

School of Law

Centre for Business Law and Practice

Faculty of Education Social Sciences and Law



UNIVERSITY OF LEEDS

Consumer Protection in Secured Transactions (Personal Property)



Two main perspectives in relation to secured transactions and consumers:

- protection for the consumer in the creation of the secured interest and its consequences and enforcement
- protection for the consumer purchaser of property subject to a prior secured interest



Secured transactions : the third party purchaser perspective

Dangers: purchase of goods subject to

- Bill of sale
- Hire-purchase or conditional sale ('quasi-security')

Current protections:

- Bills of Sale Acts- see proposed new rules on 'goods' mortgages
 - Hire-Purchase Act 1964 Part III
 - s 17 Consumer Rights Act 2015/s 12 Sale of Goods Act 1979
 - nemo dat rules
-
- Is a filing system an option? Practicalities of registration: volume, value of goods, issue of notice

Creation of the secured interest : the consumer credit/borrower perspective

Secured transactions relevant to the consumer as borrower/debtor in terms of personal property:

- Bills of sale: modern manifestation- the log book loan
- ‘Quasi-security’ : hire-purchase and conditional sale: modern manifestations- rent to own; PCP
- Pawn: enjoying a resurgence on the High Street see eg Cash Converters

Current regulation:

Bills of Sale Acts 1878, 1882, but see Law Commission proposed reforms

Consumer Credit Act 1974

Conduct Sourcebook- FCA- CONC



Consumer Credit Act 1974: protection

- Transparency provisions
- Withdrawal
- Where one third or more repaid, no repossession of goods without court order where debtor in default
- Debtor entitlement to terminate agreement- liability extends to one half of total price payable.
- Unfair credit relationship



Consumer Credit Act 1974:

Pawn:

- Requirement for receipt
- Redemption periods
- Redemption procedure
- Realisation of pawn
- Transparency
- Withdrawal
- Unfair credit relationship



CONC

- Set of Rules that details obligations in relation to credit related regulated activities
- Build on general high level principles
- CONC 6.6 Pawn
- Hire-purchase and conditional sale- covered by sourcebook if a regulated agreement
- Includes provision for assessment of creditworthiness, treatment of customers in default, unfair business practices



Crowther Report [6.1.17]

‘ It is to be assumed that legislation governing consumer credit will in practice be activated in only a small proportion of the total number of credit transactions entered into by consumers. Most credit traders and finance houses are fair in their dealings and most customers honour their obligations. This in no way affects the necessity for protective legislation: most statutes enacted for the public are concerned for with minority interest rather than with the needs of the majority’



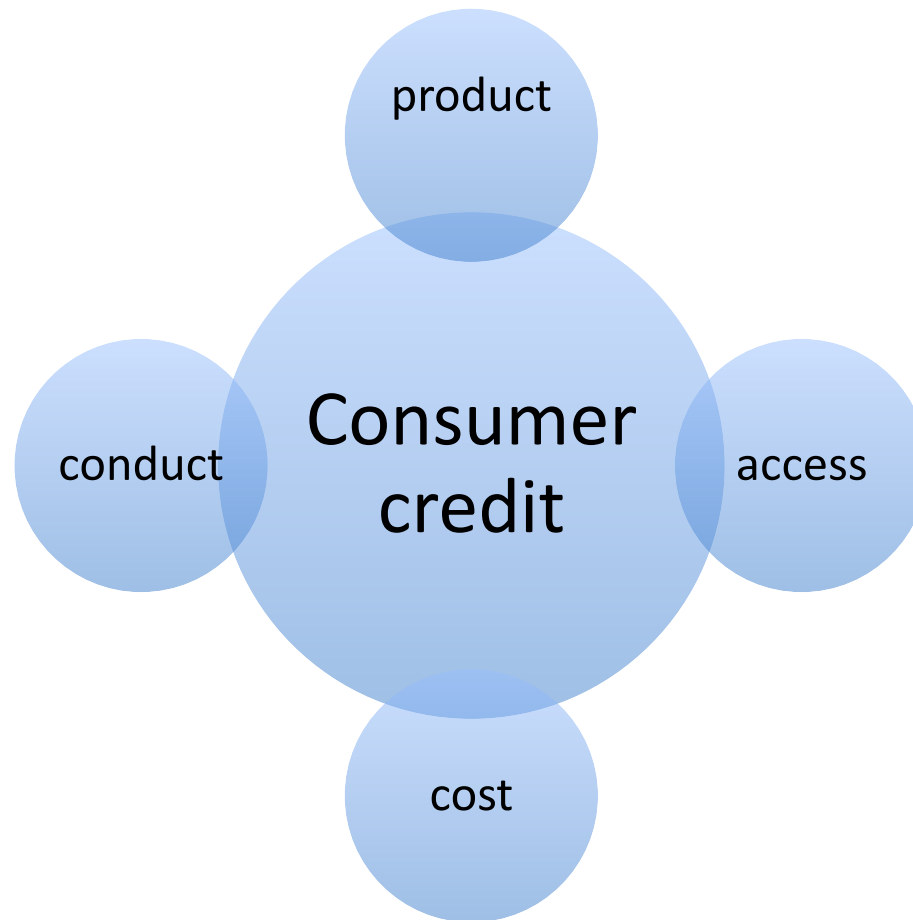
Current concerns in relation to consumer protection and secured transactions:

Log book loans: malpractice and unfairness in enforcement

Rent to own: assessment of affordability, arrears handling, price transparency

FCA call for input 2016

Connection is high cost credit/sub prime lending and creditor behaviour



Essential elements for policy



Cross cutting themes underlying consumer protective policy initiatives and goals

- Vulnerability
- Unfairness
- Trust
- Protection is consumer-centric

Themes of the Secured Transactions Reform:

- Clear certain accessible
- Efficient creation of security over any asset
- Transparency
- Effective security enforcement
- Protection is primarily focused on creditor and third party rights

Will a reformed framework address consumer borrower detriment?



Simplified and codified- current provision and further layering

Single concept – similar functions but different consumer perceptions

Security of future assets- real danger in terms of consumer vulnerability

Regime including registration of security interests?

- Law Commission reforms and goods mortgages
- Registration of hire-purchase/conditional sale- could help over- commitment
- Danger of reduced availability/ increased cost?



Some conclusions:

Differing rationale of consumer protection policy and secured transaction reform

Detraction from goal of simplification

Registration may have some benefits if appropriately framed

Ring fencing of consumer protections