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## Research Article

# Enacting a Consumer Protection Law in Ghana: Possible lessons from the UK Consumer Rights Act 2015

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**Abstract:** For many years, the trend of legislation has been piecemeal with a fusion of the rules of laws for the protection of consumer and non-consumer buyers. However, the complexity of accessing the fragmented laws and their unsuitability in dealing with contemporary consumers issues have led to the adoption of a Consumer Protection Policy 2014 with the primary object of providing a consumer tailored regime for the protection of consumers in Ghana. While the adopted 2014 Policy document is currently before the Attorney General Department to be drafted into a Bill for Parliament consideration, the present article appraises the comprehensiveness of the existing law and the adopted Consumer Protection Policy 2014 in effectively responding to the problems of consumers in Ghana. This is explored in comparison with the approach of the UK Consumer Rights Act 2015 while bearing in mind the peculiar circumstances in Ghana. This article argues that whereas the effort of the government is so far commendable, there are noticeable unresolved consumer concerns. Of particular concern is consolidating the laws on consumer contracts and coverage of the law on the supply of services to consumers. This paper, therefore, submits that addressing these concerns is vital to ensuring that consumers are provided with a comprehensive and effective regime in Ghana.

**Keywords:** *enacting consumer law, consolidating consumer laws, sale of goods, supply of services, consumer protection and consumer protection policy*

## Introduction

The implementation of the Structural Adjustment Programmes in the 1980s brought to an end the near autarky regime which was characterised with high tariffs and quantitative restrictions on the importation of goods and services to the shores of Ghana (Ayine, 2007: 309). This

was further boosted with Ghana becoming an original member of the World Trade Organisations (WTO) in 1995 with the corresponding obligation of giving effect to the WTO free trade policies in Ghana. The far-reaching liberalised trade frontiers together with the ever-increasing and appealing strides of technological advancement consequently led to the market in Ghana being continuously flooded with a

wide range of goods and services from diverse backgrounds across the globe (Dowouna-Hammond, Atuguba & Nabila, 2006; Dowuona-Hammond, 2007; Nkansah, 2015; Yidana, 2019). The accentuation of the market with the various goods and services made it possible for consumers to have unprecedented easy access to a broad variety of choices among the many goods and services at their disposal (Yidana 2019). However, the exposure of consumers to the varied goods and services challenged the readiness of the existing law to afford consumers with the needed protection when they are offered unsatisfactory goods or services by the provider of the goods or services, or where there is any other issue between the trader and the consumer.

In many jurisdictions, consumer tailored laws have been devised for the protection of consumer contractual rights in respect of the wide array of goods and services.<sup>1</sup> The consumer protection laws are mainly premised on the settled view that consumers are generally in a disadvantaged position regarding the power to effectively bargain, information asymmetry about the quality of the goods and services they buy, limited financial resources to defend their rights when breached, and consequently, underscored the need for a customised regime for the protection of consumers (Bridge, 2017: 14.001; BIS, 2013: 5 &10; Ramsay, 2012: 41). This is a complete derogation of the common law conception of the freedom of contract in which parties to a contract are seen as co-equals whose agreements the courts are reluctant to disturb. Whilst the waves of concerted legislative interventions are vigorously

pursued in many countries including quite recently, few sub-Saharan countries<sup>2</sup>, Ghana is still slow in taking action (Yidana 2019). It has therefore been argued that the absence of a tailored consumer protection legislation in Ghana as a beacon of free trade in Africa is a vehicle for the permeation of inferior goods and services into the market to the detriment of consumers (CUTS, n.d.; B&FT online, 20<sup>th</sup> March 2018).

It is instructive to note that the common law general principles of contract and tort complemented with diverse pieces of legislation currently represent the regime for the protection of consumers in Ghana. This corpus of laws for the protection of consumers has been criticised by commentators as being fragmented and difficult to easily find (Dowuona-Hammond, 2018). It has also been argued that the laws are inadequate to appropriately handle contemporary matters such as electronic transactions, digital content contracts and distance trading involving consumers in Ghana (Aborchie-Nyahe, Matthew & Dadzie, 2014; Manteau, 2002). The unsuitability of the laws impliedly defers consumers hope of finding relief at law in such instances to the ambit of judicial activism (*Tsegah v Standard Chartered Bank (Ghana) Ltd* [2001]) Suit No. C.602/99).<sup>3</sup> However, the challenge is that the degree of elasticity of judicial activism as a tool of providing relief to consumers is mostly limited in scope and not capable of dealing with the many emerging consumer problems (Nkansah, 2015). It is significant to note that the myriad of criticisms over the years are not without proposals for the reform of the law. At the heart of the

<sup>1</sup> Consumer Rights Act 2015, c15, UK; See also, Consumer Protection Act, No. 46, 2012 as revised, 2016, Kenya; Consumer Protection Act, No. 68, 2008, South Africa; Competition and Consumer Protection Act, No. 29, 2014, Ireland etc

<sup>2</sup> Consumer Protection Act 2012, Kenya; See also, Consumer Protection Act 2008, 68, South Africa

<sup>3</sup> This was illustrated in *Tsegah v Standard Chartered Bank (Ghana) Ltd* [2001], unreported judgement of the High Court [Suit No. C.602/99] where the Court was invited to examine unauthorized ATM withdrawals from the customer's account which the law did not explicitly cover. Through the power of judicial activism, the bank was nevertheless held to be liable.

recommendations lies with the object of ensuring that a sufficient degree of protection is accessible for consumers when they are supplied with unsatisfactory or poor quality of goods or services by traders (Yidana, 2020; 2019; Dowuona-Hammond, 2018; 2007; Nkansah, 2015; Nkansah, Asare & Otu, 2016).

The plethora of recommendations for a comprehensive reform of the law on consumer protection gave birth to the government adopted Consumer Protection Policy 2014 (herein referred to as CPP). The adopted policy document took notice of some of the shortcomings of the current legal infrastructure for the protection of consumer rights in Ghana. The document highlighted in a summarised manner, the exhibited shortcomings of the existing regime to include: '[g]aps in the legislative and regulatory framework; lack of adequate and effective legal regime and ineffective existing laws; lack of effective and relevant institutions specially tailored to protect consumers; and lack of easy and cost-effective redress mechanisms' (CPP 2014: 5).

While the policy document is yet to see the light of day in a form of legislation, it is not abundantly clear as to the extent to which the forthcoming law will effectively respond to the many consumer concerns in Ghana. In particular, the issue as to whether the law on consumer contracts which are presently found in different pieces of legislation will be consolidated and simplified is unclear. Similarly, the question as to whether the current law or the reform proposals sufficiently encapsulate issues pertaining to the supply of services to consumers is uncertain. Addressing these important questions in the forthcoming

statute is crucial to ensure that the law comprehensibly reflects the needs of consumers in Ghana. The extent to which these critical questions will be addressed is the focus of the present paper.

The present paper will draw guidance from the law in England and Wales as provided under the UK Consumer Rights Act 2015.<sup>4</sup> It is instructive to note that England and Wales's law had had concerns similar to the current unresolved questions under the law in Ghana before the enactment of the UK CRA 2015 (Howells & Twigg-Flesner, 2010). Drawing lessons from the law in England and Wales will therefore help in sidestepping the tendency of reinventing the wheel (Goode, Kronte & Mckendrick, 2015; Carozza, Picker & Glendon, 2008; Smits, 2006; Michaels, 2006; Zweigert & Kotz, 1998; Koopmans, 1996). However, viewing the issues in Ghana through the lens of the law in England and Wales calls for careful regard to be had to peculiar local circumstances so as not to circumvent the domestic harmony of the law in Ghana (Barak 2005; Goode et al, 2015).

The paper is divided into four sections. Section one is this introduction. The section following this part examines the current law on consumer contracts in Ghana and the possible lessons Ghana could draw from the UK CRA 2015 in responding to identified issues in Ghana. The third section appraises the law on the supply of services to consumers in Ghana and the UK with the target being directed at resolving identified issues in Ghana. The fourth section provides a conclusion highlighting the contribution of the article and the recommendations for legislative action. Below is a discussion of the current law governing consumer

<sup>4</sup> For the purposes of simplicity, the expression 'English law' will be used in most part of this paper in place of 'England and Wales law'

contracts in Ghana and lessons from the UK CRA 2015.

## Result and Discussion

### A. The law on consumer contracts in Ghana and lessons from the UK CRA

This section is subdivided into two parts. The first part considers the current law which governs consumer contracts in Ghana alongside with the proposed reforms and consequently provides a highlight of arising issues of concern. The second subsection analysis the identified concerns in Ghana through the lens of the UK CRA. The law in Ghana is first examined below.

#### 1. The current law governing consumer contracts in Ghana

Ghana currently has no clearly defined regime which is dedicated to the protection of consumers. The present regime under which consumers in Ghana may rely on for protection is found in varied sources. The first sources of law which consumers may resort to for protection is the common law rules relating to contract law and tort law (Dowuona-Hammond et al, 2006: 22-25; Yidana, 2020).<sup>5</sup> However, the realm of contemporary exigencies mostly leaves the common law rules wanting in finding their bearings in affording consumers with the needed protection. In many jurisdictions including Ghana, the shortfalls of the common law are variously supplemented with statutory control mechanisms. In effect, consumers in Ghana may turn to the statutory measures which the legislature has devised in seeking to pursue their rights when violated in any transaction.

Specifically, there are laws presently dealing with the issue of sale and supply of goods to which consumers may avail themselves for protection.<sup>6</sup> For instance, consumer transactions relating to contracts of sale of goods can draw protection from the Sale of Goods Act 1962, Act 137 (herein referred to as SGA 1962) before a court of law. In *Andreas Bschor Gmbh & Co. KG v Birim Wood Complex Ltd & Birim Timbers Ltd* [2016] NO.J4/9/2015 [4] for example, the Supreme Court noted that: 'it bears reminding ourselves that the Sale of Goods Act, 1962 is the main source of our law as far as contracts for Sale of Goods are concerned ...'. This is an affirmation of the fact that the Sale of Goods Act is the principal regime for the control of transactions relating to contracts of sale of goods. The court particularly stressed that 'the rules of the common law and equity are subservient to the statutory provisions' of the SGA 1962 in Ghana (*Andreas Bschor & Co. v Birim Wood Complex Ltd* [2016]: 4). The SGA lays down a set of obligations for sellers of goods and remedies for consumers. The obligations of sellers under the SGA particularly reflect implied conditions and warranties as to the quality and fitness of goods, description of goods, sample of goods, and delivery of goods (sections 8 – 20). Similarly, the remedies for consumers under the SGA constitute the right of rejection, the claim of damages and specific performance (sections 49 – 58). Consumers are generally entitled to exercise any of the rights where a seller is in breach of his obligation in a contract of sale of goods.

However, a consumer who acquires his/her goods in a transaction in which the mode of payment is by instalments or where

<sup>5</sup> For detail analysis of both contract law and law of tort application in dealing with consumer matters in Ghana so far, see, Christine Dowuona-Hammond, Raymond Atuguba & Lariba Nabilah, 'The Policy and Legal

Framework for Consumer Protection in Ghana', (2006), a report submitted to the Friedrich Ebert Foundation (FES), at pp 22 -25.

<sup>6</sup> The substance of the provisions of the laws in dealing with consumer matters will be explore shortly in this article.

other conditions are to be satisfied before delivery of the goods can be made to the consumer will have no protection under the SGA. The applicable law under such instance is the Hire-purchase Decree 1974, NRCD 292, (herein referred to as HPA). The Hire-purchase regime specifically governs consumer transactions relating to hire-purchase and conditional sales agreements. Section 25 (1) of the HPA states that the statute ‘applies to every hire-purchase and conditional sale agreement, regardless of the hire-purchase price, cash price, or total purchase price of the goods.’ Like the SGA, the HPA imposes implied obligations on sellers regarding the quality and fitness of goods and matching of goods as to description and sample before the transaction (sections 13 -15). A trader’s breach of any of these obligations entitles a consumer to exercise the right of terminating an ongoing hire-purchase or conditional sales agreement. The detail ground rules governing the consumer right of terminating a hire-purchase agreement before exercising the option of paying the final instalment are contained under Part Two of the HPA. In summary, a consumer may be able to rely on the provisions of the hire-purchase legislative device for the protection of their rights when traders are in breach of their obligations in respect of a hire-purchase or a conditional sale transaction.

Another important statutory measure in place for the protection of consumers is the Electronic Transactions Act 2008, Act 772 (herein referred to as ETA). As the name suggests, the Act applies only to electronic transactions (section 46). The Act governs transactions where a supplier is ‘offering goods or services for sale, hire or exchange in an electronic transaction’(section 47). Predating the 2008 Act, Manteaw (2002) had noted that while electronic transactions

may be complemented with traditional delivery of the goods or services, digital products such as ‘images, sound, video clips, software, or research and consulting services’ may be delivered to the consumer online. While referring to section 23 of the Electronic Transactions Act, the Supreme Court affirmed that a valid electronic transaction will arise ‘even if it was concluded partly or in whole through an electronic medium’(*Atuguba and Associates v Scipion Capital (UK) Ltd. and Another [2019] GHASC 18, (J4/04/2019)*: p15). The court further noted that it will ‘not gloss over an offer made and accepted in an email or other electronic means of communication’ in this ‘age of dynamism of knowledge in society, businesses and virtually almost everything around us’(*Scipion Capital (UK) Ltd case: 15*). Although the court statements were made in a non-consumer case, a similar position is very likely in consumer matters. The court submission evidences the preparedness of the courts to ensure that purchasers of goods and services are guaranteed protection while engaging in electronic transactions. It is important to note that a clear set of remedies are set out under the Electronic Transactions Act 2008 (sections 47 – 54) to which consumers could depend on for protection. In effect, a consumer who is confronted with a problem in an electronic transaction will be able to assert his/her rights under the Act.

Moreover, a third party whose rights are infringed upon will equally have the Contract Act 1960, Act 25 to rely on in seeking redress. In particular, section 5(1) of the Contract Act 1960 which departs from the common law doctrine of privity of contract states that: ‘[a] provision in a contract ... which purports to confer a benefit on a person who is not a party to the contract, whether as a designated person or

as a member of a class of persons, may, ... be enforced or relied on by that person as though that person were a party to the contract.' In the non-consumer case of *Abivams Ltd v Platin Gas Oil Ghana Ltd* [31st May 2017] GHSC, NO. J4/29/2016, the Supreme Court held that the application of the provision is 'where the contract clearly confers a benefit on the third party' (*Platin Gas Oil Ghana Ltd*: 18). In consumer contracts, it is very likely that a thirdparty consumer who has been conferred with an implied benefit may rely on the provision to seek redress. It has been argued that the statutory intervention regarding the rights of third parties to enforce contracts which expressly or possibly, impliedly confers a benefit to them is a significant contribution to the promotion of the rights of consumers in Ghana (Dowuona-Hammond et al, 2006: 38). It has similarly been contended that it is a valuable protection for end-user consumers in whom the benefit is conferred as third parties to seek redress when there is a failure of the contractual terms to which their interest is affected (Aborchie-Nyahe et al, 2014).

In summary, the SGA and the HPA protect consumers with respect to the traditional sale and supply of goods in Ghana. This is complemented with the ETA as regards electronic transactions. Similarly, the Contract Act 1960 preserves the rights of third parties in whom a contract clearly confers a benefit.

However, what is critical to note is that a consumer who is confronted with a purchase problem will have to identify the appropriate regime on which to rely on to seek for redress. Whilst undertaking the task of identifying the applicable statute to come to terms with the available protection will not be a problem to a trained lawyer, this will present serious challenges to the lay

consumer. Dowuona-Hammon et al, (2006: 44) has rightly stated that the current approach 'offers piecemeal protections scattered in different enactments, thus undermining accessibility and certainty of the law.' This observation by the commentators was specifically referring to a similar scattered piece of legislation regarding competition and trade practice directed at the protection of consumers. Nevertheless, a similar challenge of accessibility and certainty of the law is what the current varied statutes relating to the sale and supply of goods could pose to consumers as already noted. This is practically not helpful for the generality of affording a more supportive degree of protection to consumers in Ghana.

Sadly, the existing recommendations failed to clearly point out the need for the laws relating to the sale and supply of goods to be consolidated into a uniform regime for guidance in the protection of consumers in Ghana. This unresolved issue is further exacerbated by the adopted Consumer Protection Policy (CPP) document silence to this crucial call to action. It is fair to mention that the issue of consolidating the law has been made by Dowuona-Hammond et al (2006: 7 & 44), but this has been stated in reference to unfair contract terms and competition and fair-trading practice to which consumers could draw some protection as highlighted above.

Similarly, it is worth acknowledging that the adopted Consumer Protection Policy has made mention of enacting a consumer protection law, but there is no decisive expression to consolidating the regime relating to the sale and supply of goods. It is significant to also take notice of the fact that the CPP provides a highlight of the various existing laws relating to goods generally, but this appears to put technical regulatory

statutes on goods and the sale and supply of goods together. For example, the CPP (2014: 13) specify the corpus of laws that govern transactions relating to goods to include: the Sale of Goods Act 1962, Act 137; Hire Purchase Act 1974, NRCD 292; Contract Act 1960, Act 25; Standards Authority Act 1973, NRCD 175; Foods and Drugs Law 1992, PNDC LAW 305B; Weights and Measures Act 1975, NRCD 326; and Ghana Standard Board (Food, Drugs and Other Goods) General Labeling Rule 1992, LI 1541. Despite the blend of the statutes on technical regulations and the sale and supply of goods, there are still uncertainties as to whether the laws will be consolidated.

The uncertainties appear to be emboldened with a further perusal of the CPP thematic areas. The CPP clearly sets out its thematic areas with its bullet one and three covering goods as follows: '[p]hysical safety of goods and distribution facilities. ... [q]uality standards for the safety and health of consumers and consumer goods and services.'(CPP, 2014: 22). This then resulted in the policy prescription being concern with regulatory standards improvement and unfair trading practice control (CPP 2014: 23 – 26). What seems apparent is that regulatory standards and fair trading is the priority. It is not entirely clear that consolidating consumer transactions in relation to the sale and supply of goods is given serious attention. Whilst the regulatory standards and fair-trading improvement are important, the conspicuous silence on the issue of consolidating the regime relating to the sale and supply of goods remains problematic.

In short, the existing laws for the protection of consumers in Ghana are dotted

in a varied corpus of statutes. As clearly shown, the current scattered regime is not practically helpful in serving the needs of the average Ghanaian consumer without legal training. The substantive question of whether the ongoing effort at providing a consumer tailored regime will be directed at consolidating the law in a uniform manner has not been resolved. There is therefore the need for this to be resolved to ensure that a more simplified regime is put in place for the benefit of consumers in Ghana. The next subsection, therefore, seeks to draw guidance from the UK Consumer Rights 2015 in resolving the issue in Ghana while being conscious of any peculiar situation in Ghana.

## **2. Consumer transactions under the UK Consumer Rights Act 2015 and lessons for Ghana**

Under the law in England and Wales, the Consumer Rights Act 2015 is the main statute that deals with various forms of transactions involving consumer contracts in relation to goods, services and digital content.<sup>7</sup> Before the CRA 2015, the Sale of Goods Act 1979 (SGA), Sale and Supply of Goods and Services Act 1982 (SGAS), the Sale of Goods (Implied Terms) Act 1973 were the laws that superintended over transactions regarding the sale and supply of goods to consumers. The CRA has replaced these statutes with three categories of transactions notably: 'sale of goods, sale of digital content and supply of services' mainly for the protection of consumers (Beale, 2018: para. 27.018). The premise of the present outline is to draw inspiration to help in making a case for the resolution of the current scattered pieces of laws on consumer transactions in Ghana. Therefore, the primary focus is to further validate the

<sup>7</sup> The statute covers consumer contracts in relation to goods, services and digital content.

extent of the CRA coverage of the various transactions which hitherto existed in piecemeal statutes.

One of the far-reaching classes of consumer transactions which is covered under the CRA 2015 is contracts relating to goods as already mentioned. Section 3 (2) of the CRA 2015 specifically provide contracts which fall within the domain of goods to include the following: '(a) a sales contract; (b) a contract for the hire of goods; (c) a hire-purchase agreement; (d) a contract for transfer of goods.' These various forms of transactions are broadly classified as contracts to supply goods under section 3 (4) of the CRA 2015. The CRA states as per section 3 (5) that contracts to supply goods reflect: '(a) contracts entered into between one part owner and another; (b) contracts for the transfer of an undivided share in goods; (c) contracts that are absolute and contracts that are conditional.' *Atiyah and Adam's Sale of Goods* noted that the clarification of contracts to supply goods under section 3(5) is an important provision which demystifies the likely impression that some supply transactions are outside the scope of the chapter dealing with contracts to supply goods (Twigg-Flesner, Canavan, and MacQueen, 2016: p500). It also covers goods which are yet to be manufactured or produced and contracts of barter or exchange drawing from section 8 of the CRA on contract for the transfer of goods (Twigg-Flesner *et al.*, 2016: 500 – 501).

It is important to note that the provision on contracts to supply goods is a transposition of the pre-2015 statutes (on Sale of Goods Act 1979 and Sale of Goods (Implied Terms) Act 1973) as affirmed by the Blackstone's Guide to the Consumer Rights Act 2015 (Denis, Jenkins QC, Lloyd, Douglas-Jones and Sumnall, 2016: paras. 3.34 – 38). The provisions under the CRA

2015 are, however, a modified and simplified version and as well consolidated as a uniform regime for the policing of consumer contractual rights (El-Gendi, 2017; Denis *et al*, 2016: para. 3.34 -38). What seems clear is that the part of the CRA that deals with contracts to supply goods to consumers transactions cover cash sales, conditional sales, hire, and hire-purchase transactions.

Another important area which the CRA has brought under its ambit is the supply of services to consumers. Chapter Four of the Consumer Rights Act 2015 (which substance will further be considered in the next section) specifically governs consumer contracts between service providers and consumers. This part of the CRA similarly transposes section 12 of the Supply of Goods and Services Act 1982 (SGSA). In addition to the transposition of section 12 of the SGSA on the supply of services, the CRA contain an additional set of rules policing the relationship between service providers and consumers mainly tailored towards enhancing the protection of consumers (Dennis, 2016: para. 5.05). This includes the introduction of statutory remedies for consumers of services which hitherto did not exist under the SGSA (CRA Explanatory Notes, 2015: para. 230). Unlike the SGSA which protection encapsulated business to business consumers (B2B), business to consumers (B2C) and consumer to consumers (C2C) relationships, the CRA provisions are only designed to protect B2C dealings while leaving SGSA as the applicable law in B2B and C2C contracts. This was found necessary to address concerns of dissatisfaction that the SGSA offered only a piecemeal approach which was not comprehensive to dealing with many of the issues regarding the provision

of services to consumers (Beale, 2018: para. 38 – 527; Bridge, 2017: para. 14.119).

Aside from the regulation of contracts to supply goods and contracts to supply services to consumers, the CRA also covers contracts to supply digital content especially under chapter 3 of the CRA 2015. Digital content is defined to mean ‘data which are produced and supplied in digital form and includes software, music, computer games and applications or “apps”’ (CRA Explanatory Notes, 2015: para 166; Bridge, 2017: 14.055). For a digital content to meet the requirement of a contract, it must be of satisfactory quality, fit for the particular purpose of the consumer, and match the content description as per sections 34, 34 & 36 of the CRA 2015. However, the failure of digital content to meet any of these set standards entitles a consumer to a remedy of repair or replacement or any other common law remedy such as specific performance. Unlike a consumer of goods, a digital content consumer does not have a right of rejection, in that a non-functioning digital content cannot be returned as it’s in digital form (Baskind, Osborne & Roach, 2016: 451).

The point worth highlighting is that the many forms of transactions are properly consolidated into a uniform regime for the protection of consumers. El-Gendi (2017) observed that the CRA is a ‘significant piece of consumer rights legislation’ under which the previous legislation has been unified and a distinct consumer rights have been established. Samuels (2016) similarly stated that the CRA ‘consolidate, rationalise, improve, clarify, simplify and modernise consumer law’ and consequently, this is an empowerment of the consumer. This conclusion seems apt in that the consolidation and simplification of the regime significantly resolve the likely

herculean task of resorting to varied pieces of laws and regulations to understand the available degree of protection for consumers. It is, in the light of this, that El-Gendi (2017) concluded that the CRA is a ‘one-stop shop’ statute of consumer rights as practitioners will no longer have to search through overlapping laws to make sense of the law. The crux of the discourse so far is that in dealing with issues pertaining to either hire-purchase, cash sale or conditional sale in relation to contracts to supply goods, contracts to supply services, or contracts to supply digital content, the uniform set of rules under the CRA will provide guidance regarding the available protection.

The crucial question is whether a similar approach will be beneficial to consumers, if replicated, in Ghana? Essentially, a similar approach in Ghana will be viable in projecting the goal of consumer protection. Such a uniform regime will ensure that consumer practitioners and their clients do not have to resort to varied pieces of laws to struggle in making sense of the degree of protection available for them. A similar uniform law dealing with the same subject matter will facilitate easy access to the law. It might as well help consumers to better appreciate the rights that are defined under the law for their benefits. It is therefore submitted that the present effort of the government to enact a consumer tailored regime should consider consolidating the law into one uniform set of rules for the protection of consumers in Ghana.

## **B. The supply of services to consumers in Ghana and possible lessons from the UK CRA 2015**

This part of this article examines issues pertaining to the supply of services to consumers in Ghana and the UK. The law in Ghana is first examined and identified issues

are then explored further in the light of the UK CRA. The state of the law in Ghana is set out below.

### **1. The law regarding the supply of services to consumers in Ghana**

As already shown above, the available statutory measures to which consumers may rely on for protection are the SGA, the HPA and the ETA. Third parties on whom a contract confers benefit may also be able to come under the Contract Act 1960 to seek redress. These laws are designed ‘to protect the economic interests of’ consumers ‘through the regulation of the terms of contracts or transactions with respect to goods’ (Dowuona-Hammond et al., 2006: 30). As already shown earlier, the SGA, the HPA and the ETA imposed a set of obligations on traders and equally defined some remedies for consumers. Whilst the detailed analysis of the obligations and remedies are beyond the scope of the present discussion, it suffices to mention that the obligations reflect the quality, fitness and quantity of the goods, the delivery of the goods among others, and the remedies mirrors the right to reject and to claim damages as earlier noted. It is important to mention that the obligations of traders and remedies for consumers under the SGA and the HPA have been reviewed by commentators including the present writer with suggested proposals for reform (Dowuona-Hammond, 2018; 2007; Nkansah, 2015; Yidana, n.d.). It is hoped that if the proposed reforms are incorporated into the government ongoing effort to enact a consumer tailored regime, it will enhance the degree of consumer protection in Ghana.

However, it remains a worry that other important areas of consumer transactions in the traditional market environment do not appear to fall within the ambit of the existing law to which the reform proposals have

targeted so far. For example, a consumer who buys goods which require installation to work might be able to come under the various provision of the law if the goods failed to work upon installation. However, it remains doubtful as to whether a consumer who engages the service of a trader to carry out decoration works in his home will be able to rely on the SGA and the HPA regimes in the traditional setting for redress if the trader is in breach of his obligation by doing poor work for example. Similarly, a consumer who entered in a contract for a service delivery provider to deliver his goods which are undelivered or the goods are damaged upon delivery may not be able to come under the present regime for protection. Likewise, a consumer who is charged for water usage by the Ghana Water Company for a period when there was no water supply to his premise may not be able to come under the current law for protection. In short, the current law does not contain provisions that deal with issues regarding the supply of services to consumers.

As indicated earlier, the defined obligations and rights of traders and consumers are more concerned with the sale and supply of goods to consumers. Issues pertaining to the supply of services to consumers in the traditional setting do not appear to fall within the ambit of the SGA and the HPA under which there are defined obligations and rights for the benefit of consumers. However, it is worth admitting that there are other pieces of legislation that regulate the array of services which are provided to consumers in Ghana. The various laws governing the range of services can be classified broadly into utility

services,<sup>8</sup> financial services,<sup>9</sup> health services<sup>10</sup> among others. These corpora of laws are mainly concerned with the setting up, management and operations of the diverse services to the consuming public. The laws dealing with the supply of services to consumers do not specifically contain provisions that lay down defined obligations of providers of services backed by express remedies for consumers to avail themselves to when they are provided with services which failed to meet stipulated standard requirements.

Admittedly, however, providers of services to consumers under each main sector are being regulated by the state regulatory entities<sup>11</sup> with the aim of ensuring that the right quality of services is afforded to consumers. The present writer has noted elsewhere that the functions of the regulatory Departments do not extend to cover affording affected consumers with direct remedies.<sup>12</sup>

Whilst there are no statutory measures with dedicated civil remedies for consumers of services, affected persons nevertheless have the option of relying on the common law rules for protection. The problem, however, is that the common law is mostly inadequate in dealing with the diverse consumer issues relating to the supply of services. For instance, in *Tsegah v Standard Chartered Bank (Ghana) Ltd* [2001], (unreported High Court judgement, Suit No. C.602/99), during the early periods of

ATM's in Ghana, the plaintiff who had not made transactions with his ATM card was in utter shock when a number of unauthorized ATM withdrawals were found to have been made to his account. The defendant bank argued that they were absolved from liability under contract law on the basis that the plaintiff assumed full responsibility for all transactions on his card when he subscribed to the use of the ATM services. Whilst admitting that there was no statutory protection for consumers regarding electronic banking services and that the common law in Ghana had not developed to deal with such matters, the court nevertheless went on to conclude that the defendant position could not be entertained and that the bank had a duty to put measures that guaranteed the protection of its customers. It is instructive to note that during this period there were suggestions that unscrupulous persons (including bank employees) were rife in using fake ATM cards in outwitting the system and withdrawing customers' money from their accounts (Asiama-Sampong, n.d.: 205). The problem posed by the ATM services at the material time dictated that the court intervenes to guaranteeing the needed protection for consumers. The court in the *Tsegah* case particularly noted in its judgement that the integrity of the customer in question was not in doubt. This seems to imply that the unauthorised withdrawals had something to do with the failure of the bank

<sup>8</sup> Public Utilities Regulatory Commission Act 1997, Act 538; Water Resources Commission Act 1996, Act 522; Energy Commission Act 1997, Act 541; National Communications Authority Act 1996, Act 524

<sup>9</sup> Bank of Ghana Act 2002, Act 612; Banking Act 2004, Act 673; Electronic Transaction Act 2008, Act 772; Long Term Saving Scheme Act 2004, Act 678; Venture Capital Trust Fund Act 2004, Act 680; Financial Institutions (Non-Banking) Law 1993, PNDC L328; Securities Industry Law 1993, PNDC L333; Insurance Law 1989, PNDC L227.

<sup>10</sup> Ghana Health Services and Teaching Hospitals Act 1996, Act 525; National Health Insurance Act 2003, Act 650; Pharmacy Act 1994, Act 489; Traditional Medicine Practice Act 2000, Act 575; Medical and Dental Decree 1972, NRCD 91; Private Hospitals and Maternity Homes Act 1958, No. 9 of 1958

<sup>11</sup> Providers of communication services are regulated by the Communication Authority drawing their mandate from the National Communications Authority Act 1996, Act 524; Providers of utility services such as water, electricity and gas are being regulated by the Public Regulatory Service Commission (PURC) which draws its power from the Public Utilities Regulatory Commission Act, 1997, Act 538; providers of financial services are being regulated by the Bank of Ghana which takes its power from the Banking Act 2004, Act 673 among others.

<sup>12</sup> This is contained in a forthcoming article entitled '*Institutional measures of consumer protection in Ghana: lessons from the UK Consumer Rights Act 2015*' (under review – Commonwealth Law Bulletin).

internal security measures to guarantee the protection of the plaintiff bank account, underscoring the court not being reluctant in giving the customer a favourable determination in the matter.

In contrast, in the non-consumer case of *Hasnem Enterprise Ltd v Electricity Corporation of Ghana* [1992] 2 G.L.R. 250, the supply of electricity was switched on damaging the electronic gadgets and appliances of the plaintiffs. The defendants' company supplying the electricity discovered that an underground cable transmitting the electricity to the plaintiffs' premise was cut into two on account of a fault on the line. The plaintiffs, therefore, brought an action for the claim of special and general damages relying on the common law doctrine of negligence on the part of the defendants in using a faulty and inappropriate fuse in their premise. Whilst finding the defendants to be in breach of their duty to reasonably ensure that they supply safe electricity to the plaintiffs, the court nevertheless held that the plaintiffs were only to succeed by establishing the fault of the defendants and further show that the cable was substandard, but that this was not proved. Consequently, the defendants were held not liable.

Clearly, the common law is not wide enough to comprehensively cover issues relating to the provision of services to consumers. Moreover, stretching the law to ascertain some degree of protection for consumers may also likely become otiose. This may probably be the case where the burden on the consumer is a heavy one like the non-consumer case of *Hasnem Enterprise Ltd* case. So, judicial activism will clearly not be the panacea. In her article, Nkansah rightly alluded to the fact that developing 'the law through judicial

activism will not adequately address the plight of the consumer' (Nkansah, 2015).

The crucial question that arises is whether the proposed reforms under the CPP 2014 cover issues pertaining to contracts for the supply of services to consumers? In taking a tour of the CPP 2014, it seems evident that the CPP took notice of the current predicament of consumers in relation to not only goods but also in the delivery of services to consumers. The CPP (2014: 33) concisely posit that: 'most producers, as well as service providers, are operating under free-market conditions. This means that consumers are left at the mercy of the market forces in terms of determining pricing, production, quality, and quantity issues, etc. These conditions leave the consumer with little or no choice but to consume what the market forces solely determine.'

The CPP statement on the prevailing practice seems self-explanatory. For the present purpose, it is especially clear that the fate of consumers is at the mercy of service providers in most transactions as regards matters relating to the quality of service, pricing, and performance issues, among others. So, for example, a consumer who enters into a contract for the tiling of his premises is left at the mercy of the tiling service provider in relation to the quality of the work, pricing and the time to complete the tiling service. This is the case because the current law has not addressed issues relating to the supply of services to consumers as observed earlier.

Having recognised this, the CPP (2014: 33) went further to assert that: '[g]overnment will encourage the review of existing laws that do not empower consumers with better consumer choice.' The CPP (2014: 33) also added that: '[g]overnment will formulate a competition policy which will encourage market

condition that will give greater choice at competitive prices.' Indeed, the review of the existing laws to address issues of consumer empowerment and the formulation of competition policies to propel competitive pricing and consumer choice are commendable policy prescriptions. However, there is no evidence so far that the policy prescriptions have been implemented to help in addressing the underlying issues. Moreover, it is not sufficiently clear as to what specific reforms may be generated and how that could effectively deal with the issues relating to contracts to supply services to consumers. Whilst the uncertainties persist, the present commentator seeks to argue that there is no better time to address the issues concerning the state of the law on the supply of service to consumers, than now, as the Attorney General and Ministry of Justice is being tasked to draft a Bill on consumer protection for parliament consideration.

In summary, the SGA and HPA which specifically contain obligations and remedies for the benefit of consumers in the traditional market setting do not extend to cover issues relating to the supply of services to consumers. Similarly, the sector related legislation has no provisions that grant specific remedies to which consumers could directly rely on for protection. Dowuona-Hammond et al. (2006: 87) summarised this regarding the banking sector by rightly noting that 'there is currently no specific legislation to regulate the relationship between the bank and the customer or to address the peculiar legal problems posed by electronic banking procedures.' Similarly, the common law rules on which consumers may fall on for protection does not comprehensively cover critical aspects regarding the supply of services to consumers. In the *Tsegah* case,

the court was aptly concerned that the absence of a regime to regulate unfair contract terms in electronic banking services like the UK Unfair Contract Terms Act 1977 was not helpful for consumers in Ghana. Sadly, whilst the CPP 2014 recognised the deficiency of the law, neither its policy prescriptions are abundantly clear on the issue of supply of services to consumers nor the policy prescriptions being implemented to help in unearthing the specific reforms that are required especially in the supply of services to consumers. So, the current state of the law is that a consumer who is supplied with unsatisfactory service may end up without a remedy. This is generally not helpful in the overall ambit of consumer protection. There is therefore the need for this shortfall of the law to be addressed to ensure that consumers are afforded an enhanced regime regarding the supply of services to consumers in Ghana. The succeeding subsection seeks to resolve the issue regarding the supply of services to consumers in Ghana through the lens of the UK CRA 2015.

## **2. Resolving the issue regarding the supply of services to consumers in Ghana through the lens of the UK Consumer Rights Act 2015**

As highlighted previously, contracts between service providers and consumers are regulated under Chapter 4 of the Consumer Rights Act 2015 in respect of the law in England and Wales. Beyond being transposition of section 12 of the Supply of Goods and Services Act 1982 (SGSA), the provisions under Chapter 4 of the CRA further extend to cover remedies for consumers as a mitigation to the deficiency of the pre-2015 SGSA regime as affirmed by Chitty on Contracts, Benjamin's Sale of Goods and the Blackstone's Guide to the

CRA (Beale, 2018: para. 38 – 527; Bridge, 2017: para. 14:119; Denis et al., 2016: para. 5.05).

On the substance of the CRA with respect to the protection of consumers of services, section 49 of the CRA 2015 requires that a trader who is providing a service to a consumer must do so with ‘reasonable care and skill’ as a term of the contract. The CRA qualifying it as a term of a contract for the trader to act with reasonable care and skill is observed to constitute a strategy adopted by the Act to avoid legalistic expressions with the aim of helping to increase the degree to which consumers could better understand their rights (Dennis et’ al., 2016: para. 5.22).

The requirements for a trader to perform a service contract with reasonable care and skill had already been settled prior to the CRA and it is likely that a court in dealing with a matter under the CRA may not hesitate in following the same pattern. The courts generally equate reasonable care and skill in cases of professional services to that of ordinary competence and experience which is expected of the profession.<sup>13</sup> A variation of some sort is nevertheless expected taking into consideration the service provider, the cost and the reasonable expectation of the consumer (Dennis et’ al., 2016: para. 5.26). It has been determined that a higher degree of standard will be expected of a medical practitioner compared to jeweler when they are both performing the same service of piercing a person’s ear (*Philips v William Whitley Ltd* [1938] AII ER 566). However, a service provider who holds himself out as performing services to a defined standard warrant that he should be

held to that standard of skill (*Kimber v William Willet Ltd* [1947] 1 AII ER 36; *Stewart v Ravells Garage* [1952] 1 AII ER 1191). A trader failure to provide the service with reasonable care and skill may give rise to a number of rights to the consumer. In particular, the consumer has the option to demand a reperformance of the contract, or resort to a remedy of price reduction, and may also be able to bring an action for a breach of contract (Bridge, 2017: para. 14.121; Samuels, 2016). In *Perry v Sharon Development Co Ltd* [1937] 4 AII ER 390 predating both the SGSA and CRA, a newly constructed house was held as being required to be in a workmanlike state containing the necessary fittings such as water taps, installed baths and plastered walls.

Beyond providing the service with reasonable care and skill, a service provider is also obliged under sections 51 & 52 of the CRA 2015 to provide the service over a ‘reasonable time’ with the consumer paying a ‘reasonable price’ if the time to perform the service and the payable price were not agreed at the time of forming the contract.<sup>14</sup> The remedy of price reduction and general remedy under delay performance of the contract may be pursued where there is a breach relating to the reasonable time of performance of the service. A general remedy may also be pursued regarding the payable price. In a contract for a trader to provide a service, the contract embraces any information that is said or written by the service provider or his agents which the consumer took into consideration in entering into the contract (section 50, CRA 2015). The failure of the service supplied to reflect

<sup>13</sup> *Bolitho v City and Hackney Health Authority* [1998] A.C. 232; *Barclays Bank Plc v Weeks Legg & Dean* [1999] Q.B. 309; *Midland Bank Plc v Cox McQueen* [1999] Lloyd’s Rep. P.N. 223; *Dhamija v Sunningdale Joineries Ltd*

[2010] EWHC 2396 (TCC), [2011] P.N.L.R. 9; *Trebor Bassett Holdings Ltd v ADT Fire & Security Plc* [2011] EWHC 1936 (TCC), [2011] B.L.R. 661

<sup>14</sup> Predating the CRA 2015, this was affirmed in the non-consumer case of *Jonathan Wren & Co Ltd v Microdec Ltd* (1999) 65 Const. L.R. 157 in respect of the SGSA 1982

what was made known to the consumer may lead to possible actions such as; price reduction or reperformance of the contract demands.

Having similar obligations and remedies for consumers of services in Ghana is crucial to help in ensuring that consumers are better protected. A similar regime in Ghana will particularly ensure that beneficiaries of services such as repair and servicing, home improvement services (renovation, decoration, and fitting services), entertainment services, cleaning services, carrying of load services and construction services are protected. Adopting the English law verbatim will however remain inadequate in addressing the problems of consumers in Ghana in respect of the supply of services. Essentially, the provisions of the English law on services does not apply to all categories of services. The Explanatory Notes to the CRA 2015 (para. 232) explicitly states that the CRA 'does not cover all legal rights and obligations surrounding the provision of services, for example, there is a large amount of sector-specific legislation that will affect contracts between traders and consumers.' Samuels (2016: 162) argues that the CRA 'excludes land, employment, insurance, annuities, ... NHS, education and the railways' as they 'have their own specific legal regime for their "consumers". In effect, a consumer under the English law with service issues will have to rely on the sector-specific law for redress.

Whilst the sector laws under the English law contain provisions specifically dealing with issues of relationships between the provider of the service and the consumer, this is not the case in respect of the sector-specific regimes in Ghana as demonstrated earlier. It is therefore important in the case of Ghana for a regime seeking to provide

protection for consumers in the supply of services to be broadened to include defining obligations of service providers of various sectors and rights of consumers. This is especially necessary where there are no clear measures in place for the protection of consumers in particular sectors of the economy which currently seems to be the case in the many sectors in Ghana. This is significant to help in ensuring that consumers are afforded with the required degree of protection with respect to the various services they receive from traders in Ghana.

In a nutshell, replicating the requirements regarding contracts to supply service to consumers as set out under the English law in Ghana will be viable in ensuring that the rights of consumers are protected. In particular, making it a requirement for service providers to render their services with reasonable care and skill to consumers, to have regard to the timely delivery of service to consumers, to require that consumers pay a reasonable price if this was not pre-discussed, and to explicitly provide for the associated remedies in instances of a breach, will be practically worthwhile in ensuring that consumers get value for money in their transactions. However, unlike the UK where specific sectors are excluded from the provisions of the CRA, the scope of coverage in Ghana should be expanded to include all sectors of service delivery as various sectors currently do not have clearly defined consumer protection measures as is the case in the UK.

## Conclusion

This paper has shown that the adoption of the Consumer Protection Policy 2014 by government although commendable, there are noticeable concerns that remained

unresolved by both the existing statutes and the proposed reforms. In particular, the adopted Consumer Protection Policy 2014 does not expressly envisage consolidating the regime regarding the sale and supply of goods, digital content, and the supply of services to consumers. The existing proposals have equally missed the opportunity of advocating for the consolidation of the respective regimes as regards the sale of goods, hire-purchase, digital content, and the supply of services to consumers in Ghana. This is, however, necessary in order to help in easing the complexity of tracking the applicable statutes in every given transaction.

As similarly evident in the analysis of the regime, visible consumers transactions such as the supply of services (broadly construed) are currently not within the purview of statutory regulation. The government adopted Consumer Protection Policy 2014 has equally failed to capture these crucial aspects of consumer transactions for further inclusion in the forthcoming Consumer Protection Bill. The worry as shown in the analysis is that existing proposals for reform have not also provided space for these aspects of consumer transactions for legislative consideration. It is within this spectrum that the present article submits that a meaningful regime for the protection of consumers in Ghana should be extended to embrace these aspects of consumer transactions. In summary, consolidating the statutes on consumer contracts and extending the ambit of the law to embrace the supply of services to consumers (broadly defined) is vital to ensuring that a more effective and comprehensive regime is devised for the protection of consumers in Ghana.

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## QUOTE

The goal is to normalize trade relations based on sound science and consumer protection  
**Mike Johanns**