



# TRADING LAW BULLETIN

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## CONSUMER CREDIT

**Enforceability.** The High Court has considered the issue of multiple agreements in a situation where part of the advance was refinancing and part unrestricted-use. It was held that this did not produce a multiple agreement and the transaction was enforceable. The Court of Appeal has granted permission to appeal (*Heath v. Southern Pacific Mortgage Limited*, 29th January 2009).

**Limitations.** The issue of limitations in respect of extortionate credit bargain claims has been considered by the High Court. The submission that there was no limitation period was rejected and the Court held it was bound by the decision that a 12 year period applies subject to the recovery provisions where a 6 year period would apply (*Nolan v. Wright*, 26th February 2009).

**Licensing.** There will be an increase in the fees for consumer credit licences from 1st May 2009.

**Lending (Regulation) Bill.** The Bill dealing with matters such as unsolicited credit cards, calculation of rates and increasing credit limits will resume its second reading in May 2009.

**Licensing.** The OFT has imposed licence requirements on a debt collecting company.

**Second charge lending.** A draft guidance has been produced by the OFT.

**Copy Agreements.** A County Court has considered a Section 78 Defence in respect of an assigned credit card debt. The Court held that Section 78 did not apply because the Claimant was the assignee of a debt and not of the rights and duties under the consumer credit agreement. In any event a microfiche copy of the application for the credit card and what was said to be the terms and conditions were provided (*KingsHill (No.1) Limited v. Morrall*, Canterbury County Court, 1st August 2008).

**Licensing.** A licence was issued in error before minded to refuse notices could be issued. At the hearing an erratum note was handed to the licensees saying that the matter was going to be dealt with as a minded to revoke. The Consumer Credit Appeal Tribunal held that the note was incapable in law of having the effect of changing the notice so that the OFT had not complied with the Act (*Finance Select (UK) Limited v. OFT*, 4th December 2008).

**Unfair Relationships.** A County Court has held that there was no unfair relationship when there was a high rate of interest but no credit checks were made and the security was a second-hand car, the term was relatively short but the rate was competitive (*Nine Regions (T/A Logbook Loans) v. Sadeer*, Bromley County Court).

## FOOD

**Planning.** A chicken abattoir sought planning permission in order to comply with the Food Hygiene Regulations. The Inspector said that compliance with the Regulations did not amount to very special circumstances and this was upheld on appeal (*Summers Poultry v. Secretary of State*, 12th February 2009).

## PYRAMID SELLING

**Investigation.** The Office of Fair Trading has begun an investigation into pyramid selling using powers under the Consumer Protection from Unfair Trading Regulations 2008.

**Winding Up.** On an appeal against a dismissal of a winding up petition (the appeal itself was dismissed) the Secretary of State withdrew an allegation that the business had been an unlawful trading scheme (*Secretary of State v. Amway (UK) Limited*, 29th January 2009).

## UNFAIR TERMS

**Insurance.** An insurer said that the insured had submitted a fraudulent claim. The High Court held that this did not prevent recovery because it was not sent to establish an element of a claim under the policy. If it had the insured could not have relied on the Unfair Terms in Consumer Contracts Regulations 1999 (*Directline Insurance Plc v. Fox*, 10th March 2009).

## HOME IMPROVEMENT PLANS

**Guidelines.** Guidelines have been issued aimed primarily at TSOs and the OFT who enforce the duties in respect of home improvement plans.

## ENVIRONMENT

**Controlled Waste.** An appeal by the Environment Agency against an acquittal by the Magistrates' Court was dismissed when the Defendant had been contracted to collect materials from one garden centre and take them to another. It had been held that the material was not waste. At the time the materials were delivered they were to be used immediately as far as was practical (*Environment Agency v. Inglenorth Limited*, 17th March 2009).

**Noise.** The High Court allowed an appeal as to whether an appeal against a noise abatement notice to the Magistrates' Court was out of time. The local authority appealed to the Court of Appeal who upheld the appeal but then ascertained that they had no jurisdiction to hear it. The local authority applied to the High Court for the previous decision to be reopened but this was rejected. (*Butland v. Powys County Council*, 4th February 2009).

#### REGULATORY ENFORCEMENT

**Orders.** The Enforcement Action Order 2009 and Procedure for Reference to LBRO Order 2009 have been made and come into force on 6th April 2009.

#### HEALTH AND SAFETY

**Sentence.** A fine of £70,000 was reduced to £40,000 in respect of an asbestos removal company as the Judge had given insufficient weight to the mitigation (*R v. ICH Contracts Limited*, 5th March 2009).

**Work Equipment.** In a civil case the Court of Appeal have held that a piece of scrap metal used as a makeshift work tool did not amount to work equipment. The employer had no knowledge of the scrap and had not given permission to use it (*Couzens v. T McGee & Co*, 19th February 2009).

#### ENTERPRISE ACT

**Committal.** In order to show a breach of an order there was no need to prove systemic culpability but there had to be a course of conduct. The suspended custodial sentence was justified (*OFT v. Miller*, 3rd February 2009).

#### STREET TRADING

**Street.** The High Court held that the definition of "street", namely an area to which the public have access without payment, was clear and included operating a food franchise from a van in a car park located in a business village (*West Berkshire DC v. Paine*, 5th February 2009).

#### HARASSMENT

**Postal Communications.** The Court of Appeal held that it was strongly arguable that the Defendant's conduct in sending someone who was no longer a customer threatening letters and unjustified bills was sufficient to constitute harassment under the 1997 Act (*Ferguson v. British Gas Trading Limited*, 10th February 2009).

#### WASTE

**Escape.** The Court of Appeal (Criminal Division) overturned a conviction for failure to control or prevent the escape of waste. The jury acquitted on one count. On the other count there was nothing to suggest a failure to take reasonable measures to prevent the escape and an appeal against conviction was allowed (*R v. Trafalgar Leisure Limited*, 20th February 2009).

#### NURSING HOMES

**Cancellation of Registration.** The House of Lords held that there was no duty of care owed when an application was made without notice for the cancellation of registration. However, the procedures ought to be amended to incorporate safeguards and until then the procedure would continue to appear to be incompatible with convention rights (*Trent Strategic Health Authority v. Jain*, 21st January 2009).

#### GUIDELINES

**Hearing Aids.** An application for a judicial review of guidance issued by the Hearing Aid Council was refused. It was said that fitting a hearing aid may amount to dispensing but dispensing was defined by law and regulation (*R (Hidden Hearing Limited) v. Hearing Aid Council*, 22nd January 2009).

#### BANK CHARGES

**Appeal.** The Court of Appeal rejected an appeal against the decision that bank charges for unauthorised overdrafts were not core terms (*Abbey National Plc v. Office of Fair Trading*, 26th February 2009).

#### ENFORCEMENT

**Local Authorities.** Prosecutions were brought in respect of clocking. Following a successful appeal to the High Court the local authority abandoned some of the informations and amended others. An issue then arose as to whether the local authority had power to lay the original alleged informations outside its area. The High Court dismissed a further appeal saying that the local authority had very wide powers under the Local Government Act (*R (Donnachie) v. Cardiff Magistrates' Court*, 16th March 2009).

#### TRADE MARKS

**Honest and Reasonable belief.** The prosecution appealed against a decision to acquit the Defendant in respect of sport shoes bearing a logo. The Magistrates held that the statutory defence had been made out. The High Court allowed the appeal. The Defendant could hardly have done less to establish the genuineness of the sports shoes. Good character was relevant to whether the Defendant acted honestly but irrelevant to whether he acted reasonably (*Essex Trading Standards v. Singh*, 3rd March 2009).

**Control.** Goods were seized from a stall worked by the Defendant's husband. The matrimonial home was searched and counterfeit goods found in the loft and in a van parked outside. The Judge rejected a submission of no case to answer. The Court of Appeal (Criminal Division) held there was no evidence that the Defendant was in possession of the goods in the loft or in the van. The Defendant's knowledge or acquiescence was not enough to establish possession. Actual control was needed (*R v. Kousar*, 21st January 2009).