

FINANCIAL SERVICES

Leases – Commission. The Upper Tribunal dealt with an appeal relating to the liability of lessees to contribute to insurance costs which included commission (*Octagon Overseas Limited, Canary Riverside Estate Management Limited v. Cantlay and others* [2024] UKUT 72 (LC)).

Group Litigation. The Court of Appeal dismissed an appeal in an alleged negligence claim against Solicitors in relation to investments in property where 134 clients were named in one claim form. The case was different from the unfair relationship case of *Angel v Blackhorse* (*Morris v. Williams* [2024] EWCA Civ 376).

FOS Information. The Upper Tribunal considered a decision by FOS to refuse to provide documentation exchanged between the FCA and FOS about changes effected by DISP 3.3.4A R. Issues arose as to the Registrar and Closed Material Procedure. The underlying request related to material about changes to the grounds on which FOS may dismiss a complaint without considering its merits (*Barrett v. The Information Commissioner* [2024] UKUT 107 (AAC)).

FOS Judicial Review. The Claimant sought judicial review of a FOS decision to uphold a complaint that it should compensate the complainant for the loss of pension fund monies. The Claimant was a SIPP provider. The investment in the case related to leases of storage units. The introduction was via a Spanish company. The Court of Appeal dismissed an appeal against a decision that judicial review should be refused. The decision could not be said to be irrational (*Options UK Personal Pensions LLP v. FOS* [2024] EWCA Civ 541).

Collective Investments. Companies brought professional negligence claims against their former Solicitors in respect of alleged negligent advice. It was alleged that there was a failure to advise that the schemes were an unauthorised collective investment scheme. The investments were said to be individual rooms in hotels and care homes. The claims were struck out on the basis that the claimants had failed to establish any loss as a result of the alleged negligent advice. The claims would not have been struck out on the basis of causation *ex turpi causa* or limitations (*Afan Valley Ltd v. Lupton Fawcett* [2024] EWHC 909 (KB)).

Rescission. In a credit hire case the issue of rescission was considered where the motorist had tried to contact his insurer but by “Google Spoofing” had been given details of a claims management company (*Parker v. Skyfire* [2024] EWHC 1060 (KB)).

Commission. In a case not involving major finance institutions, but FCA authorised entities, it was held by the High Court that allegations of negligent financial advice were dismissed but a claim based on breach of fiducial duty in respect of commission succeeded with an account to be taken of the total commission paid (*McHale v. Dunlop* [2024] EWHC 1174 (KB)).

Emission GLO Litigation. A Master’s order in respect of service out of the jurisdiction was considered by a High Court Judge. Questions of limitations and extensions of time arose (*Wragg v. Opel Automobile GmbH* [2024] EWHC 1138 (KB)).

Default Notices. In a Scottish case an assignee of credit card debts could not produce copies of the Section 87 notices. There was an attempt to rely simply on the debt, but the claim was dismissed. An appeal was refused (*Cabot Financial (UK) Ltd v. Willis* [2024] SAC Civ 25).

Guarantor as Consumer. In proceedings to enforce an arbitration award made in Hong Kong the Court of Appeal considered whether a guarantor was a consumer for the purpose of the unfair terms legislation. It was held that the guarantor was not acting as a consumer (*Eternity Sky v. Zhang* [2024] EWCA Civ 630).

APP Fraud. The Chancery Division struck out a claim in respect of an APP fraud against an electronic money institution (*Larsson v. Revolut* [2024] EWHC 1287 (Ch)).

Strike out. The Court of Appeal dismissed an appeal against the refusal by a Judge to strike out certain parts of the Claimants’ pleadings. The Defendant Bank had breached USA Iranian sanctions and *qui tam* action was brought in the US Courts; these are brought by individuals on behalf of the Government. Claims were brought under Sections 90 and 90A of FSMA the basis of alleged untrue or misleading statements or omissions in prospectuses (*Persons in Schedule 1 v. Standard Chartered plc* [2024] EW CA Civ 674).

Magistrates’ Courts. The Claimant brought judicial review proceedings in the context of a partnership and bank documents relating to a Shareholding Agreement. There had been civil proceedings when findings of forgery had been upheld. The High Court granted judicial review and quashed the decision not to issue a summons in criminal proceedings remitting the matter to the Magistrates’ Court (*R(McGill) v. Newcastle Magistrates’ Court* [2024] EWHC 1207 (Admin)).

Summary Judgement. The Commercial Court granted a bank permission to apply for summary judgement against a

Defendant under a loan who had not acknowledged service. The Bank might have to enforce the judgement overseas and a summary judgement will assist (*Nederlands Societe Bengaz* [2024] EWHC 301 (Comm))

FOS. The High Court rejected a judicial review challenge to an FOS decision that a complainant was not an elective professional client. The matter involved contracts for differences. The Court also dealt with contributory negligence and redress (*R (on the application Linear Investments) v. FOS* [2024] EWHC 1428 (Admin))

TRAVEL

Package Holidays. The Court of Appeal upheld a High Court Judge who had upheld a claim by consumers relating to a holiday cruise to the North West Passage in Arctic Coast Canada. Due to the ice the itinerary could not be performed. There was a breach of Regulation 12 of the 1992 Regulations. Guidance was given on the measure of damages when assessed (*Sherman v. Readers Offer Ltd* [2024] EWCA Civ 412).

Compensation. The Supreme Court has ruled that the illness of a pilot was not an extraordinary event to avoid paying delay compensation. The Court gave a comprehensive review of the position of legislation post-BREXIT (*Lipton v. BA City Flyer Ltd* [2024] UKSC 24).

STATUTORY NUISANCE

Variation of Abatement Notice. The Court of Appeal reversed a decision of the High Court that a Local Authority had power to vary a noise abatement notice. Such a variation was different from a power to withdraw a notice which had in an earlier case been held possible (*R (Ball) v. Hinkley and Bosworth Council* [2024] EWCA Civ 433).

Noise. The High Court dismissed an appeal from a District Judge after a six day trial that noise from a nursery for children next door did not contribute to nuisance. The District Judge rejected the prosecutor's evidence as regards the noise. There was a perception of victimhood (*Dennis v. Head Start Day Nursery Ltd* [2024] EWHC 1245 (Admin)).

HEALTH AND SAFETY

Fireworks. The Court of Appeal (Criminal Division) dismissed appeals against gross negligence manslaughter convictions relating to the storage of fireworks (*Winter v. Rex* [2024] EWCA (Crim 711)).

STREET TRADING

Pedlars. An application for Judicial Review was granted and convictions for street trading without a licence were quashed. The Crown Court Judge has not been referred to relevant authorities by the prosecution. This led to errors of the interpretation of Section 3 of the Pedlars Act 1871. Findings by the Judge as to trading on one spot was one no reasonable Judge could have made (*R (Logic) v. Birmingham Crown Court* [2024] EWHC 1397 (Admin)).

LICENSING

Case Stated. The High Court made an Order for a case stated to be amended in respect of the revocation of nightclub

licences as regard the contentions of the parties (*Venus 14 Ltd v. Newham LBC* 19 June 2024)

HOUSING

Rent. The Upper Tribunal considered the circumstance in which the First Tier Tribunal could consider the issue of fairness in the context of a rent review clause (*Horne v. Slash Property Ltd* [2024] UT 36).

PLANNING

Enforcement Notice. A notice was issued by the Local Authority but the Defendant was totally unaware of it and was acquitted in the Magistrates Court. The prosecution's appeal by case started was dismissed. The validity of the notice can be challenged as a defence. Even if the notice is on the register under Section 188 it is still open to a Court to hold that the Defendant could not reasonably be expected to know the notice had been issued (*LB Barking and Dagenham v. Aziz* [2024] EWHC 121 (Admin)).

UNFAIR TERMS

Water meters. There was a dispute between a water company and the supplier of automated metre reading electronic units. The limitation of liability provisions were, said the Judge, such that, being a contract between businesses in particular, it was wholly unrealistic that a trial judge would not conclude that the supplier had discharged the burden of showing reasonableness (*South East Water Ltd v. Elster Water Metering Ltd* [2024] EWHC 620 (TCC)).

PROCEDURE

Coronavirus time limits. The High Court dismissed an appeal against a conviction in respect of a fixed penalty notice for having a gathering of more than 15 people during lockdown (*R v. Westminster Magistrates Court* [2024] EWHC 559 (Admin)).

FRACTIONAL PROPERTY DEVELOPMENTS

Solicitors. The High Court considered costs issue following a failed case by the SRA in relation to advice to clients as to investment in fractional property development schemes (*SRA v. Tsang* [2024] EWHC 1150 (KB)).

SECURITY INDUSTRY

False statements. The Court of Appeal in Northern Ireland considered the issue of delegation in the context of alleged false statements being made to the Security Industry Authority under Section 22 of the Security Industry Act 2001 (*Security Industry Authority v. Bryson* [2024] NICA 23).

ENVIRONMENT

Agriculture. The High Court refused an application in respect of river pollution. It was held that the 2018 Regulations should be interpreted as regards the needs at the time of the application of manure fertiliser and not on an annual crop basis (*R (River Action UK) v. Environment Agency* [2024] EWHC 1279 (Admin)).

Waste processing. A business had a permit for the operation of waste processing activities. The business pleaded guilty following a Recorder's ruling on issues of law as to

failure to comply with the permit. Issues included a fire prevention management plan, guidance and any distinction between storage and recovery or storage and processing. The Court of Appeal (Criminal Division) refused permission to appeal (*R v. Atlantic Recycling Limited* [2024] EWCA Crim 325).

DOGS

Destruction Orders. The High Court allowed an appeal against a destruction order on the basis that the Crown Court had not given proper reasons from departing from an expert's report (*R v. Fitzgerald* [2024] EWCH 869 (Admin)).

CONSUMER PROTECTION

Fraudulent Trading. The Court of Appeal allowed in part a prosecution appeal against a final ruling in a case involving home improvement products. The issue related to the admissibility of films used in a TV programme (*R v. Rowan* [2024] EWCA Crim 2025).

ADVERTISING

Comparative Authority. In a trade mark case, the Chancery Division considered the average consumer in relation to third party products (*Gibraltar (UK) Ltd v. Viovet Ltd* [2024] EWHC 777 (Ch)).