‘The biter bit’: when does a solicitor’s business model become an economic tort?

***Vanquis Bank Limited v TMS Legal Limited* [2025] EWHC 1599 (KB)**

Introduction

A prominent feature of the current legal landscape is the bringing of high-volume, low-value, consumer claims against large corporate defendants. In many instances the claims are brought against financial institutions by existing or former customers, initially by way of a complaint and then, if the complaint is rejected, via a submission to the Financial Ombudsman Service (“FOS”). The hope is that either the initial complaint or the investigation by the FOS will lead to redress for the client, which will in turn trigger reward for the solicitor.

An advantage of all this from the point of view of claimants and their solicitors is that investigation costs are borne principally by the defendant and claimants are not exposed to any risk of adverse costs. Conversely, this can impose a substantial burden on financial institutions. One might think such a system is nevertheless in the public interest as complaints should be investigated and redress afforded, where well-founded, without undue cost or risk to the consumer. That may in turn improve the standard of financial services to the ultimate benefit of consumers. On the other hand, there is a cost to such a system which needs to be absorbed by the financial institutions and which, ultimately, is passed on to the consumer.

But what of a situation in which no proper due diligence is undertaken such that the defendant is inundated with claims, most of which turn out to have no merit, with the inflated costs of that exercise borne by the defendant (but as noted ultimately passed on to all consumers)? What, also, of the prejudicial interference to the relationship between the defendant and the consumer along the way?

One can well understand that financial institutions would not enjoy being the target of claims of such a kind. One might also have thought that there was not much that they could do about it.

Vanquis Bank Limited v TMS Legal Limited [2025] EWHC 1599 (KB), a decision of Mr Justice Jay (“the Judge”), suggests this *could* be about to change. Whether or not that proves to be so, the case is a reminder to solicitors of the need to think carefully as to whether their business model might expose them to a wider range of liabilities than has hitherto been assumed. It is also a potential avenue available to be explored by the financial services industry (and its insurers) where it is perceived (rightly or wrongly) that there is an element of harassment present in “generic” claims or complaints presented by claimants.

Alleged Facts

TMS Legal Limited (“TMS”) specialised in financial mis-selling claims including acting for consumers making claims of ‘irresponsible lending’ against financial institutions alleged to have failed to undertake proper affordability checks. One such was Vanquis Bank Limited (“Vanquis”) which provided “second chance’” lending to individuals with low or adverse credit histories.

According to Vanquis, TMS did not undertake any real due diligence and instead the claims were submitted in a pro forma and indiscriminate fashion. Vanquis then bore the burden of

investigating them and also had to pay fees to the FOS when, if a complaint was rejected, TMS asked the FOS to investigate. Vanquis alleged that at that stage TMS did no more than to say that its clients were not happy with the way Vanquis had responded to the complaint and that it wanted the FOS to review the position. The FOS had the power to order redress including refunding interest and charges and the payment of compensation for distress. TMS acted on a 'no win no fee' basis and took its reward (a substantial % of any redress) from clients whose cases succeeded. However, the vast majority failed.

It should be noted that, once more than 3 complaints were made to the FOS within a calendar year, a fee was payable per complaint, irrespective of the outcome of the complaint. Vanquis was aggrieved by the large sums to which these fees amounted and the time and resources it had committed to dealing with the complaints.

Argument

Vanquis contended that TMS was guilty of the tort of causing loss by unlawful means. That is a tort which, the Judge held, requires a claimant to prove (1) unlawful acts used against, and independently actionable by, a third party; (2) interference with the actions of the third party in which the claimant had an economic interest; (3) an intention to cause loss to the claimant by the use of unlawful means; and, (4) loss in fact caused to the claimant.

Vanquis alleged that all the elements of the tort were satisfied here because (1) TMS submitted claims without any due diligence to select only those with merit and that was a breach of its contractual and tortious and fiduciary duties to its clients and also involved deceitful representations to the clients as to the merits; (2) the submission of claims interfered with the credit relationship between Vanquis and its borrowers, in a general sense by the submission of the claim, and specifically in that Vanquis would not continue to extend credit to any borrower who made a claim against it; (3) TMS had the necessary specific intent to cause losses to Vanquis because even though it was not its purpose to cause such losses they were a virtually certain consequence of TMS' actions and were a means to the end TMS did desire; and, (4) losses had been sustained in the form of staff costs, wasted management time, FOS fees, and lost profits.

TMS applied to strike out the claim and for summary judgment on numerous bases including that there were regulatory protections which could be invoked if there was a genuine concern about the way that these high-volume consumer claims were being processed and that it was not in the public interest for the economic tort of causing loss by unlawful means to be expanded to encompass the actions of solicitors bringing consumer claims of this kind.

Decision

The Judge dismissed the application. In doing so he accepted that this economic tort originated in cases where the parties were in direct competition or where there was a labour dispute but he said it was not confined to such cases. The question was also not whether a claim of this kind would require the extension of the boundaries of the tort but whether the claim came within the existing boundaries, which, in his view, taking the matters pleaded at face value, it did. He was satisfied that each element of the claim was properly arguable and that the matter should proceed to trial. The fact that there might also be regulatory implications if the allegations were made out was not a good reason to preclude the claim from proceeding.

Comment (1): the decision itself

The Judge was making an interlocutory decision as to the arguability of the claim assuming the facts alleged were true. Whether the allegations can be sustained at trial is an entirely different question, and one might think that it could be particularly difficult for Vanquis to establish that there had been the necessary interference in the consumer claimants' freedom of action in relation to Vanquis simply because a complaint of irresponsible lending was made, when perhaps it should not have been. There are surely also public interest questions at stake here in respect of the potential for a new form of claim against lawyers to impede access to consumer redress. However, subject to any further ruling at trial or on appeal (if there is one), the decision suggests there may be dangers ahead for solicitors whose business model involves making high-volume, low-value, claims for consumer clients where it is left to the complaints process and the FOS to determine whether the claims have merit.

The case also highlights the potential wide application of the tort of causing loss by unlawful means. It had its origins in competition, in a bygone age, red in tooth and claw, or muscular union activity, where a company or union sought to harm, respectively, a business competitor or employer by committing some wrong against an intermediate party which would in turn cause loss to the competitor or employer. The question posed by this case is whether the tort might provide a remedy for a defendant harassed by indiscriminate claims against the claimants' lawyer.

Comment (2)

The general scheme of Vanquis's argument might apply across the financial services field. If a serious complaint were made against an adviser, SIPP provider and so forth, this would likely engage at least PRIN 6 (duty to pay due regard to interests of the customer and treat them fairly) and PRIN 8 (duty to manage conflicts of interest). Applying these principles conscientiously, a firm might feel obliged to cease to act for the customer and to refer them to another adviser, even if it felt that the complaint was nonsense. The firm might therefore suffer a loss of income in the form of charges, commissions, loss of opportunity to do further business with the client etc. The parallels are clear.

Comment (3)

Any solicitors who bring consumer claims of this kind without any real effort to sort the good from the bad, and those who insure them, would do well to reflect on this new form of exposure. In particular, the following reflections are offered.

On behalf of solicitors, the following broad points might be made:

(i) A solicitor has a duty to advance the client's interest, by all proper and lawful means;

(ii) A solicitor does not warrant, by issuing proceedings (or here, complaining to FOS) that the client has a good cause of action (see e.g. **Nelson v Nelson** [1997] 1 WLR 233 (CA));

(iii) It follows that it is wrong for the Court to inhibit solicitors from acting for claimants irrespective of whether the claim has "moral merits" in support (and see the authorities which stress that, right or wrong, a citizen has the right to legal representation, and his lawyer need not endorse the merits of his case (e.g. the classic statement per Lord Pearce in **Rondel v Worsley** [1969] 1 AC 191 at 275));

(iv) It is not for the lawyer to erect a gateway through which the client must pass before being entitled to assert alleged rights, even if the claim ultimately fails (e.g. **Orchard v SE Electricity** [1987] QB 565);

(v) Solicitors are not responsible for the charges which the FOS, by delegated legislation, must impose on a financial institution in relation to failed or groundless complaints.

On behalf of financial institutions and other defendants exposed to such an avalanche of claims, there are contrary arguments as follows:

(i) Should the FOS, or the Court, or the Defendant, be obliged to devote resources to defeat speculative claims which are advanced without proper investigation into their facts?

(ii) Is it in the public interest that this should be so?

(iii) Should solicitors (or claims management companies) be permitted, without fear of sanction, to advance claims to FOS when the facts have been investigated on a vestigial basis (which would not have justified the signature of a Statement of Truth on a pleading: see CPR 22 and in particular **Clarke v Marlborough Fine Art** [2003] 1 WLR 1731: the hope that "something might turn up" to justify the claim is not enough);

(iv) Although a solicitor does not warrant that the client has a good cause of action (see above) this is distinct from the situation where the claims are an abuse of the process (**Dempsey v Johnstone** [2004] PNLR 25);

(v) The institution of a large number of claims or complaints, at no adverse costs risk, in the expectation that although most will fail, some will succeed, bringing financial benefit to the solicitors, ought to be discouraged.

It can be argued that these competing interests are not a matter for the Court but for legislation.

Nonetheless, experience suggests that Parliament and regulators are not always swift to act in relation to such concerns. In the mean-time *Vanquis Bank* has the makings of a test case which *could* provide financial institutions harassed by indiscriminate claims with a novel tortious remedy against the claimants' lawyers.

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