



# TRADING LAW BULLETIN

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## CONSUMER CREDIT

**Bridging Loans.** The Court of Appeal considered unfair relationships and default interest in the context of a bridging loan. The Court held that various factors such as the non-disclosure in brokering the credit agreement of the fact that the person brokering it had an involvement in the lender and issues such as affordability did not result in an unfair relationship. However, the increase in the rate of interest on default was contrary to Section 93 and was reduced to the judgment debt rate (*McMullon v. Secure The Bridge Limited* [2015] EWCA Civ 884).

**Unlicensed Trading.** A lender appealed again detailed orders in the Mercantile Court which attempted to deal with numerous actions which involved the allegedly unlicensed lender. The appeals were dismissed (*In the Matter of Gopee v. Numerous Defendants* [2015] EWCA Civ 944).

**Summary Judgment.** The Court of Appeal allowed an appeal from a summary judgment order in favour of the Claimant insurance premium finance company in respect of some of its claim against an insurance broker. The Defendants had denied allegations of breach of agency and breach of trust (*Allied Fort Insurance Services Limited v. Ahmed* [2015] EWCA Civ 841).

**Credit Hire.** An application to the Divisional Court to strike out proceedings for contempt of Court was refused. The application was against rate surveyors who had allegedly given fraudulent expert evidence as to car hire rates (*Accident Exchange Limited v. George-Broom* [2015] EWHC 2205 (Admin)).

**Interest-rate Swap.** A long term fixed rate loan for a large sum of money included an internal interest-rate swap. The borrowers were to indemnify the bank against loss in the event of the unwinding of the transaction. The bank submitted that, as a result of redemption, there would be a substantial loss covering the break clauses but the High Court held that the internal swap was not a funding transaction within the definition of loss or the indemnity (*Barnett Waddington Trustees v. Sullivan* [2015] EWHC 2435 (Ch)).

**Mortgages.** The High Court dismissed an appeal against a striking out order on the basis of there being previous litigation in respect of a mortgage of a small holding (*Dickinson v. UK Acorn Finance Limited* [2014] EWHC 3856 (Ch)).

**Possession.** The High Court suspended for a second time possession of property but on condition that £1 million was paid as a condition of the order (*LBI HF v. Stanford*, 4th September 2015).

**Solicitors.** The Solicitors Regulation Authority have announced that they will continue to regulate consumer credit activities of solicitors which are central to legal services.

**Bills of Sale.** The Law Commission published a consultation on Bills of Sale on 8th September 2015.

**Consumer.** The European Court gave a preliminary ruling on the status of a lawyer who had entered into a credit agreement secured by a mortgage on the borrower's law firm. He subsequently filed a petition for a declaration that the contractual term relating to a "risk charge" was unfair. It was held that a lawyer who concludes a contract which does not relate to the activity of his firm may be regarded as a consumer (*Costea v. SC Volksbank Romaini SA*, Case C-110/14).

**Misrepresentation.** The Chancery Division dismissed a claim alleging fraudulent misrepresentation following a loan to the Claimants in respect of property and a business prospect. On the evidence there has been no fraudulent misrepresentation as to what facilities would be available in the longer term (*NGM Sustainable Developments Limited v. Wallis* [2015] EWHC 2089 (Ch)).

## FINANCIAL SERVICES

**Rate Swaps.** The High Court has held that a Claimant could amend its statement of case to include allegations that a bank negligently conducted a review under the FCA Compensation Scheme and also the decision to review redress (*Suremime v. Barclays Bank*, 30th July 2015).

**Interchange Fees.** The High Court made an order by consent to send a letter of request to the Commission in respect of a survey relating to multilateral interchange fees (*Arcadia Group Brands Limited v. VISA*, 6th August 2015).

**Prohibition Order.** The Upper Tribunal upheld orders against a fund manager. The fund had been marketed as low risk and highly liquid but went into liquidation (*Micalizzi v. Financial Conduct Authority* [2014] UKUT 0335 (TCC)).

**Servicing Agreement.** A loan servicing agreement under a securitisation required rating confirmation in the event that there was a change in the issuer special servicer. The rating agents were notified but no confirmation was received from one which declined to provide ratings in such circumstances. The Court upheld the Claimant's interpretation that confirmation was required from all three agencies and in the absence of confirmation from all three this prevented replacement (*Deutsche Trustee Co v. Cheyne Capital* [2015] EWHC 2282 (Ch)).

**Injunctions and Penalties.** The High Court imposed injunctions and financial penalties under the FSMA on a company which carried on an investment business and individuals who traded on its behalf. It was held that the traders were aware that their conduct was wholly improper and not all has been done which reasonably could have been done to prevent

them from abusing the market, in particular giving a misleading impression as to price, supply or demand in respect of shares (*Financial Conduct Authority v. Da Vinci Invest Limited* [2015] EWHC 2401 (Ch)).

**Interest Rate Swap.** The Claimant alleged mis-selling of an interest rate hedge product. A settlement agreement had been entered into in ignorance of conclusions reached adverse to the bank during a review. The action was struck out (*Marshall v. Barclays Bank Plc* [2015] EWHC 2000 (QB)).

## FOOD

A reference was made to the European Court concerning the criteria for a product to be classified as a food for special medical purposes. The food was a yoghurt-style product and the Secretary of State decided it could not be classified in that way. The application for judicial review of this decision was adjourned pending the reference to the ECJ (*R (on the application of Nutricia Ltd) v. Secretary of State for Health* [2015] EWHC 2285 (Admin)).

## ESTATE AGENTS

A local authority had become the leading enforcement authority under the Estate Agents Act 1979. The High Court held that the procedure adopted as regards representations did not comply with the legislation (*Littlewood v. Powys County Council* [2015] EWHC 2125 (Admin)).

## PRICING

**Price Reduction.** The European Court considered a case where a website had not indicated in the context of reduced price promotions either the reference prices or the price recommended by the manufacturer. This constituted a breach of the provision of a French decree. The trader said that the Unfair Commercial Practices Directive precluded such a rule because it ignored matters such as the decision of the average consumer. The European Court agreed (*C Discount SA* Case C-13/15).

## CONSUMER CONTRACTS

**Regulations.** The Consumer Contracts (Amendment) Regulations 2015 have been made. They primarily amend the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

## ANIMAL WELFARE

**Time Limits.** The High Court dismissed an appeal against convictions under the Animal Welfare Act 2006 on the basis of time limits. The issues related to the correspondence, the statutory certificate and the meaning of the word “prosecutor” (*Letherbarrow v. Warwickshire County Council* (2015) 179 JP 307).

**Transportation.** An Advocate General’s opinion considered the Regulation dealing with the protection of animals during transport and held that, even if the activity was not for profit, the transportation of dogs between Member States with a view to placing them on the market for a fee was within Article 12 of Directive 90/425/EEC (*Pfotenhilfe-Ungarn eV v. Ministerium für Energiewende* Case C-301/14).

**Dogs.** The High Court granted a declaration that the destruction by the police of two dogs following a seizure was unlawful. There was no common law power of destruction. There was no statutory provision as to automatic destruction and an application should have been made to the Court (*R (On the Application of Ali) v. Chief Constable Merseyside* (2015) 179 JP 333).

## SUPPLY OF SERVICES

**Warranties.** The European Court considered the case of a warranty covering mechanical breakdown in respect of a second-hand car. The issue involved VAT. It was held that the supply of services whereby an economic operator which is independent of a second-hand motor vehicle dealer provides a warranty constitutes an exempt insurance transaction. It was a question for the referring Court as to whether the supply of services was such a supply (*Directeur General v. Mapfre* Case C-584/13).

## COMMERCIAL AGENTS

An Advocate General has given an opinion in respect of the concept of “new customers” in respect of the termination of a commercial agency. The opinion said that the Directive did not preclude the application of a national provision under which “new customers” can also be customers acquired by the commercial agent who had previously had a business relationship with the principal but not in respect of which the principal has entrusted the agent (*Marchon Germany GmbH v. Karaszkiwicz* Case C-3015/14).

## LANDLORDS

**Alarms.** The Smoke and Carbon Monoxide (England) Regulations came into force on 1st October 2015 requiring certain landlords to install alarms in their properties and have them in working order at the start of each new tenancy.

## GAMING

**Exclusion.** The High Court held that the provision of credit to someone who had previously entered into an agreement for self-exclusion which had been revoked was lawful and the Defendant was liable on a cheque. There was no need for an implication that a voluntary self-exclusion was irrevocable (*Ritz Hotel Casino Limited v. Geabury* [2015] EWHC 2294 (QB)).