

**(1) The ‘Scope of Duty’ limit
on damages, 3 years on from
*Manchester Building Society***

**(2) Coverage: *Axis v
Discovery Land (2024)***

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The 'Scope of Duty' limit to claimants' recovery (1)

- When is the Scope of Duty test relevant?
- The test: what is the scope or purpose of the rule which imposes liability on the defendant?
- The death of the '*Saamco* counter-factual'
- The 'information/advice' distinction is now a spectrum

Scope of duty (2)

- The 6 stage framework in *Manchester Building Society* [2021]
- Cases since *Manchester* which have applied the test
 - Valuers
 - Solicitors
 - Expert witnesses
- Conclusions

Axis v Discovery Land [2024]

Under the SRA Minimum Terms and Conditions

- Condonation
- Aggregation



SRA Minimum Terms cl.6.8

“Fraud or Dishonesty

The insurance may exclude the liability of the insurer to indemnify any particular person *to the extent that any civil liability or related defence costs arise from*

dishonesty or a fraudulent act or omission
committed or condoned by that person,

except that: [see next slide]

... except that:

1. the insurance must nonetheless cover each other insured; and
2. the insurance must provide that no dishonesty, act or omission will be imputed to a body corporate unless it was committed or condoned by, in the case of a company, all directors of that company, or in the case of an LLP, all members of that LLP.”

Axis's clause 2.8

- Excludes cover for
- “Any claims directly or indirectly arising out of or in any way involving dishonest or fraudulent acts, errors or omissions committed or condoned by the insured, provided that...
- (b) no dishonest ... act ... shall be imputed to a body corporate unless it was committed or condoned by, in the case of a company, all directors of that company [and equivalent for LLPs]”

Axis para [43] (Andrews LJ)

- “someone condones a pattern of dishonest behaviour which is of the same type as the dishonest behaviour that directly gives rise to the claim, and of which the latter [the dishonest behaviour that gives rise to the claim] forms part (for example, if one member/director condoned the regular use by the other member/director of client funds for their own purposes.). The question in each case would be whether or not knowledge and acceptance or approval of other acts in the same pattern amounted to condonation of the act or acts which gave rise to the claim.”

Aggregation - SRA Minimum Terms and Conditions

“The insurance may provide that, when considering what may be regarded as one claim for the purpose of [the limits on cover]

(a) all claims against any one or more insured arising from: ...

(iv) similar acts or omissions in a series of related matters and transactions...

will be regarded as one claim.”

Axis v Discovery Land: similar acts or omissions

There were not 'similar acts or omissions.'

One relevant act was stealing US\$14 million as soon as it came into the solicitors' client account.

The other relevant act was, many months later, mortgaging the client's property without permission, and taking the proceeds of the mortgage (about £5 million).

Axis v Discovery Land: ‘in a series of related matters or transactions’

- The two claims were not part of a series of related matters or transactions:
 - the act relevant to the first claim was part of the purchase of the Castle
 - the act relevant to the second claim was the mortgage of a property which a claimant already owned
- It was not enough that the acts involved the same property, and clients who were related companies.