Fraudulent Claimants entitled to damages from negligent solicitors

Professional Indemnity Insurers will be interested in a recent Court of Appeal decision which found that it is not in the public interest to refuse a claimant damages from a negligent conveyancing solicitor, where the underlying transaction was tainted with illegality in *Stoffel & Co v Ms Maria Grondona [2018] EWCA Civ 2031* ("Stoffel")

The Claimant brought a claim against a firm of solicitors ("the Solicitor"), who acted for her in the purchase of a lease. The Solicitor admitted breach, in failing to properly register the purchase with the Land Registry but argued that no damages were recoverable by the Claimant because she had participated in mortgage fraud to fund her purchase of the lease.

The Court rejected the Solicitor's submissions. It found that, regardless of any illegality in the Claimant's actions, it was the Solicitor’s breach of duty that caused the Claimant's title to not be registered. The claim against the Solicitor was entirely separate from the fraud. The Solicitor appealed. It argued that the Claimant's participation in illegal mortgage fraud precluded her from recovering against it on the basis of the illegality principle.

The appeal was dismissed. The Court of Appeal could see no public interest in allowing negligent conveyancing solicitors and their professional indemnity insurers to avoid their professional obligations purely due to the illegality of their clients’ actions. The Court of Appeal held that "there is a genuine public interest in ensuring that clients who use the services of solicitors are entitled to seek civil remedies for negligence/breach of contract against a defendant arising from a legitimate and lawful retainer which was entered into between them”.

As a result of this decision, insurers will no longer be able to deny a claim purely on the basis of the illegality of a Claimant’s actions - they will need to demonstrate that such “illegality” has broken the chain of causation.

*September 2018*