



TRADING LAW BULLETIN

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CONSUMER CREDIT

Unfair Relationships. The Court considered a loan at 20% compounded monthly. It was made between persons who were old family friends and although legally binding an order was made to reduce the payments on the basis of unfairness (*Patel v. Patel*, 10th December 2009).

Amount of Credit. The Court of Appeal allowed the creditor's appeal against a decision of the Chester County Court that a personal loan agreement was irredeemably unenforceable because charging interest on a fee resulted in the amount of credit being wrongly stated (*Southern Pacific Personal Loans Limited v. Walker* [2009] EWCA Civ 1218).

Course of Business. The Defendant appealed against a decision granting judgment against him for substantial sums of money he had borrowed to gamble at a club. The Court of Appeal held that the borrower had been able to apply the money as he wished so the Gaming Act 1892 did not apply. Further, the loans were not made in the course of business because they were non-commercial agreements. Further, the relationship was not unfair and there had been no fiduciary relationship (*Tamimi v. Khodary* [2009] EWCA Civ 1109).

Copy Agreements. The High Court considered a number of aspects relating to requests under Section 78 of the Consumer Credit Act 1974. It was held that the creditor could reconstitute an agreement to provide a true copy and that any failure to comply with a Section 78 request did not, of itself, result in an unfair relationship (*Carey v. HSBC Bank Plc* [2009] CTL103).

High Cost Credit. The Office of Fair Trading published, in December 2009, a report on the emerging evidence from a review of high cost credit.

Mortgages. The High Court held that when a loan had been repaid through monthly payments the original owner had a beneficial and overriding interest and that interest took priority over two subsequent mortgages (*HSBC Bank Plc v. Dyche*, 18th November 2009).

Credit and Store Cards. On 27th October 2009 BIS published a consultation in respect of reform for the regulation of credit cards and store cards.

Claims Management Companies. The Ministry of Justice have increased the number of claims management companies being suspended or cancelled from authorisation.

Enforcement. The High Court considered the meaning of enforcement in the context of a Section 77 request and held that activities by way of debt collecting including the commencement of proceedings did not amount to enforcement (*McGuffick v. Royal Bank of Scotland* [2009] EWHC 2386).

Second Charge Lending. The Financial Services Authority have proposed that the Authority should regulate second charge lending and buy-to-let lending.

Payment Protection. On 16th October 2009 the Competition Appeal Tribunal allowed an application by Barclays Bank Plc in respect of certain aspects of the findings of the Competition Commission in respect of the PPI investigation.

FSA Fine. The FSA fined GMAC and required it to pay customer redress in respect of its treatment of customers experiencing arrears and repossessions. The lender was said to have made excessive and unfair charges and customers' individual circumstances were not always considered.

Multiple Agreements. The Court of Appeal considered multiple agreements in the context of a refinancing and a cash advance. It was held that such an agreement did not constitute a multiple agreement within Section 18 so that each element need not be separately documented (*Southern Pacific Mortgages Limited v. Heath* [2009] EWCA Civ 1135).

FOOD

Establishment. The High Court held in a civil case stated appeal from a condemnation order that an authorisation in respect of "any unit of food business" did not refer to the physical establishment alone but "establishment" denotes both premises and the manner in which those premises are being used by the food business operator. Official guidance was incorrect in suggesting that there was no need for approval if a new operator of an establishment continues the activities to which approval was granted in the past (*Allan Rich Seafoods v. Lincoln Magistrates' Court* [2009] EWHC 3391 (Admin)).

Operation of Food Business. A Magistrates' Court had wrongly relied on a statement by a Defendant acting in person in respect of an alleged food hygiene offence. Following an emergency prohibition notice it was found that a group of persons were sitting at a table eating food. It was said that the Defendant had merely given cans of drink free of charge. The Divisional Court allowed a prosecution appeal. The number of people at the premises resulted in the premises being open (*Haringey LBC v. Tshilumbe*, 13th October 2009).

Food Business. Even though a food business was not open to the public for a period of time and food preparation was solely for staff, a food business was still being operated because the question for determination was whether there were breaches of the food hygiene regulations even though the restaurant had not been open for business. Food had been prepared even if it was only for staff. A food operating business remained such even when

for some reason it was not open to the public for a period of time (*Three Rivers District Council v. Chandbury* [2009] EWHC 2683 (Admin)).

GYM MEMBERSHIP

Undertakings. The Office of Fair Trading have obtained undertakings in respect of credit agreements used by operators of gyms.

ENVIRONMENT

Expert Evidence. The Divisional Court held that it was not appropriate to disallow expert evidence because the expert had some connection with the party calling that person as an expert. The Defendant had been prosecuted in respect of having no waste management licence. The issue was whether “feather water” was a polluting substance. The Defendant’s appeal was allowed because of the issue of expert evidence (*Leo Sawrij Limited v. North Cumbria Magistrates’ Court*, 16th October 2009).

Enforcement Consent. It was held that the absence of consent of the Secretary of State (in connection with a dust suppression system at a waste recycling site) did not encompass the service of an abatement notice because that did not constitute summary proceedings (*R (Ethos Recycling Limited) v. Barking and Dagenham Magistrates’ Court*, 13th November 2009).

TAXIS

Appeal. The High Court considered issues of jurisdiction of the Crown Court and held that an appeal from a Magistrates’ Court was a re-hearing in respect of the refusal of a private hire driver’s licence (*Melton v. Uttlesford District Council* [2009] EWHC 2845).

Fixed Fares. The High Court allowed an appeal by a local authority from a decision of the Magistrates’ Court excluding evidence of an undercover officer in respect of a fare charged by a taxi driver. The Court held that it was irrelevant that the fare had been arranged between the passengers and the taxi firm because the driver knew it was an offence if the fare was excessive (*Stratford-on-Avon DC v. Dyde*, 4th November 2009).

COPYRIGHT

Modchips. The Defendant dealt commercially in modification computer chips in respect of game consoles. It was the Defendant’s case at trial that any copying did not represent at any one time the whole or substantial part of the data in respect of the games so there was no infringement. The issue arose as to what was “substantial”. The Court of Appeal (Criminal Division) dismissed an appeal against conviction holding that the game was not the sole subject of the copyright and that the images shown were substantial copies of a number of works (*R v. Gilham*, 9th November 2009).

ANIMALS

Time Limits. In a prosecution in respect of a horse the Divisional Court held that the prosecutor was the RSPCA and that on the evidence an individual officer was not the prosecutor. It was held that a certificate as to knowledge of evidence for the purpose of time limits was conclusive. The prosecution’s appeal was allowed (*RSPCA v. Johnson*, 16th October 2009).

PHARMACIES

Dispensing. On a judicial review following a refusal to state a case after a conviction an employee of a pharmacy who had been convicted of selling a product that was not of the nature demanded was challenged. It was held that liability was not restricted to a corporate body or any pharmacist and the dispenser’s failure properly to examine the drugs meant that the conviction was correct (*R (Mahoney) v. Prestatyn Magistrates’ Court*, 23rd October 2009).

VIDEO RECORDINGS

Legislation. A Government Bill has been introduced to repeal and revive the provisions of the 1984 Act following a decision that it was not properly enacted.

National Classification. The European Court of Justice held that Article 28 did not preclude national rules (in this case in German legislation) prohibiting the sale and transfer by mail order of image storage media in respect of which there had been no examination and classification by the competent authority. The protection of children was a legitimate interest. Opting for a system different from another Member State did not affect the issue of proportionality (*Dynamic Medien v. Avides Media AG* [2009] All ER (EC) 1098).

PRIZE DRAWS

Proceedings. High Court proceedings have been issued in respect of prize draw competitions involving mailings and distribution of scratch cards.

OMBUDSMAN

Jurisdiction. In a case involving the Pensions Ombudsman it was held there is jurisdiction to deal with a complaint or dispute even if a comparable cause of action would have been dismissed on the basis of limitations but the Regulations were not sufficiently clear to allow the Ombudsman to refuse to give effect to a limitation defence as provided for in the Regulations (*Arjo Wiggins Limited v. Ralph*, 7th December 2009).

WATER

Probability. On an appeal by way of case stated in respect of offences relating to water, the Divisional Court held that the word “likely” in respect of water fittings did not mean probable but was used in the sense of a real possibility (*Wallis v. Bristol Water Plc*, 10th December 2009).

BANK CHARGES

Core Terms. The Supreme Court allowed an appeal in respect of a challenge by the Office of Fair Trading and held that bank charges for unpaid items and overdraft excess charges were part of a package and not susceptible to the test of fairness (*OFT v. Abbey National* [2009] 3 WLR 1215).

CARE

Wilful Neglect. The conviction of a care manager who organised a patient’s care plan was overturned by the Court of Appeal because the Judge had not addressed the question whether there was any evidence to conclude that the care plan was not as good as it should have been. There was no evidence of mens rea and therefore the conviction could not be sustained (*R v. Salisu*, 9th December 2009).