

MID-SEASON
FOOTWEAR
SALE
UP TO
50% OFF

**CLOSING
DOWN
SALE**

**EVERYTHING
MUST GO**

**CLOSING
DOWN
SALE**

RIGHTS AND RIP-OFFS

Victims of scams and aggressive sales techniques need better legal protection – and it needs to be a lot less complex, argues **Hugh Collins**.

Everyone loves a bargain. When the late Niklaus Luhmann, the distinguished German social theorist, visited the LSE Law Department a few years ago, he proudly showed me his new

Harris Tweed jacket, a “bargain” from a shop near LSE that was having a “closing down sale”. Whilst admiring the fine jacket, I told him that to my certain knowledge the shop had been advertising a closing down sale for 20 years. The shop’s claim was probably true, but misleading. It operates under short leases of the premises, so that every few months the business faces closure until the lease is renewed. Such a misleading statement, even if technically true, is

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likely to be a criminal offence now under the Unfair Commercial Practices Regulations 2008. Niklaus received my information philosophically, saying that he liked the jacket anyway.

But if I had been able to show him that he could have purchased an identical jacket for a lower price at a nearby shop, would he have been so relaxed? Could he have asked for his money back or a reduction in the price he had paid? Every law graduate knows that the complexity of the law of misrepresentation makes anyone wary of predicting its effects. But where there has been no false statement, merely misleading advertising, the dauntingly complex, 19th-century commercial law of misrepresentation is most unlikely to provide a consumer with any kind of redress.

This is only one example of a systematic anomaly in consumer law in the United Kingdom. Scams and aggressive practices have been criminalised by the updated 2008 regulations, but the victims have often been left without a personal remedy for compensation. The Law Commission has been tasked with producing proposals for reform of this aspect of the law. Its work follows up evidence from the consumer watchdog Consumer Focus that suggested that almost two-thirds of people had been the victim of some kind of unfair commercial practice in the previous two years, resulting in a total estimated loss of £3.3 billion a year for UK citizens. This evidence also drew on my own report that identified the sorts of cases where victims would be left without any personal remedy for their losses. As well as the above

example of misleading, but truthful statements, many other situations fall through the cracks of the civil law.

Some unscrupulous salesmen prey on the elderly or infirm. They make an appointment to pay a home visit. They try to sell products such as adjustable beds, claiming that they will relieve any health problems that the victims disclose, and decline to leave the house until the consumer has signed a contract and a cheque for an amount that the victims can scarcely afford. Some victims just hand over some cash to get the salesmen out of their house. Under the 2008 Regulations, this pressured sales technique is a prohibited aggressive practice. But can the victims cancel the contract and recover their money?

Under the common law, in the absence of threats, the salesman's conduct probably falls outside the protections of the law of duress and undue influence. Even if those laws permit the consumer to cancel the contract and recover any payment, there is no possibility of compensation for the distress and inconvenience caused.

The internet creates plenty of opportunities for crooks and the unscrupulous to mislead consumers into parting with their money. Auction sites, such as eBay, are vulnerable to the practice of "shilling", where the seller bids up the price in competition with genuine buyers. Unless the seller has made a false statement, the purchaser who has been duped into paying a higher price may not have any grounds for recovery. Price comparison websites may mislead consumers, even though not deliberately, by failing

to identify the best deal available from a company, so that consumers may discover subsequently that they could have obtained a cheaper deal if they had gone direct to the company. It is unlikely that consumers would be able to obtain redress against the price comparison website in such circumstances, because they would need to satisfy the complicated and uncertain requirements for recovery for pure economic loss in tort.

Indeed, this complexity of the relevant law governing civil claims for compensation is a major part of the problem for consumers. Even if the consumer has an arguable case for compensation, when confronted with a blunt refusal to address the matter by a company of dubious solvency, the expense of hiring hot-shot lawyers to conduct expensive litigation to recover a relatively small sum of compensation is bound to deter even the most belligerent consumer.

As I write, the LSE Law Department is planning to host a workshop to examine the Law Commission's proposals for reform. The aim of the workshop is to help to improve the proposals for reform of the law, so that the victims of scams and aggressive sales techniques will finally benefit from effective remedies for their losses and disappointments. Speakers from the Law Department are to include Michael Bridge, Charlie Webb, and myself.

As well as representatives from the Law Commission, other consumer groups and stakeholders are also due to attend. There is European-wide interest in this issue since the European Parliament in 2010 called for all countries to implement a private right of redress for unfair commercial practices, so officials and scholars from other member states will attend to share their experiences and comment on the proposed reform. ■

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Hugh Collins is professor of English law at LSE.