GOUGH SQUARE CHAMBERS

TRADING LAW BULLETIN

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FINANCIAL SERVICES

FOS – Time Limits. The High Court considered the time limits for a complaint in the context of a "mortgage prisoner" case and held that the ombudsmen did not unreasonably conclude that the bank had not consented to jurisdiction notwithstanding the time limited (*R (Chapman) v FOS*) [2025] EWHC 905 (Admin)).

Possession. The Court of Appeal allowed an appeal against an order in favour of administrators for delivery up of possession of a residential property occupied by a director of the property as a trespasser. There had been receivers appointed and the lender had commenced County Court possession proceedings (*Carvill-Biggs v Reading* [2025] EWHC Civ 619).

Third Parties. In a peer-to-peer lending agreement the Claimant was said to be a security agent and the Claimant was said not to be a party but there was a provision conferring rights on third parties under the 1999 Act. A High Court Judge, differing from a Circuit Judge in a very similar earlier case, held that the right applied. He gave permission to appeal to the Court of Appeal and stayed enforcement (*HNW Lending Ltd v Laurence* [2025] EWHC 908 (Ch)).

Moratorium Debt. Permission of the Court is required by the creditor before taking enforcement steps in respect of the whole debts even if it is only partly a moratorium debt under the 2020 Regulations (*Bluestone Mortgages Ltd v Stoute* [2025] EWHC 744 (Ch)).

Warrant of Control. The High Court refused an application for the immediate return of a vehicle; ownership was disputed and there were issues as to DVLA registration and insurance. There was a serious issue to be tried (in the County Court) and damages would be an adequate remedy (*Clarke v Marston Group Ltd* [2025] EWHC 1232 (KB)).

Authorisation Appeal. A car dealer's referral to the Upper Tribunal was dismissed. The issues related to what had happened during his application for limited permission. The decision was made with a "sense of sadness" (*E.A.K. Group Ltd v FCA* [2025]) UK UT 00082 (TCC)).

Regulated Activities. An appeal to the High Court related to a sale and rent bank agreement. The Defendants were owners of the property and transferred it to a company. The Claimant purchased the property from the company of which was she was a director. The company was not authorised under FSMA. The High Court held that the Judge was right to decide the Claimant did not herself carry on the activity by way of a business. However, the Defendants had a right to recover the property against the company because of the lack of authorisation and that right could bind the Claimant. The right was a mere equity for the purposes of the Land Registration Act 2002 and they were in occupation. Further arguments would have to be made as to the consequences (*Orchard v Dhillon* [2025] EWHC 834 (Ch)).

Emissions. The Court of Session dealt with the appointment of a representative party and an application to bring proposed group proceedings (*Milligan v Jaguar Land Rover* [2025] CSIH 16).

Undue Influence. The Supreme Court considered the law as to undue influence in the case of a loan to a husband and wife jointly. The transaction dealt with a hybrid transaction where the benefit of the loan is partly for their joint benefit and partly for one of their sole benefit. A creditor is put on inquiry in a non-commercial hybrid transaction where, on the face of the transaction, there is more than a de minimis element of borrowing which serves to discharge the debt of one of the borrowers.

Debt Respite. The Court of Appeal held that the principal sum of second debt – whether or not called in prior to a moratorium – is non-eligible and thus neither a qualifying debt nor a moratorium debt (Forbes v Interbay Funding LH [2025] EWCA Civ 690)

Mortgage Sale. On appeal from the from the Bahamas, the Privy Council affirmed that the burden of proof in the issue of a sale at an undervalue (a yacht) was on the mortgagor unless there was, for example, a close connection between the mortgagee and the buyer (*Gart O'Finlayson v Caterpillar Financial Services* [2025] UKPC 24).

Discontinuance. A notice of discontinuance issued by the FCA could only be effective where the FCA decided not to take any action on a decision notice. In such circumstances a notice of withdrawal should be served (*Teraiya v FCA* [2025] UKUT 211 (TCC)).

INFRINGEMENTS

Design Copyright. The Court of Appeal upheld convictions relating to Sky remote controllers and similar items. The convictions were of conspiring to breach the registered designs (*Iqbal v Wolverhampton City Council* [2025] EWCA Crim 498).

DOGS

Seizure. An appeal by way of case stated was dismissed. The Crown Court has accepted that some of the dogs seized were not of a prohibited type but rejected the claim that the seizure under Section 19 of the Dangerous Dogs Act 1991 was unlawful (*Brown v Chief Constable of Sussex* [2025] EWHC 1527 (Admin)).

SALE OF GOODS

Marking. The Marking of Retail Goods Regulations 2025 provide power to introduce "not for EU" labelling of certain retail goods to safeguard the position of Northern Ireland.

NUISANCE

Abatement Notice. The Administrative Court allowed an appeal from the decision of a District Judge in the Magistrates' Court to quash an abatement notice. The Judge was wrong to have held the noise abatement nuisance was invalid because it did not specify the steps the respondent had to take to remedy the nuisance; there was no need to do so (*Enfield BC v Beckford* [2025] EWHC 1218 (Admin)).

ESTATE AGENTS

Prohibition. The FTT dismissed an appeal against an unlimited prohibition order preventing the Appellant from carrying out estate agency work following his criminal conviction for, amongst other matters, assault in a domestic context (*Gough v Powys* [2025] UK FTT 00692 (GRC)).

HOUSING

HMOs. An agent on a "let only" basis who had no involvement in the property after receiving a singe rent at the outset of the letting was not a person managing the HMO (*Cetin v Epping Forest DC* [2025] UKUT 196 (LC)).