Consumer Credit Acts 1974 and 2006

Introduction

For several decades, financial markets have been playing an important role in alleviating poverty through the provision of favourable consumer services, including consumer credits. The consumer credit services proved beneficial for both customers and businessmen as they enhanced consumer-retailer relationship. However, numerous studies demonstrate how some financial institutions have used consumer credit card services to lure consumers into fake agreements (*Warning: too much information can harm*, 2007). This trend has led to considerable public debates on consumer credit card services offered by financial institutions as the European government countries seek solutions to end such financial crimes. In a bid to avert the situation, parliamentarians in European countries felt it was important to propose laws to protect consumers from fraudulent practices within the financial markets. As a result, the Consumer Credit Acts emerged in 1974 and 2006. Nonetheless, their efficacy in protecting consumers from unfair practices remains unclear. Therefore, this essay seeks to establish if provisions of the Consumer Credit Acts of 1974 and 2006 adequately inform and protect consumers from unfair practices before and after making a credit agreement.

Overview of Consumer Credit

Consumer credit refers to debt-purchase practices by customers when purchasing non-commercial goods or services using common forms like store cards, credit cards, motor finance, and personal loans. As demonstrated by Iyanda and Khupe (2011), the primary aim of consumer debit cards is to allow customers to acquire goods or services on credit terms and thereafter pay at the most convenient moment. Using credit services in procurement has been beneficial to both consumers and vendors. For retailers, credit-purchasing services have enhanced sales by increasing consumers' purchasing power, which in turn increases profitability, product demand, and finally boosts sales turnover. In consumers context, using credit facilities in purchases increases purchasing convenience and helps consumers to overcome their financial challenges. According to Iyanda and Khupe (2011), credit-purchasing services hasten economic growth tempo on the national economical scale, thus influencing national economic development. With the rising demand for consumer credit services, financial institutions are now manipulating consumers through such services.

Overview of Consumer Protection

Due to the rising ill practices performed by financial institutions against consumers who are now relying on credit card services in almost every sphere of their lives, consumer protection has emerged as a paramount issue within the financial market. Globally, consumer protection has dominated public discussions that have prompted the government to react by proposing laws and acts that govern agreements between buyers and sellers (Ruhl 2011). In several studies, the rationale of consumers as demonstrated by legal literature seems justified with consumers being considered weaker and unable to protect their interests as compared to their contracting partners in the financial markets. Globally, the emergence of consumer credit agreements in developed and growing economies remains the only source of hope for consumers given the growing fraud cases practised by financial institutions (Wright 2012). These agreements have continuously assisted consumers by informing about and protecting from unfair practices and promoting consumer-buyer relationship as well. Most importantly, the agreements have promoted fair, transparent, sustainable, responsible, effective, and efficient trade in the credit market.

Consumer Credit Acts of 1974 and 2006

These Consumer Credit Acts emerged primarily to protect consumers from possible exploitations by retailers. Conventionally, the Consumer Credit Act came into existence in the United Kingdom in 1974 after several decades of consumer suffering. The UK government updated the law in 2006, and its enactment followed in 2008, when its full implementation began and finally it became the UK government's law. The law established principles that credit firms must follow while conducting businesses with consumers. The established 1974 Act ensures that credit firms offering either goods or services on credit terms or firms that directly lend financial aid in terms of loans to consumers have acquired valid business licences from the office of fair trade (*Consumer Credit Act*, 1974). After its amendment in 2006, the Act became more powerful and ensured the existence of fair-trading practices between credit firms and consumers.

The original 1974 Act laid rules and regulations that controlled credit firm activities by explaining how credit lenders formed agreements and contracts pertaining to credit services. The 1974 Act organised protection regarding credit- advertising practices, defined standard methods of analysing annual percentage rates, and adopted procedures that lenders must follow while agreeing with consumers on borrowing and payment of debts, as well as ensuring that credit firms adhere to legal licensing procedures before operating. During the amendment of the 1974 Act, the government ensured that consumers' rights were central to changes in the law (Howells, 2006). One of the ways in which the Act empowered consumers was by ensuring that the Consumer Credit Act improved consumers' ability in challenging unfair lending agreements by giving them the right to disagree with lending charges or rates imposed by the credit companies. Consumers were now capable of suing unfair lenders in the court of law. Moreover, consumers were entitled to in-depth information pertinent to their debts.

Protection before Credit Agreements

Provisions of the Consumer Credit Act have continuously protected consumers from malpractices. Part 1 section 7 of this act provides conditions regarding the provision of information by the creditors to the consumers. It states that any person "knowingly or recklessly giving information to the director which, in a material particular, is false or misleading, commits a crime" (*Consumer Credit Act*, 1974, p.4). Since the director, according to the act, has the power to overrule on licensing and control over credit business activities, he or she ensures that business information reaches consumers. As stated by the National Consumer Council, "the primary aim of Consumer credit agreements is to protect consumers from falling unwittingly into debt by informing them of their right hand obligations" (*Warning: too much information can harm*, 2007, p.17). Therefore, this element allows consumers to take any action against any suspicious information given by the credit lender before entering a binding agreement with the creditors.

Before consumers can engage in an agreement with credit service providers, provisions of the Consumer Credit Act enable them to have power over the agreement. According to the Consumer Credit Act (1974), in part 3, the director general of fair-trading ensures that the business licence provided to credit vendors follows the stated regulations including the authorisation of specific business activities, the examination of the conduct of the business, and that only mentally fit people acquire trade licences for such businesses. The Act states that a "person who engages in any activities without a valid licence, for which a licence is a requirement, commits a criminal offence" (*Consumer Credit Act*, 1974, p.4). With this element in place, consumers can investigate any businesses they wish to engage in credit agreements before signing the agreements. This move involves inquiring important information, including business licences, as businesses operating without licences in credit activities are committing a crime. In addition, upon the death of a vendor, or if s/he is declared bankrupt, the board of licensing terminates the licence (White, 2007). Hence, the Consumer Credit Act protects individuals at different levels.

Pitfalls in the Provisions

Provisions of the Consumer Credit Act have been very imperative in matters related to consumer protection before an agreement, though studies have put its level of protection in question. The Act itself has some pitfalls as there are possibilities of malicious credit vendors performing unfair practices against the consumers. According to *Consumer Credit Act* (1974), part 2, section 8, “A consumer credit agreement is a personal credit agreement by which the creditor provides the debtor with credit not exceeding £5,000” (p. 4). This frontier changed in 2006 and the limit increased to £25, 000. Currently, the practices regarding agreements between vendors and consumers are breaching the provisions of this clause. Analysing the exemptions of some agreements after the 2006 amendments, creditors have continuously misled consumers on the financial limit and thus, vendors are providing consumers with financial credits exceeding the stipulated amount.

Despite the enhanced consumer security and powers increased by the amended credit card, the provisions of the Act do not necessarily ensure stable protection against creditors’ unfair practices. The exemptions have omitted some important parts of the Act, which in most cases have acted as pitfalls that allow creditors to engage in unfair practices. The Act states that a consumer credit agreement, as indicated in the amendments, borrowing or lending should not exceed an amount worth £25,000. In any case, the amendments reflect the situations that existed back in the year 2006, when the UK and the entire globe were economically stable, and thus might not suitably fit the current financial situation. Given the current economic crisis that climaxed in 2008, most consumers have had no option than to engage in risky binding agreements with creditors for the sake of boosting their financial situations.

Protection after Credit Agreement

The provisions of the Consumer Credit Act have also cushioned consumers against fraud even after engaging in a credit agreement. In particular, on the clauses enhancing the importance of creditors offering appropriate information regarding the financial agreement, the Act provides basic protection to consumers (Howells, 2006). The 1974 Consumer Credit Act part 6 stipulates that it is the duty of the creditor to provide information on a fixed-sum credit agreement, information concerning running-account credit agreements, and all information concerning the goods or services offered, as well as to give a notice before taking appropriate action (*Consumer Credit Act*, 1974). With this assertion in place, consumers feel protected in case vendors or creditors provide some misleading information during an agreement, consumers have the right and powers to take legal action against them. In fact, creditors will not want to take such risks and thus they always ensure that consumers obtain proper information.

The 1974 Credit Act provides room for consumers to protect themselves from harm even after signing an agreement, but only if consumers follow the protocols of the Act. Following provisions of chapter 3, part 4, section 69, regarding the consumer hire agreements, the Act allows both hirer and the debtor to withdraw from any agreement in accordance with the cancellable agreement. The clause also allows the Act to cancel an agreement and withdraw any offer by the hirer or creditor to enter into a linked transaction. On noticing the weaknesses of the agreement, a consumer is thus capable of withdrawing from an agreement with a creditor, thus to a certain extent offering protection after agreement.

Possible Complications

Despite the Consumer Credit Acts 1974 and 2006 having considerable features and undergoing successful amendments, in a bid to strengthen provisions that provide consumers with protection against vendors and creditors' fraudulent activities in 2006, there are still several impediments especially in the credit involving goods. Given the improved technology, which has changed the industrial world, numerous companies are emerging to provide attractive and innovative credit products reinforced with reward packages and enthusing offers that trap consumers in unfair practices (Iyanda and Khupe, 2011). Since the powers to product verification remain with the bureau of standards, consumers are rarely in a position to distinguish the products' quality before undergoing an agreement and thus any defaults in the products reflect after agreement. Ruhl (2011) argues, "Experience goods are characterised by the fact that consumers can only determine their quality after completion of the contract" (p. 573). Therefore, the provisions of the Consumer Credit Acts of 1974 and 2006 can protect consumers successfully from unfair since consumers are incapable of providing proper evidence to sue creditors.

Within the UK and other parts of the globe, international trade is extending the trading limits and in most cases influencing consumers to engage in practices without proper credit knowledge. Given the rising demand for consumer needs and the existing socio-economic ties, consumers are now looking for better and cheaper services even beyond boundaries. The provisions of the Act exempt, "Agreements made in connection with trade in goods or services between the United Kingdom (UK) and another country, or within or between countries outside the UK." Since this provision cannot bar consumers from engaging in agreements with creditors outside the UK, the consumer protection is still questionable. Johnson and Rogers (2007) affirm that as the government is shifting away from powers governing online activities, consumers are likely to fall victims of "technical possibilities of various deviant, harmful, or dangerous activities over the Internet" (p.7). Therefore, consumers are still at risk of experiencing fraudulent practices despite the existing consumer credit acts.

Conclusion

Consumer protection, as the paramount cause of proposing, enacting, and amending the Consumer Credit Acts of 1974 and 2006, seems inadequate to avert fraudulent activities practised by creditors over consumers. Furthermore, studies have demonstrated that numerous consumer laws enforced within and outside the UK are unenforceable, thus "putting a body of consumer law at war with itself" (Wright 2012, p.2216), due to the existing paradox within the Act that might possibly be unable to protect consumers from the creditors' malpractices. In spite of providing consumers with jurisdiction over information involving their debts by highlighting that a creditor must provide comprehensive information regarding all transactions before sealing credit agreements, consumers remain confused especially by credit goods agreements (Ruhl 2011). The UK Director General of Fair Trading has only powers to rule on licensing activities of businesses that operate within the United Kingdom. Thus, with the existing socio-economic ties, consumers are likely to engage in unsafe agreement outside the UK.

Reference List

Consumer Credit Act (1974) Available at: https://www.legislation.gov.uk/ukpga/1974/39/pdfs/ukpga_19740039_en.pdf (Accessed: 22 December 2020).

Howells, G. (2006) ‘The rise of European consumer law – whither national consumer law’, *Sydney Law Review*, 28(63), pp.63-88.

Iyanda, O. and Khupe, S. (2011) ‘Credit usage, hire purchase costs, and consumer protection in retail institutions in Botswana’, *KCA Journal of Business Management*, 3(1), pp. 14-29.

Johnson, M. and Rogers, K. (2007) ‘The Fraud Act 2006: the e-crime prosecutor’s champion or the creator of a new inchoate offence’, *International Review of Law, Computers & Technology*, 21(3), pp. 295-304.

Warning: too much information can harm (2007) Available at: http://www.eurofinas.org/uploads/documents/policies/NCB-BRE-Report.pdf (Accessed: 22 December 2020).

White, M. (2007) ‘Bankruptcy reform and credit cards’, *Journal of Economic Perspectives*, 21(4), pp. 175-200.

Wright, J. (2012) ‘The antitrust/consumer protection paradox: two policies at war with each other’, *The Yale Law Journal*, 12(45), pp. 2216-2267.