



TRADING LAW BULLETIN

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CONSUMER CREDIT

Credit Hire. The cost of credit hire was challenged on the basis of the Cancellation of Contracts Made in a Consumer's Home or Place of Work Etc Regulations 2008. The High Court said that the agreement would have been unenforceable in respect of one of the agreements which was signed at the Claimant's home and business address, notwithstanding arguments as to waiver and arguments based upon European decisions. However, the payment had already been made and this argument on the part of the Claimant prevailed (*W V Veolia Environmental Services (UK) Plc* [2011] EWHC 2020 (QB)).

Small Cash Advances. The Consumer Finance Association has launched a Code of Practice for businesses dealing in small cash advances.

Rate of Interest. In 2000 there was a High Court trial in respect of a customer's debt to the bank. The issue of the rate of interest was raised and it was said on behalf of the bank that the default rate of interest of 25% p.a. had not been charged. Subsequently, it became clear that it had been charged. The error was disclosed in 2009 after the customer had sought an account. The Master refused to order an account because of the long delay but this decision was overturned on appeal (*Sarwar v. Royal Bank of Scotland Plc*, 27th July 2011).

On-line Purchases. Which? has raised the question of whether Section 75 applies to payments through Paypal.

Enforceability. A County Court has held that the documentary requirements pursuant to Section 61(1) were not complied with if the terms and conditions were not physically attached to the agreement but were provided together. The agreement was therefore unenforceable (*Jerome v. Nationwide Building Society*, 27th September 2011).

Charging Orders. There is only a limited discretion to decline to make an interim charging order final and the historic "first past the post" rule gave priority to the first creditor to obtain a charging order (*British Arab Commercial Bank plc v. Ahmed Hamad Algozaibi & Brothers Co* [2011] EWHC 2444 (Comm)).

Log Book Loans. The Upper Tribunal had allowed an appeal from a decision of the First Tier Tribunal ([2010] UKFTT 643 (GRC)) in respect of the issue of attestation of bills of sale. The Upper Tribunal (by a majority) held that an employee of the lender could attest the bill of sale (*Log Book Loans Limited v. OFT* [2011] UKUT 280 (AAC)).

Licensing. The First Tier Tribunal has upheld the revocation of the licence of a business carrying on debt-collecting (*JST Financial Solutions Limited v. OFT*, 31st August 2011).

Security. The High Court held that an agreement to advance money to a company with the security of a debenture did not result in a security interest when the advance was made and there was no immediate equitable right (*Rehman v. Chamberlain* [2011] EWHC 2318 (Ch)).

PPI. An application for permission to appeal from a case management decision of the High Court has been refused by the Court of Appeal (*Barnes v. Black Horse* [2011] EWHC 1416 (QB)).

New Regulation. HM Treasury and BIS published "A New Approach to Financial Regulation" by way of a summary of responses to consultation on reforming the Consumer Credit regime in July 2011.

Extortionate Credit Transactions. Unsecured creditors sought the removal of an administrator because a replacement might bring proceedings under the Insolvency Act 1986 Section 244 in respect of the rate of interest under a loan agreement. There was insufficient justification and the Court of Appeal upheld a decision not to grant the application (*Finnerty v. Clark* [2011] EWCA Civ 858).

FINANCIAL SERVICES

Injunction. The High Court has declined to continue an interim injunction whereby the publication of a decision notice was restrained where the conclusions were in the public domain and there was a statutory power to publish where appropriate (*R (on the application of A) v. Financial Services Authority*, 26th August 2011).

Regulated Activities. The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by way of Business) (Amendment) Order 2011 came into force on 16th September 2011 and primarily deals with sale and rent back.

Investment Advice. A claim was brought for negligence and breach of contract in respect of investment advice. Although the High Court found a breach of statutory duty in respect of the FSA rules on advise transactions only, nominal damages were awarded (*Rubenstein v. HSBC Bank Plc* [2011] EWHC 2304 (QB)).

Collective Investment Scheme. The High Court held that it was inappropriate to consider whether a scheme

existed in a claim for summary judgment. It was said that negligent advice had been provided in respect of planning matters and agreements to sell land (*Dhaliwal v. Bluebells*, 1st August 2011).

FOOD

Nuisance. The Court of Appeal upheld the decision of a District Judge that food smells did not constitute a private nuisance in the circumstances of the case where the activities took place on a light industrial estate (*Hirose Electrical UK Limited v. Peak Ingredients Limited* [2011] EWCA Civ 987).

HEALTH & SAFETY AT WORK

Causation. The Court of Appeal considered issues of foreseeability and causation under Sections 2 and 3 of the 1974 Act in dismissing appeals against convictions (*R v. Tangerine Confectionary Limited*, 19th August 2011).

Workplace Regulations. The Court of Appeal (Civil Division) held that an employer had breached the Workplace (Health, Safety and Welfare) Regulations 1992 in failing to provide a continuous handrail along a staircase but the claim for personal injury did not satisfy the test of causation (*Broadfield v. Meyrick Estate Management Limited*, 27th July 2011).

NUISANCE

Motor Sports. An abatement notice was issued in respect of motor sports carried out in an area near private houses and farms. The notice referred to “excessive emissions of noise from motor vehicle activity, motor sport events and associated activities”. The High Court held that there was a low level threshold for the description of nuisance and the specific activities did not have to be specified. Observations were also made on the issue of witnesses being in Court (*R (on the application of Elvington Park Limited) v. York Crown Court* [2011] EWHC 2213 (Admin)).

HOLIDAYS

Tour Operators. An issue arose in a VAT case concerning the identity of the supplier. The High Court held that it was necessary to consider the contracts and, once the supplier was identified, that supplier would be the party for VAT. The terms of the contracts made it clear that a holidaymaker was contracting with the provider of the accommodation (*Secret Hotels 2 Limited v. Revenue and Customs Commissioners* [2011] UKUT 3088).

TOYS

Safety. The Toys (Safety) Regulations 2011 came into force on 19th August 2011.

CLAIMS MANAGEMENT

Authorisation. The Ministry of Justice announced that nearly 350 firms were closed down in 2010 compared with 35 the year before.

CONSUMER PROTECTION

Legislation. On 11th September 2011 it was announced that a Consumer Rights Bill would be brought forward to implement the Directive.

Prize Marketing. The Court of Appeal heard an appeal in respect of a prize scheme and the impact of the Consumer Protection from Unfair Trading Regulations 2008. The Court of Appeal referred the matter to the European Court of Justice in respect of the interpretation of paragraph 31 of Annex 1 to the Directive which the Regulations implement (*Purely Creative Limited v. OFT* [2011] EWCA Civ 920).

ENVIRONMENT

Waste. The Court of Appeal (Criminal Division) ordered a fresh trial after ruling that a submission of no case to answer should not have been acceded to. Soil from construction works was deposited at the Defendant's farm for payment. The Appeal Court held that there was sufficient evidence to go to the jury that this was controlled waste (*R v. W* [2011] 3 All ER 691).

WEIGHTS AND MEASURES

Deregulation. The Weights and Measures (Specified Quantities) (Unwrapped Bread and Intoxicating Liquor) Order 2011 came into force on 1st October 2011.

UNFAIR TERMS

Conditions of Sale. The Court of Appeal upheld a decision that the Standard Conditions of Sale contained terms which were not fair and reasonable and therefore struck down by the Misrepresentation Act 1967 and the Unfair Contract Terms Act 1977 (*Cleaver v. Schyde Investments Limited* [2011] EWCA Civ 929).