

RECENT DEVELOPMENTS IN BANKING AND SECURITIES LAW

UK LIBOR LITIGATION

1. Impacts of LIBOR scandal:
 - a. Fines.
 - b. EU Competition Commission investigation.
 - c. Legislative reform:
 - Part 7 of the Financial Services Act 2012 (criminal offence of making false or misleading statements in relation to specified benchmarks).
 - New 'Senior Managers Regime' for banks, policed by the Financial Conduct Authority (reversal of burden of proof).
 - d. Litigation:
 - Implied representation argument (rescission of contracts).
 - Competition law arguments.
 - Shareholder's actions?

2. Implied Representations:
 - a. *Graiseley Properties Limited v Barclays Bank* [2012] EWHC 3093 (Comm).
 - b. *Deutsche Bank AG v Unitech Global Limited* [2013] EWHC 471 (Comm).
 - c. Both appeals: [2013] EWCA Civ 1372.

3. Competition Law:
 - a. *Deutsche Bank v Unitech* [2013] EWHC 2793 (Comm).
 - b. Appeal due November 2015.

4. Disclosure Implications:
 - a. Documents relating to fixing of *all* currencies potentially relevant, even where allegations relate to sterling LIBOR.
 - b. *Graiseley Properties v Barclays* [2013] EWHC 67 (Comm): application by certain employees and ex-employees of Barclays to keep names anonymised. Supported by a letter sent to the Court by the DoJ asking for names to be kept confidential. Application rejected:

‘the involvement of Barclays in manipulation of LIBOR is only one part of a much bigger picture concerning the manipulation of LIBOR by a substantial number of banks. Contrary to Lord Pannick's submission that there is no competing public interest capable of justifying the prejudice and unfairness which the individuals assert they would suffer, there is a legitimate public interest in the true picture in relation to the manipulation of LIBOR by banks generally, not just Barclays, being brought fully to light. In my judgment, fair and accurate media reporting of all aspects of LIBOR manipulation, including the involvement of employees and ex-employees of Barclays and their identity, is an important aspect of the public obtaining that true picture. [per Flaux J at paragraph 61].

- a. *Property Alliance Group Limited v Royal Bank of Scotland plc* [2015] EWHC 321: disclosure of confidential attachment to a deferred prosecution agreement between RBS and the US DoJ 2013 ordered despite letter of objection from DoJ).
- b. *Property Alliance Group Limited v Royal Bank of Scotland plc* [2015] EWHC 322: disclosure of reports produced by RBS to the Japanese regulator ordered despite letter of objection from that regulator.

5. Future developments?

Rosalind Phelps

**Fountain Court Chambers
Temple, London EC4Y 9DH**