



# TRADING LAW BULLETIN

## ISSUE NO. 116 MARCH 2023

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### FINANCIAL SERVICES

**FOS.** From 1st April 2023 the award limits will be £415,000 in respect of complaints on or after that date about acts or omissions on or after 1st April 2019 and £190,000 for complaints on or after 1st April 2023 about acts or omissions before 1st April 2019.

**Solicitors' Charges.** The SRA has issued a consultation on draft rules which would protect consumers from excessive charges in finance services claims.

**Unfair Terms.** Policy Excess Insure Ltd has given an undertaking to the FCA as an insurance broker in respect of cancellations, automatic renewal and the use of CPA.

**GLOs.** The High Court declined to make a Group Litigation Order in claims against involving investments (*Moon v. Link Fund Solutions* [2022] EWHC 3344 (Ch)).

**Unfair Terms.** An Advocate General's opinion has been given as to the consequences of a mortgage loan being annulled due to unfair terms. The advice was that consumers could claim against banks beyond reimbursement but the banks could not do so (*Bank M.* (Case C-520/21)).

**FOS.** Compensation was awarded following a complaint by a retired business man who had agreed to accept a high level of risk as regards 20% of investments. The Ombudsman's decision was that there had been insufficient care as to the transactional position and investment exposure. The High Court dismissed an application for judicial review (*R (Charles Street Securities) v. FOS* [2023] EWHC 448 (Admin)). An earlier amendment application had been refused (*R (Charles Street Securities) v. FOS* [2022] EWHC 2401 (KB)).

**Early Repayment.** The ECJ has ruled on mortgage credit agreements and early repayment holding that a reduction in the total cost of credit does not include costs which are not dependent on the length of the agreement. The Court had to interpret Directive 2014/17 (*Unicredit Bank Austria* (Case C-555/21)).

**Attestation.** The High Court considered the attestation (or witnessing) of a guarantee and indemnity and the Law of Property (Miscellaneous Provisions) Act 1989. The context was whether the documents were deeds for the purpose of limitations. It was held that attestation of three signatures by one witness was valid. Issues of estoppel also arose. (*Euro Securities v. Barrett* [2023] EWHC 51(Ch)).

**Secret Commissions.** Although in the context of patent agents, the law on secret commissions was considered in *Commission Recovery Ltd. v. Marks and Clark LLP* [2023] EWHC 398 (Comm).

**Section 90A Claims.** The High Court has dealt with issues relating to split trials and class actions in claims under Section 90A FSMA (*Various Claimants v. Serco Group Plc* [2023] EWHC 119 (Ch)).

**Hire Purchase.** In a Scottish appeal case the Sheriff Appeal Court applied the rule that using goods after rejecting them was a bar to rejection (*King v. Black Horse* [2023] – sac – (civ) – 004).

**Doorstep Lending.** The High Court considered a creditors' meeting issue in respect of a scheme of arrangements relating to a group providing doorstep loans with more than 140,000 customers. There were misselling claims and FOS fees (*Re Morses Club Scheme Ltd* [2023] EWHC 705 (Ch)).

**Unfair Relationships.** In a bridging loan possession case, the County Court Judge held that the loan was unregulated (business purpose and declaration of under 40% occupancy) and therefore "outwith the provisions of the Consumer Credit Act 1974 and can be enforced free of statutory restrictions". On appeal to the High Court the borrower argued that the unfair relationship provisions applied but the Judge, after examining the pleadings, Court forms, position statement etc. held that the issue had not been raised below and could not be taken now (*Goldhill Finance Ltd v. Smyth* [2023] EWHC 362 (KB)).

**Procedure.** A borrower commenced proceedings based on undisclosed commission and unfair relationships. At a District Judge's hearing he did not attend but was represented. The claim was struck out and this was upheld on appeal. The Court of Appeal considered the small claims rules in detail and authority on what is attendance by a party and allowed the appeal (*Owen v. Black Horse* [2023] EWCA Civ 325).

**Unfair Relationships.** Defendant banks were refused permission to adduce expert evidence in respect of the allegation of adding basis points to the fixed rate element without disclosing the fact (*Farol Holdings Ltd v. Clydesdale Bank* [2023] EWHC 668 (Ch)).

### FOOD

**Cosmetics.** Cosmetics were marketed in Lithuania and authorities found some types of bath bombs had the appearance of foodstuffs. The ECJ referred to Directive 87/357 and held that EU law does not permit the imposition of an obligation to demonstrate the certainty that such risks will materialise. The authorities must in each individual case consider the objective characteristics of the product (*Get Fresh Cosmetics*, Case C-122/21).

### INFORMATION COMMISSIONER

**Offences.** The Upper Tribunal overturned a decision of the First Tier Tribunal that a local authority had committed an offence by failure to comply with an FTT decision (*Rotherham MBC v. Harron* [2023] UKUT 22(AAC)).

## HOUSING

**Reasonable Excuse.** The Upper Tribunal held that there was no defence to managing or being in control of unlicensed property in the absence of reasonable steps to be kept informed of the situation where properties had been bought at auction (*Gateshead BC v. City Estates Holdings Ltd* [2023] UKUT 35 (LC)).

**Rent Repayment.** The Supreme Court has upheld the decision that a rent repayment order could only be made against the immediate landlord and not a superior landlord (*Rakusen v. Jepsen* [2023] UKSC 9).

**Eviction.** The Appellant was convicted of unlawful eviction in the Crown Court. The Court of Appeal (Criminal Division) held that Section 1(2) of the 1977 Act requires the occupier to be deprived or occupation or being put or kept out of occupation (*Wu v. Chelmsford City Council* [2023] EWCA Crim 338).

## LICENSING

**COVID.** A licensing committee revoked a pub's premises licence because it had stayed open despite Covid-related restrictions. An appeal to a District Judge (Magistrates' Court) was dismissed and there was an appeal by case stated to the High Court which upheld the decision. The statutory licensing objections were not restricted to alcohol-related matters. Issues also arose as to the requirement to surrender CCTV images and the meaning of "serious crime" (*The Porky Pint Ltd v. Stockton-on-Tees BC* [2023] EWHC 128 (Admin)).

## UNFAIR COMMERCIAL PRACTICES

**Sentence.** The Court of Appeal (Criminal Division) reduced a nine month sentence to six months on a builder who pleaded guilty to a Regulation 8(1) offence (exercise of special skill and care). Four customers had paid almost £35,000 to the Appellant and were left with incomplete jobs. It had been right to impose an immediate custodial sentence but all the mitigating factors had not been taken into account (*R v. Wray* [2022] EWCA Crim 804).

## TRAVEL

**Regulations.** The High Court allowed an appeal from a County Court decision dismissing a claim by consumers who had booked a cruise intended to go through the Northwest Passage which could not be achieved because the waters were iced up. It was held that the detailed itinerary was a contractual term and the tour organiser was in breach of the contractual term implied by Regulation 12 of the Package Travel etc. Regulations 1992 (*Sherman v. Readers Offers Ltd.* [2023] EWHC 524 (KB)).

## PROCEDURE

**Prosecutions.** Following an earlier decision ([2022] EWCA Crim 1113) as to the ability of local authorities to prosecute consumer offences irrespective of a connection with its area, the Court of Appeal (Criminal Division) considered further issues. It was held that alleged offences of money laundering and conspiracy to defraud qualified as consumer offences under the Consumer Rights Act 2015 by virtue of originating from an investigation into a consumer breach. The engaging in a reserved legal activity by an individual who was neither authorised nor exempt did not render the indictment a nullity or result in an abuse of process (*R (City of York) v. AUH* [2023] EWCA Crim 6).