

# Research on the Protection of Financial Consumers' Rights and Interests under the Background of Financial Technology

Qi Wu

School of law, Anhui University of Finance and Economics, Bengbu 233030, China

## Abstract

**The development of financial technology not only brings great convenience to financial consumers, but also brings a series of risks. Infringement problems occur from time to time. Due to information asymmetry and other reasons, financial consumers' rights to know, fair trade and data security are most vulnerable to infringement. Aiming at the current situation of the protection of the rights and interests of financial consumers, this paper discusses the problems existing in the protection and puts forward some suggestions for improvement. China should consider the basic national conditions and actual situation, formulate and issue scientific laws and regulations on the protection of the rights and interests of financial consumers, improve the financial supervision system, build a diversified financial non litigation dispute resolution mechanism, effectively protect the legitimate rights and interests of financial consumers and promote the development of the financial industry.**

## Keywords

**Financial Technology; Financial Consumers; Protection of Consumers' Rights and Interests; Financial Regulation.**

## 1. Introduction

In recent years, with the wide application and development of new technologies such as big data, cloud computing and artificial intelligence in the financial industry, the digital transformation of the financial industry is accelerating. However, while financial technology empowers the financial industry, it also makes the protection of the rights and interests of financial consumers more difficult. The current consumer protection law lags behind the protection of the rights and interests of financial consumers under the background of financial technology. In addition, due to the imperfect supervision system, there has been vicious competition among many financial institutions in the development of the financial industry. On the one hand, the legitimate rights and interests of financial consumers have been greatly damaged, on the other hand, it has also caused damage to the order of the financial market.

Compared with traditional financial consumers, financial consumer rights under simultaneous interpreting of financial technology are more vulnerable to infringement. The reasons are as follows: first, the development of financial technology makes the updating speed of knowledge faster. Consumers who lack financial professional knowledge and scientific and technological knowledge do not understand financial products and services and are not aware of the risks and safety problems. They often buy blindly or consume impulsively under the publicity of financial institutions. Second, the imperfect capital custody of financial institutions has affected the property safety of financial consumers. Third, the improper handling of financial data increases the possibility of financial consumers' personal information and transaction information being leaked and embezzled. Therefore, to pay attention to the protection of the rights and interests of financial consumers, we must analyze the current situation and

deficiencies of its protection under the new background, and improving the legal and regulatory system has become an important problem to be solved urgently.

## **2. Types of Infringement on the Rights and Interests of Financial Consumers under the Background of Financial Technology**

Finance is related to the stable development of social economy, and financial consumers, as a force that can not be ignored, invisibly promote the development of the financial industry. According to the provisions of the measures for the implementation of the people's Bank of China on the protection of the rights and interests of financial consumers, financial consumers refer to natural persons who purchase and use financial products or services provided by banks and Payment institutions. Their purpose includes not only living consumption, but also meeting the demand for profit from investment.

### **2.1. Infringement of Financial Consumers' Right to Know**

The right to know of financial consumers is the basis for financial consumers to realize other rights, because if they want to realize their own interests, the key lies in the knowledge and further analysis of relevant information. If the information disclosed by financial institutions is false and one-sided, it belongs to defective information, and financial consumers can be held accountable. The information asymmetry between financial consumers and financial institutions is more obvious, and there are often conflicts of interest. In order to maximize their own interests, financial institutions may conceal important information. At present, the infringement of financial institutions on consumers is mainly concentrated in the field of P2P online loans and Internet financial products.

In the field of P2P online lending, most platforms lack transparency and cannot inform consumers of the basic operation and risk prevention measures of the platform in time. Some P2P platforms even publish false information to increase exposure and attract investors, or in the absence of specific financing projects, they do not hesitate to use improper means in order to obtain customer funds, which seriously violates the real disclosure obligation of Internet platform operators and seriously infringes on the right to know of financial consumers. In the field of Internet financial products, virtual consumers of online finance cannot communicate face-to-face with financial institutions and can only make decisions according to the information provided on the network. Consumers who lack financial expertise are easy to be deceived and often ignore important products and market information related to their own interests. In addition, when recommending products to consumers, financial institutions often unilaterally conceal or exaggerate the information closely related to consumers, making consumers unable to recognize the real risks behind products or services.

### **2.2. Infringement on the Fair Trading Rights of Financial Consumers**

In the process of financial transaction, in order to make the transaction more convenient and efficient, there are a large number of format contracts. However, in order to obtain more rights and freedoms and assume less responsibilities and obligations, financial institutions often conclude some terms that are not conducive to financial consumers in their contracts. Financial consumers are often on the weak side because of their lack of professional knowledge, and may ignore unfair terms that harm their own interests. Financial institutions impose their will on consumers. They use their advantageous position to launch an endless stream of financial products and provide format contracts to facilitate transactions. As a party to the contract, financial consumers are unable to negotiate the terms that are not conducive to them. In addition, they fail to fulfill or improperly fulfill the obligation of explanation to consumers, exaggerate the benefits of their products and avoid existing risks. Consumers cannot consult through the platform, but passively read the corresponding terms. Some financial institutions

do not use special ways to remind consumers of the provisions that derogate from their rights and interests. In fact, they are transferring the responsibility that should be borne by financial institutions to financial consumers, damaging their legitimate rights and interests.

### **2.3. Infringement of Financial Consumers' Right to Data Security**

In the era of financial technology, big data is developing very rapidly. Financial institutions collect consumer information in the process of trading, including identity, trading habits, capital accounts and other information, and can establish corresponding databases at the same time. Driven by interests, some financial platforms sell consumer information or even tamper with other people's financial data without the permission of the parties, which is prone to the risk of database theft and abuse. In addition, due to imperfect laws and weak supervision, some financial platforms are full of loopholes in the storage and use of consumer personal data, resulting in the inability to ensure data security. For example, in the field of mobile payment, the platform has collected a large number of user personal data. Although it has strengthened the protection of data security, there are still a large number of data leakage, even embezzlement and abuse. In addition, there is a delay in deleting the existing sensitive data, and the information is embezzled by others for network fraud.

## **3. Current Situation and Deficiency of Financial Consumer Protection under the Background of Financial Technology**

### **3.1. The Legal System for the Protection of Financial Consumers' Rights and Interests is not Perfect**

With the development of financial technology, financial business is more diversified and the design of financial products is more complex, which often infringes on the rights and interests of consumers. However, at present, China has not formulated special legislation on the protection of the rights and interests of financial consumers. The judgment basis of the court is mainly reflected in the newly revised law on the protection of the rights and interests of consumers, the measures for the implementation of the protection of the rights and interests of financial consumers of the people's Bank of China, the guiding opinions on strengthening the protection of the rights and interests of financial consumers issued by the general office of the State Council, the insurance law and the securities law.

The newly revised law on the protection of consumers' rights and interests includes financial consumers in the object of legal protection, but the resolution of financial consumption disputes still stays in the past offline entity disputes, which is difficult to play a protective role in the event of online financial disputes on the Internet. The measures for the implementation of the people's Bank of China on the protection of the rights and interests of financial consumers attribute financial consumers to natural persons, and legal persons and other organizations are not regarded as financial consumers in the legal provisions. The insurance law and the securities law only focus on the supervision of financial institutions to maintain financial stability, and the protection of the rights and interests of financial consumers is only an incidental goal. The regulations of relevant departments dealing with financial consumption disputes also have a relatively low level of effectiveness, and most of the provisions are abstract in principle, which is difficult to solve new problems in the financial field. Regulations seriously lag behind the innovation of financial business. At present, the regulations on digital finance are almost blank, and there are no corresponding rules for the protection of consumers' rights and interests of digital finance.

### **3.2. The Regulatory System for the Protection of Financial Consumers' Rights and Interests is not Perfect**

At present, China's financial supervision adopts the separate supervision system of "one bank, two sessions", that is, the corresponding supervision categories are allocated according to the business scope of each institution. One bank refers to the central bank, which is mainly responsible for macro supervision and monetary policy. The two sessions, namely the CBRC and the CSRC, are responsible for micro supervision and making specific decisions. In the actual supervision process, the coordination and cooperation between macro supervision and micro supervision is still not close enough, which affects the overall financial operation and supervision efficiency, including: the attention of micro supervision needs to be improved; Lack of unified protection institutions; The protection ability of financial consumers is insufficient.

Under the background of financial technology, financial business shows a trend of cross penetration, and cross-border comprehensive mixed operation has become the norm, which greatly increases the difficulty of financial supervision, easily leads to the imbalance and overlap of regulatory boundaries, and creates a regulatory vacuum. The emergence of comprehensive financial products requires the supervision of multiple regulators at the same time, but it is easy to produce the phenomenon of buck passing under the separate supervision system. The regulators do not perform their supervision duties well, which makes it impossible to achieve effective supervision and control the monopoly operation of fintech companies, and can not meet the needs of protecting the rights and interests of consumers under the rapid development of fintech. In addition, financial supervision means, supervision technology and supervision ability lag behind the development of financial technology, and relevant technical talents are also relatively scarce. The lack of unified regulatory standards weakens the effectiveness, safety and controllability of regulatory technology.

### **3.3. The Third-Party Financial Non Litigation Dispute Settlement Mechanism is Not Perfect**

At present, when financial disputes occur, the solutions mainly include consumer complaints, reconciliation, mediation, arbitration and litigation. Although court litigation is a very important way for financial consumers to protect their rights, there are also insurmountable shortcomings, such as the lack of professional knowledge of judges, long litigation time, difficult evidence collection, difficult evidence proof and implementation. In litigation, financial consumers often have difficulty in obtaining evidence. Because financial transactions supported by electronic contracts and data are easy to tamper with and difficult to store, which makes it very difficult for consumers to collect effective evidence, they are often in a passive position in claims. Secondly, the legal relationship of financial disputes is relatively complex. The subject of tort liability includes not only Internet financial institutions, but also Internet service providers, system operators and software service providers. It is difficult to identify and divide specific tort liability. Finally, if you complain to financial institutions, the consumer complaint cycle is relatively long. Because there will be delays or even inadmissibility of financial institutions. In terms of mediation, the limited financial expertise of many mediators makes mediation unlikely to work. As for arbitration, it is only applicable to disputes with large amount, complexity or high specialization, but not to daily small disputes.

## **4. Suggestions on Improving the Protection of Financial Consumers' Rights and Interests in China**

### **4.1. Formulate a Special Law on the Protection of the Rights and Interests of Financial Consumers**

In order to strengthen the protection of the rights and interests of financial consumers and stabilize the financial order, China must formulate a law on the protection of the rights and interests of financial consumers that meets the requirements of the current national conditions and realities as soon as possible. First of all, we should scientifically define the connotation of financial consumers. Financial consumers are natural persons, legal persons and unincorporated organizations that purchase or use financial products and receive financial services through various channels. They are often the weak side in the transaction process, taking into account not only the life needs of financial consumers, but also their investment needs.

Secondly, the rule of inversion of burden of proof is clearly stipulated in the legal provisions. In financial disputes, the law should directly stipulate that the infringer should prove that there is no causal relationship between his behavior and the damage result, rather than directly let consumers provide evidence. For a long time, because financial transactions are carried out in the form of electronic data and format contract, consumers also provide evidence in litigation, but they are difficult to obtain evidence. The rule of inversion of burden of proof is introduced. The infringer bears the burden of proof. Financial institutions collect corresponding evidence and show relevant evidence materials to the court, so as to make the litigation more fair.

Finally, strengthen the obligation of explanation of financial institutions. As a weak party, financial consumers must clarify the obligations of financial institutions in the form of law, strengthen the explanatory obligations of financial institutions, disclose information, inform the terms in the format contract that are obviously unfavorable to financial consumers, and use various ways to remind consumers to pay attention to the terms. If the obligation of disclosure is not fulfilled, financial consumers shall be guaranteed to fulfill the right of unilateral cancellation.

### **4.2. Improve the Regulatory System for the Protection of the Rights and Interests of Financial Consumers**

First, improve the supervision system. The separate supervision dominated by one bank and two sessions has certain limitations. We can learn from the systems of British and American countries, establish a unified protection organization and strengthen the communication between departments. In view of the infringement problem, we should uniformly mobilize regulatory resources, strengthen regulatory responsibility, and further solve the long-standing cross and even blank problems in supervision. Second, strengthen regulatory measures. Before the infringement problem occurs, it is necessary to review the qualification level of financial institutions, so that the market transaction must obtain the corresponding qualification in advance. After the occurrence of infringement, we should actively solve the complaints of consumers, strengthen statistical monitoring, and properly deal with the criminal problems involved. Third, make rational use of regulatory technology to control the financial industry. Adopt technologies such as big data, machine learning, cloud computing and quantum technology to improve regulatory efficiency, protect the rights and interests of financial consumers and avoid market risks. For example, using artificial intelligence and machine learning to collect corresponding data and intelligently analyze the financial risks behind; Using big data analysis technology to crack down on insider trading; The combination of big data and cloud computing provides an all-round risk portrait for financial institutions; Use biometric technology for automatic customer identification; Use blockchain to set up business control

points, form traceability mechanism, quickly identify and respond to abnormal transactions, etc.

### **4.3. Building a Diversified Financial Non Litigation Dispute Resolution Mechanism**

The protection of financial consumers' rights and interests is directly related to consumers' enthusiasm and confidence in the financial market. However, in case of infringement, filing a lawsuit to the court unilaterally is not only time-consuming, but also prone to the problem of difficulty in providing evidence. Compared with litigation procedures, non litigation procedures can improve the efficiency of financial transactions, save transaction costs for both parties, gain the trust of both parties, and be recognized by financial institutions and consumers. Taking the United States as an example, although the financial litigation system is relatively sound, most cases are solved through non litigation, and the litigation rate of financial disputes is about 5%. With the development of financial science and technology, we can use the power of science and technology to improve the diversified non litigation dispute resolution mechanism. In the process of consumer complaints, we can use the Internet and blockchain platform for one click processing to improve the efficiency and quality of complaint handling. For mediation, mediators need to have professional financial knowledge and scientific and technological knowledge, respect the wishes of both parties, and make mediation statements fairly with the participation of both parties. As for arbitration, we should not only consider professional litigation with huge amount of money, but also treat daily small claims equally and properly solve financial disputes. At the same time, we should link up the litigation procedure and non litigation procedure, so that financial consumers can freely choose the way of relief.

## **5. Conclusion**

Unlike previous industrial development relying on Internet technology, financial digital transformation relies on cutting-edge technologies such as big data, cloud computing, blockchain and artificial intelligence. These cutting-edge technologies, as the bottom application technologies of financial industry innovation, not only accelerate the innovation of financial products, but also meet the financial needs of consumers. Financial development is related to economic development and social progress. Financial consumers are an important force to promote the development of the financial industry. Different from ordinary consumers, in the era of financial technology, financial consumers usually buy online financial products with virtual characteristics, which makes it more difficult to protect their rights and interests. In the context of financial technology, we must constantly improve the legal system and regulatory system, build a diversified financial non litigation dispute resolution mechanism, protect the legitimate rights and interests of financial consumers, and further promote the high-quality development of the financial industry.

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