
Dreamvar continued: changes made to the Law Society Code for Completion by Post

Published 8 August 2019

As of 1 May 2019, a new Code for Completion by Post has been implemented by the Law Society in light of last year's decision in *Dreamvar (UK) Ltd v Mishcon de Reya and P&P Property Ltd v Owen White & Catlin LLP*.

To recap, in its decision the Court of Appeal declined to allow any of the solicitors involved in the transaction relief from liability under Section 61 of the Trustee Act 1925. The vendor's solicitor who pays away the purchase monies for a transaction which is a nullity will be in breach of trust, even where the purchaser's solicitors are also so liable. The apportionment of such liability is to be resolved by contribution proceedings between the two sets of solicitors.

The vendor's solicitor will also usually warrant it has authority to act on behalf of the actual vendor and will incur liability for breach of such warranty if it is relied upon.

The Law Society's amendments to the Code are designed to reflect this decision, and to "provide innocent purchasers with greater protection from fraudsters". The Code does not place any further onus or responsibility on the seller's solicitors, nor does it alter the seller's solicitors' obligation to verify their client's identity. However:-

- (i) The Code recognises that the seller's solicitors are in the best position to satisfy themselves that the person instructing them is the genuine seller who is entitled to sell the property;
- (ii) The Code defines "Seller" as "*the person...who will be at the point of completion entitled to convey the legal and/or equitable title to the property*";
- (iii) The Code makes it explicit that the Seller's Solicitor holds any purchase money on trust for the person who provided it and is under a fiduciary duty not to deal with that money other than in accordance with the Code;
- (iv) Crucially, the new Code confirms that an undertaking provided by the Seller's Solicitor to have the Seller's authority to receive the purchase money on completion should be construed as meaning that they have the true seller's authority. If the seller is, in fact, an imposter, then now it will be easier to demonstrate that the seller's solicitor is in breach of undertaking.

The new Code does not change the fact that disputes arising from circumstances such as those in *Dreamvar* will need to be resolved by way of proceedings between the solicitors, but it does provide clarity as to the scope of the undertakings provided by solicitors when acting for sellers. Those solicitors acting on sales must therefore leave no stone unturned in carrying out client due-diligence. Any suspicions must be investigated carefully.

Solicitors acting for purchasers must be careful not to inadvertently allow sellers' solicitors to opt out of the Code.

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