

Consumer Goods and Services Industry Ombud facilitates dispute resolution

The Consumer Goods & Services Ombud (CGSO) is a non-profit company (without members), that was established in terms of Section 82(6) the Consumer Protection Act (CPA) to deal with complaints and disputes between consumers and suppliers in the consumer goods and services industry.

It was established by the Consumer Goods Council of South Africa (CGCSA), at the request of its members, who sought an independent body that could act as a mediator when disputes arose between themselves and consumers as per section 70 of the CPA. The Act provides for alternative dispute resolution forums other than the National Consumer Commission (NCC) - the primary regulator of business interaction in South Africa.

The CGSO was therefore set up to deal with complaints in instances where complaints fail to resolve at retail level. Where



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the consumer approaches the CGSO before lodging the complaint with the supplier the matter will be referred back to give the supplier the opportunity to address the complaint. Since inception the CGSO has dealt with more than 50 000 calls to its helpline and has closed more than 18 376 complaints.

When the CGSO launched in March 2013, it had no participants but soon after 24 supplier participants signed up voluntarily, among them some of South Africa's biggest retailers. At that time, the CGSO operated as a voluntary consumer goods-and-services industry scheme until the Consumer Goods and Services Industry Code of Conduct (Code) was promulgated by

the Department of Trade & Industry's Minister Rob Davies on April 29, 2015. Today the CGSO has 670 participants .

When one considers that there are an estimated 134 000 small and independent retail outlets nationally (Nielson, 2016 report: South Africa's Not So Traditional, Traditional Trade), 4500 convenience stores and 2875 hypermarkets and supermarkets in South Africa, 670 participants seems like a drop in the ocean. Most of 670 participants in the CSGO scheme are holding companies however, which means a far greater number of businesses belong to the scheme, than the 670 registered participants.

For example, all of Massmart's business concerns such as Game, Makro, Dionwired and the Builders brand, among others, are members of the scheme.

But Queen Munyai, CGSO's Acting CEO and GM: Corporate Affairs, says it is a massive and ongoing task of the CGSO to reach more suppliers in the sector and get them to register, especially with limited resources.

The quoted statistics do not include micro-traders in the informal trading sector, who are also required to adhere to the Code.

The Code and the CGSO were established to guide industry on the minimum standards of conduct expected when engaging with consumers and to assist in resolving disputes. Since its promulgation, it has become compulsory by law for every qualifying supplier of goods and services in South Africa to adhere to the Code and become a participant member of the CGSO.

The Code requires that all participants establish effective internal complaints-handing processes that are accessible and understandable to all consumers. All suppliers of goods and services must display the CGSO decal with the CGSO's contact details at their retail premises and notify consumers of their right to refer complaints to the CGSO when they are dissatisfied with the outcome of their complaints.



Queen Munyai, CGSO's Acting CEO and GM: Corporate Affairs



Suppliers must acknowledge the complaint within two working days and must deal with the complaint within 15 working days. If it remains unresolved within 15 working days. If it remains unresolved, then the supplier must refer the consumer to the CGSO.

Suppliers are also required by the Code to make contributions in the form of a joining fee and annual levy to fund the operations of the CGSO. Fees are calculated according to the annual turnover of suppliers, which are grouped into six categories. Suppliers with annual turnovers of more than R3bn are required to pay R200 000 in annual levies.

For turnovers of R1bn to 3bn, the levy is R120 000; for R500m to R1bn turnovers the levy is R40 000; R5m to R500m, it's R3360; and R1m – R5m, R1680. Those whose turnover is less than R1m, must register as a participant of the CGSO but are exempt from paying a levy.

Munyai, who helped set up the CGSO's office and is responsible for finance, human resources, IT, facilities, marketing and stakeholder engagement at the Ombud, says a large majority of suppliers recognise the importance of an Ombud Scheme and are making their contributions but a few retailers have challenged the provision in the Code that requires participants to pay the CGSO a levy.

"They are arguing that there is no stipulation in the CPA that says the DTI Minister has the right to make such a provision in the Code. In order to create certainty in the market we are therefore seeking a declaratory order from the High Court to confirm that the requirements of the Code are lawful and enforceable."

By law the CGSO has to follow up on every complaint it receives and attempt to facilitate a settlement between the two parties, no matter whether a supplier has registered with the CGSO or not.

This includes following up on complaints involving traders in the informal sector. When a complaint cannot be resolved at the CGSO, the CGSO has to close the case and advise the consumer to take the complaint to the NCC, which will then conduct its own investigation of the complaint.

"Compliance is an ongoing process," says Acting Ombud, Magauta Mphahlele. We continue to engage suppliers one on one and through other campaigns and initiatives, inform and educate them on what is required of them in terms of the law and the Code."

Another challenge for the CGSO, says Mphahlele, are suppliers who are reluctant to cooperate with the CGSO when there is a complaint or dispute lodged against them.

"We would like to see every business complying with the codes - as the law demands - taking their consumers seriously and enabling consumers to have redress if something does go wrong.

When things go wrong, we want a commitment from the supplier that they will repair, refund or replace the damaged goods, where it is warranted.

Suppliers can obtain advice from us on how to deal and resolve complaints and we offer them free training on the CPA and its requirements."

She says there are also times when suppliers say they will heed the CGSO's recommendations, and then just ignore them.

"As the Ombud, we do not have the power to enforce our decisions, only to make recommendations, or otherwise refer the matter to the NCC for formal investigation."

In cases where a supplier refuses to cooperate and is investigated by the NCC, the case becomes far more serious, because then there can be grave consequences.

"Where a supplier has been found guilty of flouting the Code and the CPA, the NCC can refer the matter to the National Consumer Tribunal, where a supplier can be fined up to 10% of their annual turnover," adds Mphahlele. The Tribunal recently made a punitive decision against a supplier who had refused to cooperate with an Ombud saying that the supplier should have used the Ombud system to resolve the complaint amicably.

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CGSO Acting Ombud has had a long career looking after consumer interests



There is probably no-one in South Africa better placed to understand the Consumer Protection Act (CPA) and all its provisions and requirements, than Magauta Mphahlele, acting Ombud and former Non-Executive Chairman of the Consumer Goods & Services Ombud (CGSO).

Mphahlele was responsible for managing the policy and legislative processes of the Consumer Protection Act and National Credit Act, during her tenure as project manager for law reform at the Department of Trade & Industry in 2003.

Magauta Mphahlele, acting Ombud and former Non-Executive Chairman of the Consumer Goods & Services Ombud (CGSO)

In her role she was responsible for managing the drafting of the policy of the two acts, presenting them to Parliament, consulting on them, getting them enacted and setting up their enforcement agencies – the National Credit Regulator (NCR), and National Consumer Tribunal (NCT).

In terms of the CPA, when the CGSO is not able to resolve a matter, it recommends that the consumer lodge the complaint with the National Consumer Commission (NCC) for investigation.

Mphahlele spent two years as an adjudicator making determinations at the NCT before deciding to move on. She felt the environment was not a good fit for her personality.

“People had to stand up when Tribunal members walked into the hearing room, something I could never get used to. And I had to constantly watch what I said because of my bubbly personality.

Thereafter, she joined the National Debt Mediation Association (NDMA) as its CEO. There she was responsible for regulating the interaction between debt counsellors and credit providers and then reporting to the NCR.

“When a proposal for a voluntary debt mediation system was put on the table, which would have seen debt defaulters of banks referred to the NDMA instead of banks taking legal action against them directly, it was met with fierce resistance from the debt counselling industry.

Debt counsellors feared they would lose business. This ultimately led to the disbanding of the NDMA and I started Ithuseng Credit Solutions – an alternative dispute resolution entity between credit providers and consumers, which also runs a helpline that offers free advice on all issues relating to credit.”

ROLE AT CGSO

In her role as Acting Ombud of the CGSO, she has the overall responsibility to ensure that the objectives of the Code to provide speedy and effective dispute resolution is achieved.

This involves ensuring that the CGSO’s policies enable the efficient functioning of the Ombud office, that there are internal systems and procedures in place and sufficient capacity to deal with complaints from consumers speedily and within the

60-working days timeframe set out in the Code.

She is also responsible for drafting determinations where the adjudicators are not able to resolve a matter as well as addressing service complaints from consumers and participants.

“The CGSO has to maintain high standards of good corporate governance and accountability, including maintaining good relations with key stakeholders like the NCC, NCT and other Ombuds and regulatory agencies. This is a key function,” adds Mphahlele.

Her responsibilities also include reporting the activities of the office to the public through the CGSO’s annual report. According to the Code, says Mphahlele, at no time should consumers be left to handle complaints on their own.

“We put significant focus on facilitating a resolution between the consumer and the supplier. In most cases where resolution is reached complaints are resolved at retail level.

And in most instances where our office has to intervene, a resolution is amicably reached. It is in the interest of the supplier to resolve the matter at CGSO level.

Only one percent of cases ever find their way to a formal mediation or determination.”

Mphahlele says it can be very frustrating for a consumer in instances where the CGSO has to close a case because the supplier has not cooperated or has not heeded the CGSO’s recommendations.

The consumer then has no choice but to open a new case with the NCC.

“While this entire process is offered as a free service to the consumer, it can be very frustrating, especially where the consumer initially approached the NCC, and the NCC referred the case to CGSO.”

There are those that argue that the CGSO should have the powers to make a binding ruling. Mphahlele offers a possible explanation behind this.

“That would give a supplier the ability to appeal at the level of the Tribunal or the courts and result in protracted litigation to the disadvantage of the consumer and high costs for the Ombud. Where would the protection of the consumer then be?

The current dispute resolution system in the CPA protects the consumer from having to litigate as the NCC is responsible for investigating and referring matters to the NCT on behalf of the consumer.

A referral to the NCT for prosecution can potentially open up the supplier to stiff fines or other remedies and that is why it is sometimes better for suppliers to resolve matters at the Ombud level.” Mphahlele adds that while most larger entities understand the need for an Ombud, smaller businesses see



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compliance as a burden as it costs them money to have a complaints-handling division and to comply with the provisions of the Code.

In the 2016/2017 financial year, 5595 complaints were lodged with the CGSO. Out of those complaints only 24 required mediation by the CGSO. Of all the complaints lodged, 48% were found in favour of the consumer.

In 12.3% of cases, the complaint was partially upheld, meaning the consumers got some of what they wanted but not all.

“Of concern to the CGSO is the fact that in 17.8% of cases, the complaint could not be resolved due to lack of cooperation from the supplier,” says Mphahlele. Since it is a contravention of the CPA not to comply with an approved industry Code, these suppliers are referred to the NCC.

The vast majority of complaints received in the 2016/2017 financial year were about goods (37%), services (31%) and agreements (24%), with the largest number of goods complaints about cellphones.

LOGGING A COMPLAINT WITH THE OMBUD

There are several ways in which consumers can lodge complaints with the Ombud. They can send an email, phone the call centre or fill in a form on the CGSO website www.cgso.org.za. Once the CGSO team receives a complaint, they will check whether the complaint falls under the CGSO’s jurisdiction and also check whether the consumer has laid a complaint directly with the supplier or other institutions to avoid duplication.

If not, the CGSO will accept the complaint and then notify the supplier of the complaint. If the supplier resolves the complaint within 15 working days, then it’s the end of the matter. If it is not resolved, then both parties need to enter into a mediation process with the CGSO to try and resolve the complaint before referring it to the NCC. ■

