

Sham law firms and mortgage fraud



Impersonating a solicitor has been a criminal offence, carrying a penalty of a fine and/or up to 2 years imprisonment, for many years. Notwithstanding the consequences, however, it can also, unfortunately, be an extremely lucrative business and therefore a very attractive prospect for those of an 'enterprising' nature.

There are, sadly, a growing number of people who are pretending, sometimes very convincingly, to be solicitors and barristers in the UK. The SRA received 548 reports of such activity in 2013, (an increase of 57% from the previous year), and, by the end of April 2014, had already received a further 235 such reports. On a similar note, in 2013 the SRA published nearly 100 'scam' notices on its consumer web pages - warnings of, amongst other things, fraudulent activity involving the identity theft of existing solicitors and law firms. As of 19 November 2014, the SRA had published over 160 such notices for the current year.

Scams, frauds & cons

The scams carried out by these fraudsters are wide ranging. A common trick is to write to 'beneficiaries', requesting payment of a fee to secure release of an inheritance from an unknown, yet curiously generous, deceased relation.

Another is to offer government or charity grants, again available on receipt of a fee from the lucky punter. Increasingly, however, the fraudsters are moving into property, where there are opportunities to steal significant sums of money with surprisingly little effort.

The usual property scam involves the fraudster(s) both setting up a bogus firm of solicitors and impersonating the seller of the property (although in some instances the fraudster is the true owner; usually one with a threat of repossession hanging

over his or her head). The buyer, and the buyer's solicitor, are given the name of the bogus firm and, assuming the fraud proceeds as expected, in due course hand over the purchase monies, which promptly disappear, leaving the buyer (and usually their lender) out of pocket and with no title to, or security over the property. Some fraudsters have been known to 'stack up' multiple transactions over the course of a couple of weeks, with 'profits' from their criminal enterprise running into the millions.

Mortgage fraud cases have more than doubled since 2007 and the UK Courts have been awash with claims involving bogus law firms for several years. The most recent decision, handed down by the Court of Appeal in February 2014 (*Santander v RA Legal* [2014]) found the defendant solicitor liable to the claimant lender, having handed over purchase monies to what turned out to be a bogus firm of solicitors purporting to act for the vendor. The defendant's application for permission to appeal to the Supreme Court was refused on 31 October 2014 on the grounds that the case did not raise an arguable point of law of general public importance.

The extent of liability faced by solicitors who inadvertently misapply their client's funds in this manner can therefore be very substantial, notwithstanding the decision of the Supreme Court earlier this month in *AIB v Mark Redler & Co Solicitors* [2014]. In *Redler*, the court confirmed that solicitors who had accidentally misapplied their mortgage lender client's funds in a

mortgage transaction (where no fraud was involved) were only liable to compensate their client to the extent necessary to return it to the position it would have been in but for the solicitors' breach, and were not liable for other losses associated with the transaction that were not due to the breach. The solicitors were therefore found liable only for the additional monies (still a six-figure sum) which the lender would have recovered on the sale of the property had the loan transaction gone according to plan, rather than having to make the lender whole and reimburse losses which were caused by the fall in the property market.

Sham firms are therefore a significant concern for our profession - not only is there the risk that any one of us may be taken in by a fraudster posing as a legitimate fellow professional or firm (with the consequent risk of a claim), but also there are the reputational issues to consider should the identity stolen by the fraudster be yours or that of your firm. Claims are damaging enough - in the conveyancing field, with rising house prices, individual claims are unlikely to be for less than six-figure sums and some may be of considerably higher value - but it is the reputational damage, in this Google era of permanent recall, which can be difficult to undo.

In the remainder of this article, we will look at how to spot bogus firms, as well as potential steps which solicitors can take to protect themselves and their clients from falling foul of fraudsters.

How do they do it?

There are numerous ways fraudsters are successfully impersonating law firms. More than half (56%) of reports on bogus firms relate to criminals using the identity of existing firms.

Usually, the fraudster(s) will take the name of a reputable, listed, law firm but will change some or all of the contact details, so as either to establish a false branch or otherwise to divert relevant correspondence to a false e-mail address or telephone number. Alternatively, the fraudsters may assume the mantle of a genuine firm of solicitors which has ceased trading, or take a name which is almost, but not quite, identical to that of a real firm. The Council for Licensed Conveyancers has noted a risk of firms actually being wholly cloned, with letter-heading, websites and email addresses being falsified for these purposes. There is no particular victim profile at play here, and both large and small firms are at risk of being cloned – indeed, it may be easier for fraudsters to assume the guise of a larger firm, which may be expected to open regional branch offices, than a smaller firm, which will have the benefit of familiarity within its local professional community.

Once the fake firm has been created, whether as a solely virtual entity, or with some physical presence in the form of a serviced office somewhere, the fraudsters are then relying on the buyer's solicitor not to carry out full due diligence, or otherwise not to notice discrepancies in paperwork, during the course of the transaction. Assuming all goes well, the buyer's solicitor then pays over the completion monies, and the fraudster can vanish with the funds (which will be nice and 'clean', having passed through the hands of both a professional and at least one bank or building society). Completion, as it is legally defined, is unlikely to have taken place as the documentation provided by the fraudster will either be forged or otherwise useless, and any undertakings relied upon by the buyer's solicitor will be worthless, not having been provided by a genuine solicitor.

What to look out for

In our experience, there are common factors in sham firm cases which the honest solicitor can look out for, and simple steps that can be taken to minimise the risk of doing business with fraudsters:



- Do you know the firm and/or the individual undertaking the seller's work?
 - If not, check with the appropriate regulator that the firm and individual are both registered - barristers are regulated by the Bar Standards Board and registered on the Barristers' Register. Solicitors are regulated by The Solicitors Regulation Authority (SRA) and registered on the Roll of Solicitors. Licenced conveyancers are regulated by the Council for Licenced Conveyancers, which maintains a register of its members
 - If you do, are you dealing with an office you are familiar with, or a new one? Don't assume that because you know the name of a firm, either through previous dealings or because the firm's brand is simply ubiquitous, that you are definitely dealing with who you think you are dealing with
 - Undertake internet searches of the firm's name, partners and staff and see if there is anything which suggests a false office or identity. Pay particular attention to websites, as these may be constructed with 'stock' images which may not look genuine
- Cross-check details with Companies House and Directory Enquiries
- Cross-check details on the SRA's scam alert web pages, which lists all scams and frauds notified to it.
- Pay careful attention to contact details, particularly telephone numbers and e-mail addresses. Are landline numbers provided or just mobile numbers? Are the e-mail addresses professional/commercial or generic/personal (eg. hotmail/ gmail/outlook)?
 - Whilst mobile only numbers and web-based email addresses are not, of themselves, evidence of an underlying fraud, they are sufficiently strong indicators as to merit further investigation
 - If there are any differences in key details (name of firm, address, contact details), or if you cannot find the

individual you are looking for on the firm's website or regulator's register, make further enquiries by telephone, either of the firm (head office if there is one) or of the regulator

- Keep file notes of any such conversations/enquiries and, if you remain concerned, tell your client
- Does the transaction feel right? There can be many factors that can render a transaction suspicious, and, in these cautious times, it is better to ask questions than leave doubts hanging. The following is a non-exhaustive list of possible indicators that something may not be quite on the straight and narrow:
 - Unexplained distance between property and seller's solicitor
 - Spelling or typographical mistakes (particularly in letterheads)

- Unexplained speed in pushing for completion or unexplained reason for sale (particularly if the property has not been owned for long)
- Seller's willingness to waive deposits, or take less than a full deposit
- Sale at an undervalue
- Seller's solicitors' bank details (account name or address of account) do not marry up to the solicitor's name or address

There may, of course, be good reasons for all or any of the above – but if you do not ask, you will not know, and if the transaction turns sour recent case law suggests that the Court will have very little sympathy for a solicitor, however honest and well meaning, who has not dotted every 'i' and crossed every 't'.

These are difficult times for property lawyers, and we are coming increasingly

closer to a system which essentially holds lawyers to a counsel of perfection and requires them to almost guarantee the transactions on which they act. In such circumstances, it is worth spending a little extra time investigating your counterpart, even if it results in the odd embarrassing phone call whilst you question Mr X of Bloggs & Co to determine his true identity, if it results in safer transactions for both you and your clients.

Finally, if your digging uncovers a fraudster or potential fraudster, the SRA does have a Red Alert Line which can be contacted as a matter of extreme urgency. For more details, please visit www.sra.org.uk/alerts

Further advice should be taken before relying on the contents of this summary.

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