

## Duty of care: is three a crowd?

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October 9, 2023

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**PRACTICES** Litigation, International Arbitration

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It is well established that in general solicitors owe duties to their clients alone, and do not ordinarily owe any duties of care to those on the other side of the transactions in which they are acting. But there are exceptional cases where solicitors have been held to owe a duty of care to someone who is not their client. In the recent decision of *Ashraf v Lester Dominic Solicitors and others* [2023] EWCA Civ 4, the Court of Appeal had to decide whether the facts were exceptional enough to justify departing from the general rule.

### Background

The facts arose out of the unfortunate case of Mr Sayed UI Haq, who was a victim of two consecutive property frauds before dying shortly thereafter, no doubt with a very dim view of his fellow man. His story began when he attempted to sell a property to a Mr Bijan Attarian for £1,250,000. Mr UI Haq and Mr Attarian had both instructed FLP Solicitors (“FLP”) to act for them in the proposed sale, such that, unusually, the solicitors were acting for both the vendor and the purchaser.

Money was advanced by Mr Attarian’s lender (“the Bank”) to complete the purchase. In the normal course of events this money would be held by FLP, who would only release it to the vendor in return for a duly executed transfer by the vendor together with a discharge of the vendor’s mortgage. Instead, that money was stolen by FLP’s office manager, Mr Misba Uddin. Incidentally, Mr Uddin would later appear on a list of ‘most wanted’ criminals published by London’s Metropolitan Police for committing a string of frauds. He was eventually caught and given a lengthy custodial sentence.

As part of the process of regularising matters after the first fraud, the Bank instructed its own solicitors, Rees Page (“RP”). At this stage, Mr Attarian was living in the property and wished to register his interest in the property with the Land Registry. RP advised the Bank that all that was needed to finalise the sale was a replacement mortgage in favour of the Bank and a replacement of the conveyancing transfer form (“TR1”) executed by Mr Attarian and Mr UI Haq in the presence of solicitors instructed by them.

[Read the full article here.](#)