



Manchester Building Society One Year On: Part 5



This is the fifth in a series of reflections on *Manchester Building Society v Grant Thornton* [2021] UKSC 20 a year on from the judgment being handed down.

In Part 5 we examine a claim against an engineer where the analytical framework from *Manchester Building Society* was applied to a case which did not involve professional advice.

INTRODUCTION

In Part 1, we revisited the key points arising from *Manchester Building Society*. In summary, the central analytical framework involves asking six questions: the actionability question, the scope of duty question, the breach question, the factual causation question, the duty nexus question and the legal responsibility question. In asking the scope of duty question, the court will look at the purpose of the duty which is in turn informed by working out the risk which the duty was meant to guard against. The 'advice' and 'information' labels based on *SAAMCO* were disapproved of. The *SAAMCO* counterfactual, which asks whether the losses claimed would have been suffered if the defendant had been right, was reduced to a checking mechanism which would not be useful in every case.

We then reflected on our experience since *Manchester Building Society* was decided and made some general observations based on caselaw.

In Part 2 we considered the approach adopted by the court in recent claims against solicitors. In Part 3, we turned to a claim against a medico-legal expert and in Part 4 reviewed an opinion of the Privy Council in a claim against a valuer.

BDW

BDW v URS [2021] EWHC 2796 (TCC) involved the Claimant housebuilder pursuing the Defendant engineer for what it said was defective design. Inspection of cladding on one block revealed structural cracking. Further investigations showed that this was replicated across several other blocks. In some instances, the defects were thought so serious that the blocks were evacuated. The Defendant contended, on the facts, that the Claimant was not legally liable to make good the defects.

The matter proceeded to a trial of preliminary issues. The Judge was satisfied that the *ratio* of *Manchester Building Society* extended beyond professional advice cases to negligence more generally. He carefully worked through the six questions.

The 'actionability question' was described in *Manchester Building Society* as a threshold test and will rarely be a difficult hurdle. *BDW*, however, was an exception. The court accepted that loss of reputation was not something which an engineer was under a duty to prevent and so that part of the claim failed at stage 1.

Moving on to the 'scope of duty question', the parties put forward competing formulations of the risk which the duty was meant to guard against, but the Judge found these to amount to the same thing: a risk of economic loss caused by building the blocks to a negligent design.

Because it was a trial of preliminary issues, the court proceeded on the assumption that the 'breach question' would be answered in favour of the Claimant. The Judge concluded that the 'factual causation question' was one for full trial. He rejected the Defendant's contention that there was no nexus between the duty and the loss because, on its case, the Claimant was not obliged to carry out remedial works. He concluded that the reasoning behind this was flawed. The duty nexus question, he said, was answered by determining whether the nature, element or type of loss suffered was encompassed by a defendant's scope of duty.

He observed that it may well not be necessary to ask the duty nexus question at all outside professional advice claims. This is because the purpose of the duty is different. Where, for example, a valuer gives advice on whether a property is worth the asking price or a conveyancer gives advice on title, these are some of the factors which the buyer or lender might take into account in deciding whether to proceed. Where, by contrast, an engineer prepares drawings and method statements, they are not produced to assist the employer in deciding whether to build the structure but to enable the contractor to build it.

Nevertheless, the Judge agreed that there was no nexus between the duties owed and the reputational losses claimed. Those losses would also fail at the next stage as too remote.

PART 6

In Part 6, we look at the approach adopted by the court adopted in a claim against a firm of accountants which introduced clients to tax avoidance and investment schemes which failed.

Further Information

Given the generality of the note it should not be treated as specific advice in relation to a matter as other considerations may apply.

Therefore, no liability is accepted for reliance on this note. If specific advice is required, please contact one of the Partners at Caytons who will be happy to help.

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