

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

FINDINGS

in Complaint

by

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

against

**DUNCAN HAMISH EDWARD
KERR, residing at 88 Willowbank
Road, Aberdeen**

1. A Complaint dated 20 April 2012 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Duncan Hamish Edward Kerr, 88 Willowbank Road, 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 Complaint as lodged to be served upon the Respondent. Answers by way of letter dated 5 June 2012 were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard as a procedural hearing on 20 July 2012 and notice thereof was duly served on the Respondent.
4. When the case called on 20 July 2012, the Complainers were represented by their Fiscal, Paul Reid, Solicitor Advocate, Glasgow. The

Respondent was neither present nor represented. Direct contact was made with the Respondent to confirm that he had no intention of attending and that he was insisting on his aforementioned Answers. The fiscal indicated that the Respondent's position as laid out in his Answers was not accepted in its entirety and that evidence would require to be led. A substantive hearing was fixed for 18 September 2012 at 10.30am and it was agreed that the Notice of Hearing would be served upon the Respondent by Sheriff Officer.

5. At the hearing on 18 September 2012, the Complainers were represented by their fiscal Paul Reid, Solicitor, Advocate, Glasgow. The Respondent was neither present nor represented. A further letter had been submitted by the Respondent dated 17 September 2012 indicating that he was aware of the date of the hearing but had no intention of attending. Consideration was given as to what evidence would be necessary given the terms of the Respondent's admissions. The fiscal asked the Tribunal to adjourn the hearing to another date to allow him to obtain copies of various CML Handbooks and to consider what evidence he intended to lead. The matter was continued to a further hearing on 15 November 2012 at 10.30am. The fiscal was reminded that any additional productions to be lodged for that date required to be copied to the Respondent.
6. The hearing took place on 15 November 2012. The Complainers were represented by their fiscal, Paul Reid, Solicitor Advocate, Glasgow. The Respondent was neither present nor represented. Further correspondence dated 12 November 2012 had been received from the Respondent confirming his knowledge of the date fixed for hearing, indicating that he was not attending, and giving further information on his behalf. It was confirmed that the hearing was to proceed in terms of the Tribunal Rules 2005. Thereafter, evidence was led on behalf of the Complainers.
7. The Tribunal found the following facts established:-

- 7.1 The Respondent was born 1st February 1967. He was admitted as a solicitor on 2nd November 1990. He was enrolled as a solicitor in the Register of Solicitors practising in Scotland on 15th November 1990. From 1st November 1990 until 30th September 1991, the Respondent was employed with the firm Paull & Williamsons, Solicitors, Edinburgh. From 1st October 1991 until 31st October 1992, the Respondent was employed with the firm Aberdeen Considine & Company, Solicitors, Aberdeen. From 1st November 1992 until 31st October 1998, the Respondent was employed by the firm Burnett & Company, Solicitors. From 1st November 1998 until 23rd March 2010, the Respondent was initially a partner in the organisation Solicitors Direct which in or about 2nd March 2009 changed its status to Solicitors Direct (Scotland) Limited, of which the Respondent was a director. The Respondent was sequestrated on or about 24th March 2010. To the knowledge of the Complainers, the Respondent is presently not working within the legal profession.
- 7.2 The Respondent was a Partner in the firm and traded as Solicitors Direct of 4 Golden Square, Aberdeen between on or about November 1998 through to March 2009. The Financial Compliance Department of the Complainers conducted an inspection of the Respondent's financial records, books, accounts and documentation in April 2008. This inspection identified a number of matters of serious concern. Correspondence was entered into with the Respondent in an effort to resolve these concerns. The Respondent failed to adequately address the issues which were raised as a consequence of which a formal complaint was intimated to the Respondent.
- 7.3 The Council of Mortgage Lenders describes itself as a not for profit organisation and a trade association for the mortgage

lending industry in the UK. Its members account for around 94% of the 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. 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 the general provisions in part 1 of the handbook and any lender-specific requirements in terms of part 2 require to be followed.

Purchase of Subjects at Property 1

- 7.4 The Respondent was consulted by a Mr and Mrs A of property 2. He was instructed in connection with their purchase of the heritable subjects property 1 which upon completion was to be provided with the postal address of property 3. The Respondent received an offer to sell on behalf of the developer dated 30th November 2007. Said offer to sell indicated a price of £117,000. The Respondent issued a Qualified Acceptance on behalf of his clients dated 30th January 2008 in terms of which he modified the offer to reflect that there would be a 5% deposit given on the purchase price stated therein. Missives were never concluded.
- 7.5 The clients obtained lending finance from the Birmingham Midshires Building Society which is a division of the Bank of Scotland plc of The Mound, Edinburgh, EH1 1YZ. Loan instructions were issued to the Respondent dated 18th January

2008. In terms of those loan instructions, it was provided “you are instructed in accordance with the CML Lenders Handbook for Scotland and their part 2 instructions. The second edition of the CML Lenders Handbook for Scotland and their part 2 instructions are only available on the CML website”. The Respondent accepted these instructions and proceeded with the conveyancing. Missives were not concluded. The developer was an organisation called Company 1. The solicitor acting on behalf of the developer in processing the conveyancing delivered to the Respondent by letter dated 28th January 2008 various drafts for revisal. Enclosed therein was a draft Disposition which revealed that Company 1 were the heritable proprietors of the subjects, that they had sold the subjects to a Mr B who had not completed title thereto and that the said Mr B had sold the subjects to Company 2 who in turn were to sell the subjects to the clients whom the Respondent represented. The Respondent issued a Report on Title to the lender dated 13th February 2008. In terms of the report on title the Respondent certified that he had investigated the title to the property offered to the lender as security and that the title was good and marketable and may be safely accepted by them. Having received the Certificate of Title the lender arranged for loan funds of £99,415 to be paid to the Respondent. The transaction settled on 14th February 2008. The Respondent paid to the solicitor acting for the seller the sum of £111,150. The conveyancing documentation was delivered to the Respondent and he submitted same on behalf of his clients to the Land Register. With his submission he included the Disposition in favour of Company 2 as well as the Disposition relating to the interest of his client.

- 7.6 In dealing with the conveyancing transaction in this fashion, the Respondent failed to comply with the obligations imposed upon him in terms of the CML Handbook , 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 what is commonly known as a “back to back transaction” whereby the person selling to the borrower had owned the property for less than six months or that he was not the proprietor (contrary to paragraph 5.1.1 of the CML Handbook) ; and that he did not have control over the full purchase price in that it would appear the deposit in respect of the subjects passed between the parties themselves (contrary to paragraph 6.3.2 of the CML Handbook). Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further a deposit was paid in this transaction. The deposit was never paid through the client account maintained by the Respondent.

Purchase of Property 4

- 7.7 The Respondent acted on behalf of a Ms C of property 5. On 17th December 2007 he received an offer to sell from the developer the subjects at property 4 which upon completion would be provided with the postal address of property 6. The price identified was £125,000. The offer provided for a non-refundable deposit of £6,250 to be paid to the seller upon conclusion of the Missives. Missives appear not to have been concluded. The Respondent obtained loan instructions from the Birmingham Midshires Building Society which is a division of the Bank of Scotland plc of The Mound, Edinburgh, EH1 1YZ. Said loan instructions were dated 20th December 2007. In terms of the loan instructions the Respondent was instructed as follows “please also act for the Bank of Scotland plc on the mortgage of the property to us. You are instructed in accordance with the CML Lenders Handbook for Scotland and their part 2 instructions. The second edition of the CML

Lenders Handbook for Scotland and their part 2 instructions are only available on the CML website". The Respondent submitted a Certificate of Title to the lender on 20th December 2007. The Respondent did not issue any qualifications to the Certificate of Title. Having received the Certificate of Title loan funds of £106,215 were deposited with the client account of the Respondent. The transaction settled on 21st December 2007. Upon receipt of the price the seller's solicitor delivered to the Respondent settlement items which included a Disposition in favour of the seller which was described as a Link in Title along with a Disposition in favour of the client whom the Respondent represented. Said Link in Title suggested that this was a back to back transaction and should have been reported by the Respondent to the lender in terms of the CML Handbook. Subsequent enquiry by the Complainers revealed that at no stage was the funding for the deposit ever held by the Respondent. The balance of the purchase price of £12,500 being the difference between the loan funds and the price in terms of the Missives had been provided not by the purchaser but from the seller with no explanation or enquiry made by the Respondent as to the basis upon which these funds had been paid.

- 7.8 In dealing with the conveyancing transaction in this fashion, the Respondent failed to comply with the obligations imposed upon him and which he had accepted in terms of the CML Handbook in that the Respondent had failed to report to the lender that the transaction was a transaction commonly known as a "back to back transaction; that the Respondent had failed to report to the lender that an incentive had been paid in that he had failed to report to the lender that the seller had paid the sum of £12,500 to facilitate payment of the purchase price (contrary to paragraph 6.3.1 of the CML Handbook); in that the Respondent had failed to report that he did not have control over the full

purchase price (contrary to paragraph 6.3.2 of the CML Handbook); in that the Respondent had failed to report that the balance of the purchase price was not being provided from the borrowers own funds and (contrary to paragraph 5.8 of the CML Handbook)". Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further a deposit was paid in this transaction. The deposit was never paid through the client account maintained by the Respondent.

Purchase of Property 7

- 7.9 The Respondent acted on behalf of a Mr D of property 8. On 17th December he received an offer to sell the subjects at Plot 6 of the development at property 7 which when completed would have the postal address property 9. The offer to sell was dated 17th December 2007. The offer provided for a price of £125,000 with a deposit of £6,250 to be paid by the Respondent's client on conclusion of Missives. The Respondent issued a formal letter mistakenly dated 21st November 2007 in terms of which on behalf of his client he accepted the terms of the offer to sell. It would appear from a review of the file maintained by the Respondent that he had never been formally instructed by his client. A review of the file revealed a letter from the sellers solicitors KWAD Solicitors dated 21st August 2007 addressed to the Respondent providing him with the details of his client.
- 7.10 It transpired that Mr D the client was in actual fact employed by KWAD Solicitors who were acting on behalf of the seller. The Respondent received loan instructions from the Birmingham Midshires Building Society being a division of the Bank of Scotland of The Mound, Edinburgh, EH1 1YZ dated

19th December 2007. In terms of the letter of instruction it provided that “you are instructed in accordance with the CML Lenders Handbook for Scotland and their part 2 instructions”. The Respondent issued an unqualified Report on Title to the Birmingham Midshires Building Society on 20th December 2007. Having received the unqualified Report on Title the building society transferred to the client account of the Respondent the sum of £106,215. Subsequent review of the file revealed that the balance of the purchase price was paid by the seller to the Respondent to facilitate the transaction settling. The transaction settled on 20th December 2007 and the Respondent paid to the solicitors acting for the seller the sum of £118,750. At settlement various items were delivered by the seller’s solicitors to the Respondent. In particular there was delivered a Disposition in favour of Mr E together with a Power of Attorney. Said Disposition represented a Link in Title and revealed that the seller was not the registered owner of the property at the time the property was sold to the client of the Respondent.

- 7.11 In dealing with the conveyancing transaction in this fashion, the Respondent acted contrary to the obligations imposed upon him and in respect of which he accepted in terms of the CML Handbook. In particular the Respondent had failed to report that the person selling to the borrower had owned the property for less than 6 months or was not the proprietor (contrary to paragraph 5.1.1 of the CML Handbook); in that the Respondent had failed to report that he as the solicitor was not in control of the full purchase price (contrary to paragraph 6.3.2 of the CML Handbook); in that the Respondent failed to report that the balance of the purchase price was not being provided from the borrowers own funds (contrary to paragraph 5.8 of the CML Handbook). Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to

adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further a deposit was paid in this transaction. The deposit was never paid through the client account maintained by the Respondent.

Purchase of Property 10

7.12 The Respondent acted on behalf of a Mr E of property 11. On 17th December 2007 the Respondent received an offer to sell dated 17th December 2007 the subjects of property 10. When the development was complete the subjects would have the postal address of property 12. The offer to sell provided for a price of £125,000 and a non-refundable deposit of £6,250 to be paid to the seller on conclusion of Missives. On behalf of his client the Respondent accepted the terms of the offer to sell by formal letter mistakenly dated 21st November 2007. The client Mr E sought and obtained loan finance from the Birmingham Midshires Building Society. Formal instructions were issued to the Respondent dated 20th December 2007 in terms of which he was advised “you are instructed in accordance with the CML Lenders Handbook for Scotland and their part 2 instructions. The second edition of the CML Lenders Handbook for Scotland and their part 2 instructions are only available on the CML website”. The Respondent accepted these loan instructions and proceeded to act in connection with the conveyancing. The Respondent issued a Certificate of Title to the Birmingham Midshires Building Society on 20th December 2007 which was unqualified. A review of the file maintained by the Respondent revealed that the balance of the purchase price was delivered to the client account of the Respondent by the seller. Having received the unqualified Certificate of Title the lender transferred the sum of £106,215 to the client account of the Respondent on 20th December 2007. The Respondent settled the transaction on 21st December 2007. At settlement

the Respondent received various settlement items including a Disposition in favour of the seller together with a copy Power of Attorney.

- 7.13 In dealing with the conveyancing transaction in this fashion, the Respondent acted contrary to the obligations imposed upon him in terms of the CML Lenders Handbook. In agreeing to act on behalf of the lender the Respondent accepted these obligations. In particular the Respondent failed to report to the lender that the person selling to the borrower had not owned the property for 6 months or was not the proprietor (contrary to paragraph 5.1.1 of the CML Lenders Handbook); in that the Respondent had failed to report to the lender that he was not in control of the full purchase price (contrary to paragraph 6.3.2 of the CML Lenders Handbook); in that the Respondent failed to report that the balance of the purchase price was not being provided from the borrowers funds (contrary to paragraph 5.8 of the CML Lenders Handbook. Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further a deposit was paid in this transaction. The deposit was never paid through the client account maintained by the Respondent.

Property 13

- 7.14 The Respondent was instructed by the client Mr E. On or about 17th December 2007 an offer to sell was received in respect of the subjects at property 13 which upon completion the subjects would have the postal address property 14. The offer to sell identified a price of £125,000 with a deposit of £6,250 to be paid upon conclusion of the Missives. A formal letter was issued by the Respondent dated mistakenly 21st November 2007 concluding the Missives. The client obtained lending

finance from the Birmingham Midshires Building Society. The formal letter of instruction was issued to the Respondent by the building society dated 17th December 2007. In terms of that letter of instruction the building society provided that “you are instructed in accordance with the CML Lenders Handbook for Scotland and their part 2 instructions. The second edition of the CML Lenders Handbook for Scotland and their part 2 instructions are only available on the CML website”. The Respondent accepted these instructions. The Respondent issued a Certificate of Title which was unqualified to the lender on 19th December 2007. A subsequent review of the Respondent’s file disclosed that loan funds of £106,215 were released to the client account of the Respondent by the lender on 19th December 2007. The transaction settled on 20th December 2007 when payment of £118,750 was made to the seller’s solicitor. A review of the client ledger maintained by the Respondent reveals that the sum of £13,305.18 had been received by the Respondent on 20th December 2007, the Respondent issued a State for Settlement to his client which recorded incorrectly that the payment had been received from the client rather than from the seller. When the transaction settled the Respondent received certain settlement items which included a Disposition in favour of the seller being a Link in Title.

- 7.15 In dealing with the conveyancing transaction in this fashion, the Respondent acted contrary to the obligations imposed upon him in terms of the CML Lenders Handbook. In agreeing to act on behalf of the lender the Respondent accepted these obligations. In particular the Respondent failed to report to the lender that the person selling to the borrower had not owned the property for 6 months or was not the proprietor (contrary to paragraph 5.1.1 of the CML Lenders Handbook); in that the Respondent had failed to report to the lender that he was not in control of

the full purchase price (contrary to paragraph 6.3.2 of the CML Lenders Handbook); in that the Respondent failed to report that the balance of the purchase price was not being provided from the borrowers funds (contrary to paragraph 5.8 of the CML Lenders Handbook. Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further a deposit was paid in this transaction. The deposit was never paid through the client account maintained by the Respondent.

Purchase of Property 15

- 7.16 The Respondent acted for the client Mr E. On 17th December 2007 the Respondent received an offer to sell the subjects at property 15 which upon completion would have the postal address of property 16. The offer to sell identified a price of £125,000 and provided for a non-refundable deposit of £6,250 being paid at the conclusion of the Missives. By formal letter dated 18th December 2007 the Respondent accepted the terms of the offer to sell on behalf of his client. The client obtained lending finance from the Birmingham Midshires Building Society. A formal letter of instruction dated 14th December 2007 was issued to the Respondent. This letter provided “you are instructed in accordance with the CML Lenders Handbook for Scotland and their part 2 instructions. The second edition of the CML Lenders Handbook for Scotland and their part 2 instructions are only available on the CML website”. The Respondent accepted these instructions. The Respondent submitted a Certificate of Title which was unqualified to the lender on 18th December 2007. The lender released loan funds of £106,215 to the client account of the Respondent on 19th December. The transaction settled on 20th December 2007 whereupon a payment of £118,750 was made to the solicitors

acting for the seller. A review of the client ledger maintained by the Respondent reveals that the sum of £13,305.18 was received by the Respondent on 20th December 2007 from a commercial entity Company 2. These funds were applied to the balance of the purchase price and the fees and outlays incurred by the client. The State for Settlement issued by the Respondent recorded incorrectly that the payment had been received from the client. At settlement certain items were delivered, these included a Disposition in favour of the developer constituting a Link in Title.

- 7.17 In dealing with the conveyancing transaction in this fashion, the Respondent acted contrary to the obligations imposed upon him in terms of the CML Lenders Handbook. In agreeing to act on behalf of the lender the Respondent accepted these obligations. In particular the Respondent failed to report to the lender that the person selling to the borrower had not owned the property for 6 months or was not the proprietor (contrary to paragraph 5.1.1 of the CML Lenders Handbook); in that the Respondent had failed to report to the lender that he was not in control of the full purchase price (contrary to paragraph 6.3.2 of the CML Lenders Handbook); in that the Respondent failed to report that the balance of the purchase price was not being provided from the borrowers funds (contrary to paragraph 5.8 of the CML Lenders Handbook). Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further a deposit was paid in this transaction. The deposit was never paid through the client account maintained by the Respondent.

Property 17

7.18 The Respondent acted on behalf of a Mr F of property 18. On 10th December 2007 the client instructed the Respondent to submit an offer to purchase the subjects known as and forming property 19 at a price of £340,00 Sterling. The offer provided that a vendor deposit of £17,000 would be deducted from the purchase price at settlement. The offer further provided that a deposit of £5,000 had already been paid and this would be deducted from the purchase price payable at settlement. The Missives in respect of the purchase were concluded on 17th January 2008. The Respondent was instructed by the Birmingham Midshires Building Society by letter dated 10th January 2008. This letter provided that “you are instructed in accordance with the CML Lenders Handbook for Scotland and their part 2 instructions. The second edition of the CML Lenders Handbook for Scotland and their part 2 instructions are only available on the CML website”. The Respondent accepted these instructions. An unqualified Certificate of Title was sent by the Respondent to the lender on 23rd January 2008. A review of the client ledger maintained by the Respondent revealed that loan funds of £288,965 were released by the lender on 24th January 2008. The transaction settled on 25th January 2008. The Respondent tendered a cheque for the sum of £317,660.83 to the seller’s agents. The balance of the price was accounted for by way of a £17,000 discount offered by the sellers and a deposit of £5,000 which apparently had been paid by Mr F to the sellers directly.

7.19 In dealing with the conveyancing transaction in this fashion, the Respondent acted contrary to the obligations imposed upon him in terms of the CML Lenders Handbook. In agreeing to act on behalf of the lender the Respondent accepted these obligations. In particular the Respondent failed to report to the lender that the person selling to the borrower had not owned the property for 6 months or was not the proprietor (contrary to paragraph

5.1.1 of the CML Lenders Handbook); in that the Respondent had failed to report to the lender that he was not in control of the full purchase price (contrary to paragraph 6.3.2 of the CML Lenders Handbook); in that the Respondent failed to report that the balance of the purchase price was not being provided from the borrowers funds (contrary to paragraph 5.8 of the CML Lenders Handbook). Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further a deposit was paid in this transaction. The deposit was never paid through the client account maintained by the Respondent.

Purchase of Property 20

- 7.20 The Respondent acted on behalf of the client Mr E of property 11. Mr E had a commercial relationship with a Mr D of the firm KWAD Solicitors. A review of the file maintained by the Respondent revealed a letter from Mr D to the Respondent dated 31st December 2007 in which he advised that in this transaction title had been transferred to his business partner Mr E at a price of £153,000 following the acquisition by Mr D of the property from Company 3. The lender was the mortgage business of PO Box 548, Leeds, LS1 1WU. The lender issued formal instructions to the Respondent dated 11th January 2008. The formal letter to the Respondent provided “we have made a mortgage offer and would like you to act for us in the transaction. These instructions are governed by and incorporate the current edition of the CML Lenders Handbook applicable to the jurisdiction in which the property is located and their part 2 instructions. The current edition of the applicable CML Lenders Handbook and their part 2 instructions for each handbook are only available on the CML website”. Further in the letter of instruction the lender advised

the Respondent that he must not release the mortgage advance unless “inter alia you have complied with these instructions and your obligations set out in the Lenders Handbook”. The letter drew the attention of the Respondent to the current edition of the applicable Lenders Handbook. The Respondent accepted these instructions.

7.21 A subsequent review of the file maintained by the Respondent revealed that he acted only for the lender in the course of the transaction. The only deed sent for registration by the Respondent was the Standard Security. An unqualified Certificate of Title was issued by the Respondent to the lender on 22nd January 2008 in terms of which loan funds of £130,050 were released by the lender to the client account of the Respondent on 24th January 2008. On 25th January 2008 the sum of £130,050 was paid to the firm of KWAD Solicitors as the balance of a purchase price. Apparently the remainder of the purchase price had been received by the firm KWAD Solicitors from the client directly. In dealing with the conveyancing transaction in this fashion, the Respondent acted contrary to the obligations imposed upon him in terms of the CML Lenders Handbook. In agreeing to act on behalf of the lender the Respondent accepted these obligations. In particular the Respondent failed to report to the lender that the person selling to the borrower had not owned the property for 6 months or was not the proprietor (contrary to paragraph 5.1.1 of the CML Lenders Handbook); in that the Respondent had failed to report to the lender that he was not in control of the full purchase price (contrary to paragraph 6.3.2 of the CML Lenders Handbook); in that the Respondent failed to report that the balance of the purchase price was not being provided from the borrowers funds (contrary to paragraph 5.8 of the CML Lenders Handbook). Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent

failed to adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further a deposit was paid in this transaction. The deposit was never paid through the client account maintained by the Respondent.

Purchase of Property 21

- 7.22 The Respondent acted on behalf of a Miss G of property 22. She had consulted with the Respondent regarding her purchase of the subjects at property 21. An offer to sell the subjects to her dated 11th November 2007 was received by the Respondent from the organisation Company 2. The offer provided that the purchase price would be £211,150 and that a deposit of £10,000 thereon would be deducted at settlement and applied towards the price. The conditions of the proposed sale included a provision that a Disposition by Company 4 in favour of the sellers would be delivered as a Link in Title.
- 7.23 The Respondent received a letter dated 14th November 2007 from an organisation Company 5 which stated “we write to confirm in terms of the collateral agreement with the purchaser, i.e. Miss G we have been instructed by the purchaser to provide payment from monies due to them of the sum required to complete their purchase of the above mentioned property, which sum we will provide to you upon request from the purchaser or you as their nominated solicitors in order to effect timeous completion of the transaction”.
- 7.24 The Respondent was instructed by the Birmingham Midshires Building Society by formal letter dated 12th November 2007. The letter of instruction provided that “you are instructed in accordance with the CML Lenders Handbook for Scotland and their part 2 instructions. The second edition of the CML Lenders Handbook for Scotland and their part 2 instructions are

only available on the CML website". The Respondent accepted these instructions. The Respondent issued a concluding Missive dated 21st November 2007 to the firm of KWAD Solicitors who were representing the sellers.

7.25 An unqualified Certificate of Title was sent by the Respondent to the lender on 20th November 2007. A review of the client ledger maintained by the Respondent disclosed that loan funds of £190,000 were released by the lender on 20th November 2007. Also on 20th November 2007 in terms of the purported agreement with the purchaser, the sum of £14,837.24 was received by the Respondent from the commercial entity Company 5. The transaction settled on 21st November 2007 whereby the sum of £201,150 was paid by the Respondent to the seller's solicitors. At settlement the Respondent received a number of items including a Disposition by Company 4 in favour of the sellers being the Link in Title referred to earlier. That Disposition was dated 21st November 2007.

7.26 In dealing with the conveyancing transaction in this fashion, the Respondent acted contrary to the obligations imposed upon him in terms of the CML Lenders Handbook. In agreeing to act on behalf of the lender the Respondent accepted these obligations. In particular the Respondent failed to report to the lender that the person selling to the borrower had not owned the property for 6 months or was not the proprietor (contrary to paragraph 5.1.1 of the CML Lenders Handbook); in that the Respondent had failed to report to the lender that he was not in control of the full purchase price (contrary to paragraph 6.3.2 of the CML Lenders Handbook); in that the Respondent failed to report that the balance of the purchase price was not being provided from the borrowers funds (contrary to paragraph 5.8 of the CML Lenders Handbook). Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed

to adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further a deposit was paid in this transaction. The deposit was never paid through the client account maintained by the Respondent.

Purchase of Property 23

- 7.27 The Respondent acted on behalf of the client Mr H of property 24. The Respondent was consulted by the client in connection with the purchase of the heritable subjects at property 23. The Respondent received an offer to sell dated 23rd January 2008 from the commercial entity Company 2. The offer to sell stipulated the purchase price would be £218,400 but that there would be deducted from the price at settlement a deposit of £10,000. The conditions of the proposed sale included a provision that a Disposition by Company 4 in favour of the sellers would be delivered as a Link in Title. A concluding Missive dated 1st February 2008 was issued by the Respondent to the firm of KWAD Solicitors who were acting on behalf of the sellers.
- 7.28 The client organised a loan with the Birmingham Midshires Building Society. A review of the file maintained by the Respondent did not reveal a formal letter of instruction from the building society. Instead a copy of loan papers was received by the Respondent by facsimile transmission from the financial advisors Company 6. Despite not having received a formal letter of instruction, the Respondent acted on behalf of the lender in the transaction. The Respondent submitted an unqualified Certificate of Title to the lender on 1st February

2008. Loan funds of £185,605 were paid by the lender to the client account of the Respondent on 1st February 2008. The transaction settled on that date with the Respondent paying to KWAD Solicitors the purchase price of £208,400. This was the balance of the price under deduction of a deposit and a payment of £26,555.24 which had been received by the Respondent on 31st January 2008 from the commercial entity Company 5.

7.29 The Respondent was aware of the obligations expected of him as a solicitor for a lender in terms of the CML Handbook. On this occasion the Respondent failed to act in accordance with the obligations imposed upon him. In dealing with the conveyancing transaction in this fashion, the Respondent acted contrary to the obligations imposed upon him in terms of the CML Lenders Handbook. In agreeing to act on behalf of the lender the Respondent accepted these obligations. In particular the Respondent failed to report to the lender that the person selling to the borrower had not owned the property for 6 months or was not the proprietor (contrary to paragraph 5.1.1 of the CML Lenders Handbook); in that the Respondent had failed to report to the lender that he was not in control of the full purchase price (contrary to paragraph 6.3.2 of the CML Lenders Handbook); in that the Respondent failed to report that the balance of the purchase price was not being provided from the borrowers funds (contrary to paragraph 5.8 of the CML Lenders Handbook). Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further a deposit was paid in this transaction. The

deposit was never paid through the client account maintained by the Respondent.

Property 25

- 7.30 The Respondent acted on behalf of the client Mr I of property 26. The Respondent received an offer to sell dated 11th November 2007 which was subsequently revised by an offer dated 14th December 2007 in respect of subjects at property 25 at a price of £216,300. There was a deposit of £10,000 thereon which would be deducted at settlement and applied towards the price. The conditions of the said offer included a provision that a Disposition by Company 4 in favour of the seller would be delivered as a Link in Title. The Respondent also received a letter from Company 5 dated 20th November 2007 which stated “we write to confirm that in terms of a collateral agreement with the purchaser, i.e. Mr I, we have been instructed by the purchaser to provide payment from monies due to them of the sum required to complete their purchase of the above mentioned property which sum we will provide to you upon request from the purchaser or you as their nominated solicitors in order to effect timeous completion of the transaction”. The client obtained loan funds from the Birmingham Midshires Building Society. By letter dated 17th December 2007 the Respondent was instructed by the building society to act on their behalf. In particular the letter of instruction provided “you are instructed in accordance with the CML Lenders Handbook for Scotland and their part 2 instructions. The second edition of the CML Lenders Handbook for Scotland and their part 2 instructions are only available on the CML website”. The Respondent accepted these instructions. A review of the file maintained by the Respondent revealed there was no concluding Missive but it seems clear that the bargain was concluded and the transaction proceeded. An unqualified

Certificate of Title was sent by the Respondent to the lender dated 19th December 2007. A review of the client ledger maintained by the Respondent disclosed that loan funds of £183,820 were paid by the lender on 19th December 2007. That sum was paid by the Respondent to the firm of KWAD Solicitors who represented the sellers by transfer on 20th December 2007. Thereafter on 21st December 2007 as per their earlier correspondence the sum of £26,219.24 was received by the Respondent from Company 5. A further sum of £22,480 was paid by the solicitor to the firm KWAD Solicitors on 21st December 2007 in respect of the balance due on the purchase price.

- 7.31 In dealing with the conveyancing transaction in this fashion, the Respondent acted contrary to the obligations imposed upon him in terms of the CML Lenders Handbook. In agreeing to act on behalf of the lender the Respondent accepted these obligations. In particular the Respondent failed to report to the lender that the person selling to the borrower had not owned the property for 6 months or was not the proprietor (contrary to paragraph 5.1.1 of the CML Lenders Handbook); in that the Respondent had failed to report to the lender that he was not in control of the full purchase price (contrary to paragraph 6.3.2 of the CML Lenders Handbook); in that the Respondent failed to report that the balance of the purchase price was not being provided from the borrowers funds (contrary to paragraph 5.8 of the CML Lenders Handbook). Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further a deposit was paid in this transaction. The deposit was never paid through the client account maintained by the Respondent.

- 7.32 The Respondent was instructed by a Mr D to act on his behalf in connection with the purchase of the property 27 which when completed would have the postal address of property 27. The file of the Respondent commenced with a letter from Mr D who was a partner in the firm KWAD Solicitors dated 31 December 2007 enclosing a draft Disposition transferring the title of the said subjects to Mr D as a partner/member of Company 2. With the said letter was a draft Disposition which designed Mr D as the owner but specified transfer of the property to Mr D as the partner/member of Company 2 for the sum of £149,000.
- 7.33 Mr D borrowed from the Birmingham Midshires Building Society to facilitate the purchase of the said subjects. By letter dated 24 January the Respondent received loan instructions. Said loan instructions were dated 24 January 2008. In terms of the loan instructions, the Respondent was instructed as follows “We have made a mortgage offer and would like you to act for us in the transaction. These instructions are governed by and incorporate the current edition of the CML Lenders Handbook applicable to the jurisdiction in which the property is located and our part 2 instructions”. The loan instructions further provided that the Respondent must not release the mortgage advance “unless you had complied with those instructions and his obligations set out in the Lenders Handbook”. The Respondent accepted these instructions. On 24 January 2008 the Respondent submitted a report on title to the mortgage business which was unqualified and sought payment of the loan funds to his client account. Loan funds of £126,628 were released to the ledger of the Respondent on 24 January 2008.
- 7.34 In dealing with the conveyancing transaction in this fashion, the Respondent acted contrary to the obligations imposed upon him in terms of the CML Lenders Handbook. In agreeing to act on

behalf of the lender the Respondent accepted these obligations. In particular the Respondent failed to report to the lender that the person selling to the borrower had not owned the property for 6 months or was not the proprietor (contrary to paragraph 5.1.1 of the CML Lenders Handbook); in that the Respondent had failed to report to the lender that he was not in control of the full purchase price (contrary to paragraph 6.3.2 of the CML Lenders Handbook); in that the Respondent failed to report that the balance of the purchase price was not being provided from the borrowers funds (contrary to paragraph 5.8 of the CML Lenders Handbook). Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further a deposit was paid in this transaction. The deposit was never paid through the client account maintained by the Respondent.

Purchase of Property 28

- 7.35 The Respondent acted on behalf of the client Mr E in connection with his purchase of the subjects at property 28. The file maintained by the Respondent commenced with a letter from a commercial entity called Company 5 which sent a letter to the Respondent dated 14 January 2008. Said letter made reference to the purchase of the subjects and enclosed a copy of missives granted in favour of Company 5 which had decided that title would be transferred to Mr E in respect of Plot 2 of the development. A further letter was received from Company 5 addressed to the Respondent dated 14 February 2008 which confirmed the balance of the purchase price was to be collected and paid directly by Mr E from the proceeds generated from the development payable to him.

- 7.36 The said Mr E sought and obtained lending finance from the Birmingham Midshires Building Society. They instructed the Respondent by letter dated 20 December 2007. Their instructions provided “You are instructed in accordance with the CML Lenders Handbook for Scotland and our part 2 instructions. The second edition of the CML Lenders Handbook for Scotland and our part 2 instructions are only available on the CML website”. The Respondent accepted those instructions and proceeded with the conveyancing. On 28 February 2008 the Respondent sent the certificate of title to the lenders which was unqualified seeking delivery of the loan funds. Having received the certificate of title the lender forwarded the sum of £184,965 to the Respondent on 29 February 2008. The funds were thereafter paid to Messrs KWAD Solicitors on 4 March 2008.
- 7.37 A review of the file maintained by the Respondent revealed a Disposition by an organization Company 7. The Disposition identifies that the subjects were sold to Company 5 and that Company 5 did not take title but instead agreed to transfer title to Mr E for the sum of £225,000. The conveyance was accordingly direct between Company 7 and Mr E.
- 7.38 In dealing with the conveyancing transaction in this fashion, the Respondent acted contrary to the obligations imposed upon him in terms of the CML Lenders Handbook. In agreeing to act on behalf of the lender the Respondent accepted these obligations. In particular the Respondent failed to report to the lender that the person selling to the borrower had not owned the property for 6 months or was not the proprietor (contrary to paragraph 5.1.1 of the CML Lenders Handbook); in that the Respondent had failed to report to the lender that he was not in control of the full purchase price (contrary to paragraph 6.3.2 of the CML Lenders Handbook); in that the Respondent failed to report that

the balance of the purchase price was not being provided from the borrowers funds (contrary to paragraph 5.8 of the CML Lenders Handbook). Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further a deposit was paid in this transaction. The deposit was never paid through the client account maintained by the Respondent.

Purchase of Property 29

- 7.39 The Respondent acted on behalf of Mr E in connection with his purchase of property 29. The file maintained by the Respondent reveals an offer of loan from the Birmingham Midshires Building Society to the said Mr E. The Respondent received the letter of instruction from the Birmingham Midshires Building Society dated 20 December 2007. In terms of those instructions, it was provided “You are instructed in accordance with the CML Lenders Handbook for Scotland and our part 2 instructions. The second edition of the CML Lenders Handbook for Scotland and our part 2 instructions are only available on the CML website”. The Respondent accepted these instructions. A review of the file maintained by the Respondent also revealed a letter dated 14 January 2008 from the commercial entity Company 5 addressed to the Respondent. It made reference to the development and sought to clarify the position where two directors of that organisation Mr D and Mr E were taking title. The review of the file also revealed a copy of a letter from the commercial entity Company 5 to Messrs KWAD Solicitors dated 14 February 2008 which identified that the balance of the purchase price was to be collected and paid directly by Mr E from the proceeds generated from the development payable to him.

- 7.40 The Respondent issued an unqualified certificate of title to the building society on 28 February 2008. A review of the ledger maintained by the Respondent revealed that the lender forwarded the sum of £169,965 to the Respondent's firm on 28 February 2008. The funds were thereafter transferred to Messrs KWAD Solicitors on 4 March 2008.
- 7.41 A review of the file maintained by the Respondent revealed the existence of a Disposition by Company 7 to Company 5 who without taking title thereto agreed to transfer title to Mr E for the sum of £215,000. The conveyance was accordingly directly between Company 7 and Mr E.
- 7.42 In dealing with the conveyancing transaction in this fashion, the Respondent acted contrary to the obligations imposed upon him in terms of the CML Lenders Handbook. In agreeing to act on behalf of the lender the Respondent accepted these obligations. In particular the Respondent failed to report to the lender that the person selling to the borrower had not owned the property for 6 months or was not the proprietor (contrary to paragraph 5.1.1 of the CML Lenders Handbook); in that the Respondent had failed to report to the lender that he was not in control of the full purchase price (contrary to paragraph 6.3.2 of the CML Lenders Handbook); in that the Respondent failed to report that the balance of the purchase price was not being provided from the borrowers funds (contrary to paragraph 5.8 of the CML Lenders Handbook). Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further a deposit was paid in this transaction. The deposit was never paid through the client account maintained by the Respondent.

- 7.43 The Respondent acted on behalf of the client Mr E in connection with his purchase of the heritable subjects at property 30. A review of the Respondent's file revealed a letter dated 21 December 2007 from the Birmingham Midshires Building Society being a formal letter of instruction to the Respondent for him to act on their behalf in connection with the security transaction. The letter provided that "You are instructed in accordance with the CML Lenders Handbook for Scotland and our part 2 instructions. The second edition of the CML Lenders Handbook for Scotland and our part 2 instructions are only available on the CML website".
- 7.44 There was also on the file a copy letter from the commercial entity Company 5 dated 14 January 2008 which related to the development of property 31 and identified that titles to the subjects have been taken in the name of the directors of that commercial entity, being Mr D and Mr E. There was also a copy of a letter from Company 5 to Messrs KWAD Solicitors dated 14 February 2008 which identified that the balance of the purchase price was to be collected and paid directly by Mr E from the proceeds generated from the development payable to him.
- 7.45 The Respondent accepted these instructions. The Respondent submitted an unqualified certificate of title to the lender on 28 February 2008. A review of the client ledger maintained by the Respondent revealed that the lender forwarded to him the sum of £159,965 on 28 February 2008. Further the Respondent transferred that amount to the firm of KWAD Solicitors on 4 March 2008. A review of the file maintained by the Respondent revealed the existence of a Disposition by Company 7. This revealed that the subjects were sold to

Company 5 who did not take title and that therefore the conveyancing was directly between Company 7 and Mr E.

7.46 In dealing with the conveyancing transaction in this fashion, the Respondent acted contrary to the obligations imposed upon him in terms of the CML Lenders Handbook. In agreeing to act on behalf of the lender the Respondent accepted these obligations. In particular the Respondent failed to report to the lender that the person selling to the borrower had not owned the property for 6 months or was not the proprietor (contrary to paragraph 5.1.1 of the CML Lenders Handbook); in that the Respondent had failed to report to the lender that he was not in control of the full purchase price (contrary to paragraph 6.3.2 of the CML Lenders Handbook); in that the Respondent failed to report that the balance of the purchase price was not being provided from the borrowers funds (contrary to paragraph 5.8 of the CML Lenders Handbook). Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further a deposit was paid in this transaction. The deposit was never paid through the client account maintained by the Respondent.

Property 32

7.47 The Respondent acted on behalf of the client Mr D in connection with his purchase of the heritable subjects at the development, Property 32. A review of the Respondent's file reveals a letter of instruction dated 21 December 2007 from the Birmingham Midshires Building Society asking the Respondent to act on their behalf in connection with the security transaction obtained by Mr D in connection with his purchase. The letter of instruction indicates "You are instructed in accordance with the CML Lenders Handbook for

Scotland and our part 2 instructions. The second edition of the CML Lenders Handbook for Scotland and our part 2 instructions are only available on the CML website”.

- 7.48 A review of the Respondent’s file also reveals a letter dated 14 January 2008 from the commercial entity Company 5 which related to the development and identified that title was to be taken in the name of a director of that entity, namely Mr D. There was also a copy of a letter from Company 5 to KWAD Solicitors dated 14 February 2008 identifying that the balance of the purchase price was to be collected and paid directly by Mr D from the proceeds generated from the development payable to him.
- 7.49 The Respondent accepted the instructions of the lender. The Respondent submitted an unqualified certificate of title to the lender on 28 February 2008. A review of the ledger maintained by the Respondent revealed the lender paid the sum of £194,965 to the Respondent’s firm on 28 February 2008. The Respondent transferred these funds to the firm of KWAD Solicitors on 4 March 2008.
- 7.50 A review of the Respondent’s file revealed the existence of a Disposition by an entity Company 7. This revealed that the subjects were sold to Company 5 who did not take title but agreed to transfer title to Mr D. The conveyance was accordingly directly between Company 7 and Mr D.
- 7.51 In dealing with the conveyancing transaction in this fashion, the Respondent acted contrary to the obligations imposed upon him in terms of the CML Lenders Handbook. In agreeing to act on behalf of the lender the Respondent accepted these obligations. In particular the Respondent failed to report to the lender that the person selling to the borrower had not owned the property

for 6 months or was not the proprietor (contrary to paragraph 5.1.1 of the CML Lenders Handbook); in that the Respondent had failed to report to the lender that he was not in control of the full purchase price (contrary to paragraph 6.3.2 of the CML Lenders Handbook); in that the Respondent failed to report that the balance of the purchase price was not being provided from the borrowers funds (contrary to paragraph 5.8 of the CML Lenders Handbook). Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further a deposit was paid in this transaction. The deposit was never paid through the client account maintained by the Respondent.

Purchase of Property 33

- 7.52 The Respondent acted on behalf of the client Mr D in connection with his purchase of the heritable subjects at property 33. By letter dated 27 December 2007 the Birmingham Midshires Building Society wrote to the Respondent requesting that he act on their behalf in connection with the security to be granted by Mr D over the said subjects. The letter of instruction provided that “You are instructed in accordance with the CML Lenders Handbook for Scotland and our part 2 instructions. The second edition of the CML Lenders Handbook for Scotland and our part 2 instructions are only available on the CML website”. The Respondent accepted these instructions.
- 7.53 A review of the file maintained by the Respondent also revealed the existence of a letter dated 14 January 2008 from a commercial entity Company 5 which identified to the Respondent the manner in which title to various properties within this development were to be taken between the two

directors Mr D and Mr E. There was also a copy of a letter from Company 5 to KWAD Solicitors, the selling solicitors dated 14 February 2008 advising that the balance of the purchase price was to be collected and paid directly by Mr D from the proceeds generated from the development payable to him.

7.54 The Respondent accepted the instructions from the building society. An unqualified certificate of title was sent by the Respondent to the lender on 28 February 2008. A review of the ledger maintained by the Respondent reveals that the lender paid to the Respondent the sum of £159,965 on 28 February. The Respondent transferred these funds to the firm KWAD Solicitors on 4 March 2008.

7.55 A review of the file of the Respondent revealed a Disposition by the commercial entity Company 7. This revealed that the subjects had been sold to Company 5 who had not taken title. They had agreed to transfer title to Mr D for the sum of £210,000. The conveyance was therefore directly between Company 7 and Mr D.

7.56 In dealing with the conveyancing transaction in this fashion, the Respondent acted contrary to the obligations imposed upon him in terms of the CML Lenders Handbook. In agreeing to act on behalf of the lender the Respondent accepted these obligations. In particular the Respondent failed to report to the lender that the person selling to the borrower had not owned the property for 6 months or was not the proprietor (contrary to paragraph 5.1.1 of the CML Lenders Handbook); in that the Respondent had failed to report to the lender that he was not in control of the full purchase price (contrary to paragraph 6.3.2 of the CML Lenders Handbook); in that the Respondent failed to report that the balance of the purchase price was not being provided from

the borrowers funds (contrary to paragraph 5.8 of the CML Lenders Handbook). Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further a deposit was paid in this transaction. The deposit was never paid through the client account maintained by the Respondent.

Purchase of Property 34

- 7.57 The Respondent acted on behalf of the client Mr D in connection with his purchase of the heritable subjects at property 34. By letter dated 21 December 2007 the Birmingham Midshires Building Society instructed the Respondent to act on their behalf in connection with the said subject. Their letter of instruction provided “You are instructed in accordance with the CML Lender’s Handbook for Scotland and part 2 instruction. The second edition of the CML Lender’s Handbook for Scotland and our part 2 instructions are only available in the CML website”. The Respondent accepted these instructions.
- 7.58 A review of the file maintained by the Respondent revealed the existence of a letter dated 14 January 2008 addressed to the Respondent from the commercial entity Company 5 which identified the manner in which title was to be taken of various subjects within the development at property 31. There was also a copy of a letter from Company 5 to KWAD Solicitors dated 14 February 2008 identifying that the balance of the purchase price was to be collected and paid directly to Mr D from the proceeds generated from the development payable to him.
- 7.59 The Respondent accepted the instructions from the building society. An unqualified Certificate of Title was sent by the

Respondent to the lender on 28 February 2008. Following receipt of that, the lender delivered the sum of £169,965 to the Respondent's firm on 28 February 2008. The Respondent thereafter on 4 March 2008 paid this amount to KWAD Solicitors.

7.60 A further review of the file maintained by the Respondent revealed the existence of a Disposition by a commercial entity Company 7. The subjects had been sold to Company 5 who did not take title. They had agreed to transfer the title to Mr D. The conveyance was accordingly directly between Company 7 and Mr D.

7.61 In dealing with the conveyancing transaction in this fashion, the Respondent acted contrary to the obligations imposed upon him in terms of the CML Lenders Handbook. In agreeing to act on behalf of the lender the Respondent accepted these obligations. In particular the Respondent failed to report to the lender that the person selling to the borrower had not owned the property for 6 months or was not the proprietor (contrary to paragraph 5.1.1 of the CML Lenders Handbook); in that the Respondent had failed to report to the lender that he was not in control of the full purchase price (contrary to paragraph 6.3.2 of the CML Lenders Handbook); in that the Respondent failed to report that the balance of the purchase price was not being provided from the borrowers funds (contrary to paragraph 5.8 of the CML Lenders Handbook). Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further a deposit was paid in this transaction. The deposit was never paid through the client account maintained by the Respondent.

- 7.62 The Respondent acted on behalf of the client Mr D in connection with his purchase of the heritable subjects known as property 35. The said Mr D secured lending finance from the Birmingham Midshires Building Society. The building society wrote to the Respondent by letter dated 20 December 2007 requesting that he act on their behalf. In particular the letter of instruction provided “You are instructed in accordance with the CML Lender’s Handbook for Scotland and our part 2 instruction. The second edition of the CML Lender’s Handbook for Scotland and our part 2 instruction are only available in the CML website”. The Respondent accepted these instructions.
- 7.63 A review of the file maintained by the Respondent revealed the existence of a letter dated 14 January 2008 from the commercial entity Company 5 advising the Respondent as to the manner in which title was to be taken in relation to various properties in this development between the directors Mr D and Mr E.
- 7.64 There was also a letter from Company 5 to KWAD Solicitors dated 14 February 2008 advising that the balance of the purchase price was to be collected and paid directly by Mr D from the proceeds generated from the development payable to him.
- 7.65 The Respondent accepted these instructions. The Respondent submitted an unqualified Certificate of Title to the lender on 28 February 2008. In response, the lender that day transferred the sum of £169,965 to the Respondent’s bank account. The funds were thereafter paid to KWAD Solicitors on 4 March 2008.

7.66 A review of the file maintained the Respondent revealed the existence of a Disposition by Company 7. This Disposition revealed that Company 5 had purchased the said subjects without taking title thereto and had agreed to transfer the subjects to Mr D. The conveyance was accordingly directly between Company 7 and Mr D.

7.67 In dealing with the conveyancing transaction in this fashion, the Respondent acted contrary to the obligations imposed upon him in terms of the CML Lenders Handbook. In agreeing to act on behalf of the lender the Respondent accepted these obligations. In particular the Respondent failed to report to the lender that the person selling to the borrower had not owned the property for 6 months or was not the proprietor (contrary to paragraph 5.1.1 of the CML Lenders Handbook); in that the Respondent had failed to report to the lender that he was not in control of the full purchase price (contrary to paragraph 6.3.2 of the CML Lenders Handbook); in that the Respondent failed to report that the balance of the purchase price was not being provided from the borrowers funds (contrary to paragraph 5.8 of the CML Lenders Handbook). Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further a deposit was paid in this transaction. The deposit was never paid through the client account maintained by the Respondent.

Purchase of Property 36

7.68 The Respondent acted on behalf of the client Mr D in connection with his purchase of the subjects at property 36. By letter dated 21 December 2007 the Birmingham Midshires Building Society wrote to the Respondent instructing him to act on their behalf in connection with the security transaction.

Their letter of instruction provided “You are instructed in accordance with the CML Lender’s Handbook for Scotland and our part 2 instructions. The second edition of the CML Lender’s Handbook for Scotland and our part 2 instructions are only available on CML website”. The Respondent accepted these instructions.

- 7.69 A review of the Respondent’s file revealed the existence of a letter dated 14 January 2008 from the commercial entity Company 5 which identified the manner in which title was to be taken to the various properties in this development between the directors Mr D and Mr E. There was also on the file a copy letter from Company 5 to KWAD Solicitors dated 14 February which identified that the balance of the purchase price was to be collected and paid directly by Mr D from the proceeds generated from the development payable to him.
- 7.70 The Respondent accepted the instructions from the building society. The Respondent submitted an unqualified Certificate of Title to the lender on 28 February 2008. In response the lender paid to the Respondent the sum of £169,965 on 28 February 2008. The Respondent transferred this sum to the firm KWAD Solicitors on 4 March 2008.
- 7.71 A review of the file maintained by the Respondent revealed the existence of a Disposition by the commercial entity Company 7 which revealed that the subjects had been sold to the commercial entity of Company 5 who did not register their title and that they were consenting to the transfer on paper to Mr D. The conveyance was accordingly directly between Company 7 and Mr D.
- 7.72 In dealing with the conveyancing transaction in this fashion, the Respondent acted contrary to the obligations imposed upon him

in terms of the CML Lenders Handbook. In agreeing to act on behalf of the lender the Respondent accepted these obligations. In particular the Respondent failed to report to the lender that the person selling to the borrower had not owned the property for 6 months or was not the proprietor (contrary to paragraph 5.1.1 of the CML Lenders Handbook); in that the Respondent had failed to report to the lender that he was not in control of the full purchase price (contrary to paragraph 6.3.2 of the CML Lenders Handbook); in that the Respondent failed to report that the balance of the purchase price was not being provided from the borrowers funds (contrary to paragraph 5.8 of the CML Lenders Handbook). Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further a deposit was paid in this transaction. The deposit was never paid through the client account maintained by the Respondent.

Purchase of Property 37

- 7.73 The Respondent acted on behalf of an Mr J in connection with the purchase of the heritable subjects property 37 which upon completion of the development would have the postal address property 38. The Respondent was first instructed in or around October 2007. The Respondent received from a commercial entity Company 2 an offer to sell the subjects to his client dated 17 January 2008. This offer provided that the purchase price would be £165,000 with a deposit of £16,500 falling due as at conclusion of Missives. The offer identified the bargain was entirely conditional upon the sellers concluding Missives with the developer Company 8. The concluded Missive was issued by the Respondent on behalf of his client on 13 February 2008.

- 7.74 The client obtained loan finance from the Birmingham Midshires Building Society. By letter dated 6 February 2008 the lender wrote to the Respondent asking him to act on their behalf. Their letter of instruction provided “You are instructed in accordance with the CMA Lender’s Handbook for Scotland and our part 2 instructions. The second edition of the CML Lender’s Handbook for Scotland and our part 2 instructions are only available on the CML website”. The Respondent accepted these instructions.
- 7.75 The Respondent accepted these instructions. The Respondent submitted an unqualified Certificate of Title to the lender on 12 February 2008. In response the lender released loan funds of £140,715 to the Respondent on 13 February 2008. The transaction settled later that day with the Respondent paying the sum of £140,715 to the firm of KWAD Solicitors.
- 7.76 A completion statement on un-headed notepaper recorded that separate deposits of £16,500 and £8,500 had been received from Mr J. Neither of these deposits was recorded in the firm’s ledger. There was no evidence of them having been reported to the lender prior to the mortgage advance having been requested. A review of the Respondent’s file revealed a Disposition granted by the developer in favour of the sellers executed on 20 September 2007 which was submitted by the Respondent to Registers of Scotland as a link in title to perfect the title which had been transferred to his client Mr J but with no evidence of this having been reported to the lender prior to the mortgage advance having been requested.
- 7.77 In dealing with the conveyancing transaction in this fashion, the Respondent acted contrary to the obligations imposed upon him in terms of the CML Lenders Handbook. In agreeing to act on behalf of the lender the Respondent accepted these obligations.

In particular the Respondent failed to report to the lender that the person selling to the borrower had not owned the property for 6 months or was not the proprietor (contrary to paragraph 5.1.1 of the CML Lenders Handbook); in that the Respondent had failed to report to the lender that he was not in control of the full purchase price (contrary to paragraph 6.3.2 of the CML Lenders Handbook); in that the Respondent failed to report that the balance of the purchase price was not being provided from the borrowers funds (contrary to paragraph 5.8 of the CML Lenders Handbook). Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further a deposit was paid in this transaction. The deposit was never paid through the client account maintained by the Respondent.

Purchase of Property 39

- 7.78 The Respondent acted on behalf of the client Miss K in connection with her purchase of the subjects at property 39. The Respondent was first instructed in or about December 2007. Thereafter the firm received from the commercial entity Company 2 an offer to sell the subjects to Miss K dated 7 December 2007. The offer provided that the purchase price would be £220,000 with a deposit of £10,000 falling due at conclusion of the Missives.
- 7.79 Miss K sought and obtained lending finance from the Bank of Scotland plc. The Respondent received a letter of instruction dated 7 December 2007 from the lender. The letter of instruction provided “These instructions are governed by and incorporate the current edition of the CML Lender’s Handbook applicable to the jurisdiction in which the property is located and our part 2 instructions”. The letter of instruction further

advised that the purchase price of the property was £220,000 and that “You must not release the mortgage advance unless you have complied with these instructions in your obligations set out in the lender’s handbook”. The Respondent accepted these instructions.

- 7.80 The Respondent issued a concluding Missive on 11 December 2007. The Respondent submitted an unqualified Certificate of Title to the lender on 11 December 2007. In response the lender transferred loan funds of £186,970 to the Respondent. The transaction settled on 12 December 2007 upon payment of £210,000 by the Respondent to the firm of KWAD Solicitors. The balance of funds was taken from a sum of £26,776.24 which had been received by the Respondent from the commercial entity Company 5 on 11 December 2007.
- 7.81 The account issued to the client Miss K by the Respondent records that the sum of £26,776.24 as having been received from you. The file contained no indication as to the source or nature of these funds.
- 7.82 In dealing with the conveyancing transaction in this fashion, the Respondent acted contrary to the obligations imposed upon him in terms of the CML Lenders Handbook. In agreeing to act on behalf of the lender the Respondent accepted these obligations. In particular the Respondent failed to report to the lender that the person selling to the borrower had not owned the property for 6 months or was not the proprietor (contrary to paragraph 5.1.1 of the CML Lenders Handbook); in that the Respondent had failed to report to the lender that he was not in control of the full purchase price (contrary to paragraph 6.3.2 of the CML Lenders Handbook); in that the Respondent failed to report that the balance of the purchase price was not being provided from the borrowers funds (contrary to paragraph 5.8 of the CML

Lenders Handbook). Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further a deposit was paid in this transaction. The deposit was never paid through the client account maintained by the Respondent.

Purchase of Property 40

- 7.83 The Respondent acted on behalf of Mr L in connection with his purchase of the heritable subjects known as and forming property 40. The Respondent was first instructed by Mr L in or about September 2007. The Respondent received an offer to sell the subjects from the commercial entity Company 2 dated 21 September 2007. The offer identified a purchase price of £185,000 with a deposit of £9,250 payable on conclusion of Missives. The concluding Missive was sent by the Respondent to the seller's agent Messrs KWAD Solicitors on 24 October 2007.
- 7.84 The Respondent received a letter dated 28 September 2007 from the commercial entity Company 5 which provided "We write to confirm in terms of a collateral agreement with the purchaser we have been instructed by the purchaser to provide payment of monies due to them in the sum required to complete their purchase of the above mentioned property which sum we will provide to you upon request from the purchaser or you as their nominated solicitors in order to affect timeous completion of the transaction".
- 7.85 By letter dated 10 October 2007 the Respondent received a letter of instruction to act on behalf of the building society Birmingham Midshires who were lending in respect of the transaction. A letter of instruction provided "You are

instructed in accordance with the CML Lender's Handbook for Scotland and our part 2 instructions. The second edition of the CML Lender's Handbook for Scotland and our part 2 instructions are only available on the CML website".

- 7.86 The Respondent accepted these instructions. An unqualified Certificate of Title was sent by the Respondent to the lender on 19 October 2007. Loan funds of £166,465 were released by the lender on 22 October 2007. The transaction settled on 29 October 2007 when the Respondent sent the sum of £175,820 to the selling solicitors Messrs KWAD Solicitors. The balance of the price was taken from a sum of £12,611.24 which had been received per the firm's ledger from Company 5 on 22 October 2007. A review of the file maintained that the Respondent revealed a letter dated 22 October 2007 from Company 5 to the Respondent confirming the position and that "In terms of our agreement with the purchaser we have today instructed the transfer of the above sum for the client to complete their purchase of the above mentioned property. We trust that this will enable you to affect timeous settlement of the transaction." The account issued by the Respondent records the sum of £12,611.24 as having been received from the client.
- 7.87 A review of the Respondent's file revealed a Disposition by Company 9 in favour of the sellers which identified that Missives had been concluded by the sellers on 20 June 2007 but that the sellers had not taken title to the property. A receipted Form 4 on the file revealed that two distinct Dispositions were sent by the solicitor for registration, one in favour of the sellers and one in favour of his client Mr L.
- 7.88 In dealing with the conveyancing transaction in this fashion, the Respondent acted contrary to the obligations imposed upon him in terms of the CML Lenders Handbook. In agreeing to act on

behalf of the lender the Respondent accepted these obligations. In particular the Respondent failed to report to the lender that the person selling to the borrower had not owned the property for 6 months or was not the proprietor (contrary to paragraph 5.1.1 of the CML Lenders Handbook); in that the Respondent had failed to report to the lender that he was not in control of the full purchase price (contrary to paragraph 6.3.2 of the CML Lenders Handbook); in that the Respondent failed to report that the balance of the purchase price was not being provided from the borrowers funds (contrary to paragraph 5.8 of the CML Lenders Handbook). Further, the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of the funds utilised by the client to settle the deposit due to the seller. Further a deposit was paid in this transaction. The deposit was never paid through the client account maintained by the Respondent.

8. Having considered the foregoing circumstances, having heard oral evidence from the Complainers' witness, having considered the Complainers' Productions, having heard submissions from the Fiscal and having considered the written submissions by the Respondent, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:
 - 8.1 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;
 - 8.2 his failure to report to his client unusual circumstances and his failure to comply with the explicit instructions provided to him by his client being the obligations imposed upon him as provided for within the CML Lender's Handbook applicable to Scotland;

- 8.3 his failure to act with absolute propriety and to protect the interest of his client being the lender in respect of each transaction;
- 8.4 his failure to comply with the terms of the Solicitors (Scotland) Accounts etc Rules 2001 in so far as they relate to Money Laundering obligations, in particular, Rule 24.

9. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 15 November 2012. The Tribunal having considered the Complaint dated 20 April 2012 at the instance of the Council of the Law Society of Scotland against Duncan Hamish Edward Kerr, 88 Willowbank Road, Aberdeen; Find the Respondent guilty of Professional Misconduct in respect of 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 and in particular his failure to report to his client unusual circumstances; 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; and his failure to comply with Rule 24 of the Solicitors (Scotland) Accounts etc Rules 2001; Order that the name of the Respondent be Struck Off the Roll of Solicitors in 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)

Alistair Cockburn

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

Chairman

NOTE

When this matter called before the Tribunal on 15 November 2012 the Tribunal had before it certain admissions on behalf of the Respondent. On the basis that the admissions were not comprehensive the Fiscal indicated an intention to lead evidence. Mr Reid pointed out that the Respondent did not distance himself from the paperwork, he merely stated that what was involved was a failure to supervise.

The Fiscal accepted that it was the Tribunal Rules of 2005 which applied to this case. The Fiscal confirmed that the relevant CML Handbook was the 2006 edition for all of the transactions.

Evidence was led by Mr Reid from one witness, Ian David Ritchie, Clerk to the Professional Conduct Sub Committee.

EVIDENCE OF IAN RITCHIE

Mr Ritchie indicated that he had been employed by the Law Society since 14 April 2003. Mr Ritchie explained that the Complaint against the Respondent had come through the Guarantee Fund Sub Committee. He explained that Mr Kerr was the designated Cash Room Partner and Money Laundering Compliance Partner of the firm. He was able to confirm that the correspondence forming the productions in this case were retrieved from files delivered to the Law Society by Mr Kerr's firm. He indicated that the concerns in this particular case related to what are known as "back to back transactions". Back to back transactions were transactions where there was a seller, a mid-purchaser and an end purchaser and the mid-purchaser sold to the end purchaser over a short space of time either by a Disposition with consent or involving two Dispositions which were either recorded or used as a link in title. The major concern of the Law Society was that the purchase price paid by the mid-purchaser was substantially lower than that paid by the end purchaser and the loan provided to the end purchaser was often greater than the price paid by the mid-purchaser and yet the dates of entry were the same day which meant that the loan received by the end purchaser was partly used to fund the purchase by the mid-purchaser. There was a risk to the lender that the end purchaser was paying more than market value and if a loss

was sustained they would look elsewhere to make up the loss resulting in payments out from the insurers under the Master Policy. A loss would occur when for example the lender repossessed and had to sell at a price less than the loan given to the end purchaser.

The Council of Mortgage Lenders Handbook applies only to domestic conveyancing and was introduced to try and prevent mortgage frauds which can often be involved in back to back transactions. Where a solicitor represents a purchaser and lender he has an equal duty of care to the lender and must treat the lender with the same respect and diligence.

The Handbook outlines key conditions in particular for reporting by the solicitor acting for the lender. In particular, paragraph 5 of the Handbook requires back to back transactions be reported to the lender as the lender may make a decision not to proceed with the loan. Indeed unless the mid purchaser has not held titled for six months that is a matter requiring to be reported.

In connection with breach of Rule 6 of the Accounts Rules, the Law Society's concern was that the lender required certain written notice to be given in connection with certain facts and the solicitor should not intromit with client funds unless the written authority has been given. The terms of the CML Lenders Handbook are to the effect that a solicitor must comply with the Accounts Rules. If solicitors deliberately or recklessly fail to inform the lenders of matters which should be reported to them, the solicitor cannot then claim that he did not need written consent just by failing to tell the lender. The lender would then be deprived of the right to give informed consent and if there was no written consent it would be a breach of Rule 6. Mr Ritchie stated that there were some lenders who as part of their certificate of title require the solicitor to indicate that he has complied with the CML Handbook.

This case also involved a whole number of concerns in relation to Rule 24 of the Solicitors (Scotland) Accounts Rules relating to money laundering in particular a) source of funds obtained and b) possible identity fraud. There was no evidence of documentation on the files showing money laundering checks. On one occasion ID

documentation was sent to Mr Kerr that had been certified a true copy by the client where Mr Kerr had not met the client.

Mr Ritchie stated that he was familiar with the 22 transactions in this case. There was evidence in these cases that the Respondent had not met his clients. The Respondent in various Guarantee Fund interviews had admitted that he did not meet his clients face to face. The Respondent had five interviews preceded by at least five inspections. The Respondent was relying on the mortgage brokers to do the money laundering checks for him. This was not acceptable and extra vigilance was required in these cases. It was clear from the contents of the files and from the contents of the Guarantee Fund interviews that transactions were introduced to the Respondent by one individual, Mr D. The loan would be set up independent of the Respondent. Mr D would set the fee that the Respondent was to receive. On two occasions the Respondent acted only in connection with the loan element of the transaction and he had no face to face meetings. In some of the transactions he acted for Mr D and Mr E where no end purchaser was found. Mr E had been involved with Mr D in connection with a company called Company 5. These transactions all involved the same personalities but not each person involved in each transaction. The Company called Company 2 also involved Mr D. It was not suggested by the Respondent at any of the Guarantee Fund interviews that the work was carried out by anybody else and that he was only responsible for a failure to supervise. Mr Ritchie confirmed from his personal knowledge that the minute of the Guarantee Fund interview in 2008 was correct. Mr Ritchie stated that for fraud to be able to work, the solicitor acting in the end transaction had to be lax. This was the case with the Respondent's firm.

In particular Mr Ritchie looked at two transactions, the first of these related to the purchase of subjects at property 1. There was an offer from Company 2 dated 30 November 2007 to sell the subjects to a Mr A. The offer was addressed to Solicitors Direct. The price was said to be £117,000. The offer at paragraph 3.2.1 referred to a reservation fee of £1000. In connection with that transaction there was a letter from Solicitors Direct indicating that there would be a 5% deposit given on the purchase price. It is assumed that this would be paid by the purchaser to Company 2 on conclusion of missives. Production 3 was a letter from Birmingham Midshires to Solicitors Direct instructing them to act for the Bank of Scotland in connection with

the mortgage. That letter makes specific reference to the solicitor acting in accordance with the CML Lenders Handbook for Scotland. Production 4 was a draft disposition that appeared to show that Company 2 itself had purchased the property as a result of a back to back transaction. Production 5 is the certificate of title forwarded to the lender. It makes no mention of any deposit or of any other unusual circumstances. This certificate appears to be signed by Solicitors Direct with the authorised signatory being Duncan Kerr. Production 6 suggests that £12,552.50 was paid to the solicitor by Mr and Mrs A. KWAD was paid £111,150 being the purchase price less the deposit. Production 7 is the form 4 forwarded to the Registers of Scotland. This bears the reference of Mr Kerr. This form suggests that the disposition to Company 2 is being used as a link in title and that disposition itself had not been recorded.

Production 226 is a draft disposition to Company 2 marked at the top as an unrecorded link. It should be noticed that the price in that disposition is less than the mortgage obtained by the end purchasers, Mr and Mrs A.

The second transaction specifically referred to was the purchase of Property 5. Production 8 is an offer to sell by Company 2 to Ms C. The property concerned is to be property 6. The price is noted as £125,000. Paragraph 3.2.1 of Production 8 indicates a deposit of £6,250.

The significance of this is that the deposit should have been reported to the lender and that none of these transactions had any evidence that the funds were paid through the ledger, they were either paid direct or not at all. This would cause two concerns a) there is an effect on the loan to value ratio and b) the disposition price of £117,000 misled as to the actual price paid. Production 9 is the loan instructions in connection with this transaction. They are addressed to Solicitors Direct and make reference to the solicitor requiring to comply with the CML Lenders Handbook for Scotland. Production 10 is the certificate of title apparently signed by Solicitors Direct with the authorised signatory being Duncan Kerr. Production 11 is confirmation of the payment of £106,215 to Solicitors Direct by Birmingham Midshires. Production 12 appears to be a copy of the client ledger showing that money was paid to the purchaser by the seller, Company 2 in the sum of £12,500. Production 13 is the settlement and suggests that the £12,500 was received direct from the client. Payment

of such a figure by the seller to the purchaser raises issues of what is commonly called a revolving deposit where the same sum of money gets recycled around. Production 14 is the disposition from Company 2 to the borrower. Production 15 is a letter from the solicitors representing Company 2 to Solicitors Direct disclosing that there is a disposition in favour of Company 2 which has not been recorded which is to be used as a link in title. The fact that the seller's solicitor is dictating to the borrower's solicitor how the conveyancing is to be done should cause some concern to the borrower's solicitor. Production 16 is the form 4 to the Registers of Scotland, again showing that the disposition to Company 2 is being used as a link in title in connection with the transaction/sale to Mr C. Production 17 is a letter from Solicitors Direct to Birmingham Midshires written after conclusion of the transaction disclosing that £6,250 was paid direct to the seller by the purchaser. It makes no reference to the £12,500 paid by Company 2. There are three potential problems with this transaction: a) it involves a back to back transaction; b) a payment by the seller to the purchaser and c) a deposit to be paid on conclusion of missives. The letter to Birmingham Midshires is dated 9 June 2008 which is believed to be after an inspection but before a Guarantee Fund interview.

There were a number of interviews by the Guarantee Fund where the Respondent indicated his relationship with Mr D and confirmed that all of these transactions were referred to him by Mr D. He confirmed that there were no face to face meetings. He confirmed that matters had not been reported to lenders. At no stages in his interviews did he indicate that this was a case of lack of supervision.

Mr Ritchie confirmed in response to a question by the Tribunal that all of the transactions formed a similar pattern with a failure to report the significance of the back to back transactions to the lender and some of them involving deposits which were not reported. Additionally Mr Ritchie confirmed that there was no evidence in any of the files of money laundering checks and the Respondent had admitted that there were no face to face meetings. Additionally, there were a number of irregular entries on the files.

Mr Reid, for the Complainers, attempted to lodge a precognition on behalf of Ms M, who was said to be a paralegal with the firm Solicitors Direct. The Tribunal indicated

to Mr Reid that the form of precognition did not comply with the Tribunal Rules 2005 and that in terms of those Rules it could only consider it if it was in fact an Affidavit. In response, Mr Reid withdrew the precognition.

In response to a question from a Tribunal member, Mr Ritchie accepted that there may be practical difficulties in getting the written response from the lender in time for settlement but that if the solicitor did not write to the lender in the first place, then no response could be received. Mr Ritchie stated that if a solicitor at least advised the lender of the situation, that solicitor would be in a much better position. Mr Reid submitted that in this case the Respondent had wilfully and recklessly ignored material risks.

In response to questioning by the Tribunal, Mr Reid also indicated that he was not insisting upon the averments relating to an alleged breach of Rule 6 of the Accounts Rules.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid asked the Tribunal to make a finding of professional misconduct in respect of the 22 transactions listed. Mr Reid asked the Tribunal to take a view that there was nothing in the evidence to suggest a failure to supervise. Mr Reid stated that the Respondent was involved in a scheme involving a large number of transactions occurring over a fairly restricted period of time where the same parties were involved and the same complications were being presented.

SUBMISSIONS FOR THE RESPONDENT

The Answers for the Respondent admitted the factual pattern of the conveyancing transactions but explained that the Respondent was unaware of the details of the transactions which were undertaken by his paralegal. The Respondent states in these Answers that he was unaware of the requirements made by the CML Handbook. The Respondent denied a contravention of Rule 6 (no longer part of the Complainer's case) or Rule 24 of the Accounts Rules.

DECISION

The Tribunal considered the oral evidence and submissions, the Productions and the written submissions on behalf of the Respondent very carefully. It found Mr Ritchie to be a reliable and credible witness and accepted his evidence.

It was clear that the CML Handbook applied in each of these transactions. The productions spoken to by Mr Ritchie proved this, as did the Respondent's Answers. The productions clearly revealed issues that should have been reported to the Lenders. It was also clear that the Respondent had failed to report these matters to the lenders. The Tribunal did not accept the Respondent's assertions that he was unaware of his obligations in terms of the CML Handbook. The instructions received by the Respondent from the lenders clearly referred him to the obligations set out in the CML Handbook. The Respondent accepted the instructions and by doing so was confirming that he would comply with the obligations contained in the CML Handbook. Much of the correspondence in the various transactions bore the reference of Duncan Kerr. In particular in having regard to the same source of the business, the same parties being involved, the multiplicity of transactions, and the connection of all the parties, the Tribunal was satisfied that the Respondent must have had knowledge of this course of conduct and that this was not merely a case of a lack of supervision. The Tribunal drew support in this conclusion from statements made by the Respondent in a number of Guarantee Fund interviews, notes of which were productions in this case and spoken to by Mr Ritchie. His conduct in these cases amounted to a flagrant 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. He repeatedly failed to draw to his clients' attention various unusual circumstances. In particular he repeatedly failed to draw to lenders attention that there were back to back transactions and that purchase prices were not with entirely within his control.

This case also involved the wilful breach of the Money Laundering Regulations. The Respondent was engaged, in what can only be classed as high risk transactions. He had been alerted by the Guarantee Fund on an earlier occasion with regard to the particular care he required to take and yet he appeared to take no adequate steps to ascertain the source of funds in these transactions. The Respondent indicates that the

Complaint lacks detail with regard to which specific Money Laundering Regulation he has breached. The Complaint however is quite clear that the Respondent failed to identify the source of the funds utilised by clients to settle deposits etc and failed to carry out proper client identification, difficulties which had been highlighted to the Respondent at the Guarantee Fund interview. In all of these circumstances the Tribunal was satisfied beyond reasonable doubt that all the averments in the Complaint (with the exception of the Rule 6 breaches which were withdrawn) were proved. The Respondent acted wilfully and persistently, lacked integrity and may well in the circumstances have facilitated mortgage fraud. There were 22 transactions, each involving the same personalities. Each transaction was introduced to the Respondent by Mr D, with whom the Respondent had a personal connection. Each transaction had the same or similar complications---none of which were reported to the lenders concerned. In none of them had the Respondent carried out checks as to the source or nature of any additional funding.

In all of the circumstances, the Tribunal found the Respondent's conduct regrettably disgraceful and dishonourable and found that it fell at the higher end of professional misconduct as set out in the case of Sharp-v-The Council of the Law Society of Scotland [1984] SC 129. The Tribunal considered that the Respondent had shown a complete lack of remorse or insight into the dangers he had created by his course of conduct. He had participated in conduct which clearly placed mortgage lenders at risk, conduct which is likely to seriously damage the reputation of the legal profession. His conduct shows that he is not a fit person to be a solicitor and the only conclusion the Tribunal could reach was that the Respondent should be struck off the Roll of Solicitors. The Tribunal made the usual orders as to expenses and publicity.

Chairman