



# TRADING LAW BULLETIN

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## CONSUMER CREDIT

**Amount of credit.** In a non-status lending case the Court of Appeal upheld the County Court decision that the consumer credit agreement was unenforceable. The Court disagreed with the Judge in respect of the mortgage arrears being within the total charge for credit but agreed with him in respect of the insurance premium. This was held to be compulsory and fell within the total charge for credit rendering the amount of credit incorrect (*London North Securities Limited v. Meadows*, 27th July 2005).

**Multiple agreements.** In a County Court case dealing with a non-status loan the Judge held that the combination of a debtor-creditor element with a debtor-creditor-supplier element constituted a multiple agreement. He also held that the sum to discharge a prior charge was within the total charge for credit rendering the amount of credit wrongly stated (*London North Securities Limited v. Williams*, 11th July 2005).

**Securitisation.** Notwithstanding the securitisation of a loan the Court of Appeal held that the Claimant, as registered proprietor of the legal charge, retained legal ownership of it. That included a right to claim possession of the mortgaged property. The power to vary interest rates was subject to an implied qualification that it would not be exercised improperly, capriciously or arbitrarily, or in a way which no reasonable mortgagee, acting reasonably, would do. These implied obligations had not been breached and the credit bargain was not extortionate (*Paragon Finance Plc v. Pender* [2005] 1 WLR 3412).

**Limitations.** An order for possession because of mortgage default was obtained in 1989. The property was sold in 1990. In 2002 the building society claimed the shortfall and interest. The House of Lords held that the monies had become receivable when the mortgage default occurred and therefore the Claimant's claim was statute barred (*West Bromwich Building Society v. Wilkinson* [2005] 4 All ER 97).

**Limitations.** The Court of Appeal dismissed a mortgagee's appeal against the dismissal of its claim

for the mortgage shortfall and interest on the grounds of limitation. More than twelve years had elapsed since the last repayment but the Claimant sought to rely on letters sent which it was argued amounted to acknowledgements of the debt. The Court held that whether or not the letters amounted to acknowledgements of the debt they were inadmissible because they were without prejudice communications (*Bradford & Bingley Plc v. Rasid*, 22nd July 2005).

**Credit cards.** The Court of Appeal allowed an appeal by Revenue and Customs in respect of the VAT implications of a purported charge of 2.5% for card handling services. The Court said that the wording on the till slip did not amount to a contract with the card handling company (*HM Revenue & Customs v. Debenhams* [2005] STC 1155).

**Amount of credit.** The Claimant entered into a series of pawnbroking transactions. She claimed that some were unenforceable because they had been backdated creating a redemption period shorter than that required by Section 116 of the Consumer Credit Act 1974. She also claimed that the total amount of credit was incorrect because a document fee had been included. The High Court upheld these arguments and decided that the agreements were unenforceable (*Wilson v. Robertson* [2005] 3 All ER 873).

## FOOD

**Food hygiene.** The Food Hygiene (England) Regulations 2005 come into force on 1st January 2006.

## CONSUMER PROTECTION

**Prices.** A new Code of Practice for traders on price indications was made on 11th September 2005.

## LICENSING

**Private hire vehicle.** The Divisional Court held that a local authority officer had the right to require an applicant for a licence for a private hire vehicle to disclose any previous criminal convictions. An appeal against the decision of the Magistrates that the Respondent had no case to answer for failing to

provide information under the Local Government (Miscellaneous Provisions) Act 2003 was upheld (*Sheffield City Council v. Ali*, 7th July 2005).

#### **ENTERPRISE ACT**

**Designated bodies.** A new list of designated bodies enabled to make super complaints has been substituted with effect from 1st October 2005.

**Pre-Act infringements.** The Outer House of the Court of Session have held that it is permissible to take into account domestic and community infringements which had taken place before the commencement of the Act when an enforcement order was sought (*OFT v. MB Designs (Scotland) Limited*, The Times, 11th August 2005).

#### **ANIMALS**

**By-products.** The Animal By-Products Regulations 2005 came into force on 28th September 2005.

#### **WEIGHTS AND MEASURES**

**Specified quantities.** The Weights and Measures (Miscellaneous Foods) (Amendment) Order 2005 was made on 1st November 2005 and comes into force on 15th November 2005. The amendment deals with exempting UK requirements in respect of goods from other Member States and for deleting prescribed quantities for chocolate and cocoa products.

#### **DATA PROTECTION**

**Disclosure.** A doctor was aggrieved at the refusal to renew his membership of the Professional Indemnity Insurance Scheme. He brought proceedings under the 1998 Act. He claimed specific disclosure of documents and the Defendant contended that the disclosure was precluded by Section 15(2). The High Court held that this was not a general prohibition and granted the application (*Johnson v. Medical Defence Union Limited* [2005] 1 All ER 87).

**Processing.** The Claimant went to a bank and, relying on information on the system, the staff were suspicious and called the police. The High Court Judge upheld an appeal against the decision of the Master to strike out the case. There was an arguable basis for a claim for damages under Section 13 of the 1998 Act (*Sofola v. Lloyds TSB Bank*, 27th June 2005).

#### **HEALTH AND SAFETY**

**Sentence.** The Court of Appeal allowed an appeal against a fine of £400,000 as a result of a health and safety prosecution following a railway accident. Even allowing for the element of deterrence and expression of public outrage the fine was too high

and one of £275,000 was substituted (*R v. Jarvis Facilities Limited*, The Times 6th June 2005).

**Inconsistent verdicts.** The Court of Appeal quashed the convictions of a company. A co-Defendant company had been acquitted and therefore the Jury must have reached certain conclusions resulting in the Appellant company not being in breach of its duty to its own employee or to the employee of the other company (*R v. Cova Products Limited* [2005] Crim.L.R.667).

**Directions.** The Court of Appeal held that the Judge had correctly directed the Jury to consider each count separately, that is in relation to employees and non-employees. The sentence of a fine of £550,000 was upheld but the prosecution costs were reduced (*R v. B & Q Plc*, 27th September 2005).

#### **REGULATORY REFORM**

**Unsolicited Goods Etc.** The Regulatory Reform (Unsolicited Goods and Services Act 1971) Etc. Order 2005 adds a further method by which a person may agree to an entry in a directory where the entry is a repeat or a renewed entry.

**Deeds and documents.** The Regulatory Reform (Execution of Deeds and Documents) Order 2005 came into force on 23rd June 2005.

#### **PRODUCT SAFETY**

**Regulations.** The General Product Safety Regulations 2005 are in force, subject to Regulation 43(2), on 1st October 2005.

#### **UNFAIR TERMS**

**Construction contracts.** The Court of Appeal upheld the decision of the Judge who rejected an argument that adjudication provisions were unfair under the 1999 Regulations. The provisions were not imposed on the employer and there was no lack of openness, fair dealing or good faith (*Bryen & Langley Limited v. Boston*, 29th July 2005).

**Guarantees.** The High Court ruled that a guarantee given by a director in respect of the indebtedness of his company was not within the 1999 Regulations and, in any event, a "no set-off" clause did not cause any significant imbalance in the parties' rights and obligations because there was no contractual obligation on the bank so there was nothing the bank could fail to perform or could perform inadequately (*Bank of Scotland v. Singh*, 17th June 2005).