



TRADING LAW BULLETIN

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CONSUMER CREDIT

Rate of interest. The High Court dismissed a claim that agreements were irredeemably unenforceable because of a mis-match between the APR and stated rates of interest. The APR was not the “driver” (*Sternlight v. Barclays Bank plc* [2010] EWHC 1865(QB)).

Credit limit. A cardholder alleged that the agreement had failed to state the credit limit and was therefore irredeemably unenforceable. The High Court rejected the argument saying that a term that the limit will be determined by the bank from time to time complied with both Schedules 1 and 6 (*Brophy v HFC Bank* [2010] EWHC 819(QB)).

Credit limit. The Mercantile Court rejected an argument that the expressions “Approved Limit” and “Individual Limit” created an unacceptable degree of confusion. It also ruled that a charge for making payment other than in a certain way was not unfair (*Slater v. Egg Banking plc*, 9th August 2010).

PPI. The Mercantile Court found in favour of a lender on the basis of accepting the evidence of the seller of PPI as to what she would do as her usual practice. The borrower gave inconsistent or implausible evidence. There was an obiter observation about the total charge for credit and multiple agreements (*Blackhorse Limited v. Speak* [2010] EWHC 1866 (QB)).

PPI. The Mercantile Court held that obligations imposed by regulators do not result in fiduciary obligations and, in particular, the relationship between bank and customer does not ordinarily give rise to such a relationship. Parts of the unfair relationship allegations were struck out on the basis of the transitional provisions in relation to them (*Soulsby v. Firstplus Financial Group plc*, 10th March 2010).

PPI. A County Court held that the “apparently poor deal” in relation to the policy did not create an unfair relationship (*Morris v. Blemain Finance Limited*, 14th June 2010).

PPI. The FSA have published feedback on further consultation and a final handbook text on redress of PPI complaints (10/12). The BBA are seeking judicial review on its retrospective effect.

Compound interest. The High Court upheld a decision regarding compound interest on a credit card (*Armstrong v. American Express*, 11th November 2009).

Pre-action disclosure. The Commercial Court has ruled that an order requiring pre-action disclosure in order to ascertain whether the credit agreement was unenforceable was wholly speculative and should be set aside (*Kneale v. Barclays Bank plc* [2010] EWHC 1900(Comm)).

Default notices. In a County Court case it was held that the legibility of an agreement was sufficient and that not giving the full 14 days’ notice does not provide a prospect of a successful defence (*American Express v. Brandon*, 25th May 2010).

Regulation. The OFT have published a “regulatory approach” in respect of its Consumer Credit Act responsibilities (OFT 1262).

Connected lender liability. The First Division, Inner House, Court of Session have held that a “like claim” under Section 75 does not extend to the rescission of a contract so that rescission of the contract of sale did not rescind the credit agreement. Consideration was also given to the duty of care owed in respect of reporting to credit reference agencies (*Durkin v. DSG Retail Ltd and HFC Bank plc* [2010] CSIH 49).

Floating charge. The High Court held that a provision created a floating charge but this could not be regarded as a security instrument or a security financial collateral agreement under the Financial Collateral Arrangements (No.2) Regulations 2003 (*Gray v. G-T-P Group Limited*, 7th May 2010).

Bills of Sale. The High Court considered whether a loan agreement was a bill of sale. The case involved the ownership of solicitor’s files. It was held that an assignment of after-acquired property can be a bill of sale which may be void for non-compliance with the 1882 Act (*Chapman v. Wilson* [2010] EWHC 1746 (Ch)).

Debt management. The OFT have published a review of the debt management sector (28th September 2010).

Mortgage repossession. The Mortgage Repossessions (Protection of Tenants Etc) Act 2010 was passed on 8th April 2010.

Land registration. The Chancery Division considered a negligent failure to protect or perfect a security. A bank was entitled to be subrogated to and registered as a proprietor with priority over an equitable registered charge (*Anfield v. Bank of Scotland* [2010] EWHC 2374).

Credit reference. An agreement between BIS and industry enables consumers to have easier access to their credit reports.

Guarantees. The Court of Appeal allowed an appeal against an order for summary judgment in respect of a guarantee under a share purchase agreement which involved deferred consideration. (*Mentmore International v. Abbey Healthcare* [2010] EWCA Civ 761).

Regulations. The Consumer Credit (Amendment) Regulations 2010 came into force on 26th August 2010 and included a new exemption for investment firms.

Leasing. The High Court held that a company had deliberately misrepresented the costs under a supply and service agreement for photocopying machines (*Osteopathic Education v. Purfleet Office Systems Limited*, 26th July 2010).

Prosecutions. The Supreme Court dismissed an appeal in respect of the FSA's powers to prosecute and held that they were not restricted to those under the FSMA 2000 (*R v. Rowlinson* [2010] UKSC 39).

Regulation. A command paper has been published (7874) entitled "A New Approach to Financial Regulation".

Legal charges. The Chancery Division held that there was an estoppel against someone whose son had forged her signature because of her conduct in concealing his forgeries once they became known (*English v. English*, 3rd August 2010).

Advertising. The Consumer Credit (Advertisements) Regulations 2010 were made on 3rd August 2010.

Mortgages. The FSA launched a consultation proposing a ban on self-certification mortgages.

Directive. BIS published a guidance on the CCD Regulations in August 2010.

CONSUMER PROTECTION

Redress. The FSA have published a guidance note on consumer redress schemes (No.10 (2010)).

REGULATION

LBRO. BIS have announced that there will be a review of the Local Better Regulation Office.

Criminal liability. The Law Commission have published a consultation paper (No.195) on Criminal Liability in Regulatory Contexts.

DISTANCE CONTRACTS

Delivery costs. The ECJ have held that the Directive precluded national legislation allowing a supplier under a distance contract to charge the costs of delivery where the consumer exercised a right of withdrawal (*Handelsgesellschaft v. Verbraucherzentral* [2010] All ER (EC) 776).

ADVERTISING

Websites. The Advertising Standards Authority will include websites etc. under its remit from March 2011.

Health insurance. Online traders have signed undertakings not to engage in deceptive selling practices concerning European health insurance cards.

FURNITURE

Regulations. The Furniture and Furnishings (Fire) (Safety) Regulations 2010 came into force on 1st October 2010.

REGISTRATION

Driving instructors. Despite a finding that a Tribunal was wrong in respect of the relevance of the Appellant's offences, the Tribunal would no doubt have arrived at the same conclusion on registration and the Court of Appeal dismissed an appeal (*Harris v. Registrar of Approved Driving Instructors* [2010] EWCA Civ 808).

SALE OF GOODS

Conditional Sale. The High Court held that there was no evidence of a novation in respect of the purchase of a helicopter with the aid of a loan (*McCandless Aircraft v. Payne* [2010] EWHC 1835 (QB)).

CONSUMER RIGHTS

Directive. BIS have launched a consultation in response to uncertainty as to how legislation on unfair terms apply to charges.

OFT consultation. The OFT have published a long-term strategy on online consumer protection (83/10).

PLANNING

Statutory Defence The High Court remitted a case to the Magistrates on appeal by a local authority from the dismissal of an information concerning the alteration of a listed building. The question in issue was the statutory defence and the absence of proper reasoning on the issue (*Carmarthenshire CC v. Humphreys*, 6th July 2010).

DANGEROUS DOGS

Destruction. An immediate order for destruction was quashed and replaced by a contingent destruction order (*R v. Davies* [2010] EWCA Crim 1923).

FIREWORKS

Prosecution. The Court of Appeal rejected an appeal against conviction following the death of a cameraman working for the fire service when there was an explosion at a fireworks company (*R v. Winter* [2010] EWCA Crim 1474).