



TRADING LAW BULLETIN

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CONSUMER CREDIT

Litigation Funding. The Court of Appeal dismissed an appeal by a Solicitor who alleged that there had been a repudiatory breach of contract in failing to grant advances (*McKay v. Centurion Credit Sources*, 2nd May 2012).

Loan Agreement. The Court of Appeal upheld a Judge's decision that money paid by the Claimant was a loan and not an investment (*Bajtia v. Toor* [2012] EWCA Civ 565).

PPI. A claim that PPI was compulsory was dismissed by the High Court on the basis of inconsistent evidence (*Black Horse Limited v. Speak* [2010] EWHC 1866 (QB)).

Solicitors' Negligence. A firm of Solicitors appealed from a High Court decision that they had acted in breach of trust in relation to mortgage loan monies. The appeal was dismissed because loan monies had been paid away in breach of trust and the Solicitors had not acted reasonably although they acted honestly (*Lloyds TSB Bank v. Markandan* [2012] 2 All ER 884).

Solicitors' Negligence. An appeal by Solicitors was allowed in respect of allowing the Claimant to plead a cause of action after the limitation period had expired. The borrower had effectively purchased the properties from himself. It was held that the limitation defence could only be defeated if it was shown that the Defendant had known at the time that the alleged breach of duty amounted to a breach of duty (*Mortgage Express v. Abensons* [2012] EWHC 1000 (Ch)).

Merchant Acquirers. An application for summary judgment was allowed against a merchant providing services for reuniting lost pets with their owners. The Court held there was no basis for an implication imposing an obligation to give reasons for the merchant acquirer making retentions (*WSB Limited v. Worldpay Limited* [2012] EWHC 927 (Comm)).

Licensing. The OFT have issued guidance on misleading names.

Total Charge for Credit. The Consumer Credit (Total Charge for Credit) Regulations 2012 come into force on 1st January 2013.

FOOD

Use-By Dates. The Supreme Court has given permission to appeal in the case of *Torfaen v. Douglas Willis*.

Hygiene. The Food Hygiene (England) (Amendment) Regulations 2012 come into force on 30th July 2012.

Warrants. The High Court overturned a Judge's decision setting aside warrants obtained by Trading Standards in respect of the basmati rice (*R (On the Application of Dulia) v. Chelmsford Magistrates Court* [2012] EWHC 1055 (Admin)).

UNFAIR COMMERCIAL PRACTICES

Unfair Trading. The Court of Appeal dismissed an appeal in respect of convictions under the Consumer Protection from Unfair Trading Regulations 2008 in respect of the sale of electricity (*R v. Scottish and Southern Energy Plc* (2012) 176 JP 241).

FINANCIAL SERVICES

Ombudsman. The High Court dismissed a claim for judicial review by a financial adviser holding that the ombudsman's decision on causation was not irrational (*R (On the Application of Green) v. Financial Ombudsman's Service* [2012] EWHC 1253 (Admin)).

Ombudsman. An application to the European Court of Human Rights in respect of a decision of the Ombudsman against a financial adviser was held inadmissible (*Heather Moor v. United Kingdom* [2011] ECHR 1019).

Regulated Activities. The Court of Appeal dismissed an appeal against a conviction for carrying on an unauthorised regulated activity by way of accepting deposits as it was for the Jury to decide whether the Defendant had accepted deposits only on particular occasions (*R v. Napoli* [2012] EWCA (Crim) 1129).

Warning Notice. Although there had been reliance on some legally privileged material, a warning notice issued by the FSA could not successfully be challenged (*Ford v. Financial Services Authority*) [2012] EWHC 997 (Admin)).

Spread Betting. The High Court dismissed a claim for summary judgment by a spread betting bookmaker holding that part of a clause in the agreement with the Defendant was unfair under the 1999 Regulations (*Spreadex Ltd v. Cochrane* [2012] EWHC 1290 (Comm)).

ADVERTISING

Radio Clearance. A judicial review against the Radio Advertising Clearance Centre was dismissed in respect of its refusal to allow an advertisement by a Christian broadcasting organisation (*R (London Christian Radio Limited) v. Radio Advertising Clearance Centre* [2012] EWHC 1043 (Admin)).

LOAN AGREEMENTS

Transfer of Agreement. The Court of Appeal held that a restriction of transfer of a loan agreement would fetter the ability of the Irish National Asset Management Agency (*McKillen v. Maybourne Finance Limited* [2012] EWCA Civ 864).

VIDEO RECORDINGS

Regulations. The Video Recordings (Labelling) Regulations 2012 come into force on 30th July 2012.

PAYMENTS SERVICES

Regulations. The Payments Services Regulations 2012 come into force on 1st October 2012.

UNFAIR TERMS

Powers of Court. The European Court of Justice held that Spanish procedural legislation was not compatible with the Directive by making it difficult for consumers to allege unfair terms, that the remainder of a contract can be binding if the unfair term does not result in it being incapable of continuing but the Court is not permitted to revise the unfair term (*Banco Espanol v. Camino*, Case- 618/10).

ANIMALS

Time Limit. In an appeal by way of case stated it was held that a power to issue a certificate as to time limit compliance under Section 31(2) of the Animal Welfare Act 2007 could be exercised by a private prosecutor and it is conclusive unless it is demonstrated that the certificate is plainly wrong (*Lamont-Perkins v. RSPCA* (2012) 176 JP 369).

Time Limits. An application for judicial review of a refusal by the Crown Court to state a case was dismissed in respect of time limit issues but it was granted in respect of an award of £10,000 costs (*Browning v. Lewes Crown Court* [2012] EWHC 1003 (Admin)).

Dogs. The High Court held that a Crown Court had been correct in ruling that there was no power to impose conditions when a contingent destruction order was made (*R (Sandhu) v. Isleworth Crown Court*, 23rd May 2012).

STREET TRADING

Newspapers. The Divisional Court dismissed an appeal by way of case stated. The Defendant alleged that he was entitled to an exemption from street trading licensing requirements because his product was a newspaper. The Court held that it was a lanyard attached to papers slightly larger than a credit card giving certain information and that it was not a newspaper (*Davis v. Westminster City Council*, 1st May 2012).

Injunctions. The High Court granted a local authority injunctions in respect of ice-cream vendors because of persistent unlawful trading (*Lambeth LBC v. Sanli* [2012] EWHC 1623 (QB)).

Adjournment. The High Court upheld the decision of a Magistrates' Court to dismiss an information where the local authority had not attended Court with the relevant files in respect of a street trading prosecution (*R (Newham LBC) v. Stratford Magistrates' Court*, 31st May 2012).

Vehicles. The High Court dismissed an appeal by way of case stated holding that a person travelling in a car to a town or city with goods for sale was not acting as a pedlar under the Pedlars' Act 1871 and was therefore engaging in street trading.

NUISANCE

Costs. Following the dismissal of a complaint for statutory nuisance a District Judge awarded costs against the Claimant and the High Court held that this was wrong where the matter had been the subject of an information and not a complaint (*R (Desouza) v. Croydon Magistrates' Court*, 4th May 2012).

FRANCHISING

Covenants. The High Court granted injunctions against a director of a franchisee company holding that there was no serious issue to be tried as to whether he was a party to the agreement (*Dream Doors Limited v. Lodgeford Homes*, 10th May 2012).

LEASING

Estoppel. Despite the fact that an aircraft had not been delivered in an unairworthy condition the hirer was estopped from alleging that it was not in a condition required because it had signed a certificate of acceptance (*ACG Acquisition v. Olympic Airlines* [2012] EWHC 1070 (Comm)).

HEALTH & SAFETY

Manual Handling. In a civil case the Court of Appeal held that an employer was liable where there had been no suitable or sufficient assessment of the risks of carrying out a stock take and therefore there was a breach of the Manual Handling Operations Regulations 1992 (*Ghaith v. Indesit Co UK Ltd* [2012] EWCA Civ 642).

GUARANTEES

Signatures. The Court of Appeal considered the issue of electronic signatures and held that it was sufficient for a first name, initials or perhaps a nickname to suffice as a signature and that a guarantee can be set out in separate documents (*Golden Ocean Group Ltd v. Salgaocar* [2012] 3 All ER 842).

Conditions. The High Court rejected a submission that the taking of a debenture was a condition precedent of a guarantee (*National Westminster Bank Plc v. Alfano* [2012] EWHC 1020 (QB)).

GAMBLING

Judgment. The High Court declined to set aside a judgment obtained by a casino as the Defendant's defence that credit had been granted was not made out (*Genting Casinos v. Sisserain*, 25th May 2012).

UNDER AGE SALES

Meaning of "Sell". The Divisional Court dismissed an appeal by case stated holding that there had been a sale when a test purchase of tobacco was made (*WM Morrisons v. Reading BC* (2012) 176 JP 388).

DURABLE MEDIUM

Website. An Advocate General's opinion dealt with the issue of durable medium (*Content Services* – Case C-49/11).