



Court hands down judgment in PAG v RBS

Asplin J has today (21 December) handed down judgment in *Property Alliance Group Ltd v The Royal Bank of Scotland Plc*, dismissing all of PAG's claims.

The case involved three claims: the **Swaps Claims** (alleged mis-selling of four interest rate swaps to PAG); the **GRG Claims** (allegations of bad faith and abuse of discretion against RBS's turnaround division); and the **LIBOR Claims** (based on alleged implied representations or terms relating to the setting of LIBOR).

The Court's key findings include those highlighted below.

In relation to the **Swaps Claims**:

- **Scope of duty of care to explain / not to mis-state:** The Court rejected PAG's claims that RBS owed a duty wider than that to take reasonable care not to mis-state facts. In doing so the Court stated that if, as PAG had contended, the decision in *Crestsign v NatWest* [2015] 2 All ER (Comm) 133 was intended to recognise a wider duty to "explain fully" even outside an advisory relationship, she declined to follow it: see [194]-[205].
- **Misrepresentation and contractual estoppel:** All of PAG's allegations of misrepresentation (including representations that the products were "hedges" or would "protect" PAG and that the swaps were "suitable") were dismissed. The Court held inter alia that the meaning of words such as "hedge" and "protect" had to be seen in the context of the non-advisory nature of RBS's role and that PAG was contractually estopped from advancing its claims: see [229]-[240].
- **No duty to provide break cost "scenario analysis" or to reveal the size of internal credit lines:** The Court found that RBS was under no obligation to provide to PAG "scenario analysis" of potential break costs, or the "mark to market" value of any of the Swaps (either at the outset or from time to time), or details of the size of the internal credit line assigned by RBS to the Swaps: see [203]-[204].
- **Implied terms:** The Court rejected PAG's argument that the fact that interest rate hedging was a requirement under various loan facilities meant that there was an implied term in those agreements that the Swaps would be suitable to hedge those facilities. The Court also held that there was no implied term of good faith or duty not to withhold "important information" (which PAG claimed included information about potential break costs): see [249]-[252].



In relation to the **GRG Claims**:

- **No implied term good of faith:** The Court held that no term that RBS would act in good faith was to be implied into the parties' agreements: see [275]-[276].
- **No implied limits on discretion:** The Court also held that no terms fell to be implied into the parties' agreements such as to impose limitations on various alleged contractual discretions enjoyed by RBS. The Court held that such a term did not arise in circumstances where RBS was exercising pure contractual powers (such as the power to call for a valuation under a loan agreement) or where there was no relevant contractual power or discretion at all (such as when it was being decided which part of the bank would manage RBS's relationship with PAG): see [277]-[281].
- **No breach:** The Court further held that even if it were wrong about the existence of the alleged implied terms, it would in any event have rejected PAG's claims that RBS had breached those terms by acting in bad faith and/or irrationally: see [302]-[308].

In relation to the **LIBOR Claims**:

- **No implied representation:** The Court rejected PAG's argument that the proffering of a transaction referenced to a LIBOR rate would give rise to any implied representation about how LIBOR was set: see [404]-[407].
- **No reliance:** The Court further found that the alleged implied representations had in any event not been understood by the relevant individuals at PAG and therefore could not have been relied upon: see [415]-[419].
- **Implied term:** The Court accepted that it was an implied term of the Swaps that the relevant LIBOR rate payable under them would be the LIBOR rate as defined by the BBA, although such term was to be restricted so as to apply only to the conduct of RBS (and did not extend to a promise about the conduct of other Panel Banks): see [414].
- **RBS was not involved in manipulation of GBP LIBOR:** The Court rejected PAG's case that RBS had been involved in any so-called "trader manipulation" or "lowballing" of GBP LIBOR, and as a consequence found that the implied term in the Swaps relating to LIBOR had not been breached: see [453]-[463] and [489].
- **"LIBOR is broken" during the Financial Crisis:** The Court dismissed PAG's allegations that the effects of the Financial Crisis, including a severe lack of liquidity (which led to some describing LIBOR as "broken"), meant that the alleged LIBOR Representations were false, a claim which the Court found was based on a misunderstanding of what LIBOR was: see [464]-[475].

Richard Handyside QC, **Paul Sinclair** and **Adam Sher** of **Fountain Court** represented RBS, along with Laurie Brock of Maitland Chambers, instructed by Richard Caird of Dentons.

