



TRADING LAW BULLETIN

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FINANCIAL SERVICES

Hire. The Court of Appeal considered the liability of a negligent motorist for the damage to hired equipment. The issue related to the cost of repairs and loss of use (*Armstead v. Royal and Sun Alliance* [2022] EWCA Civ 497).

Aircraft Mortgage. Following a trial in the Queen's Bench Division it was held that a creditor was entitled to enforce its security over a Learjet. There was no breach of duty as mortgagee (*Lombard North Central plc v. European Skyjets Ltd* [2022] EWHC 728 (QB)).

Injunctions. The High Court granted an interim prohibiting injunction to receivers appointed by a lender against a borrower who interfered with the receivership by changing locks, collecting rents, entering into tenancy agreements etc. The Judge dismissed the defence that the lender did not have the power to assign the right to rents and, in any event, there had been an appointment under the charge (*Bushby v. Cronshaw*, 22nd June 2022).

Statutory Demand. On an appeal to the High Court it was held that a loan agreement for £50,000 was made with individuals rather than the company which received the funds. There was no question of common mistake or rectification (*Smith v. Gregory* [2022] EWHC 910 (Ch)).

Misselling SWAPS. Claims as to misselling and conspiracy were dismissed after a High Court trial (*CS v. CKV Natwest Marketing* [2022] EWHC 726 (Comm)).

CCA Reform. On 16th June 2022 HM Treasury announced plans to modernise the Consumer Credit Act 1974. The plan is to move much of the Act to "sit under" the FCA. A consultation is expected to be published by the end of the year.

BNPL. On 20th June 2022 HM Treasury announced plans to bring Buy Now Pay Later lending within FCA regulations as well as short term interest free credit. Consultation on draft legislation will be published by the end of 2022.

FOS. The annual complaints data for the finance year April 2021 to March 2022 has been published. It shows that the service continues to uphold about 75% of complaints.

FCA and FOS Fees. In PS22/7 of June 2022 the FCA published the 2022/23 periodic regulatory fees and levies provisions. This includes FEES 5 Annex 1R for FOS. The total FOS budget was £291.7m.

Proposed Directive. The EBA has responded to the Commission on the CCD review.

Debt Advice. FCA has published a portfolio letter "FCA Supervisory Strategy for Debt Advice Portfolio".

Consumer Credit Directive. On 9th June 2022 the Council agreed its position ("general approach") on the revision of the consumer credit directive. The revised Directive will replace 2008/48.

Distance Marketing. The Commission has adopted proposed reforms to amend Directive 2011/83/EU.

High Net Worth. On 30th June 2022 an amendment to the RAO was made as regards the number of days spent in the UK in respect of the high net worth exemption.

Quincecare. The Privy Council considered the extent of the Quincecare duty of care by a bank in respect of the beneficial owner of monies in an account (*RBS v. JP SPC4* [2022] UKPC 18).

CMCs. The FCA has made financial rules which will prohibit CMCs in some circumstances from being involved in claims to the Financial Services Compensation Scheme. This follows consultation CP21/14.

FOS. Complaints to FOS in respect of alleged misselling of PPI to consumers who were now bankrupt were considered by the High Court as regards the limitation regime in DISP 2.8.2R(2)(b). It was held that the date of knowledge was that of the Official Receiver's not the bankrupt's (*Shop Direct Finance v. Official Receiver* [2022] EWHC 1335 (Comm)).

FOOD

High-Sugar Cereals. Kellogs have commended proceedings against the Government on the rules in respect of the display of certain cereals.

Food Information. The Food Information (Amendment) (England) Regulations 2022 came into force on 19th May 2022.

TRAVEL

Jurisdiction. In a dispute between a low-cost airline and an online booking business the High Court refused a stay of English proceedings brought against the airline (*On the Beach Ltd v. Ryanair UK Ltd* [2022] EWHC 861(Ch)).

FORESTRY

Felling. Natural Resources Wales have successfully prosecuted a landowner for breaching the Forestry Act 1967 by illegal felling of over eight hectares of woodland and non-compliance with an enforcement notice.

FREEDOM OF INFORMATION

Contempt. The First Tier Tribunal upheld an appeal from the ICO and held that Section 16 of the FOIA had been breached. An application was made for a certification of an offence of contempt to the High Court. This was granted by the FTT (*Moss v. Royal Borough of Kingston-Upon-Thames*, 20th January 2022).

CONSUMER PROTECTION

Electronic Contract. In the context of a distance relationship for hotel rooms, the CJEU have held that consumers must clearly understand on the basis only of the words on the ordering button the obligation to pay in order to be validly bound (*Fukmaan-2* (Case C-249/21)).

DANGEROUS DOGS

Seizure. In a judicial review application the High Court held that a dog could be dangerously out of control even if on a lead and that a dog can be so out of control even if placid at the point of seizure on the basis of past behaviour (*R (on the application of Andrews) v. Chief Constable of Thames Valley Police* [2022] EWHC 887 (Admin)).

Strict Liability. The Divisional Court has held that Section 3 of the 1991 Act is one of strict liability. The prosecution successfully appealed against an acquittal. The conduct of the injured person was not relevant (*Royal Mail Group v Watson* [2022] 2 All ER 293).

UNFAIR TERMS

Res Judicata. The ECJ considered four cases relating to mortgages and leases and the impact of national procedural rules which could limit a consumer's rights and the power of the national court to examine a term for unfairness (*Ibercaja banco* (Case C-600/19)).

CONSUMER PROTECTION

Standing to Bring Proceedings. The ECJ has held that the Federal Union of Consumer Organizations and Associations (Germany) had standing to bring proceedings against an Irish entity for an injunction in respect of providing free games of third parties in respect of personal data and unfair commercial practices (*Meta Platforms Ireland* (Case C-139/20)).

Product Liability. An Advocate General's opinion is that a purchaser of a vehicle with an unlawful detect device has a right of compensation against the manufacturer calculated by methods of Member States (*Mercedes-Benz Group* (Case C-100/21)).