

## Cases of interest for Finance Litigators

Summer 2018 Edition

### Unfair Relationships: **Carney v NM Rothschild & Sons Ltd**

In dismissing the claim against NM Rothschild & Sons Ltd (**Bank**) under Section 140A and 140B of the Consumer Credit Act 1974 (**Act**), it was held that there was no unfairness in the relationship between the Bank and the Claimants. The Court dismissed all claims relating to alleged bad advice, misrepresentations, regulatory concerns, lack of information and risk warnings.

Click [here](#) for the full judgment. Click [here](#) for our commentary on this case.

Another example of the Court's refusal to allow an unfair relationship claim can be seen in the recent case of **Mr Cope Hodell & others v Clydesdale Bank PLC**. HHJ Rawlings dismissed the Claimants' claim that there was an unfair relationship between the Bank and the Claimants. The Judge held that the alleged instances of unfairness in the relationship were not capable of being made out.

### Widening access to the Financial Ombudsman Service: responses to consultation (CP18/3) and Dispatches investigation

The FCA has released the initial responses to its consultation paper on SME access to FOS (CP18/3). The respondents comprised of a range of institutions, intermediaries and associations. Responses were mixed, however concerns were expressed as to FOS' ability and resource to meet the more complex complaints that would come with handling SME disputes. This follows an undercover investigation by Channel 4's Dispatches programme into FOS and its handling of cases, following which, Nicky Morgan, Chair of the House of Commons Treasury Committee has written to FOS' Chief Executive for further comment.

Click [here](#) for the responses to CP18/3. Click [here](#) for Nicky Morgan's letter to Caroline Wayman.

### An IRHP mis-selling case and section 138D Financial Services and Markets Act 2000 (FSMA): **Parmar and another v Barclays Bank plc**

The Court dismissed the Claimants' claims against the Bank under s138D of FSMA for alleged breaches of various provisions of the FCA's Conduct of Business Sourcebook Rules. The breaches related to the Bank's alleged mis-selling to the Claimant of interest rate hedging products. The Deputy Judge found that (a) the Bank's selling of the products was "*not an advised sale*"; (b) there was no failure by the Bank to "*conduct a sufficient fact finding exercise*" (and in any event the products "*were suitable for the Claimants*"); and (c) in the circumstances, and in order to comply with the COBS Rules, "*it was not necessary for the Bank to disclose the existence of its [credit equivalent exposure] limit for the purpose of demonstrating the breakage costs.*"

### Authorised Push Payment Scams: PSR's update and UK Finance Banking Protocol

In June 2018, the Payment Systems Regulator published a document outlining the work done to tackle authorised push payment scams. The document summarises the initiatives led by UK Finance and The New Payment System Operator to protect people from this type of fraud. Also in June, UK Finance announced that the Banking Protocol (a rapid response scheme which enables bank branch staff to report suspected fraud to police) has prevented almost £25m of attempted fraud and has led to 197 arrests across the UK since its roll-out last year.

Click [here](#) for the Payment System Regulator document. Click [here](#) for the UK Finance announcement.

## Possession proceedings and reasonable adjustments: *Southern Pacific Mortgage v Green*

The Court of Appeal dismissed the mortgagor's defences to a mortgage possession action based on disability discrimination. The Court rejected the assertion that the mortgagee had failed to make "reasonable adjustments" in providing its service by refusing to change its policy not to allow the conversion of the mortgagor's mortgage to an interest-only mortgage. LJ Coulson noted, "*I do not consider it a reasonable adjustment within the meaning of s.21(1) [Disability Discrimination Act 1995] to require the mortgagee in this case to abandon the security which it had agreed with the appellant, and instead to accept a much more speculative and uncertain security by way of an interest-only mortgage.*"

Click [here](#) for the full judgment .

## Between a Rock and a hard place: should oral variations be upheld in the face of a contractual bar? *Rock Advertising Limited v MWB Business Exchange Centres Limited*

In an eagerly awaited judgment, the Supreme Court held that an oral variation to a licence agreement was ineffective because of the inclusion of a no oral modification (NOM) clause. This overturned the Court of Appeal's decision that the oral agreement to revise the licence agreement also amounted to an agreement to dispense with the formal requirements of the NOM clause.

Click [here](#) for the full judgment. Click [here](#) for our commentary on this case.

## In scope? Banks and valuers – duty of care & fiduciary duties: *Rehman & Rehman v (1) Santander UK plc (2) BNP Paribas*

The High Court has re-affirmed settled legal principles in a summary judgment application: the banker/customer relationship gives no automatic rise to a duty of care or fiduciary duty, and an "all monies guarantee" will be held to be just that if expressly described as such.

Click [here](#) for our commentary on this case.

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