



# TRADING LAW BULLETIN

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## CONSUMER CREDIT

**Limitations.** During twelve years prior to the bringing of a mortgage action the mortgagor did nothing; making no payments to the claimant bank and not acknowledging title. The Court of Appeal upheld the Judge's decision that the bank's legal charge was extinguished by virtue of the Limitation Act 1980 (*National Westminster Bank Plc v. Ashe*, 8th February 2008).

**Directive.** The Council's common position has been agreed in respect of the proposed Directive on consumer credit.

**Redemption.** A borrower alleged that the redemption provisions in respect of a loan were unfair under the Unfair Terms in Consumer Contracts Regulations 1999. The trial Judge ([2007] CTLC 220) held that the borrower was a consumer notwithstanding that part of the premises on which the loan was expended was commercial and that the redemption penalty was unfair. The creditor appealed on the first point and the appeal was dismissed by the Court of Appeal (*Evans v. Cherrytree Finance Limited*, 6th February 2008).

**2006 Act.** Commencement No. 4 Order was made on 20th March 2008 bringing a number of provisions into force on 6th April or 1st October 2008.

**Consumer Credit Appeals.** The Consumer Credit Appeals Tribunal Rules 2008 were made on 10th March 2008 and the first chairman of the Appeals Tribunal has been appointed.

**Licensing.** In January 2008 the Office of Fair Trading issued a general guidance for licensees and applicants on fitness and requirements. By General Notice No. 73 the OFT provided for new consumer credit licence fees with effect from 6th April 2008 having, by General Notice No. 72, given notice of certain descriptions of business relevant to licensing.

**Cancellation.** A credit card customer alleged that the agreements were unenforceable because of breaches of the Cancellation Notices Regulations 1983. An argument relating to the application of Regulation 5(4) was considered by a Lord Justice of Appeal when the customer sought permission to appeal. It was held that, even if Regulation 5(4) did apply, the bank had not voluntarily contracted into the statutory provisions and that Regulation 5(4) does not say that an agreement will be deemed to be cancellable under the Act (*Rankine v. MBNA Europe Bank Limited*, 26th October 2007).

**Payment Protection Insurance.** The FSA has imposed a fine of £1,000,000 on HFC Bank for the mis-selling of payment protection insurance.

**Credit Cards.** The OFT have published a report into credit card comparisons following a super complaint from Which?

## CONSUMER PROTECTION

**Regulations.** The Consumer Protection From Unfair Trading Regulations 2008 were laid before Parliament and will come into force on 26th May 2008. They repeal or revoke a considerable amount of consumer protection legislation and replace it by way of implementing Directive 2005/29/EC.

**Door-step Sales.** BERR are consulting on new Regulations which would replace the 1987 Regulations and implement measures to extend the cooling-off period.

**Trading Standards Action.** BERR have announced that £7.5 million will fund a new "scambuster" team within the Trading Standards Service. Such teams will have authority to take action across local authority borders and will work with the police.

**Approved Code Logos.** The OFT launched an approved code logo awareness campaign. Such logos represent codes of practice approved under the Enterprise Act 2002.



## ESTATE AGENTS

**2007 Act.** Commencement No.4 Order 2008 was made on 26th March 2008 and brings a number of provisions concerning prohibition and warning orders etc. into force on 1st October 2008 under the Consumers, Estate Agents and Redress Act 2007.

**Unfair Terms.** The OFT have issued High Court proceedings against Foxtons Limited under the 1999 Unfair Terms Regulations in respect of certain terms in their letting agreements with landlords.

## HEALTH AND SAFETY

**Sentence.** Fines of £260,000 were imposed following a fatal accident during the construction of a warehouse. The fines were upheld by the Court of Appeal (*R v. F J Chalcroft Construction Limited*, 12th March 2008).

**Work Equipment.** In a civil case the Court of Appeal held that the Provision and Use of Work Equipment Regulations 1998 did not impose strict liability (*Smith v. Northamptonshire County Council*, 11th March 2008).

**Work Equipment.** A train driver brought a personal injury claim under the Provision and Use of Work Equipment Regulations 1998. The Court of Appeal (Civil Division) rejected a submission that the Regulations impose a “no-fault liability” but held that the brake controller which had caused the Claimant’s injury should not have been put into service without suitable advice and her appeal was allowed (*Allison v. London Underground Limited*, 13th February 2008).

## ADVERTISING

**Business Protection.** The Business Protection From Misleading Marketing Regulations 2008 were laid before Parliament and will come into force on 26th May 2008. They prohibit advertisements, including specific types of comparative advertising, which mislead traders.

## DOGS

**Public Place.** In an appeal against conviction under the Dangerous Dogs Act 1991 the High Court held that a place which was of a private nature, such as a front garden, would only be a public place if members of the public had access to it otherwise than at the invitation of the occupier and allowed the appeal (*R v. Bogdal*, 16th January 2008).

**Procedure.** A Magistrates’ Court had dismissed proceedings under the Dogs Act 1871 because they had been instigated by the laying of an information and not a complaint. The High Court upheld an appeal by the prosecution. The Magistrates’ Court Act 1980 permitted informality. Essentially what had been lodged was in substance a complaint and the appeal was allowed (*R v. Anglesey Justices*, 5th February 2008).

## BANK CHARGES

**Compound Interest.** A bank had refunded money to the appellant in respect of bank charges but without admission of liability. The appellant sought compound interest on the sum deducted, from the date of deduction to date of payment at the same rate as the bank was entitled to under the express terms of the contract. On an appeal the High Court dismissed the claim (*Halliday v. HBOS Plc*, 8th June 2007).

## PACKAGE TRAVEL

**Guidance.** BERR have published guidance dealing with what constitutes a package holiday.

## GAMING

**Poker.** The Court of Appeal (Criminal Division) dismissed an appeal from a Crown Court conviction in which the jury concluded that the game of TH Poker was a game of chance (*R v. Kelly*, 8th February 2008).

## PROCEDURE

**Partnerships.** The Court of Appeal (Criminal Division) considered appeals in respect of convictions under the Sea Fishing Etc. Order 2000. The Court considered the situation of a partnership in criminal proceedings and held, in respect of the Order in question, that a partnership can be independently liable but that a partner would not be liable unless the offence had been committed with his consent, connivance or neglect (*R v. Stevenson*, Times 5th March 2008).

## EMPLOYMENT AGENCIES

**Fees.** BERR appealed against a decision dismissing informations of unlawfully charging fees to individuals seeking employment. The High Court dismissed the appeal holding that it was not a requirement that, before an employment agency could charge a fee in respect of a publication, the publication had to have been published. Whether a demand for payment was unlawful had to be judged at the time the demand was made and it could not become unlawful thereafter (*Department of Business, Enterprise and Regulatory Reform v. Adams*, 18th March 2008).