

Recent developments in Financial Institutions' Liabilities

Nicholas Davidson QC

FOUR
NEW
SQUARE

LINCOLN'S INN

The pilot,
The plutocrat, and
The punter

“I have no doubt that it is stressful to be exposed to substantial losses from spread betting.”

R. (On the application of Heather Moor & Edgecomb Ltd) v. Financial Ombudsman Service [2008] EWCA Civ. 642.

Part XVI of FSMA 2000

The £100,000 limit

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Heads I win, tails I don't lose

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Fair and reasonable yardstick

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(Lord Chancellor's foot??)

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Judicial review

- Taking the law into account

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- C) The Ombudsman had not followed those rules of law

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- B) That construction was in any event necessary to avoid infringement of ECHR Article 6 and Article 1 of the First Protocol
- C) The Ombudsman had not followed those rules of law
- D) The advisers had not been negligent so no award should have been made

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- “... but if he does so he *should say so in his decision and say why.*”

provided that they comply with the relevant law, regulations, regulators' rules and guidance and standards, relevant codes of practice and, where appropriate, good industry practice

- “... in an age of commerce between merchants ...”

transparency, consistency and
accessibility as to the principles
which inform the ombudsman's
determinations

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*J P Morgan Chase Bank v.
Springwell Navigation Corporation*
[2008] EWHC 1186 (Comm)

*Commissioners of Customs and
Excise v. Barclays Bank* [2006]
UKHL 28

- “... (Springwell’s expert) conducted a highly academic exercise in subjecting the portfolio to sophisticated portfolio management analysis.

- “... (Springwell’s expert) conducted a highly academic exercise in subjecting the portfolio to sophisticated portfolio management analysis. But this was ..was not one which [the person doing the work could have been expected to have undertaken.”

Spreadex Ltd v. Sekhon [2008]
EWHC Ch 1136

14 September 2006

14 September 2006

5 October 2006