



Press Summary

1 April 2026

Kession Capital Ltd (in Liquidation) (Appellant) v KVB Consultants Ltd and others (Respondents)

[2026] UKSC 11

On appeal from: [2024] EWCA Civ 765

Justices: Lord Lloyd-Jones, Lord Sales, Lady Rose, Lord Richards and Lady Simler

Background to the Appeal

This appeal arises from the regulation of financial services under the Financial Services and Markets Act 2000 (“FSMA”). FSMA prohibits persons from carrying on a financial services business unless authorised by the regulator, the Financial Conduct Authority (“FCA”). Persons who hold FCA authorisation are known as “authorised persons”. Section 39 of FSMA provides that an authorised person may permit another person to carry on a financial services business as its representative. This other person is known as an “appointed representative”.

Section 39 requires the appointment to be made by a contract which will specify the types of business (“business of a prescribed description”) that the appointed representative is permitted to carry on. The authorised person must accept in writing responsibility for the activities of the appointed representative “in carrying on the whole or part” of the specified business. An authorised person may therefore limit the permission granted to its appointed representative to carrying on a “part” only of a business.

Section 39(3) states that an authorised person accepts responsibility “for anything done or omitted by the representative in carrying on the business for which he has accepted responsibility”. A client who suffers loss as a result of an appointed representative’s breach of FCA rules in carrying on that business is therefore entitled to bring a claim not only against the appointed representative itself but also against the authorised person responsible for it.

The extent of the permission an authorised person grants its appointed representative is coterminous with the extent of the authorised person’s responsibility for the representative’s conduct. In other words, the authorised person is only responsible for those of its appointed representative’s activities which fall within the scope of the permission. An authorised person is not responsible for any other business activities its appointed representative chooses to engage in.

The FCA's regulatory regime distinguishes between retail clients and professional clients. In summary, substantial institutional investors and other more sophisticated investors are categorised as professional clients. All other clients are categorised as retail clients. The FCA considers that professional clients do not need the level of protection accorded to retail clients. Firms which choose to deal with retail clients are therefore subject to more extensive requirements in the conduct of that business, which is underpinned by a regulatory regime of qualifications and continuing staff training. Under section 55 of FSMA, an authorised person may, at its own request or otherwise, be prohibited by the FCA from dealing with retail clients.

An authorised person may likewise limit the scope of the permission it gives to an appointed person by prohibiting it from dealing with retail clients. The issue on this appeal is whether that also excludes any responsibility by the authorised person for any dealings by the appointed person with retail clients.

The Appellant, Kession Capital Ltd ("**Kession**"), was an FCA authorised person. In June 2015 Kession agreed to appoint another firm, Jacob Hopkins McKenzie Ltd ("**JHM**"), as its appointed representative. This agreement prohibited JHM from dealing with retail clients.

JHM set up a number of investment schemes. Despite the terms of JHM's agreement with Kession, all but one of those who invested in these schemes were retail clients. These retail clients are the Respondents in this appeal. JHM's investment schemes failed and the investors lost their money. JHM is now insolvent and there is no prospect of the investors recovering their money from it. The investors therefore brought the present claim for a combined total of £1.7 million against Kession.

Kession resisted the claim on the basis that, in dealing with retail clients, JHM had acted outside the scope of the permission given to it by Kession and therefore correspondingly outside the scope of the business for which Kession had assumed responsibility. As such the retail clients were not entitled to bring a claim against Kession.

Paul Stanley KC, sitting as a Deputy High Court judge, rejected this argument and entered summary judgment against Kession. The Judge considered that dealing with retail clients could not be described as a distinct 'part' of a financial services business for the purpose of section 39. The prohibition on JHM dealing with retail clients was simply a contractual restriction, which did not affect the rights of third parties such as JHM's investors.

The Court of Appeal by a majority (Sir Geoffrey Vos MR and Males LJ) agreed with the Judge's conclusions and dismissed Kession's appeal. Lewison LJ gave a dissenting judgment. Kession appealed to the Supreme Court.

Judgment

The Supreme Court unanimously allows Kession's appeal. Lord Richards gives the judgment with which Lord Lloyd-Jones, Lord Sales, Lady Rose, Lady Simler agree.

Lord Richards holds that dealing with retail clients constituted a "part" of a business in the context of section 39(1). By restricting JHM's permission to dealing only with professional clients, and not with retail clients, Kession correspondingly accepted responsibility only for JHM's dealings with professional clients and not with retail clients. The investors' claim against Kession therefore fails.

Reasons for the judgment

Lord Richards notes that as a matter of ordinary language there is no difficulty in describing dealing with retail clients as a "part" of a financial services business ([58]). No-one would suggest that it was inapposite to say of a supplier who deals with both business and retail customers that dealing with retail customers was a "part" of the supplier's business.

Moreover, the distinction between retail and professional clients is an important element of the FCA's regulatory regime ([59]). This supports the view that dealing with retail clients may properly be described as a distinct "part" of a financial services business. The FCA itself may grant an authorised person permission to deal solely with professional clients, which also suggests that dealing with retail clients is a distinct "part" of a business ([60]).

Lord Richards notes that, although the FSMA regulatory regime provides remedies for breaches of the FCA's rules, it is primarily focused on the prevention of abuse ([61]). Bearing this in mind, he holds that there are three substantial reasons why consumer protection would be better served by construing dealing with retail clients as constituting a "part" of a business ([62]).

The first reason is that it would undermine effective regulation if an authorised person whose own expertise lay in dealing with professional clients, and lacked expertise in dealing with retail clients, was nonetheless required to monitor and supervise and accept responsibility for its appointed representative's dealings with retail clients ([64]). Indeed, if dealing with retail clients is not a "part" of the permitted business, an authorised person whose own FCA authorisation prevented it from dealing with retail clients would nevertheless be responsible for its appointed representative's dealings with retail clients ([66]). This would not be a sensible feature of a regulatory regime.

The second reason is that the authorised person, whether or not it is permitted to deal with retail clients itself, may form the view that an appointed representative is qualified to deal with professional clients but not with retail clients ([69]). In such a case, it makes little sense to require the authorised person to be responsible for the appointed representative's dealings with retail clients.

The third reason is that if dealing with retail clients is not a "part" of the permitted business, an appointed representative prohibited from dealing with retail clients by the terms of its appointment will not incur any civil and criminal penalty if it nonetheless chooses to do so ([70]). This is not a result calculated to improve consumer protection.

Finally, Lord Richards holds that it would be regulatory overkill, and indeed unfair, to make an authorised person responsible for its appointed representative's activities in dealing with retail clients when the representative is expressly prohibited from doing so by the terms of its appointment ([71]).

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)