

# RISKALERT

SEPTEMBER 2025 NO 4/2025

## IN THIS EDITION

### RISK MANAGEMENT COLUMN

- Clarifying the role and function of the LPIIF 1
- LPIIF claim statistics 3
- Litigation against the RAF 5
- Trust account advocates' scope of work 6
- Attorneys' trust accounts used as conduits 7

## RISK MANAGEMENT COLUMN

### Clarifying the role and function of the LPIIF

#### The LPIIF

In our interactions with the legal profession, the insurance industry and the public, respectively, we note that there is a lack of understanding of the LPIIF's functions. The information in the July 2025 and May 2022 editions of the Bulletin addresses some of the frequently asked questions. Some of the differences between the LPIIF and the Fidelity Fund are summarised in the table below:



The Risk Alert Bulletin is written by Thomas Harban, General Manager, LPIIF

**Legal Practitioners Indemnity Insurance Fund:** Thomas Harban, General Manager, 1256 Heuwel Avenue, Centurion 0127 • PO Box 12189, Die Hoewes 0163 • Docex 24, Centurion • Tel: 012 622 3900 Website: [www.lpiif.co.za](http://www.lpiif.co.za) • Twitter handle: @LPIIFZA

**Prescription Alert,** 2nd Floor, Waalburg Building, 28 Wale Street, Cape Town 8001 • PO Box 3062, Cape Town, 8000, South Africa, Docex 149 • Tel: (021) 422 2830 • Fax: (021) 422 2990 E-mail: [alert@aiif.co.za](mailto:alert@aiif.co.za) • Website: [www.lpiif.co.za](http://www.lpiif.co.za)

**Legal Practitioners' Fidelity Fund,** 5th Floor, Waalburg Building, 28 Wale Street, Cape Town 8001 • PO Box 3062, Cape Town, 8000, South Africa, Docex 154 • Tel: (021) 424 5351 • Fax: (021) 423 4819 E-mail: [attorneys@fidfund.co.za](mailto:attorneys@fidfund.co.za) • Website: [www.fidfund.co.za](http://www.fidfund.co.za)

#### DISCLAIMER

Please note that the Risk Alert Bulletin is intended to provide general information to legal practitioners and its contents are not intended as legal advice.



**Legal Practitioners Indemnity Insurance Fund NPC**

Est. 1993 by the Legal Practitioners Fidelity Fund



**LEGAL PRACTITIONERS' FIDELITY FUND**

SOUTH AFRICA

LPIIF	FIDELITY FUND
Is a licenced non-life insurance company	Statutory entity and client protection fund. It is not an insurance company (section 60)
Theft claims are excluded from cover (clauses 16 (b), 16 (c), 16(u) and 18). The LPIIF only indemnifies insured practitioners against professional legal liability to pay compensation to a third party arising out of the provision of legal services by the insured where a claim is made against such insured (clause 1)	Only covers claims arising from the theft of money or property entrusted to a practitioner (section 55)
Only insured practitioners can apply for indemnity (clause 39)	Only the person who has suffered the loss arising from the theft can claim
Only covers insured practitioners, not third parties	Covers the owner of the stolen funds, not the practitioner
Provides the primary/ base layer of professional indemnity insurance	Is a fund of last resort
Claim notification procedure is set out in the policy and on the website	Claim procedure is set out in sections 55, 78 and 79
Exclusions are listed in the policy	Exclusions are listed in section 56
Annual amount of cover and excess are determined by the number of partners/directors in the firm on the date that the cause of action arose	Does not cover practitioners and the amount of liability is determined by the provisions of the Legal Practice Act. There is currently a cap of R5million per claim (section 55(1))

## RISK MANAGEMENT COLUMN continued...

The differences between the LPIIF and commercial insurance companies are highlighted in paragraphs 8 to 18 of the judgment in *Propell Specialised Finance (Pty) Ltd v Attorneys Insurance Indemnity Fund NPC and Others* [2017] 3 All SA 1005 (WCC). The LPIIF was still known as the AIIF then. The differences between the LPIIF and commercial insurers include the following:

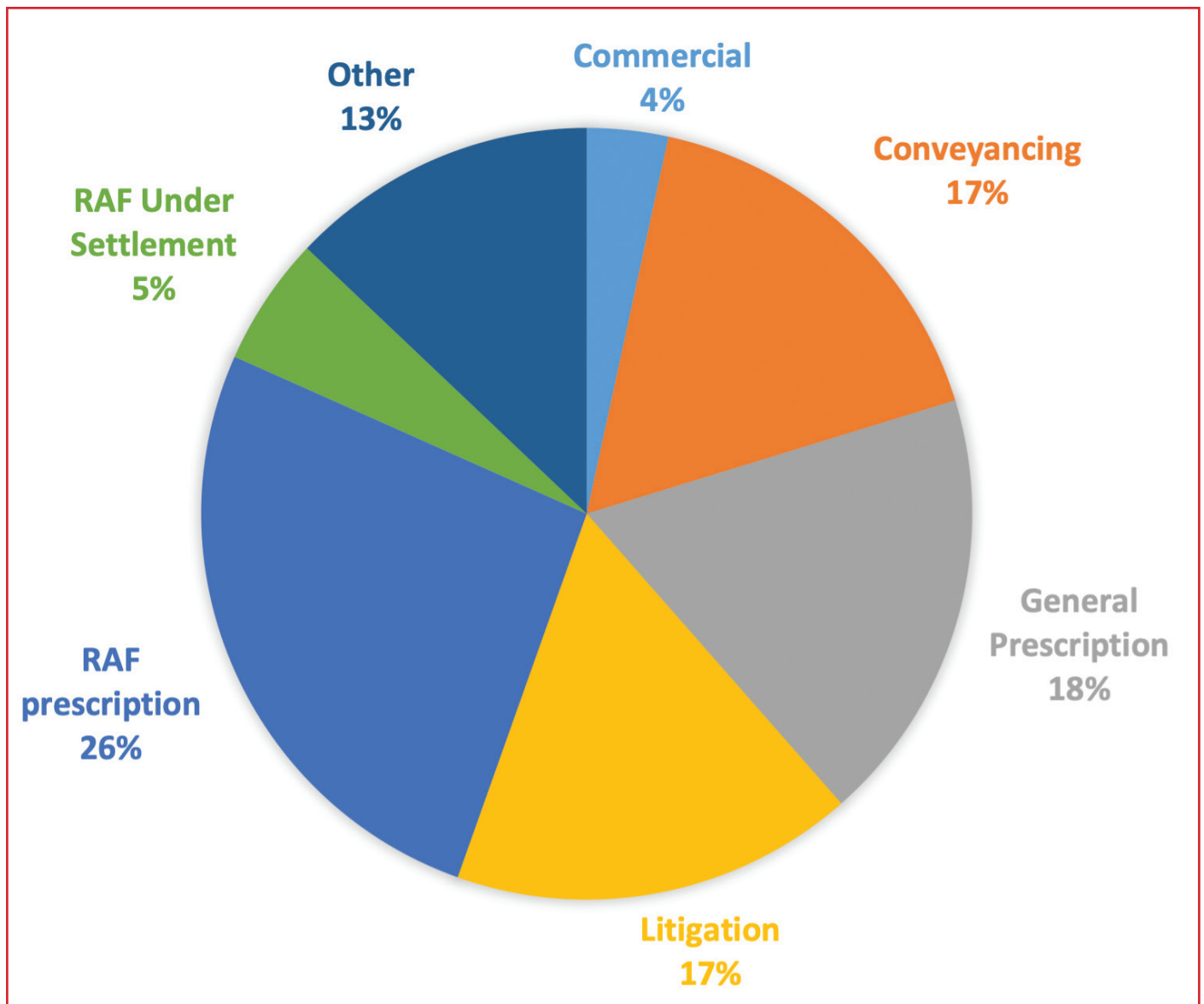
LPIIF	COMMERCIAL INSURERS
Carries out a specific legislative function	Exist for commercial reasons
Non-profit	Exist to make profit
Provides cover automatically to a defined group of insureds	Insureds must apply for cover
No broker or intermediary involved	Cover is placed through a broker/ intermediary
Cover is not subject to a risk assessment	Underwriting process done
Insureds do not pay a premium	Cover is subject to payment of a premium
One Master Policy issued annually	Individual policy terms set for specific insured/ risk
Master Policy is automatically renewed annually	Insureds must renew their policies annually
No run-off cover is required. The LPIIF will cover a claim arising from circumstances where the practitioner had a Fidelity Fund certificate at the time of the circumstances that led to the claim, even if the claim is made after the practitioner in question has since left practising	Insureds must purchase run-off cover
Annual limit of indemnity	Cover per claim
Defence costs are paid in addition to limit of indemnity	Defence costs are included in the limit of indemnity
The base/ primary layer of cover is provided automatically to all insured practices	There may be more than one insurer on risk. Co-insurance is common
The amount of cover is determined by the number of partners/ directors in the firm on the date that the cause of action arises	The limit of indemnity is agreed between the parties

There is also still confusion in some quarters about the respective roles of the Law Society of South Africa (LSSA) and the Legal Practice Council (LPC). The editor of *De Rebus*, Mapula Oliphant, has published a informative article titled “There is a difference between the Law Society of South Africa and the Legal Practice Council” in that publication in December 2023. Ms Oliphant authored a similar article published in the May 2021 edition of *De Rebus*. The articles can be accessed on the *De Rebus* website [www.derebus.org.za](http://www.derebus.org.za)

## RISK MANAGEMENT COLUMN continued...

### LPIIF claim statistics

A breakdown of claims notified to the LPIIF in the five year period to end June 2025 is as follows:



## RISK MANAGEMENT COLUMN continued...

Claim trends are consistent with previous years. Prescription remains the highest risk, both in terms of frequency and severity. Practitioners doing RAF related work, other areas of litigation and conveyancing, respectively, must have a heightened alertness to risks emanating from those areas of practice. There are extensive risk management resources available on the LPIIF's website. Risk and practice management training is also offered to practitioners at no cost. Email [risk.queries@lpiif.co.za](mailto:risk.queries@lpiif.co.za) to arrange training for the professionals and support staff in your firm. The training can either be conducted in person (at your office or ours) or virtually. Virtual training is particularly useful for firms with multiple branches as it allows for all offices to join in simultaneously. We encourage the recording of the training sessions so that they can be accessed later as refreshers or by those who could not make the sessions.

Claim notifications reveal some concerning trends, including:

- some brokers and in-

sured firms still notify the LPIIF of cybercrime related claims though such claims have been excluded from the policy since 1 July 2017, and theft relates claims (theft claims have been excluded since the LPIIF started operating on 1 July 1993). We urge practitioners, their brokers and intermediaries to acquaint themselves with the LPIIF policy;

- late notifications of claims. Claims must be notified as soon as possible after the insured becomes aware of circumstances that may give rise to a claim (clause 22 (a) – this applies to potential claims), or within one week where the firm receives written notification of a claim (clause 22 (b));
- firms instructed to do debt collections for banks settling matters with debtors in breach of the mandates received from their clients. If, for example, the creditor has given the firm a mandate to accept 70% of the total outstanding amount in full and final settlement, a staff member accepts 50% of

the outstanding amount in full and final settlement. The bank then expects the firm to compensate it for the difference;

- staff in debt collection practices providing their own banking details, rather than those of the firm or its creditor client, to debtors. The latter then pay the funds into the account provided in the belief that they are paying the creditor or the firm;
- litigation resulting from sham property sale agreements; and
- plaintiffs seeking indemnification by the LPIIF. Plaintiffs cannot claim indemnification by the LPIIF (clause 39 of the policy). This was also addressed in *Propell Specialised Finance (Pty) Ltd v Attorneys Insurance Indemnity Fund NPC* 2019 (2) SA 221 (SCA), the claims procedure available on the LPIIF's website, the July 2025 (page 2), May 2022 (page 6) and August 2018 (page 7) editions of the Bulletin.

## RISK MANAGEMENT COLUMN continued...

### Litigation against the Road Accident Fund (RAF)

*Langeveld v Road Accident Fund* (252/2023) [2025] ZANHC 80 (15 August 2025)

The plaintiff was injured in a motor vehicle accident that occurred on 18 November 2019. She lodged a claim with the RAF by registered mail on 08 November 2022, and further lodge-ments on 15 and 25 November 2022, respectively. The RAF acknowledged receipt of the lodge-ment. The RAF contended that the claim did not comply with Board Notice 271 of 2022 (Board Notice) as the plaintiff had not attached (a) all itemised invoices from a registered medical provid-er or hospital for past medical ex-penses, (b) proof of payment for medical expenses, and (c) medico legal reports. As a result, accord-ing to the RAF, the claim lodged was non-compliant.

The plaintiff instituted action against the RAF on 07 February 2023. The RAF pleaded on the merits and raised two special pleas, being (i) a plea of pre-scription, and (ii) a plea relat-ing to the assessment of the serious injury in terms of sec-tion 17(1) of the Road Accident Fund Act 56 of 1996 (RAF Act) and the regulations issued in terms of that legislation.

The special plea alleged that the:

- (i) right to compensation, in terms of sections 23(1) and 23(4) of the RAF Act, prescribes within three years from the date on which the cause of action arose in cases where the owner or driver of the in-sured vehicle is known;
- (ii) plaintiff's cause of action arose on 18 November 2019;
- (iii) plaintiff's claim was lodged with the RAF on 25 November 2022;
- (iv) plaintiff's claim should have been lodged with the RAF on or before 17 No-vember 2022; and
- (v) plaintiff failed to submit a claim to the RAF within three years from the date on which her cause of ac-tion arose and, as a result, her claim had prescribed.

The plaintiff replicated con-tending that she had complied with sections 23(1), (4) and 24(1)(b) of the RAF. Her conten-tions were based on the lodge-ment letter dated 08 November 2022, the proof of its transmis-sion by registered mail and a letter from the RAF dated 08 November 2022 acknowledging receipt of the lodgement.

The parties agreed that the special plea be argued on the

pleadings and separated those from the other issues.

At the hearing, counsel for the RAF admitted that the plaintiff lodged her claim on 08 Novem-ber 2022, but denied that she had substantially complied with section 24 because the plaintiff had, allegedly, failed to comply with the Board No-tice as she had failed to submit the documents listed in (a), (b) and (c) above.

Dealing first with the status of the Board Notice, the court considered regulation 7 (1), the publication of the Board Notice and *Legal Practitioners Indem-nity Insurance Fund NPC and Others v Road Accident Fund and Others* 2024 (4) SA 594 (GP) (*LPIIF v RAF*) which found the delegation by the Minister or Transport unlawful, declared the Board Notice unlawful, re-viewed and set it aside.

Counsel for the RAF had con-tended that the appeal pending before the SCA in *LPIIF v RAF* suspended the judgment of the court *a quo*, the plaintiff thus had to comply with the Board Notice and that she had failed to do so when her claim was lodged on 08 November 2022. The plaintiff's counsel argued that the RAF had not relied on the Board Notice in its special plea and it therefore could not raise the provisions of that Board Notice for the first time during argument.

The court found that:

"[23] It is evident from the special plea of prescription that the RAF neither made any refer-



## RISK MANAGEMENT COLUMN continued...

ence to the Board Notice nor to the fact that the plaintiff's claim had prescribed as a result of this non-compliance therewith. The Board Notice was not canvassed fully by way of evidence. Furthermore, the RAF did not amend its special plea of prescription to include its reliance on the Board Notice. The RAF's argument that the plaintiff's claim has prescribed as a result of her failure to comply with the Board Notice is therefore unmeritorious.

[24] It is undisputed that the plaintiff's claim was submitted to the RAF on 08 November 2022 and that the RAF acknowledged receipt thereof on 08 November 2022. The plaintiff's claim has accordingly not prescribed; and the special plea of prescription accordingly stands to be dismissed.

[25] In addition to my finding above, I align myself with the judgment of the court *a quo* in *LPIIF v RAF* that remedial steps that allow for the submission of claims in terms of the old regime had to be implemented pending the appeal in the Supreme Court of Appeal. To my mind, the same remedial steps would be apposite *in casu*."

The special plea of prescription was thus dismissed with costs.

*Leshori v Road Accident Fund* (276/2023) [2025] ZANCHC 77 (15 August 2025)

One of the special pleas raised by the RAF concerned the plaintiff's alleged non-compliance with the Board Notice. The court postponed the adjudica-

tion of that special plea pending the outcome of the appeal before the Supreme Court in *LPIIF v RAF*.

Practitioners are also urged to read *Maarman and Others v Road Accident Fund* (993/2023) [2025] ZAWCHC 106 (12 March 2025) and *Majozi v Road Accident Fund* (D10075/2023; D10076/2023) [2025] ZAKZDHC 31 (5 February 2025).

### *LPIIF v RAF*

The RAF's appeal will probably only be heard in 2026. As indicated in previous editions

of the Bulletin, we will communicate further on this when a date for the hearing is allocated. We, once again, implore members of the profession and other interested parties to desist from contacting us seeking individual weekly or monthly reports on the matter. The previous editions of the Bulletin provide details reports on that matter and the related cases. Regard must be had to what we have already published.

## Trust account advocates' scope of work

Two recent cases, *Segole v Road Accident Fund* (16923/2022) [2025] ZAGPPHC 725 (21 July 2025) and *Sithole v Road Accident Fund* (2024/052535) [2025] ZAGPJHC 787 (8 August 2025), dealt with trust account advocates instituting and prosecuting claims against the RAF without instructions from an attorney. The two judgments concluded that trust account advocates cannot institute and prosecute claims against the RAF. At the time of writing, it is unknown whether ei-

ther or both of the judgments will be taken on appeal.

The question in *Rabalao v Trustees for the time being of the Legal Practitioner's Fidelity Fund: South Africa and Another* 2023 (5) SA 563 (GP) was whether the receipt by a trust account advocate of funds in relation to a conveying transaction was within the scope of his practice as legal practitioner. On 15 October 2025 the full bench will hear an appeal in that matter.

## RISK MANAGEMENT COLUMN continued...

### Attorneys' trust accounts used as conduits

There have been several cases recently where attorneys' trusts accounts have been used as conduits for funds. No legal services are rendered and the channelling of the funds has been part of a broader criminal scheme in one case, and sham transactions aimed at the misappropriation of funds in others.

The alleged perpetrator of the sham scheme in *Flexicor Cables (Py) (Ltd) v Howard Woolf* (2023/113646) [2025] ZAGPJHC 737 (28 July 2025) was one Alberto Lorenzo Pavoncelli. Mr Pavoncelli's name appears in several judgments, including *Attorneys Fidelity Fund Board of Control v Love* (170/2020) [2021] ZASCA 44 (14 April 2021) where R10 million was misappropriated from the trust account of a firm of attorneys, Turnbull and Associates, allegedly by Mr Pavoncelli. That litigation is ongoing. In *EPA Development (Pty) Limited v Attorneys Fidelity Fund Board of Control* (40972/2016) [2018] ZAGPJHC 463 (2 July 2018) it was alleged Mr Pavoncelli misappropriated R6 million paid into the trust account of Turnbull and Associates. His name is also mentioned in *Wilson v Pecanprops 43 CC and Others*

(987/2010) [2011] ZANWHC 6 (24 February 2011).

An attorney's trust account was also used as a conduit of funds in a fraudulent scheme in *Mohlaloga v S* (1028/2023; 1112/2023) [2025] ZASCA 115 (8 August 2025).

In *Marimuthu v Amod* (an unreported judgment delivered by Zwane AJ in the KwaZulu-Natal Division, Durban) (case no. D3716/2025) (15 August 2025) an attorney was provisionally sequestered after funds were channelled through his trust account in a fraudulent scheme. Practitioners must:

1. study their obligations in respect of trust moneys as set out in the Legal Practice Act 28 of 2014, the rules and the Code of Conduct and abide by those at all times;
2. have an alertness to fraudulent schemes. Ask questions about the source of funds, reasons for the payment into the trust account, identity of the owner and not simply act on the instructions of person claiming to be the owner or intended beneficiary;
3. comply with their obligations in terms of the Financial Intelligence Centre Act

38 of 2001 and the regulations issued in terms of that legislation;

4. read the judgments referred to above and those in *Hirschowitz Flionis v Bartlett and Another* 2006 (3) SA 575 (SCA), *Du Preez and Others v Zwiegers* 2008 (4) SA 627 (SCA) and *Roestof v Cliffe Dekker Hofmeyer Inc* 2013 (1) SA 12 (GNP). In *Hirschowitz Flionis*, Howie P stated (at 589C-F) the following on the question whether the appellant, a firm of attorneys, owed a legal duty to the respondent, the owner of the funds:

"[30] ..., there are a number of considerations which, in my opinion, compel the conclusion that [the attorney, Mr Flionis] was indeed subject to the legal duty under discussion. First and foremost, the appellant, as recipient, was a firm of practising attorneys. As such it proclaimed to the public that it possessed the expertise and trustworthiness to deal with trust money reasonably and responsibly. Second, [the respondent, Mr Bartlett] relied on that and particularly on the fact that the money would be

## RISK MANAGEMENT COLUMN continued...

in the appellant's trust account until he instructed otherwise. [The expert witness Mr Faris'] exposition of an attorney's obligations in properly managing a trust account demonstrate that Bartlett's reliance on the money being safe in a trust account was reasonable even if, as I shall point out, his failure to communicate with Flionis was not. Third, even where an attorney discovers an anonymous and unexplained deposit it requires minimal management to transfer the money to a trust suspense account. It is then a task of no difficulty to trace the depositor with the aid of the firm's own bank. After that one need merely leave the money where it is until receipt of instructions by or on behalf of the depositor or the person for whose benefit the deposit was made. Fourth, unreasonable conduct that might put the money at risk would, as a reasonable foreseeability, cause loss to the depositor or beneficiary. The legal convictions of the community would undoubtedly clamour for liability to exist in these circumstances."

5. remember that claims arising in these circumstances are not covered by the LPIIF policy. There are no legal services rendered (clauses XXII and 1), the scams involve

misappropriation of funds (clauses 16(b) and (c)), such claims arise from the provision of investment advice or the taking of funds for investment purposes (clause 16(e)), the liability relates to investment of funds other than in terms of sections 56(6)(a) and 86(4) of the Legal Practice Act (clause 16(f)), such claims arise from practices carried out in violation of the Act (clause 16(u)) and involve dishonesty (clauses XII and 18);

6. be alert to some of the common scams doing the rounds. We have been notified of matters where parties have purportedly entered into an agreement involving the sale of immovable property. Funds are paid into the attorney's trust account with a reference that gives the impression that they belong to a particular person. That person will then contact the attorney claiming to be the depositor. The purported agreement to purchase the property will be cancelled for some or other reason and the person masquerading as the owner of the funds then contacts the attorney seeking payment of the funds. Some attorneys pay out the funds without conducting any verification of owner-

ship of the funds, breaching what was stated in *Hirschowitz Flionis*, and without conducting any of the verifications required by the Financial Intelligence Act. Those attorneys are then left to face the consequences when the true owner/s of funds contact the firm seeking a refund of their money. *South African Legal Practice Council v Mabena and Another* (B306/2023) [2024] ZAGP-PHC 593 (13 May 2024) is an example of a case where a similar scam was executed;

7. the Fidelity Fund will not indemnify claimants for losses arising from the theft of trust funds where such theft occurs in circumstances outside of the course of practice (section 55 (1)) or where any of the exclusions in section 56 will apply; and

8. many of these scams are adaptations of *modus operandi* that has been used and reported on previously. Reading the cases above will provide an alertness to the scams. In the case of Mr Pavoncelli, a search for his name on the internet would have alerted the parties to the previous cases where he was involved.