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New
revised and
updated edition

A HANDBOOK OF CONSUMER LAW

A practical guide to consumers' problems

National Federation of Consumer Groups



A Handbook of Consumer Law

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National Federation
of Consumer Groups



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The first edition was prepared by David Hawkes, Hamish Henderson, John Josephs, Jill Moore, Keith Percy, Janet Upward and James Woodward-Nutt.

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For the entries on consumer law in Northern Ireland, we are indebted to Basil Glass and Brice Dickson.

Preface

Strictly speaking, there is no such entity as consumer law. Lawyers do not major in it as they might in taxation or divorce. Nevertheless, over the last 20 years there has been a great deal of new legislation dealing with the relationship of those who offer goods and services and those who want to buy them. All kinds of transactions, from parking in a council-run car-park to renting a house through an agency, can have unexpected consequences; when something goes wrong the ordinary person needs a handy comprehensive book, written in language simple enough to understand, yet technically correct.

The National Federation of Consumer Groups had its own 'notes for guidance' for some years, but by 1983 it became clear that the subject was beyond the scope of a few sheets of paper and that there was a need for something which could be used by the general public. The first edition of *A Handbook of Consumer Law* was compiled by NFCG members, some lawyers, some lay people, and published in 1982. Its popularity and changes in the law led to a second updated edition in 1986. This third edition, once again edited by Jill Moore, the present NFCG chairman, is based on the law at 31 October 1988 and has been considerably revised and rewritten. There are new chapters on food law and professional services, subjects which were only touched on in previous editions.

On the statute book since 1986 are such milestones as the Financial Services Act, the Latent Damage Act and the Consumer Protection Act. The latter, in particular, is a real step forward for consumers' right to safe goods and right of redress; the product liability legislation, which will make manufacturers responsible for the safety of the goods they produce, is something for which the consumer movement has campaigned for years. We have also tried to look at the implications of legislation in the pipeline including the various EC draft directives. Wherever possible, we have tried to relate an abstract legal point to a real consumer problem, making it easier to understand and remember. There is still, however, very little case law to draw on,

although that hoary old warhorse, 'merchantable quality', has been tried and found wanting since the last edition. Therefore, some of our views would not be accepted without cavil by every lawyer and others may be overruled by later court decisions. In spite of these caveats, all those who worked so hard on this book believe that it will prove a trusty guide to those consumers, traders and teachers it is meant to serve.

Moyra Haynes, Vice Chairman, NFGG,
12 Mosley Street, Newcastle upon Tyne NE1 1DE
October 1988

1 Consumer law

In this book, *you* in the text means anyone who buys goods or services for private use. A *trader*, who may be a manufacturer or a retailer, is anyone selling goods or services in the course of business. A trader may be a limited company, local authority, public corporation, partnership or individual.

This chapter explains the differences between criminal and civil law and their relevance to consumer law. It also gives a general summary of the consumer law which you will find in the rest of this book. The second chapter gives advice on what to do before and after you buy something. It also advises on how and where to complain and explains how to pursue a complaint if you fail to get satisfaction. The remaining chapters set out the law in more depth, topic by topic. Addresses of various organisations mentioned (and some others too) are listed at the end of the book.

The law in Scotland has differences from that in England and Wales, and these are shown in the text. Northern Ireland law is virtually identical to that in England and Wales; any differences are noted.

Consumer law

'Consumer law' is a mixture of bits and pieces of law taken from many sources. It includes common law and statute law. Common law is based on the decisions of the courts in actual cases. These are recorded and form 'precedents' for the future. In this way the courts can adapt the law to new situations without having to wait for Parliament to introduce legislation.

Statute law consists of Acts of Parliament and Regulations and Orders made by the government under the general authority of Acts of Parliament. These Regulations are published as 'Statutory Instruments'. In Northern Ireland they are normally in the form of 'Statutory Rules'.

Civil and criminal law

To understand consumer law, you need first to know the difference between civil and criminal law. Each of these two branches of the law may have its roots in either common or statute law. As a general rule, civil law provides only a personal remedy and criminal law only punishment for the offender. However, there are some exceptions.

Civil law and the consumer

Civil law is concerned with rights and duties between individuals. Some of the rules apply only if one of the parties is a 'trader'; others also apply to purchases from a private seller. If you suffer loss because someone else breaks the rules, you can take that person to court. Various remedies may be available (see pp.29–35). These civil rights and duties may arise from the law governing the contract or agreement involved, or from the law of 'tort'. A tort is a wrong-doing in civil law; in Scotland it is called a 'delict'. In England there are a large number of named torts, while in Scots law delict is based on general principles of liability for fault or negligence.

Criminal law and the consumer

Criminal law is concerned with offences against the public, and those who break the criminal law are likely to be prosecuted by the state on behalf of the public.

In consumer law, the legislation most likely to be offended against is:

- the Trade Descriptions Act 1968 and other description and labelling legislation (see Chapter 9)
- the Consumer Protection Act 1987 and The (N.I.) Order 1987 (see Chapter 5)
- the Fair Trading Act 1973 (see Chapter 15)
- various laws about prices, mostly under the Prices Act 1974 (see Chapter 4)
- the Food Act 1984, the Food and Drugs (Scotland) Act 1956 and the Food and Drugs Act 1958 (N.I.) (see Chapter 6)
- the Weights and Measures Act 1985 and (N.I.) Order 1988, usually for short weight.

For consumer offences the punishment will usually be a fine.

You cannot automatically get compensation by reporting a criminal offence, but the law says that courts can order criminals to compensate victims (Powers of the Criminal Courts Act 1973, section 35; Criminal Justice (Scotland) Act 1980, section 58, or The Criminal Justice (N.I.) Order 1980). The problem is that this can work only if the offending trader is prosecuted and found guilty, and only then if the court is prepared to use these powers.

Nevertheless, criminal law can help you, indirectly. It gives a certain amount of 'leverage'. If you suspect a criminal offence, you should report it to the authorities, who may often be more ready to let the trader off with a warning if he has compensated you. A visit to the trader from the appropriate inspector (Trading Standards, Environmental Health or even maybe the police) may have a significant deterrent effect (see p.119).

For some things (dangerous goods, lack of hygiene, dirty food and fraud) you should go straight to the proper authority without first going to the trader. In the case of short weight, if you think the trader has made a genuine mistake and you would like to give him the chance to put it right, you may prefer to go first to that trader.

Normally the interest of the general public is served by treating offences as crimes, that is, offences against the criminal law, but a few offences are subject to civil law and actions may be brought on behalf of the public interest. These are in the field of competition. In these cases the Director-General of Fair Trading can stop certain practices by going to court and getting an injunction, or, in Scotland, an 'interdict'. This is a court order to stop someone doing something. A person disobeying the order becomes guilty of contempt of court and can be imprisoned.

Enforcing the criminal law

Most criminal consumer law is enforced by local authorities through their Trading Standards, Consumer Protection or Consumer Services Departments (they were known formerly as Weights and Measures Departments). The term 'Trading Standards' is used throughout this book. In England and Wales these come under the County and London Borough Councils, while in Scotland they are operated by the Regional and Islands Councils. In Northern Ireland trading standards are enforced by the government's Department of Economic Development. Enforcement of hygiene laws is the responsibility of Environmental Health Departments of the District and London Borough Coun-

cils in England and Wales, the District and Islands Councils in Scotland and District Councils in Northern Ireland.

This list gives the places to which to take your 'criminal' complaints in the first instance (addresses of national organisations are at the back of the book):

NATURE OF COMPLAINT:	WHO TO COMPLAIN TO:
Business names	The local authority's Trading Standards Department
Credit	The local authority's Trading Standards Department
Dangerous goods	The local authority's Trading Standards Department, not the shop or manufacturer
Descriptions and advertisements	The local authority's Trading Standards Department. If they decide that an advertisement is legal but you still think it is dishonest, misleading or indecent, complain to the Advertising Standards Authority or, in the case of a radio or TV advertisement, to the Independent Broadcasting Authority. You may also complain to the Office of Fair Trading
Dirty food or dirty premises	The local authority's Environmental Health Department, not the shop or manufacturer
Door-to-door callers	The police, if you are suspicious
Estate agents	The Office of Fair Trading and the local authority's Trading Standards Department
Fair trading and fair competition	The Office of Fair Trading. (For example, if a paint company has refused to supply your local shop with its paint unless the shop buys a large quantity)
Foreign bodies in food	The local authority's Trading Standards or Environmental Health Department

Fraud and theft	The police. (You might find, for example, that an inferior article has been substituted for that paid for, or you might discover that you have bought stolen goods)
Guarantees	The firm giving the guarantee. If your complaint is about the wording of the guarantee, go to your local Trading Standards Department
Hallmarking	The local authority's Trading Standards Department. If they say that the hallmarking is legal but you are still worried, try the Hallmarking Council
Insurance	The company or broker who sold you the policy. Then, if the complaint is not resolved, the appropriate Ombudsman or Self-Regulatory Organisation (see p.189)
Prices (including 'reductions')	The local authority's Trading Standards Department for most prices. The Department of Trade and Industry, Consumer Affairs Division, for profiteering when an essential item like sugar or bread is in short supply
Short weight, short measure	Take your purchase and your receipt to the local authority's Trading Standards Department if you do not want to go back to the shop
Unsolicited goods	The local authority's Trading Standards Department

Summary of main points of law

Implied conditions

Whether goods are bought from a trader or a private seller, they must be as described. Where goods are bought from a trader, they must also be fit for the purpose for which they are sold and be of merchantable quality. Merchantable quality means that they must be reasonably fit for their normal purpose. What is reasonable depends on the type of goods, the price paid, the