



TRADING LAW BULLETIN

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FINANCIAL SERVICES

Debt Packaging. With effect from 2nd October 2023 debt packaging firms will be prohibited from receiving referred fees. The FCA's CP23/5 sets out the handbook texts to provide for this.

FOS – Time Limits. The Court of Appeal allowed an appeal against the making of a declaration that it was the knowledge of the Official Receiver not of the bankrupt which was relevant for a PPI complaint to FOS. The judgment considered in detail the various roles of the FCA and FOS in DISP. It was decided that the issue of who is the complainant for time limit purposes was not simply a binary question (*The Official Receiver v. Shop Direct* [2023] EWCA Civ 357).

Credit Hire. Pre-action disclosure in favour of the insurers of an at fault driver in respect of credit hire charges was refused (*Holt v. Allianz Insurance Plc* [2023] EWHC 790 (KB)).

Appeal. The High Court refused to grant an extension to bring an appeal almost two-and-a-half years late. The claim involved an unpaid loan and a statutory demand (*Anwer v. Central Bridging Loans*; 3rd April 2023).

Motor Dealers. The Court of Appeal rejected a submission by a motor dealer that its relationship with manufacturers and a manufacturer's finance company to which customers had to be directed for finance resulted in an umbrella agreement (*Mackie Motors (Brechin) Ltd v. RCI Financial Services Ltd* [2023] EWCA Civ 476).

Timeshare. In judicial review proceedings against FOS decisions the High Court held that FOS had correctly construed Regulation 14(3) of the Timeshare Regulations, that Section 140A of the 1974 Act resulted in liability for the credit grantors and there were unfair relationships. However, although not affecting the dismissal of the applications, decisions were made about the FOS rulings on various matters relating to the Timeshare Regulations, CPUT and unfair terms (*R (Shawbrook Bank Ltd) v. FOS* [2023] EWHC 1069 (Admin)).

Costs. Substantial adverse costs orders were made in cases involving solar panels sold on consumer finance. The solicitors had not properly dealt with the bills of costs submitted by them. Time had been claimed for work not done (*Ikin v. Shawbrook Bank* [2023] EWHC 1075 (SCCO)).

Charging Orders. The Court of Appeal upheld a High Court decision not to stay enforcement of a charging order based on a guarantee of four hire purchase agreements. Allegations of fraud and forgery were dismissed (*Close Brothers Ltd v. Taylor* [2023] EWCA Civ 533).

Guarantees. A person who signed guarantees in support of corporate loans said it was on the basis of an essential error induced by misrepresentations by the bank. This was rejected by the Outer House, Court of Session (*Parkash v. Royal Bank of Scotland* [2023] CSOH 33).

Summary Judgement. The Court of Appeal dismissed an appeal against a decision giving judgment in favour of a lender against a company. The company did not dispute that a balance (in excess of £2.3m) was outstanding. The defence that it had been agreed it was repayable only in the event of a sale or other liquidity event or by unanimous consent of all shareholders was rejected (*Malik v. Henley Homes Plc* [2023] EWCA Civ 726).

Final Notices. The Upper Tribunal considered the effect of final notices by the FCA on the ability of a third party to have his third party reference considered by the Tribunal (*Banque Havilland SA v. FCA* [2023] UKUT 136 (TCC)).

Consumer Redress. The FCA imposed a single-firm consumer redress requirement on an investment management business. The Upper Tribunal held that the power to do so originated from Sections 404F(7) and 556 of FSMA and there was no free-standing power to do so. The FCA was debarred from defending a reference (*Bluecrest Capital Management v. FCA* [2023] UKUT 140 (TCC)).

Charges. The High Court considered the distinction between fixed and floating charges, in a debenture. One issue was generating assets. It was held that a fixed charge was created (*Avanti Communications Ltd.* [2023] EWHC 940 (Ch)).

Unfair Relationships. The Commercial Court struck out a defence in respect of a loan agreement. The misrepresentation defence did not have a real prospect of success as there were no alleged representations as to present facts. There was a possibility of an unfair relationship claim. It was not necessary for a specific allegation of an unfair relationship and a new defence was ordered (*Gomes v. AMG Financial Management Ltd.*, 30th June 2023).

FSMA 2023. The Act has received Royal Assent. It allows for revocation of EU-derived law. It also makes provision as to costs in favour of FOS in the case of vexatious claims.

FOOD

Offers to Settle. In a case of alleged food poisoning on holiday, a Part 36 offer was made on the basis of 90%/10%. The High Court considered the costs consequences of the Claimant failing to beat the Defendant's offer (*Mundy v. TUI UK Ltd* [2023] EWHC 355 (Ch)).

Chickens. The High Court rejected an application for judicial review in respect of fast-growing breeds of broiler chickens. The claim turned on the Welfare Regulations 2007 (*R (Humane League UK) v. Secretary of State* [2023] EWHC 1243 (Admin)).

Cannabis. Packages of plant material were intercepted. They were addressed to the Defendants. The prosecution was staged in the Crown Court as, having regard to Article 34 of TFEU and the chemical composition, it was not an offence to import the material. The Court of Appeal dismissed the Prosecution's appeal (*R v. Margiotta* [2023] EWCA Crim 959).

Retained EU Law. Schedule 1 to the Retained EU Law (Revocation and Reform) Act 2023 includes the Food Additives (England) Regulations 2009 and the Flavourings in Food (England) Regulations 2010.

LITIGATION

Costs. A private prosecution was brought in relation to counterfeit clothing. Issues were raised on judicial review regarding an order for the costs of the prosecution to be paid from central funds. An order for such payment was made by the Administrative Court (*R (Chapter 4 Corp) v. Crown Court at Southwark* [2023] EWHC 1362 (Admin)).

Services. In a case involving commission in a property transaction the Supreme Court considered S.15 of the Supply of Goods and Services Act 1982 as amended by the Consumer Rights Act 2015 (*Barton v. Morris* [2023] 2 All ER 701).

UNFAIR TERMS

Legal Advice. In the context of a professional negligence claim against a tax silk, the Court of Appeal upheld a High Court decision that the 1977 Act did not apply to warranties in a subscription agreement. In any event the warranties satisfied the test of reasonableness (*McLean v. Thornhill* [2023] EWCA Civ 466).

Jurisdiction. The Court of Appeal dealt with a submission that a New York arbitration clause was unfair. The dispute related to an auction for a block chain based non-fungible tokens resulting in a claim for US\$650,000. It was ordered that there should be a trial of whether the arbitration agreement is null and void (*Soleymaai v. Nifty Gateway LLC* [2023] 2 All ER 569).

Lotteries. The High Court dismissed a summary judgment application in which the Claimant was seeking payment of £1m to which she said she was entitled with a winning ticket. For the purpose of the application the relevant terms were incorporated in the contract, they were not unfair and the contract was construed in favour of the Defendant (*Parker-Grenmann v. Camelot UK Lotteries Ltd* [2023] EWHC 800 (KB)).

HOUSING

Banning Orders. The Appellant was convicted of offences in relation to HMO's. As some offences were "banning order offences" under the Housing and Planning Act 2016, the FTT made a banning order which forbids the Appellant from letting housing or engaging in letting agency or property management work for 5 years. The issues on appeal to the Upper Tribunal included the requirement to consider the seriousness of the offence. The appeal was dismissed; there was nothing inappropriate in the way the FTT made its assessment (*Knapp v. Bristol City Council* [2023] UKUT 118 (LC)).

Licensing. The Court of Appeal considered the role of the FTT in an appeal from a licensing decision. The local authority appealed from a decision of the Upper Tribunal. The appeal was allowed. A Tribunal should consider whether the person concerned was fit and proper on the date the authority made its decision not on the date of the appeal so an event after the decision would not be relevant. However, matters existing at the time of the decision but which were unknown to the authority could be taken into consideration (*Waltham Forest LBC v. Hussain* [2023] EWCA Civ 733).

Penalty. The Upper Tribunal reversed a decision of the FTT to reduce a penalty imposed by a local housing authority in respect of an unlicensed HMO. The Upper Tribunal reached its own decision on penalty. It was held that the FTT was correct to ignore the Council's policy of adding enforcement costs. Issues regarding guidance and whether an offence occurred on a single day were considered (*Leicester City Council v. Morjaria* [2023] UKUT 129 (LC)).