

# Research impact: making a difference

## **Giving consumers the right to private redress over scams**

LSE research made the case for giving UK consumers the right to private redress from rogue traders and scammers

### **What was the problem?**

Scams and underhand sales practices are estimated to cost UK consumers some £3.3 billion each year. The common law governing such practices was developed in the nineteenth century in the context of commercial transactions prevailing at that time. Although reforms to UK consumer law have criminalised a wide range of unfair commercial practices, the victims of these unfair practices do not always have the right to compensation against rogue traders.

### **What did we do?**

Since 1993, LSE Professor of English Law Hugh Collins (now at Oxford) conducted research into the best ways to use the law to prevent scams and underhand sales practices.

As unfair commercial practices operate across borders, Collins' research focused initially 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.

Collins undertook his most detailed research paper on this issue for the independent but government-funded agency Consumer Focus, which commissioned him in 2009 to consider how a private right of redress might be enacted and what the benefits of such legislation might be. His study was to cover both adequate redress and reforming the confused and outdated common law on misrepresentation, duress and undue influence.

Collins' research first identified 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.

In laws governing misrepresentation, duress and undue influence, the individual victims of scams can fall into legal gaps which deprive them of the opportunity to obtain compensation for their losses and in some cases to recover money paid. For example, private law rarely establishes liability for misleading statements that are literally true, or for misleading omissions in providing material information to consumers, even when those misleading statements and omissions are criminal offences.

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Similarly, pressurised sales techniques may fall short of the required legal definitions of duress and undue influence yet still unfairly persuade consumers to part with their money. Although classified as criminal offences, such techniques may create binding contracts that leave the consumer without redress.

Collins' research showed that a private right of redress would achieve three key aims. It would stimulate compliance with the law on unfair commercial practices, serve the goal of restorative justice and provide the opportunity for an overhaul — long overdue — of existing private law rules in the field. The research proposed various ways of overhauling these rules to provide an effective remedy for individual consumers for losses suffered as a result of all criminal offences.

## What happened?

Consumer Focus relied heavily on Collins' legal analysis of a private right of redress for its own report, *Waiting to be Heard: Giving Consumers the Right of Redress over Unfair Commercial Practices*, published in August 2009.

The Law Commission (covering England and Wales) and the Scottish Law Commission then used the Consumer Focus report to draw up their own consultation paper, *Consumer Redress for Misrepresentation and Aggressive Practices*. The section of the consultation paper dealing with a private right of redress begins with a discussion of Collins' paper for Consumer Focus, and the consultation paper as a whole made a number of references to Collins' other work in this area.

Collins organised the only public event centred on the Law Commissions' consultation paper and was one of the main speakers. Attendees included officials from both Law Commissions and civil servants from the Department of Business, Innovation and Skills. This event gave Collins a further platform to influence the Law Commissions' final proposals.

The Law Commissions published their final report in 2012, *Consumer Redress for Misleading and Aggressive Practices*. This proposed 'targeted' or narrow reform in the guise of a Consumer Bill of Rights, without addressing the more systematic weaknesses of common law. The report contained frequent references to Collins' paper for Consumer Focus and to his other published research.

Parliament subsequently revised the law, putting in place the substance if not the letter of the proposed Bill of Rights by enacting the Consumer Protection from Unfair Trading (Amendment)

“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.”

**Law Commission team lawyer**

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Regulations 2013. It is therefore possible to trace Collins' direct influence on legislation, and in particular on a consumer's right to damages where no private law remedy was previously available.

Now, under these new Regulations, a consumer has the right to damages if “the consumer has incurred financial loss ...” or 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”.

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**Professor Hugh Collins** joined LSE in 1991 when he was appointed to the chair of English Law. He studied law at Oxford and Harvard. Previously he was a Fellow of Brasenose College, Oxford University. He has also visited and taught in several American law schools including a year as a Visiting Professor at Boston University, and extended periods of research at Harvard and the University of Virginia.

Professor Collins was appointed by the University of Oxford as Vinerian Professor of English Law in 2013.

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