

Institution: London School of Economics and Political Science
Unit of Assessment: 20 Law
Title of case study: Private redress for consumers against scams
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>Scams and underhand sales practices are estimated to cost consumers in the UK over £3 billion each year. Collins's research has identified gaps in the remedies available to consumers who are victims of unfair commercial practices or scams. Consumer Focus (an independent but government-funded agency) relied heavily on his research in their 2009 report, which informed the Law Commission's 2011 proposals for reform of the law, and which in 2013 led Parliament to legislate to close the remedial gaps.</p>
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>Collins was Professor of English Law at the LSE from 1991 to 2013. All of the research underpinning this case study was produced while he was a member of the Law Department (and all of it was produced since 1993). The research project concerns the best ways to use the law to prevent scams and underhand sales practices, which are estimated to cost consumers in the UK approximately £3.3 billion annually. Since these unfair commercial practices operate across borders, the research focuses on European measures and their implementation in the UK. The European Directive on Unfair Commercial Practices expressly avoids any connection with contract law and the possibility of a remedy of private redress for consumers against losses caused by unfair commercial practices.</p> <p>The research identifies the lack of adequate mechanisms for private claims for redress brought by individual consumers who have suffered loss as a result of unfair commercial practices. The most detailed of the papers dealing with this matter is Collins 2009, which shows that although the reformed UK consumer law has criminalised a wide range of unfair commercial practices, the victims of these practices do not always have a right to compensation against rogue traders. The common law governing this issue was developed in the nineteenth century in the context of commercial transactions. Collins' research has identified gaps in the laws governing misrepresentation, duress and undue influence, through which consumers who have been the victims of various scams can fall, leaving them with no possibility of obtaining compensatory damages for their losses, and in some instances unable to recover money paid. For instance, there is rarely liability in private law for misleading though literally true statements and misleading omissions to provide material information to consumers, even though such misleading statements and omissions can be criminal offences. Similarly, pressurised sales techniques may be effective even though they fall short of the requirements for duress and undue influence; so though they are criminal offences, these techniques may create binding contracts, leaving the consumer with no redress.</p> <p>The research shows that a private right of redress would 1) stimulate compliance with the law on unfair commercial practices, 2) serve the goal of restorative justice, and 3) provide the opportunity for a long-overdue overhaul of the existing private law rules in the field. The research proposes various ways by which to overhaul these rules so as to provide an effective remedy for individual consumers for losses suffered as a result of all criminal offences.</p>
<p>3. References to the research (indicative maximum of six references)</p> <p>(2004) H. Collins, 'EC Regulation of Unfair Commercial Practices', in H. Collins (ed), <i>The Forthcoming EU Directive on Unfair Commercial Practices: Contract, Consumer and Competition Law</i> (The Hague: Kluwer Law International) 1-42, esp. pp. 36-39. http://eprints.lse.ac.uk/51365/</p> <p>(2005) H. Collins, 'The Unfair Commercial Practices Directive', 1 <i>European Review of Contract Law</i> 417-441, esp. pp. 424-27. DOI number:10.1515/ercl.2005.1.4.417</p>

(2009) H. Collins, *A Private Right of Redress for Unfair Commercial Practices: A Report for Consumer Focus* (London: Consumer Focus) 41pp., available at: <http://www.consumerfocus.org.uk/assets/1/files/2009/08/A-Private-Right-of-Redress-for-Unfair-Commercial-Practices-Hugh-Collins.pdf> (evidence of at least 2* quality: national and international scholars' reliance on the research at e.g. *Cambridge Companion to European Private Law* (2010), 242; [2012] Erasmus L. R. 237; *European Private Law* (de Gruyter, 2011), 137 (G. Howells)). <http://eprints.lse.ac.uk/36437/>

(2010) H. Collins, 'Harmonisation by Example: European Laws against Unfair Commercial Practices', 73 *Modern Law Review* 89-118, esp. pp. 113-17. DOI number: 10.1111/j.1468-2230.2009.00785.x

Evidence of quality: peer-reviewed journal articles and citations as noted above.

4. Details of the impact (indicative maximum 750 words)

On the strength of his previous research on the subject, Collins was commissioned by Consumer Focus to write a research paper on how a private right of redress might be enacted and what the benefits of such legislation might be (both as regards adequate redress and the reform of the confused and outdated common law regarding misrepresentation, duress and undue influence). Consumer Focus relied heavily on the legal analysis in Collins's 2009 research paper in their own report, *Waiting to be Heard: Giving Consumers the right of redress over Unfair Commercial Practices* (section 5, sources 1 and 4).

That report was jointly used by the Law Commission of England and the Scottish Law Commission in drawing up their consultation paper, *Consumer Redress for Misrepresentation and Aggressive Practices* (section 5, source 2). The section of the consultation paper entitled 'Calls for a Private Right of Redress' (paragraphs 1.19 et seq.) begins with a discussion of Collins 2009. The consultation paper also includes several references – in particular at pp. 24, 26, 84 and 149 – to Collins's other works in this area (cited in section 3, above).

Collins organised and was one of the speakers at the only public event concerning the Consultation Paper. This event was attended by civil servants from the Department of Business, Innovation and Skills and by officials involved in the day-to-day enforcement of consumer protection rules, as well as by the teams from both Law Commissions (section 5, sources 6 and 7). This provided further opportunity for his research to influence the final Law Commission proposals. Jessica Ugucconi, a lawyer at the Law Commission, commented that "written response to [the] proposals can be relatively narrow in what it says, so the LSE event meant we were able to get a much better feel of the reaction." (Section 5 source 5.)

The Law Commissions published their final report in 2012: *Consumer Redress for Misleading and Aggressive Practices* (section 5, source 3). The final report proposes 'targeted' or narrow reform – in the form of a Consumer Bill of Rights – without addressing the more systematic weaknesses of the common law. The report contains frequent references (most notably at pp. 33, 48 and 81) both to Collins 2009 and to his other cited research.

Parliament altered the law so as to put in place the substance of the Law Commissions' Bill of Rights proposal by enacting the Consumer Protection from Unfair Trading (Amendment) Regulations 2013. Direct connections can be drawn between the Collins's 2009 research paper and the 2013 Regulations. For example, at p. 26 of his 2009 paper, Collins states:

"The Consumer Bill of Rights should aim to give consumers a consistent direct right of redress across the consumer protection landscape. In the context of this report, it should ensure that consumers enjoy an extension of existing rights of redress in particular areas of unfair commercial practices, where at present no private law remedy is available or no remedy in damages is available. A reform of this nature would involve statutory changes to the private law doctrines of

duress and undue influence, and misrepresentation. It might also require adjustments to other aspects of the law of tort.”

And section 27J of the 2013 Regulations provides that:

“a consumer has the right to damages if ... the consumer has incurred financial loss ... or” – the extension of the existing rights – if “the consumer has suffered alarm, distress, physical discomfort or inconvenience which the consumer would not have [incurred or] suffered if the prohibited practice in question had not taken place.”

Details of the new regulations, acknowledging and providing a link to Collins’s 2009 report, are provided in the Government’s press release at <https://www.gov.uk/government/news/new-powers-to-protect-vulnerable-and-elderly-consumers-against-rogue-traders>.

Why the impact matters. The consequences of Collins’s research having had the impact demonstrated in this study are a) that the relevant consumer law principles and attendant legislative provisions have been rendered more coherent and robust, and b) that consumers will now be able to seek redress for unconscionable sales practices, enhancing consumer rights and potentially reducing such practices and associated costs to consumers over time.

5. Sources to corroborate the impact (indicative maximum of 10 references)

All Sources listed below can also be seen at: <https://apps.lse.ac.uk/impact/case-study/view/40>

1. Consumer Focus, *Waiting to be heard: Giving consumers the right of redress over Unfair Commercial Practices* (August 2009) p 3, available at:

<https://apps.lse.ac.uk/impact/download/file/1388>

2. Consumer Redress for Misleading and Aggressive Practices (2011) Law Commission Consultation Paper No 199; Scottish Law Commission Discussion Paper No 149, available at:

<https://apps.lse.ac.uk/impact/download/file/1389>

3. *Consumer Redress for Misleading and Aggressive Practices Law Com No 332/ Scot Law Com No 226, CM8323* (2012). <https://apps.lse.ac.uk/impact/download/file/1390>

4. Department for Business, Innovation & Skills, *Press release: New powers to protect vulnerable and elderly consumers against rogue traders* (6 August 2013), at:

<https://www.gov.uk/government/news/new-powers-to-protect-vulnerable-and-elderly-consumers-against-rogue-traders>

“In a 2009 Consumer Focus [i.e., Collins’s] report, Consumer Focus calculated that the total detriment suffered by consumers as a result of misleading and aggressive practices was around £3.3 billion a year.... Despite the high standards exhibited by the vast majority of businesses, there are traders who seek to exploit consumers. Misleading and aggressive practices are a particular problem for vulnerable and elderly consumers, for example, when they fall victim to misleading or aggressive doorstep sales techniques.... We want consumers to be confident to shop with a range of traders and to drive rogues out of business. The new rights announced today will mean consumers are entitled to the same level of protection whether they are purchasing goods or services online, at home or in a shop.... [T]he reforms to consumer law will enhance consumer rights and make them easier to understand and help businesses interpret and apply the law.”

5. The Director of International Policy Advocacy, Consumer Focus:

“We commissioned Hugh, as an expert in the field, to write a report analysing the legal arguments to help us with building the case and that was very helpful.”

6. Law Commission team lawyer:

“We used Hugh’s research at the very beginning in our scoping exercise on whether there was a problem and figuring out what it was. It definitely fed into what we did and was very useful. He identified a lot of problems and we quote him in our consultation papers.... He also helped us along the way, meeting to discuss the issue and had the idea to pull together people from different backgrounds for the consultation workshop using his contacts.... The workshop was a big opportunity for everyone to discuss our initial proposals on reforming consumer law.... We had a good spread of people from academia, industry and government. Bringing together all these people who have very different perspectives gave everyone a better understanding of where other people were coming from.... In terms of the proposals themselves, we are in the process of writing a report and we have definitely taken into account the views expressed. It was the most important event during the consultation phase and it was the only public event where people could engage and give us feedback orally.”

7. English Law Commissioner for commercial and common law:

“[T]he teams here and in Scotland very much appreciated the opportunity to debate our proposals on redress with such a distinguished set of speakers and knowledgeable audience [at the Reforming the Private Law of Unfair Commercial Practices Workshop, Monday 23 May 2011, LSE].... The workshop produced some strongly held views on both sides of that debate which we will be reflecting in our consultation process.... I am certain that the workshop has encouraged a wider response to our consultation.”