligations imposed upon him in terms of the Council of Mortgage Lenders Handbook for Scotland, in particular Clause 6.3.1.

7.8 The Respondent's firm acted on behalf of the client, Miss F. On 13th March 2007, solicitors acting on behalf of a developer issued an offer to sell Property 11 (with a provisional postal address of Property 12) to the clients Mr H and Mr I at a price of £249,000. The offer provided that if settlement took place no later than 30th March 2007 there would be a discount on the price of £49,800. The offer further provided that the price in the Disposition would reflect the discounted price and that the purchaser would warrant that they had disclosed the discount to their mortgage lender. A qualified acceptance was issued by the Respondent's firm on 29th June 2007 advising that the purchaser was to be Miss F and that the discount would be increased to £59,760. That qualified acceptance was accepted by the developer's solicitors that day. Miss F had organised mortgage finance with the Halifax plc. In so doing, the Respondent's firm owed the lender certain duties, in particular a duty to secure a valid security over the subjects and to comply with their instructions. A certificate of title without qualification was submitted to the lender on 27th June 2007 advising that the price on the Disposition was £249,000. Following the completion of the transaction, the Respondent deducted from the mortgage proceeds his professional fees and outlays and remitted to the said Miss F the balance of £7,528.62. The Respondent failed to advise the lender of the discount of £49,000. The lender was not advised by the Respondent of the discount of £49,000 on the price nor of the correct price being paid. In concluding the transaction in this manner the Respondent had failed to abide by the obligations imposed upon

him in terms of the Council of Mortgage Lenders Handbook for Scotland, in particular Clause 6.3.1.

7.9 The Respondent's firm acted on behalf of the client, Mr J. On behalf of the client the Respondent's firm submitted an offer dated 2nd August 2007 to purchase the flatted dwellinghouse at Property 13 at a price of £195,000 with a date of entry being 28th August 2007. Said offer was accepted after negotiation identifying a date of entry being 26th October 2007. Mr J had secured mortgage finance through the Birmingham Midshires Building Society. In so doing, the Respondent's firm owed the lender certain duties, in particular a duty to secure a valid security over the subjects and to comply with their instructions. The Respondent's firm acted on behalf of the lender. The Respondent issued a certificate of title certifying that the price stated in the transfer was £240,000 when as he well knew that was incorrect and inaccurate. Following completion of the transaction, the Respondent deducted his professional fees and outlays and remitted to the client the balance of £77.94. A further balance of £5,014.83 was transferred direct to an entity called Property Network in payment of an invoice in accordance with the terms of instruction given to the Respondent by the client. In concluding the transaction in this manner the Respondent had failed to abide by the obligations imposed upon him in terms of the Council of Mortgage Lenders Handbook for Scotland, in particular Clause 5.1.1, 5.1.2, 6.3.1 and 2.3.

7.10 The Respondent's firm acted on behalf of the client, Mr K. Solicitors acting on behalf of a developer by formal offer dated 11th October 2007 offered to sell to Mr K the subjects at Property 14 (with a provisional postal address of Property 15) at a price of £405,000 with a date of entry being 28th November 2007. The Respondent's firm issued a qualified acceptance advising that the clients would be a Mr and Mrs L and not Mr K and the date of

entry would be 30th November 2007. The formal offer to sell provided that if the transaction settled prior to 31st October 2007 there would be a discount on the price of £81,000. Mr and Mrs L secured mortgage finance from the lender TMB. The Respondent acted on behalf of the lender. In so doing, the Respondent's firm owed the lender certain duties, in particular a duty to secure a valid security over the subjects and to comply with their instructions. The Respondent issued an unqualified certificate of title confirming a price being stated in the Disposition of £405,000 when he well knew that was incorrect and inaccurate. Following settlement, the Respondent deducted his professional fees and outlays and from the mortgage proceeds and remitted to their client the sum of £5.00. Further acting upon their instructions, he paid the sum of £7,268.30 to the entity Property Network. The Respondent failed to advise the lender as to the discount of £81,000 on the price. In concluding the transaction in this manner the Respondent had failed to abide by the obligations imposed upon him in terms of the Council of Mortgage Lenders Handbook for Scotland, in particular Clause 6.3.1.

Guarantee Fund Inspection

7.11 An inspection of the financial records, books and documentation of the Respondent was carried out by the Complainers between 30th March and 1st April 2010. A number of matters of concern were raised during the inspection. A report identifying these concerns was intimated to the Respondent and he was requested to provide a detailed reply within a period of 14 days. The report identified a number of concerns on the part of the Complainers regarding the failure by the Respondent to comply with his obligations in terms of the Money Laundering Regulations. A number of files were examined by the Complainers which revealed a failure on the part of the Respondent to obtain

satisfactory and appropriate identification in respect of certain of his clients including the commercial entity Company 1, Mr M and Miss N. The Respondent provided a reply dated 11th May 2010 advising that he would in accordance with the issues identified by the report secure the appropriate identification. Nothing was received from the Respondent. A reminder was intimated requesting his reply. Eventually by letter dated 10th June 2010, the Respondent replied that he had not secured the necessary identification in respect of the commercial entity Company 1 nor had he obtained identification in respect of the client, Mr M. A further opportunity was afforded to the Respondent to secure the outstanding identification. His last reply was dated 29th June 2010 when the Respondent advised that he still had not secured the identification required. Further concerns raised by the Complainers following this inspection regarding a failure on the part of the Respondent to identify the source of funds received by him in respect of a purchase by the client, Mr O. Further in connection with the affairs of the client, Mr P and Miss Q, the Respondent had failed to identify appropriate the commercial entity from whom the Respondent had received funds on behalf of these clients. These concerns were intimated to the Respondent who replied on 10th June 2010 indicating that the money received in respect of the client, Mr O had been returned following a failure of the transaction to complete. In relation to the clients, Mr P and Miss Q, the Respondent replied that he did not need to provide a detailed reply given the transaction had failed and that he had returned the money with a portion thereof going to a third party. The Complainers concluded that in these circumstances the Respondent had received money which was deposited into his client account, from a third party which had been returned to that third party and to another party.

7.12 An inspection was carried out of the Respondent's books, financial records and documentation by inspectors of the Financial Compliance Team of the Complainers of the Respondent's firm between 30th March and 1st April 2010. Following that inspection, a report was sent to the Respondent on 28th March 2009 requesting a reply within 14 days. In particular concerns were raised by the Complainers regarding a failure on the part of the Respondent to identify the source of funds received by him in respect of a purchase by the client, Mr O. Separately in connection with the affairs of clients, Mr P and Miss Q, the Respondent had failed to identify appropriately the commercial entity from which he had received funds on behalf of his clients. The reply from the Respondent was dated 10th June 2010 where he indicated the money received from Mr O had been returned to him following the failure of the transaction to complete. In relation to the clients, Mr P and Miss Q, the Respondent considered he did not need to provide a reply given the transaction had failed and he had returned the money with a portion going to a third party. The Respondent had received money into his client account from a third party which had been returned to a third party and to another party.

7.13 Following an inspection by the inspectors of the Financial Compliance Team of the Respondents on 30th March to 1st April 2010, a number of issues were identified and a report was sent to the Respondent. He was employed by a client in connection with a conveyancing transaction. An offer of loan was submitted. There were certain conditions advanced in the offer of loan, he had failed to comply with these conditions, in particular he had not informed the lender that the balance of the purchase price was not supplied by the client.

8. Having considered the foregoing circumstances the Tribunal found the Respondent guilty of Professional Misconduct <u>in cumulo</u> respect of:

8.1 his conduct amounting to a failure on his part to adequately supervise the conduct of employees then acting in the course of their employment with the Respondent insofar as these employees were involved in conveyancing transactions in terms of which they presented to lenders, on whose behalf they were acting, inaccurate, incorrect and misleading information which subsequently led to the financial gain of clients of the Respondent's firm; in that they failed to abide by the loan instructions provided to them in that they failed to comply with their obligations in terms of the Council of Mortgage Lenders Handbook for Scotland and in particular their duty to report to the Lender an unusual circumstance in relation to the transaction.

8.2 his failure to abide by the terms of Rule 24 of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001.

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

Edinburgh 15 December 2011. The Tribunal having considered the Complaints dated 11 August 2011 at the instance of the Council of the Law Society of Scotland against Kevin Wallace Alexander Davidson of K.W.A.D., Brodie Point, 133-137 Holburn Street, Aberdeen; Find the Respondent guilty of Professional Misconduct in cumulo in respect of his failure to adequately supervise the conduct of employees then acting in the course of their employment with him in so far as these employees were involved in conveyancing transactions in terms of which they presented to lenders, on whose behalf they were acting, inaccurate incorrect and misleading information which subsequently led to the financial gain the client of the Respondent's firm; in that they failed to abide by the loan instructions provided to them and failed to comply with their obligations in terms of the Council of Mortgage Lenders

Handbook for Scotland and in particular the duty to report to the lender an unusual circumstance in relation to the transaction and his failure to comply with Rule 24 of the Solicitors (Scotland) Accounts Etc Rules 2001; Censure the Respondent and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of three years with effect from 1 June 2012 any practising certificate held or issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to such employer as may be approved by the Council or the Practising Certificate Sub Committee of the Council of the Law Society of Scotland; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Kirsteen Keyden

Vice Chairman

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

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

There were two Complaints before the Tribunal, one under the Scottish Solicitors Discipline Tribunal Procedure Rules 2005 and the other under the Scottish Solicitors Discipline Tribunal Procedure Rules 2008. The only reason that the matters were put into two Complaints was due to the dates when the conduct occurred meaning that one Complaint was governed by the old Rules and the other by the new Rules. The Tribunal however saw no difficulty in dealing with the two Complaints together and issuing one set of Findings in relation to the two Complaints. The matters were set down for a procedural hearing on 15 December 2011 but when they called it was clarified that the Respondent was pleading guilty as libelled to both Complaints and accordingly the matters proceeded to a conclusion. As the facts were admitted there was no need for any evidence to be led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid stated that the Respondent had been in the profession for 20 years and that these matters arose following on from Law Society inspections. The Law Society inspection identified unusual conveyancing transactions. There was a Guarantee Fund interview with the Respondent in January 2007 when the Respondent was told that he needed to pass on the information to the lenders. There was another Guarantee Fund interview in May 2008 when the Respondent was strongly reminded of what was expected of him. A further inspection in September 2008 highlighted more instances of the same problem. Mr Reid explained that the Respondent had identified 109 matters where there had been a breach of the CML Handbook and he reported these matters himself. Mr Reid pointed out that there were similarities between the transactions, they were new build properties, sold at a discount and a profit was made by individuals when the properties were sold on the same day. The Law Society enquiries showed that the transactions had been dealt with by junior members of staff.

In respect of Complaint B these matters came to light as a consequence of the inspections and had been included in a separate Complaint as due to the dates when the

conduct occurred. Mr Reid asked the Tribunal to make a finding of professional misconduct in cumulo in respect of both Complaints.

SUBMISSIONS FOR THE RESPONDENT

Mr Brown pointed out that the Respondent had been in the profession for 20 years without incident. In connection with Complaint A, there was a cluster of similar and related transactions. The mischief was that the lender, who was also a client, did not get a full and complete report of the material circumstances surrounding the transaction as was required. The first purchaser bought from the builder at a discounted price for early completion. On the same day the first purchaser sold on to a second purchaser who paid the full price and the mischief was that the second purchaser may assume that the price was the real value and the loan was based on this second price and the lender had not been alerted of this. This would result in a lender basing the amount of loan on the value paid by the second purchaser when the property had changed hands earlier the same day for a lesser value. This would affect the amount of loan granted. The lender was not in possession of all the facts. The CML Handbook had been revised to make it a specific obligation to report this type of matter. Mr Brown explained that the transactions were related and that Mr B was a financial adviser and he and his wife were the clients in respect of Articles 2.2 and 2.3. The rest of the clients were referred by Mr B as their adviser. Mr Brown stated that if Mr B had been told that this was not on in connection with the first transaction the other transactions would not have happened.

Mr Brown clarified that the day to day work was done by three qualified assistants within the Respondent's firm. One was an associate 3 years qualified, another was an experienced assistant with 25 years experience who was very good with technical matters but unworldly and who did not see what was happening and the third was a conveyancing paralegal. The Respondent was a partner and then sole practitioner of the firm. His role was business development and he had been very involved in a sports agency in 2008. At this time it was the anniversary of Aberdeen winning the cup and there were a lot of events going on which took up a lot of the Respondent's time. He was also having difficulties in his marriage and took a number of holidays to try and work things out but they separated. Mr Brown clarified that the Respondent was not

hands on involved in the day to day conveyancing. In response to a question from the Chairman in respect of the size of the Respondent's firm in 2008, it was clarified that there were 4 solicitors and the Respondent and 2 part time solicitors. In response to a question from a Tribunal member, it was confirmed that the Respondent was in day to day charge of the cash room and was aware of all the transactions and signed the cheques. Mr Brown pointed out that there was nothing untoward on the face of the transactions or in the cash room, the duty that the Respondent missed was the duty to stop the transactions happening. Mr Brown stated that it was conceded that there was an obligation on the Respondent to properly supervise his staff and have proper systems in place. It was clarified that Mr Ingram was a partner until the end of 2007 when matters first came to the attention of the Law Society.

Mr Brown submitted that the Respondent knew that there was an issue but did not realise the scale of the problem. After the first inspection he did take action to tell the staff to report matters to lenders and there were reports but this per se was not enough. It was not enough to just write to the lender and say that it was a back to back transaction and then carry on if there was no reply. It was not good enough to assume that if they had sent the funds the lenders were happy. The lenders required to give positive consent. Mr Brown pointed out that some of the transactions happened during the festive period when there was skeleton staff in place at the lenders. Mr Brown pointed out that most of the lenders were subsidiaries of HBOS who seemed to be lenders who suffered from a disproportionate amount of this type of transaction and this was perhaps why Mr B selected them.

Mr Brown advised that the Respondent now had specific instructions to staff on what steps they required to take and there was a system of recording on the files. This system was initiated after the complaint process in connection with professional misconduct was commenced. The Respondent had his eye off the ball and had previously only given a superficial instruction. It was only when the disciplinary strand came in that he took advice from Mr Macreath. He looked at the files and realised that there was a systematic problem. There is now a bar on any transactions settling without the file being signed off for CML compliance. There was also a system of random sampling by the Respondent every couple of weeks.

In response to a question from the Tribunal, Mr Brown stated that there were only about 4 live claims in respect of the professional indemnity insurance but it was possible that other claims would crystallise in the future if borrowers defaulted.

In respect of Complaint B, this arose due to the inspection process. Mr Brown submitted that it would not be sufficiently serious of itself to amount to professional misconduct. There were a series of failures in respect of identifying clients but the underlying circumstances were such that these were not high risk transactions. Company 1 was another name for Company 2 and there was no doubt they were who they said they were. Mr Brown submitted that the breaches of the money laundering regulations which were identified happened frequently within firms. Two of the individuals were known to the Respondent but did not fit the established client criteria. They were however who they said they were. In respect of the identification of the funds in respect of Mr O, funds were identified in the earlier stages of the transaction but not in respect of every individual later payment. This transaction did not conclude and funds were returned. In connection with funds received from Miss Q, the sale price was not sufficient to discharge the mortgage and the third party loan. The clients were confident that they could get the discharge of the second loan despite not having enough funds. An advance of salary from a well known oil company was required. The Respondent knew the company but did not verify. The transaction did not complete and the money was returned. Mr Brown stated that it was accepted that the only way that money laundering could be properly regulated was to have solicitors do a check in every case.

Mr Brown stated that it was accepted that in cumulo this was a serious course of conduct. Mr Brown stated that the Tribunal required to look at the protection of the public and the reputation of the profession. Mr Brown submitted that the Tribunal could be satisfied that there was no ongoing risk to the public and could mark the gravity of the conduct by a censure and a high fine. Mr Brown referred to the latest Law Society inspection which had recently taken place. He indicated that while this was not a clean bill of health the issues raised concerned fine detail of identifying client procedures. He submitted that these sort of things came up in inspections of every firm. Mr Brown submitted that in the Respondent's case he had acted in good faith and had made legitimate attempts to discharge the duties on him. He had not been dishonest,

had not done anything for personal gain and there was not an issue of competence. It was a failure to appreciate the onerous requirements that must be met. Mr Brown stated that the Tribunal could be satisfied that the requirements would be met in future and that the public would not be at risk. Mr Brown pointed out the substantial financial cost to the Respondent who now had a premium loading of £14,000 per annum on his indemnity insurance. He would also have to settle the excesses on the claims and would further have the Tribunal expenses and his own legal costs to pay. Mr Brown referred the Tribunal to the four references lodged from prominent solicitors. He stated that if the Tribunal felt that it was necessary to restrict the Respondent's practising certificate he would need time to make the necessary arrangements.

DECISION

The Tribunal was greatly concerned by the Respondent's conduct in this case. The Tribunal considered that there were systematic ongoing failings. There had been three inspections and three appearances before the Guarantee Fund Committee but it was only after the commencement of conduct proceedings against the Respondent that rigorous changes in process were made. The Respondent was the sole partner responsible and the designated cash room partner and should have known what was happening within his firm. The Tribunal note that the Respondent has now put in place a proper system but still there is no one to cross check what the Respondent does. Although he is signing off each of the files to check compliance with the CML Handbook there is no oversight by any third party to ensure protection of the public. The Respondent's conduct was a serious failure to supervise staff over a long period in respect of numerous transactions. The Respondent owed a duty to the lender to ensure that the title being granted in favour of the borrower was clear and without defect thereby preserving the status of the standard security being granted by the borrower in favour of the lender. If the Respondent had discharged adequately his duty to supervise the conduct of his employees then he would have identified that on repeated occasions inaccurate, incorrect and misleading information was being presented to lenders to the financial gain of clients of the Respondent. The Tribunal found it particularly concerning that this went on even after the matter had been brought to the Respondent's attention on a number of occasions by the Law Society. The Tribunal accept that the Respondent did take some steps by advising his staff to write to the lenders about the

back to back transactions but he still failed to comply with his duty and with the conditions of the CML Handbook.

The Tribunal accordingly had no hesitation in finding the Respondent's conduct in cumulo sufficiently serious and reprehensible so as to amount to professional misconduct in terms of the Sharp test. The Tribunal accept that the breaches of the money laundering regulations in this particular case are not the most serious but taken in cumulo with the other matters are sufficient to amount to professional misconduct.

The Tribunal also note that despite these Complaints reaching the Tribunal, the Respondent's firm has still not been given a clean bill of health in the latest inspection by the Law Society. This inspection appears to identify a number of matters which are classed by the Law Society as of a serious nature.

The Tribunal consider, given the serious and ongoing failings by the Respondent, that it is necessary to impose a Restriction on the Respondent's practising certificate in order to ensure that the public are protected. The Tribunal considered that a period of 3 years would be sufficient and did not consider it necessary to impose a fine in addition to this given that the Respondent will have significant expenses to pay in connection with the proceedings. The Tribunal Ordered the Restriction to come into force on 1 June 2012 thus allowing the Respondent time to wind up his firm. The Tribunal made the usual order with regard to expenses and publicity.

The Tribunal had concerns with regard to the lack of contrition included in the plea in mitigation put forward on behalf of the Respondent. Mr Brown however indicated that this had been a mistake on his part and that the Respondent was contrite. This matter would not however have made any difference to the Tribunal's disposal.

Vice Chairman