

## **London Property Support Lawyers Group**

### **LPSLG protocol on client identity**

#### **Principles**

- It is in the interests of the commercial conveyancing community for there to be an agreed convention on how the risk of identity fraud in real estate transactions should be dealt with, to avoid the issue having to be considered at the start of every transaction, prolonging the conveyancing process and increasing the costs for clients.
- In the normal course of events, the risk of the seller being a fraudster should lie with the solicitors acting for the seller, as it is they who have the better opportunity to take steps to verify the identity of the seller and to link the seller to the property.
- We should not ask other firms for information, assurances, warranties, undertakings etc that we would not be prepared to give ourselves.
- Transactions showing "red flag" indicators of fraud, of the kind highlighted in the HM Land Registry/Law Society joint note on Property and Title Fraud, are outside the scope of this response. Such transactions will no doubt involve the risk and compliance teams of the firms involved and our real estate lawyers will be guided in the steps they take by those teams.
- Nothing in this protocol is intended to override any specific client instructions concerning verification of any person's identity.
- Adoption of this protocol is voluntary and the inclusion of "LPSLG" in the title of the protocol is not intended to mean that law firms represented in the London Property Support Lawyers Group are bound to adopt it in any specific transaction or at all.

#### **Issues**

In the event of identity fraud on the part of the "seller" who turns out to be a fraudster pretending to be the true owner of the property (whom we will nevertheless call the "seller" for convenience):

- Both buyer's solicitors and seller's solicitors would be in breach of trust. However, depending on the degree of culpability, one or other (or both) solicitors firms could be excused any liability (in whole or in part) for that breach of trust under section 61 of the Trustee Act 1925.
- Where the buyer's solicitors relied upon it, the seller's solicitors could be held liable for breach of warranty of authority where the seller's solicitors:
  - signed the contract stating that they were acting as the seller's agent
  - (possibly) stated at the start of the transaction that they were acting for the seller
  - (possibly) gave any assurance that they had verified their client's identity
- The seller's solicitors would be in breach of an undertaking if:
  - the Code was used unamended or, where amended, in a form that retained the undertaking in paragraph 8(i) of the Code ; or
  - they otherwise gave an undertaking that they are authorised to receive the completion funds on the seller's behalf.

- According to the Court of Appeal's decision in *Dreamvar*<sup>1</sup>, the anti-money laundering (AML) checks that solicitors carry out are for the benefit of society at large. Their principal purpose is to deter money laundering and terrorism rather than to combat identity fraud. Furthermore, they are not necessarily intended to connect a person to a specific property.
- "The Code" means the Law Society's Code for Completion by Post (2019 version)

## **Protocol**

- In this section of this protocol, the term "seller" has the same meaning as is given to the term "Seller" in the Code and the phrase "seller's solicitors" has the same meaning as is given to the phrase "Seller's Solicitor" in the Code.
- When acting for a buyer, we will not normally request confirmation of identity, or assurances as to the carrying out of AML checks or similar, from the seller's solicitors. Our AML responsibilities are not there to create a cause of action between law firms.
- Instead we will rely on the seller's solicitors' undertaking that they are authorised to receive the completion funds on the seller's behalf (as the Court of Appeal held in *Dreamvar* that this meant the true owner). Accordingly where the Code is not being adopted, the seller's solicitors should be prepared to undertake that they are authorised to receive the completion funds on the seller's behalf. No well advised real estate lawyer acting for a buyer would complete without such an undertaking anyway and if completion is to be dealt with via solicitors, no seller's solicitor could avoid giving such an undertaking in order for the completion process to proceed with confidence.
- We recognise that to be sure that such an undertaking will be given before completion it will be necessary to add a contractual obligation on the seller to procure that their solicitor will provide such an undertaking (whether as part of using the Code or as a stand-alone undertaking) as a pre-condition to completion.

May 2019

## **Suggested provision for including in the sale and purchase contract**

*This is not part of the LPSLG protocol on client identity: it is provided for convenience only*

The Seller shall procure that, by the time of completion, the Buyer's solicitors have the benefit of an undertaking ("the Undertaking") given by the Seller's solicitors (whether by the adoption of the Law Society's Code for Completion by Post (2019) ("the Code") or otherwise) that the Seller's solicitors have the Seller's authority to receive the purchase money on completion.

The Buyer shall not be obliged to complete the purchase of the Property unless and until the Buyer's solicitors have the benefit of the Undertaking. If the Buyer is ready, able and willing to complete but the Buyer's solicitors do not have the benefit of the Undertaking, the Seller shall be treated as in default and not being ready, able and willing to complete and the Buyer shall be entitled to give the Seller a notice to complete.

In this provision, the term "Seller" has the same meaning as in the Code and the phrase "Seller's solicitors" has the same meaning as is given to the term "Seller's Solicitor" in the Code.

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<sup>1</sup> *P&P Property Ltd v Owen White Catlin and Dreamvar (UK) Ltd v Mishcon de Reya* [2018] EWCA Civ 1082