



TRADING LAW BULLETIN

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CONSUMER CREDIT

Litigation Funding. A High Court Judge allowed an appeal against a Master's decision to dismiss a claim brought by solicitors against litigation funders. The Claimant sought repayment of monies paid to the funders on the basis that they now contended that the advances were unenforceable against their clients (*Proddow v. Hampshire Trust Plc* [2011] EWHC 536 (Ch)).

APR. ECJ has held that the failure to mention the APR might be a decisive factor and the Court had power to assess on its own motion whether there was unfairness (*Krajcsky v. Presove* (Case 76/10)).

Possession. The Court of Appeal declined to overturn a possession order and a monetary judgment following proceedings between parties concerning the occupation of premises through a limited company (*Bank of Scotland v. Pereira* [2011] EWCA Civ.241)).

FMSA Loan. The Court of Appeal dismissed an appeal, except for the issue of costs, whereby the High Court had held that a loan secured by a first charge over freehold property was done by way of business but nevertheless ordered enforcement (*Helden v. Strathmore Limited* [2011] EWCA Civ.542)).

Harassment. The High Court held that an offence of harassment could be committed by a company (*Kosar v. Bank of Scotland Plc* [2011] EWHC 1050 (Admin)).

Credit Hire. A County Court has held that the 2008 Cancellation Regulations apply to credit hire and that the terms and conditions and the right to cancel must be incorporated in the same document (*Guerrero v. Nykoo*, 25th October 2010).

Credit Hire. A County Court held that it was not necessary that the right to cancel should be incorporated in the main contract under the 2008 Cancellation Regulations (*Orley v. Viewpoint*, 7th December 2010).

PPI. The Mercantile Court dealt with issues of unfair relationships, fiduciary relationships and transitional provisions (*Barnes v. Black Horse Limited* [2011] EWHC 1416 (QB)). There is an application for permission to appeal.

Hire Charges. The High Court held that a manager had apparent authority to sign a long term contract of hire (*CRJ Services v. Lanstar* [2011] EWHC 972).

Mortgages. The duty of care owed by a surveyor in a valuation report did not apply where there was a buy to let investment (*Scullion v. Bank of Scotland Plc* [2011] EWCA Civ.693).

Guarantees. The Chancery Division held that there was a seriously arguable misrepresentation claim and that a wife's personal guarantee had been the product of undue influence (*Mahon v. FBN Bank (UK) Limited* [2011] EWHC 1432 (Ch)).

Possession. The Court of Appeal upheld a decision to refuse to suspend the enforcement of a possession order where an order had been suspended on condition of monthly payments to clear arrears and the mortgagee fell into further arrears (*Zinda v. Bank of Scotland Plc* (2011) EWCA Civ. 706).

Licensing. The OFT have published information on licence applications and revised licence fees.

Gym Membership. The High Court rejected an argument that monthly payment for monthly membership with a minimum term was a credit agreement but held that certain terms were unfair (*OFT v. Ashbourne Management Services Limited* [2011] EWHC 1237 (Ch)).

Legal Charge. The High Court held that the decision to give a preference was judged by the date of that decision and not the actual giving of the preference (*Re Stealth Construction Limited* [2011] EWHC 1305 (Ch)).

Financial Conduct Authority. The Government have issued a summary of responses on a new approach to financial regulation.

Credit Brokers. The OFT issued a consultation on guidance on credit brokers and intermediaries in June 2011 (OFT 1307 – con).

Sub-prime Lending. The OFT issued a consultation on the marketing and charging practices in sub-prime credit brokerage and debt management in June 2011 (OFT 1333 –con).

Debt Management. In June 2011 the OFT issued a consultation on new debt management guidance (OFT 1338 – con).

Credit Cards. The Supreme Court have rejected an application for permission to appeal in respect of a Court of Appeal decision on credit card applications (*HSBC Bank Plc v. Brophy*).

Section 75. The Law Commission has published a consultation on amending Section 75 to include aggressive acts and capping liability at the amount of the loan and interest.

FOOD

Slaughter House. The High Court upheld a District Judge's decision that following the grant of conditional approval and a time lapse of more than six months it was not possible to give further extensions (*R (Flatman) v. Colchester Magistrates' Court*, 8th April 2011).

Slaughter Notice. A notice was quashed in respect of a bull as it had not been tested in accordance with policy (*R (K & AC Jackson & Son) v. DEFRA* [2011] EWHC 956 (Admin)).

REGULATION

Consultation. BIS has issued a consultation on institutional changes for consumer information, advice, enforcement etc.

PAYMENT SERVICES

Surcharges. In June 2011 the OFT issued a response to a Which? super-complaint on payment surcharges (OFT 1349 – rep).

UNFAIR COMMERCIAL PRACTICES

Consumer Redress. In April 2011 the Law Commission issued a summary of responses to a consultation on consumer redress in respect of misleading and aggressive practices.

Injunction. The High Court granted an injunction in respect of a supplier of equipment but indicated that such applications were better heard in the Mercantile Court by a Circuit Judge (*LB Croydon v. Hogarth* [2011] EWHC 1126 (QB)).

Bait and Switch. The OFT have taken enforcement action under the 2008 Regulations in respect of advertising the sale of a very limited number of phones at a large discount.

COMMERCIAL AGENTS

Compensation. The High Court held that a commercial agent to whom the benefit of an agency agreement had been assigned could not pursue compensation as there had been no novation (*Barnett Fashion Agency Ltd v. Nigel Hall Menswear Ltd* [2011] EWHC 978 (QB)).

LICENSING

Delegation. The Court of Appeal held that sufficient power to delegate authority to amend conditions of a licence had been granted and upheld the reduction in the number of hours a nightclub could operate (*R (Raphael) v. Highbury Corner Magistrates' Court* (2011) EWCA Civ.462).

Premises Licence. An application for judicial review of a decision of a Magistrates' Court to uphold a refusal of a premises licence was upheld by the High Court in respect of a surrendered premises licence (*R (Novus Leisure) v. Westminster Magistrates Court*, 11th April 2011).

Premises Licence. Even if the authority did not carry out the proper notification process there was a right to grant an application for a premises licence. This was in the context where relevant representations had not been received by the due date (*Corporation of the Hall of Arts and Sciences v. Albert Court Residents' Association* [2011] EWCA Civ. 430).

Revocation. The Court of Appeal dismissed an application for judicial review in respect of a revocation of licence where issues regarding under-age sales had been raised (*Khan v. Coventry Magistrates' Court* [2011] EWCA Civ 751).

Premises Licence. The Divisional Court upheld a District Judge's decision to uphold amendments to a premises licence following representations by the police (*Marathon Restaurant v. Camden LBC* [2011] EWHC 1339 (QB)).

WATER

Discontinuance. The normal rule on discontinuance was departed from due to the late introduction of a defence under the 1991 Act (*Webb v. Environment Agency*, 5th April 2011).

TRAFFIC

Deprivation Order. The Divisional Court set aside a deprivation order as invalid where there had been a failure to consider matters such as value and financial effect (*R (Trans Berckx) v. North Avon Magistrates' Court*, 15th April 2011).

Drivers' Hours. The Divisional Court held that the driving of a commercial vehicle during a weekly rest period but for personal use interrupted rest time and did not fall within the exemption (*VOSA v. Wright* [2011] EWHC 1389).

Drivers' Hours. The Divisional Court held that the derogation permitting limited interruption did not apply to all or part of the weekly rest period (*Platje v. VOSA* [2011] EWHC 1369 (Admin)).

WASTE

Deposit. The Divisional Court upheld a Magistrates' Court decision that where waste had been deposited on a field to create access there had not been a deposit contrary to the 1990 Act (*Milton Keynes Council v. Fuller*, 23rd June 2011).

Deposit. The Court of Appeal upheld convictions under the 1990 Act as the defence regarding exemptions had not been made out (*O'Grady Plant v. Tower Hamlets LBC* [2011] EWCA Crim 1339).

AIR CARRIERS

Compensation. A County Court held that the Defendant airline breached its obligations to provide meals and refreshments where the flight was cancelled due to flying restrictions but there was no right to a civil monetary award (*Hendy v. Iberian*, 21st March 2011).

ENTERPRISE ACT

Undertakings. The OFT accepted undertakings against Webuyanycar in respect of the price given as against the original valuation.

TAXIS

Licensing. A hackney carriage licence could be renewed under the 1976 Act after the period of one year but an application a few days late would require very good reasons and it would be exceptional to extend time beyond that (*Exeter City Council v. Sandle*, 16th May 2011).

PACKAGE TRAVEL

Jurisdiction. The ECJ considered the jurisdiction in respect of package travel and a contract for a hotel stay. A contract concerning a voyage by freighter is a contract for transport providing for a combination of travel and accommodation (*Pammer v. Reederei (C-585/08)*).

CONSUMER INSURANCE

Legislation. On 17th May 2011 the Consumer Insurance (Disclosure and Representations) Bill was introduced.

HEALTH AND SAFETY

Work at Height. In a civil case the High Court held that there was liability for breach of the Construction Regulations and the Work At Height Regulations (*Tafa v. Matsim Properties Limited* [2011] EWHC 1302).

Improvement Notices. The High Court overturned a decision of an Employment Tribunal concerning improvement notices and costs having regard to time limits (*LB Wandsworth v. Covent Garden Market Authority* [2011] EWHC 1245 (QB)).

CONSUMER RIGHTS

Directive. On 23rd June 2011 the European Parliament approved the text of the Consumer Rights Directive.