A new dawn for banking misrepresentation claims under English law: *Credit Suisse Life (Bermuda) Ltd v Ivanishvili [2025] UKPC 53*

I. Introduction

On 24 November 2025, the Board of the Privy Council gave judgment in *Credit Suisse Life (Bermuda) Ltd v Ivanishvili [2025]* UKPC 53 ("**Ivanishvili**"). As the Board put it, the issue was *"a pure question of law: is it a legal requirement of a claim in deceit that the plaintiff was aware of the representation on which the claim is based?"*[1] In a unanimous judgment delivered by Lord Leggatt, the Board decisively answered that question as 'no'. In other words, the Board wiped away the requirement in the law as it had previously been understood for the claimant in an implied misrepresentation claim to have been 'consciously aware' of the misrepresentation at the time it was made.[2] In doing so, it has settled a significant and troubled issue under English law by removing a key hurdle to pleading and proving implied misrepresentation claims. The decision is therefore likely to be of great importance generally for cases where misrepresentations are sought to be alleged in the future, and given the nature of bank-customer relationships, particularly important for such cases in the banking sphere. Indeed, it arguably represents a new dawn for implied misrepresentation claims, after several such claims failed for the claimant's lack of 'conscious awareness', including when seeking to hold banks liable for misrepresentation in connection with the LIBOR scandal. This Client Alert examines the important implications for misrepresentation and civil fraud claims against banks, institutions and counterparties.

II. Previous position

Following a series of English cases starting with *Raiffeisen Zentralbank Österreich AG v Royal Bank of Scotland plc* [2010] EWHC 1392 (Comm) ("***Raiffeisen***"), a new legal element became embedded within the tort of deceit. This was that a claimant must be 'consciously aware' of the representation at the time it was made, and this awareness requirement had to be pleaded and proved. If this element was not pleaded, a claim was liable to be struck out for the failure to include an essential ingredient of the cause of action. In very brief terms, and taking the three leading modern cases in turn:

- *Marme* (2007):[3] Although Picken J's comments were obiter (as he had found the representations alleged had not been made), the Court referred to the Raiffeisen line of cases and noted they supported the idea that a claimant must have given some "*contemporaneous conscious thought to the fact that some representations were being implied made*".[4]

1. *Credit Suisse Life (Bermuda) Ltd v Ivanishvili* [2025] UKPC 53 at [126].
2. For present purposes concerning the 'awareness' issue, claims for 'fraudulent misrepresentation' and 'deceit' are referred to interchangeably in this Client Alert.
3. *Marme Inversiones 2007 v Natwest Markets plc* [2019] EWHC 366 (Comm) ("***Marme***").
4. Ibid [286].

- *Leeds (2021):*[5] The Court found that English law required that the claimant have some degree of "awareness" of the representation, which was alternatively expressed as being that it had to be "actively present" in that person's mind.[6]
- *Loreley (2023):*[7] Despite an intervening decision casting some doubt on the conclusions in *Leeds*, Cockerill J maintained her earlier conclusions on awareness and drew a distinction between the simple 'dry rot' type cases (discussed below) and cases involving complex commercial transactions.

III. Facts

The *Ivanishvili* case was the latest in global litigation concerning the fraud perpetrated by a late Credit Suisse wealth manager on the claimant, Mr Bidzina Ivanishvili. On Credit Suisse's advice, in 2010 and 2011 the plaintiff[8] transferred US $750 million to the defendant ("**CS Life**") as premiums under two life insurance policies, which sums were to be invested at the policyholders' choice. The assets generated and under management were to be held on trust for the benefit of the policyholders, being two companies connected with Mr Ivanishvili.

It emerged some years later that Mr Ivanishvili's wealth adviser at Credit Suisse, a Mr Lescaudron, had been fraudulently dealing with the assets held on trust, including via misappropriation, the transfer of assets to unrelated client accounts, the inflated transfer of assets into the policy accounts and enriching himself via secret commissions.[9] Unsurprisingly, Mr Lescaudron was charged with and convicted of criminal fraud offences in Switzerland.

The plaintiff and related parties issued proceedings against CS Life in Bermuda in 2017, alleging breach of contract, breach of fiduciary duty and, relevantly for present purposes, later also alleging fraudulent misrepresentation. Damages were claimed. For the purposes of this Client Alert, we focus only on the fraudulent misrepresentation claim.

The Bermudan trial decision found that the plaintiffs (Mr Ivanishili and related parties) had been induced to enter into the life insurance policies by fraudulent misrepresentations as claimed, and the Court awarded damages aimed to put the plaintiffs in the "*same position financially as if the policy assets had not been fraudulently mismanaged by Mr Lescaudron and had instead been professionally managed.*"[10]

The Bermudan Court of Appeal reversed the decision on the fraudulent misrepresentation claim, finding that English law (and Bermudan law, which for these purposes was the same as English law) required that a claimant must plead and prove that he or she had a conscious awareness or understanding of the representations made. The plaintiffs then cross-appealed to the Privy Council., resulting in the decision the subject of this Client Alert.

5. *Leeds City Council v Barclays Bank* plc [2021] EWHC 363 (Comm) *("**Leeds**").*
6. Ibid [146], [102].
7. *Loreley Financing (Jersey) No 30 Ltd v Credit Suisse Securities (Europe) Ltd* [2023] EWHC 2759 (Comm).
8. Under Bermudan law, the party bringing the action (here, Mr Ivanishili) is termed the 'plaintiff'. Where appropriate, that terminology will be used in this Client Alert, but it may be read as the 'claimant' for the purposes of English law.
9. *Ivanishvili* at [2].
10. Ibid at [5].

IV. The misrepresentations

The misrepresentations in question were made by the fraudster on behalf of CS Life. As found at trial in Bermuda, they were straightforward:[11]

- When Mr Lescaudron recommended to Mr Ivanishvili in 2011 that his trust assets already being managed by Credit Suisse should instead be invested in the relevant life insurance policy with CS Life, there was an implied representation by Credit Suisse that those existing assets were not already being managed by Credit Suisse fraudulently, and would not be managed fraudulently.

- When Mr Lescaudron made further recommendations in 2012 that the proceeds of Mr Ivanishvili's divestment of certain Russian assets held on trust should be invested in a second policy with CS Life, there was the same implied representation by the bank, i.e. it represented that those assets would not be managed fraudulently.

Unchallenged before the Privy Council were the twin findings that: (a) those implied representations were found to be false; and (b) they had induced the plaintiff to enter into the two policies with CS Life. The plaintiff relied on those representations by instructing the two respective trustees of his existing and divested assets to enter into the two respective life insurance policies with CS Life, and by signing the policy application forms on behalf of the related corporate policyholders.[12]

The Privy Council also found that the Court of Appeal was correct to find that the plaintiff had put his case on a purely legal footing. That is, the plaintiff gave no evidence at trial that he actually understood or was aware that Mr Lescaudron had represented to him that Credit Suisse would not fraudulently manage his assets. Mr Ivanishvili's case therefore rested on establishing that, as a matter of law, it was not a legal requirement of the tort of deceit that he was aware of the representation on which the claim was based.

V. Tort of deceit

A traditional analysis of the elements

The Privy Council's judgment focused closely on the traditional elements of the tort of deceit, which Lord Leggatt summarised as: "(1) *making a representation of fact (or law) which (2) is false, (3) the maker does not believe to be true, (4) is intended to be believed by the representee, and (5) causes the representee to believe that the representation is true."*[13] That summary omitted any reference to an 'awareness' requirement, or that the representation must be 'actively present' in the representee's mind. Indeed, Lord Leggatt expressly noted that traditional judicial statements of the elements of deceit did not include any such requirement.[14]

Difficult cases: restaurant customers and dry rot

In omitting the 'awareness' requirement, the Privy Council dealt directly with several prior cases that had caused difficulties for the modern theory of conscious awareness. The first was the case of a customer in a restaurant who 'did a runner' after eating the main course.[15] The House of Lords held that there was an implied representation that he would pay for the meal. Lord Leggatt described this case as a "*straightforward*" example of deceit: where a person ordered goods or services, but

11. Ibid at [11], [13], [114]–[115].
12. Ibid at [124].
13. Ibid at [128].
14. Ibid at [137].
15. DPP v Ray [1974] AC 370 *("**Ray**").*

did not intend to pay.[16] The second was the 'dry rot case'.[17] There, it was held that a seller of a flat was liable in deceit where he had covered up the dry rot from the buyer's inspection. Lord Leggatt considered this to be an example of "*entirely non-verbal conduct*" constituting deceit, and there was nothing "*recent or novel*" in that conclusion.[18]

These two cases had caused particular difficulties in Leeds and Loreley, because they were existing authorities that had found there was an implied misrepresentation, even though the claimant was **not** consciously aware of it. To fit those cases within the modern theory of awareness, the Court in *Leeds* and *Loreley* had to resort to drawing a distinction between: (a) a so-called "*quasi-automatic understanding*" of the claimant in these pre-existing cases (which satisfied the awareness requirement); and (b) an assumption by the claimant (which did not). Despite drawing that distinction, the Court itself said in Leeds that the dividing line in practice may be "*thin to non-existent*". Lord Leggatt in the Privy Council noted that: "*[a]s these observations indicate, Cockerill J may not have been entirely convinced that her conclusions were correct in principle*."[19]

To this end, in a separate Client Alert, we had previously written the following in response to the Leeds decision:[20]

"*However, as recognised by the Court of Appeal in PAG, some representations are so intrinsic to a proposed transaction that they do 'go without saying' (see, contra, Mrs Justice Cockerill at [152]). Representations as to the honesty of the counterparty and the integrity of an interest rate benchmark plainly fall into such a category. Accordingly, it is not obvious why a claimant's assumption that the counterparty has made the representation should not also be sufficient to prove reliance upon it, especially in circumstances where the claimant would not otherwise have entered into the relevant transaction had he or she known the truth. … In other words, the line between awareness and assumption vanishes. Should that distinction collapse, then, arguably, so does the new awareness requirement*".

VI. No awareness requirement

In the present case, and having reviewed the authorities, Lord Leggatt stated that there was "*no escaping from the choice that must be made*".[21] This was to either conclude that the restaurant customer, dry rot and similar cases were wrongly decided, or alternatively reject the modern requirement that a deceit claim required the claimant's awareness of the representation. The Privy Council unanimously adopted the latter course.

Its reasoning was straightforward. There are some representations that are implied from words or conduct which naturally give rise to an assumption. Outside of the restaurant customer and dry rot examples, the Privy Council's core example was a passenger who hails a cab driver. By hailing the ride, the cab driver assumes the passenger will pay. A representation has been made by conduct. The resulting assumption "*arises naturally through established social norms and expectations*".[22] It is no more complicated than that. The representee believes that the passenger will pay for the cab, or that assets will not be managed fraudulently. "The claimant's belief that this is so does not just look like an assumption. That is exactly what it is."[23]

16. *Ivanishvili* at [135].
17. *Gordon v Selico Ltd* (1986) 18 HLR 219 (the "dry rot case").
18. *Ivanishvili* at [132].
19. Ibid at [144].
20. See: here (2022).
21. *Ivanishvili* at [157].
22. Ibid at [144].
23. Ibid at [153].

In *Ivanishvili*, the Privy Council held that the two representations set out above were "*simple but fundamental*".[24] This placed the case in precisely the same category as the restaurant customer and dry rot cases: it was a natural assumption for Mr Ivanishvili to make that Credit Suisse was not acting fraudulently. In the words of the Board: "*[t]hey are no different in this respect from the present case where… Mr Ivanishvili would certainly have assumed that the relevant portfolio had not been and was not in the future to be fraudulently managed; but that is not to say that he applied his mind to whether CS Life was making any representation to him.*"[25]

The position was found to be no different in complex commercial transactions. These were specifically addressed by Lord Leggatt because it had been suggested that such cases sat in a different category, at least evidentially, by Cockerill J in Loreley. The Privy Council held that any such suggestion conflated the question of whether it is obvious the representation had been made in the first place with whether it was obvious to the representee it had been made. Given the Privy Council's rejection of the awareness requirement, it follows that the latter enquiry falls away.

VII. Prior misconceptions

The Privy Council went on to address several theoretical and legal bases which had previously been put forward to justify the modern awareness requirement, and explained why they should be rejected. We address these shortly as follows:

- **Reliance and awareness:** In *Leeds* and *Loreley*, the Court found that awareness was the "*logical bridge*" between representation and reliance.[26] The Privy Council rejected that reasoning, holding that reliance does not "*logically require*[]" the claimant "*to be consciously aware of the representation at the time that C acts on it*".[27] In short, this is because it is an "*everyday feature of human existence that people form and act on beliefs without any conscious awareness or thought*".[28] The Board held that doing so should not be taken advantage of by defendants to require claimants to plead and prove contemporaneous conscious awareness. In the cab driver example, why should it matter whether the driver consciously turned his mind to the question of whether the passenger will pay? The respective drivers would be "*equally a victim of deceit*".[29] The Privy Council's reasoning therefore lays down a straightforward causation analysis in place of the awareness requirement: did the representation cause the claimant to hold a false belief or assumption (which was then relied upon)? Respectfully, we suggest this is simple, powerful and correct reasoning that cuts to the heart of these implied representation cases.

- **Ambiguous representations:** The Privy Council rejected the argument that the scope for ambiguous representations justified the modern awareness requirement. However, it went on to find that in cases where the representation is ambiguous—such as where a company prospectus was readily capable of two alternative meanings, one true and one false—there is a residual need for evidence from the claimant proving that he or she understood the representation in the way intended by the defendant.[30]

- **Representations and assumptions:** The Privy Council rejected the alleged dichotomy between representations and assumptions, essentially for the reasons summarised above concerning natural assumptions. This distinction was found to be one without a difference.

24. Ibid at [149].
25. Ibid at [155].
26. *Leeds* at [70].
27. *Ivanishvili* at [161].
28. Ibid at [162].
29. Ibid at [164].
30. Ibid at [170].

- **Misrepresentation and non-disclosure:** Finally, a more difficult issue was the dividing line between misrepresentation and non-disclosure, the latter of which is generally not actionable under English law. The Privy Council held that the dividing line was as follows: *"[t]he seller who takes active steps to conceal a defect in order that a buyer should not discover it stands in a different position from the seller who is aware of a defect not apparent to the buyer but does nothing actively to hide it."*[31] While the Privy Council recognised that the "*line is not always easy to draw*", ultimately it considered that the enquiry should be resolved by looking at what the defendant had done (or not done), not what the claimant knew.[32]

VIII. Pleading and proving deceit claims

For parties considering potential claims concerning fraud and misrepresentation, there are key points concerning pleading and proving such claims to emerge from the *Ivanishvili* decision. They include the following:

- A claimant should clearly plead the representations implied from words or conduct, keeping these as straightforward and simple as possible. They should typically be so obvious that they 'go without saying'.
- A claimant should plead the features of the representation that "*naturally*"[33] give rise to a particular assumption (or belief) by the claimant (which turns out to be false, i.e. the claimant is deceived). The assumption should be one which "*arises naturally through established social norms and expectations*".[34]
- A claimant should plead and prove: (i) that the representation caused the claimant to hold the natural assumption or belief (which turns out to be false); and (ii) that it has acted and relied on that assumption or belief.[35]
- If the representation is at all ambiguous (i.e. capable of more than one meaning), the claimant will need to plead, and then prove at trial, that it understood the representation in the sense that the defendant intended the claimant to understand it (and which the defendant knew was false).[36]
- Pertinent to the use of AI, if the representation is said to have been made to a machine which processes information automatically, the pleadings and evidence will need to address how the machine would have acted differently if the correct representation had been made. The Privy Council referred in this context to the recent *SKAT* decision on this topic.[37]

31. Ibid at [178].
32. Ibid at [178].
33. Ibid at [153], [155], [163], [176].
34. Ibid at [153].
35. Ibid at [161], [176].
36. Ibid at [172].
37. Ibid at [136], citing *Skatteforvaltningen v Solo Capital Partners LLP* [2025] EWHC 2364 (Comm), paras 531-532.

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For the reasons noted above, the removal of the awareness requirement in deceit claims is a very significant development, and is likely to make it much easier to plead and prove misrepresentation in banking and other complex commercial cases than it has been hitherto. Whilst we note that the decision from the Privy Council will not be directly binding on the English Court, it is

likely to be very persuasive. Moreover, given the highly distinguished composition of the Board, it is unlikely in practice that the decision will not be followed.

If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to reach out to:

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