TRADING LAW BULLETIN

ISSUE NO. 97
JUNE 2018

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Derivatives and Jurisdiction. The High Court considered a standard contractual clause which conferred exclusive jurisdiction on the English Courts. An English derivatives broker sued former clients who had issued proceedings against it in Germany. The English claim was for breach of contract by bringing the German proceedings. The Defendant argued that the action became time-barred six years after the German proceedings begun. It was held that the mere existence of proceedings elsewhere was, on the face of it, a continuing breach (*AMT Futures Limited v. Boural* [2018] 3 WLR 358).

Claims Against Bank. A firm of solicitors acted for Claimants in proceedings against a bank which were abandoned for lack of funds. The Claimants then brought a claim against the firm alleging that it should have advised them as to how to fund their claims by way of CFA and an ATE insurance. The firm claimed an indemnity against the Barrister who had been instructed. The Chancery Division held that it was unclear what was being alleged but it disclosed no arguable case (*Andrews v. Messer Beg Limited*, 12th April 2018).

Disability. The Court of Appeal dismissed an appeal by a disabled mortgagor against a possession order in the County Court. Reliance was placed upon the equality legislation. The main contention was that she should have been allowed to transfer from a repayment mortgage to an interest only mortgage. Consideration was given to what was the "service" and the majority held that it was limited to the secured repayment loan and cannot be characterised as comprising mortgage lending generally. The appeal was dismissed although there was considerable criticism of the mortgagee in the context of costs' responsibilities (*Southern Pacific Mortgage Limited v. Green* [2018] EWCA Civ 854).

GMRA. The Court of Appeal considered the terms of the Global Master Re-Purchase Agreement 2000. The question was the meaning of "fair market value". It was held that it must be by reference to a price agreed between an unimpaired/willing buyer and an unimpaired/willing seller so that distress in the market is to be left out of account (*LBI EHF v. Raiffeisen Bank International Limited* [2018] EWCA Civ 719).

Valuations. The former directors and shareholders of a company operating nursing homes sued a lending bank and a valuer. The Claimants had signed guarantees which they sought to rescind. The High Court held that the negligence claim against the bank failed because it was an ordinary commercial transaction which did not impose a duty of care, the misrepresentation claim failed because it would be unreasonable to hold that simply passing on to an intended borrower the result of the valuation made this a representation about its accuracy, the fiduciary duty claim failed because the relationship was not a fiduciary one, the claim that the guarantee had been discharged by variation failed and in any event there had been consent and the claim against the valuer failed because there was no real prospect of establishing that the valuer knew that the Claimants were likely to rely on the reports (*Rehman v. Santander UK Plc* [2018] EWHC 748 (QB)).

Financial Mis-selling. The High Court considered a claim brought by British ex-patriots living in Spain in connection with loan agreements the purpose of which was to advance funds for investment purposes. The Claimants alleged that a bank acted as their advisor. One issue was the meaning and effect of "basis clauses". The Court said that the provisions are given that description because they purport to delineate the scope or basis of the parties' primary relationship, for example, whether it is advisory or not. The Court considered whether basis clauses are exclusionary clauses for the purposes of the unfair terms legislation and whether the unfair relationship regime applied. The claims were dismissed (*Carney v. N M Rothchild & Sons Ltd* [2018] EWHC 958 (Comm)).

Interest Rate Swaps. The High Court gave judgment for a bank in respect of a claim under the FSMA for alleged breaches of COBS. The products were two ten year interest rate swaps for approximately £1.3 million. The Court held that the sale was non-advisory, the bank had complied with COBS, the presentation gave sufficient explanation of the breakage cost and identified the value of a cap and there was no necessity to disclose the existence of a credit equivalent exposure (*Parmar v. Barclays Bank Plc* [2018] EWHC 1027 (Ch)).

Hedge Accounting. The Commercial Court held that an accountancy firm provided negligent advice to a building society in respect of the availability of hedge accounting but it had not assumed responsibility for the losses resulting from breaking long-term swaps. Relatively modest sums were awarded in respect of termination or penalty costs but there was contributory negligence because the Claimant had been negligent in buying 50 year swaps (*Manchester Building Society v. Grant Thornton UK LLP* [2018] EWHC 963 (Comm)).

Mortgages. The Claimant applied for declarations regarding the beneficial interest of the former matrimonial home. The Court said that the purpose of an arrangement was to obtain funds as mortgagor which would not have been available had the true state of affairs been disclosed. However, this was not a case where the principles of illegality should bar remedies or relief and the apportionment of beneficial interests (*Kliers v. Schmerier*, 30th April 2018).

Investment Schemes. The Court refused to order defendants to provide specific information as this was not reasonably necessary and proportionate as draft Particulars of Claim had been

produced alleging fraudulent statements to induce investment (*Barness v. Formation Group Plc* [2018] EWHC 1228 (Ch)).

Negligent Advice. The Second Division Inner-House, Court of Sessions considered a case where the pursuer alleged reliance on negligent advice by a banking manager and sought damages running into several millions of pounds. A claim was also made under FSMA. The action was dismissed because of persistent failures which indicated a casual approach to the rules and orders of the Court. Dismissal was, said the Second Division, an unreasonable and disproportionate response (*Shanley v. Clydesdale Bank Plc* [2018] CSIH 32).

Investments. The High Court considered a claim in respect of two financial products issued by the Defendant bank. The Claimant alleged that they were surrendered by the bank and encashed earlier in breach of the contractual terms. The Court ordered security for costs (*Lord Limited v. HSBC Bank Plc* [2018] EWHC 680 (Comm)).

Property Development. The Claimants were approached by a school friend of one of them and he persuaded them to make short term loans in a property development scheme that his business partner was intending to carry out. It was said that the investment money could be raised by way of a re-mortgage arranged by the business partner. The Claimant alleged that the business partner was engaged or otherwise authorized by the Defendant company. The Defendant IFA was an authorized person. The business partner in question was a registered individual. Unbeknown to the Claimants the remortgage applications were based on false information and were dishonest and fraudulent. The individual was made bankrupt and the Claimants' mortgages could not be discharged. The Court of Appeal held that the Judge below had been right to enter summary judgment against the Claimants on the issue of vicarious liability (*Frederick v. Positive Solutions (Financial Services) Limited* [2018] EWCA Civ 431).

Mortgages. The Court of Appeal dismissed an appeal from a decision granting a bank summary judgment in respect of a cross-claim in an action brought for alleged negligence and breach of statutory duty. The Court said that such claims could not be set-off if they were time-barred. If a party wished to contract out of the common law position it had to be done by clear words (*Woodeson v. Credit Suisse (UK) Limited* [2018] EWCA Civ 1103).

Supervisory Notices. In a case dealing with Section 393 of FSMA the position about warning and decision notices was contrasted with supervisory notices. The Upper Tribunal said that there was no provision within the Act for a reference to be made by a third party on the basis that he had been identified in a supervisory notice (*UK Innovative TI Limited v. Financial Conduct Authority* [2018] UKUT 136 (TCC)).

Credit Hire. Despite an assurance by a credit hire company that a driver would never be personally responsible for hire charges she had a contingent liability and did not have free car hire so that the other driver's insurer was liable. The liability of the Claimant to pay charges was contingent on their recovery from the Defendant (*Irving v. Morgan Sindall PLC* [2018] EWHC 1147 (QB)).

Mortgages. A High Court case considered a mortgagee's duty to accept a proper tender and discharge a mortgage (*St Vincent European General Partner Ltd v. Bruce Robinson* [2018] EWHC 1230 (Comm)).

Passing Off. Two mutual businesses used the word "mutual" and the Claimant brought passing off proceedings. A Mutual insurance company alleged that the Defendant should not use the word "mutual" in its trading name. It provided financial products and customers could become members. The IPEC held that the regulatory structure did not prohibit a financial organization styling itself as mutual even if it was not wholly or partly owned by customers. Judgment was given for the Defendants (*The Military Mutual Limited v. Police Mutual Assurance Society* [2018] EWHC 1575 (IPEC)).

Unfair Terms. A student at a Belgian Educational Establishment owed money in respect of registration fees connected with a study trip and entered into an interest-free plan for repayment. The Belgian Court referred a question to the ECJ as to whether the Court could of its own motion question whether the contract falls within the Unfair Terms Directive notwithstanding that the Educational Establishment was financed mainly by State funds. The Court said that in principle the legislation should be given a broad meaning and that in reality it was not directly concerned with the task of the establishment but the service provided and, in this case, it was a contract for credit. There was in principle an inequality between the Educational Establishment and the student (*Karel v. de Grote-Hogeschool v. Kuijpers*, Case C-147/16).

Swiss Franc Denominated Loan. An Advocate General gave an opinion concerning a contract whereby, although the monthly repayments were to be paid in Hungarian Forints, the instalments were calculated on the current exchange rate with the Swiss Franc. Hungary had adopted laws by which foreign currency loan contract were subject to new rules. The opinion proposed that in respect of a term which had become part of a foreign currency loan contract where the term was not formulated in the contract in a plain and intelligible manner, the Court could examine whether it considered this constituted an unfair term (*OTP Bank Nyrt v. Ilyes*, Case C-51/17).

LIBOR Rigging. The Upper Tribunal found that the FCA had grounds to ban a junior trader in respect of LIBOR fixing but criticized the authority for not pursuing more senior management (*Hussein v. FCA* [2018] UKUT 0186 (TCC)).

Leveraged Investments. The Privy Council considered leveraged investments in hedge funds. The case involved the interpretation of a share purchase agreement and it was held that the agreement authorized first layer leverage which was an authorized administrative step rather than an investment (*Sadik v. Investcorp Bank* [2018] UKPC 15).

Savings Accounts. An opinion of an Advocate General proposed that the Payment Services Directive should be interpreted as meaning that an online savings account with which a customer (without notice and without any particular involvement of the bank) may, by way of telebanking, make deposits into and withdrawals from a reference account held in his name was not included within the term "payment account" within Article 4(14) (*Bundeskammer v. ING-DiBa* Case C – 191/17).

PPI. The FCA have issued a consultation paper (CP18/18) on guidance on regular premium PPI complaints and recurring non-disclosure of commission.

Consumer Credit Directive Evaluation. The European Commission have published an evaluation of the Consumer Credit Directive to consider whether the rules are fit for purpose.

Information Sheets. The FCA have issued revised information sheets with effect from 27th July 2018.

Affordability. The Treasury have stated that following an FCA consultation a final policy statement on rules and guidance on creditworthiness assessments in respect of rent-to-own lending will be published later in 2018.

VAT. An ECJ decision has considered whether hire-purchase contracts should be treated as taxable supplies of vehicles and separate exempt supplies of credit instead of a single taxable complex supply (*Revenue & Customs v. Volkswagen Financial Services (UK)* Case C – 153/17).

Creditworthiness. The Creditworthiness Assessment Bill is progressing through the House of Lords. It would amend FSMA to require the FCA when making rules to take into account rental payment history and council tax payment history.

Variation Terms. In May 2018 the FCA issued a Guidance Consultation (GC18/2) on the fairness of variation terms in financial services consumer contracts under the Consumer Rights Act 2015.

Securitization. A Basel Committee on Banking Supervision has published additional guidance on the requirements for applying preferential regulatory capital treatment for banks in respect of investments in simple, transparent and comparatively short-term securitization.

Senior Managers Regime. The extended regime will come fully into force on 10th December 2018.

Loan Sharking. On 25th April 2018 the Treasury announced that there would be more funding to tackle unlawful lending by way of funding for the illegal money-lending team.

Loan Fee Fraud. The FCA have issued a warning about the increased threat of loan scams estimating that borrowers have lost over £3.5 million a year.

Financial Guidance. The Financial Guidance and Claims Act 2018 has received Royal assent. It establishes a new financial guidance body and makes provision about the regulation of claims management services including a cap on fees charged by CMCs.

FOOD

Regulations. The Environment, Food and Rural Affairs (Miscellaneous Amendments) (England) Regulations 2018 will come into force on 5th July 2018.

Blockchain. The FSA has completed a pilot of blockchain technology to track the distribution of meat in a cattle slaughterhouse.

Risk Assessment. On 11th April 2018 the European Commission published a proposal on amendments to legislation regarding the transparency and sustainability of the EU risk assessment in the food chain.

ANIMALS

Appeals by Case Stated. The High Court dismissed an appeal by way of case stated from a disqualification order imposed by the Crown Court. The decision was measured and fair and not harsh and oppressive (*Barker v. RSPCA* [2018] EWHC 880 (Admin)).

ESTATE AGENTS

Letting Agents. A Bill has been introduced to make provision prohibiting landlords and letting agents from requiring certain payments to be made and to make provision about the payment of holding deposits and the enforcement and lead authority provisions.

FIREARMS

Appeals. The Divisional Court held that an individual appealing against a decision revoking his firearms and shotgun certificates had not been given a fair hearing. The procedure in the Crown Court had prevented the Claimant from having the opportunity to correct and contradict issues central to the original decision and the appeal (*R (Mason) v. Winchester Crown Court* [2018] EWHC 1182 (Admin)).

TRADEMARKS

Forfeiture. The Divisional Court held that an Order for the forfeiture of goods under the Trademarks Act 1994 could be made even though there was no criminal conviction subject to the Court being satisfied on the balance of probabilities that the relevant offence had been committed. The absence of a conviction was not a bar to an application for a forfeiture order (*R (Drain) v. Birmingham Crown Court* [2018] EWHC 1255 (Admin)).

TSE

Slaughterhouse. The operator of a slaughterhouse and cutting plant for sheep appealed against a conviction under Regulation 17(1) of the TSE Regulations 2010. The conviction was quashed because the company had no legal obligation to cooperate with DEFRA. The explanatory notes to the Regulations had no legal force and at most could be used as an aid to interpret any language which was ambiguous. There was no provision in the Regulations by which an inspector could be said to be enforcing when requiring the occupier of a slaughterhouse to assist in the taking of samples for testing (*Najib & Sons Ltd v. Crown Prosecution Service* [2018] EWCA Crim 909).

ENVIRONMENTAL PROTECTION

Waste. The Appellants were convicted of offences under the Environment Permitting (England and Wales) Regulations 2018. They appealed by way of case stated. The High Court dismissed the appeal holding that the offence of "knowingly permitting" the operation of a regulated facility did not require the prosecution to establish that the accused took a positive act. It was sufficient to prove that the accused knew such a waste operation was taking place and did nothing to prevent it (*Stone v. Environment Agency* [2018] EWHC 994 (Admin)).

AIR TRAVEL

Costs. The Claimants had booked flights with an airline which

had its operator's licence suspended. None of the Claimants was given a replacement flight so that they had to buy alternative tickets. Some 838 Claimants brought proceedings in the High Court. The Court of Appeal allowed an appeal against an order as to costs holding that the proper order should be no order. In particular, the costs of the parties vastly exceeded any substantive claim and from a very early stage the main driver in the proceedings was costs (*Atlasjet v. Kupeli* [2018] EWCH Civ 1264).

CONSUMER PROTECTION

Proposal for Directive. On 11th April 2018 the European Commission proposed a Directive which would amend a number of Directives as regards better enforcement and modernization of EU Consumer Protection Rules.

Consumer Green Paper. In April 2018 the Department for Business, Energy and Industrial Strategy issued a consumer green paper for modernizing consumer markets.

PRODUCT SAFETY

Hip Replacements. The High Court dismissed a group action over metal-on-metal hip replacement implants. The claim had relied on the Consumer Protection Act 1987 (*Gee v. De Puy International Limited* [2018] EWHC 1208 (QB)).

Costs. Claims were issued in respect of defective breast implants. The Court of Appeal upheld an order that a non-party costs order should be made against an insurance company (*Travellers Insurance Co Ltd v. XYZ* [2018] EWCA Civ 1099).

HOUSING

Harassment. The Court of Appeal dismissed an appeal by a housing association against a decision that it had unlawfully harassed two social housing tenants within the Protection from Harassment Act 1997 when it had sent letters threatening injunctions and possession proceedings without a proper foundation (*Worthington v. Metropolitan Housing Trust Limited* [2018] EWCA Civ 1125).

MOTOR VEHICLES

DVLA. Relying in part on the classification of a car as historic by DVLA the Claimant bought the car. The wrong classification was considered by the High Court which found as a matter of law that the DVLA did not owe a duty of care to the Claimant (*Seddon v. DVLA* [2018] EWHC 312 (QB)).

PROCEDURE

Private Prosecution. The High Court quashed a decision by a District Judge to issue summonses for alleged offences of fraud issued on the application of a private prosecutor. The case involved a furniture manufacturing business based in Poland. The Court held that the duty of candor applied to an ex parte application for the issue of summonses and this had been breached (*R (On the Application of Kay) v. Leeds Magistrates' Court* [2018] EWHC 1233 (Admin)).

Seizure. A Trading Standards Authority obtained warrants to search and seize material such as computer equipment. An issue arose as to the duty of authorities who seize computers and other electronic devices containing data which the authority then copies and retains. The Claimant applied for the return of physical property and a Judge refused to make any direction about the copied data held by the authority. This was challenged by judicial review. The application was refused; the Claimants could have made more and better use of the powers available under the legislation (*Business Energy Solutions Limited v. The Crown Court at Preston* [2018] EWHC 1534 (Admin)).

GROUP ACTIONS

Server Space. The High Court considered assignments of potential rights of consumers to obtain redress from third parties for cancellation charges rendered to them by a software company and held there were strong public policy grounds for upholding the validity of such assignments which were enforceable. Consideration was also given to the cancellation provisions under the Consumer Rights Act 2015. The cancellation fee provisions formed part of the price payable by the customer for the purposes of Section 64(1)(a) of the 2015 Act (*Casehub Limited v. Wolf Cola Limited* [2017] 5 Costs LR 835).

PACKAGE TRAVEL

Regulations. The Package Travel and Linked Travel Arrangements Regulations 2018 come into force on 1st July 2018.

Updating Consumer Protection. In April 2018 the Government published a response to a consultation on updating consumer protection in the package travel sector.

Civil Liability. The Court of Appeal upheld a decision that a travel company was not contractually liable and nor was it liable under the 1992 Regulations for a sexual assault and rape of a holidaymaker by a hotel's employee (*X v. Kuoni Travel Limited* [2018] EWCA Civ 938).

UNFAIR TERMS

Exclusion Clauses. The Court of Appeal upheld a decision that an exclusion clause in a specialist fire suppression contract was not unusual or onerous and it was not unreasonable under the Unfair Contract Terms Act 1977 (*Goodlife Foods Limited v. Hall Fire Protection Limited* [2018] EWCA Civ 1371).

WEIGHTS AND MEASURES

Energy. An application for permission to apply for judicial review of the revocation of approved status under the Registered Dealers in Controlled Oil Provisions was refused. There was an alternative remedy before the First-Tier Tribunal. The revocation by HMRC followed an investigation by Trading Standards under the Weights and Measures Act 1985 (*R (On the Application of Birlem Oil Limited) v. Revenue and Customs Commissioners*, 19th June 2018).

GAMBLING

Fine. A gambling company has been fined £2 million by the Gambling Commission after it failed to note at least 22 incidents indicating that a customer was a problem gambler. In another case the Commission fined a company £600,000 after failing to return deposits to 11,205 gambling addicts who had asked to be stopped from being allowed to play.

SECONDARY TICKET MARKET

Regulations. The breaching of limits on Ticket Sales Regulations 2018 will come into force on 5th July 2018.