GOUGH SQUARE CHAMBERS

TRADING LAW BULLETIN

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FINANCIAL SERVICES

Loan. The Court of Session (Outer House) held that a loan agreement which contained no provision for repayment was repayable on demand (*Samuray v. Asanov* [2026] (SOH 64)).

Moratorium. The 2020 Regulations did not stop receivers from selling property charged by the moratorium debtor (*Together Commercial Finance Ltd v. Slack* [2026] EWHC 1732 (Comm)).

Buy Now Pay Later. BNPL products became regulated on 15th July 2026.

FOS. A judicial review application against a FOS decision rejecting a complaint in respect of unauthorised payments was dismissed as the complainant had allowed a fraudster access to a PIN and card (*R(Moniak) v. FOS* [2026] EWHC 1725 (Admin)).

Guarantee – Limitations. The High Court considered the issue of when someone was induced by fraudulent misrepresentation to enter into a guarantee and whether limitations run from the time of the guarantee or when it is called upon. The Judge said that it seemed improbable that the point had not been determined before but there appeared to be no case on it. It was held that damage was only sustained when a demand was made under the guarantee (*Richardson v. Robertson* [2026] EWHC 2286 (Ch)).

FSCS. Claimants lost investments following transfers of their pension funds into a SIPP and then investments as a result of advice given by those unauthorised under FSMA. A judicial review failed because the Defendant did not err in law in deciding that Section 27(2) of FSMA gives rise to a single cause of action (*R(Golding) v. Financial Services Compensation Scheme* [2026] EWHC 2337 (Admin)).

FCA Sanctions. The Upper Tribunal upheld FCA decisions imposing sanctions being a prohibition order and financial penalties for a lack of integrity relating to the removal of executive committee members (*Odey v . FCA* [2026] UKUT 00351).

PPI. The Court of Appeal set aside an indemnity claim order under an agency agreement relating to PPI and store cards. The obligation was the payment of redress under a regulatory obligation. (*Axa France Lard SA v. Santander Cards UK Ltd* [2026] EWCA Civ 1185).

Section 106 Agreement. A Section 106 agreement in respect of affordable housing excluded from the obligation any mortgage of a registered social provider. The Court of Appeal upheld a decision that the de-registration of a provider did not affect this (*Westminster City Council v. Gems* [2026] FWCA (Civ 937)).

Costs. The Court of Appeal considered "unreasonable behaviour" justifying a costs order in a small claims case by discontinuing a PPI unfair relationship claim after a deadline set by the lender and shortly before trial. It was held that a costs order should not have been made. One point was that a well-resourced party could correspond their way out of the costs regime. There was no order for costs of the appeal (*Orton v. Barclays Bank plc* [2026] EWCA Civ 1025).

CONSUMER PROTECTION

Trading Standards' Evidence. In a civil claim for causing loss by unlawful means and an unlawful means conspiracy, consideration was given as to the use of trading standards' evidence. It was contended that Trading Standards erred in law in disclosing evidence to the claimants. It was said the statutory gateway under Section 241A of the Enterprise Act 2002 did not apply; the claimants were not consumers. The Court did not agree. The deceit related to policies covering home white goods (*Domestic and General Insurance PLC v. Premier Protect Holdings Ltd* [2026] EWHC 1001 (KB)).

"Dieselgate" Claims. The High Court rejected most of the allegations in "dieselgate" claims as most of the strategies did not constitute a prohibited defeat device (*Various Claimants v. Mercedes Benz Group AG* [2026] EWHC 1753 (KB)).

Reference Pricing. The High Court gave judgment in a pricing case still governed by the CPUT regime. The overall conclusion was that, taking into account the various ratios as regards comparative price reductions, no enforcement order as sought by the CMA should be granted (*CMA v. Emma Matratzen GmbH* [2026] EWHC 1995 (Ch)).

Off Premises Contracts. The ECJ has given a judgment in respect of a case whereby a German company dealing with the supply and installation of photo or voltaic systems were requested for reimbursement of a payment on account. It was held that where "the consumer accepts, in the physical presence of the trader where it is not the business premises of the trader, the offer and contract constitute an "off-premises contract""(*PL, GQV Gexx aeroSol GmbH – Case PC-381/25*).

Distance Contracts. A Scottish Court has held that the payment of a deposit online to reserve a vehicle for purchase was a distance contract within the 2013 Regulations, entitling the consumer to cancel and obtain a refund. An England and Wales jurisdiction clause had no legal force having regard to the 1982 Act (*Grag v. RW Motor Co Ltd* [2026] SAC (Civ) 43).

HOUSING

HMO Penalty-Director. The Upper Tribunal dealt with an appeal relating to the sole director of a corporate landlord. The UT held that the FTT's decision should be set aside on liability and, if the decision was otherwise, the penalty would be set aside (*Khuja v. Cherwell DC* [2026] UKUT 363 (LC)).

UNFAIR TERMS

Guidance. The CMA issued updated guidance on 22nd July 2026.

ENVIRONMENT

Prosecution. A Magistrates' Court issued a summons against the chief executive of a water company alleging conspiracy to defraud. The Divisional Court refused permission for a judicial review application. There was power to prosecute under the 1995 Act (*R (Wright) v. Medway Magistrates' Court* [2026] 1842 (Admin)).