



# TRADING LAW BULLETIN

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## CONSUMER CREDIT

**Capitalization.** There was a capitalization of a mortgage agreement and the mortgagee later brought possession proceedings. The borrowers applied for permission to appeal on the basis that the capitalization was a modifying agreement because it was a form of cash loan and therefore the removal of the monetary limit did not apply. The High Court rejected the arguments. Further, securitization did not affect the bank's rights (*Santander UK Plc v. Harrison* [2013] EWHC 199 (QB)).

**Hire Purchase.** A hirer under a hire purchase agreement offered the vehicle to a company in settlement of some debts and issued an invoice. The company claimed protection under the Hire Purchase Act 1964. It was held that there was only a disposition within the Act where the vehicle was transferred in return for money (*VFS Financial Services v. J F Plant Tyres Limited* [2013] EWHC 346 (QB)).

**Credit Hire.** A credit hire company sought permission to appeal and adduce fresh evidence. The Court of Appeal ordered retrials after it showed that evidence produced as to the appropriate daily hire rate was unreliable (*Dickinson v. Tesco Plc* [2013] EWCA Civ 36).

**Credit Reports.** The Claimant sought damages from a bank for breach of contract, defamation and negligent misstatement. The statement referred to credit reports. The High Court dismissed the claim (*Gatt v. Barclays Bank* [2013] EWHC 2 (QB)).

**Mortgage Sale.** A mortgagor claimed against a mortgagee for having allegedly sold the property below its reasonable value. The Chancery Division held that there were shortcomings in the marketing of the property but there was no evidence that the price obtained was less than the best price reasonably achievable (*Meah v. GE Money* [2013] EWHC 20 (Ch)).

**High Cost Credit.** A House of Commons library note of 13th March 2013 deals with issues about high cost lending.

**Data Protection.** A customer obtained credit to acquire a television. Following a consent order the creditor said it would delete all data held on the Claimant but forwarded it to a credit rating agency. The Judge awarded nominal damages. The Court of Appeal held that the Claimant had been caused distress by non-compliance and awarded damages at £750 (*Halliday v. Creation Consumer Finance Limited* [2013] EWCA Civ 333).

**Licensing.** The Office of Fair Trading have published a guidance on the power to suspend credit licences which came into force on 19th February 2013.

**Pay Day Lending.** The Office of Fair Trading have issued a compliance review final report on pay day lending (OFT 1481).

**Marshalling.** The Chancery Division considered the doctrine of marshalling and the exception to the "common debtor" rule (*Highbury Pension v. Zirfin Investments Limited* [2013] EWHC 238 (Ch)).

**Credit Reference Agencies.** A credit reference agency incorrectly recorded that the Claimant was the subject of a bankruptcy order. The Court of Appeal held that the Judge was wrong to identify a duty of care in tort co-extensive with that which he had found to be imposed by statute and of which there had been no breach (*Smeaton v. Equifax Plc* [2013] EWCA Civ 108).

**Mortgages.** A borrower defrauded a mortgagee. He handled the transaction himself through a solicitor's practice of which he was the sole proprietor. He also had another practice in which he had a partner. It was held that the other partner was not liable under the Partnership Act 1890 (*UCB Home Loans v. Soni* [2013] EWCA Civ 62).

**Secured Lending.** In one of a number of cases in Greater London a judgment was set aside. Loans were generally made to people who had recently arrived in the United Kingdom and at high rates of interest secured on the borrowers' homes. Two companies involved had had adverse licensing decisions. The claim that one company acted as agent for a licensed company had an appearance of a sham. The appeal was listed to be heard with the other cases in the Mercantile Court (*Barons Finance Limited v. Makanju* [2013] EWHC 153 (QB)).

**Mortgages.** A Judge held that solicitors acting in a mortgage had only been in breach of trust to a limited extent. The solicitors paid insufficient to discharge the existing mortgage. The Court of Appeal held that the solicitor did not warrant that the transaction would be loss free but the Judge's calculation of the compensation payable in equity was affirmed (*AIB Group v. Redler* [2013] EWCA Civ 45).

## PAYMENT SERVICES

**Acting as a Consumer?** In a case involving electronic payment services to the Claimant an issue arose as to whether he was a consumer. The High Court held that the expression should be given an autonomous, community-wide interpretation and held the Claimant was not a consumer (*Overy v. PayPal (Europe) Limited* [2012] EWHC 265 (QB)).

**Payment Surcharges.** The Consumer Rights (Payment Surcharges) Regulations 2012 came into force on 6th April 2013.

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**Prosecutions.** The High Court refused to allow a voluntary bill of indictment to be preferred in respect of charges of conspiracy to defraud because conspiracy charges could have been brought under 1988 Act (*R v. Dady* [2013] EWHC 475 (QB)).

## **PARKING**

**VAT.** In a case involving questions of VAT in respect of operating car parks the Court of Appeal considered questions of the contractual relationship and trespass (*Vehicle Control Services v. HMRC* [2013] EWCA Civ 186).

## **ANIMALS**

**Prosecution.** The Administrative Court upheld a Crown Court's decision on appeal and said that there was a need to establish whether the Defendant knew or ought reasonably to have known that his act or a failure would cause suffering to an animal and that the suffering was unnecessary (*R (On the Application of Grey) v. Aylesbury Crown Court* [2013] EWHC 500 (Admin)).

## **ENVIRONMENTAL PROTECTION**

**Sewerage.** The Administrative Court held that a conviction for depositing sewerage was based on a strict liability provision (*Thames Water v. Bromley Magistrates' Court* [2013] EWHC 472 (Admin)).

## **FINANCIAL SERVICES**

**Extended Warranty.** The Supreme Court dismissed appeals from winding up orders. It was held that Member States could regulate any insurance business even if not listed in the Directive so that extended warranty contracts to repair as opposed to pay money was a regulated activity (*In the Matter of Digital Satellite* [2013] UKSC 7).

**Land Banking.** The Chancery Division held that the Land Banking Schemes in question were collective investment schemes within the 2000 Act and the Scheme was being operated by unauthorised persons (*Financial Services Authority v. Asset LI Inc* [2013] EWHC 178 (Ch)).

**Damages.** The Supreme Court held that the Financial Service Authority were acting pursuant to a public duty and there was no general rule that it should give a cross-undertaking to damages in respect of injunctive proceedings (*FSA v. Sinaloa Gold Plc* [2013] UKSC 11).

**Conduct of Business Rules.** The Court of Appeal held that a Judge had been correct in respect of the tests for the suitability of investments (*Zaki v. Credit Suisse* [2013] EWCA Civ 14).

## **LICENSING**

**Reasons.** The Administrative Court remitted a licensing decision relating to a night club because restrictions had been imposed without giving reasons (*Little France v. Ealing LB*, 15th February 2013).

## **SALES OF GOODS**

**Penalties.** The High Court held that the doctrine of penalties only applied to breach and not to an obligation to pay instalments of a price (*Cordovan Petroleum Holdings Limited v. Global Process* [2013] EWHC 214 (Comm)).

## **HEALTH**

**Compensation.** A petting farm owner sought contribution from a local authority and health protection agency in respect of claims following an infection at the farm. The High Court held that there is no assumption of a private law duty (*Furnell v. Flaherty* [2013] EWHC 337 (QB)).

## **NUISANCE**

**Noise.** A private individual laid an information against a local authority. The District Judge dismissed the informations and ordered the payment of costs. This was overturned by the Divisional Court (*Bentley-Thomas v. Winkfield Parish Council* [2013] EWHC 356 (Admin)).

**Abatement Notice.** A company was convicted of breaches of an abatement notice by the lighting of fires. The High Court held that nuisance was the undue interference with the enjoyment of land and it had to be a real interference with the comfort or convenience of living. The appeal was dismissed (*Dennis Rye Limited v. Balsover District Council*, 22nd March 2013).

## **BUSINESS PROTECTION REGULATIONS**

**Warrants.** An application was made to quash a warrant under Regulation 24 of the 2008 Regulations. The High Court dismissed the application holding that the Regulation applied to dwellings, there had been no material non-disclosure and the decision to issue the warrant could be based on material outside the contents of the information (*R (on the application of Ahmed) v. York Magistrates' Court* (2013) 177 JP 233).

## **UNFAIR TERMS**

**Exclusion Clauses.** A conference centre operator appointed a company to provide its catering services. The Judge held that there was an effective exclusion clause. The Court of Appeal held that that construction would result in the contract being of no effective content since there would be no sanction for non-performance (*Kudos Catering v. Manchester Central Convention* [2013] EWCA Civ 38).