

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

FINDINGS

in Complaint

by

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

against

**CAMPBELL DINSMORE JOSS,
Unit 4, 1987 Maryhill Road,
Glasgow**

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Campbell Dinsmore Joss, Unit 4, 1987 Maryhill Road, Glasgow (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 18 December 2012 and notice thereof was duly served on the Respondent.
4. The hearing took place on 18 December 2012. The Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was not present but was represented by James McCann, Solicitor, Clydebank.

5. Ms Motion moved to amend Article 3.8 in the Complaint and this was agreed. A Joint Minute of Admissions for the parties was placed before the Tribunal. The said Joint Minute agreed the facts, averments of duty and averments of professional misconduct in the Complaint and agreed the Productions lodged on behalf of the Complainers. Mr McCann confirmed that he had his client's written instructions to appear on his behalf and confirm his plea of guilty. Accordingly, no evidence was led.

6. The Tribunal found the following facts established:

6.1 The Respondent is a solicitor enrolled in the Registers of Scotland on 17 October 1975. He has practised as a partner since 1 November 1981 and since 1 November 1993 as a sole practitioner under the business name of Campbell D Joss LL.B. He has been the cash room partner since 1 June 2000; the risk partner since 11 February 2002 and the client relations partner since 28 August 2005.

6.2 At the relevant material times narrated below the Respondent acted for all of the following individuals:-

A – Mr A

B – Mrs B- the mother of Mr A

C- Ms C- advised by the Respondent to be the wife of Mr A

D – Mr D – advised by the Respondent to be the nephew of Mr A and Ms C

E - Mr E- advised by the Respondent to be the business associate of Mr A

F - Mr F- advised by the Respondent to be the business associate of Mr A

G – Mr G

H –Mr H - advised by the Respondent to be the business associate of Mr A

I - Mr I- may have been a business associate of Mr A

6.3 At the relevant material times narrated below the Respondent also acted for the following mortgage lenders:-

A- ("BM") - Transactions 1, 2 & 3

B- ("C&G") - Transactions 4, 5 & 6

Purchase/Sale/Purchase- Property 1-("Transaction 1")

6.4 In this transaction the Respondent acted for Mr A and Mr E in relation to the initial purchase and Mr E and Mr D in relation to the subsequent sale and purchase. He also acted for BM as lenders to Mr D. His client Mr F was also involved in funding parts of the transactions detailed below but had no interest in any of the property transactions.

6.5 On 28 October 2008 the Respondent acted on behalf of Mr A, of property 2 in relation to an offer to purchase the property at property 1 in the sum of £63,000 with entry on 9 December 2008. The selling agents were Irwin Mitchell solicitors ("IM").

6.6 As at 14 November 2008 the Respondent amended the offer for Mr A on the basis of "lending restrictions".

6.7 From the Respondent's file no lender appears to have been involved in relation to this purchase. Accordingly the Respondent misled IM.

6.8 On 24 November 2008 the bargain was concluded with an amended date of entry as at 15 December 2008.

- 6.9 By letter of 10 December 2008 the Respondent advised IM, that his client wished to complete the title of the property in the name of his colleague, Mr E, of property 3.
- 6.10 The transaction settled on 15 December 2008, title passing in the purchase to Mr E. Prior to settlement, on 5 December 2008, the Respondent transferred £70,000 from Mr A's client ledger to Mr F's client ledger.
- 6.11 Mr F had no title or interest in the purchase of property 1. On 16 December 2008, the bulk of the purchase price, £62,520 was then transferred by the Respondent from Mr F's client ledger to Mr E's client ledger to enable the purchase to proceed.
- 6.12 The Respondent's file failed to disclose :-
- (a) Terms of Business letters to Mr A, Mr E or Mr F.
 - (b) money laundering evidence in relation to Mr A, Mr F or Mr E. Subsequent undated documentation has been provided by the Respondent but it was not held on file.
 - (c) any correspondence from the Respondent on the file to Mr E.
 - (d) any correspondence from the Respondent on the file to Mr F.
 - (e) advice from the Respondent to Mr E or Mr F.
 - (f) any mandates from Mr A or Mr F to authorise the transfer of funds as narrated in paragraphs 6.10 and 6.11 above. A mandate by Mr F has subsequently been produced by the Respondent dated 12/12/2008 but this was not held on file.
- 6.13 The Respondent then acted for Mr E in the onward sale of this property to a Mr D, also his client.

6.14 By letter of 10 December 2008 BM wrote to the Respondent to act on it's behalf and enclosing loan instructions for Mr D who was to purchase property 1 for £90,000 with an advance of £67,500 together with fees of £1,687. Said loan instructions required the Respondent to act "in accordance with the CML Lenders Handbook for Scotland" and the Lenders Part 2 instructions. The CML Lenders Handbook and Part 2 instruction sets out-

- (i) It does not affect any responsibilities the Respondent has to it under the general law or any practice rule or guidance issued by the Law Society of Scotland (Pt 1 1.3)
- (ii) The standard of care is that of a reasonably competent solicitor acting with reasonable care (Pt 1 1.4)
- (iii) The Respondent must comply with any separate instruction for an individual loan (Pt 1 1.5)
- (iv) If there is any conflict of interest, instructions should be returned (Pt1 1.15)
- (v) A matter should be reported as soon as the Respondent becomes aware of it and the mortgage should not be completed until further instructions are given (Pt 1 2.3)
- (vi) Solicitors must comply with the Solicitors (Scotland) Accounts Rules, Money Laundering Regulations 2003 and the Proceeds of Crime Act 2002 (Pt1 3.1)
- (vii) Report if the proprietor has owned the property for less than six months (Pts1 & 2 5.1.1)
- (viii) If the Respondent becomes aware of any matter which he should reasonably expect the lender to consider important in considering lending but the Respondent cannot disclose it due to a conflict of interest, the Respondent must cease to act (Pt 1 5.1.2)
- (ix) If the Respondent becomes aware that the borrower is not providing the balance of the purchase price from his

own funds the solicitor must report this or return instructions (Pt1 5.8)

- (x) The Respondent must obtain a clear personal search against each borrower (Pt1 5.10)
- (xi) The Respondent should explain to each borrower his responsibilities and liabilities under the standard security (Pt 1 11.2)

6.15 The value of the property of £90,000 was based on a valuation dated 2 December 2008 from Walker Fraser Steel LLP indicating that external repairs “are necessary to sections of woodwork and windows. Internally, some attention is necessary to fittings, fixtures and decorations, also a degree of upgrading would be beneficial”.

6.16 By letter of 14 January 2009 the Respondent wrote to Mr D referring to the provision of a copy Passport and Council Tax Notice. Said identification was not provided directly by Mr D to the Respondent in original form. Copies were provided to the Respondent by Mr A. Said letter indicated that the Respondent would advise Mr A with regard to any fees and outlays.

6.17 No Missives are held on file in relation to the sale from Mr E to Mr D.

6.18 The Respondent’s file does not disclose any search against Mr D or for Mr E in the sale/purchase transaction between them.

6.19 The transaction between Mr E and Mr D purportedly settled on 02 February 2009.

6.20 On 02 February 2009 the Respondent transferred £22,535 from Mr A’s client ledger to Mr D’s client ledger to fund the balance

of the purchase price. No mandate authorising said transfer by either Mr F or Mr A is held on the Respondent's file. A mandate has subsequently been produced by the Respondent by Mr F dated 28/01/2009 but this was not on file.

- 6.21 On 29 January 2009 the Respondent received £67,465 from BM which was placed on Mr D's client ledger for the purchase. The sale/purchase transaction also settled on 02 February 2009.
- 6.22 On 02 February 2009, after settlement, the Respondent then transferred:
- (a) £89,398.05, comprising the net free proceeds of sale, from Mr E's client ledger to that of Mr F's client ledger.
 - (b) £21,378.05 from Mr F's client ledger to Mr A's client ledger narrating these as "surplus funds re sale of property 1 by Mr E".
- 6.23 The Respondent's file failed to disclose:-
- (a) Terms of Business letters to Mr E or Mr D.
 - (b) appropriate money laundering of Mr E or Mr D.
 - (c) correspondence from the Respondent to Mr E.
 - (d) correspondence from the Respondent to Mr D-aside from one letter of 14 January 2009 (6.16).
 - (e) advice from the Respondent to Mr E.

- (f) advice from the Respondent to Mr D in particular regarding the purpose of the Standard Security or the nature of the loan that he was taking on.
- (g) letters in terms of Rule 5 of the Solicitor's (Scotland) Practice Rules 1986 to Mr E or Mr D.
- (h) any mandates from Mr A or Mr F to authorise the transfer of funds as narrated in paragraph 6.22 above.
- (i) mandate from Mr E to authorise transfer of funds to Mr F.

6.24 The Respondent failed to advise BM at or before settlement :-

- (a) that the sale and purchase by Mr E to Mr D was a back-to-back transaction linking in with a settlement on 15 December 2008, only 6 weeks earlier.
- (b) that the loan was more than 100% of the original purchase price paid by Mr E on 15 December 2008.
- (c) of the substantial increase in the purchase price paid by Mr D.
- (d) that a third party was providing funds to Mr D for the balance of the purchase price.
- (e) that the Respondent was acting on behalf of all parties involved in the sale/purchase transaction namely the seller, purchaser as well as third party funders.
- (f) that the Respondent did not carry out a search in the personal register relating to Mr D.

- (g) that the Respondent did not give any advice to Mr D, in particular in relation to his responsibilities and liabilities under the standard security.
- (h) that the Respondent had not carried out the appropriate Money Laundering checks as required.

6.25 The Respondent did not make any disclosure to the Serious Organised Crime Agency in relation to this transaction.

Purchase/Sale/Purchase – Property 4- (“Transaction 2”)

6.26 In this transaction the Respondent acted for Mr A and Mrs B in relation to the initial purchase and Mrs B and Ms C in relation to the subsequent sale and purchase. He also acted for BM as lenders to Ms C.

6.27 By letter of 27 November 2008 the Respondent submitted an offer to purchase property 4 on behalf of his client, Mr A, of property 2 for £51,000 with a date of entry of 29 January 2009. By letter of 11 December 2008 the Respondent required an amendment to the date of entry to 29 January 2008 “due to funding arrangements”.

6.28 Missives were concluded on 7 January 2009 with a date of entry at 16 February 2009.

6.29 By letter of 6 February 2009 the Respondent advised the seller’s agents, Mellicks, that his client wished the title to be taken in the name of his mother, Mrs B of property 5.

6.30 By letter of 12 February 2009 the Respondent forwarded a cheque, inter alia, for £51,000 in relation to the settlement to be

held as undelivered. Said cheque was returned on £51,000 due to a delay in settlement.

- 6.31 Settlement occurred on 9 April 2009 with a reduced purchase price of £50,000.
- 6.32 The Respondent's file does not disclose any mortgage or funding arrangements being taken out by Mr A or Mrs B for the purchase of the property.
- 6.33 The Respondent's file does not disclose any :-
- (a) Terms of Business Letters with either Mr A or Mrs B.
 - (b) correspondence of any nature to Mrs B. All correspondence was directed to Mr A.
 - (c) advice from the Respondent to Mrs B.
 - (d) money laundering documentation for either Mr A or Mrs Hepburn.
- 6.34 The Respondent also acted for Mrs B and Ms C in relation to the further sale and purchase of the property.
- 6.35 No Missives are held on the Respondents file in relation to the sale from Mrs B to Ms C.
- 6.36 By letter of 8 January 2009 BM wrote to the Respondent in relation to his client, Ms C with an offer of loan for this property. The offer of loan was for £56,250 in relation to a purchase price of £75,000 with a date of entry as at 16 February 2009. The Respondent accepted instructions to act for BM.

6.37 The loan instructions required the Respondent to act “in accordance with the “CML Lenders Handbook for Scotland” and the Lenders Part 2 instructions. The CML Lenders Handbook and Part 2 instruction sets out:-

- (i) A matter should be reported as soon as the Respondent becomes aware of it and the mortgage should not be completed until further instructions are given (Pt 1 2.3)
- (ii) Solicitors must comply with the Solicitors (Scotland) Accounts Rules, Money Laundering Regulations 2003 and the Proceeds of Crime Act 2002 (Pt1 3.1)
- (iii) Report if the proprietor has owned the property for less than six months (Pts1 & 2 5.1.1)
- (iv) If the Respondent becomes aware of any matter which he should reasonably expect the lender to consider important in considering lending but the Respondent cannot disclose it due to a conflict of interest, the Respondent must cease to act (Pt 1 5.1.2)
- (v) If the Respondent becomes aware that the borrower is not providing the balance of the purchase price from his own funds the solicitor must report this or return instructions (Pt1 5.8)
- (vi) The Respondent should explain to each borrower his responsibilities and liabilities under the standard security (Pt 1 11.2)

6.38 Ms C was designed as the grantee residing at property 6. A Fee Note on the Respondent’s file details her address as property 2. That was the same address as Mr A.

- 6.39 By letter of 15 January 2009 the Respondents sent the BM Security and Affidavit to Mr A. The only loan/lender disclosed on the Respondent's file was in relation to the purchase by Ms C from Mrs B.
- 6.40 By letter of 27 November 2008 the Respondent sent a Report on Title to BM in relation to his client Ms C for the purchase of this property. On 6 February 2009 the Respondent signed a Certificate of Title and in doing so certified that the title was "good and marketable" despite said certification predating the initial purchase by Mrs B outlined in paragraph 6.31.
- 6.41 A survey report dated 8 January 2009 valued the property at £75,000. Said survey indicated that "externally some attention was necessary and internally some attention is necessary to fittings, fixtures and decorations including joinery and plasterwork". It also flagged up isolated dampness in sections of walls which should be monitored and remedied if necessary.
- 6.42 The sale and purchase between Mrs B and Ms C settled on 8 April 2009, the day before the initial purchase settlement by Mrs B.
- 6.43 The Respondent knew of the CML and Certificate of Title obligations he required to comply with but despite this, on the face of the client ledger, released the loan funds before Ms C could have received good title to the property given that that transaction settled the day before the initial purchase by Mrs B. The Respondent used said loan funds to partly fund the initial purchase by Mrs B.
- 6.44 The Respondent transferred on:-

- (a) 8 April 2009, £18,785 from Mr B's client ledger to Ms C's client ledger comprising funds for the purchase price of the property from Mrs B;
- (b) 8 April 2009, £75,000 from Ms C's client ledger to Mrs B's client ledger comprising the purchase price.
- (c) 9 April 2009, £50,000 from Mrs B's client ledger to Mellicks comprising the initial purchase price;
- (d) 17 April 2009, £25,000 from Mrs B's client ledger to Mr A's client ledger comprising the net free proceeds of sale of the property.

6.45 The Respondent's file does not disclose any:-

- (a) Terms of Business letters to Mrs B or Ms C.
- (b) money laundering of Mrs B or Ms C.
- (c) correspondence from the Respondent to Ms C.
- (d) advice from the Respondent to Mrs B.
- (e) advice from the Respondent to Ms C.
- (f) letter in terms of Rule 5 of the Solicitor's (Scotland) Practice Rules 1986 issued to Mr A, Mrs B or Ms C.

6.46 The Respondent failed to advise BM and/or was in breach of the Certificate of Title dated 6 February 2009 at or before settlement:-

- A- that the sale by Mrs B to Ms C was a back-to-back transaction linking in with a settlement where the initial sale to Mrs B had not occurred by the time of the onward sale and purchase to Ms C;

- B- that the loan was more than 100% of the original purchase price paid by Mrs B on the same day.
- C- of the substantial increase in the purchase price paid by Ms C.
- D- that he had released said loan funds prior to settlement of the earlier purchase transaction and used those loan funds to part fund that initial purchase.
- E- that the Respondent was acting on behalf of all parties involved in the purchase/sale/purchase transactions.
- F- that the Respondent did not give any advice to Ms C, in particular in relation to her responsibilities and liabilities under the standard security.
- G- that the Respondent had not carried out the appropriate Money Laundering checks as required.

6.47 The Respondent did not make any disclosure to the Serious Organised Crime Agency in relation to this transaction.

Property 7-“Transaction 3”

6.48 The Respondent acted for Mr A, Mr G, of property 8 and Mr E of property 3 in relation to the initial purchase and for Mr E and Mr H of property 9 in relation to the subsequent sale and purchase. His client Mr F was also involved in funding the purchase by Mr H as set out below. He also acted for BM as lenders to Mr H.

6.49 By letter of 13 March 2009 the Respondent offered to purchase property 7 on behalf of his client Mr G for the price of £69,000 with a date of entry of 8 May 2009.

6.50 By letter of 2 April 2009 the Respondent wrote to Mr G enclosing a copy of the offer and indicated that the property would subsequently be transferred to Mr H. That letter also

indicated that the Respondent would contact Mr A when a formal acceptance was received.

- 6.51 By letter of 16 April 2009 the Respondent wrote to Mr E to indicate that he had been instructed to complete the purchase of the property in Mr E's name at a price of £69,000 and thereafter the property was to be re-sold by Mr E to Mr H. Said letter was copied to Mr A.
- 6.52 By letter of 16 April 2009 the Respondent wrote to Mr A at property 2, enclosing the response to the offer for the property and asking Mr A to check over the details before the formal acceptance was issued on behalf of Mr E. Said documents were enclosed for signature and return.
- 6.53 By letter of 16 April 2009 the selling agents, Anderson Strathern ("AS"), were advised that the property purchase would now be completed in the name of Mr E in substitution for Mr G. It also sought an earlier date of entry.
- 6.54 On 27 or 28 April 2009 this initial purchase transaction by Mr E settled.
- 6.55 The Respondent's file does not disclose:-
- (a) Terms of Business letters to Mr A, Mr G or Mr E.
 - (b) any money laundering documentation in relation to Mr A, Mr G or Mr E.
 - (c) any legal advice to Mr G in relation to this part of the transaction.
 - (d) any legal advice to Mr E in relation to this part of the transaction.
 - (e) any correspondence with Mr E, aside from the letter referred to in paragraph 6.51 above.

- 6.56 The Respondent also acted on behalf of Mr E in relation to the onward sale of the property to Mr H, also his client. He also acted for Mr A and Mr F in this transaction.
- 6.57 No Missives are held on the Respondent's file in relation to the sale from Mr E to Mr G. The Respondent's file does not disclose any search against Mr G.
- 6.58 By letter of 1 April 2009 from The Shawlands Mortgage Shop to the Respondent enclosing an offer of loan from BM on behalf of Mr H for £75,000 plus £2,150 for fees. The Respondent accepted instructions to act for BM.
- 6.59 The loan instructions required the Respondent to act "in accordance with the "CML Lenders Handbook for Scotland" and the Lenders Part 2 instructions. The CML Lenders Handbook and Part 2 instruction sets out:-
- (i) A matter should be reported as soon as the Respondent becomes aware of it and the mortgage should not be completed until further instructions are given (Pt 1 2.3)
 - (ii) Solicitors must comply with the Solicitors (Scotland) Accounts Rules, Money Laundering Regulations 2003 and the Proceeds of Crime Act 2002 (Pt1 3.1)
 - (iii) Report if the proprietor has owned the property for less than six months (Pts1 & 2 5.1.1)
 - (iv) If the Respondent becomes aware of any matter which he should reasonably expect the lender to consider important in considering lending but the Respondent

cannot disclose it due to a conflict of interest, the Respondent must cease to act (Pt 1 5.1.2)

- (v) If the Respondent becomes aware that the borrower is not providing the balance of the purchase price from his own funds the solicitor must report this or return instructions (Pt1 5.8)
 - (vi) The Respondent must obtain a clear personal search against each borrower (Pt1 5.10)
 - (vii) The Respondent should explain to each borrower his responsibilities and liabilities under the standard security (Pt 1 11.2)
- 6.60 The purchase price of the property on the loan instructions was £100,000 and related to a valuation of 25 March 2009 based on a survey.
- 6.61 Said survey report was carried out on 25 March 2009 on behalf of Mr H by Walker Fraser Steel LLP and was dated 31 March 2009. It disclosed that “externally, some maintenance was necessary to sections of the roof tiles, gutters, downpipes and rain drain and that internally some attention was necessary to fittings, fixtures and decorations and that a degree of upgrading would be beneficial”.
- 6.62 By letter of 2 April 2009 the Respondent advised Mr H that he had received a copy of his mortgage offer to acquire the property for £100,000.
- 6.63 By further letter of 16 April 2009 the Respondent advised Mr H that Mr A had nominated him to purchase the above property at

£100,000. It also indicated the Respondent had sent various documents to Mr A to have Mr H sign them.

- 6.64 By letter of 16 April 2009 the Respondent wrote to Mr A indicating that he had prepared the documents relating to the purchase of the property by Mr H and the security deeds. Those were enclosed for signature and return.
- 6.65 The Respondent signed the Certificate of Title on 20 April 2009 indicating the completion date of the transaction was 24 April 2009 in doing so certified that the title was “good and marketable” despite said certification predating the initial purchase by Mr E outlined in paragraph 6.54.
- 6.66 On 23 April 2009 BM provided the loan of £75,000 to the Respondent and this was credited to Mr H’s client ledger. From the ledger this onward sale/purchase settled on 24 April 2009 i.e. prior to the initial sale to Mr E.
- 6.67 The Respondent transferred on:-
- (a) 24 April 2009, £25,636.95 from Mr F’s client ledger to Mr H’s client ledger. Said sum comprised the balance of the purchase price for the transaction. Mr F had no title or interest in the purchase of the property;
 - (b) 24 April 2009, £100,020 from Mr H’s client ledger to Mr E’s client ledger for the purchase price and bank charges for the property;
 - (c) 28 April 2009 £69,000 from Mr E’s client ledger to AS comprising the initial purchase price for the property;

- (d) 29 April 2009, £31,000 from Mr E's client ledger to that of Mr F's client ledger comprising proceeds of sale of the property;
- (e) 1 May 2009 £31,000, from Mr F's client ledger to an undisclosed recipient.

6.68 The Respondent knew of the CML obligations he required to comply with but despite this, on the face of the file and client ledgers, released the loan funds before Mr H could have purchased said property given the transfer to Mr E only settled on or around 27/28 April 2009.

6.69 The Respondent's file does not disclose any:-

- (a) Terms of Business letters to Mr A, Mr E or Mr H.
- (b) money laundering of Mr E or Mr H.
- (c) correspondence from the Respondent to Mr H.
- (d) advice from the Respondent to Mr E.
- (e) advice from the Respondent to Mr H.
- (f) letter in terms of Rule 5 of the Solicitor's (Scotland) Practice Rules 1986 issued to Mr A, Mr E or Mr H.
- (g) mandate from Mr F to authorise transfer of funds to Mr H.

6.70 The Respondent also failed to advise BM and/or was in breach of the Certificate of Title dated 20 April 2009 at or before settlement:-

A - that the sale by Mr E to Mr H was a back-to-back transaction with the initial sale to Mr E not having occurred by the time of the onward sale and purchase to Mr H;

- B - of the nomination of Mr H to the purchase of the property by a third party, Mr A.
- C- that funds for the balance of the purchase by Mr H were being provided by another third party, Mr F.
- D- released the loan funds prior to settlement of the earlier purchase transaction.
- E- that the loan amount was more than 100% of the original purchase by Mr E.
- F- that the Respondent was acting on behalf of all parties involved in the purchase/sale/purchase transactions
- G- that the Respondent did not carry out a search in the personal register relating to Mr H.
- H- that the Respondent did not give any advice to Mr H, in particular in relation to his responsibilities and liabilities under the standard security.
- I- that the Respondent had not carried out the appropriate Money Laundering checks as required.

6.71 The Respondent did not make any disclosure to the Serious Organised Crime Agency in relation to this transaction.

Property 10-“Transaction 4”

6.72 The Respondent acted for Mr A and Mr E, in relation to the initial purchase and Mr E and Ms C of property 11 in relation to the subsequent sale and purchase of property 10. He also acted for C&G as lenders to Mr H.

6.73 On 14 January 2009 the Respondent offered to purchase property 10 on behalf of his client, Mr A for £65,000 with the date of entry of 10 March 2009.

6.74 The Respondent met with Mr A on 16 January 2009 and a file note indicates that the purchase was a cash transaction, there

were no outstanding issues regarding common charges and Mr Hepburn would be in a position to conclude Missives “fairly soon”.

- 6.75 By letter of 22 January 2009 the Respondent advised the selling solicitors, Fitzpatrick & Co. that it was taking increasingly longer for loan offers to be issued. Said letter enclosed a Qualified Acceptance changing the date of entry to 31 March 2009.
- 6.76 By letter of 26 January 2009 Missives were concluded with the date of entry 31 March 2009.
- 6.77 By letter of 24 March 2009 the Respondent confirmed that he anticipated being in funds to settle the transaction on 31 March 2009. However, by letter of 30 March 2009 the Respondent indicated there may be a few days delay in settlement but not beyond 3 April 2009.
- 6.78 By letter of 1 April 2009 the Respondent advised the seller’s agents that “with regard to the arrangements for funding, my client has advised me that the title now requires to be taken in the name of his colleague, Mr E”.
- 6.79 The Respondent’s file does not disclose at any stage any information to suggest that either Mr A or Mr E were obtaining a loan for the purchase of the property. He accordingly misled Fitzpatrick & Co.
- 6.80 By letter of 3 April 2009 Mr A authorised the selling solicitors, Fitzpatrick & Co., to complete the title in favour of Mr E.
- 6.81 The transaction settled on 7 April 2009.

- 6.82 The Respondent's file did not disclose any:-
- (a) Terms of Business Letters with Mr A or Mr E;
 - (b) money laundering documentation in relation to Mr A or Mr E; and
 - (c) advice from the Respondent to Mr E.
 - (d) correspondence from the Respondent to Mr E.
- 6.83 The Respondent also then acted in the sale of the property by his client, Mr A to Ms C, also his client.
- 6.84 The Respondent's file does not disclose any missives in relation to this transaction. The Respondent's file does not disclose any personal search against Ms C.
- 6.85 By letter of 31 March 2009 the Respondent was instructed by the C&G to act on it's behalf in relation to a Mortgage Loan Agreement for his client, Ms C, of property 11 for the purchase of this property.
- 6.86 The loan instructions required the Respondent to act "in accordance with the "CML Lenders Handbook for Scotland" and the Lenders Part 2 instructions. The CML Lenders Handbook and Part 2 instruction set out:-
- (i) A matter should be reported as soon as the Respondent becomes aware of it and the mortgage should not be completed until further instructions are given (Pt 1 2.3)
 - (ii) Solicitors must comply with the Solicitors (Scotland) Accounts Rules, Money Laundering Regulations 2003 and the Proceeds of Crime Act 2002 (Pt1 3.1)
 - (iii) Report if the proprietor has owned the property for less than six months (Pts1 & 2 5.1.1)

- (iv) If the Respondent becomes aware of any matter which he should reasonably expect the lender to consider important in considering lending but the Respondent cannot disclose it due to a conflict of interest, the Respondent must cease to act (Pt 1 5.1.2)
- (v) If the Respondent becomes aware that the borrower is not providing the balance of the purchase price from his own funds the solicitor must report this or return instructions (Pts1 & 2 5.8)
- (vi) The Respondent must obtain a clear personal search against each borrower (Pt1 5.10)
- (vii) The Respondent should explain to each borrower his responsibilities and liabilities under the standard security (Pt 1 11.2)

6.87 The Respondent proceeded to so act on behalf of the lender. The mortgage was £71,250 plus fees. The purchase price was £95,000.

6.88 By letters dated 2 and 3 April 2009 the Respondent wrote to Mr A with the Mortgage Loan Agreement and with a Standard Security for signature as well as a Disposition. The only Mortgage Loan Agreement disclosed on the Respondent's file was the one from C&G for his client, Ms C. A copy of the Mortgage Loan Agreement signed by Ms C is held on the Respondent's file.

6.89 On 7 April 2009 the lenders released £71,250 by way of loan to the Respondent on behalf of Ms C and was credited to Ms C's client ledger.

6.90 The transaction also settled on 7 April 2009, the same day as the original purchase by Mr E.

- 6.91 The Respondent transferred on:
- (a) 6 April 2009, £23,750 from Mr A's client ledger to Ms C's client ledger comprising the balance of the purchase price. No mandate authorising the Respondent to do so is held on file;
 - (b) 7 April 2009, £95,000 from Ms C's client ledger to Mr E's client ledger comprising the purchase price for the property;
 - (c) 7 April 2009, £65,056 from Mr E's client ledger to Fitzpatrick & Co comprising the initial purchase price by Mr E plus interest;
 - (d) 8 April 2009 £29,361.98 from Mr E's client ledger to Mr A's client ledger comprising the net free proceeds of sale of the property.
- 6.92 The Respondent's file does not disclose any:-
- (a) Terms of Business letters to Mr A, Mr E or Ms C.
 - (b) money laundering of Mr A, Mr E or Ms C.
 - (c) correspondence from the Respondent to Mr E or Ms C.
 - (d) advice from the Respondent to Mr E.
 - (e) advice from the Respondent to Ms C.
 - (f) letters in terms of Rule 5 of the Solicitor's (Scotland) Practice Rules 1986 issued to Mr A, Mr E or Ms C.
 - (g) mandates from Mr A or Mr E to authorise transfer of funds as set out in paragraph 6.91.
- 6.93 The Respondent's file does not disclose that he advised C&G at or before settlement:-

- (a) that there were back-to-back transactions which settled on the same day;
- (b) that the loan funds authorised to be released to Ms C were in fact used for the initial purchase by Mr E;
- (c) that funds for the balance of purchase by Ms C were being provided by a third party, Mr A,
- (d) that the loan amount was more than 100% of the original purchase by Mr E.
- (e) that the Respondent acted on behalf of all parties involved in the purchase/sale/purchase transactions.
- (f) that Mr A was married to Ms C, was involved in the initial purchase and was the third party provider of funds in the purchase by Ms C.
- (h) that the Respondent did not carry out a search in the personal register relating to Ms C.
- (i) that the Respondent did not give any advice to Ms C, in particular in relation to her responsibilities and liabilities under the standard security.
- (j) that the Respondent had not carried out the appropriate Money Laundering checks as required.

6.94 The Respondent did not make any disclosure to the Serious Organised Crime Agency in relation to this transaction.

Property 12 (Transaction 5”)

6.95 The Respondent acted on behalf of Mr A, of property 2, Mrs B, of property 5 and Mr I, of property 13 in relation to the initial purchase of the property. DLA Piper (“DLA”) acted for the sellers. He then acted for Mr I and Ms C, of property 11 in relation to the subsequent sale and purchase of property 12. He also acted for C&G as lenders to Ms C.

- 6.96 By offer of 2 September 2008 the Respondent offered on behalf of his client, Mrs B, to purchase the property for £62,500 with entry on 15 October 2008. By letter of 10 September 2008, DLA offered to sell the property to Mrs B. By letter of 16 September 2008 the Respondent sent the said offer to sell to Mr A, not Mrs B, his mother.
- 6.97 By letter of 16 September 2008 the Respondent advised DLA “my client is on holiday until 19 September”.
- 6.98 On 22 September 2008 the Respondent was advised by Mr A that “the purchase could go ahead with a date of entry on 27 October and a possibility that it was unlikely there would be any major common charges at this property as it had been refurbished”.
- 6.99 By letter of 23 September 2008 the Respondent advised DLA that “my client is in a position to conclude Missives subject to the date of entry being 27 October and also to confirm the position regarding common charges”.
- 6.100 By letter of 7 October 2008 the Respondent advised DLA that “my client now finds himself in a position whereby he is unable to proceed unless your clients will agree to a reduced price of £60,000”.
- 6.101 By letter of 28 October 2008 the Respondent advised DLA that the date of entry would now be 17 November at a purchase price of £60,000. The Respondent also indicated that title required to be taken in the name of “a business associate, Mr I, property 13.”
- 6.102 During this period, all correspondence to DLA indicated in the heading that the Respondent’s client was Mrs B.

- 6.103 By letter of 10 November 2008 the Respondent proposed an amended reduced purchase price of £55,000 and that his “client’s loan will likely be based on this figure”.
- 6.104 The Respondent’s correspondence with DLA regarding the loan position was misleading.
- 6.105 The Respondent’s file does not disclose at any stage any information to suggest that Mr A, Mrs B or Mr I were obtaining a loan for the purchase of the property.
- 6.106 By letter of 20 November 2008 the Respondent provided a valuation report from Shepherd, Chartered Surveyors, to DLA. Said report was dated 17 November 2008 having been inspected on 13 November 2008. It valued the said property at £55,000. Said valuation was provided to DLA.
- 6.107 By letter of 20 November 2008 the Respondent received instructions from Mr A that Missives should be concluded for a reduced price of £55,000 with date of entry 30 January 2009 in terms of a letter of 29 December 2008.
- 6.108 By letter of 8 January 2009 the Respondent confirmed to Mr A that title was to be taken in the name Mrs B.
- 6.109 By letter of 26 January 2009 the Respondent advised DLA that “I have been advised by my client that in fact he would prefer to take the title in the name of Mrs B who in fact was the original purchaser rather than Mr I.”. Missives were concluded on 30 January 2009.
- 6.110 By letter of 30 January 2009 the Respondent advised Mr A that he had made out a factoring float in the name of Mrs B.

- 6.111 By letter of 30 January 2009 DLA confirmed settlement of the transaction. The Respondents said letter is marked in the Respondent's file with a yellow post-it marked "hold pending loan".
- 6.112 The Respondent's file does not disclose any loan transaction for the purchase by Mrs B of the property.
- 6.113 This transaction settled on 30 January 2009.
- 6.114 Prior to settlement the Respondent held on file a valuation report dated 18 November 2008 carried out by Walker Fraser Steel as a result of an inspection on 10 November 2008 for the property. The valuation report indicated the market value in the present condition of the property was £85,000 and indicated that "the property appears to have been adequately maintained and having regard to its age, type and character". It further indicated that while there were some items requiring attention, they were of a relatively minor nature and should be capable of remedy by routine maintenance work. This valuation report was not disclosed to DLA at any stage up to conclusion of the missives.
- 6.115 The Respondent therefore misled DLA in relation to the valuation of the property of £55,000 given the second valuation dated 18 November 2008 referred to in the preceding paragraph which valued the property at £85,000.
- 6.116 On 29 January 2009 the Respondent transferred £55,020 from Mr A's client ledger to Mrs B client ledger comprising the full purchase price. No mandate authorising said transfer by the Respondent is held on the Respondent's file.

- 6.117 The Respondent's file did not disclose any:-
- (a) Terms of Business Letters with Mr A, Mrs B or Mr I.
 - (b) money laundering documentation in relation to Mr A, Mrs B or Mr I or Mr E.
 - (c) advice from the Respondent to Mrs B or Mr I.
 - (d) correspondence from the Respondent to Mrs Hepburn or Mr I.
 - (e) mandates from Mr A to authorise transfer of funds as set out in 6.116 above.
- 6.118 The Respondent then proceeded to act on behalf of his client Mrs B in relation to the onward sale of the property to Ms C, also his client.
- 6.119 There are no Missives on the Respondent's file for the sale and purchase transaction between Mrs B and Ms C.
- 6.120 By letter of 19 March 2009 the Respondent was instructed on behalf of the lenders, C & G, in relation to a Mortgage Loan Agreement with Ms C in relation to the property. The lenders understood the purchase price was to be £85,000 with a loan of £63,750 plus £1,628 for fees. The loan was an interest only loan.
- 6.121 The loan instructions required the Respondent to act "in accordance with the "CML Lenders Handbook for Scotland" and the Lenders Part 2 instructions. The CML Lenders Handbook and Part 2 instruction set out:-
- (i) A matter should be reported as soon as the Respondent becomes aware of it and the mortgage should not be completed until further instructions are given (Pt 1 2.3)

- (ii) Solicitors must comply with the Solicitors (Scotland) Accounts Rules, Money Laundering Regulations 2003 and the Proceeds of Crime Act 2002 (Pt1 3.1)
- (iii) Report if the proprietor has owned the property for less than six months (Pts1 & 2 5.1.1)
- (iv) If the Respondent becomes aware of any matter which he should reasonably expect the lender to consider important in considering lending but the Respondent cannot disclose it due to a conflict of interest, the Respondent must cease to act (Pt 1 5.1.2)
- (v) If the Respondent becomes aware that the borrower is not providing the balance of the purchase price from his own funds the solicitor must report this or return instructions (Pt1 5.8)
- (vi) The Respondent should explain to each borrower his responsibilities and liabilities under the standard security (Pt 1 11.2)
- (vii) The Respondent must obtain a clear personal search against each borrower (Pt1 5.10)

6.122 The Respondent accepted said instructions and signed a Certificate of Title dated 23 March 2009 indicating the completion date for the purchase by Ms C was 27 March 2009. In signing said Certificate the Respondent certified that the investigation of the title was in accordance with the current CML Lenders Handbook for Scotland.

6.123 By letter of 23 March 2009 the Respondent provided Mr A with documents required to be signed for this purchase and loan transaction. "Please arrange to have the Security Deed signed where shown and also the Disposition."

6.124 The Respondent's file contains the original Disposition marked "unrecorded link" from Northern Rock plc to Mrs B.

- 6.125 The Respondent's file holds the original Disposition by Mrs B in favour of Ms C dated 30 January 2009 with entry as at 30 January 2009 and witnessed by the Respondent.
- 6.126 The Respondent's file holds an SDLT 5 certificate indicating the effective date of the transaction as 30 January 2009.
- 6.127 The transaction settled on 28 March 2009.
- 6.128 The Respondent transferred on:
- (a) 29 January 2009, £26,305 from Mr A's client ledger to Ms C's client ledger comprising the purchase price of this property from Mrs B;
 - (b) 29 January 2009, £55,020 from Mr A's client ledger to Mrs B's client ledger for the initial purchase price of this property from DLA's client;
 - (c) 30 January 2009, £55,000 from Mrs B's client ledger to DLA comprising the initial purchase price of the property;
 - (d) 27 March 2009, £85,000 from Ms C's client ledger to Mrs B's client ledger for the subsequent purchase price of the property;
 - (e) 3 April 2009, £85,000 from Mrs B's client ledger to Mr A's client ledger comprising the net free proceeds of sale of the property. No mandate authorising him to do so is held on file.

- 6.129 The Respondent did not disclose the earlier valuation of £55,000 to C&G.
- 6.130 The fee rendered by the Respondent to Mrs B designs her as of property 2 and not property 5.
- 6.131 The fee rendered by the Respondent to Ms C designs her at property 2 and not property 11.
- 6.132 Mr A's address is property 2.
- 6.133 The Respondent's file does not disclose any:-
- (a) Terms of Business letters to Mrs B or Ms C.
 - (b) money laundering of Mrs B or Ms C.
 - (c) correspondence from the Respondent to Mrs B or Ms C.
 - (d) advice from the Respondent to Mrs B.
 - (e) advice from the Respondent to Ms C.
 - (f) letters in terms of Rule 5 of the Solicitor's (Scotland) Practice Rules 1986 issued to Mrs B or Ms C.
 - (g) mandate from Mrs B to authorise transfer of funds as set out in paragraph 6.128 above.
- 6.134 The Respondent's failed to advise C&G and/or was in breach of the Certificate of Title dated 23 March 2009 at or before settlement:-
- (a) that these were back-to-back transactions with the initial purchase by Mrs B not occurring until after the purchase by Ms C ;
 - (b) that the seller was the mother-in-law of the purchaser ;
 - (c) the two valuations held by the Respondent showing a difference in valuation of £30,000 despite being carried out only a few days apart;

- (d) that the loan amount was more than 100% of the original purchase by Mrs B.
- (e) that the Respondent acted on behalf of all parties involved in the purchase/sale/purchase transactions.
- (f) that Mr A was married to Ms C, was involved in the initial purchase by way of a third party provider of funds in the purchase by Mrs B and subsequent purchase by Ms C.
- (h) that the Respondent did not carry out a search in the personal register relating to Ms C.
- (i) that the Respondent did not give any advice to Ms C, in particular in relation to her responsibilities and liabilities under the standard security.
- (j) that the Respondent had not carried out the appropriate Money Laundering checks as required.

6.135 The Respondent did not make any disclosure to the Serious Organised Crime Agency in relation to this transaction.

Property 14- Transaction 6

6.136 The Respondent acted on behalf of Mr A, of property 2 and Mr E, of property 3 in relation to the initial purchase and for Mr A and Ms. C, of property 11 in the subsequent sale and purchase property 14.

6.137 By offer of 11 November 2008 the Bank of Scotland plc, through their agents, Aberdeen Considine (“AC”) offered to sell property 14 to Mr A, the Respondent’s client. The purchase price was £70,000 with a date of entry of 17 December 2008. On 12 November 2008 the Respondent sent the offer to Mr A.

- 6.138 By letter of 20 November 2008 the Respondent advised AC of a revised date of entry to 27 January 2009 indicating “the necessary funding will not be in place by your proposed date of 17 December”.
- 6.139 By letter of 21 November 2008, the contract was concluded with a date of entry as at 22 January 2009.
- 6.140 There is nothing on the Respondent’s file to indicate that Mr A was obtaining “funding” to enable the purchase to proceed. Accordingly, the Respondent mislead AC.
- 6.141 By letter of 20 January 2009 the Respondent advised AC that title would be taken in the name of Mr E, Mr A’s “business colleague”.
- 6.142 By letter of 20 January 2009 AC sent the executed Disposition in favour of Mr A to the Respondent to be held as undelivered pending receipt of the settlement sums.
- 6.143 As a result of the Respondent’s letter of 21 January 2009, AC opened up the Missives to allow the title to pass in the name of Mr E.
- 6.144 By letter of 21 January 2009, the Respondent accepted the amended Missives on behalf of Mr E.
- 6.145 On 21 January 2009 AC acknowledged the Respondent’s formal letter re-concluding the contract.
- 6.146 On 22 January 2009 the Respondents instructed Airdrie Savings Bank to transfer the purchase price of £70,000 to the account of AC. The Airdrie Savings Bank Account was in the name of Mr A.

- 6.147 The purchase transaction settled on 22 January 2009.
- 6.148 At the same time as the Respondent indicated to AC that the title was to be in the name of Mr E, the Respondent enclosed a Disposition for execution. By letter of 23 January 2009, that Disposition was returned by AC to the Respondent. By letter of 4 February 2009, the Respondent indicated to AC that they did not receive the amended Disposition and enclosed a fresh Disposition for signature. By receipt dated 6 February 2009 the Registers of Scotland acknowledged an Application Form 4. The applicant was Mr A. The Form 4 enclosed:-
- Disposition – E;
Submission receipt, A;
Disposition, A; and
Certificate of Advert.
- 6.149 The Respondent's file does not disclose any Missives between Mr E and Mr A transferring the property to Mr A. Nor does it disclose any correspondence or drafts of any nature in relation to such a transaction.
- 6.150 The Respondent then proceeded to act on behalf of his client, Mr E, in relation to the onward sale of the property to Ms. C, also his client.
- 6.151 There are no Missives on the Respondent's file for the sale and purchase transaction between Mr E and Ms. C.
- 6.152 By letter of 16 April 2009 the Respondent was instructed on behalf of the lenders, C&G, in relation to a Mortgage Loan Agreement with Ms. C in relation to the property. The lenders understood the purchase price was £100,000 with a loan of

£75,000 plus £1,910 for fees. The loan was an interest only loan.

6.153 The loan instructions required the Respondent to act “in accordance with the “CML Lenders Handbook for Scotland” and the Lenders Part 2 instructions. The CML Lenders Handbook and Part 2 instruction set out:-

- (i) A matter should be reported as soon as the Respondent becomes aware of it and the mortgage should not be completed until further instructions are given (Pt 1 2.3)
- (ii) Solicitors must comply with the Solicitors (Scotland) Accounts Rules, Money Laundering Regulations 2003 and the Proceeds of Crime Act 2002 (Pt1 3.1)
- (viii) Report if the proprietor has owned the property for less than six months (Pts1 & 2 5.1.1)
- (ix) If the Respondent becomes aware of any matter which he should reasonably expect the lender to consider important in considering lending but the Respondent cannot disclose it due to a conflict of interest, the Respondent must cease to act (Pt 1 5.1.2)
- (x) If the Respondent becomes aware that the borrower is not providing the balance of the purchase price from his own funds the solicitor must report this or return instructions (Pt1 5.8)
- (xi) The Respondent should explain to each borrower his responsibilities and liabilities under the standard security (Pt 1 11.2)

- (xii) The Respondent must obtain a clear personal search against each borrower (Pt1 5.10)

6.154 The Respondent accepted said instructions and signed a Certificate of Title dated 5 May 2009 indicating the completion date for the purchase by Ms. C was to be 8 May 2009. In signing said Certificate the Respondent certified that the investigation of the title was in accordance with the current CML Lenders Handbook for Scotland. On 8 May 2009 the Respondent credited the loan funds of £75,000 to Ms C's client ledger and settlement occurred on that date.

6.155 The Respondent transferred on:

- (a) 8 May 2009, £25,250 from Mr A's client ledger to Ms. C's client ledger, comprising the balance of the purchase price by Ms C from Mr E;
- (b) 8 May 2009, £100,000 from Ms C's client ledger to Mr E's client ledger card comprising the purchase price;
- (c) 1 June 2009, £100,000 from Mr E's client ledger card to Mr A's client ledger card comprising the net free proceeds of sale of the property.

6.156 The Registers of Scotland submission receipt, an electronic SDLT5 Certificate, was issued to the Respondent confirming the date of the transaction was 8 May 2009. A copy Form 4 refers to Dispositions in favour of Mr E and Ms. C as well as a Standard Security to the C&G.

6.157 The Respondent's file does not disclose any:-

- a) Terms of Business Letters with Mr A, Mr E or Ms. C;

- b) money laundering documentation in relation to Mr A, Mr E or Ms. C;
- c) correspondence from the Respondent to Mr E or Ms. C;
- d) advice from the Respondent to Mr E;
- e) advice from the Respondent to Ms. C;
- f) letters in terms of Rule 5 of the Solicitors' (Scotland) Practice Rules 1986 issued to Mr E or Ms. C;
- g) mandates from Mr A or Mr E to authorise the transfer of funds as set out in paragraph 6.155 above.

6.158 The Respondent's failed to advise C&G and/or was in breach of the Certificate of Title dated 5 May 2009, at or before settlement :-

- (a) that the transactions were back-to-back;
- (b) that the loan amount was more than 100% of the original purchase by Mr E;
- (c) that the Respondent acted on behalf of all parties involved in the purchase/sale/purchase transactions;
- (d) Mr A nominated a third party to take title to the property in the initial purchase;
- (e) that Mr A was married to Ms C and was the initial intended purchaser of the property;
- (f) that Mr A provided the balance of the purchase price to Ms. C to enable the purchase by Ms. C;
- (g) no search had been obtained against either Mr E or Ms. C; and
- (h) Mr A was designed at two different addresses;
- (i) that the Respondent did not carry out a search in the personal register relating to Ms C;
- (j) that the Respondent had not carried out the appropriate Money Laundering checks as required.

7. Having considered the foregoing circumstances, and having heard submissions on behalf of both parties, the Tribunal found the Respondent guilty of Professional Misconduct in cumulo in respect of:

7.1 In relation to the lenders C&G and MB, in terms of the Code of Conduct 2002 and the Practice Rules 2008, his failure to advise his clients (the lenders) that:

- (i) the proprietor(s) of the subjects being purchased had not owned the subjects for 6 months and/or the transaction where the lending was provided occurred before the initial transfer to the seller. (CML Handbook 5.1.1);
- (ii) the balance of the purchase price on each transaction was not being provided by the borrower(s) from their own funds (CML Handbook 5.8);
- (iii) he had not obtained clear searches against each borrower and/or proprietor or guarantor as at a date not more than three working days prior to the date of completion of the advance (CML Handbook 5.10.1).
- (iv) he did not explain to some or all of the borrowers the responsibilities and liabilities under the Standard Security/IES which they were required to sign (CML Handbook 11.2)
- (v) each loan was more than 100% of the original purchase price paid by the original purchaser.
- (vi) there were substantial increases in value for each of the transactions (CML Part 1 2.3.)

- (vii) he was acting behalf of all parties involved in the purchase/ sale/ purchase transactions as well as the third party funder/s (CML Part 1 2.3).
- (viii) he had not carried out the appropriate money laundering checks as required in any or all of the transactions (CML Part 1 3.1).
- (ix) he signed and submitted Certificates of Title to BM in relation to Transactions 2 & 3 when he knew or at least ought to have known that he could not so certify , in particular that the title in each transaction was good and marketable and so accordingly misled his client, BM.
- (x) He signed and submitted Certificates of Title to C&G in relation to Transaction 5 & 6 when he knew or at least ought to have known that his investigation of title in relation to each transaction did not comply with the current CML Lenders Handbook for Scotland.

7.2 In relation to his individual clients, in terms of the Code of Conduct 2002 and the Practice Rules 2008 he:

- (i) did not communicate effectively with said clients in some or all of the transactions,
- (ii) acted in a conflict or potential conflict of interest in each, of the transactions.
- (iii) knowingly mislead :-
 - (a) Fitzpatrick & Co in relation to Transaction 4 and;
 - (b) DLA in relation to Transaction 5 and;
 - (c) Aberdeen Considine in relation to Transaction 6.

- 7.3 His failure to comply with the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rule 2001 in respect that:
- (a) he breached Rule 6 by failing to obtain authority for drawings from client ledgers and;
 - (b) he breached Rule 24 by failing to comply with some or all of Regulations 7, 8, 9, 14 and 20 of the Money Laundering Regulations 2007.
- 7.4 His failure in terms of The Proceeds of Crime Act 2002, part 7 section 30 to report relevant transactions to the Serious Organised Crime Agency.
- 7.5 His failure in terms of the Solicitors (Scotland (Client Communications) Practice Rules 2005 to issue terms of engagement letters to clients.
- 7.6 His breach of the Solicitors (Scotland) Practice Rules 1986 in that he acted in a conflict of interest in some or all of these transactions.

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

Edinburgh 18 December 2012. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Campbell Dinsmore Joss, Unit 4, 1987 Maryhill Road, Glasgow; Find the Respondent guilty of Professional Misconduct in respect of: his breach of the Code of Conduct 2002 and Practice Rules 2008 in relation to institutional lenders in regard to his failure to report to the lenders relevant circumstances and in particular those circumstances as required by the lenders' explicit instructions as set out in the Council of Mortgage Lenders' Handbook applicable to Scotland and his misleading a lender; his breach of the Code of

Conduct 2002 and Practice Rules 2008 in relation to individual clients in that he had little or no communication with said clients, provided no advice to said clients, acted in potential conflict situations in relation to these clients; his breach of the Practice Rules 2008 and Code of Conduct 2002 in relation to other solicitors in that he knowingly misled solicitors representing other parties in three transactions; his failure to comply with Rule 6 of the Solicitors (Scotland) Accounts etc Rules 2001; his failure to comply with Rule 24 of Solicitors (Scotland) Accounts etc Rules 2001; his failure to comply with Section 30 of The Proceeds of Crime Act 2002; his failure to comply with the Solicitors (Scotland) (Client Communications) Practice Rules 2005; his failure to comply with the Solicitors (Scotland) Practice Rules 1986 by acting in conflict of interest situations; 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

9. 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 18 December 2012, the Tribunal had before it Answers and the Joint Minute admitting the averments of facts, duties and professional misconduct contained in the Complaint. The Respondent's solicitor confirmed a guilty plea. In these circumstances no evidence was required to be led and the Tribunal proceeded on the basis of submissions made by both parties.

SUBMISSIONS FOR THE COMPLAINERS

The Complainers' Fiscal, Ms Motion, opened her submissions by seeking to amend the Complaint at paragraph 3.8 – amending the first date to 2008. No objection was made to this application by the Respondent's Agent, Mr McCann, so the Tribunal allowed the amendment to be made. Ms Motion also indicated that in the List of Productions and Productions lodged the Production listed as 33 was not the correct letter. Ms Motion confirmed that the Joint Minute that had been tendered to the Tribunal agreed all facts and duties. She indicated that the six transactions set out within the Complaint disclosed at best a reckless disregard of the professional practice rules and duties required of a solicitor.

In transaction 1, the price paid in the first purchase was £62,000, in the second it was £90,000. Mr A appeared to be in the centre of these transactions. It would appear from the records that Mr A paid out £93,000 and only received back £21,000. Ms Motion indicated that she had some difficulty in understanding how the Respondent could not immediately have been alerted that there was something not correct about this transaction. This transaction was made even more suspicious by the involvement of Mr F who had no apparent part in the transaction at all. Money was transferred from Mr A to Mr F in December 2008. That money then moved in a circle through the transaction. On the face of it, Mr F made no benefit from the transaction itself – he had no title or interest – and yet at the end of day was up £68,000. The amount of the loan in the second purchase of transaction 1 made by BM was more than 100% of the initial purchase price – paid in the first purchase.

Ms Motion indicated that she should clarify at this stage that none of these properties appeared to have been sold on, the Society had made checks with regard to that. She did not know if they were going to be what was known as “sleepers” – and whether or not difficulties would arise in the future.

In transaction 2, the initial purchase price in the first transaction was £50,000. The second purchase was £75,000 with the loan from BM, again, being more than the initial purchase price paid. Mr A was neither a purchaser or seller and yet at the end of the day he pocketed the proceeds of sale. Whilst it may be suggested that these were business transactions, Ms Motion indicated that she would ask why the transactions went all round the houses if they were legitimate business transactions.

In transaction 3, the initial purchase price paid was £69,000, and in the second purchase it was £100,000. The loan provided by the lender was £75,000. The Respondent signed off a Certificate of Title where the second seller had not yet even settled the first transaction. The loan from the lender was used to fund the initial purchase. £31,000 went through Mr F to an undisclosed recipient. This was the same Mr F as in transaction number 1 and again Mr F was neither a purchaser nor a seller and on the face of it had no involvement in these transactions.

Transaction 4 appeared to be a cash transaction. The Respondent misled Fitzpatrick & Co with regard to funding arrangements. It would appear that settlement was deliberately delayed pending loan arrangements for the second purchaser. The property was first purchased for £65,000 and then sold on on the same day for £95,000. The delay allowed both transactions to settle on the same day and logically it could be read into the situation that the loan funds were used for the first purchase. Mr A appeared to be £6,000 better off, Mr E appeared to make no benefit and Ms C appeared to make no benefit apart from the fact that she was married to Mr A.

In transaction 5, the first purchase was for £62,500. That was reduced down to £55,000 by misleading the original solicitors as to the value of the property. The Respondent had a valuation dated 17 November 2008 valuing the property at £55,000. He also had a second valuation for £85,000 dated 18 November 2008. At no stage did he disclose the higher valuation to the original solicitors. Again, there was a round

robin of funds with Mr A appearing to be £30,000 better off and all transactions settling on one day.

Despite the strange natures of transactions 1 to 5, at no stage did the Respondent make any SOCA reports.

In transaction 6, the initial purchase price was £75,000 and the second purchase price was £100,000. The loan obtained was £75,000. £25,000 went to Mr A.

Asked by the Chairman if she was able to give an aggregate of funds leading to the apparent benefit to Mr A, Ms Motion indicated that there appeared to be a benefit of about £68,500 but in transaction 1 Mr A appeared to be short about £70,000. So on the face of it, he made little financial gain. Ms Motion indicated that the point she wanted to emphasise was that at no stage on the face of it was Mr A a purchaser or seller. The Respondent closed his eyes and acted wilfully or with complete reckless disregard to the variety of clients paying no regard to his duties to Mr E, Mr D or Ms C.

In response to a question raised by the Tribunal, Ms Motion confirmed that there appeared to be no criminal investigations taking place. She indicated that she wanted to emphasise that in these particularly difficult economic times these type of people are deliberately picking their targets within the profession and that practitioners needed to be aware of their duties to all clients.

SUBMISSIONS FOR THE RESPONDENT

Mr McCann indicated that the plea on behalf of the Respondent was one of professional misconduct in cumulo in relation to non-compliance with the various respective matters. He emphasised that there were no allegations of fraud made against the Respondent within the Complaint. He confirmed that he did not dispute that the circumstances in these transactions raised the potential for fraud.

He confirmed that the Respondent's plea in mitigation was as noted in the written statement presented to the Tribunal. The Respondent's motive in this case was not for

personal greed or profit it was rather a set of failures driven by the constant pressure of insufficient fees from existing business rising overheads and client demands. The Respondent accepted that he should have insisted on a much stricter attitude to compliance. Mr McCann stated that the Respondent admitted that he had culpably allowed to develop within his practice a remarkably casual attitude to the requirements of the various regulations. The Respondent had acted for his main client Mr Craig Hepburn in previous years. His understanding was that this was a group of business people who were involved in purchasing repossession properties or properties from executries where there had been a degree of neglect and consequently a need for improvement. The Respondent did not think that there was actually a problem in any of the six transactions in connection with the identity of the persons involved. The Respondent understands that in no case was there a repossession and is not aware of any allegation of loss or complaint by any lender or any of the people involved. Mr McCann explained that the Respondent had been struggling for many years prior to the final surrender of his practising certificate on 30 June 2012 and did not make any significant profit during the period. The Respondent has accepted for some time that he could not survive in law as a principle and knows that he would be unlikely to be permitted to do so. Since ceasing practice the Respondent has attempted to set up a landscape gardening business. Mr McCann pointed out that the Respondent had cooperated with the Law Society throughout the process of enquiry and had pled guilty at the earliest possible stage in the Tribunal proceedings

He indicated he would state further matters and clarification.

For the last eight years the Law Society and the Legal Defence Union had been saying to the profession that the CML Handbook Rules were important rules which had to be complied with. Unfortunately however the evidence disclosed that a large number of practitioners did not get the message. Even partners in large firms were being offered, five, ten or fifty of these types of transactions. When Mr McCann had pointed out to them the potential consequences of these transactions, the experienced practitioners had paled. The Respondent was regarded as a competent and courteous practitioner. He too had failed to understand the significance of these rules. Mr McCann had not been contacted by the Respondent until after he had attended the Guarantee Fund interview held in September 2009. He pointed out to the Tribunal that this process had

taken more than three years. Mr Joss was a member of the Legal Defence Union and had been entitled to advice before attending the Guarantee Fund interview. This disclosed that he had not realised the significance of these transactions. After the Guarantee Fund interview the Respondent was shocked by the Committee's attitude. He felt that he had been called a crook. He did not feel that it was at all justified. Nor did he feel it justified that his client, Mr Hepburn was being called a crook. In these transactions there is no direct evidence of any fraud and it would be speculation to go beyond what was stated in the facts and to ask what might have happened. None of the properties have been sold on.

In 2009/10, the Legal Defence Union advised practitioners to make post event communications to lenders, in particular with regard to increases in price. Where these post event communications had taken place – and Mr McCann was aware of many hundreds of these – in no case had any of the lenders called up the loan. They have exclusively taken the decision to leave the loans in place. The consequence is that the potential liability if there is a loss at a subsequent sale remains hanging in the air. In fact in Mr McCann's experience in a vast number of cases before 2008 where there were post event notifications there were often no responses at all from the lenders. In some cases the lenders wrote advising that the mortgage itself had been sold on. These became toxic bundles. They were parts of transactions worth millions of pounds.

The Respondent had been lax as to the degree of culpability. He had known Mr A for 10 years. He thought this was a group of business people buying property to do it up and sell it on at a profit. The Respondent had in fact offered to show the Law Society boxes of receipts to do with refurbishment.

The Respondent had made post event notifications to lenders who have left the loans in place.

Mr McCann made reference to the report of a case in Smith and Barton [1989]. He indicated that from this case it seemed that duties to lenders were based on common law i.e. a solicitor must not keep information from lenders. Modern cases rely more

on the CML Handbook and Regulations contained therein which in many cases are not complied with.

Mr McCann made reference to Production 1 for the Respondent which was an article from the Law Agents Society. This article was from March 2012 and clearly disclosed a degree of surprise on the part of the profession following the first of the CML Handbook cases. The article reflects that many lawyers did not see breaches of the Handbook as a conduct issue. Many of the comments made by solicitors within this article indicated that they had no idea as to the seriousness of the issues. He was referring to this article to pray in aid of support for the Respondent that he was not aware of the significance of his actions and then he had become shocked. Mr McCann accepted that he had to concede that this was a bad case. He was not saying that because others had been guilty of the same acts and not been prosecuted that the Respondent should not be prosecuted. The Respondent required to accept his responsibility for what was done or not done within his practice.

The Respondent had practiced since 1975 with no difficulty. He was in despair see his career come to this end.

Mr McCann asked the Tribunal to consider this a serious case of non-compliance with no evidence of anything criminal, or of any loss or calling up as a consequence of the non-compliance. He asked the Tribunal to consider restricting the Respondent's practising certificate for some years. He submitted that the Respondent did not deserve to be struck off. The Respondent is 69 years old and has left the profession but may come back later and give something back to the profession. A restriction on his practising certificate would meet the Tribunal's requirements.

In response to a query from the Chairman, Mr McCann indicated that the Tribunal were not entitled to draw a conclusion of dishonesty from these transactions – only of recklessness. Mr McCann stated that the Respondent was not alone with this type of conduct but that this was an example of the type of non-compliance that had been going on at that time. The Chairman raised a question of whether or not the Tribunal could deduce that the Respondent had stood aside to allow someone else to steal money and that it was open to the Tribunal to say that the Respondent was aware or

should have been aware of that. Mr McCann indicated that the Tribunal could not speculate. He referred to the cases that arose from the Glasgow Harbour Development where discounts had been large and many. This case was a much smaller case than that. He asked whether or not it was fair to take from the circumstances that this case disclosed a recklessness to a degree that you could not mitigate. Mr McCann asked the Tribunal to answer that question in the negative and to hold that this was not a unique situation and was a smaller instance of this problem. This case showed evidence of serious non-compliance but no evidence of anything else. This could have been a series of business investments – lots of people did this. He submitted that the Tribunal could treat it as non-compliance and not anything else.

In response to comments made by Mr McCann, Ms Motion indicated that there was nothing in the valuations held on the Respondent's files to show that any refurbishments had taken place between the first and second purchasers. These transactions were much broader than the CML Handbook. The Respondent had not complied with any money laundering requirements and had not corresponded or spoken with clients. The Respondent's actions were taking place in 2009. The first warning article about this type of transaction was in 2009 following the Pervez case.

In response to a question from the Tribunal relating to the issues of money laundering checks, something which had been required for years, Mr McCann indicated that there was no evidence of any false identifications being used in this case. The fact that there were no money laundering checks did not provide evidence of the opposite.

DECISION

Having considered the conduct admitted by the Respondent, the Tribunal concluded that the Respondent's conduct in cumulo was so serious and reprehensible that it clearly met the test of misconduct set out in the case of Sharp-v-The Council of the Law Society of Scotland [1984] SC 129 at page 134. The six transactions described in the Complaint disclosed many breaches of the standard of conduct expected of a solicitor.

Having concluded that professional misconduct had been established, the Tribunal went on to consider the question of disposal. In considering disposal, the Tribunal gave careful consideration to the submissions made by Mr McCann, the written statement of mitigation, the article by the Law Agents Society and the case referred to. The Tribunal had particular concerns with regard to the lack of any report to The Serious Organised Crime Agency. It was difficult to see how any man of business exercising the normal standards of care required by a professional could not see that there were issues in these cases that required to be reported. The Respondent clearly knew or ought to have known the difficulties with these transactions. The action or lack of action on the part of the Respondent was so bad that it was clearly beyond the conduct expected of any competent and reputable solicitor. The Respondent had exercised reckless conduct towards all of his clients. He appeared to be unconcerned as to the effect his conduct could have on his clients and other members of the profession. Although there was no evidence of any particular fraudulent conduct here, his complete and utter disregard for any standard of care had made it possible.

The Tribunal took note of the degree of professionalism and cooperation given by the Respondent to these proceedings and indicated that it could only express regret that the Respondent had not exercised the same degree of professionalism when it had come to these transactions. The Tribunal found it difficult to reach any conclusion other than that the Respondent must have been aware of his breaches of duty to lenders; clients and other members of the profession. The Respondent was a very experienced solicitor. His misconduct stretched well beyond not obtempering the CML Handbook and involved a complete and utter disregard for his duties of care to all clients, and other members of the profession. The Respondent had wilfully misled fellow solicitors. He had no communication with many of his clients. He had offered no advice to his clients regarding the consequences of these matters. The misleading content of the certificates on title were either wilful or at best extremely reckless. Having regard to the nature of the conduct here, the only conclusion that could be drawn was that the Respondent was not a fit and proper person to practice as a solicitor and that his name should be struck from the Roll. In reaching this conclusion the Tribunal took the following into account. The large number of breaches of many duties, the repeated nature of the course of conduct, the clear danger presented to the public as a result of the Respondent's conduct, the clear risk to the reputation of the

legal profession, the Respondent's complete and utter disregard for the duties of care he owed to clients, the profession and the authorities. The Respondent's conduct had involved not just his complete non-compliance with the CML Handbook but his non-compliance with basic, obvious and essential duties of care owed to clients. The Respondent had ignored his duties to institutional lenders, private clients and the profession. Unfortunately, nothing in the submissions in mitigation could persuade the Tribunal that this whole course of conduct was not so serious and so reprehensible that the Sharp Test was not met.

The Tribunal wanted it to be noted that both parties had acted in an extremely professional manner in relation to these proceedings.

The Tribunal made the usual order with regard to publicity and expenses.

Chairman