

# All that glitters

Unless you have real expertise in complex financial transactions, steer clear of opportunities that look too good to be true, warns **John Gould**



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**A**fter more than a decade, the danger of solicitors being drawn into so called high-yield investment frauds is rising again and solicitors need to be on their guard.

In the 1990s a surprisingly large number of mainly smaller firms became involved in what was then most commonly called Prime Bank Instrument Fraud. A significant minority were initially foolish and naive rather than deliberately embarking on fraud and money laundering. They were drawn into work which, like the transactions themselves, seemed too good to be true. They were often already under financial pressure. Their recruitment, slowly and carefully, by fraudsters who were often connected to established clients, was part of the patient assembly of the fraud itself.

A solicitor brings some important advantages to a fraud: credibility, by simply appearing



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to participate; the ability to move money through client account and to give undertakings which are likely to be trusted. In honest transactions these advantages are usually a subsidiary part of familiar legal work. In frauds, they may be at the centre of what the fraudster actually requires of the solicitor.

Fraud depends on the true nature of transactions being obscured. This is much easier if the solicitor is persuaded to work outside of their area of expertise by talk of limited responsibilities. Apparently complex documents

which contain impressive sounding jargon are given credibility by ad hoc communities of fraudsters who endorse each other's documentation. On careful scrutiny the documents are usually incompetently drafted. The transaction is likely to be said to exist only because it is occurring within a secret or mysterious financial world. Huge sums may be mentioned to explain how investments may be geared to produce vast returns in short periods on a "leverage" basis. Parties who are presented as distinct may in fact be operating cooperatively. The purpose may not be fraud but laundering or both.

A key objective is, of course, to get hold of a sum of money. This tends eventually to produce an undue emphasis on the need for a payment or deposit by the intended victim. It may be said that a deposit supported by a solicitor's undertaking will allow

## IGNORANCE IS NO DEFENCE

**T**he Solicitors Regulation Authority has recently re-issued its warning notice to solicitors about high-yield investment frauds and every solicitor will be assumed to have read it.

If a problem arises, ignorance may not provide much of a defence to regulatory, criminal or civil proceedings. A defrauded investor may regard a solicitor as the best defendant for a claim. A solicitor's participation in a fraud may assist the fraudster even in the absence of any substantive legal work.

Going along with discussions on the basis of being able to keep the right side of a line of misconduct is a dangerous approach. Often fraudsters may be introduced by established clients who may themselves have been taken in, or hope to receive a commission or other payment.

Unless a solicitor has a known expertise in complex financial transactions, the question of why the solicitor has been selected is often very difficult to answer other than on the basis of giving the fraudster a better chance of success.

a "Proof of Funds" letter from the solicitor and a risk-free return. Once the investor has given the money to a solicitor, onward payment may be obtained by persuasion, trick or pressure. If a new commercial instruction seems too good to be true – it probably is. **SJ**

