

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

F I N D I N G S

in Complaint

by

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

against

**CHRISTOPHER MARTIN
CAMPBELL of Campbells, 49
London Road, Edinburgh**

1. A Complaint dated 21 May 2012 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as the "Complainers") requesting that, Christopher Martin Campbell of Campbells, 49 London Road, Edinburgh (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 2 July 2012 and notice thereof was duly served on the Respondent.

4. When the Complaint called on 2 July 2012, the Complainers were represented by their fiscal, Paul Reid Solicitor Advocate, Glasgow. The Respondent was present and represented himself.
5. A Joint Minute was lodged admitting the averments of fact, averments of duty and averments of professional misconduct in the Complaint. The Respondent also lodged a brief note in mitigation.
6. The Tribunal considered that the plea may be a plea of convenience and was not satisfied on the basis of the Respondent's submissions included in his note in mitigation, (that he did not believe that the failure to report was misconduct), was consistent with a plea of guilty to professional misconduct. The Tribunal accordingly adjourned the case to 20 July 2012 for evidence to be led.
7. When the case called on 20 July 2012, the Respondent was present and represented himself. The Law Society were represented by their fiscal Paul Reid, Solicitor Advocate, Glasgow. Evidence was led from the Respondent and the Tribunal heard submissions from both parties. It was clarified that the Joint Minute was still before the Tribunal with the deletion of paragraph 3.
8. Tribunal found the following facts admitted or proved:
 - 8.1 The Respondent was born on 29 January 1961. He was enrolled as a solicitor on 7 November 1983. He was formally a partner in the firm Keir Moodie, Solicitors, Edinburgh from 1 October 1987 to 30 September 1991. From 1 October 1991 to date, the Respondent has been employed as a partner running his own firm under the name, Campbells, Solicitors of 49 London Road, Edinburgh.

Purchase of Property 1

8.2 The Respondent acted on behalf of the client, Mr A. In or about 11th November 2009, the Respondent was instructed by the client in connection with the purchase of Property 1. The agent acting on behalf of the sellers was the Lints Partnerships. A review of the file maintained by the Respondent reveals a letter from him to the seller's solicitor advising that the intended purchaser had withdrawn due to a lack of funds and that he had now been instructed by Mr A. With this letter the Respondent enclosed a draft Disposition in favour of his client with a date of entry identified as 13th November 2009.

The Respondent was approached by another solicitor (Lints Partnership) to do the conveyancing work in respect of the purchase of flats at Property 1. There was some discussion between the Respondent, Lints and other solicitors as to the set up of back to back transactions and what was required in terms of general reporting. The Respondent's view was that Company 1 would never actually own the property, as set out in the Disposition, with in effect the previous owners Company 2 selling the property with Company 1 signing a consenter. The Respondent took the view at the time in these circumstances there was no requirement to report this to the lenders. Since that time (November 2009) there has been much reported on this matter and discussions as to the nature of those back to back transactions and the requirement to report to the lenders in full. The Respondent has not acted in any back to back transactions since February 2010

8.3 This draft Disposition identified that the heritable proprietors of the property were Company 2 and Company 2a. Each of these commercial entities were companies registered in Jersey. These

commercial entities had sold the subjects to a company called Company 1. Company 1 had not taken title to the subjects. Instead Company 1 had sold them to Mr A in consideration of certain good and onerous causes. The Disposition narrated that Company 2 with the consent of Company 1 had disposed the subjects in favour of Mr A.

8.4 Mr A sought and obtained loan finance. By letter dated 11th November 2009, the Birmingham Midshires Building Society instructed the Respondent to act on their behalf. The letter of instruction provided that “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 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 agreed to act in accordance with these instructions.

8.5 The Respondent issued a Certificate of Title without qualification to the Lender by facsimile transmission on 12th November 2009. This requested that loan funds be released for settlement the following day. Subsequently the Building Society offered a new Offer of Loan to the client on 13th November 2009. This offer was identical in its terms to the earlier Offer of Loan. The Respondent was instructed by the Lender to act on their behalf by letter dated 13th November 2009 which was in terms identical to those previously averred. The Respondent submitted another Certificate of Title by facsimile transmission to the Lender on 13th November 2009 requesting the release of loan funds. The firm ledger of the Respondent was credited with the sum of £82,465 from the Lender on 13th November 2009. Missives in respect of the purchase were concluded. The

transaction settled with the Respondent telegraphically transferring to the firm the Lints Partnership the purchase price of £110,000 on 16th November 2009. A review of the ledger maintained by the Respondent identified the sum of £28,494 had been received from a commercial entity identified as “Company 3” on 13th November 2009. This sum had been applied by the Respondent to the balance of the purchase price and the fees and outlays incurred in finalising the conveyancing transaction.

- 8.6 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 and in terms of which he agreed to act on behalf of the Lender. In particular he failed to report to the Lender that this transaction was what is commonly known as a back to back transaction whereby the Seller had not owned the property for a period in excess of six months (contrary to paragraph 5.1.1 of the CML Handbook); that the Respondent had failed to report to the Lender that the borrower was not providing the balance of the purchase price from his own funds (contrary to paragraph 5.8 of the CML Handbook); and that the Respondent was aware of information that the transaction involved a back to back transaction with a third party providing the balance of the purchase price, such circumstances were significant and should have been reported to the Lender to allow the Lender to determine whether or not they wished to continue with the transaction (contrary to paragraph 1.15 and 5.1.2 of the CML Handbook). Further the Respondent acted contrary to the terms of Rule 6.1(c) of the Accounts Rules in that funds were advanced to his client account by a Lender who was acting under the false apprehension that there existed no circumstances which the Lender ought to have been informed of in terms of the instructions set out in the CML Handbook. The Respondent should not have

drawn money from his client account without the full and informed authority of his client, being the Lender. Further the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of funds utilised by the client to settle the balance of the purchase price or to apply appropriate risk sensitive customer due diligence measures. Further, the Respondent failed to verify the identity of the commercial entity Scanlon Properties which was the third party provider of funds.

Purchase of Property 2

- 8.7 In or about 10th November 2009, the Respondent was instructed by a Mr A in respect of the purchase of subjects at Property 2. The Sellers were represented by the Lints Partnership. A review of the file maintained by the Respondent revealed an e-mail from the Respondent to the Seller's solicitor advising that the intended purchaser had withdrawn due to a lack of funding and that he had been instructed by Mr A. With this e-mail, the Respondent enclosed a draft Disposition in favour of Mr A which identified a date of entry of 13th November 2009.
- 8.8 This draft Disposition identified that the heritable proprietors of the property were Company 2 and Company 2a. Each of these commercial entities were companies registered in Jersey. Company 2 had sold the subjects to a company called Company 1. Without taking title to the subjects, Company 1 had sold them to Mr A. The consideration was identified as being for certain good and onerous causes. Company 2 with the consent of Company 1 disposed the subjects in favour of Mr A.
- 8.9 The client sought loan finance from the Birmingham Midshires Building Society. By letter of instruction dated 11th November 2009,

the Respondent was appointed to act on their behalf. The letter of instruction provided “Please also act for the bank of Scotland plc on the mortgage of this property to us. 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 Part 2 Instructions are only available on the CML Website”. The Respondent accepted these instructions.

- 8.10 The Respondent submitted a Certificate of Title without qualification to the Lender by facsimile transmission on 13th November 2009 requesting that funds be released for settlement that day. The Lender issued a new Offer of Loan to the client on 13th November 2009. The terms of this Offer were identical to the earlier Offer as hereinbefore averred. The Respondent submitted a further Certificate of Title by facsimile transmission to the Lender on 16th November 2009 requesting the release of loan funds.
- 8.11 A review of the ledger maintained by the Respondent identified that the sum of £82,465 was received from the Lender that day. Missives were concluded. The transaction settled by the Respondent paying to the Seller’s solicitor the purchase price of £110,000 on 17th November 2009. A review of the firm ledger maintained by the Respondent revealed that the sum of £28,494 had been received from a commercial entity “Company 3” on 13th November 2009, which sum had been applied to the balance of the purchase price and the fees and outlays incurred in finalising the conveyance.
- 8.12 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 and in terms of which he agreed to act on behalf of the Lender. In particular he failed to report to the

Lender that this transaction was what is commonly known as a back to back transaction whereby the Seller had not owned the property for a period in excess of six months (contrary to paragraph 5.1.1 of the CML Handbook); that the Respondent had failed to report to the Lender that the borrower was not providing the balance of the purchase price from his own funds (contrary to paragraph 5.8 of the CML Handbook); and that the Respondent was aware of information that the transaction involved a back to back transaction with a third party providing the balance of the purchase price, such circumstances were significant and should have been reported to the Lender to allow the Lender to determine whether or not they wished to continue with the transaction (contrary to paragraph 1.15 and 5.1.2 of the CML Handbook). Further the Respondent acted contrary to the terms of Rule 6.1(c) of the Accounts Rules in that funds were advanced to his client account by a Lender who was acting under the false apprehension that there existed no circumstances which the Lender ought to have been informed of in terms of the instructions set out in the CML Handbook. The Respondent should not have drawn money from his client account without the full and informed authority of his client, being the Lender. Further the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of funds utilised by the client to settle the balance of the purchase price or to apply appropriate risk sensitive customer due diligence measures. Further, the Respondent failed to verify the identity of the commercial entity Scanlon Properties which was the third party provider of funds.

Purchase of Property 3

- 8.13 The Respondent acted for a client, Mr B. In or about 3rd November 2009, the Respondent was instructed by Mr B in respect of the proposed purchase of heritable subjects at Property 3. A review of

the file maintained by the Respondent revealed a draft Disposition which identified the heritable proprietors of the property as being Company 2 and Company 2a. Each of these commercial entities were companies registered in Jersey. These heritable proprietors had sold the subjects to a company called Company 1. Without taking title to the subjects. Company 1 had sold them to the client, Steven Webster. The consideration was identified as being for certain good and onerous causes. Company 2 with the consent of Company 1 disposed the subjects in favour of Mr B.

8.14 Mr B obtained loan finance from the Birmingham Midshires Building Society. The lender instructed the solicitor to act on their behalf in connection with the transaction. The Respondent accepted these instructions. By letter dated 4th November 2009, the Lender instructed the Respondent. The letter of instruction 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 agreed to act in accordance with these instructions.

8.15 The Respondent submitted a Certificate of Title without qualification to the Lender by facsimile transmission on 9th November 2009 requesting that loan funds be released for settlement the following day. A review of the firm ledger maintained by the Respondent records that the sum of £82,465 was received from the Lender on 10th November 2009. Missives were concluded. The transaction settled by the Respondent paying by telegraphic transfer to the Seller’s solicitors, the Lints Partnership, the purchase price of £110,000. The firm ledger maintained by the Respondent records that the sum of £28,479 had been received from a Mr B on 10th

November 2009 which sum had been applied by the Respondent to the balance of the purchase price and the fees and outlays incurred in finalising the conveyance.

- 8.16 A further review of the file maintained by the Respondent revealed the existence of a letter which was sent to the Respondent by a Mr C (understood to be the son of the client) on 3rd November 2009. This letter was on the headed stationary of a firm of Chartered Surveyors based in London called Company 4. Mr C was designed as being the Managing Director of this firm. The letter is headed “Property 3” and stated “I write to confirm that our mutual client, Mr B and others have given me instructions to deal with their prospective purchases of the above mentioned properties. I can confirm that I will be transferring their deposits to you as and when we are due to exchange and complete”.
- 8.17 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 and in terms of which he agreed to act on behalf of the Lender. In particular he failed to report to the Lender that this transaction was what is commonly known as a back to back transaction whereby the Seller had not owned the property for a period in excess of six months (contrary to paragraph 5.1.1 of the CML Handbook); that the Respondent had failed to report to the Lender that the borrower was not providing the balance of the purchase price from his own funds (contrary to paragraph 5.8 of the CML Handbook); and that the Respondent was aware of information that the transaction involved a back to back transaction with a third party providing the balance of the purchase price, such circumstances were significant and should have been reported to the Lender to allow the Lender to determine whether or not they wished

to continue with the transaction (contrary to paragraph 1.15 and 5.1.2 of the CML Handbook). Further the Respondent acted contrary to the terms of Rule 6.1(c) of the Accounts Rules in that funds were advanced to his client account by a Lender who was acting under the false apprehension that there existed no circumstances which the Lender ought to have been informed of in terms of the instructions set out in the CML Handbook. The Respondent should not have drawn money from his client account without the full and informed authority of his client, being the Lender. Further the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of funds utilised by the client to settle the balance of the purchase price or to apply appropriate risk sensitive customer due diligence measures. Further, the Respondent failed to verify the identity of the commercial entity Company 4 which was the third party provider of funds.

Purchase of Property 4

- 8.18 The Respondent acted on behalf of the client Mr B. In or about 12th November 2009, the Respondent was instructed by Mr B in respect of his proposed purchase of a property at Property 4. The firm of solicitors acting for the Seller was the Lints Partnership. A review of the file maintained by the Respondent identified a draft Disposition in favour of Mr B with a date of entry being 13th November 2009. The draft Disposition identified that the heritable proprietors of the property were Company 2 and Company 2a. Each of these commercial entities were companies registered in Jersey. The heritable proprietors had sold the subjects to a company called Company 1. Without taking title to the subjects, Company 1 had sold them to Steven Webster. The consideration was identified as being for certain good and onerous causes. Company 2 with the consent of Company 1 disposed the subjects in favour of Mr B.

- 8.19 The client, Mr B sought and obtained loan finance from the Birmingham Midshires Building Society. By letter dated 12th November 2009, the Lender instructed the Respondent to act on their behalf in connection with the transaction. The Respondent accepted these instructions. The letter of instruction 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 agreed to act in accordance with these instructions.
- 8.20 The Respondent submitted a Certificate of Title without qualification to the Lender by facsimile transmission on 16th November 2009 requesting that funds be released for settlement the following day. A review of the firm ledger maintained by the Respondent records that the sum of £82,475 was received from the Lender on 17th November 2009. Missives were concluded. The transaction settled by the Respondent paying by way of telegraphic transfer to the Lints Partnership the purchase price of £110,000. A review of the firm ledger revealed that the sum of £28,479 had been received from Mr B on 17th November 2009 which sum had been applied by the Respondent to the balance of the purchase price and the fees and outlays incurred in finalising the conveyance.
- 8.21 A further review of the file maintained by the Respondent revealed the existence of a letter which was sent to the Respondent by a Mr C (understood to be the son of the client) on 3rd November 2009. This letter was on the headed stationary of a firm of Chartered Surveyors based in London called Company 4. Mr C was designed as being the Managing Director of this firm. The letter is headed “Property

4” and stated “I write to confirm that our mutual client, Mr B and others have given me instructions to deal with their prospective purchases of the above mentioned properties. I can confirm that I will be transferring their deposits to you as and when we are due to exchange and complete”.

8.22 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 and in terms of which he agreed to act on behalf of the Lender. In particular he failed to report to the Lender that this transaction was what is commonly known as a back to back transaction whereby the Seller had not owned the property for a period in excess of six months (contrary to paragraph 5.1.1 of the CML Handbook); that the Respondent had failed to report to the Lender that the borrower was not providing the balance of the purchase price from his own funds (contrary to paragraph 5.8 of the CML Handbook); and that the Respondent was aware of information that the transaction involved a back to back transaction with a third party providing the balance of the purchase price, such circumstances were significant and should have been reported to the Lender to allow the Lender to determine whether or not they wished to continue with the transaction (contrary to paragraph 1.15 and 5.1.2 of the CML Handbook). Further the Respondent acted contrary to the terms of Rule 6.1(c) of the Accounts Rules in that funds were advanced to his client account by a Lender who was acting under the false apprehension that there existed no circumstances which the Lender ought to have been informed of in terms of the instructions set out in the CML Handbook. The Respondent should not have drawn money from his client account without the full and informed authority of his client, being the Lender. Further the Respondent acted in breach of Rule 24 of the Accounts Rules in that the

Respondent failed to adequately identify the source of funds utilised by the client to settle the balance of the purchase price or to apply appropriate risk sensitive customer due diligence measures. Further, the Respondent failed to verify the identity of the commercial entity Company 4 which was the third party provider of funds.

Purchase of Property 5

8.23 The Respondent acted for the client, Ms D and Mr E. In or about 20th January 2010, the Respondent was instructed by the clients in respect of their proposed purchase of Property 5. The clients had obtained a mortgage from the Royal Bank of Scotland plc. The Respondent contacted his clients by e-mail on 5th February 2010 in which he requested sight of identification for each of the clients for Money Laundering purposes and proof of the source of any deposit monies. A review of the file maintained by the Respondent revealed copies of the client's passports and a utility bill were forwarded by e-mail to the Respondent on 8th February 2010 by a Financial Services Company. Each of the copy documentation had been certified as genuine by a Mr F who was designed as a Mortgage Consultant with that company. Further there was a letter dated 9th February 2010 from a Mrs G who was the mother of the client, Ms D. This letter stated "I confirm that I am gifting my daughter, Ms D the sum of £14,000 to aid in her purchase of Property 5. This is a gift and not repayable at any time. I will be taking no interest in the property".

8.24 A review of the file maintained by the Respondent revealed a draft Disposition on the file which identified that the heritable proprietors of the subjects were Company 2 and Company 2a. Each of these companies were commercial entities registered in Jersey. As heritable proprietors of the subjects, they had sold the subjects to a company called Company 1. Without taking title, Company 1 had

sold them to the clients of the Respondent. The consideration was identified as being for certain good and onerous causes. Company 2 with the consent of Company 1 disposed the subjects in favour of the clients.

- 8.25 The clients obtained loan finance from the Royal Bank of Scotland plc. The Lender by letter dated 3rd February 2010 instructed the Respondent to act on their behalf in connection with the transaction. The Respondent accepted these instructions. The letter of instruction provided “You are instructed in connection with the CML Lenders Handbook for Scotland including our Part 2 Instruction”. The letter also included a summary of requirements which further included “As we no longer require delivery of the Title Deeds, it is imperative that you comply fully with our instructions. We are relying on you to ensure that the necessary deeds have been registered or recorded and that we have First Ranking Standard Security.” A revised Offer of Loan which subsequently superseded the earlier Offer of Loan was submitted. The Lender instructed the Respondent in terms identical to the earlier Offer of Loan. The Respondent accepted these instructions.

The delay in registering the transaction, including the Standard Security was an oversight by the Respondent.

- 8.26 By facsimile transmission dated 10th February 2010, the Respondent submitted a Certificate of Title without qualification to the Lender requesting that the loan funds be advanced for settlement on 12th February 2010. A review of the firm ledger maintained by the Respondent records that a loan advance of £125,970 was received in his client account on 11th February 2010. A further review also records that the sum of £16,365 in respect of the deposit and costs

had been received on that date from the clients. Missives were concluded. The transaction settled with the Respondent paying the purchase price to the Seller's Solicitors on 12th February 2010 by telegraphic transfer.

8.27 The client by e-mail on 3rd March 2010 enquired of the Respondent in respect of timescales for completion of the final documentation. The Respondent replied on 18th March 2010 confirming that the purchase had completed on 12th February 2010 and that he was in the process of submitting the paperwork to the Land Register. The Respondent's file is thereafter silent until the Lender wrote to the Respondent on 6th August 2010 noting that they had been unable to ascertain whether the Standard Security had yet been registered. The Lender requests that the Respondent should investigate the matter urgently and confirm the position. The client e-mailed the Respondent again on 19th August 2010. The Respondent acknowledged both communications and indicated to both that he had written for proof of ownership and registration within the next few days. A review of the file maintained by the Respondent revealed an acknowledgement from the Land Register dated 24th August 2010 which confirmed the date of receipt of the application for registration as being that date. The Land Register issued a requisition to the Respondent. Confirmation that the Disposition and Standard Security had been registered was eventually issued by the Land Register on 14th January 2011.

8.28 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 and in terms of which he agreed to act on behalf of the Lender. In particular he failed to report to the Lender that this transaction was what is commonly known as a back

to back transaction whereby the Seller had not owned the property for a period in excess of six months (contrary to paragraph 5.1.1 of the CML Handbook); that the Respondent had failed to report to the Lender that the borrower was not providing the balance of the purchase price from his own funds (contrary to paragraph 5.8 of the CML Handbook); and that the Respondent was aware of information that the transaction involved a back to back transaction with a third party providing the balance of the purchase price, such circumstances were significant and should have been reported to the Lender to allow the Lender to determine whether or not they wished to continue with the transaction (contrary to paragraph 1.15 and 5.1.2 of the CML Handbook). Further the Respondent acted contrary to the terms of Rule 6.1(c) of the Accounts Rules in that funds were advanced to his client account by a Lender who was acting under the false apprehension that there existed no circumstances which the Lender ought to have been informed of in terms of the instructions set out in the CML Handbook. The Respondent should not have drawn money from his client account without the full and informed authority of his client, being the Lender. Further the Respondent acted in breach of Rule 24 of the Accounts Rules in that the Respondent failed to adequately identify the source of funds utilised by the client to settle the balance of the purchase price or to apply appropriate risk sensitive customer due diligence measures. Further, the Respondent failed to verify the identity of the commercial entity Mrs G which was the third party provider of funds.

9. Having very carefully considered the submissions made by both parties in respect of whether or not the established facts were sufficiently serious and reprehensible to amount to professional misconduct, Tribunal found the Respondent guilty of Professional Misconduct in cumulo in respect of:

- 9.1 His failure to comply with the terms of the common law standard applicable to a solicitor acting on behalf of a lender in a conveyancing transaction. In particular as a consequence of his failure to report to his client an unusual circumstance; 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; his failure to act with absolute propriety and to protect the interest of his client being the lender in respect of each transaction.
- 9.2 His failure to comply with the terms of Rule 6 of the Solicitors (Scotland) Accounts Etc Rules 2001.
- 9.3 His failure to comply with the terms of the Accounts Rules insofar as they relate to money laundering obligations, in particular Rule 24.
- 9.4 His delay in registering conveyancing documentation on behalf of his clients
10. Having heard from the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-
- Edinburgh 20 July 2012. The Tribunal having considered the Complaint dated 21 May 2012 at the instance of the Council of the Law Society of Scotland against Christopher Martin Campbell of Campbells, 49 London Road, Edinburgh; Find the Respondent guilty of Professional Misconduct in cumulo 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 an unusual circumstance to comply with the explicit instructions provided to him by his client being the obligations imposed on him as

provided for within the CML Lender's Handbook applicable to Scotland; his failure to act with absolute propriety and to protect the interest of his client being the lender in respect of each transaction; his failure to comply with Rules 6 and 24 of the Solicitors (Scotland) Accounts Etc Rules 2001 and his delay in registering conveyancing documentation on behalf of his client; Censure the Respondent; Fine him in the sum of £1000 to be forfeit to Her Majesty and Find the Respondent liable in 80% of 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)

Dorothy Boyd
Vice Chairman

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

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

This matter called before the Tribunal on 2 July 2012. The Respondent pled guilty to professional misconduct by way of a Joint Minute. The Respondent also lodged a note in mitigation which indicated that he did not believe at the time that the failure to report to the lender amounted to professional misconduct. The Tribunal had concerns that if the Respondent was claiming that he was acting negligently rather than knowingly, his plea was one of convenience and his conduct would not necessarily amount to professional misconduct. Mr Reid indicated that the Law Society did not accept that his conduct was not wilful or reckless. It was accordingly decided that evidence would be required and the matter was adjourned to 20 July 2012 for a hearing.

When the case called on 20 July 2012 the Respondent clarified that his position was that he was aware at the time of his obligations under the CML Handbook and now accepted that he should have reported matters to the lender in terms of the CML Handbook. The Respondent's position however was that Company 2 was the infert proprietor and had owned the property for in excess of 6 months. Although Company 1 had owned the property for less than 6 months, they were not infert and accordingly the Respondent did not realise he had to report this matter in terms of the CML Handbook. It was clarified that the Joint Minute lodged on the last occasion still stood, with the deletion of paragraph 3. Mr Reid clarified that the Law Society accepted that Company 2 had been infert in the property for a period of over 6 months

Evidence for the Respondent

The Respondent confirmed that his position was as set out in Answer 2.1 of the record. Mr Reid then cross examined the Respondent. The Respondent confirmed that he had been in the profession for 29 years and had dealt mainly with conveyancing. He recognised that he owed the lender a duty to act with propriety. The Respondent confirmed that he was familiar with the CML Handbook at the time and the obligations imposed by it. The Respondent also confirmed that he accepted that there was an

obligation on him to report unusual matters in connection with the transactions to the lender. The Respondent emphasised that because Company 2 had owned the property for over 6 months he did not realise there was a need to report. This was because Company 1 were uninfected and their ownership was fleeting. The Respondent explained that as he was dealing with Lints partnership he was not concerned because he thought that they were a respectable firm and there was nothing to trigger in his mind that anything may be untoward. The Respondent accepted that there were 5 transactions where Company 1 were shown as consenter. The Respondent explained that the properties were in a modern block of flats and he assumed that Company 2 owned the whole block.

The Respondent was then referred to the productions lodged and accepted that he made no enquiries with regard to Company 1's involvement. The Respondent explained that it did not occur to him at the time that it was necessary to do so. The Respondent accepted that there was an obligation to report anything unusual to the lender. He accepted that with hindsight he should have reported these matters. The Respondent confirmed that in each transaction, the consideration as set out in the disposition was for certain, good and onerous causes. He explained that this was done to preserve commercial confidentiality. Mr Reid referred the Respondent to Production 4 which showed that the price was actually £110,000. The Respondent stated that his clients paid the full price as per the certificate of title. The Respondent confirmed that the template for the disposition was provided by Lints but was wrong and that he prepared the disposition. He accepted that he made no enquiries with Lints with regard to the wording in the disposition. He indicated that the only relevant matter was how much they were paying for the property and they did pay the full price. The Respondent confirmed that he did have a land certificate for the property and did examine the title. The Respondent accepted that in respect of property 1 the offer was dated 16 November 2009 but the certificate of title and the settlement date were 13 November 2009. The Respondent stated that this was perhaps because there was a delay in getting the offer typed and explained that it was common practice not to commit the client to missives until the offer of loan was made available. Mr Reid referred the Respondent to Production 13 which showed that the

money came in on 13 November, which was before the offer was made. The Respondent accepted that this was slightly unusual.

Mr Reid referred the Respondent to Production 2, being an email to Lints, which referred to Miss H who the Respondent confirmed worked for a broker. Production 12 was the power of attorney by Company 1 in favour of Mr Lints. The Respondent confirmed that the director of Company 1 was a Mr I who was behind a number of referrals of clients to the Respondent. The Respondent stated that this was not particularly unusual but the Respondent accepted that he did not meet any of the clients face to face in the 5 transactions. He further accepted that some of the communications were via Miss H. He explained that he was told that this would be the best way of obtaining information and he did obtain some money laundering information via this method. He however stated that all the documentation appeared fine. The Respondent accepted that the deposit came from Company 3 rather than his client.

In response to a question from one of the Tribunal members, the Respondent confirmed that he had a hard copy of the CML Handbook. In response to a question from the Chairman, the Respondent confirmed that the wording of condition 5/1/1 in the Handbook was “please report to us if the proprietor has owned the property for less than 6 months or the person selling to the borrower is not the proprietor.....” The Respondent confirmed that the missives were with Company 1 and the money was going to Company 1 and that accordingly Company 1 was the seller but that Company 1 was not the heritable proprietor, Company 2 was.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid asked the Tribunal to make a finding of professional misconduct in respect of the 5 transactions. Mr Reid stated that this was not just a case of omitting to report a matter to the building society but a clear breach of the obligation to report unusual circumstances. The Respondent accepted that he had had discussions with Mr Lints with regard to back to back transactions so it was not just a coincidence. Mr Reid pointed out

the unusual nature of the transactions which had all settled within a few weeks of each other. Mr Reid also pointed out the unusual wording relating to the consideration in the disposition. He further pointed out the absence of what you would normally expect in a conveyancing file. Mr Reid further referred to the individuals in the background being brokers who nominated individuals to buy properties and the absence of further investigations in respect of money laundering and the fact that this appears to have been done through the brokerage. Mr Reid suggested that there was something sinister with regard to the transactions and pointed out that the Respondent has an obligation to act diligently and with utmost propriety.

Mr Reid referred the Tribunal to Smith and Barton page 130 & 131, case no 748/89, where the Tribunal had concluded that it was an important matter of principle and that failing to report a matter to a building society was misconduct. He also referred to Patterson and Richie at page 168 & 169 in connection with the relationship between the solicitor and the lender and the identification of a number of previous cases before the Tribunal where failure to inform the building society of these matters has been held to amount to professional misconduct. Mr Reid further referred to the cases of Joy Dunbar and Kevin Davidson, where the Tribunal have recently made Findings of professional misconduct in respect of failure to comply with obligations in terms of the CML Handbook.

SUBMISSIONS BY THE RESPONDENT

The Respondent stated that he assured the Tribunal that he had no part in any sinister scheme. He stated that there were 5 cases due to the nature of the referral and that they settled close together because it was a modern block of flats and Company 2 wanted to sell them as quickly as possible. He confirmed that he did see land certificates for each block of flats and would have seen the form 12 and did not see any need to write this up in the file. He stated that he accepted that his view at the time that he did not need to report matters was wrong but he had not realised anything was amiss as he was dealing with a reputable firm.

DECISION

The Tribunal considered the case very carefully. Condition 5/1/1 of the CML Handbook in 2009 clearly states that the Respondent had an obligation to report to the lender, if the proprietor had owned the property for less than 6 months or the person selling to the borrower was not the proprietor, unless certain circumstances applied which do not apply in this case. The Respondent's position was that as Company 1 were not infest he did not realise that he had to report the matter to the lender. However the Respondent's evidence was that he is an experienced conveyancing practitioner and he had a hard copy of the CML Handbook available to him. The Tribunal considered that the terms of condition 5/1/1 are quite clear and that the Respondent should have known that he had to report matters to the lender. In this case there were also a number of unusual aspects about the transactions such as the consideration as set out in the Disposition being for "good and onerous causes" rather than the actual purchase price being narrated. There was also the issue of deposits not coming from the purchaser and proper money laundering checks not having been carried out. The Respondent clearly understood that Company 1 were the seller and should have known that he should tell the lender about the situation. The Respondent by his own evidence was clearly aware that he was involved in a number of back to back transactions. The Tribunal accordingly considered that the Respondent was cavalier in the way he dealt with the lender in these particular circumstances and that his conduct would be viewed by competent and reputable solicitors as serious and reprehensible. When a solicitor takes instructions from a lender, the solicitor owes the lender a duty to ensure that they receive a valid title over the subjects and that he complies with the terms of their instructions. The CML Handbook conditions are part of the lender's instructions. They are there to prevent potential fraud. Failure to comply with the conditions is damaging to the reputation of the legal profession. The Tribunal considered that in this case the Respondent had shown a reckless disregard for complying with his client's instructions. The Respondent should have been aware of the potential risk of failing to report the unusual aspects of these transactions. The Tribunal accordingly considered that the Respondent's conduct was sufficiently serious and reprehensible to meet the Sharp Test and made a finding of professional misconduct.

The Tribunal further considered that the Respondent could not have had an understanding that he had authority to draw down and intromit with the funds in circumstances where he knew that he had not complied with the terms of the CML Handbook and had accordingly not complied with the lender's instructions. The Tribunal accordingly found that there was a breach of Rule 6 of the Accounts Rules .The Tribunal also found a breach of Rule 24 of the Accounts Rules in respect of the Respondent's failure to adequately identify the source of funds utilised by clients to settle the balance of the purchase price in the transactions. The Tribunal found that these breaches in cumulo amounted to professional misconduct when taken with the failure to comply with the CML Handbook.

The Respondent also delayed on one occasion in recording the Standard Security to protect the lender's interests. A solicitor acting for a client in connection with conveyancing transactions has a duty to present, to the Inland Revenue, a deed which requires to be stamped within a reasonable time of the conveyancing transaction taking place failing which the interests of the lender are exposed because of the delay. Although this one incident on its own would not be sufficient to amount to professional misconduct, the Tribunal made a finding in cumulo.

MITIGATION

The Respondent referred to his written plea of mitigation. He had been in practice for almost 30 years and had not previously been subject to any complaints. The Respondent also explained his current financial position and the position with his business. The Respondent advised that he was in the process of closing his firm.

PENALTY

The Tribunal took account of the fact that the Respondent had fully cooperated and had tendered a plea of guilty when the case called on 2 July 2012. The Respondent now

accepts that he should have reported the circumstances to the lender and he has shown remorse. The Tribunal considered that the Respondent's misconduct was at the lower end of the scale of professional misconduct and considered that a Censure plus a fine of £1000 would be sufficient penalty. The Tribunal saw no reason to restrict the Respondent's practising certificate as the Tribunal did not consider that the Respondent was a danger to the public or that these circumstances were likely to arise again in the future. The Tribunal noted that in any event the Respondent intended to close his business. The Tribunal made the usual order with regard to publicity. The Tribunal also followed the usual practice of awarding expenses where a Respondent is found guilty of professional misconduct but in these particular circumstances, given that the Respondent had pled guilty when the case called on 2 July and that it was on the Tribunal's initiative that the case was adjourned for the hearing of evidence to ensure fairness to the Respondent and ensure that the plea was not one of convenience, the Tribunal considered it appropriate to restrict the expenses by 20%.

Vice Chairman