



# The scandal of solicitor involvement in property scams.

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You can put lipstick on a pig, but it's still a pig, so the old adage goes.

The same could be said to apply to the collective investment scheme. Scams evolve and in the case of this particular piggy a number have been dolled up as traditional property purchases by solicitors. Whether or not technically unlawful, the SRA doesn't like these little porkers and wants solicitors to have nothing to do with them.

And with good cause. There have been massive failures of these schemes in recent years, many fraudulent, a number with all the hallmarks of Ponzi schemes and nearly all involving unacceptable levels of risk for the investor. Numerous high-profile failures of property projects financed in this way remain vacant plots of land around the country. Those sites that were built out are underperforming, with opaque financial structures designed for a quick buck for the promoters and slow failure for the investors, often ensuring that what little operating income is available is siphoned off to an entity connected to the developer in fees and service charges. To add insult to injury, the hefty charges of the insolvency practitioners who have been appointed to many of the failed developments are doing a good job of accounting for any balance left over.

The result of this scandal is that tens of thousands of investors have lost their life savings or pension pots, many of whom were unsophisticated to the extent of being vulnerable. Serious damage has also been done to the brand of UK Plc with the targeting of overseas investors.

Sadly, members of the legal profession have either been complicit in, or have negligently enabled, this state of affairs.

Legal structures sit behind all of these schemes, and many involved "conveyances" (of student bedrooms or hotel rooms, for example). Promoters of the schemes would often suggest a local firm or panel of firms to the investors who could quickly and cheaply complete the transaction on the basis of standard form documentation, sometimes paying the solicitors even though their client was the investor. The investors were told that these firms were familiar with the concepts and the development and that searches and enquiries could be recycled without the need to reinvent the wheel. In fact, the unspoken arrangement with the promoters was often that solicitors would wave through their clients' 'investment' in schemes that should have raised red flag after red flag.

Cosy arrangements were thus struck up between the firms and the promoters of these schemes. Even where there was not direct collusion, lines were blurred as to who the real client was and where the solicitors' duties lay. Unhealthy partnerships of this nature provided bulk, repeat, instructions to the often struggling firm (much easier than finding 500 new clients), whilst the promoter benefitted from the air of legitimacy that allegedly independent legal representation for investors conferred. Basic points were missed and important questions were not asked because of a mixture of incompetence and a fear of biting the hand that feeds.

The SRA and the Legal Ombudsman believe there has been malpractice and the SRA is taking action. Slowly but surely key protagonists will face investigation and enforcement. Civil redress is also being sought and specialist firms including HK are investigating and advancing claims on behalf of the victims of these arrangements. On the facts of the cases this firm has seen, disclaimers of responsibility for "commercial" advice and arguments about scope of duty and "limited retainers" do not pass muster, either morally or legally.

Going forwards, whether the behaviours of solicitors facilitating these schemes will improve, or simply evolve, remains to be seen. The need to act with integrity and avoid conflicts of interest sits at the heart of the ethical duties of a solicitor and is the cornerstone of the fiduciary relationship with a client. That duty cannot be abrogated in the commercial interests of the solicitor. Rogues and charlatans will always be with us, but it is to be hoped that solicitors will no longer lend confidence to this particular trick.

As regards the damage done, swift and effective redress would go some way towards restoring the reputation of the profession in the eyes of those hardest hit. Sadly, scandals such as these reinforce that a sensible class action regime in the UK is long overdue. As Mark Humphries of this firm has commented elsewhere, access to justice under the current regime for the collective victims of civil wrongs leaves much to be desired.



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