

FINANCIAL SERVICES

Consumer Credit Reform. In July 2023 HM Treasury published a Consultation Response on Reforming the Consumer Credit Act 1974.

FSMA 2023. The FSMA 2023 (Commencement Order No.1) Regulations 2023 were made on 10th July 2023. They include a Schedule of Retained EU law relating to financial services which will be revoked on 29th August 2023.

FCA and REUL. The FCA has published a new webpage with information on the repeal and replacement of retained EU law with FCA rules.

Proposed EU Directive. The European Parliament has adopted the proposed directive on consumer credit at first reading (CCPII) (2021/017 (COD)).

Local Authority. The High Court refused to grant relief from sanctions in a case where a property developer sued a local authority which had granted him a loan to renovate flats. The claim was for £1.5m for breach of contract, breach of trust and a failure to complete a restriction of a charge. The sanctions related to witness evidence. Relief was granted with regard to expert evidence (*Hankin v. Kent CC*, 28th July 2023).

Litigation Funding. The Supreme Court has held that litigation funding where the funder is remunerated by reference to a percentage of the recovery constitutes claims management services within the Compensation Act and Section 419A of FSMA (*R (on the application of PACCR Inc) v. Competition Appeal Tribunal* [2023] UKSC 28).

Illegal Money Lending. An appeal against a civil restraint order was dismissed by the Court of Appeal (*Gopee v. Southwark Crown Court* [2023] EWCA Civ 881).

Summary Judgment. A defendant Kenyan company when sued on a loan agreement did not acknowledge service or serve a Defence. The High Court gave a reasoned judgment as this could assist with enforcement in Kenya. There were no grounds to hold that the interest rate was penal or to challenge the interest claimed (*Barak Fund SPC Ltd v. Tron Enterprises Ltd* [2023] EWHC 2048 (Comm)).

Penalty. The High Court overturned an order for judgment. The loan was a secured bridging loan with default interest at 12% per month compounded. There was a business purpose declaration. The loan was for £250,000 plus rolled up interest and fees in a total sum of £355,000. The balance escalated to about £13.3m but the lender capped this at £850,000. There was a trial. The High Court held that the Judge's conclusions

on penalty and unfair relationships could not be sustained and a re-trial was ordered (*Seculink Ltd v. Salih* [2023] EWHC 1706 (KB)).

Decision Notices. The FCA issued decision notices providing for prohibition on three individuals and arising from Bank Julius Baer & Co. Ltd. The Upper Tribunal allowed references by the three people. The FCA were criticised for accepting the narrative put forward by the company when enforcement action was settled (*Seiler and others v. FCA* [2023] UKUT 00133 (TCC)).

Limitations. The High Court upheld an order that claims in deceit, knowing receipt and conspiracy involving possession proceedings, a mortgage and a charging order were statute barred (*Okunola v. Barca*, 25th July 2023).

Credit Hire. The High Court upheld a Judge's decision that hire charges should be disallowed where the MOT on the Claimant's car had expired some four months before the accident so that the use of the car was illegal (*Ali v. HSF Logistics Polska* [2023] EWHC 2159 (KB)).

Guarantees. The Claimant bank obtained final judgments on the basis of guarantees in Abu Dhabi. A new law in that country prevented enforcement there. The English Commercial Court held that the money judgment had the effect of res judicata and the judgments could be enforced (*Invest Bank PSC v. El-Husseini* [2023] EWHC 2302 (Comm)).

Arbitration. An individual challenged an arbitration award in California on the basis of Section 103 of the Arbitration Act 1996. Claims of unenforceability under FSMA were made and the issue of who is a consumer in the context of a digital online crypto asset exchange (*Payward v. Chechetkin* [2023] EWHC 1780 (Comm)) was considered. Issues as to who is a consumer also arose in *Eternity Sky Investments v. Zhang* [2023] EWHC 1964 (Comm) which is subject to appeal.

Strike Out. A summary judgment application by a defendant was dismissed as an abuse of process. A similar application had previously been dismissed ([2023] Ch 101). The main issue related to a request for mutual legal assistance from Greece (*FCA v. Papadimitrakopoulos* [2023] EWHC 2090 (Ch)).

Financial Services Compensation Scheme. The Court of Appeal has upheld a High Court decision that the Scheme should not compensate for post litigation interest and costs. The underlying issues related to a defective building and insurance (*R (on the application of Manchikalapiti) v. FSCS* [2023] EWCA Civ 1006).

Litigation Funding. The Court of Appeal considered the position where a financial remedies case is funded by a loan (*Simon v. Simon*) [2023] EWCA Civ 1048).

FOOD

Insurance. Following an acquisition of another food business the buyer brought claims against an insurer. The claim was dismissed. Issues included material adverse change, recipe changes and product prices agreed with a retailer (*Finsbury Food Group plc v. Axa Corporate* [2023] EWHC 1559 (Comm)).

Food Waste. A judicial review letter has been sent to DEFRA by Feedback in respect of a decision not to require large and medium companies to make food waste reporting.

Pet Food. The FSA issued a recall of cat food because of concern about the number of cases of leucopenia. The Claimants challenged the lawfulness and rationality of the recall and updates of the FSA. It was agreed that the FSA had no power to require the recall. It said it merely encouraged this. The Court emphasised the difference between merits and rationality. The claim was dismissed (*R (on the application of Fold Hill Foods Ltd) v. Food Standards Agency* [2023] EWHC 2271 (Admin)).

HOUSING

Case Stated. A tenant issued a complaint in the Magistrates' Court in respect of an alleged statutory nuisance in connection with internal mould in a flat. The complaint was dismissed and the tenant appealed by way of case stated. He said that the contents of the case did not cover the issues. The High Court held it had no power to amend the cases stated and remitted it with suggested amendments (*Ferko v. Ealing Magistrates' Court* [2023] EWHC 1817 (Admin)).

Appeal. The Upper Tribunal considered the principles to be applied if an Applicant in an HMO case disputed receipt of the notices and extension of the time limits (*Naujokas v. Fenland DC* [2023] UKUT 190(LC)).

Injunctions. An injunction was granted by the High Court following conviction for failing to comply with an improvement notice. The Court ordered compliance with the notice (*LB Barking and Dagenham v. Gbadegesin* [2023] EWHC 2371 (KB)).

STATUTORY NUISANCE

Variation. The High Court has held that a nuisance abatement notice can be varied to reduce restrictions. The notice concerned a racing circuit (*R (Ball) v. Hinckley and Bosworth BC and Real Motorsport* [2023] EWHC 1922 (Admin)).

DATA PROTECTION

Standard of Proof. In a case involving medicines and the disposal of unused medicines and pharmaceutical records, the Upper Tribunal held that the issues of disputed facts before the FTT should be decided on the civil standard (*Doorstep Dispensavee Ltd v. The Information Commissioner* [2023] UKUT 132 (AAC)).

Cold Calling. The Treasury has issued a consultation seeking views on a ban on cold calling for consumer financial services and products (August 2023).

TRAVEL

Regulations. The Department for Business and Trade have issued a consultation document dated 18th September 2023 on reforming the 2018 Regulations.