

# Regulatory Remedies in the Enforcement of Product Quality and Safety Standards in Ghana: A Case for Reform from a Comparative Analysis

Nuhu Yidana\*

## SUMMARY

*This article examines the regulatory remedies in the enforcement of consumer law regarding the quality and safety standards of goods in Ghana. The article argues that the remedies which the regulatory institutions administer in their enforcement of consumer law in Ghana are focused mainly on punishing the manufacturer or seller of the goods. The article further contends that there are presently no provisions in the regulatory remedies for the manufacturer or seller who breached the established quality and safety standards of goods to compensate affected consumers on account of the breach. As a result, consumers only have access to common law remedies in tort for the manufacturer's or seller's negligence. However, this reprieve is illusory for many Ghanaian consumers as litigation is expensive and in most cases, beyond the reach of the average consumer in Ghana. Consequently, this article advocates for the adoption of the redress category of the enhanced consumer measures (ECMs) similarly introduced by the UK Consumer Rights Act 2015 (CRA 2015) to secure administrative remedies for consumers as part of the regulatory remedies in the enforcement of consumer law regarding the quality and safety standards of goods in Ghana.*

## KEYWORDS:

*regulatory institutions, quality and safety standards, enforcement remedies, consumer redress, enhanced consumer measures*

## 1 INTRODUCTION

We are in an era of increasing technological advancement in almost all aspects of human life including the production of goods (products) of every description that make our daily lives ever more comfortable.<sup>1</sup> The growing novelty in the production of the range of goods continuously intensifies the presence of complex goods at the doorsteps of consumers in almost every country around the globe, eliminating the shortage of goods that hitherto characterized the pre-technological,

pre-industrialized and pre-liberalized eras.<sup>2</sup> However, these technically complex products at the forefront of consumers have introduced fresh concerns regarding health and safety risks inherent in many of the goods. To safeguard consumers against potential health and safety risks, most countries, including Ghana, have established institutions with the core mandate of devising and regulating the health and safety standards of the various goods that are allowed entry into the market.<sup>3</sup> This aligns with one of the central themes of the United Nations (UN) Guidelines for Consumer Protection,<sup>4</sup> which urge governments, especially in developing countries, to 'adopt or encourage the adoption of appropriate measures, including ... safety regulations, national or international standards, voluntary standards, and the maintenance of safety records to ensure that products are safe for either intended or normally foreseeable use'.<sup>5</sup> This is also reflected in the European Union (formerly European Economic Community) Directive on Product Safety 1992, as amended in 2001 for the protection of consumers from the health and safety threats of manufactured products, especially within the EU Member States.<sup>6</sup>

The health and safety regulation, either influenced by international or regional safety measures, demonstrates a great deal of importance attached to the health and safety of consumer products that are permissible for entry into the consumer market across many jurisdictions, including Ghana. The manifested institutionalization of the regulatory establishments to devise and promulgate minimum quality and safety standards products ought to meet to safeguard consumers from health and safety hazards deserves commendation. However, the bottom line of product quality and safety regulation is enforcement and effective judicial protection of the rights of consumers in the face of infringement.<sup>7</sup> It is significant to note that the enforcement of consumer law should result in effective redress to persons who are victims of the infringement.<sup>8</sup> It has rightly been argued that the crucial aspect of regulatory enforcement hinges on effectively securing access to justice for consumers.<sup>9</sup> This is consistent with the observation that consumer rights are human rights.<sup>10</sup> In a

<sup>2</sup> Christine Dowuona-Hammond, *Protecting the Purchaser of Goods Under Ghanaian Law*, 19 Rev. Ghana L. 105 (1993).

<sup>3</sup> For details, see Jacolien Barnard, *An Overview of the Consumer Safety and Product Liability Regime in South Africa*, 9 IJCLP 25 (2021); Nuhu Yidana, *Consumer Protection in Ghana: Oversight, Enforcement and Recommendations*, Commercial Law Research Network Nigeria (CLRNN) (2021); I. O. Omoruyi, *The Legal Regime of Industrial Standards Regulation in Nigeria: A Critical Examination*, 1 KNUST L.J. 83 (2004).

<sup>4</sup> The UN Guidelines were first adopted on 16 Apr. 1985 by the General Assembly in Resolution 39/248, expanded on 26 Jul. 1999 by the Economic and Social Council in Resolution 1999/7, and have now been revised and adopted by the General Assembly in Resolution 70/186 of 22 Dec. 2015.

<sup>5</sup> Guideline B, 16, UN Guidelines for Consumer Protection 2015, UNCTAD/DITC/CPLP/MISC/2016/1; see also Guideline B (17–19) for further details.

<sup>6</sup> Directive 92/59/EEC of 29 Jun. 1992 on general product safety as amended by DIRECTIVE 2001/95/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 3 Dec. 2001; The UK, as then a member of the EU, implemented the EU Directive through the General Product Safety Regulation 2005 and empowered enforcers of consumer law to investigate and prosecute all alleged breaches of the Regulation. Regulation 2005 amended relevant provisions in the Consumer Protection Act 1987 that dealt with general safety regulations to bring further clarity to the regime.

\* Lecturer in Law, School of Law, SOAS University of London. The author wishes to thank both the Commercial Law Network of Nigeria (Nov. 2021) and the Society of Legal Scholars (Sept. 2022) for the opportunity to present initial thoughts and ideas regarding the central focus of this article. This article is greatly modified and expanded from those initial discussions. The author also owes a debt of gratitude to Professor Lutz Oette for his earlier review and suggestions for improvement. The author is equally grateful to the editorial team and reviewers for their suggestions for improvement throughout the process. The

AQ1 author remains responsible for any errors and omissions. Authors contact: ny4@soas.ac.uk/chiefyidana.ny@gmail.com

<sup>1</sup> The words 'products' and 'goods' are used interchangeably throughout this article to imply manufactured goods.

nutshell, the practical usefulness of product quality and safety standards regulation will remain illusory without enforcement and redress to consumers as victims of regulatory breaches.

Against this backdrop, this article seeks to examine the regulatory remedies at the disposal of regulatory enforcers of quality and safety standards of consumer products in Ghana. Essentially, while enforcement of the quality and safety standards is crucial, a significant missing link will continue to fester in the absence of comprehensive remedies regulators could apply in their enforcement exploits. The central question, therefore, is whether the assigned remedies to the regulatory institutions are adequate to safeguard the rights of consumers in Ghana. It has been argued that a comprehensive framework of consumer law is pivotal in lubricating the wheels of effective consumer protection.<sup>11</sup>

While issues of deficiencies of consumer law broadly conceived have so far led to the adoption of a Consumer Protection Policy 2014, which is currently before the Drafting Department of the Ministry of Justice and Attorney General for transposing into a Bill,<sup>12</sup> a crucial part that appeared to suffer marginalization is the issue of remedies which regulatory institutions could apply in the enforcement of consumer law in Ghana. In particular, key questions as to whether the enforcement powers of the regulatory institutions cover relief for consumers who purchased goods which are found to substantially deviate from the approved quality and safety regulatory standards remain uncertain. This article, therefore, examines the adequacy of the remedies of the regulatory institutions in their enforcement of consumer law in Ghana. The analysis of the regulatory remedies of the various institutions in Ghana will be appraised in comparison with the remedies at the disposal of regulators in other jurisdictions with a particular focus on South Africa and the UK. The comparative appraisal of the enforcement remedies of the regulatory institutions is particularly important to assist in resolving lapses in the law in Ghana for effective consumer protection.

The article is divided into seven sections. The first section is this introduction which lays out the background of this article. The second section provides brief highlights of some of the key regulatory establishments in Ghana. This covers the core mandate of the regulatory institutions concerning product quality and safety standards in Ghana. The third section concerns the enforcement measures of the regulatory

institutions in Ghana. The fourth part considers the remedies at the disposal of the regulatory institutions in enforcing product quality and safety standards in Ghana. This is complemented by a highlight of the deficiencies of the remedies in advancing the goals of consumer protection in Ghana. Lessons from the supply of services to consumers are then appraised under section five. Section six further examines the law in South Africa and the UK for possible lessons. Section seven provides a conclusion to the article, highlighting the argument and contribution of this article.

## 2 INSTITUTIONAL FRAMEWORKS FOR PRODUCT QUALITY AND SAFETY REGULATION IN GHANA

The Parliament of Ghana created and empowered a number of institutions to devise and promulgate standards with the object of ensuring that only products that comply with the devised standards are legally permitted to enter the arena of the consumer market in Ghana. One such institutional framework is the Ghana Standards Authority (GSA). The GSA, a creature of the Ghana Standards Act 1973,<sup>13</sup> wields the mandate of establishing and promulgating quality and safety standards with the object of ensuring that goods meant for consumer use, whether locally produced or imported, are of high quality and safe for consumption.<sup>14</sup> The GSA also exercises regulatory oversight over the use of weights and measures in Ghana as the appointed custodian of the Weights and Measurements Act 1975.<sup>15</sup> Significantly, the GSA-devised standards are generally consistent with international standards. The standards largely constitute the minimum benchmarks for both imported and domestically produced goods in Ghana. It is significant to note from the onset that the GSA is a general standards organization and its formulated standards span over the diverse fields of industry and commerce.<sup>16</sup>

Beyond the GSA as a general standards organization, several sector-specific establishments oversee the quality and safety of consumer products. One of these sector-specific institutional frameworks is the Food and Drugs Authority (FDA). Established by the Public Health Act 2012,<sup>17</sup> the FDA has the primary responsibility of providing and enforcing the law on the quality and safety standards of food, food additives, herbal medicinal products, cosmetics, drugs, vaccines, medical devices and household chemical substances as specified under section 81 of the Public Health Act 2012. The statute charges the FDA to ensure that the standards for food, drugs, cosmetics, household chemicals and medical devices are adequate and effective.<sup>18</sup> In performing its functions, the FDA is also to advise the Minister on measures for the protection of the health of consumers and the preparation of effective regulations.<sup>19</sup>

Another critical regulatory architecture in the quality and safety control within the sector-specific arena is the Energy Commission (EC).<sup>20</sup> The EC has overall regulatory oversight over household appliances such as air conditioners,

<sup>7</sup> Mateja Durovic & Hans W. Micklitz, *Internationalization of Consumer Law: A Game Changer* 70 (Springer 2016).

<sup>8</sup> Iris Benöhr & Hans-W. Micklitz, *Consumer Protection and Human Rights*, in *Handbook of Research on International Consumer Law* 16–34 (2d, Edward Elgar Publishing 2018).

<sup>9</sup> Durovic & Micklitz, *supra* n. 7, at 16.

<sup>10</sup> Benöhr & Micklitz, *supra* n. 8.

<sup>11</sup> Kwaku Ansa-Asare, *The Case for a Comprehensive Framework of Consumer Protection in Ghana*, 14 Rev. Ghana L. 13, 73 (1981).

<sup>12</sup> Nuhu Yidana, *Enacting a Consumer Protection Law in Ghana: Possible Lessons from the UK Consumer Rights Act 2015*, 6(4) L. Res. Rev. Q. 323–342 (2020); Christine Dowuona-Hammond, *Consumer Law and Policy in Ghana*, 41(4) J. Consumer Pol'y 333–354 (2018); Nuhu Yidana & Lydia A. Nkansah, *Consumer Law in Ghana*, in *National Legal Systems: Convergence or Divergence? Lessons from a Contemporary Crisis* (Springer – forthcoming); Lydia A. Nkansah, Jennifer Asare & George Otu, *Dispute Resolution and Consumer Protection in Ghana*, in *A Commitment to Law, Development and Public Policy: A Festschrift in Honour of Nana Dr Samuel Kwadwo Boaten Asante* 296–310 (London: Wildy Simmonds and Hill Publishing 2016).

<sup>13</sup> Section 1(1) of the Standards Decree, 1973 (NRCD 173). The Standards Decree, 1973 (NRCD 173) initially ousted the Standards Decree, 1967 (NLCD 199) and was subsequently supplemented with minor modifications by the Standards (Amendment) Decree, 1979 (AFRCD).

<sup>14</sup> Section 2, NRCD 173.

<sup>15</sup> (1975), NRCD 326, s. 14 empower the Minister of Trade to appoint a custodian of the Law.

refrigerators, lamps and other related electrical goods. A particular focus of the EC regulation over household appliances is to ensure that appliances on the market meet the prescribed minimum energy efficiency standards and are safe for consumer use.<sup>21</sup> The EC also regulates the labelling of appliances with accurate information as an important catalyst for informed consumer decision-making.<sup>22</sup>

The National Communication Authority<sup>23</sup> (NCA) is another institution that cannot be ignored in respect of its role in the protection of consumers in Ghana. The NCA has the overall regulatory responsibility of maintaining high standards of telecommunication equipment in Ghana including, among others, television and radio equipment, mobile phones, printers and computers.<sup>24</sup> The NCA protects the interests of consumers by facilitating the availability of quality equipment for both operators and consumers as part of its primary mandate.<sup>25</sup> Communication equipment and systems are required to 'be of such standard and technical specifications as to (c) guarantee customer safety'.<sup>26</sup>

The mandate of the institutional frameworks outlined above typically illustrates the tacit recognition of the importance of product quality and safety standards regulation as a key device for the protection of consumers in Ghana. The quality and safety regulation of consumer products has both health and economic implications for consumers. Thus, the consumption of quality and safe products is not only crucial to the health of consumers but also ensures that consumers get value for money. Central to the present review, the various institutions are to ensure that the recognized minimum standards for the class of products in their domain meet those standards. The products' compliance with the minimum standards signals the safety of those goods for consumer usage. As noted earlier, however, the crucial part of standards regulation is enforcement of the standards and not merely the establishment of the standards. The key question then is, what are the measures for the enforcement of the quality and safety standards devised by these regulatory institutions?

### 3 ENFORCEMENT OF PRODUCT QUALITY AND SAFETY STANDARDS

A number of enforcement measures are set aside for the regulatory institutions to deploy to bring about compliance with the established and promulgated quality and safety standards. One of the powers at the disposal of regulators of institutions is the inspection of product quality and safety standards with the primary object of pre-empting breaches. There are two notable strands of inspection directed at compelling compliance with the defined standards for the quality and safety of manufactured goods. The two common features of inspection that cut across regulatory institutions are pre-market inspection and post-market surveillance. Typically, the pre-market inspection entails a technical audit of the production facilities, materials or ingredients, and manufacturing processes among others particularly focusing on compliance with the laydown standards.<sup>27</sup> As part of the pre-market inspection, the institutions also conduct laboratory investigations of manufactured product samples to establish the final products' compliance with the stipulated standards. In the case of the GSA for example, its mandate of inspection transcends beyond the inspection of the manufacturing process of domestic factories to include destination inspection of imported high-risk goods.<sup>28</sup>

With inspection as a requirement for the determination of the quality and safety standards of products, the threshold of the FDA product inspection must strictly be met for clearance to trade in products such as food products,<sup>29</sup> drugs, herbal medicinal products, cosmetics, medical devices, and household chemical substances.<sup>30</sup> Consequently, products under the control of the FDA are not permitted for sale in Ghana unless they are registered by the FDA, after being satisfied that the products are of the right quality and safe for consumer use. The statute, therefore, banned persons from manufacturing, preparing, importing, exporting, distributing, selling, supplying or exhibiting for sale of food products,<sup>31</sup> drugs, herbal medicinal products, cosmetics, medical devices or household chemical substances without the FDA inspection and registration.<sup>32</sup> A person is also not allowed to label, package, sell or advertise food,<sup>33</sup> drugs, herbal medicinal products, cosmetics, medical devices or household chemical substances contrary to the FDA regulation or guidelines.<sup>34</sup>

The EC and the NCA equally conduct pre-market inspections of products under their domain before there are allowed entry into the market space. For instance, importers of household appliances are required to submit all relevant technical documentation to the EC for the assessment of their compliance with the established energy efficiency standards before the importation of such appliances.<sup>35</sup> Similarly, the NCA is to inspect, test and certify the compliance of communication equipment with international standards, and environmental health and safety standards, including electromagnetic radiation and emission, before their importation into Ghana for consumer use.<sup>36</sup> The pre-market assessment of the various products is crucial to prevent substandard products from entering the market for consumer patronage.<sup>37</sup> It is worth noting that some of the

<sup>16</sup> Nuhu Yidana & Lydia Nkansah, *Consumer Law in Ghana*, in *National Legal Systems: Convergence or Divergence? Lessons from a Contemporary Crisis* (Emilie Ghio & Ricardo Perlingeiro eds, Springer – forthcoming).

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<sup>17</sup> The FDA was originally established by the Food and Drugs Law in 1993 (PNDCL 305B) but has since been repealed by the Public Health Act 2012. Thus, s. 175, Public Health Act 2012, Act 851 repealed the Food and Drugs Law 1993 (PNDCL 305B).

<sup>18</sup> Section 82 (a), Public Health Act 2012, Act 851.

<sup>19</sup> Section 82 (c) and (d), Public Health Act 2012, Act 851.

<sup>20</sup> Energy Commission Act 1997.

<sup>21</sup> See Regulation 2, Energy Efficiency Standards and Labelling (Non-Ducted Air Conditioners and Self-Ballasted Fluorescent Lamps) Regulations (2005), L.I. 1815; see also Regulation 3, Energy Efficiency Standards and Labelling (Household Refrigerating Appliances) Regulations (2009), L.I. 1958.

<sup>22</sup> Regulation 5 of L.I. 2353, Energy Commission (Efficiency Standards and Labelling) (Light Emitting Diode and Self-Ballasted Fluorescent Lamps) Regulations (2017).

<sup>23</sup> Established by the National Communications Act, 1996, Act 524, and repealed by the National Communications Authority Act, 2008, Act 769.

<sup>24</sup> Section 3, the National Communications Act 1996, Act 524 as amended by s. 3, the National Communications Authority Act 2008, Act 769.

<sup>25</sup> Section 2 (e) and (f), National Communications Act 1996, Act 524.

<sup>26</sup> National Communications Regulations (2003), L.I. 1719.

<sup>27</sup> GSA, Product Inspection, <https://www.gsa.gov.gh/product-inspection/> (accessed 20 Aug. 2022).

<sup>28</sup> Yidana, *supra* n. 12; Dowouna-Hammond, *supra* n. 12.

<sup>29</sup> Section 99 (1), Public Health Act 2012.

<sup>30</sup> Section 118 (4)(b), Public Health Act 2012.

<sup>31</sup> Section 97 (1), Public Health Act 2012.



regulatory departments maintained electronic catalogues of compliant products to assist with consumer education.<sup>38</sup>

The second limb of inspection that is predominantly used by the regulatory bodies to deter breaches of the law, as noted earlier, is post-market surveillance. Instructively, post-market surveillance may be at the instance of the institution or may be triggered by a complaint.<sup>39</sup> Post-market surveillance allows regulators to sample and test products on the market to ascertain whether the final products on the market are continuously compliant with the established standards and safe for consumer use. For example, the GSA Product Certification Scheme underscored that the quality of certified products is ‘continuously monitored through surveillance of the factory’s quality management system, testing of samples from the factory and open market’.<sup>40</sup> The NCA Type Approval Guidelines also provide that ‘[t]he Authority shall perform market surveillance activities from time to time to ensure that only type approved

**AQ2 Electronic Communication Equipment (ECE)** is sold in Ghana’.<sup>41</sup> The primary object of conducting monitoring and surveillance of the market is to get rid of goods that do not comply with the regulatory standards and are detrimental to the health and safety of consumers.<sup>42</sup>

Closely linked to product inspection is product certification. The regulatory institutions provide certification to approved goods<sup>43</sup> through registration and regulation of the use of standard marks of conformity.<sup>44</sup> Mostly, products that meet the minimum standards following inspection become suited for conformity certification by the regulatory institutions. As set out in the Standards Act, for example, ‘any person desiring to use a standard mark in connection with goods, commodity, process or practice, may apply to the Board in the manner determined or prescribed by the Board’.<sup>45</sup> Similarly, the Certification Mark Rules, state that ‘[e]very person desirous to have the licence ... shall apply ... to the GSA’.<sup>46</sup> Before the grant of a licence, the various regulators will have to satisfy themselves that the goods, commodity, process or practice in question duly conform to the adopted standard specifications.<sup>47</sup> A typical illustration of this is set out under the GSA Product Certification Scheme that ‘[t]he certification Mark requires determination of conformity of products to Ghana Standards through product sampling, testing and assessment of the factory

quality management system’.<sup>48</sup> It is also instructive to note that certified products are continuously being monitored through assembling and testing of product samples, both from the factory and open market as noted earlier.

Consequently, the use of the various institutions’ standard marks of conformity is an indication of the goods complying with the established standards,<sup>49</sup> and assurance to consumers that the goods are of the required quality and reasonably safe for consumption.<sup>50</sup> The emerging point is that if the requirements of the law are effectively enforced, it would enhance the position of consumers in Ghana. It is evident that if the various standard marks of conformity are not abused, for example, it will go a long way to protect consumers from substandard goods and their associated hazards, and equally uphold the economic interest of consumers. Consequently, this will help consumers to make more intelligent purchasing decisions, since substandard goods will not receive regulatory approval and assign the standard marks of conformity.

From the above review, it is evident that the institutions use a variety of measures such as pre-market inspection, market surveillance, laboratory investigations, and certification in their enforcement of the regulatory standards for the quality and safety of consumer products in Ghana. Arguably, the primary target of the various enforcement measures focuses on preventing products that are not compliant with the established regulatory standards from being sold to consumers. While prevention is a highly desirable goal of public policy, it remains insufficient without remedial actions for consumers who are hurt by a breach.

More importantly, safeguarding consumers is subject to adherence to the regulatory standards, the trouble is where these standards are being undermined by manufacturers, importers and traders. In particular, recent evidence from various regulatory surveillance consistently points to a wide range of infiltration of substandard products into the Ghanaian market.<sup>51</sup> While commenting on the magnitude of substandard and adulterated goods proliferation on the market culminating in regulators issuing several public health alerts and warnings, Dowouna-Hammond argued that regulators overtly face formidable challenges in their oversight monitoring of product health and safety compliance.<sup>52</sup> The author further observed that the overwhelming onslaught of non-compliance goods is acute in cases of drugs and food products that are imported into the country.<sup>53</sup> The widespread substandard products on the market arena raise critical questions

<sup>32</sup> Section 118 (1), Public Health Act 2012.

<sup>33</sup> Section 100, Public Health Act 2012.

<sup>34</sup> Section 113, Public Health Act 2012.

<sup>35</sup> Energy Efficiency Standards and Labelling (Household Refrigerating Appliances) Regulations (2009), L.I. 1958, Regulation 5(1); *see also* Energy Commission (Efficiency Standards and Labelling) (Light Emitting Diode and Self-Ballasted Fluorescent Lamps) Regulations (2017), Regulation 6.

<sup>36</sup> Section 3 (n), National Communications Authority Act (2008), Act 769; *see also* s. 66, Electronic Communications Act (2008), Act 775.

<sup>37</sup> Energy Commission, Ghana Appliance Energy Efficiency Standards and Labelling Programme (2016), available on the EC website at, <http://www.energycom.gov.gh/efficiency/standards-and-labelling> (accessed 20 Jan. 2020).

<sup>38</sup> The EC, Energy Compliant Products, <http://www.energycom.gov.gh/efficiency/energy-compliant-products> (accessed 20 Jan. 2020); NCA, Type Approved Equipment, [https://portal.nca.org.gh/search\\_type\\_approval.php](https://portal.nca.org.gh/search_type_approval.php) (accessed 20 Aug. 2022).

<sup>39</sup> NCA, Type Approval Guidelines, Guideline 20.2.

<sup>40</sup> GSA, *Product Certification Scheme 2* (2018–2022), <https://www.gsa.gov.gh/wp-content/uploads/2019/07/1-PRODUCT-CERTIFICATION-MARKS-BROCHURE.pdf> (accessed 15 Oct. 2020).

<sup>41</sup> NCA, Type Approval Guidelines, Guideline 20.2.

<sup>42</sup> Section 3 (a), National Communications Authority Act, (2008) Act 769.

<sup>43</sup> Section 3 (2) (d), Standards Act, 1973 NRCD 173 as amended by AFRC 44, 1979.

<sup>44</sup> Section 3, (2), (f), Standards Act, 1973 NRCD 173 as amended by AFRC 44, 1979.

<sup>45</sup> Section 12 (1), Standards Act, 1973 NRCD 173 as amended by AFRC 44, 1979.

<sup>46</sup> Ghana Standards (Certification Mark) Rules, 1970, Rule 2 (1), L.I. 662.

<sup>47</sup> *Ibid.*, *see* s. 12 (2, 3, 4 & 5).

<sup>48</sup> GSA, *supra* n. 40, at 2.

<sup>49</sup> Nuhu Yidana, Ibrahim Osman, Joseph Dery-Nyeadi & Zakaria Yidana, *Awareness and Importance Attached to Quality Parameters in Sachet Water Production in Tamale Metropolis*, 6 (7) Int’l J. Current Res. 7586 (2014); Emmanuel K. Asare, *The Road Map to Product Certification*, 1 (3) *Qualitas Mag.* 18 (2009), ISSN 0855–885X.

<sup>50</sup> *Ibid.* Asare, at 18; Ghana Standards Authority, *Qualitas*, 1(4) *Ghana Stand. Mag.* (2011); S. Famiyeh-Addo, *Quality of Bagged Drinking Water on the Ghanaian Market*, 1(4) *Stand. Auth. Mag.* 17–19 (2011).

regarding the extent to which consumers are protected under the regulatory regime with respect to remedial actions. Undoubtedly, this calls for a further appraisal of the remedies these regulatory institutions may apply, and the extent to which the remedies may directly benefit affected consumers of the breach of the regulatory standards for the quality and safety of goods.

#### 4 REMEDIES FOR BREACH

As noted previously, remedies for breach of the quality and safety standards of products are as important as the standards and their enforcement. Without being required to remedy the breach, there will be no incentive for future compliance and violators may persist in breaching the law with impunity. Therefore, regulatory enforcement remedies are crucial to induce future compliance. Against this backdrop, the regulatory bodies in Ghana are vested with some remedies to administer against manufacturers or traders who contravene the standards in the manufacture and product sale enterprise.

Seizure of infringing goods is one of the remedies available to regulatory enforcers of product quality and safety standards in Ghana. Inspectors of the various regulatory institutions are clothed with the requisite powers to seize goods that contravene any provision of the rules, including goods labelled in such a way as to be deceptive, misleading, or false.<sup>54</sup> Not only do they wield the power to upset the sale of the infringing goods to consumers, but they may also destroy the goods, or order the re-exportation of the goods, if they were originally imported and it is impossible to remedy the deficiency.<sup>55</sup> In the case of the NCA, the National Communications Regulations permits the authority to confiscate seized communication equipment brought into the jurisdiction without authorization.<sup>56</sup> In *Aewaha Company Ltd v. National Communication Authority*,<sup>57</sup> the imported electronic communications equipment was seized and confiscated on the alleged ground that no prior approval was granted.<sup>58</sup> Before the court verdict, however, the equipment was returned when the NCA discovered that approval had been granted. It is worth noting that the case was concerned with a radio station's electronic communications equipment. The case nevertheless illustrates the enforcement remedy available to the NCA which can be activated in instances of imported communication equipment for consumer use without the NCA certifying their quality and safety standards. While it may be argued that the rationale for the remedy of seizure and destruction or re-exportation or confiscation is to discourage manufacturers and traders from violating the laid down standards, the alleged

floods of substandard products on the market taint this notion with doubts.

Also on the radar of regulatory institutions is the revocation or suspension of the manufacturer's or importer's or trader's licence for non-compliance with the minimum health and safety standards. For example, section 12 (11) of the Standards Act requires the GSA to revoke a certification mark of conformity where this is in the broader interest of public health and safety to do. Similarly, breaches of the set-out standards by the FDA regarding food products, drugs, household chemicals, medical devices and herbal medicinal products may occasion the cancellation or revocation of the operating licence through a court order.<sup>59</sup> The orders for the suspension or cancellation of the licence may be issued in addition to, or in place of, any other penalty. The revocation of the licences of rogue traders will possibly signal to consumers that the products of those manufacturers or traders are of poor quality and not safe for consumption.

Other sources of enforcement remedies regulators may pursue against offenders include court actions where persons who are found culpable may either be fined or imprisoned.<sup>60</sup> For instance, a trader or manufacturer who flouts the EC regulatory standards may be sanctioned with a fine not exceeding 250 penalty units or imprisoned for not more than twelve months or both.<sup>61</sup> In the case of a corporate entity, every director or officer of the body corporate or member of the partnership, or any other person concerned with the management of the firm, is to be deemed to have committed the offence and liable to a summary conviction of a fine of not more than 500 penalty units and not less than 250 penalty units.<sup>62</sup> In the case of non-conformity with any provision on the sale of food under the FDA authority, the penalty is a summary conviction with a fine of not less than 1,000 penalty units and not exceeding 7,500 penalty units, or a minimum term of imprisonment of four years and not exceeding fifteen years or to both.<sup>63</sup> Liability for non-compliance regarding drugs, medical devices, cosmetics, herbal medicine and household chemicals is also a 'summary conviction to a fine of not less than seven thousand five hundred penalty units and not more than fifteen thousand penalty units or a term of imprisonment of not less than fifteen years and not more than twenty-five years or both'.<sup>64</sup> Similarly, section 21 (2) of the Standards Act 1973 sets a penalty for a violation to a term of imprisonment not exceeding two years or to a fine of not more than 500 penalty units or both, and in the case of continuing the offence after the initial violation, to a one penalty unit per day of the recurring offence.<sup>65</sup> This may especially arise when a trader or manufacturer uses a revoked certification mark of conformity, or uses a misrepresented mark to create the impression that goods, commodities,

<sup>51</sup> In one of its market surveillances, the GSA discovered and seized substandard products as reported on its websites. For details, see Ghana Standards Authority News, *197 Out of 204 Electrical Items Substandard – Standards Authority* (4 Sep. 2018), <https://www.gsa.gov.gh/news/page/3/> (accessed 25 Apr. 2020); GSA News, *We Will Destroy 'Fake-Branded' Products – GSA Director-General* (20 Oct. 2018), <https://www.gsa.gov.gh/2018/10/we-will-destroy-fake-branded-products-gsa-director-general/> (accessed 26 Mar. 2021).

<sup>52</sup> Dowuona-Hammond, *supra* n. 12.

<sup>53</sup> *Ibid.*

<sup>54</sup> For details, see Rules 7–9, Ghana Standards Board (Food, Drugs and Other Goods) General Labelling Rules 1992, L.I. 1541; see also s. 135, Public Health Act 2012; see also Regulation 21, Energy Commission (Efficiency Standards and Labelling) (Light Emitting Diode and Self-Ballasted Fluorescent Lamps) Regulations, 2017. L.I. 2353.

<sup>55</sup> See *ibid.*, Regulation 29, L.I. 2353; see also s. 135, Public Health Act 2012.

<sup>56</sup> Regulation 104, NCA, National Communications Regulations (2003), L.I. 1719.

<sup>57</sup> (2011) High Court Suit No. OCC3/07, unreported.

<sup>58</sup> *Aewaha Company Ltd v. National Communication Authority* [2011] High Court Suit No. OCC3/07, unreported.

<sup>59</sup> Section 141, Public Health Act 2012.

<sup>60</sup> For example, see s. 21, the Standards Act 1973; Ghana Standards (Certification Mark) Rules, 1970, L.I. 66; s. 21 of NRCD 326, the Weights and Measurement Decree, 1975.

<sup>61</sup> Regulation 23, L.I. 1958; Regulation 5 (6), L.I. 1815; Regulation 5(6), L.I. 2353.

<sup>62</sup> Regulation 32, L.I. 2353.

processes, or practices conform with the standard specification when in fact they do not.<sup>66</sup> In the case of an offence by a body corporate other than a partnership concerning the GSA standards, every director and officer of the corporate entity will be deemed to have committed that offence; and where the corporate body is a firm, every partner of the firm will be deemed to have committed the offence.<sup>67</sup>

In a nutshell, the remedies which the institutions may apply against manufacturers or importers or traders who are in breach of the regulatory standards are mainly seizure of infringing goods, either for destruction, confiscation or re-export, licence revocation and imposing fines or imprisonment sanctions or applying both fines and imprisonment sanctions. Ideally, the deployment of these remedies has the prospects of compelling adherence to regulatory standards. Such adherence will ensure increased standards of consumer products and consumer safeguards against substandard products and their likely health and safety hazards. The strict adherence to the regulatory standards flowing from deterrence to the enforcement of the existing remedies, however, remains theoretical only. As noted previously, the regulatory authorities have countlessly bemoaned the existence of widespread substandard goods on the market in Ghana. Commentators have equally waded in to allude that the resource capacity of the various institutions is woefully inadequate to cope with the overwhelming onslaught of substandard products on the market.<sup>68</sup> The question then is, are the remedies adequate for the true and meaningful protection of consumers in Ghana? This is further considered below.

## 5 DEFICIENCY OF THE ENFORCEMENT REMEDIES

From the preceding review, it is evident that the enforcement remedies available to regulators of the various institutions in Ghana are mainly licenced revocation, seizure of infringing goods (with options of destruction, confiscation or order for re-export of the goods by the trader) as well as fines or imprisonment sanctions or both. These are primarily targeted at punishing the offender of the regulatory standards. Indeed, punishing the offender is important to possibly discourage other potential culprits. The difficulty is that there is no provision for the award of administrative remedies to consumers who are affected on account of a manufacturer or importer or trader's breach of the regulatory standards. This is worrying, especially for consumers who purchased the goods or products before these are found, by the regulators, to be non-compliant and originally unfit for consumer use. The key question is, what option is available for such a consumer? Interestingly, both the parent acts and legislative instruments are silent on the option available, in the form of a remedy, for such a class of consumers. In other words, the enforcement remedies under the aegis of the regulatory institutions do not cover administrative remedies for such consumers. As observed in the review, while a regulatory

institution may carry out market surveillance or investigation as part of its routine checks, it may equally originate from a consumer complaint. In effect, a consumer with a faulty substandard product may file a complaint and this may result in a manufacturer or importer or trader being sanctioned, but the consumer will have no remedy directly to his benefit. Alternatively, a consumer may suffer damage or injury for having bought the non-compliant goods, but the consumer will have no remedy flowing directly from the regulatory remedies or sanctions. Consequently, a consumer who is a victim of having bought such non-compliant goods will be left with no remedy irrespective of the likely hazards and economic implications.

Nevertheless, it may be argued that a consumer who is affected or injured should be able to rely on the common law doctrine of product liability as was laid down in *Donoghue v. Stevenson*.<sup>69</sup> Especially, the Ghanaian courts are said to strictly apply the doctrine mainly for the protection of consumers in Ghana.<sup>70</sup> The court's preparedness to strictly apply the product liability theory was particularly demonstrated in the case of *Overseas Breweries Ltd. v. Acheampong*.<sup>71</sup> In the instant case, the claimant brought an action for the claim of damages against the manufacturer of beer which was contaminated with kerosene. It was held by the court that the defendant, as a manufacturer of the beer, owed a duty of care to the claimant to ensure that the beer sold to him was not contaminated with kerosene and failure to do so could be inferred to be negligence. Also, in *Aboagye v. Kumasi Brewery Ltd.*,<sup>72</sup> the claimant developed funny feelings on seeing a rotten palm nut in the beer bottle after consuming three-quarters of the content. Later in the night, the claimant vomited and had frequent stools. Upon his visit to the doctor the following morning, the diarrhoea and vomiting were confirmed to be the result of food poisoning. Consequently, the manufacturers were held liable for negligence in the preparation of the beer which the claimant drank. The court noted that the plaintiff's illness was probably psychological, but there was no doubt that this was a result of the nut being found in the beer.

The above illustration is a clear affirmation of the willingness of the courts to strictly apply the general principle of product liability doctrine as was laid down in *Donoghue v. Stevenson*, in holding manufacturers accountable for their negligence. Admittedly, therefore, consumers who are affected or injured may be able to seek redress by relying on the concept of product liability. However, the value of most consumer goods which are individually purchased is often quite small in terms of the purchase price. In contrast, the cost of bringing an action in a court of law, as in many other jurisdictions, is prohibitively high in Ghana.<sup>73</sup> For example, Owusu-Dapaa and Bediako stated that the estimated cost of litigating a civil claim in a circuit court in Ghana is typically in the range of 'five thousand Ghana cedis (GH¢5000) to anything over ten thousand Ghana cedis (GH¢10,000)'.<sup>74</sup> So, the majority of the average Ghanaian consumers simply cannot afford the cost of instituting and maintaining a claim in a court of law in Ghana.<sup>75</sup> Moreover, excessive delays in the court processes, and the uncertainty of the outcome, generally

<sup>63</sup> Section 110, Public Health Act 2012.

<sup>64</sup> Section 129, Public Health Act 2012.

<sup>65</sup> Section 21 (2), the Standards Act 1973, NRCD 175; see also Rule 8, Ghana Standards (Certification Mark) Rules, 1970.

<sup>66</sup> Section 21, The Standards Act, 1973.

<sup>67</sup> Section 22, The Standards Act, 1973; see also Rule 9, Ghana Standards (Certification Mark) Rules, 1970.

<sup>68</sup> Dowouna-Hammond, *supra* n. 12.

<sup>69</sup> [1932] UKHL 100.

<sup>70</sup> S. K. Date-Bah, *Towards a Strict Tort of Products Liability in Ghana*, 5(3) Rev. Ghana L. 236 (1973).

<sup>71</sup> [1973] 1 GLR 421.

<sup>72</sup> [1964] GLR 242.

discourage even consumers who could afford the cost of seeking relief at law.<sup>76</sup> The consumer may therefore go without a remedy for his or her inability to bring an action in court for his or her claim against the supplier or manufacturer for the defective goods.

Against this backdrop, it is submitted that the absence of administrative remedies for consumers who might have been victims of buying the goods before the declaration of their lack of conformity to stipulated standards does not portend well for the overall protection of consumers in Ghana. This is especially disturbing because many consumers in Ghana will not be able to afford the excessively high cost of litigating a case in a court of law in Ghana. The plight of the average consumer is further exacerbated in light of the growing spate of substandard goods on the market in Ghana as previously noted. Consequently, the inadequacy of the law to provide for the award of administrative remedies is not helpful to safeguard the interests and rights of consumers.

What might be beneficial to consumers is if the regulatory enforcement measures provide for the provision of compensatory or administrative remedies to consumers who might have been supplied with the goods in violation of the quality and safety regulatory standards. However, this is presently not available under the respective mandate of the regulatory establishments that police the quality and safety standards of goods as demonstrated earlier.

The important question is whether this can be addressed to forestall the case of many consumers remaining at the mercy of defective substandard goods without a remedy. Addressing this is especially vital to ensure that consumers who will be unable to pursue individual claims are offered the necessary protection when supplied with implicated substandard goods.

### 5.1 Lessons from the Supply of Services to Consumers in Ghana

The regulatory architecture for the supply of various services to consumers in Ghana is formulated with administrative remedies for consumers in the event of a breach. The regulated services in question encompass financial services, telecommunication services, and utility services such as water, electricity, and gas. Both financial and non-financial commercial institutions in Ghana are regulated by the Bank of Ghana.<sup>77</sup> The National Communications Authority superintends the delivery of quality telecommunications services to consumers in Ghana. The regulation of the supply of utility services covering water, electricity, and gas to consumers equally rests on the shoulders of the Public Utility Regulatory Commission (PURC). In the exercise of their enforcement powers directed at ensuring that consumers are supplied with quality services, these regulatory bodies may direct the compensation of consumers who unjustly suffered as a result of the service provider's breach of consumer regulatory standards. For example, the Public Utilities Regulatory Commission Act 1997 gave the PURC the power to initiate and conduct investigations into standards

of quality of services given to consumers by utility providers.-

<sup>78</sup> The Act provides for the incorporation of a complaint procedure as a medium through which persons with issues relating to the supply of utility services, or the rates chargeable, could first file their complaints before the PURC for investigation and settlement.<sup>79</sup> In the settlement of such complaints, the PURC may direct a utility service provider to provide adequate or reasonable service to the consumer, including the payment of compensation to the consumer who has suffered loss or damage on account of the utility provider's initial breach.<sup>80</sup> It is refreshing to note that this mandate of the PURC has further been emboldened with the recent promulgation of the Public Utility Regulatory Commission (Consumer Services) Regulations, 2020.<sup>81</sup> The 2020 Regulations made it abundantly clear that the PURC orders are binding.<sup>82</sup>

A further illustration of the power of regulatory institutions to advance administrative remedies to consumers in their regulatory dispensation bring into sharp focus the mandate of the NCA once again. Thus, while the NCA enforcement powers do not come with administrative remedies to consumers in the enforcement of communications equipment standards as observed earlier, administrative remedies to consumers are attached to its enforcement of the delivery of quality communications services to consumers. For instance, the Electronic Communications Act<sup>83</sup> 2008 tasked the NCA to 'create a mechanism for dealing with complaints or concerns of consumers of telecommunication services'.<sup>84</sup> Section 28 of the statute further requires the NCA to prepare a consumer code which should reflect measures for the protection of consumer information, handling of customer complaints and disputes and the compensation of customers in case of a breach of the consumer code among others. In spelling out the rights and responsibilities of consumers, the NCA explicitly captured the rights of consumers to include 'the right to receive compensation for misrepresentation of products or services'. While enforcement of the set-out consumers' rights is entrusted to the NCA, its determinations are subject to review by the Electronic Communication Tribunal as defined under sections 88 to 93 of the Electronic Communications Act 2008. The point worth highlighting is that as per the Electronic Communications Act 2008, a consumer may obtain compensation for unsatisfactory service received or other related breaches within the range of the NCA-recognized consumer rights.<sup>85</sup>

From the above illustrations, it is clear that regulators are empowered to award administrative remedies to consumers who are affected as a result of a service provider's breach of the standards for the supply of quality services to consumers. The potency of the award of administrative remedies to affected consumers lies in its promotion of access to justice by the average person. It remains a grave concern that regulators' enforcement of the standards for the quality and safety

AQ3 Regulatory Commission Act 1997 gave the PURC the power to initiate and conduct investigations into standards

<sup>73</sup> Nkansah et al., *supra* n. 12, at 296–310; Yidana, *supra* n. 12.

<sup>74</sup> Ernest Owusu-Dapaa & Ebenezer Adjei Bediako, *Austerity in Civil Procedure: A Critical Assessment of the Impact of Global Economic Downturn on Civil Justice in Ghana*, 8 Erasmus L. Rev. 210 (2015).

<sup>75</sup> Dowuona-Hammond, *supra* n. 2.

<sup>76</sup> Nkansah et al., *supra* n. 12; Yidana, *supra* n. 12.

<sup>77</sup> The Bank of Ghana is the central bank of the Republic of Ghana.

<sup>78</sup> Public Utilities Regulatory Commission Act, 1997.

<sup>79</sup> Section 29, Public Utilities Regulatory Commission Act, 1997, Act 538.

<sup>80</sup> Section 12, Public Utilities Regulatory Commission Act, 1997, Act 538.

<sup>81</sup> L I. 2413.

<sup>82</sup> Regulation 7, PURC (Consumer Services) Regulations, 2020, L I. 2413.

<sup>83</sup> [2008], Act 775.

<sup>84</sup> Section 27 (2), Electronic Communications Authority Act 2008, Act 775.

of consumer products comes with no administrative remedies. Drawing from the supply of services, it is submitted that the absence of administrative remedies (offence-connected remedies) for consumers who bought the non-compliant products ahead of the regulatory findings of their non-compliance to the established quality and safety standards is not in sync with the trend of contemporary regulatory enforcement of consumer law standards.

It may be argued that a case for the extension of administrative remedies to consumers in the enforcement of the quality and safety standards of products on the basis that similar remedies exist in the supply of services, is like comparing apples and oranges in that the effects of a breach relating to quality services can easily be assessed, but the same cannot be said in the case of a breach concerning product quality and safety standards. However, there is evidence of defined administrative remedies under the law in England and Wales for consumers who are affected on account of breaches of regulatory standards. The existence of such remedies for consumers within the sphere of product regulatory standards demises the validity of such a possible claim. This is further explored below with a particular focus on whether there are effective grounds for the extension of the present scope of remedies to cover administrative remedies for consumers in the regulatory enforcement of the quality and safety standards of consumer law in Ghana.

## 5.2 Lessons from South Africa and the UK Regulatory Enforcement of Consumer Law

Recent development in other jurisdictions offers interesting ideas that could possibly assist in the fashioning of a Ghanaian solution regarding the provision of relief for victims of a trader's breach of regulatory standards regarding the quality and safety of products.<sup>86</sup> While several countries approach the subject differently, the comparative analysis will be limited to South Africa and the UK due to the available space. In South Africa, the overarching goal to 'protect consumers from hazards to their well-being and safety' as well as 'develop effective means of redress for consumers' are at the heart of the Consumer Protection Act (CPA) 2008, as elegantly set out under the preamble to the CPA 2008.<sup>87</sup> The National Consumer Commission (NCC),<sup>88</sup> established by the CPA, is empowered to entertain consumer complaints, assess the merit of the complaint through investigation and refer the matter to a sector-specific ombudsmen or provincial consumer courts or tribunals for settlement, but remained as an appeal forum for consumers who are not satisfied with the decision of the ombudsman or the consumer court or tribunal.<sup>89</sup>

In cases where the NCC determines a matter following investigation, the NCC may proceed to make a consent order including an award of damages to the complainant as the victim of the breach. The model in South Africa is a good one, but the requirements for the NCC to refer a complaint with merit to either sector-specific ombudsmen or a consumer court or tribunal will be problematic in Ghana at the moment against the backdrop of the current non-existence of sector-specific ombudsmen and consumer courts or tribunals

in Ghana. More importantly, there is presently no dedicated consumer protection authority or council responsible for a broad range of consumer matters as is the case in South Africa. It is, therefore, submitted that the South African model will not be ideal for the present limits of the law in Ghana on account of the peculiarity of the domestic circumstances in Ghana. This does not rule out the possible viability of a wholesale adaptation of the South African model in Ghana *bis* beyond the present analysis. With a particular focus on the scope of the present analysis, the South African model stands unsuitable.

Turning to the law in England and Wales, regulatory enforcers and civil courts are empowered to attach 'Enhanced Consumer Measures' (ECMs) in giving enforcement orders or accepting undertakings by traders to avoid or stop the violation of consumer legislation.<sup>90</sup> In particular, under Part 8 of the Enterprise Act 2002, enforcers had the authority to initiate formal enforcement orders or to accept undertakings of businesses not to violate consumer law where informal measures failed. These were mainly to bring rogue traders into compliance with the relevant consumer legislation but did not offer a direct remedy to consumers who might have suffered as victims of the breach, as similarly discussed earlier concerning the present enforcement remedies for breach of quality and safety standards in Ghana.

The Consumer Rights Act 2015 (CRA 2015), however, went further to amend the Enterprise Act by introducing 'ECMs' into Part 8 of the Enterprise Act 2002.<sup>91</sup> The ECMs essentially empower the courts and enforcers<sup>92</sup> to attach 'a range of ECMs that are just, reasonable and proportionate' when accepting an undertaking by a trader, or when issuing an enforcement order.<sup>93</sup> The ECMs are basically in three categories reflecting redress, compliance, and choice,<sup>94</sup> and may be deployed in transactions involving goods and services. It is significant to highlight from the onset that both the compliance and the choice categories of the ECMs are not meant to provide relief to consumer victims of a trader's breach of consumer law. The enforcement orders or undertakings under the compliance category are meant to prevent or reduce the risk associated with the occurrence or repetition of breach conduct or secure improvement of compliance with consumer law more generally.<sup>95</sup> On the other hand, the choice category focuses on enforcers compelling traders with a history of breaching consumer law to publish such breaches and their line of action in complying with the law to enable consumers to choose more effectively between traders,<sup>96</sup> and has been titled as 'Consumer Information Measures' in the Guidance for enforcers of consumer law.<sup>97</sup>

So, clearly, the principal objectives of both categories, though useful, do not act as a solution to the current

<sup>85</sup> The detailed NCA recognized consumer rights are available on the NCA website at, <https://www.nca.org.gh/consumer-center/consumer-right-and-safety/rights-and-responsibility/> (accessed 16 Oct. 2020).

<sup>86</sup> For a nuanced discussion of various countries' novel forms of consumer regulatory enforcement remedies, see Hans-W. Micklitz & Geneviève Saumier, *Enforcement and Effectiveness of Consumer Law* 3–45 (Springer, Cham 2018).

<sup>87</sup> Consumer Protection Act, 2008, No. 68 of 2008. The Act came into force in 2011.

<sup>88</sup> Section 85, Consumer Protection Act 2008.

<sup>89</sup> See ss 72 and 73, Consumer Protection Act 2008. NCC is to refer alleged offences to the National Prosecuting Authority and anti-competitive conduct and related competition prohibitions to the Competition Commission.

<sup>90</sup> Sections 219A to 219C of the Enterprise Act 2002 as amended by Sch. 7 of the CRA 2015.



limitation of the law in Ghana. Moreover, the seizure and destruction of infringing goods, the administrative fines, and the revocation of operating licences as measures available to the regulatory institutions are vital measures capable of securing future compliance in the Ghanaian context, if they are practically enforced. Nevertheless, the approach of the CRA 2015 where enforcers may provide traders with possible actionable guidance to preventing future violations is novel, but this is not the current issue of concern to the law in Ghana. Consequently, both categories of ECMs do not directly provide a solution to the current deficiency of the law in Ghana. The redress category which targets the victim of the breach is, therefore, considered further below focusing on whether its approach contains viable lessons for adaptation in the local Ghanaian context.

## 6 THE REDRESS CATEGORY OF THE ECMs

The redress category has three sets of measures incorporated into section 219 A (2) of the Enterprise Act 2002 by the CRA 2015. These include: '(a) measures offering compensation or another redress to consumers who have suffered loss as a result of the conduct which has given rise to the enforcement order or undertaking', or (b) measures offering consumers the option to terminate (but not vary) the contract, and (c) where the affected consumers cannot be identified or their identification could be disproportionate to the enforcement order or undertaking, measures intended to be in the collective interests of consumers could be applied.<sup>98</sup> Whilst the courts have not had the opportunity to comment on the exact import of the provision, the Explanatory Notes of the CRA and leading commentators have made observations regarding the possible construction that may be given to the provision by the courts.

In particular, the redress category is said to be the primary basis of the ECMs, and as such, the redress category is to take priority if applying all three categories of ECMs will be disproportionate to the breach caused by the trader.<sup>99</sup> The significant aspect of the redress category of the ECMs is that the main targets of the measures are the victims of the trader's breach of consumer law as noted earlier. This is because the

measures seek to remedy the harm that the consumer has suffered on account of the trader's failure to act within the regulatory requirements.<sup>100</sup> The remedy may come in a form of financial compensation, or a right to terminate the contract, with presumably restitutionary consequences.<sup>101</sup> It has, therefore, been stated that the measures under the redress category are meant to either compensate 'consumers who have suffered loss as a result of the breach of consumer law' or give the affected consumers the option to terminate the contract or require the trader to undertake an act directed to the collective interest of all affected consumers where their identification will be disproportionate.<sup>102</sup>

In effect, the applications of the ECMs are not only to bring about compliance and relevant information to consumers but are also meant to offer a direct remedy to affected consumers. The emphasis that the redress category should take priority when applying all the categories will be disproportionate, further highlights the primary aim of the ECMs to ensure that affected consumers are not left without a direct remedy.

The redress category of the ECMs is consistent with the administrative remedies available to regulators in the supply of services to consumers in Ghana, as observed earlier. In effect, introducing administrative remedies in Ghana for regulators to apply in their enforcement of consumer law regarding the quality and safety of goods will receive a warm welcome. A similar measure in the quality and safety standards of goods in Ghana will be practically helpful in resolving the present situation whereby affected consumers have no direct redress in regulatory actions against traders who are in breach of consumer law unless they bring a separate civil action in a court of law. Introducing a similar enhanced consumer redress scheme will particularly ensure that those who cannot afford to initiate and sustain an action in a court of law, due to the cost of litigation, can obtain redress through the regulators or the courts attaching such measures to their enforcement options of fines or imprisonment or both. This is particularly important taking into consideration the vulnerability of the majority of consumers in Ghana who may not even contemplate an action in court as noted earlier.

In the supply of service sector as observed earlier, regulators are vested with powers to award administrative remedies in a form of compensating affected consumers. The issue, however, is that the power to award administrative remedies centres primarily on the supply of services with complete

<sup>91</sup> This is to be read as s. 219A of the Enterprise Act 2002 as amended by Sch. 7 (8) of the CRA 2015.

<sup>92</sup> Section 219B of the 2002 Act as amended refers enforcers to enforcers under the Competition and Markets Authorities or the local weights and measures Authority – the Trade Standard Department.

<sup>93</sup> Consumer Rights Act 2015: Explanatory Notes (2015), para. 370; Department for Business, Innovation and Skills, *Enhanced Consumer Measures: Guidance for Enforcers of Consumer Law* 5 (2015); Peter Cartwright, *Redress Compliance and Choice: Enhanced Consumer Measures and the Retreat from Punishment in the Consumer Rights Act 2015*, 75 Cambridge L.J. 271–300 (2016); Peter Rott, *The EU Legal Framework for the Enforcement of Consumer Law, in Enforcement and Effectiveness of Consumer Law* 249–285 (Hans-W. Micklitz & Geneviève Saumier eds, Springer 2018); Department for Business, Innovation and Skills, *Draft Consumer Rights Bill: Government Response to Consultations on Consumer Rights* 14 (2013), para. 25.

<sup>94</sup> This is to be read as s. 219A of the Enterprise Act, 2002 amended by Sch. 7 (8) of the CRA, 2015.

<sup>95</sup> Section 219A (3), Enterprise Act 2002 as amended by Sch. 7 (8), CRA 2015.

<sup>96</sup> Section 219A (4), Enterprise Act 2002, amended by Sch. 7 (8), CRA, 2016.

<sup>97</sup> Department for Business, Innovation and Skills, *supra* n. 93, at 24.

<sup>98</sup> Section 219A (2), Enterprise Act 2002, amended by Sch. 7 (8), CRA 2015.

<sup>99</sup> Denis Barry, Edward Jenkins, Daniel Lloyd, Ben Douglas-Jones & Charlene Sumnall, *Blackstone's Guide to the Consumer Rights Act 2015* (Oxford University Press 2016), para. 8.55; see also Department for Business, Innovation and Skills, *supra* n. 93, para. 48; see also Cartwright, *supra* n. 93.

<sup>100</sup> Cartwright, *supra* n. 93.

<sup>101</sup> *Ibid.*

<sup>102</sup> Consumer Rights Act, *supra* n. 93, para. 383; see also Michael G. Bridge, *Benjamin's Sale of Goods* (10th ed., Sweet & Maxwell 2017), para. 14.315; see also Christine Reifa & Chris Willett, *Enforcement and Effectiveness of Consumer Law in the UK, in Enforcement and Effectiveness of Consumer Law* 673–695 (Hans-W. Micklitz & Geneviève Saumier eds, Springer International Publishing AG 2018); see also Christian Twigg-Flesner, *Consumer Sales Law in the United Kingdom, in Comparative Consumer Sales Law* 128–153, at 136 (Geraint G. Howells et al. eds, Routledge 2017).

exclusion of issues of the quality and safety standards of goods. The existing remedies in Ghana also preclude the right to terminate the contract presumably due to the monopoly of the supply of most services, such as utility service providers in Ghana. Despite the confinement of the present remedies to the supply of services to consumers, the existing power of the regulators to award compensatory remedies to consumers in their enforcement dispensation provides an important starting point for the introduction of the wider enhanced consumer redress scheme in Ghana. Especially, adopting the CRA 2015 redress category of the ECMs in Ghana will easily play out as an extension of the prevailing consumer redress within the domain of the supply of services to consumers in Ghana. The enhanced consumer redress measure in Ghana as similarly introduced by the CRA 2015 into the Enterprise Act 2002 will provide regulators with a set of flexible options to apply remedies such as compensation, termination of the transaction or compel the undertaking of measures in the collective interest of consumers where identifying affected consumers will be disproportionate to the offence. This will ensure that the enhanced consumer redress will not only operate in the case of utilities in Ghana, but will similarly be available for consumers of various goods and services in Ghana.

One important aspect of the enhanced consumer redress measures under English and Welsh law, which will similarly be critical in Ghana, is that the consumer acceptance of the redress offered as an ECM is not mandatory. In particular, under the law in England and Wales, it has been contended that the individual consumer is not obliged to accept an ECM being offered as a part of the court's or the enforcer's enforcement order or acceptance of an undertaking.<sup>103</sup> The individual consumer is not precluded from pursuing a separate claim for relief in a court of law. However, when choosing to bring a separate action, the consumer in question must not have accepted an ECM.<sup>104</sup>

It is worth noting that the provision under the law in Ghana which empowers the PURC, for example, to discretionarily direct a utility service provider who is in breach of consumer law to pay compensation to the victim equally stipulates that a consumer may opt to seek judicial relief without being obliged to accept the compensation.<sup>105</sup>

It is therefore submitted that a similar requirement will be critical in adopting the enhanced consumer redress measures in Ghana. In particular, providing such an option will allow individuals the opportunity to seek a separate redress without being obliged to take what is being offered as an ECM when introduced into the regime in Ghana. This is significant to avoid the potential of denying consumers who might consider the ECM as being unsatisfactory, and who might be capable and willing to seek better redress outcomes. Nevertheless, as indicated earlier, those who may not be able to assert their rights to the claim of the required remedy will benefit from the enhanced consumer redress measure when introduced in Ghana, bearing in mind the domestic conditions. This will help in giving effect to remedies consumers are entitled to under the law when introduced in Ghana.

One other important criterion that will similarly be useful in introducing the redress ECM in Ghana and be worth highlighting, is that the application of the measure only follows where the trader is in breach of consumer law

resulting in the court or enforcer's enforcement order or acceptance of an undertaking as pertaining under the law in England and Wales.<sup>106</sup> Having a requirement to the effect that the application of the ECM, when introduced in Ghana, should precede where the seller is charged with an offence or breached a consumer protection enactment will similarly be helpful to the cause of consumers in Ghana. First, this will ensure that providers of services or suppliers of goods whose conduct seeks to undermine the relevant consumer-related laws are dissuaded from the acts to avoid being blacklisted. More importantly, it will ensure that consumers who are affected by the conduct are given a remedy. The overall effect will be that a trader who is found guilty of a breach of the requirement of the law will not only result in fines or imprisonment but will as well attract civil liabilities, especially to consumers who are affected for having bought the particular goods or services.

In short, the redress category of the ECMs under the law in England and Wales will be viable in remedying the present lack of direct remedy for affected consumers in the enforcement remedies of regulators in Ghana. This is particularly because of the tripartite strands of the redress category where consumers who have suffered loss as a result of a breach of the health and safety standard may be compensated, or where affected consumers may be given the option to terminate the contract, and/or where the trader will be required to undertake acts in the collective interest of all affected consumers in cases of likely disproportionate identification of affected consumers. The adoption of the redress category of the ECMs will ensure that not only consumers of services will get relief when affected as a result of a breach of the defined standards, but also consumers of goods who suffer due to a breach of the established quality and safety standards.

## 7 CONCLUSION

This article demonstrates that the prevailing regulatory enforcement remedies for the quality and safety of consumer goods placed less focus on victims of regulatory breaches by traders and manufacturers regarding the quality and safety standards of goods. As shown in the analysis, there is no direct redress for consumers of goods in the regulatory enforcement remedies except in the cases of the supply of services to consumers. The regulatory institutions' primary enforcement remedies are concentrated on the seizure and destruction of infringing goods, administering fines and imprisonment sanctions and licence revocation. While these are crucial with the likely object of compelling traders to act in compliance with the law, consumers who are affected by buying such goods before the detection of the deviation of the goods from the national safety standards will have no redress unless they pursue a separate claim at law. This article nevertheless demonstrates that the cost of litigation, delays and the small cost nature of many consumer goods may consequently discourage most consumers from contemplating judicial relief. Moreover, the

<sup>104</sup> *Ibid.*, para. 60.

<sup>105</sup> Section 13, Public Utilities Regulatory Commission Act, 1997, Act 538.

<sup>106</sup> Christian Twigg-Flesner, *supra* n. 102, at 128–145, 132; *see also* Bridge, *supra* n. 103, para. 14.315.

<sup>103</sup> Department for Business, Innovation and Skills, *supra* n. 93, para. 59; Cartwright, *supra* n. 93.

majority of consumers simply cannot afford the prohibitive cost of litigation and may therefore be left without a remedy.

Drawing guidance from the regulatory remedies in the supply of services in Ghana, the approach to remedies under the South African regime and the remedies under the Enterprise Act 2002 as amended by the CRA 2015 in the UK, this article argues that the redress category of the ECMs, with its tripartite structure will similarly be viable in resolving the present deficiency of the regulatory enforcement remedies regarding the quality and safety standards of goods in Ghana. It has been demonstrated abundantly

clearly that the existence of possible relief for affected consumers under the supply of services to consumers in Ghana, is an indication that comparable remedies for consumers in the enforcement of the quality and safety standards of goods will likely receive a welcome reception. This article, therefore, submits that introducing administrative remedies into the enforcement remedies of the regulatory institutions in Ghana is crucial to ensuring that the majority of consumers, who cannot afford to seek relief at law, can obtain redress when they are supplied with non-compliant goods.