

Insights

EIGER FUNDING (PCC) LTD V RIDGE AND PARTNERS LLP – A CAUTIONARY TALE FOR MONITORING SURVEYORS AND LENDERS

Apr 17, 2026

SUMMARY

In this Insight, Fainche Whelan considers the case of Eiger Funding (PCC) Limited v Ridge and Partners LLP [2026] EWHC 609 (TCC). Here, an independent monitoring surveyor (“IMS”) was found liable to pay £2.5m in damages to a lending company due to their negligence in the discharge of their duties as IMS on a development financing project. This Insight considers the impact this case has on monitoring surveyors, the extent of their responsibilities to funders and how conflicts of interest crucially play into their role.

WHAT HAPPENED?

The project concerned the conversion and refurbishment of 60 Old Hall Street, Liverpool, to 122 residential flats, where the claimant, Eiger Funding (PCC) Limited (“Eiger”) loaned £12.9m to fund the development for developer, Signature Living Residential Limited (“Signature”). Ridge and Partners LLP (“Ridge”) were appointed to act as IMS for Eiger, but interestingly, they had also been appointed as the quantity surveyor to Signature on the project. This was contrary to the RICS’ professional guidance on conflicts of interest, which provides that if a regulated firm has two or more professional appointments in relation to the same project, this is likely to cause a conflict of interest and that firm must seek written “Informed Consent” before proceeding. Ridge did not obtain such consent.

17 months into the loan, Signature was placed into administration, resulting in Eiger suffering a loss of approximately £10.8m. Eiger subsequently brought a claim of professional negligence against Ridge, stating that they had relied on the report that Ridge had provided as part of their duties in deciding to deliver the loan.

ISSUES AND JUDGMENT

Eiger's case centred around 4 key issues that the court had to consider, being:

- The relationship between Signature and the contractor;
- The conflict of interest point;
- The pricing point; and
- The cost to completion point.

Ultimately, the court found that Ridge had been negligent in their duties and awarded £2.5m in damages to Eiger. Much of the weight of this decision turned on the facts, but the court made some interesting comments chiefly regarding the duties of an IMS, the impact of conflicts of interest in the context of an IMS and their duties across construction projects, and the issues of causation and quantum of damages:

THE RELATIONSHIP BETWEEN SIGNATURE AND THE CONTRACTOR AND THE COURT'S COMMENTS ON THE ROLE OF AN IMS

Whilst not uncommon in practice, the close relationship between Signature as borrower and the contractor (another Signature company) posed various risks for the project, including an inaccurate contract sum, which led to the JCT contract effectively being converted from a fixed-price contract to a target cost contract. This relationship also meant that cost overruns and the programme not being observed was far more likely. Ridge did not advise on any of these risks. The court upheld all of these points.

Ridge originally attempted to argue that they did not have a duty of care in contract nor in tort to Eiger and claimed that they did not rely on their report in their decision to provide the development loan. The court rejected this, stating that an IMS's duty goes beyond relaying information that the borrower has provided.

The role of an IMS is to exercise independent professional judgment and particularly in a case like this, they should have noted the low contract sum and risks associated with the close relationship between Signature and their contractor. Objectively, IMSs must exercise reasonable skill and care in verifying costs, and they should carry out their own estimates and inspections into individual risks that could impact the progress of the project and the timeline. This should then be reflected in their reports and advice provided to lenders/funders, for them to rely on before approving the loan. After this, IMSs should provide regular and accurate progress reports, conduct site visits and keep the lender updated of any change in aspects such costs and the project programme.

THE CONFLICT OF INTEREST

The court sustained that Ridge had acted against RICS' guidance on conflicts of interests, most notably in not obtaining "Informed Consent" to act as both quantity surveyor and IMS on the same

project. For example, the original £10.2m construction cost estimate had increased by 20% during the course of the project – not only did Ridge omit to disclose that they had prepared the original cost estimate, they also did not notify Eiger of this increase.

The court noted that an IMS's primary duty of care is to the lender and that their independence was compromised by the clear conflict of interest with their previous role as quantity surveyor. This resulted in what Judge Williamson KC referred to as Ridge effectively "marking its own homework" and Ridge being unable to adequately fulfil their role.

Furthermore, the lack of "Informed Consent" was key. The court provided that this should have been sought and that Ridge should have properly explained the potential implications of the conflict. They then should have ensured that any consent given was informed and with a proper understanding of the circumstances.

PRICING AND COST TO COMPLETION

Following on from the above, the underestimated contract sum carried a significant risk of the contractor not meeting this requirement and any contractor replacing the contractor incurring extra costs to complete the project. Furthermore, Judge Williamson KC described Eiger's report as "confusing and unsatisfactory" and went into great detail on the numerous inconsistencies, discrepancies and lack of detail. Ridge also failed to give its own estimate of the costs to complete the project, instead relying on figures provided to them by Signature. The court held that part of Ridge's role was to "estimate for themselves the total costs of the project, less those certified to date, and then to compare this with what Signature were saying."

One of the arguments Ridge put forward was that Eiger had not relied on their report, and therefore the insufficient report had not been the causal link leading to Eiger's losses. This was rejected by the court, who applied a "but for" test, being, would Eiger have provided the loan (and continue to provide drawdowns) had Ridge fulfilled their duties? The court confirmed that they would not.

This was instrumental when it came to quantifying the damages for Eiger. Here, the court digressed from the known (but more dated) principle grounded in *SAAMCO v York Monatgue Ltd* in quantifying losses from negligent advice (establishing the difference between losses arising from negligently provided information and losses arising from a transaction itself). Instead, the Judge focussed on the principle in *Manchester Building Society v Grant Thornton UK LLP* [2022] A.C. 783, and asked what Ridge's key duty was supposed to guard against – here Judge Williamson KC stated that this was for Eiger to provide a loan on the basis of construction costs and costs to complete which made that loan "unduly hazardous".

This principle was key in the court deciding the more limited award of damages of £2.5m, compared with the £10.8m claimed by Eiger.

THOUGHTS

For lenders and IMSs alike, this decision serves as a cautionary tale for development funding projects.

There is some notable case law regarding IMS's duties, and this case emphasises the extent of these duties. Crucially, the court stated that it was reasonable for Eiger to rely on Ridge's report – something for lenders to take note of and a warning to monitoring surveyors. It also reminds lenders that they should carefully review information and advice provided by IMSs and verifying such information where needed.

It is particularly interesting to note the court's rigorous adherence to RICS' guidance on conflicts of interest – something that has not been seen before in IMS-related case law. For IMSs, this highlights the importance of ensuring that any conflicts of interest are properly managed in accordance with the guidance. For lenders, it is a reminder for them to keep their eyes open when encountering a situation where a developer/borrower and a contractor are closely associated, in addition to IMSs performing dual roles on the same project.

The decision reached on the quantum of damages is also worth noting, as the court concluded that in cases such as these and losses suffered, an IMS is not responsible for the default of a loan, but rather the outcomes of their incorrect advice.

Judge Williamson KC's comments on causation also stress the importance of being able to demonstrate a causal link between advice received and decisions reached as a result of this advice. In this case, Ridge argued that the lack of board minutes mentioning their report showed that Eiger did not rely on their report. Whilst the court rejected this point, it is strongly advised that lenders keep sound and detailed paper trails around documentation received from IMSs, such as reports, emails of advice and their own internal paperwork (like board minutes).

Either way, the case of Eiger Funding (PCC) Limited v Ridge and Partners LLP sets a vital precedent that will resonate with all parties in similar circumstances in the future.

RELATED CAPABILITIES

- Commercial Construction

MEET THE TEAM



Fainche Whelan

Associate, Southampton

fainche.whelan@bclplaw.com

[+44 \(0\) 20 3400 2529](tel:+442034002529)

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