

Jonathan Kirk

1995 , 2010 Kings Counsel, kirk@deanscourt.co.uk



Education

LLB Kings College London

Professional Associations

Bar European Group
CTSI (honorary member)
Food Law Group

Areas of Specialism

Business and Property

Consumer Law

Consumer Finance

Food Law

"A formidable adversary who knows the business inside out." Chambers and Partners (Star Individual Silk)

"An outstanding advocate who can distil the most complex of cases to something so straightforward." Legal 500 (Tier 1 KC)

For several years Jonathan has been ranked as the star individual silk for consumer law by Chambers & Partners and a Band 1 KC by the Legal 500.

He has been the principal author and editor of the Pink Book on consumer law (*Consumer and Trading Standards: Law and Practice* published by Lexis Nexis) for each of the 11 editions since it was first published in 2001.

Jonathan has been instructed to defend businesses in virtually all of the CMA's sectoral investigations into consumer law infringements: including supermarket pricing, online retail, package holidays, furniture, carpet pricing, airline refunds, ground rents, anti-virus subscriptions, ticket reselling, dating websites and covid cancellation.

He recently represented British Airways in their successful defence to the CMA investigation in relation to Covid refunds, and is currently instructed in the sectoral investigations into supermarkets, online website architecture and greenwashing.

In the Supreme Court he represented the successful parking company in *Beavis v ParkingEye*, which now sets out the correct approach to the assessment of unfair terms in consumer contracts and the general application of the civil penalties doctrine.

Jonathan has also acted as an expert witness on consumer law in overseas courts. He was instructed by Apple as its expert witness on UK consumer law in the US courts for its defence of a global class action concerning the performance of older iPhone models.

For over 25 years he has advised and acted in some of most important trading standards litigation. In particular, he has defended numerous companies against allegations of mis-selling and misleading pricing, including the Tesco strawberries litigation. He was the legal adviser and draftsman for the current CTSI Pricing Practices Guide.

In 2023 he represented the successful appellants in the landmark *R (City of York) v AUH* litigation before the Court of Appeal concerning the territorial jurisdiction of a local authority. He also represented the traders in *R v X Limited* the first appellate consideration of the Consumer Protection from Unfair Trading Regulations.

Jonathan was previously an editor of *Miller: Product Liability and Safety Encyclopaedia* and has been involved in many of the most serious product safety cases including dangerous appliances (Whirlpool), cars (Vauxhall), personal protective equipment, electrical imports, toys, clothing and baby and childcare products. He advises the Office of Product Safety and Standards on national product safety issues.

Jonathan is also familiar with money laundering and confiscation, on which he co-authored the textbook: *The Proceeds of Crime Act 2002: A Practitioner's Guide*, published by Jordan.

Notable Cases

Practice Area:

Regina (Shawbrook Bank) & R (Clydesdale Financial Services t/a Barclays Partner Finance) v Financial Ombudsman Service [2023] EWHC 1069 (Admin) [2023] 5 WLUK 93 – judicial review test case in relation to FOS unfair relationships under the CCA 1974 and mis-selling complaints in relation to timeshare consumer credit and consideration of whether fractional timeshare amount to collective investment schemes.

R v AUH Number 2 [2023] 1 WLR 1399 Court of Appeal (LCJ) consideration of whether fraud and money laundering were offences “originating from” scheduled consumer offences under schedule 5 of the Consumer Rights Act 2015.

R v AUH [2023] 1 WLR 106 Court of Appeal (LCJ) consideration of local authority territorial jurisdiction under Para 46 of Schedule 5 to the Consumer Rights Act 2015 and whether that confers a freestanding right to commence proceedings.

Healthspan Limited v Food Standards Agency [2022], judicial review of the Food Standards Agency concerning the amnesty scheme for CBD suppliers.

Happy Hounds Wales Limited v Neath Port Talbot CBC [2022] High Court appeal against prohibition order over the supply raw pet feed and the requirement to be authorised as a feed business.

Competition and Markets Authority v British Airways plc [2022] Defended BA in the CMA investigation concerning Covid 19 refunds for passengers unable to travel because of public health restrictions.

CFL Finance Ltd v Bass, Gertner & Others [2021] EWCA Civ 228 | [2021] 4 All E.R. 717 | [2021] 2 WLUK 315 Court of Appeal decision on the application of the Consumer Credit Act 1974 to contractually binding settlement agreements.

Competition and Markets Authority v A National House Builder [2021] defended house builder in the CMA investigation into escalating ground rents for leasehold properties

Competition and Markets Authority v An anti-virus software provider [2021] defended a second anti-virus software provider in the CMA investigation into that sector.

Regina (on the application of Tesco Stores Limited) v Birmingham Mct Birmingham CC [2020] EWHC 799 (Admin) | [2021] 1 All E.R. 158 | [2021] 1 All E.R. (Comm) 240 Acted for Tesco in judicial review on the application of EU law deeming provision to food with an expired use by date.

Competition and Markets Authority v An anti-virus software provider [2020] defended a company in the CMA investigation into the anti-virus software sector.

Competition and Markets Authority v Bijou Weddings Group [2020] Defended wedding venue provider in CMA investigation into cancellation of weddings due to Covid 19 public health restrictions.

In the matter of CBD oil, novel foods and the Commission of the European Union [2019] Represented CBD (cannabidiol) oil suppliers and manufacturers before the EU Commission (DG Sante) inquiry on the categorisation of CBD oil as a novel food for the purposes of the EU Novel Foods Regulation.

R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service, Charlton and the Financial Conduct Authority [2019 Bus LR 437] Acted on behalf of SIPP administrator in judicial review claim against FOS decision considered to be a test case for financial services sector in relation to the Ombudsman's right to impose duties on the basis of the FCA's general Principles for Business (PRIN Sourcebook).

In Re Device Performance Litigation: [2018-9 California ND DC] Instructed to act as expert witness on UK consumer law in the US courts by US technology company in relation to a global class action concerning the performance of older models of mobile telephones.

CMA v An online dating platform [2018] Defence of online dating platforms in CMA investigation and Part 8 Proceedings brought in relation to alleged misleading practices in the computer dating sector.

CMA v An online ticker re-seller [2018]: Defended two online ticket re-sellers during the third phase of the CMA investigation and Part 8 proceedings into misleading pricing and a failure to provide material consumer information.

Christian Littlewood v Powys County Council [2018] CTLC 293 Appeal to the Upper Tribunal against a Estate Agency prohibition order made against an estate agent convicted of insider dealing.

CMA v An online gaming provider [2018] Defended online gaming business in CMA and Gambling Commission joint investigation, under Part 8 EA 2002, into misleading and unfair practices in the provision of online gambling facilities.

ASA v A sports goods retailer [2018] Represented national sports goods retailer in defence of ASA complaints concerning misleading price promotions in advertisements.

Mohammed Arif and 175 others v BBSAL Ltd [2017] EWHC 3108 (Com) Defence of SIPP administrator in group litigation concerning allegedly mis-sold financial products.

Civil Aviation Authority v An online package holiday provider [2017] – represented package holiday provider in Part 8 CAA investigation concerning alleged misleading advertising practices in the comparative sale of packaged flights and accommodation.

ASA v A contact lens manufacturer [2017] acted for complainant business in ASA adjudication on misleading comparative advertising by competitor.

BBSAL v Charlton, Brown and Financial Ombudsman Service [2017] EWHC 2396 (Comm); [2018] 1 Lloyd's Rep. 337; [2017] 10 WLUK 33; [2017] 2 C.L.C. 410; [2018] CTLC 1: Acted for pension administrator in litigation on the application of the Arbitration Act 1996 to the FOS jurisdiction.

R (On the application of the Consumers' Association) v Peterborough CC, Whirlpool [2017] acted for the Primary Authority in judicial review and regulatory product safety enforcement proceedings concerning defective tumble dryers that caused domestic fires.

Surrey CC v Zenith Staybrite Ltd and 7 others [2017] represented double glazing manufacturer in criminal enforcement proceedings under CPUTR 2008 in relation to misleading sales practices.

R (on the application of Stephanie Hudson) v Liverpool City Council (High Court, QBD, 2016): contempt proceedings against the Council for

breaching its undertaking to review its decision to restructure its consumer protection services.

R (Kingston upon Hull City Council) v Secretary of State for Business, Innovation and Skills, Newcastle City Council and Greggs plc (High Court, Admin, 2016): represented Greggs plc, an interested party, in a judicial review of the endorsement by BIS' Better Regulation Delivery Office ('BRDO') of advice given under the Primary Authority Scheme to Greggs plc, concerning provision of sanitary facilities.

Competition and Markets Authority v Various Supermarkets (2016): defended a supermarket in the CMA investigation into the Consumers' Association (Which?) super-complaint about pricing and promotional practices in the groceries market.

Makdessi v Cavendish Square Holdings BV; Beavis v ParkingEye Ltd [2016] AC 1172; [2015] 3 WLR 1373 acted for parking company in appeal to Supreme Court concerning an £85 parking charge; case is now the leading decision on penalty clauses, re-examining the scope of the common law doctrine and the approach to challenges to unfair terms in consumer contracts.

Competition and Markets Authority v Seatwave, Viagogo, StubHub! and Get Me In! (2015): defended the GetmeIn! website in the CMA investigation into the ticket re-selling market.

R (Hudson) v Liverpool City Council (High Court, Admin, 2015): acted in judicial review proceedings against Liverpool CC in relation to the claim that it had drastically reduced its trading standards capacity and therefore breached its European and domestic consumer protection responsibilities.

Torfaen County Borough Council v Tesco Stores Limited (2015) defended Tesco in allegation of mis-selling of peanuts under the Price Marking Order 2004.

British Parking Association v A Private Parking Enforcement Company (2015) defended a private parking company in disciplinary proceedings brought by the British Parking Association in relation to allegations of fraud by parking wardens falsely issuing parking tickets.

R (Wren Kitchens Limited) v Advertising Standards Authority (2015): acted for Wren Kitchens Limited in ASA adjudication on price comparisons and in subsequent judicial review proceedings.

Av B Ltd (High Court, Ch Div, 2015): represented corporate defendant in a fraudulent misrepresentation trial concerning land in the Cayman islands.

OFGEM v Various Energy Companies (2015): acted for OFGEM in allegations against energy companies under Part 8 EA and the Consumer Protection from Unfair Trading Regulations 2008 ('CPUT').

Office of Fair Trading v Carpetright PLC, SCS, Dreams, Furniture Village Limited, Homestyle Operations Limited, Harveys and Bensons for Beds (2014): defended Carpetright PLC in the OFT's investigation into alleged misleading reference pricing in the furniture retail sector.

Hertfordshire County Council and London Borough of Brent v Wendy Fair Markets Limited (High Court, Ch Div, 2014): claim under Part 8 EA 2002 for injunctive relief against market operators concerning consumer law infringements in relation to counterfeit goods.

Torfaen CBC v Douglas Willis Ltd [2013] UKSC 59 (Supreme Court): food standards and minimum durability labelling.

R v X Limited [2013] EWCA Crim 818 (Court of Appeal): first consideration of the meaning of 'commercial practice' under CPUT.

Birmingham CC v Tesco Stores Limited (2013): Defended Tesco in allegation of misleading price promotions under CPUTR (strawberries).

Cheshire East v Salsa Enterprises Limited and Sean Ellman (2013): defence of company accused of breaching CPUT by selling 'legal highs'.

R v Blake (2013): defence of managing director of finance company prosecuted for breach of financial conduct provisions.

OFT v First Step Finance Limited (2013): representation of company in relation to the revocation of its consumer credit licence.

House of Cars Ltd v Derby Car and Van Rental (2012): first private prosecution under CPUT.

East Riding of Yorks v UK Parking Control Ltd (2012) (CC, HC (QBD) and CofA): first trading standards enforcement of CPUT in private car parking enforcement.

R (LOCOG) v Sportsworld Limited, Events International Limited and International Corporate Events Limited (2012): defence of national ticket sales company prosecuted under the provisions of the 2006 Olympic Act.

Brighton & Hove CC v Towers Property Developments Ltd (High Court, Ch Div, 2011): first Part 8 EA 2002 and CPUT trading standards enforcement against land banking company.