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Consumer Protection in Financial Services

Editor
Peter Cartwright

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Edited by
Peter Cartwright

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FOREWORD

In the 1960s, consumer protection was concerned essentially with the purchase of consumer goods and services, together with the need to ensure that there were adequate safety standards and protection against misleading labelling and against contractual terms that exempted suppliers from liability for defects. Financial services were considered only in so far as credit might be required to facilitate a buying transaction, typically through a hire-purchase agreement.

While in general there was some reason to be cynical about governments setting up commissions and committees to review the existing law and come up with proposals for change, there is little doubt that the Molony Committee which reported in 1962 had considerable success in that its recommendations were implemented to a very high degree by successive governments in the late 1960s and 1970s.

Concern for the rights of ordinary people buying goods, including complex appliances, in an increasingly affluent society, began to extend to people buying services of all kinds, both physical services for repairs and maintenance, as well as insurance and other kinds of financial services. For the user of credit provision, which began to emerge in a much greater variety than hire-purchase, the Crowther Committee on Consumer Credit led quite rapidly to the formidably detailed Consumer Credit Act 1974, with its novel use of real-life examples, as to how the Act operates, set out in a Schedule.

However, consumers not only borrowed and obtained goods and services and houses on credit, they increasingly used financial services to save and to invest and formed significant short-term and long-term relationships with banks, building societies, the Stock Exchange, collective investment schemes such as unit trusts and a considerable variety of advisers, brokers and institutions. The growth of occupational and personal pensions schemes and the risk of misuse of pension funds (the Maxwell scandal) and mis-selling of pensions were startling features of the new prosperity. Molony and Crowther were followed by the review of banking law and practice by the Jack Committee and the remarkable one-man review of investor protection by Professor L. C. B. Gower, and later by the Goode Committee on pension law. The relative infrequency of the

Foreword

purchase of financial services, as distinct from many household goods, and the more obvious imbalance in knowledge between the trader and the buyer, emphasise the special importance of protection in this field.

This collection of essays is a valuable and timely one, covering a great many of the problems of consumer and investor protection in the provision of financial services and, given growing globalisation, it appropriately surveys European Union influences and looks at some of the examples and exemplars of such protection elsewhere in the world. In the UK we are about to move to a new culture under the aegis of the Financial Services Authority by way of the Financial Services and Marketing Bill.

There was something very unstable and temporary about the profusion of regulatory and self-regulatory bodies – the ‘alphabet soup’ of different regulators – set up under the Financial Services Act 1986. It would be folly to imagine that the new legislative structure will be set in stone. Certainly, it will need to be flexible and adaptable to the rapidly changing national and international scene. It will also need to make use of the whole area of consumer protection – comprehensible and comprehensive information, regulatory machinery with flexible powers using both the criminal and civil law, and access to redress for consumers that adopts best practice from developing schemes of mediation, conciliation, ombudsmen and arbitration. It will have to develop over time and the legislation must not be over-prescriptive. It is vital that the law is enabled to catch up with evolving business practice without too much of a gap in time.

Gordon Borrie

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EDITOR'S PREFACE

I have incurred many debts of gratitude in putting this book together. First of all, I would like to thank my research assistant, Yvonne Williams, for her outstanding work on the project. Yvonne's contribution to the book cannot be overstated. Without her skills, the task of producing the work would have been considerably more arduous. Second, I would like to thank various people who, while not contributing chapters to the book, have helped and encouraged in other ways. They include Ross Cranston, Marise Cremona, Stephen Edell, Cowan Ervine, Michael James, Alan Page, Deborah Parry, Udo Reifner and Steve Weatherill. A small number of the essays in this book began life as papers delivered at a conference I organised at Queen's College Cambridge on 'Financial Services and the Consumer'. The conference was organised on behalf of the Consumer Law Section of the Society of Public Teachers of Law, and I would like to thank Francis Rose and John Tiley for all their work in making the conference a success. I would also like to thank those at Kluwer Law International, in particular Selma Hoedt, Sarah King and Lukas Claerhout for their help with the book.

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August 1998

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