

CGSO STAKEHOLDER NEWSLETTER

3rd Issue 2017



CONSUMER GOODS
& SERVICES OMBUD

Fairplay between consumer & supplier

WORD FROM THE ACTING OMBUDSMAN

Following the successful media launch of our annual report, the team spent a considerable amount of time visiting our members in order to provide them with operational feedback. The road show was also an opportunity for members to voice any concerns they might have regarding their participant status, as well as to discuss any Code-related issues.

While it is widely acknowledged that participating in an Ombud Scheme has the benefit of preventing matters from escalating to the Tribunal level while assisting suppliers and their customers to maintain good relations by resolving disputes in a speedy and consensual

manner, questions still remain over whether it is compulsory for qualifying suppliers to sign up with the CGSO, pay participation fees, and comply with the Industry Code of Conduct.

In view of this we believe it would be useful to share the contents of a legal opinion that we sought in this regard. We also share a recent ruling that was issued by the National Consumer Tribunal which touches on how the Tribunal views the role of Ombuds within the CPA Alternative Dispute Resolution Scheme. The Tribunal was quite emphatic that “a clear message must be sent that non-compliance with the CPA will neither be condoned nor tolerated.”



Ms Mphahlele

IN THIS ISSUE

Word From The Acting Ombudsman	01	National Consumer Tribunal Ruling	07	Case Studies	12
Legal Opinion on Industry Participation in the CGSO Ombud Sheme	02	Update on Case and Helpline Statistics	10		

LEGAL OPINION ON INDUSTRY PARTICIPATION IN THE CGSO OMBUD SCHEME

The legal opinion below is shared with our stakeholders and participants in the hope of clarifying some of the questions raised regarding whether it is compulsory to comply with the Consumer Goods and Services Industry Code of Conduct through signing up with the CGSO and paying the participation fees.

In addition to the legal opinion, the CGSO is seeking a Court Declarator regarding its ability to levy joining and participation fees. Our attorneys have advised that the matter will be heard in the first half of 2018. Below is the legal opinion provided:

1. Jurisdiction Of The Various Ombuds

1.1. Section 69 (Enforcement of rights by consumer) of the Consumer Protection Act (CPA) provides:

A person contemplated in section 4 (1) may seek to enforce any right in terms of this Act or in terms of a transaction or agreement, or otherwise resolve any dispute with a supplier, by—

- (a) referring the matter directly to the Tribunal, if such a direct referral is permitted by this Act in the case of the particular dispute;
- (b) referring the matter to the applicable ombud with jurisdiction, if the **supplier**¹ is subject to the jurisdiction of any such ombud;
- (c) if the matter does not concern a supplier contemplated in paragraph (b)—
 - (i) referring the matter to the applicable industry ombud, accredited in terms of section 82 (6), if the supplier is subject to any such ombud; or
 - (ii) applying to the consumer court of the province with jurisdiction over the matter, if there is such a consumer court, subject to the law establishing or governing that consumer court;
 - (iii) referring the matter to another alternative dispute resolution agent contemplated in section 70; or
 - (iv) filing a complaint with the Commission in accordance with section 71; or
- (d) approaching a court with jurisdiction over the matter, if all other remedies available to that person in terms of national legislation have been exhausted. (emphasis added)

1.2. The definition of an “ombud with jurisdiction” in the CPA recognises two kinds of ombuds with jurisdiction:

- 1.2.1. a “statutory ombud” appointed for an industry in terms of any national legislation; and
- 1.2.2. an ombud for a “financial institution”, as defined in the Financial Services Ombud Schemes Act 37 of 2004.

Statutory Ombuds

1.3. Ombuds which have been appointed as statutory ombuds in terms of a statute include the Ombud for Financial Services Providers appointed in terms of the Financial Advisory and Intermediary Services Act 37 of 2002 and the Pension Fund Adjudicator appointed in terms of the Pension Funds Act 24 of 1956.

Industry Ombud

1.4. “Industry ombud” in subsection (c)(i) of section 69 of the CPA refers to an industry-appointed ombud. The National Consumer Commission (“**Commission**”) may, in terms of section 82(6) of the CPA, recommend to the Minister that a particular code of conduct is to be recognised as the code which regulates the conduct of persons conducting business within a particular industry. The Commission may furthermore recommend that the scheme be an “accredited industry ombud”.

1.5. It should further be noted that the Commission has published Guidelines for the Accreditation of Ombud-Schemes in terms of the CPA.²

Industry codes of conduct

1.6. In terms of section 82 of the CPA the Minister, by regulation, may prescribe an industry code on the recommendation of the Commission (acting on its own initiative, or in response to a proposal from persons conducting business within a particular industry) or withdraw all or part of a previously prescribed industry code³, on the recommendation of the Commission.

¹ “Supplier” means a person who markets any goods or services; “market”, when used as a verb, means to promote or supply any goods or services; “promote” means to advertise, display or offer to supply any goods or services in the ordinary course of business, to all or part of the public for consideration; make any representation in the ordinary course of business that could reasonably be inferred as expressing a willingness to supply any goods or services for consideration; or engage in any other conduct in the ordinary course of business that may reasonably be construed to be an inducement or attempted inducement to a person to engage in a transaction; and “supply”, when used as a verb in relation to goods, includes sell, rent, exchange and hire in the ordinary course of business for consideration; or in relation to services, means to sell the services, or to perform or cause them to be performed or provided, or to grant access to any premises, event, activity or facility in the ordinary course of business for consideration.



1.7. If a proposed industry code provides for a scheme of alternative dispute resolution; and the Commission considers that the scheme is adequately situated and equipped to provide alternative dispute resolution services comparable to those generally provided in terms of any public regulation, the Commission, when recommending that code to the Minister, may also recommend that the scheme be accredited as an “accredited industry ombud”.

1.8. Woker argues that suppliers cannot be compelled to join an ombud scheme, as section 70(1)(b) of the CPA provides that matters will be referred to an industry ombud if the supplier is subject to the jurisdiction of such ombud. In our view, this is incorrect as this provision applies to the situation where the supplier is part of an industry that has an accredited ombud scheme. There are still various industry sectors, such as the cellular network providers, that do not belong to ombud schemes.⁴

1.9. In addition, section 82(2)(b), read with section 81(1)(a) of the CPA, gives the Minister the power to prescribe an industry code regulating to the interaction between or among persons conducting business within an industry (as opposed to some persons conducting business within an industry).

1.10. Section 82(3)(c)(i) envisages that the Commission will consult more widely in the industry than the persons who made the original proposal, and section 82(3) (a) makes it mandatory that the code be published for public comment, thereby giving any persons conducting business within the industry who do not wish to subscribe to the envisaged ombud scheme the opportunity to raise objections.

1.11. In addition, it would be pointless for the Minister to prescribe a code only for those persons conducting business within an industry who have already voluntarily subscribed to the code. It follows that once prescribed the code applies to the entire industry (this term is defined in each individual code).⁵

1.12. A supplier must thus not, in the ordinary course of business, contravene an applicable industry code.

²See GN 174 of 25 March 2011: (Government Gazette No. 34163)

³“Industry code” means a code regulating the interaction between or among persons conducting business within an industry; or regulating the interaction, or providing for alternative dispute resolution, between a person contemplated above and consumers.

2. THE CODE AND THE CGCSO

2.1. The Consumer Goods and Services Code of Conduct (“Code”) and the CGSCO are the industry code and ombud scheme for the “Consumer Goods and Services Industry” set up in accordance with, and accredited in terms of, section 82 of the CPA.⁶

2.2. In light of the Code being recognised under the CPA, it is enforceable against suppliers within the “Consumer Goods and Services Industry”. It follows that any person who promotes any goods or services, or sells, rents, exchanges, hires and the like goods, or sells or performs services, or causes them to be performed or provided, or grants access to any premises, event, activity or facility, to all or part of the public for consideration; or makes any representation in the ordinary course of business that could reasonably be inferred as expressing a willingness to do so; or engages in any other conduct in the ordinary course of business that may reasonably be construed to be an inducement or attempted inducement to a person to engage in a transaction, should adhere to the Code and falls within the jurisdiction of the CGSO.⁷

2.3. From a supplier’s perspective, the most important change brought about by the Code is that participation in or membership of the CGSO scheme is now compulsory for all suppliers who operate within the “Consumer Goods and Services Industry”, subject to certain exceptions stipulated in the Code. Eligible suppliers are thus obliged to comply with the provisions of the Code and the CGSO procedures, as well as contribute towards the funding of the scheme.⁸

2.4. “Consumer Goods and Services Industry” is broadly defined in the Code to include “all Participants and/or entities involved in the Supply Chain that provides, markets and/or offers to supply Goods and Services to Consumers unless excluded in terms of clause 4.4 hereof”⁹. In turn, “participant” is defined as “any entity operating within the industry bound by the Code unless expressly excluded by clause 4.4.”¹⁰

2.5. The Code applies to all participants, unless they are regulated elsewhere by other public regulation, a code prescribed by the Minister in terms of section 82 of the CPA, or where a complaint falls within the jurisdiction of an ombud with jurisdiction, or an industry ombud accredited in terms of section 82(6) of the CPA.¹¹

2.6. It is mandatory for all participants to comply with the provisions of the Code, to register with the CGSO and contribute towards the funding of the CGSO.¹²

2.7. Excluded from the application of the Code are:¹³

2.7.1. transactions that are not covered by the CPA which for the sake of completeness are the following:

2.7.1.1. where goods and services are promoted or supplied to the State;

2.7.1.2. where a consumer is a juristic person whose asset value or annual turnover, at the time of transaction, equals or exceeds R2 000 000 .00(two million Rand)¹⁴

2.7.1.3. credit agreements under the National Credit Act 34 of 2005 (“NCA”) (but goods and services provided under the agreement are not excluded from the ambit of the CPA);

2.7.1.4. employment contracts;

2.7.1.5. collective bargaining and collective agreements as defined in the Labour Relations Act 66 of 1995 and the Constitution; and

2.7.1.6. if the transaction falls within an industry-wide exemption granted by the Minister on application by the relevant regulatory authority. The regulatory authority (and not the supplier itself) may apply to the Minister for an industry-wide exemption from one or more provisions of the CPA on the grounds that those provisions overlap or duplicate a regulatory

⁶ See Melville, N, Commentary on the Consumer Protection Act; Jutastat e-publications; p82-7.

⁷ Ibid p82-8.

scheme administered by that regulatory authority in terms of national legislation or any treaty, international law, convention or protocol. The powers of the Minister to grant the exemption are however limited in that after receiving the advice of the Commission he can only grant an exemption to the extent that the relevant regulatory scheme ensures the achievement of the purpose of the CPA and then subject to any limits or conditions necessary to ensure the achievement of the purposes of the CPA. (Regulatory authority is defined to mean “an organ of state or entity established in terms of national or provincial legislation responsible for regulating an industry, or sector of an industry”).

2.7.1.7. transactions that are governed by other public regulation;

2.7.1.8. the automotive industry;

2.7.1.9. electronic communications services as defined in section 1 of the Electronic Communications Act 36 of 2005; and

2.7.1.10. transactions with organs of state or financial institutions.

2.8. In addition, the jurisdiction of the CGSO is limited in respect of:¹⁵

2.8.1. Amounts involved: the CGSO may not consider a complaint by a juristic person whose asset value or annual turnover equals or exceeds R2 000 000.00 (two million rand);

2.8.2. Time limit: The CGSO may not consider a complaint or dispute that relates to an act or omission which occurred before 1 April 2011 or more than 3 (three) years prior to the date when

the complaint was lodged with the CGSO;

2.8.3. Other processes: the CGSO may not consider a complaint or dispute that falls within the jurisdiction of any other ombud with jurisdiction; or is based on the same event and facts as any matter which is, was, or becomes, the subject of any proceedings in any court, tribunal or regulatory body or any ombud with jurisdiction of any jurisdiction; or could more appropriately be dealt with by, among others, the police or a court of law.

2.9. Excluded from the jurisdiction of the CGSO is any complaint that:¹⁶

2.9.1. is being pursued in an unreasonable, frivolous, vexatious, offensive, threatening or abusive manner or if the complainant fails to co-operate with the process;

2.9.2. does not allege any facts which, if true, would constitute grounds for a remedy under the Code or CPA;

2.9.3. is lacking in substantive merit;

2.9.4. has been substantially dealt with by the CGSO;

2.9.5. is based on the same events and facts as any matter which is, was or becomes, the subject of any proceedings in any court or other independent dispute-resolving body;

2.9.6. is under consideration by a legal practitioner on behalf of a consumer unless the ombud determines that the involvement of a legal practitioner is appropriate in the circumstances.

2.10. A failure by a supplier to comply with the Code amounts to a contravention of section 82(8) of the CPA, which would constitute prohibited conduct in the form of “an act or omission in contravention of” the CPA, which may lead to the imposition of an administrative fine.¹⁷

⁶ See GNR.271 of 30 March 2015: Prescription of the Consumer Goods and Services Industry Code and accreditation of the alternative Dispute Resolution Scheme administered by Consumer Goods and Industry Ombud as an accredited Industry Ombud in terms of section 82 of the Act.

⁷ See fn 1 above.

⁸ See Code para 6.2.1.

⁹ See Code para 3.1.10.

¹⁰ See Code para 3.1.29.

3. SPECIFIC QUERIES

Could suppliers such as importers or online retailers, who are merely conduits for the supply of goods and services, be held liable under the CPA and, as a result, be included as industry participants under the aegis of the CGSO?

3.1. In our view, all suppliers, including importers and online retailers, will fall within the scope of the CPA (see paragraph 3.2 above) and all “participants” in the “Consumer Goods and Services Industry” fall under the aegis of the CGSO. (See paragraphs 3.4ff above.)

3.2. Online retailers may seek to argue that they are not located in South Africa and/or their servers are located outside of South Africa and/or they do not have any presence (bricks or mortar) in South Africa and as such, that the CPA does not have extra-territorial jurisdiction making them fall outside of the ambit of the Code.

3.3. In our opinion, this position may be found to be incorrect. In the case of *Casino Enterprises (Pty) Ltd v Gauteng Gambling Board and others* [2011] 4 All SA 573 (SCA) dated 28 September 2011, albeit within the context of online gambling and the gambling legislation, our courts found that notwithstanding the foreign location of an operator’s business or servers, on-line gambling that is made available to persons in South Africa on the internet nevertheless takes place in South Africa for the purposes of the National Gambling Act 7 of 2004.

3.4. Applying this within the context of online retailers, the sale can be said to take place when a consumer located in South Africa places an order. The fact that any actions subsequent to such activation take place outside of South Africa is irrelevant to the central issue and none of such subsequent actions changes the reality that a consumer at his computer, in South Africa, committed himself to placing an order for goods with the retailer. The legislature is concerned with substance, not form, and if the purchase takes place in South Africa, it is of no consequence what means are employed to facilitate it and whether those means are employed outside the country.

3.5. In conclusion, notwithstanding the foreign location of an online retailer’s business and/or servers, online retailer stores made available in South Africa on the internet may very well be found to take place in South Africa for purposes of the CPA and such online retailers would fall within the ambit of a “supplier”.

Is the CGSO empowered by the Code to grant exemptions to entities who are of the opinion that they do not fall within the jurisdiction of the CGSO and as such should not be considered industry participants/members?

In our view, nothing in the Code permits the CGSO to grant exemptions to industry participants or members in respect of the jurisdiction of the CGSO. All suppliers in the “Consumer Goods and Services Industry” fall within the scope of the CGSO’s jurisdiction (unless specifically excluded as set out in paragraph 3.5 above).



¹¹ See Code para 4.1

¹² See Code para 4.2.

¹³ See Code para 4.4.

¹⁴ The Regulations were published in Government Notice 293 in Government Gazette No 34180 of 1 April 2011

¹⁵ See Code para 10.3.

¹⁶ See Code para 10.3.4.

¹⁷ See the definition of “prohibited conduct” in section 1 of the CPA.

NATIONAL CONSUMER TRIBUNAL RULING:

CONSEQUENCES OF NON-COOPERATION WITH OMBUDS SCHEMES AND CONTRAVENTION OF THE CPA. NCC VS WESTERN CAR SALES

(Case number: **NCT/81554/2017/73(2)(b)**)

The ruling below is groundbreaking in that it confirms the importance that the NCC and NCT places on the need for suppliers to participate in and cooperate with the accredited Ombud Schemes. Below is a summary of the ruling. The full judgement can be obtained from our website <http://www.cgso.org.za/wp-content/uploads/2017/09/NCT-81554-2017-73-3-NATIONAL-CONSUMER-COMMISSION-v-WESTERN-CAR-SALES....pdf?87ab66>

CASE SUMMARY

On 11 December 2015 Ms H Van Lill purchased a 2001 model Volkswagen Passat 1.8T with approximately 280 000 kilometres on the odometer from the Respondent for an amount of R61 450.00. She collected the vehicle on 14 December 2015.

On 17 December 2015 the vehicle started exhibiting problems with the gearbox. The vehicle started shaking and the gears would not engage properly. On 19 December 2015 the vehicle broke down and had to be transported to the Respondent on a truck at Ms Van Lill's cost. Ms Van Lill requested the Respondent to refund her the purchase price of the vehicle but the Respondent refused to do so. The vehicle remained at the Respondent for a period of time but was eventually transported to Ms Van Lill's premises due to the Respondent threatening to charge storage costs.

Ms Van Lill reported her complaint to an independent institution called SA Consumer Complaints in January 2016.

This institution attempted to resolve the dispute but was unsuccessful. She then approached the Motor Industry Ombudsman of South Africa (MIOSA). MIOSA issued a ruling in favour of Ms Van Lill in May 2016. The Respondent however appears to have ignored the ruling and MIOSA thereafter referred Ms Van Lill to the NCC. Based on the complaint received from Ms Van Lill dated 30 May 2016, the NCC initiated an investigation into the matter and issued a report on 24 February 2017.

THE RULING

After considering the facts the Tribunal made the following ruling:

- 1) The Respondent is to reimburse Ms Van Lill with an amount of R R61 450.00 within 15 business days of the date of this judgment.
- 2) After payment has been made the Respondent may collect the Volkswagen Passat 1.8 T vehicle from Mr Van Lill at its own cost.
- 3) The Respondent is interdicted from using any terms in its contract which contravene the CPA as explained in this judgment.
- 4) The Respondent is to pay an administrative fine of R100 000.00 (One hundred Thousand Rand) into the National Revenue Fund referred to in section 213 of the Constitution within 30 business days of the date of this judgment.
- 5) No order is made as to costs.



TRIBUNAL CONSIDERATIONS WHEN DETERMINING THE RULING AND QUANTUM OF ADMINISTRATIVE FINES

1. PROHIBITED CONDUCT

The NCC requested the Tribunal to make a finding that the Respondent Contravened Section 48(1)(c) and sections 51(1)(a) and (b) and that this constitutes prohibited conduct.

On the evidence presented to the Tribunal, the contract provided by the respondent and signed by the consumer contains numerous clauses and statements which either contradict the rights of a consumer in terms of the CPA or at the very least misrepresent the consumer's rights in this regard.

An example of this is the clause in the contract relating to "Return" as set out under paragraph 23 above.

RETURN

If I am entitled to return the vehicle to the seller for any reason whatsoever and I want to cancel the sale, then I Understand that by returning it and cancelling the sale, the value of the vehicle will drop, due to:

- 1.1 Market price
- 1.2 Wear and tear or any misconduct from my side, and
- 1.3 A cancellation fee made up of all the costs regarding the sale of the vehicle

I have the option to put the vehicle on the seller's floor to be sold on my behalf.

This section of the contract is very vague as to what the basis may be for any vehicle being returned. If the clause intends this situation to include a return of the vehicle in terms of section 55 of the CPA then the conditions applicable to the return are clearly not in accordance with the rights of the consumer in terms of the CPA.

The following clauses which are quoted from the contract (referred to in paragraph 21 and 23 above) also bear specific mention -

I accept and understand that this is a Second Hand used vehicle and that due to wear and tear and age, any components or part may fall(sic) after I take delivery of the vehicle.

I accept and understand that NO warranties or guarantees are given on any electrical components, radios, air conditioning and alarm systems, central locking systems or keys.

"Comments: Vehicle sold as it stand No warranty" (sic)

"Due to KM and age No warranty" (sic)

These clauses are also in direct contradiction to the rights of a consumer as set out in section 55 of the CPA. At the very least they misrepresent the rights of a consumer. As stated previously, the CPA does not provide for a sale of goods on a basis that the supplier does not accept any liability and does not offer any warranty whatsoever.

There are numerous other examples in the contract that can be mentioned but for the current purposes the above examples will suffice.

The ultimate effect of these clauses is that they mislead the consumer, seek to avoid liability for the supplier and defeat the purpose of the CPA. This is specifically prohibited by the provisions of section 51 of the CPA.

The Tribunal further considered the applicability of section 48 to the contract and its terms. In the Tribunal's view the purpose and relief provided for by sections 48 and 51 differ from each other. While the Tribunal has the power to declare conduct which contravenes section 51 as prohibited, the same cannot be said for section 48. On a plain reading of section 48, read with section 52, it would appear that the power to apply the provisions of section 48 remain exclusively reserved for a court of law. It would in any event appear to be a case of splitting of charges to find a contravention of section 51 would also amount to a contravention of section 48.

CONSIDERATION OF AN ADMINISTRATIVE FINE

The NCC has requested the Tribunal to impose a fine on the Respondent. The NCC has submitted argument on the factors listed in section 112(3) of the CPA that the Tribunal must consider.

Considering the nature of the contraventions and the importance of this issue for consumers the Tribunal regards a fine as appropriate and justified. The buying and selling of vehicles is a large industry in South Africa. This industry affects consumers on a daily basis. A clear message must be sent that non-compliance with the CPA will neither be condoned nor tolerated.

1. The nature, duration, gravity and extent of the contravention;

The approach used by the Respondent as set out above appears to be ongoing and common practice. Using terms in a contract which have the effect of misleading consumers on an ongoing basis regarding their rights is a serious contravention of the CPA.

2. Any loss or damage suffered as a result of the contravention;

No specific evidence was provided in this regard but it is reasonably expected that many consumers have been denied their rights in the same way that Ms Van Lill was. These consumers would then have had to suffer the loss incurred when their vehicle was not repaired or they were not refunded.

3. The behaviour of the Respondent;

The Respondent refused to comply with the ruling made by the MIOSA. It then did not defend the application before the Tribunal. This behaviour is indicative of a dismissive attitude towards the rights of consumers and the dispute resolving process in general. The Respondent was granted an ideal opportunity to cooperate and resolve the matter through the MIOSA. The fact that it chose to simply ignore the ruling made by the MIOSA and not engage further in any way to resolve the dispute is an aggravating factor.

4. The market circumstances in which the contravention took place;

No specific evidence was provided to the Tribunal but based on the types of matters referred to the Tribunal it would appear that vehicle related complaints against dealerships are very common. For the average consumer the purchase of a vehicle would constitute an extremely costly and important transaction, second only to the purchase of a house.

5. The level of profit derived from the contravention;

No specific evidence was provided in this regard. Again, the Respondent would have derived the significant benefit of not having to refund consumers or repair their vehicles.

6. The degree to which the respondent has co-operated with the Commission and the Tribunal;

Based on the NCC's submissions the Respondent did cooperate with the NCC's investigator.

7. Whether the respondent has previously been found in contravention of this Act.

The NCC submitted that there was no record of a previous investigation or finding against the Respondent.

The NCC did not submit any evidence of the turnover of the Respondent. The Tribunal can still impose a fine but is then limited to a maximum fine of R1 000 000.00.

As far as the Tribunal is aware, this is the first judgment being issued which deals with Prohibited provisions in a contract involving the sale of vehicles. A strong message must be sent that dealers in motor vehicles cannot escape the peremptory provisions of the CPA. Their contracts must be aligned to the CPA and consumers must be protected against dealers that use their contract terms to mislead consumers as to their rights. Dealers and suppliers must further make use of the opportunity to settle disputes through the MIOSA when provided with the opportunity to do so, as set out in section 69 of the CPA.

The Tribunal must however also consider that the fine must not be so punitive as to discourage dealers from engaging in a necessary and lawful business. It must further be kept in mind that the fine imposed would be for a first offender. Further transgressions would be met with significantly higher penalties.

CONCLUSION

The Tribunal finds that Ms Van Lill is entitled to a refund of the purchase price paid for the vehicle in terms of section 56 of the CPA. The vehicle must naturally also be returned to the Respondent.

The Respondent is found to have contravened sections 51(1) (a) and (b) of the CPA and this constitutes prohibited conduct. The Respondent must be interdicted from contravening the provisions of the CPA any further.

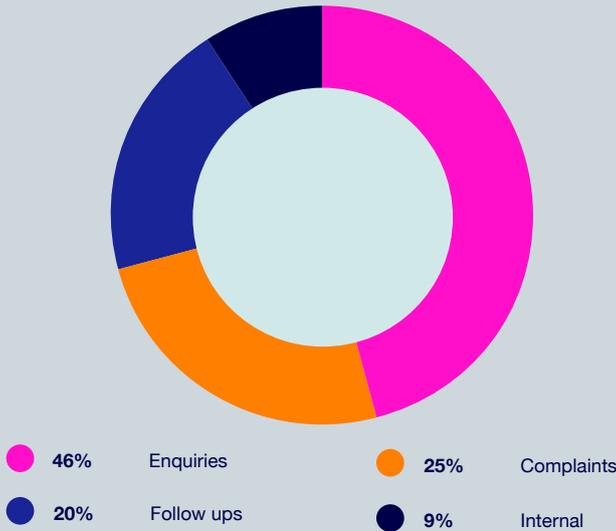
An administrative penalty of R100 000.00 is appropriate under the circumstances.

UPDATE ON CASE AND HELPLINE STATISTICS

HELPLINE STATISTICS

During the period July to September 2017, the CGSO Helpline received 5059 calls of which 425 were internal. Below is a breakdown of the type of enquiries received:

Type of Calls



COMPLAINTS RECEIVED AND CLOSED

A total of 1174 new complaints were received during this period. This brings the total number of cases received for 2017 thus far to 4443.

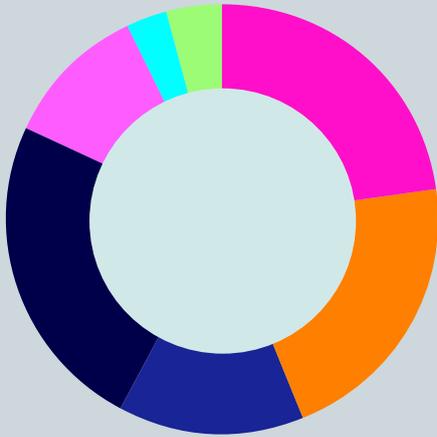
Complaints Opened & Closed Per Month



TYPE OF CASES RECEIVED

Below is a breakdown of the type of cases that we received. The top three complaints received relate to services, defective goods and contract terms.

Type of Complaints

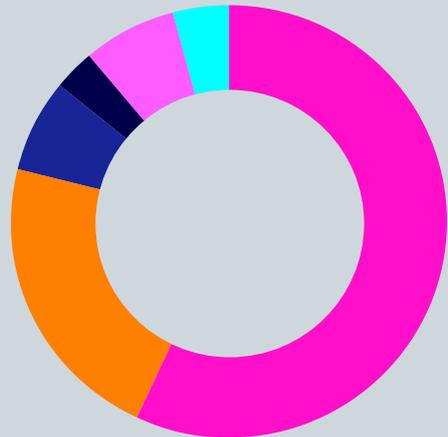


- 23% Service not of expected quality
- 21% Defective Goods
- 14% Cancellations and Overcharging
- 24% Contract Terms
- 11% Deliveries or according to specifications
- 3% Breakages
- 4% Treatment, Complaints and Options

HOW WE RESOLVED THE CASES

The statistics below exclude 229 cases which were either withdrawn, not referred to the supplier, out of our jurisdiction, or were duplicates of cases. Consumers were able to receive the type of redress they requested in 68% of cases. Below is a breakdown of how cases were resolved:

Resolve Type



- 57% Fully Upheld
- 22% Not Upheld
- 7% No Cooperation from Supplier
- 3% No Cooperation from Complainants
- 7% Assistance Provided
- 4% Partially Upheld



CASE STUDIES

1. Concert postponed

The complainant, who lives in Cape Town, booked tickets for himself and his family for a concert that was scheduled to take place in Durban on 29 April 2017. The complainant also booked airline tickets and accommodation for himself and his family for that weekend.

The concert was postponed on 28 April 2017 and the complainant was seeking to be reimbursed for all his costs including the cost of the concert tickets, flights and accommodation for himself and his family. Computicket (not the supplier in this matter) refunded the complainant the amount paid for the tickets.

In terms of section 47(3)(b) of the Consumer Protection Act, 2008, a supplier is liable to compensate a consumer for costs directly incidental to the cancellation of an event. In that regard, section 47(3)(b) states as follows:

“47. Over-selling and over-booking.

.....

(3) If a supplier makes a commitment or accepts a reservation to supply goods or services on a specified date or at a specified time and, on the date and at the time contemplated in the commitment or reservation, fails because of insufficient stock or capacity to supply those goods or services, or similar or comparable goods or services of the same or better quality, class or nature, the supplier must—

(a) refund to the consumer the amount, if any, paid in respect of that commitment or reservation, together with interest at the prescribed rate from the date on which the amount was paid until the date of reimbursement; and

(b) in addition, compensate the consumer for costs directly incidental to the supplier’s breach of the contract, except to the extent that subsection (5) provides otherwise.

.....”

We advised the supplier of its liability in terms of section 47(3)(b) however the supplier refused to refund the complainant any of the amounts incurred by him. The matter was referred to the NCC.

2. Cancellation

The complainant entered into an agreement with a timeshare company after a marketing presentation. The complainant then wished to change the payment period and was advised that someone from the supplier would contact him, which they failed to do. When the supplier failed to contact the complainant, he decided that he wanted to cancel the agreement and be refunded all amounts paid by him.

In terms of section 16(3) of the Consumer Protection Act, which relates to a consumer’s right to a cooling-off period after direct marketing, a consumer may rescind a transaction resulting from any direct marketing without reason or penalty, by notice to the supplier in writing, or another recorded manner and form, within five business days after the later of the date on which the transaction or agreement was concluded or the goods that were the subject of the transaction were delivered to the consumer.

In the present case, the complainant did not cancel within the 5-day cooling-off period and accordingly, the matter was not upheld.

3. “Defective” perfume

In this case, the complainant bought a bottle of perfume however, she felt that the smell did not last and therefore took the perfume back to the supplier for a refund. The supplier advised that she would send the perfume for testing. The complainant was subsequently contacted by the supplier who advised that there was nothing wrong with the perfume.

Our offices intervened in the matter and the complainant was given another perfume to compensate for the one that the complainant was unhappy with.

Feedback from the complainant:

“I will definitely recommend CGSO due to the excellent services received from CGSO personnel. I was rendered speedy service from CGSO. Thank you”