



# TRADING LAW BULLETIN

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## CONSUMER CREDIT

**Unenforceability.** The High Court considered the relationship between unenforceability and unfair relationships where borrowers had repaid under unenforceable agreements (*In the Matter of London Scottish Finance Limited* [2013] EWHC 4047 (Ch)).

**Payment Protection Insurance.** In two appeals by borrowers in respect of the alleged misselling of PPI the Court of Appeal dismissed one appeal and ordered a re-hearing on the other. Issues arose as to unfair relationships and the previous case of *Harrison v. Black Horse (Plevin v. Paragon Personal Finance Limited* [2013] EWCA Civ 1658).

**Green Deal.** The Department of Energy and Climate Change has issued a draft Order (The Consumer Credit Act 1974 (Green Deal) (Amendment) Order 2014).

**Cancellation.** In a credit hire case it was held that the failure to include a notice of cancellation rendered the contract unenforceable (*Salat v. Barutis* [2013] EWCA Civ 1499).

**Guarantees.** The High Court granted summary judgment holding that guarantees had been executed with the authority of the Defendant in respect of loan agreements to finance international trade (*Levin v. Tannenbaun* [2013] EWHC 4457 (Ch)).

**Mortgages.** The Supreme Court examined whether the remedy of marshalling was available where a second mortgage in respect of the common property did not secure a debt (*Szepietowski v. National Crime Agency* [2013] UKSC 65).

**Mortgages.** The Court of Appeal allowed an appeal in respect of a negligent valuer claim concerning the recovery of hedging costs to hedge the risks under loans (*Mortgage Agency Services v. Symmons* [2013] EWCA Civ 1590).

**Mortgages.** The Privy Council considered the question of relief from forfeiture in respect of an equitable mortgage (*Cukurova Finance International v. Alfa Telecom* [2013] 4 All ER 936).

**Mortgage Directive.** The European Parliament adopted the Mortgage Directive on 10th December 2013.

**Costs.** Following PPI litigation the Senior Court's Costs Office considered the issue of conditional fee uplifts and whether the appropriate notices had been given (*Harrison v. Black Horse Limited* [2013] EWHC B28 (Costs)).

**Variations.** The Court of Appeal in Northern Ireland dismissed an appeal having regard to the correct interpretation of the 1974 Act with regard to a number of loans (*Swift Advances v. McKay*, 27th November 2013).

**Information Regulations.** The Office of Fair Trading circularised a number of banks in respect of their compliance with Sections 77 to 79 of the Act.

## FOOD

**Desinewed Meat.** In a further hearing concerning the meaning of mechanically separated meat the High Court continued interim relief to permit a meat processing company to continue to sell the product in question (*R (On the Application of Newby Foods Limited) v. Food Standards Agency* [2013] EWHC 3184 (Admin)).

**Hygiene.** The Divisional Court dismissed an application for judicial review of a Magistrates' Court's refusal to state a case following a food hygiene conviction. It was held that a limited company had been registered as the food business operator but that was not determinative of who was responsible as being in control of the premises (*R (On the Application of Rasool) v. Tower Bridge Magistrates' Court*, 7th November 2013).

## FINANCIAL SERVICES

**Sentence.** The Court of Appeal Criminal Division upheld a nine month sentence on the Defendant who had offered financial advice without being authorised (*R v. Cooper*, 19th December 2013).

**Pensions.** The High Court held there was jurisdiction to appoint trustees to a scheme and make a freezing order notwithstanding the Regulator's wish to stay proceedings (*In the Matter of Bovey Cranbrook RBS* [2013] EWCA 4346 (CL)).

**LIBOR.** The Court of Appeal allowed an appeal holding that in cases where it was sought to recover under loan or swap agreements by reference to LIBOR borrowers could allege that there was an implied misrepresentation as to the fact that LIBOR was not being manipulated (*Deutsche Bank AG v. Unitech Global Limited* [2013] EWCA Civ 1372).

## DOGS

**Liability.** The Court Appeal Criminal Division held that there was no absolute liability in respect of a dog being dangerously out of control under the 1991 Act (*R v. Robinson-Pierre* [2013] EWCA Crim 2396).

**Destruction.** The High Court upheld a destruction order. There had been evidence before the Magistrates' Court as to the danger from the dog but there was conflicting evidence and the District Judge was entitled to make the order (*Brough v. St Helens Metropolitan Borough Council*, 29th November 2013).

## LICENSING

**Appeal.** The High Court held that where there is an appeal against a refusal to vary a premises licence this was to be held de novo looking at the law and guidance as at the date of appeal (*Gurgur v. LB Enfield* [2013] EWHC 3483 (Admin)).

## ADVERTISING

**Freedom of Expression.** The Court of Appeal upheld a decision of the High Court that an advertisement concerning Christianity was directed towards a political end (*R (On the Application of London Christian Radio) v. Radio Advertising Clearance Centre* [2013] EWCA Civ 1495).

**Advertising Standards Authority.** On 21st November 2013 the ASA announced an agreement with Trading Standards that will act as their legal backdrop following the abolition of the Office of Fair Trading.

**Jurisdiction.** A claim was struck out because the company's websites and overall activity involved doing business with consumers in Scotland (*Oak Leaf Conservatories Ltd v. Weir* [2013] EWHC 3197 (TC)).

**Authority to Prosecute.** The High Court declined to quash a decision by a local authority to prosecute a company for unauthorised advertising. The Borough Solicitor had granted a general authority to prosecute to another Solicitor (*R (On the Application of UK Real Estate Limited) v. Camden LBC* [2013] EWHC 3505 (Admin)).

## CONSUMER PROTECTION

**Information Regulations.** On 11th December 2013 the Consumer Contracts (Information Cancellation and Additional Charges) Regulations 2013 were made.

## HOUSING

**Multiple Occupation.** The High Court allowed an appeal from a decision that a house was in multiple occupation. It was held that the Court should have concluded on the interpretation of the tenancy agreements that it was not an HMO (*Shah v. Croydon LBC* [2013] EWHC 3657 (Admin)).

**Service.** The Upper Tribunal upheld an appeal from a Property Tribunal's decision to allow an extension of time in respect of an appeal against an improvement notice (*Nottingham City Council v. Tyas* [2013] UKUT 492 (LC)).

**Notices.** An appeal against an acquittal was allowed by the High Court in respect of breaches of improvement notices. It was held that the Magistrates' Court could not have rationally concluded that there was a reasonable excuse (*Haringey LBC v. Goremsandhu* [2013] EWHC 3834 (Admin)).

## BUSINESS PROTECTION

**Regulations.** On 19th October 2013 the Business Protection from Misleading Marketing (Amendment) Regulations 2013 were made.

## FIRE

**Indictment.** The Court of Appeal Criminal Division dismissed an appeal holding that errors in an indictment for offences under the Regulatory Reform (Fire Safety) Order 2005 were "mislabelling" errors and the indictment was not a nullity (*R v. Wilson* [2013] EWCA Crim 1780).

## PLANNING

**Stop Notices.** The Appellant appealed by Case Stated against convictions for contravening stop notices. The High Court held that it did not have jurisdiction to deal with the issue of multiple charges but nevertheless gave its views on second and subsequent offences (*Lewis v. Three Rivers District Council* [2013] EWHC 3250 (Admin)).

## SALE OF GOODS

**Retention of Title.** The case involved two diesel generating sets. The High Court held that there was no entitlement to delivery up after the company in question had gone into liquidation because the Defendant who had agreed to sell the items was entitled to rely upon a retention of title clause (*Fadallah v. Pollak* [2013] EWHC 3159 (QB)).

**Action for Price.** A claim for the price of goods fell under Section 49 of the Sale of Goods Act 1979 and there was no scope for a claim independently of that section (*Caterpillar v. John Holt* [2013] EWCA Civ. 1232).

## WASTE

**Offences.** The Court of Appeal considered the offences of failure to take necessary procedural steps and the requirement for mens rea (*R v. Ezeemo* [2013] 4 All ER 1016).

## UNFAIR COMMERCIAL PRACTICES

**Amendment.** The Department has issued draft Regulations being the Consumer Protection from Unfair Trading (Amendment) Regulations 2013.

## TAXIS

**Licensing.** The High Court held that the Magistrates' Court were wrong to hold that a recent conviction for possession of cannabis resulted in the Applicant not being fit and proper. Account should be taken of the circumstances of the offence (*Pinnington v. Transport for London* [2013] EWHC 3656 (Admin)).

**Licensing.** The Divisional Court held that it was not irrational for a District Judge to hold that a local authority which required taxis to be licensed had breached notification requirements. However, there should have been consideration of whether there had been substantial compliance with the Act (*Aylesbury Vale District Council v. Call a Cab Limited* [2013] EWHC 3765 (Admin)).

## HEALTH AND SAFETY

**Sentence.** The Court of Appeal Criminal Division dismissed two appeals concerning sentence. One was in respect of a collision at an unmanned level crossing and one in respect of radioactive waste (*R v. Sellafield Limited* [2014] EWCA Crim 49).