



Annual Report

2014/15



CONSUMER GOODS
& SERVICES OMBUD

Fairplay between consumer & supplier





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... the ushering in of an era of effective consumer redress.

– Magauta Mphahlele, Chairperson



Mostly we focus on providing a no-frills facilitation process between disputing parties.

– Neville Melville, Ombudsman



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Report of the CHAIRPERSON



I was delighted to have been invited in 2014 to join the **Board of the Consumer Goods and Services Ombud (CGSO) NPC** as an independent member and non-executive chairperson.

This appointment enables me to pursue my passion for consumer protection and to share my experience, knowledge and expertise in this area. It is gratifying to have a role in the consumer protection framework that occupied many long hours of conceptualisation and consultation with stakeholders when I served in the Department of Trade and Industry (dti) and to be able to contribute towards making the Consumer Protection Act (CPA) work in practice.



I took over the chairmanship of CGSO from Grant Pattison, whose contribution towards the establishment of CGSO, setting up of budgets and human resources infrastructure and recruitment of participants when CGSO was still a voluntary scheme I must acknowledge. It was important in the beginning for the consumer goods and services industry to have a sense of ownership of the ombud scheme and Grant did an excellent job in bringing some of the major industry players on board to support the set-up phase.

Even though the **CGSO Board** continues to benefit from the services, wisdom and experience of several respected members of the industry, the Board has, from the outset, been very careful to ensure that its role is confined to its statutory duties in terms of the law and the Consumer Goods and Services Industry Code in ensuring that the ombud office is adequately resourced and efficiently run. The Ombudsman's approach to complaints generally or any particular complaint has never been a topic for consideration or discussion by the Board.



Shortly after I assumed office, CGSO achieved a very important milestone in its development: it was accredited as the official alternative dispute resolution scheme for the entire consumer goods and services industry, excluding the automotive industry and any other sub-sector regulated elsewhere. I believe this event marks the ushering in of an era of effective consumer redress.

I would like to extend our gratitude to the Minister of Trade and Industry, Minister Rob Davies, for recognising the importance of access to redress for consumers and the importance of alternative dispute resolution schemes. A big thank you also goes to officials in the Corporate Regulation Division of the dti, under the leadership of Zodwa Ntuli, for working diligently to ensure the promulgation of the Code.



The promulgation of the Code would not have been possible without the involvement of the Consumer Goods Council of South Africa (CGCSA) through the leadership of Gwarega Mangozhe. The CGCSA dedicated legal resources and drafters to ensure the drafting of a comprehensive Code that eventually satisfied the requirements of the CPA and the concerns of stakeholders.



For the year under review, the complaints of 4 583 consumers were resolved in an average of 39 actual days. This turnaround time is significantly better than the target completion time of 60 business days of receipt by the Ombudsman set in clause 11.2.5 of the Code.

Of cases within CGSO jurisdiction and in which there was an **outcome**, 82% were resolved by the consumer receiving all or part of what was claimed or some other assistance. In many instances, the suppliers in question acted in the spirit of good customer relations by providing refunds or other relief even though they were not obliged to do so under the strict application of the law.

I would like to encourage all participants of the scheme to support the Code by ensuring that their internal dispute resolution processes and policies are geared to ensure the quick resolution of disputes and escalation to the Ombud, should internal resolution fail.

I would like to conclude by thanking the members of **staff of CGSO** for their continued high level of service and dedication, particularly during the trying times that preceded the prescription of the Code by the Minister.

Magauta Mphahlele
Chairperson



Report of the OMBUDSMAN



The office of CGSO was set up by the CGCSA before my appointment as ombudsman. Initially it consisted of an outsourced call centre and an independent dispute resolution business, both based in Cape Town, that dealt with unresolved complaints.

The CGCSA made available a vacant building it owns in an office park in Randburg and provided a start-up grant to CGSO. In addition, initially it provided back-office services such as finance, human resources and legal to CGSO, until CGSO was registered as a non-profit company and could recruit its own staff, create administrative systems and operate its own accounts.



CGSO was the author and proposer of the **Code**. It consulted with various other industry bodies, businesses and consumer bodies in the process.

When I took office on 1 June 2013, I had no idea of how long it would take to get the Code approved and this office accredited as an industry ad scheme.

After lengthy and thorough consultations by dti, the Code was eventually promulgated by the Minister of Trade and Industry on 30 March 2015 and came into effect on 29 April 2015. Prior to that date, the office operated on a voluntary participation basis.



The Code has broadened our reach considerably. All businesses that operate as part of the consumer goods and services industry supply chain and are not governed by other regulation must now register with us. This will mean that CGSO will become a mega-ombud scheme.

While this will bring its own challenges, it will increase access to redress for consumers and make it possible to share the financial burden of running the office over a larger base, which will ultimately bring down the level of contributions for individual participating groups or businesses.

A single application for membership had been received prior to my appointment. By the time the Code came into effect, CGSO had managed to **sign up** most of the major retail and furniture chains, a mobile phone provider and a few large manufacturers.

This fell short of the membership level anticipated by the committee of the CGCSA that set up CGSO. The committee had based CGSO's initial budget and membership contribution level on the assumption that all the large members of CGCSA would join CGSO and contribute towards its running costs, a view initially shared by CGSO's Board members.



The fact that by no means all of CGCSA's large members joined CGSO placed severe financial pressure on it once the start-up grant from CGCSA dried up. The promulgation of the Code literally saved CGSO from closure. The projected inflow of funds from new participants should enable the scheme to break even without having to increase participant fees.



Early in 2014, at about the same time that CGSO's Board placed a moratorium on permanent appointments, the National Consumer Commission (NCC) referred several batches of its old complaint files to us for resolution.

Before long, we developed a worrying backlog of cases that required drastic measures and took the rest of the year to be brought under control.

A further challenge was that the outsourced call centre had a complaint management system that was not web based. Thus we had to keep track manually of complaints we dealt with in Randburg, until, after many delays, our own system became operational.

Contrary to what we had hoped, it was not possible to upload the cases from the old system onto the new, resulting in an inability to collate the full set of statistics we would have liked.

With the passing of the Code, our immediate focus will be signing up as many eligible participants as possible. Once we have that under control, we will put in place structures to carry out the objectives communicated to us by dti: to educate scheme participants on the requirements of the Code and the CPA and to monitor their compliance with those requirements.

We have overhauled our website to make it easier for complainants to check whether we are able to deal with their **complaints** or to identify the **correct body** to assist. The website provides advice to **consumers on their rights** and **obligations** and to businesses on the **interpretation and**





implementation of the CPA. CGSO's decisions on a wide range of areas under the Act are also available on the site.

After my appointment, I decided to curtail the use of the independent dispute resolution service provider for mediating matters not resolved by the call centre as it made no business sense to pay more for mediation than the value of the claim.

Most of the complaints we receive are fairly low in monetary value. We did, however, use an outside consultant to assist us with mediations when we had a backlog of cases.

Mostly we focus on providing a no-frills facilitation process between disputing parties. We have discovered that, unlike most other ombud offices in South Africa, our effort is spent more on matters such as coordinating the inspection of allegedly defective goods and other logistical arrangements than on getting the parties around a table to mediate a settlement or on writing determinations, although we do the latter when necessary.

The Code has not given us the power to make binding determinations. This is not to say that we are powerless. Any contravention of the Code may be reported to the NCC for appropriate action. Already we have a protocol with the NCC to refer to it systemic issues that require its intervention and its statutory powers. In addition, the National Consumer Tribunal may be approached to declare conduct to be prohibited under the CPA.

CGSO has the opportunity in implementing the new Code to demonstrate to both consumers and businesses the benefits of informal dispute resolution over formal statutory processes. I have devoted many years of my career to this cause.

Advocate Neville Melville
Ombudsman and CEO



**The Board
includes:**

**Eddie Moyce
MTN SA**

**Justin Apsey
Unilever**



Ensuring Fairplay

THE DIRECTORS



**Magauta
Mphahlele**
Chairperson



Clif Johnston
SA National
Consumer Union



Grattan Kirk
Tiger Brands



Sally Gnodde
Cosmetic Toiletry
and Fragrance
Association SA



**Gwarego
Mangozhe**
Consumer Goods
Council SA



**Nozuko
Mxunyelwa**
Company
Secretary



Zyda Rylands
Woolworths



Ravi Pillay
Nestlé



Russell Behrens
Tiger Brands



Introduction to the OMBUDSMAN & CODE



The **Code** and CGSO were established to guide industry on what is considered the minimum standards of conduct expected when engaging with consumers and to assist in resolving disputes between consumers and industry in terms of the CPA.

The Code regulates interaction between participants conducting business in the industry and the consumer, and provides for an alternative dispute resolution mechanism as described in section 82 (6) of the CPA should there be a dispute between a participant and consumers.

The Code sets out to:

- Raise standards of good conduct in the industry without endangering the vitality and growth of business;
- Generate growth in the industry by increasing the level of certainty for all participants;
- Offer guidance to participants in the industry on the implementation of and compliance with the CPA and what constitutes fair business practices to be followed when operating in the industry;
- Educate consumers on their rights and the redress available to them should a participant breach the CPA or the Code; and
- Provide for a scheme of alternative dispute resolution as described in section 82 (6) of the CPA.



Participants in the industry are required to pursue the objectives set out in section 3 of the CPA, especially to:

- Reduce and ameliorate any disadvantages experienced by consumers in accessing the supply of any goods and services;
- Promote fair business practices;
- Protect consumers from:
 - o Unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices;
 - o Deceptive, misleading, unfair or fraudulent conduct.
- Provide for a consistent, accessible and efficient system of consensual resolution of disputes arising from consumer transactions.



The Code imposes several obligations on suppliers, the main ones being:

- To participate in the scheme
- To establish an internal complaints-handling process
- To advise customers that their businesses are bound by the Code (we provide a decal to this effect)
- To provide details of how complainants may lodge complaints with the business
- To provide consumers with the contact details of CGSO: consumers who complain should be informed that if they are not satisfied with the outcome, they may contact CGSO
- To ensure that relevant staff members have suitable working knowledge of the Act, the Code and CGSO's procedures.

Funding Model

CGSO's services are free to consumers as a result of the **funding model**. Likewise, businesses with an annual turnover of less than R1 million do not have to pay for complaints dealt with by CGSO.

Apart from being an aspect of enterprise development, not charging small, medium and micro enterprises (SMMEs) makes business sense as the cost of collection of fees would be disproportionately high.

Thus large businesses bear the cost of running CGSO in proportion to their sizes based on turnover. This start-up model will be reviewed by CGSO's Board in time.

Internationally, ombudsman offices are funded by:

- The government
- A levy raised against participating businesses and collected by the government
- Participating businesses in proportion to:
 - o Their size
 - o The number of complaints against them dealt with by the Ombud in the year preceding the year to which the budget applies.

Some schemes have adopted complicated models based on the category the business falls into, the level at which the ombud process resolves the complaints and the actual cost of dealing with the complaints.



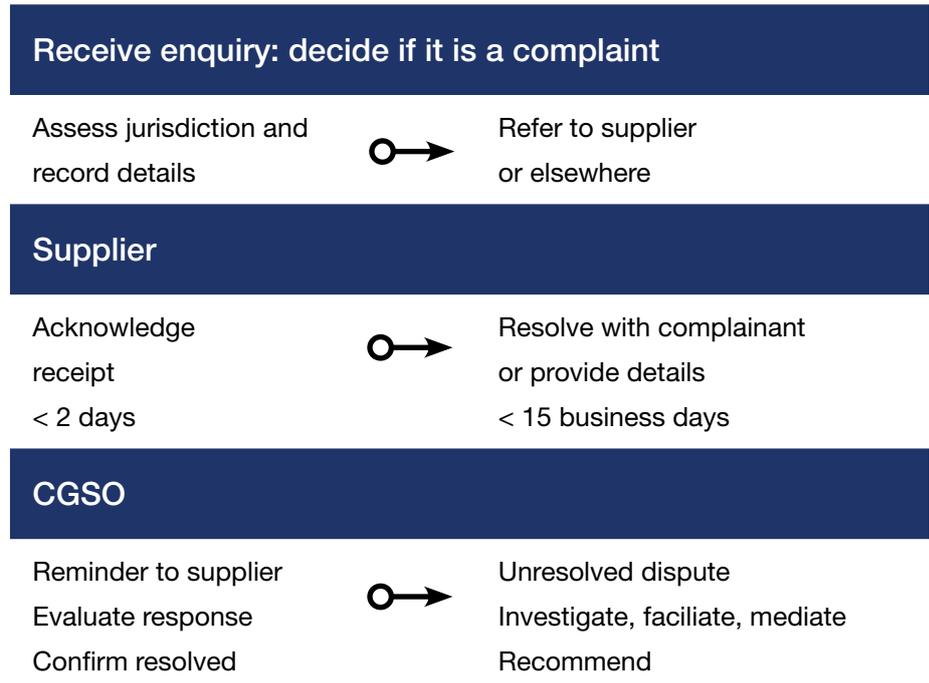


In some instances, a case fee is charged in arrears per case. Where this approach is adopted, it is usually only incidental to the main method of funding.

An example is the Financial Ombudsman Service in UK. A fee of £550 is charged for every case that goes beyond the first stage of the complaints process and is over the first 25 cases (which are covered by a levy).

Whichever model is ultimately adopted will need to be sustainable, easy to understand and calculate, and inexpensive and easy to collect.

At a Glance CASE FLOW



In Depth

CASE STATISTICS

Statisticians looking for connections can always find odd coincidences and statistical anomalies, if they try hard enough. – Brandon Sanderson, *The Hero of Ages*

To the above quote may be added that the interpretation of statistics is a dubious science. Our initial conclusion from the fact that we received fewer complaints than we had anticipated, based on early NCC statistics, was either that businesses were, on the whole, complying with the CPA or that many consumers were unaware of their rights or our existence.

One of our major stakeholders, however, arrived at a different conclusion, taking our complaint numbers to indicate that the CPA and CGSO were not working.

There is a further reason why caution should be exercised in interpreting our statistics. When the CGSO office was launched in March 2013, it consisted of an outsourced call centre and an independent dispute resolution service provider, both based in Cape Town. The subsequently appointed ombudsman, Neville Melville, and his staff members were based in Randburg, Gauteng.

The lack of connectivity among the various components of the scheme gave rise to many operational challenges. A web-based complaints management system was commissioned by CGSO to counter these challenges. The system came online in September 2014. Since then, almost 1 400 complaints have been captured on the system, over a third of which were submitted online by the complainants themselves.

This led to an improvement in turnaround times and enabled the office to cancel the costly contract with the call centre and take over this function in-house. The changeover of systems midway through the year does, however, mean that we have had to compile statistics from two different systems, each configured differently. Some of the statistics reported on here are for the period September 2014 to February 2015.

A further complication was that we agreed to assist the NCC by taking on 967 of its old cases. Processing the cases referred by the NCC required a different approach to that normally followed, as we had to contact complainants to inform them of our involvement and ask them if the matter had been resolved since they lodged it with the NCC or if they still wanted to pursue it. Then we had to attempt to follow up with suppliers over whom we have no jurisdiction, long after the fact. In spite of these impediments,





we were able to bring a number of these cases to a satisfactory conclusion. Since then, the NCC has been referring new cases to us regularly.

Explanation of terms

Case means a file that is opened once a complaint is accepted;

Complaint means an expression of dissatisfaction made by a consumer to a participant related to its goods and/or services or the complaints-handling process pursued or used thus far by the consumer, the essence of which falls within the ambit of the CPA;

Dispute means a disagreement, arising from a complaint submitted to a participant about goods and/or services provided to a consumer of that participant, which have not been resolved by the parties;

Enquiry means a contact requesting information or advice on a complaint not yet lodged with CGSO;

Facilitation and facilitated settlement means a dispute resolution method in which the dispute resolver, being CGSO, communicates its initial position to the parties and a settlement is sought through offers or counteroffers;

Mediation means the active participation of a dispute resolver, being CGSO, intended to assist the parties to identify the issues, to generate options, to consider alternatives and to endeavour to reach an agreement;

Recommendation means a dispute resolution method in which the parties are given written suggestions on how factual, legal and other issues should be resolved, on possible outcomes and how they can be achieved;

Outcome means the way in which a complaint or dispute has been resolved or finalised.

Comparison			
Total	2012	2013	2014
Complaints per year	2 927	5 207	4 222
Enquiries per year	1 814	3 673	9 191
Grand total	4 741	8 880	13 413



Complaints – Mar 2014 to Feb 2015 (financial year)

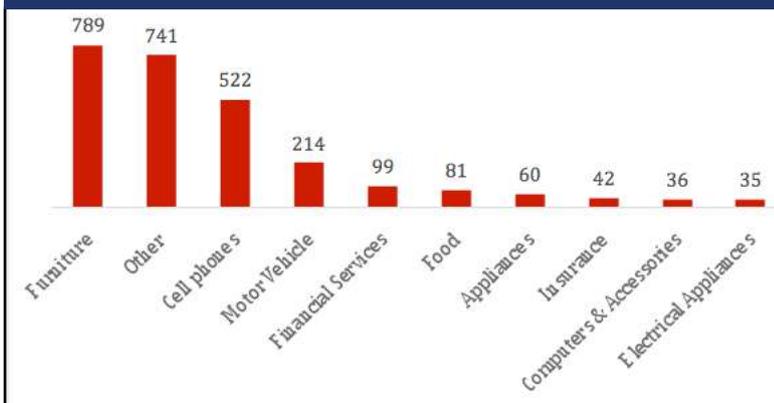
Total

Complaints per year 4 655

Enquiries per year 4 583

Total cases open 72

Top 10 – Complaints per industry sector



Files open – by province

Gauteng	53%
Western Cape	15%
KwaZulu-Natal	11%
Eastern Cape	6%
Free State	4%
Mpumalanga	3%
Limpopo	3%
North West	3%
Northern Cape	2%

Cases – by category

Goods	44%
Service	38%
Agreements	15%
Marketing	1%
Health and safety	1%
Disclosure	1%
Treatment	0%
Deposits	0%



Case outcomes

Outside of jurisdiction

During 2014, in the hope that suppliers would cooperate voluntarily pending the approval of the Code, we accepted complaints on matters that were then considered to be outside our jurisdiction as they related to non-members. This quickly gave rise to two problems: many suppliers either refused to cooperate or dragged their heels in responding. Even those that did cooperate failed to sign up as members and contribute to CGSO's mounting running costs.

This became untenable so we decided to continue to receive such complaints as a public service, but merely refer them to suppliers, and to close our files after making the referral. With the approval of the Code in March 2015, participation in the Ombud scheme became mandatory and the distinction between members (now called participants) and non-members has fallen away.

In addition to the non-member cases, we received a number of complaints that fell within the jurisdiction of entities such as the credit, banking, insurance and motor ombuds and the Estate Agency Affairs Board.

These matters were referred*** to the appropriate organisations. To reduce the resources used on such matters, our website has been revised and we are working with the Ombudsman Association of South Africa to educate the public about the functions of the respective ombud offices.

Amounts recovered

Unlike our counterparts in the financial sphere, we do not consider this to be a useful measure of our outputs, as money seldom changes hands as a result of our intervention. Most of the complaints involve repairing defects, replacing goods, the cancellation of agreements, correcting account balances and price discrepancies. (Resolved* cases are those on which help was given to achieve a mutually acceptable outcome. Cases on which no cooperation** was received were dismissed.)

Average days to close a case: 39

Complaints – resolution

Upheld fully	34%
Upheld partially	1%
Not upheld	8%
Resolved*	2%
Complaint withdrawn	3%
No cooperation**	12%
Referred***	40%



In Depth

CASE SUMMARIES

As the CPA is a new piece of legislation, there is a lack of guidance from the courts or tribunals as to how it is to be applied. A further complication is that the CPA introduces concepts from foreign law that are new to South Africa. It is against this background that CGSO has had to give effect to the CPA.

Its decisions draw upon its own limited research into local and international law as well as views from academics and practising lawyers.

In most of our cases, however, the law was straightforward and there was no need for a written, considered decision. The majority of cases were resolved fully in favour of consumers. This should not be taken to mean that a decision was made as to who was right and who was wrong or that suppliers have no rights under the CPA, a common misperception. Several of the cases reported below show that if suppliers follow the rules, they too are protected by the law.

Detailed reports of all our written decisions are available as Compendium of Cases on our website, www.cgso.org.za, under [downloads](#).

Snatching a bargain: incorrect price advertised

The complainant saw the supplier's advert for a couch selling at R1 599. On the following day, the complainant went to buy the couch and was told that the actual price was R3 700. The store said the advertised price of R1 599 was a printing error and refused to sell it at the lower price.

Following an extensive survey of local and international law, we concluded that whether or not the supplier is bound by the terms of an advertisement depends on the wording of the advertisement.

If a supplier advertises particular goods as being available at a specified price and the advertisement expressly states a limitation in the numbers available, the supplier must honour the advertisement terms, to the extent of the expressed limits.

If, however, no limit is expressed, it follows logically that the supplier is not bound by the advertisement, but would nevertheless be open to a claim for damages under section 115. If a price for goods is published in a catalogue, brochure, circular or similar form of publication available to that consumer, or to the public generally, and it is an inadvertent and obvious error, the supplier is not bound by it after correcting the error and taking reasonable steps in the circumstances to inform consumers.





This does not hold true for other types of advertisement. In these instances, we advocate the Australian approach of applying a reasonable person test when making an assessment of whether the advertisement did or may mislead or deceive a consumer or consumers. Applying this approach, consumers would not be misled by a massive error.

We concluded that the discrepancy between the actual price, the price that a reasonable consumer might expect the price to be and the advertised price was so large that a reasonable consumer would have realised there was an error and not have been misled.

Note: in other cases involving errors in price we decided in favour of the consumer (see the following case). Each case depends on its own circumstances.



Lowest display price binding

The complainant went to the store and saw a coffee-making machine priced at R485.00. When the complainant wanted to buy it at the displayed price, the store refused to sell it to her, saying there was an error in the price, which should have been R4850.00. The dot was in the wrong place.

We found that, to give effect to section 23, it is necessary to hold that the transaction is concluded before the price is rung up on the till. The most logical and workable conclusion is that it happens when, where appropriate, the consumer takes the selected goods out of the trolley or basket and places them on the counter. The supplier must correct the error prior to that point not to be bound by it.



Cancellation of orders for product not in writing

We dealt with four separate cases involving the sale of goods by different distributors, but financed by a single company and with another company providing the warranty and after sales service. In all four cases, the complainants experienced varying degrees of difficulty in cancelling the agreements.

We found that, irrespective of whether the CPA or the National Credit Act (NCA) applied, the consumers were entitled to cancel the agreements subject to the payment of a settlement amount. The supplier was given the opportunity to backdate the acceptance of the respective cancellations to

the dates on which the complainants said they first gave notice of intention to cancel, and to calculate settlement fees accordingly.

Cancellation of order for special-order tools

Due to financial constraints, the complainant attempted to cancel an order for a set of metal-bending tools valued at R85 000, but was informed by the supplier that there was a no-refund clause in the agreement. Consequently it refused to repay the complainant's deposit of R17 000. The tools had had to be imported from Australia for the complainant.

We held that although, as a general rule, a consumer may, in spite of any term to the contrary, cancel an advanced order in terms of section 17(2) of the CPA, this did not apply for special-order goods.

Cancellation of wedding due to rain

When the complainant's garden wedding was rained out, she claimed a refund from the supplier for the unused garden décor. The supplier was not prepared to refund the full deposit as the cancellation happened on the day of the event. But, in an attempt to resolve the matter, it offered as a gesture of goodwill to refund 10% of the amount paid.

We concluded that the supplier had not acted unreasonably in keeping the full amount of the cancellation fee as it was unable, due to the short notice, to rent out the equipment to anyone else and had to cover the full cost of the items for that day.

Return: goods altered contrary to instructions

After buying a DVD player, the consumer cut off the plug to lengthen the connection cord. Subsequently, it was discovered that the DVD player did not work properly.

When the consumer tried to return the item for repair, the supplier refused, saying that the warranty was null and void as the cord had been cut, contrary to the user manual.

We found in favour of the supplier, as section 56 of the CPA does not entitle a consumer to have the goods repaired if the goods have been altered contrary to the supplier's instructions. The supplier was prepared to assist in getting the unit repaired at the cost of the consumer.





Non-material defect

When the complainant collected her suitcase at the airport after using it for the first time, she discovered the zip tag was broken. She requested a refund, but the supplier countered with an offer to repair the zip.

After considering the law, we concluded that it was not clear that the suitcase was defective as per section 56 (1)(a) of CPA because it would be unreasonable to equate any inability to withstand every hazard usually associated with an intended usage as amounting to a defect in the product.

Further, even if it was defective, the defect was not material, as it related to a small component, and it could easily and quickly be remedied.

Accordingly, the consumer's right to a refund did not kick in and the supplier was entitled to repair the goods. We ruled that if the zipper broke again within three months, the complainant would be entitled to a refund or replacement.



Burns caused by drain cleaner: warnings adequate

The complainant spilled some drain cleaner (caustic soda) on his bare foot while cleaning his shower. He claimed to have followed the instructions on the tub on what to do when the product touched the skin. In spite of this, the caustic soda burnt through his skin, to the bone. He claimed for damages against the supplier.

We found that the complainant was not able to prove a claim against either the distributor or the supplier for the injuries he suffered. The warnings on the tub are adequate and comply with the prescribed standards.

Although the supply of the hazardous product enabled the harm to occur, the action of the complainant in failing to read/ignoring the warnings, dropping flakes of caustic soda on his unprotected foot and failing immediately to wash off with water were the immediate or proximate cause of the injury.



Executing Fairplay

THE OMBUD STAFF



Queen Munyai
General Manager:
Corporate
Services



Ouma Ramaru
Office and
Complaints
Administrator



Bonita Hughes
Complaints
Officer



Sicelo Gwala
Complaints
Assessor



Gladys Manyobe
Clerk, Relief
switchboard,
Cleaner



Nadima Hartley
Administrator:
General



Sindiswa Jojo
Accountant



Bongwiwe Myeni
Receptionist



Mpho Neluheni
Administrator



Illuminating

MAIN ISSUES



The main issues that have come up over the year under review are:

CPA escalation process

The drafters of the CPA chose not to be prescriptive on the escalation process for complaints through the complaint infrastructure created by it.

Instead, the CPA provides in sections 69 and 70 that a person may (as an alternative) enforce any right in terms of the CPA or in terms of a transaction or agreement, or otherwise resolve any dispute with a supplier by referring the matter to an accredited industry ombud. If the ombud terminates the process because there is no reasonable probability of the parties resolving their dispute through it, the person may then approach the NCC [section 70(2)].



What is not clear is what ought to happen if the ombud makes a determination that is rejected by either the consumer or the supplier. Although the CPA provides that, in interpreting or applying the Act, the Tribunal or Commission may refer to a decision of an ombud, the Code does not provide for CGSO's determinations (referred to as recommendations) to be binding on the parties.

This is out of step with the practice of the financial sector ombudsman offices, most of which are able to make determinations that bind only the financial institution and not the consumer.



It does not seem that it would serve any purpose to refer an unresolved dispute to the NCC, as the CPA describes the NCC's role as being to enforce the Act by promoting informal resolution of any dispute arising in terms of this Act between a consumer and a supplier.

The NCC is not responsible for intervening in or directly adjudicating any such dispute. It may, however, investigate and act upon alleged prohibited conduct or offences (section 99). In any event, the NCC has made a **policy decision** to move away from a complaint conciliation role.

A person may refer a matter directly to the Tribunal only if such a direct referral is permitted by the CPA in the particular dispute [section 69(a)]. The only direct referrals provided for in the CPA are:

- If the Commission issues a notice of non-referral in response to the complaint [section 75(1)]
- In an application for a matter referred by the NCC to a consumer court to be heard by the Tribunal [sections 73(4) and 75(2)];



- An application to review the determination of the registrar of business names [section 80(5)].

Rule 10 of the Amended Rules for the Conduct of Matters before the Tribunal states that if a matter is not provided for in the rules, a person must first apply to the High Court for a declaratory order confirming the Tribunal's jurisdiction. Our enquiries revealed that such an application would be prohibitively expensive.

It is desirable that this apparent lacuna be addressed, particularly as, to avoid the risk of losing the claim, a person must make a claim before the Tribunal or a court within three years of the event to which the complaint refers.

Turnaround times

Since the arrival of social media platforms such as Facebook and Twitter, customers who are dissatisfied with a business's products or services have come to expect that their concerns will be dealt with almost instantly.

This is borne out by a Millward Brown Digital study, which found that 72% of customers who have complaints expect a brand to respond to their Tweet demand in less than an hour. Even consumers who are initially positive can quickly turn negative if brands fail to respond to their Tweets timeously.

Although we believe our average time of 39 days for finalising a complaint compares well with other similar institutions in South Africa, it must seem like an eternity to those technologically savvy consumers who expect instant resolution. The statistic masks the fact that most participants in the scheme fail to resolve complaints within the 15 days provided for in the Code and that some cases drag on for over six months.

Now that the Code is law, we intend bringing more pressure to bear on suppliers who fail to respond in good time.

Cancellation and refund policies

From the onset, we have detected a trend among suppliers to ignore certain provisions of the CPA or override them by referring to their own internal policies. This problem is particularly prevalent in the areas of **cancellation and refund policies**. The CPA clearly entitles a consumer to cancel an advanced reservation, booking or order, and a fixed term agreement with





notice. The supplier is entitled to charge a reasonable cancellation fee. Where goods are defective, the consumer's right to a refund also amounts to the right to cancel the agreement.

As an alternative to this remedy, a consumer may elect to have the defective item repaired or replaced, as long as the consumer returns the item within six months of purchase.

Some suppliers refuse to give a refund, pointing to 'no refunds' clauses in their agreements or on their displayed notices. Others try to impose their own terms as to repair rather than providing the consumer with a refund or replacement.

In some instances, suppliers point to their particular business model as the reason they cannot apply CPA provisions. While we can sympathise with these businesses, the law, which was created through a lengthy process of consultation, must be complied with unless or until there is an amendment to the CPA.



Incorrect prices

There are few business practices that annoy consumers more than marking or advertising an item at one price, then claiming it was a mistake when the consumer tries to buy it at that price. This area of **incorrect prices** is one that we have carefully researched and considered.

Our conclusion, which is contained in various decisions and advisory notes produced by the office, is that on close examination, the rules are fairly complicated and depend on whether the price is a display price or in an advertisement, and then whether or not a limitation was placed on the number of items available at that price. Different rules altogether apply to electronic transactions covered by another piece of legislation, the Electronic Communications and Transactions Act 25 of 2002.

Be that as it may, suppliers and their legal advisers must accept that the common law rules such as 'offer to treat' and 'snatching at a bargain' have largely been replaced (possibly without even having been taken into consideration) by the CPA.



Issues brought to the attention of NCC

Whenever we pick up on a trend that points to a practice that is inconsistent with the purposes of the CPA [the words used in section 95(1)(a)], we refer it to NCC for investigation and action. During 2014, we made several such referrals:

Aquazone

Various complaints about defective products were referred to us by NCC. Consumers claimed to be unable to cancel the transaction as they could not get hold of the supplier. We returned them to NCC as the supplier did not cooperate.

Medi-Solutions

Allegations of defective, unsafe medical equipment.

Bargain Tents

We received various complaints regarding defective tents, tents not being delivered and the wrong tents being delivered. One of these was referred to NCC.

Interface Holdings/Interface Media/Incubate Holdings

The complainants paid the supplier to boost their businesses on Google advertisements by linking them to existing links, which would have earned the complainants money every time the link was clicked. This apparently did not happen.



Seen and Heard

OUTREACH



One of the internationally accepted principles applicable to ombudsman offices is that they must be accessible to the public. This requirement encompasses two aspects: public awareness of the existence of the system and effective access options.

To address the first aspect, we engaged a public relations agency that handled the accounts of several of the other South African ombudsman offices. In conjunction with the agency, we put out a series of media releases on topical consumer issues. These were picked up by television and radio stations as well as electronic and print media. The result was that, on several occasions, our switchboard was inundated with calls following the airing of interviews involving staff members.

Of particular note is that we have managed to get extensive coverage on indigenous language channels, thanks to the multilinguistic skills of one of our staff members, Ouma Ramaru, whose regular radio time slots are:

Station	Day	Time	Term
Cape Pulpit	Wednesay	20h00	8 months
Thobela FM	Tuesday	22h00	7 months
Lesedi FM	Tuesday	12h00	2 months
Valley FM	Monday	16h00	3 months

Although we intend to keep up our media campaign, we believe that the best way to make consumers aware of our existence is for suppliers participating in the scheme to advertise our details to their customers.

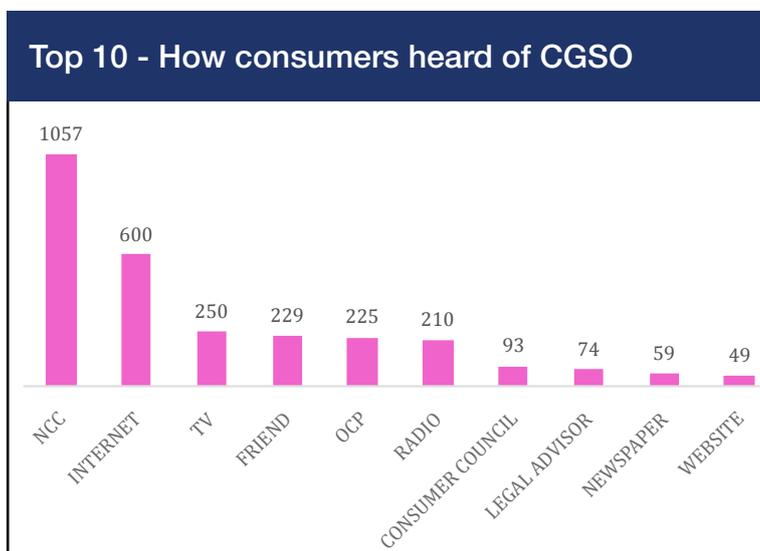
This approach works very successfully in the financial sector, where 48% of the Banking Ombudsman's complaints during 2014 were referrals from banks. This approach is incorporated into the Code. It requires participants to inform consumers, by means of a decal displayed prominently on all their trading premises and on their website, that they are bound by the Code. The notice must provide consumers with the CGSO contact details.

It makes good business sense for businesses to direct consumers to the preferred complaint management channels. A failure to do so does not mean that the complaints will disappear as some suppliers seem to hope, but that complainants will opt for less constructive and more



reputation-damaging avenues to vent their frustrations, such as Facebook, Twitter and online complaint portals.

To accommodate the increased public usage of electronic communication, we have enhanced our website, www.cgso.org.za, to include our decisions on a range of disputes handled to date, advice on consumer and business rights and obligations under the CPA. We plan to appoint a consultant to handle social media on our behalf in 2015. We are also working with the Southern African [Legal Information Institute](http://www.saflii.org/) to publish our decisions and advisory notes on its free website <http://www.saflii.org/>.



How consumers learnt of CGSO

It is worrying that such a significant number of consumers learnt of us from NCC. The complaints of these consumers were usually first recorded by NCC, which then delivered hard copies of the complaint forms to us, causing duplication of effort and substantial delays.

Ideally, consumers should first approach us. In terms of the Code, if the consumer is still not happy after CGSO has delivered its finding, he or she may then refer the matter to NCC. This problem will best be addressed by suppliers referring unresolved complaints to us.

Future developments

In line with its mission to ensure compliance with the CPA and the Code, CGSO plans a conference later in the year, to which CPA experts will be invited to speak. A similar event was held in Durban in 2014. We are also looking at making an explanation of the Code available via e-learning.

Annual Report

2014/15



CONSUMER GOODS
& SERVICES **OMBUD**

Fairplay between consumer & supplier

*An interactive copy of the 2014/15 annual report is
available on our **downloads** page at www.cgso.co.za*