

**BETWEEN:**

**(1) PCP CAPITAL PARTNERS LLP**  
**(2) PCP INTERNATIONAL FINANCE LIMITED**

Claimants

-and-

**BARCLAYS BANK PLC**

Defendant

**B e f o r e :**

**MR JUSTICE WAKSMAN**

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**EXECUTIVE SUMMARY OF JUDGMENT**

**HANDED-DOWN ON 26 FEBRUARY 2021**

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**Introduction**

1. This is a short précis of the lengthy written judgment handed-down today after a trial which took place in June, July and parts of August and October 2020. It does not form part of, nor is it a substitute for, the actual judgment to which reference should be made for my detailed findings and reasons.
2. In October 2008, at the height of the global financial crisis, the Defendant, Barclays Bank Plc (“Barclays”) was required by the regulatory authorities to raise £6.5bn worth of Tier 1 capital. It wished to obtain this from the market, rather than be the subject of a government bailout. It did raise that capital (“CR2”), most of which came in the form of investments by Qatari interests, who were already shareholders because they participated in an earlier capital raise in June (“CR1”), on the one hand, and by entities originally owned by the First Claimant, PCP Capital Partners LLP (“PCP”), on the other. Those entities were special purpose corporate vehicles (“the SPVs”). The subscriptions were announced by Barclays to the market on 31 October 2008. That announcement stated that the SPVs represented the beneficial interests of Sheikh Mansour of Abu Dhabi, who had been introduced to Barclays as a potential investor by PCP.

3. The subscriptions were due to be completed, and were in the event completed, by the payment of the monies due by the investors, by 27 November. On 24 November the subscription arrangements were voted upon by Barclays shareholders at an EGM. 75% of the votes was required and in the event 87% voted to approve.
4. On 20 November 2008, PCP lost control of the investment and agreed to transfer ownership of the SPVs to International Petroleum Investment Company (“IPIC”), an Abu Dhabi state-owned entity whose Chairman was Sheikh Mansour. IPIC became the vehicle for the investment on the part of Abu Dhabi interests, through the SPVs. PCP subsequently entered into negotiations for the payment of a fee for its work. In March 2009, it received a £30 million fee. In June 2009, IPIC sold its investment and made a profit of £1.3bn.
5. Part 1 of the judgment is a general introduction to the case.

### **Liability**

6. In January 2016, PCP commenced this claim. It alleged that in October 2008, Roger Jenkins (then Head of Structured Capital Markets at Barclays Capital Investments (“BarCap”) and Executive Chairman of its Middle East business) had represented to Amanda Staveley, the principal of PCP, that the SPVs were getting the “same deal” in respect of the investment as the Qatari interests. Those representations have been referred to as the Same Deal Representations. PCP also alleged that Mr Jenkins told Ms Staveley that what was described in the 31 October announcement as an “arrangement fee” of £66 million to be paid by Barclays to the Qatari interests (“the Arrangement Fee”) was in fact related to monies due to them for their earlier investment in CR1 (“the June Representation”). Finally, it alleged that Barclays impliedly represented to PCP that, in respect of a \$3bn loan made by Barclays to Qatari interests at around the same time (“the Loan”), it did not intend or know that the Loan would be used to fund or facilitate the Qatari interests’ subscription (“the Investor Representation”). PCP then alleged that it relied upon all the Representations by causing the SPVs to subscribe in CR2 to the tune of £3.25bn.
7. For its part, Barclays denied making of any of the Representations, save an attenuated version of the Investor Representation. It also denied that PCP relied upon them or was intended to rely upon them.
8. Next, PCP alleged that all the Representations were false. First, because Barclays had in fact agreed to pay £280 million to the Qatari interests pursuant to an Advisory Services Agreement (“ASA 2”) made on 31 October, which was either a sham or in any event amounted to part of the

package sought by the Qatari Interests in return for their investment, and was therefore part of the “deal”. Second, the Arrangement Fee was not a fee in respect of introducing an investor, it was simply a fee paid to Qatar for its investment and was therefore another part of the “deal”. Thirdly, the Loan was a further benefit paid to the Qatari interests in return for their investment. PCP also alleged that the June Representation was false because, on any view, the Arrangement Fee did not relate back to CR1. Finally, the Loan was intended to be used to fund the Qatari interests’ subscription and did so. I refer to all of these as “the Misrepresentations”.

9. PCP then alleged that Barclays (through Mr Jenkins in relation to the Same Deal and the June Representation, and generally in relation to the Investor Representation) made those Representations fraudulently because it knew that they were false or did not care whether they were true or false. Barclays denied that any of the Representations, if made, were false and even if false denied that they were dishonestly made.
10. All of the above issues are dealt with in Part 2 of the judgment under the heading “Liability”.

### **Causation and Loss**

11. PCP then alleged that if the Misrepresentations had not been made, there would have been the following consequences:
  - (1) Ms Staveley would have discovered the truth about the deal for the Qatari interests:
  - (2) She would have negotiated with Barclays for the same deal, *pro rata*, for the SPVs and would have obtained Additional Value (“AV”) of somewhere between £615m and £1.063bn along with Additional Time to finalise the subscription and/or complete it (“Additional Time”);
  - (3) By 18 November 2008 Ms Staveley had in fact agreed, on behalf of PCP, a remuneration package with Sheikh Mansour in respect of PCP’s efforts in bringing about the subscription and the potential for very large profits from it. That agreement, recorded in or evidenced by a document called “Draft Heads of Terms” dated 12 November, required PCP to raise 60% of the subscription price to be funded by Sheikh Mansour, in the form of non-recourse debt finance. That 60% amounted to £1.95bn. In return, PCP would receive a 10% interest in the underlying investment and 10% of the profits it made (“the 10% +10%”);
  - (4) Although, in the real world, PCP had not raised such finance by 20 November 2008, when it lost control of the SPVs, in the counterfactual world, and with the benefit of the AV

and/or AT, there was a real and substantial chance that it would have been able to raise the required finance, supplemented if necessary by other funding; if so, it would not have lost control of the SPVs and would have earned its 10% +10%;

(5) PCP then says that its putative interest in the investment, including the profit, would have been £774 million. Applying the various “loss of chance” calculations, PCP says that its ultimate loss was £660m after giving credit for the £30m fee which it did receive.

12. Barclays denies that any of these consequences would have occurred or that there was any real or substantial chance that they would have occurred and, accordingly, PCP was not entitled to any damages at all.

13. These issues are dealt with in Part 3 of the judgment.

### **My Findings**

14. In the course of the trial I heard live evidence from 17 ordinary witnesses over 30 days, and from 4 expert witnesses over 6 days, as well as reading and hearing submissions, and considering a very large number of documents.

15. I found that the Same Deal Representations and the June Representation were made, essentially as alleged by PCP. I also found there to have been a narrow version of the Investor Representation. I held that PCP relied on all these Representations and was intended by Barclays so to rely upon them.

16. I then found that the Same Deal Representations were false because (1) although ASA 2 was not a sham, it was clearly part of the price required by and paid to the Qatari interests for their investment and was part of their deal, (2) the Arrangement Fee was similarly part of the Qatari interests’ deal and (3) so was the Loan. The June Representation was also false because the Arrangement Fee was not in truth related to CR 1. I did not find that the Loan was intended to be the funding for the Qatari interests’ subscription, nor was it actually so used.

17. I concluded that not only were the Same Deal and June Representations false but they had been made by Mr Jenkins knowing that they were false, in other words he knew that the SPVs were not getting the same deal as the Qatari interests.

18. PCP therefore succeeded on the Liability issues. Subject to showing Causation and Loss, therefore, it established that Barclays was guilty of fraudulent misrepresentation.

19. As for causation and loss, I found that PCP would have discovered the truth, would then have negotiated with Barclays for the same deal, *pro rata* as the Qatari interests and would have obtained AV of £615 million. It would also have obtained some AT, if required to complete the subscription agreement but not very much. In fact this does not make any difference to the overall outcome. The AV would have been provided, principally, in the form of changes to the terms of the investment instruments. All of that would have required the approval of Barclays shareholders at the EGM, as in the real world. I consider that there was a 60% chance of the 75% approval coming about.
20. I also found that PCP, through Ms Staveley, did make the alleged remuneration agreement with Sheikh Mansour in the real world, alternatively, if not actually made, there was an 80% chance in the counterfactual that it would have been made. Therefore, to earn its 10% +10%, PCP needed to deliver 60% non-recourse debt finance.
21. However, I found that in the counterfactual world, there was no real chance of such finance being obtained by PCP, or anything like it. Nor was there any real chance of obtaining alternative funding so as to reach the total of 60%. Nor was there any prospect of AT being granted for long enough to put in place the financing structure posited by PCP, even if it was viable.
22. On that basis, not only would the 10% +10% remuneration not have been earned, but PCP would have lost control of the investments, just as it did in the real world.
23. Accordingly, PCP is not entitled to any of the damages it sought by reference to its primary claim. I also rejected its secondary claim to the effect that even if it did not obtain the finance, it would instead have obtained remuneration in the form of half of the warrants which were provided to the SPVs as part of the subscription, with an estimated value according to PCP of some £365 million. This meant that PCP's claim as a whole must fail.

26 February 2021