



Manchester Building Society v Grant Thornton [2021] UKSC 20

Scope of duty

Alicia Tew

Hailsham Chambers



Summary

Nature of professional liability: concurrent in contract & tort

What principles do the courts apply when deciding whether a loss can be recovered from a professional acting in breach of contract / negligently towards their client?

What lessons can we take forward in our own professional practice?



The facts

In 2005, the Society sought advice from GT about hedge accounting when deciding whether to match swaps and mortgages

GT's advice was wrong

In 2013, the Society paid £32.7 million to close the swaps

The Society sought damages of £26.7 million



The judgment

Unanimous decision with varying reasoning

Majority view: focus on the **purpose** for which the advice was sought

Minority view: SAAMCO cap is about causation

Clearest approach: Lord Burrows: risk allocation



Scope of duty

Aim: to place the claimant in the position he or she would have been in absent the defendant's negligence.

- (1) The actionability question
- (2) What are the risks of harm to the claimant against which the law imposes on the defendant a duty to take care? (the scope of duty question)



Scope of duty

- (3) Breach
- (4) Factual causation (but-for)
- (5) Is there a sufficient nexus between a particular element of the harm for which the claimant seeks damages and the subject matter of the defendant's duty of care as analysed at stage 2 above? (the duty nexus question)
- (6) Element of the harm irrecoverable because too remote/novus actus / failure to mitigate? (the legal responsibility question)



Lessons for practice

Client care letter

Ongoing retainers

Professional indemnity insurance