

# CGSO STAKEHOLDER NEWSLETTER

1st Issue 2019



CONSUMER GOODS  
& SERVICES OMBUD  
*Fairplay between consumer & supplier*

## A MESSAGE FROM THE OMBUDSMAN



Magauta Mphahlele: Ombudsman

**In the last few months we've been hard at work developing a strategy to take us into 2021. It's an opportune moment to take stock given that 29 April 2019 marked our fourth-year anniversary since the Minister of Trade and Industry promulgated our Code of Conduct.**

Since our mandate became formalised in April 2015, we have fielded more than 61 000 calls, opened some 19 410 complaints and closed 18 000.

And all indications are that this is set to rise, given that there has been a steady increase in call volumes for the last four quarters, based on our call centre statistics. This reflects not just the growing public awareness around the role of the CGSO but is also in large measure due to the support of the National Consumer Commission, Department of Trade and Industry and our valued Participants, without whom this service would not have been possible.

It's a common misperception that we are an investigative body with adjudication powers but the fact is that we are an impartial body providing a viable alternative dispute resolution process for both consumers and Participants as a first step process after a supplier fails to resolve a consumer complaint. Channelling complaints through the CGSO, or referring disgruntled customers to the CGSO, avoids potentially costly and drawn out litigation or a formal investigation by the Regulator, and offers the opportunity to resolve issues with customers, either by us drafting recommendations to assist the parties to reach an amicable settlement or by our Participants making good either as restitution or by choosing to compromise in the interests of sound customer relations. The services of our mediation team are therefore not automatically deployed on the side of the consumer, but are equally there to advise the parties to the dispute of their rights and obligations in terms of the Consumer Protection Act.

We are fully committed to working with you, our valued Participants, to continue promoting fair business practices in the interests of all stakeholders.

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# MESSAGE FROM THE CEO



Queen Munyai: CEO

In our previous newsletter I reported that we had experienced an 8% rise in Participant numbers, and I am pleased to welcome twelve new Participants since the start of the year, bringing our total number of Participants to 739.

GROUP	FUNDING TIER	OPENING BAL.	Q1 – NEW PARTICIPANTS	TOTAL
1	R3 bil +	45	1	46
2	Above R1 bil to R3 bil	31	1	32
3	Above R500 mil to R1 bil	23	1	24
4	Above R5 mil to R500 mil	469	6	475
5	Above R1 mil to R5 mil	99	1	100
6	R1 to R1 mil	60	2	62
<b>TOTAL</b>		<b>727</b>	<b>12</b>	<b>739</b>

This is important as we are incredibly proud of our standards of good governance and prudent fiscal management that allows this office to provide a neutral dispute resolution scheme; a scheme that is made possible by the support of responsible retailers such as these.

Our strategy for 2021 is to ensure that we continue to provide a fair, efficient and objective alternative dispute resolution service that operates in the best interests of all stakeholders.

Accordingly, we have bolstered our governance and oversight expertise with the appointment of Ms Ravina Reddy to the CGSO Board as an independent non-executive director. Ms Reddy brings her considerable HR and corporate relations experience to the boardroom and will add significantly to the depth of our collective expertise.

We have also added new staff to our call centre to deal with the increased call volumes, especially in the wake of the (very welcome) decision by the NCC to refer cases directly to us in the first instance. This streamlines the process considerably, and reduces the aggravation-factor of consumers and Participants being pushed from pillar to post between the NCC and the Ombudsman.

Additional staff members have also meant a renewed focus on training for our call centre agents to ensure that we are accessible and respond to all inquiries with respect, empathy, fairness, impartiality and integrity.

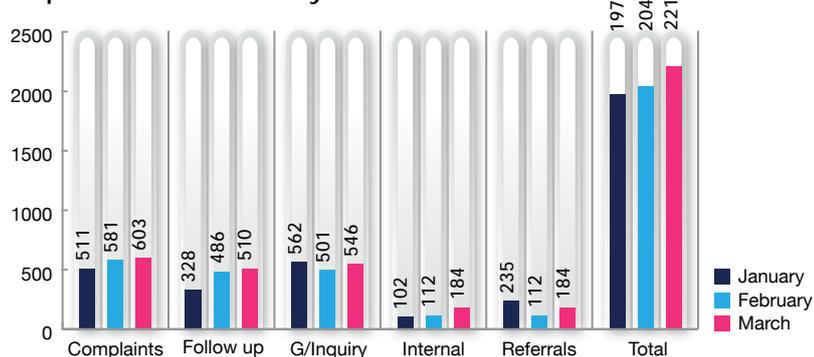
If there is anything we can do to improve your experience of this Ombudsman – either as a Participant, stakeholder or a consumer – we'd love to hear from you.

## CALL CENTRE STATISTICS

For the first quarter of 2019 we received 11 787 calls of which 97% were from external parties. This is close to double the number of calls we received compared to the first quarter of 2018 wherein we received 5 917 calls. We have improved our social media presence and continue to get free coverage on all media platforms, including radio, television and print. We also continue to collaborate with the National Consumer Commission (NCC), Provincial Consumer Affairs Offices, Sector Regulators and other Ombuds in reaching out to consumers in remote areas.

### Call Centre Statistics

Comparison for January 2019 – March 2019

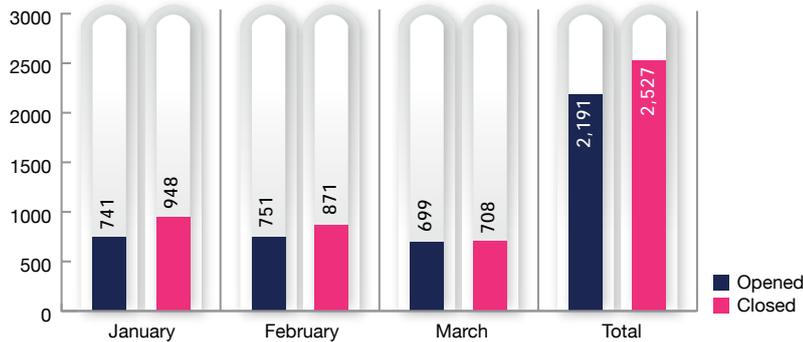


### Total number of cases received and closed for the quarter

In the three months January to March 2019 we received 2 191 complaints - 696 more than for the equivalent period in 2018. Several measures have been put in place to deal with the rise in the number of complaints, including the appointment of a part time adjudicator, onboarding interns and increasing the number of administrators.

# COMPLAINTS STATISTICS

## Complaints Opened and Closed

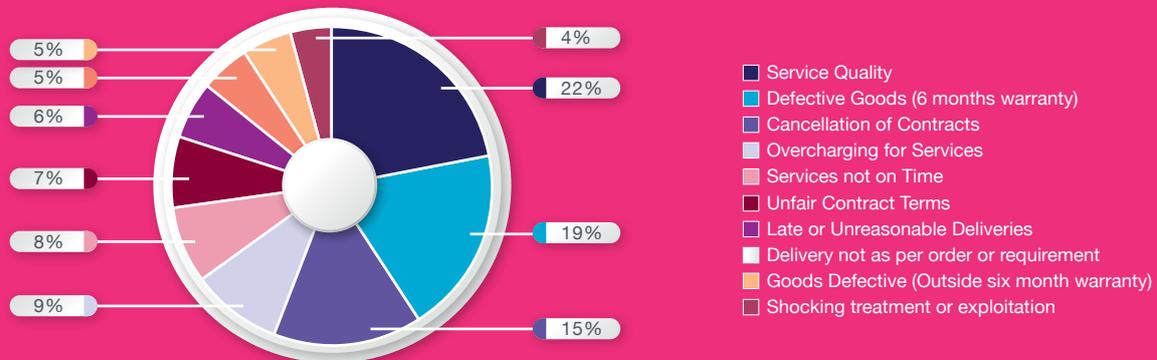


Despite the 46.5% rise in complaints, the team managed to close 2 527 cases, an increase of 1 243 cases against the first quarter of 2018. Despite the increase in the number of cases received and closed, the team succeeded in keeping the number of days it takes to finalise a case to 47 days.

## Top 10 Nature of Complaints Received

Poor service and defective goods routinely head up the list of top ten complaint categories received, and this quarter was no different.

### Types of Complaints

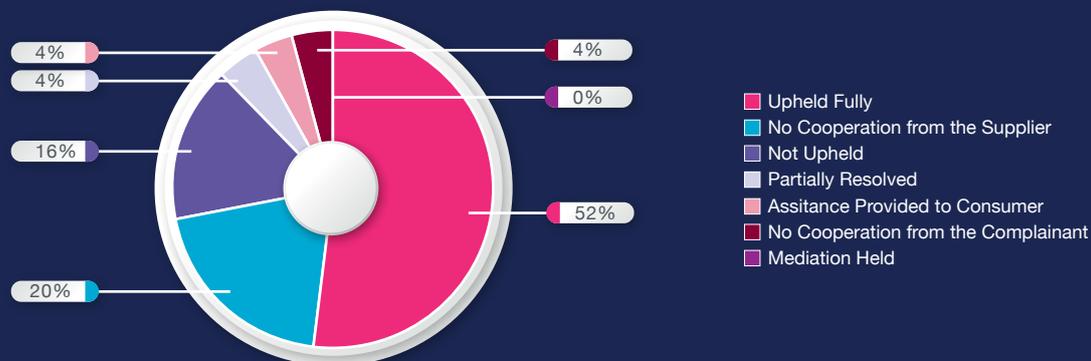


We are particularly concerned by the rise of suppliers who contravene Section 40 of the Consumer Protection Act (CPA), effectively taking customers' money and failing to deliver the requisite goods or services in return. The suppliers below have failed to cooperate with our office and we will be issuing a warning to consumers to be careful when dealing with them as we are gravely concerned about their conduct.

- AF-FSL Glass Distributors.** Consumers ordered aluminium doors and windows but the goods were never delivered. The supplier is not co-operating with our office and it would appear that they are in contravention of Section 40 of the CPA, having accepted payment for goods that they have not delivered. They are further possibly contravening Section 19 of the CPA, having failed to deliver goods within a reasonable time.
- Benna Bok.** Consumers ordered and paid for leather shoes and bags but the goods were never delivered. Despite being the subject of a recent Carte Blanche exposé, Benna Bok continues to operate, taking new orders even though the complaints with our office have not been resolved. When pushed, Benna Bok claims to be busy resolving the issue but thus far has failed to resolve any of the complaints directed to our office. The supplier is not co-operating with our office and it seems they are in contravention of Section 40 of the CPA, as well as Section 19 of the CPA, i.e failing to deliver goods within a reasonable time.
- 4 Cities Removers.** In this matter the consumers paid the supplier to move their furniture from one address to another. The supplier collected the furniture but failed to deliver it. In addition to being in possible contravention of Section 40 of the CPA, having taken people's furniture and not delivered it, 4 Cities Removers is also possibly in contravention of the Section 65 of the CPA which provides that the supplier in possession of a consumer's property must handle it with care and account for the property when required.
- Milo Design.** The complainants paid the supplier for furniture which never arrived. Milo Design is refusing to refund consumers, stating they have a no-refunds policy. To compound matters, the goods that have been delivered appear to be of an inferior quality and numerous complaints in this regard have also been received. As a result, Milo Design would appear to be in contravention of Section 40, as well as Section 19, which provides that the supplier must refund a consumer if they are unable to deliver on the agreed date and time. In addition, Section 55 and 56 refer to inferior quality goods.
- Appliance House.** Consumers paid the supplier for electronic goods online, which the supplier undertook to deliver. The goods were never delivered, entitling the customers to a refund. The supplier has ceased all communication with our office and is no longer refunding consumers. Again, an apparent contravention of Section 40 and Section 19 of the CPA.

# OUTCOME OF COMPLAINTS

If we exclude 759 cases that were either outside of our jurisdiction, withdrawn and/or not yet referred to the supplier, the outcome was positive for the consumer in 60% of cases. Of the 60%, just over half (52%) was fully in favour, 4% partially in favour and in 4% of cases, assistance was provided to the consumer.



## WORLD CONSUMER RIGHTS DAY

In celebration of World Consumer Rights Day on 15 March, our office joined forces with The Consumer Protection Forum, an innovative joint assembly comprising the NCC, Provincial Consumer Affairs Offices, Sector Regulators and Ombuds (Motor Industry Ombudsman, Credit Ombudsman), to promoting consumer rights in South Africa. Our thanks to the provincial forums who ran campaigns across the country and to the KZN team for hosting us. Together we spent five days engaging with various stakeholders around the province and included:

- Inspections of shopping outlets to check compliance with various laws
- Consumer workshops in Umlazi, KwaMashu and Hammarsdale
- Mall exhibitions
- A march by consumers, regulators and Ombud offices
- A panel discussion that critically examined the state of consumer protection in South Africa. Panelists included academics, our Ombudsman, Ms Magauta Mphahlele, regulators and business chambers.

## MEDIA ACTIVITY

We continue to enjoy wide coverage on various media platforms. We strive to maintain good relations with the media through being responsive and providing quality content. We are greatfull to all the journalists and channels that continue to give us free coverage as this assists us to create general awareness about rights and responsibilities of consumers and participants.

### Television

DATE	CHANNEL	SHOW
03.01.2019	SABC 2	Speakout
17.01.2019	SABC 2	Speakout
24.01.2019	SABC 2	Speakout
28.02.2019	SABC 2	Speakout

### Print

DATE	PUBLISHER	TOPIC	JOURNALIST
20.02.2019	Business Tech	NewsletterQ4 2018	Ryan Brothwell
21.02.2019	The Star	Price Error	Georgina Crouth
22.02.2019	The Star	Refund with driving schools	Georgina Crouth
25.25.2019	Times Live	Removal Companies	Wendy Knowler

# MEDIA ACTIVITY CONTINUED

Radio Interviews			
DATE	STATION	TIME	TOPIC
04.01.2019	Cape Talk	1:14	Consumer rights
04.02.2019	Capricorn FM	17:40	Consumer rights if you forgot to pay for an item
12.02.2019	Metro FM	20:00	Telemarketing
24.02.2019	Lesedi FM	6:20	Price errors
27.02.2019	Cape Talk	1:55	Non-delivery
14.03.2019	Capricorn FM	17:00	Expired goods in small and informal businesses
15.03.2019	Jozi FM	9:00	WCRD 2019
15.03.2019	Phalaphala FM	8:20	WCRD 2019
15.03.2019	Alex FM	7:20	WCRD 2019
18.03.2019	Motsweding FM	13:20	Consumer infringes another consumer
18.03.2019	Metro FM	20:30	WCRD 2019
19.03.2019	Jozi FM	19:00	CGSO Office &WCRD 2019
20.03.2019	Motsweding FM	21:20	Rights to return goods
23.03.2019	TruFM	7:20	Consumer rights in terms of CPA
25.03.2019	Metro FM	8:20	About the CGSO
28.03.2019	Phalaphala FM	7:40	Sell by & due dates on products
30.03.2019	TruFM	7:20	Consumer rights in terms of CPA

## PARTICIPANT COMPLIANCE AWARENESS AND TRAINING

In terms of our mandate to educate consumers and participants, we teamed up with the SABC to produce our first radio ad which aired on [Ukhozi FM](#), [Lotus FM](#), [Good Hope FM](#) and [SAfm](#). The aim was to reach retailers and service providers who may not be aware of their obligation to sign up with the CGSO in terms of the requirements of the CPA and Code of Conduct.

We were also very proud to have partnered with Sasol and Nestle to offer consumer-awareness training to their customer-facing employees.

## LAUNCH OF CGSO YouTube CHANNEL

Keep up to date with all the news and happening at CGSO by liking us on Facebook and following us on Twitter. We have also launched our own YouTube channel! [Click here to watch and LIKE!](#)



### FACEBOOK: DATA ANALYTICS

ITEM	JAN-FEB	MARCH	PERFORMANCE
Page engaged users	4,472	9,683	+5,211
Total reach	56,997	369,138	+312,141
Viral reach	8,313	20,321	+12,008
Total impressions	100,177	507,483	+407,306
Viral impressions	12,520	34,072	+21,552
Reach off page posts	56,391	367,726	+311,335



### TWITTER: SUMMARY

PERIOD	IMPRESSIONS	NEW FOLLOWERS	PROFILE VISITS	MENTIONS
January	9,605	2	30	4
February	5,154	3	13	1
March	14,200	9	213	15

# CASE STUDY

## Dream Vacation or Nightmare Holiday Home?

This is a cautionary tale from a complainant who booked a dream holiday rental in Cape Town over the December holidays in 2017, at the height of the Western Cape's water crisis. Like so many people these days, the booking was made online. The property – featuring a dazzling blue pool – was advertised as luxury accommodation at a cost of R135 770 for 10 days, with full payment required up front.

The transaction was done through a booking agent, who was also responsible for placing the advert.

However, upon arrival at the holiday rental, the complainant was appalled to find that the property bore very little resemblance to the photographs posted in the advert and was – allegedly – uninhabitable, causing the complainant to seek alternative holiday accommodation. On lodging a complaint with the booking agent, the complainant was given a 35.5% refund amounting to R48 237.37. When the rental agent refused to refund the balance, the complainant approached our office to seek redress for the remaining R87 533.37 on the basis that the advertisement was misleading and that had they known the true state of the property, they would not have booked it. The complainant was of the view that it did not constitute luxury accommodation, nor was it worth R135 770, especially when compared with the alternative accommodation that they managed to secure at very short notice, at a cost of R80 000.

### 1. Supplier's response

The supplier was unwilling to refund any further monies as the guests allegedly voluntarily departed without giving them an opportunity to remedy the issues.

The supplier disagreed that the property was uninhabitable, and explained that in "subjective" situations they always inform their guests that should they wish to move out, they will open the property up for further availability and any new income received will be credited back to them. The supplier accordingly refunded the complainant R48 237.37.

While the supplier acknowledged that the pool was not functional due to the drought, they contended that the compensation offered was sufficient.

The supplier's attorney further highlighted certain terms and conditions in the Rentals Reservation Agreement entered into between the supplier and complainant, specifically: 'For bookings cancelled less than 30 days from arrival date a cancellation fee of 100% of the Rental is charged.' The indemnity clause was also highlighted which provides: 'the tenant shall not have any claims of any nature against the Manager or the Owner for any loss, damage or injury which the Tenant may directly or indirectly suffer (even if such a loss, damage or injury is caused through the negligence of the Manager or the Manager's servants or employees or the Owner) by reason of any latent or patent defects in the Premises or fire in the Premises or theft from the Premises or by reason of the Premises or any part thereof being in a defective condition or state of disrepair....'

The supplier's attorneys further advised that the booking was not cancelled due to any breach or force majeure but on the alleged unilateral decision of the guests to relocate. This was done less than 30 days from arrival and they were therefore liable for 100% of the total rental. The supplier further contended that the listed complaints did not constitute valid grounds to lawfully demand a full refund namely:

- dirty swimming pool
- half torn sticker on the dustbin
- clutter
- scruffy looking coat hanger.

They further maintained that the issues that the complainant had with the property could have been easily fixed, but that the guest voluntarily decided to find alternative accommodation.

### 2. What the law says: Legal considerations/Applicable provisions of the Consumer Protection Act and Consumer Goods and Services Industry Code of Conduct

Section 29 of the Consumer Protection Act (68 of 2008) provides consumers with the right to fair and responsible marketing. In essence, Section 29 prohibits marketing which is misleading, fraudulent or deceptive, or which is conducted in a manner that is likely to imply a false or misleading representation concerning goods or services. Section 29 of the CPA should be read in conjunction with various other sections of the Act:

- Section 3(1)(d) which states that it is a purpose of the Act to protect consumers from unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices;
- Section 4(5)(b), which contains a general prohibition on engaging in conduct that is unconscionable, misleading or deceptive, or that is reasonably likely to mislead or deceive when dealing with a consumer in the ordinary course of the supplier's business;
- Section 40, which protects the consumer against unconscionable conduct including in connection with the marketing of goods and services;
- Section 41, which explains what false, misleading or deceptive representations for the purposes of the Act are;
- Section 48(2)(c), which provides that a transaction, an agreement, a term or condition of a transaction or agreement or a notice to which a term and condition is purportedly subject, is unfair, unreasonable or unjust if- the consumer relied on a false, misleading or deceptive representation, as contemplated in Section 41.
- Section 51(1)(a), (b) and (g), which prohibits a supplier from contracting out of the CPA or depriving consumers of their rights in terms of the CPA.
- Section 54, which gives consumers the right to demand quality services.

### 3. CGSO Findings

After considering the evidence presented by both the complainant and the supplier, our advice was as follows:

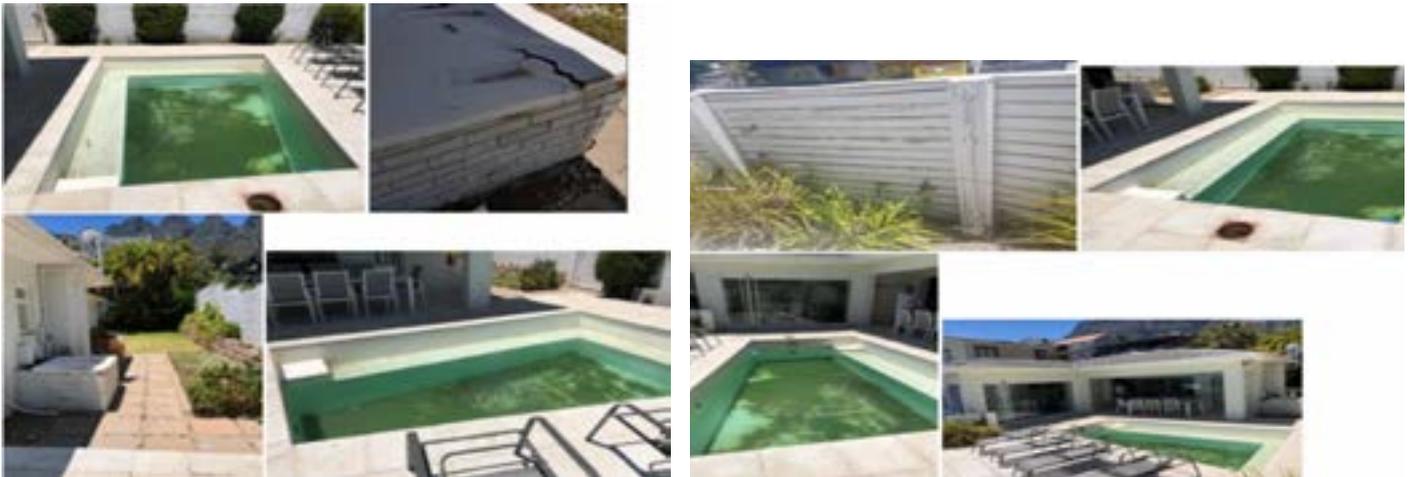
#### 3.1 Marketing of the property

The complainant booked accommodation based on the following pictures and advertisement:



# CASE STUDY CONTINUED

Upon arrival the complainant immediately noticed that the property was in a dilapidated state and took the following pictures:



Our office attempted to establish from the supplier if the complainant was at any time prior to the booking of the accommodation, informed of the condition of the property and that it no longer resembled the images used to market the property. From what we could determine, the property was still being marketed as having a pristine pool and well-maintained facilities.

The supplier advised that they have a general notice on their website advising consumers that jacuzzis and pools may not be operational and that gardens may look a little dreary. The complainant also confirmed that they were aware of the water restrictions but reiterated that the overall look and the upkeep of the property was not at all as what was represented to them.

Based on the photographs in the marketing material and the actual photographs submitted by the complainant, there is clearly a vast difference as to how the property was represented to the complainant versus what the complainant found upon arrival. While we take note of the supplier's efforts to advise customers of the effects the drought may have on pools and gardens, the fact remains that the general up-keep of the property was lacking. Further, if one considers the amount paid by the complainant for the accommodation, a reasonable person would have expected the property to be in mint condition (as per the marketing photographs) and not in a state of disrepair, including a peeling fence, a broken pool cover, an unkempt garden and clutter in the house.

We are therefore of the view that the supplier did not comply with the provisions of CPA, in that their standards of marketing did not meet the criteria listed in the CPA:

*'Section 29(a), A producer, importer, distributor, retailer, service provider must not market any goods or services- (a) in a manner that is reasonable likely to imply a false or misleading representation concerning those goods or services.'*

And

*'Section 41(1)(a)-(c), In relation to the marketing of any goods or services, the supplier must not, by words or conduct—*

- (a) directly or indirectly express or imply a false, misleading or deceptive representation concerning a material fact to a consumer;*
- (b) use exaggeration, innuendo or ambiguity as to a material fact, or fail to disclose a material fact if that failure amounts to a deception; or*
- (c) fail to correct an apparent misapprehension on the part of a consumer, amounting to a false, misleading or deceptive representation.'*

We are of the view that the way the property was marketed created a false impression and misled the complainant to expect a well-maintained property. The supplier advised that they could have easily fixed the issues, thereby affirming that the property was not the same as per their marketing. It is however not clear to us how a green pool and cracked walls could have been fixed within a short period, within the context of the drought situation and without disturbing the peace and privacy of the occupants.

### 3.2 Supplier not given an option to repair

The supplier's defence was based on the fact that they were not given an opportunity to rectify the issues, which they claim, could have been done very easily and in a short period of time. Section 54 of the CPA provides consumers the right to demand quality services. Services is defined under Section 1 of the CPA and includes accommodation.

Section 54(1)(b) provides that a consumer has the right to service which is performed 'in a manner and quality that persons are generally entitled to expect'. The question therefore is what a reasonable person would have expected the condition of the accommodation to be.

Many of these expectations are created by the marketing of accommodation facilities through the use of glossy pictures. Another factor is the price paid. In this instance the accommodation was marketed (as per the pictures) to be in an excellent condition. Further the complainant paid an amount of R135 770 for 10 nights. Taking into account the marketing pictures and the amount paid, we are of the view that the complainant was entitled to complain as they did not receive the standard of service which they reasonably were entitled to expect.

Section 54(2) provides for two remedies in the event that a supplier fails to meet the obligations of quality service: The consumer will have the choice between demanding that the defect be remedied or that a reasonable portion of the price paid by the consumer be refunded. ***The consumer has the unfettered choice between the remedies in Section 54. Therefore, a complainant is not obligated to first allow a supplier to remedy the quality issues if they prefer a refund.***

### 3.3 Cancellation of the agreement

Even though Section 54 of the CPA does not specifically make provision for the right to cancel the agreement, the consumer will still be able to cancel in terms of common law, by virtue of Section 2(10) of the CPA which provides that the CPA must not be interpreted to limit the consumer's right in terms of common law. A party is entitled to cancel a contract, and be placed in the position he or she was prior to entering into

## CASE STUDY CONTINUED

the agreement, if a misrepresentation was made to that party and based on the misrepresentation, induced the party to enter into the agreement.

The question one should therefore ask is: Would the complainant have entered into this agreement had the pictures the complainant took been used in the marketing of the property? We are of the opinion that the complainant would definitely not have considered this accommodation for R135 770 had they not relied on the marketing pictures.

We therefore believe that the complainant was entitled to cancel the agreement and obtain a full refund. We also take note that the supplier in their terms and conditions exclude liability and limits the consumer's right to cancel the agreement. As mentioned under the legal considerations, Section 51 of the CPA prohibits any contract terms which limits a supplier's liability in terms of the CPA or waive or deprive a consumer a right in terms of the CPA. A supplier can therefore not rely on a term in an agreement which prohibits a consumer a right in terms of the provisions of the CPA.

### 4. Conclusion

Due to the misleading marketing of the property we are of the view that the complainant was entitled to cancel the agreement and obtain a full refund.

We accordingly recommended that the supplier refund the difference of the amount paid and the amount already refunded which amounts to R87 532.63. The complainant however indicated that they would be satisfied with a refund of R55 000, being the difference between the amounts paid for the two sets of accommodations.

After considering our recommendation, the supplier offered to refund 50% of the amount claimed by the complainant, i.e R27 500, which the complainant accepted. The complainant was therefore refunded a total of R75 737.37.

## USEFUL CONTACTS

ITEM	CONTACT PERSON	EMAIL ADDRESS
SERVICE AND POLICY ISSUES	Magauta Mphahlele	<a href="mailto:magautam@cgso.org.za">magautam@cgso.org.za</a>
PARTICIPANT SUBSCRIPTION, FEES AND BILLING	Queen Munyai	<a href="mailto:queenm@cgso.org.za">queenm@cgso.org.za</a>
COMPLAINTS	Bonita Hughes	<a href="mailto:bonitah@cgso.org.za">bonitah@cgso.org.za</a>
CALL CENTRE, MEDIA AND PARTICIPANT TRAINING	Ouma Ramaru	<a href="mailto:oumar@cgso.org.za">oumar@cgso.org.za</a>
NEW PARTICIPANT SIGN UP	Katlego Lehabe	<a href="mailto:katlego@cgso.org.za">katlego@cgso.org.za</a>

[www.linkedin.com/company/consumer-goods-services-ombudsman](http://www.linkedin.com/company/consumer-goods-services-ombudsman) 

[www.facebook.com/cgsombud](https://www.facebook.com/cgsombud) 

[twitter.com/cgsombud](https://twitter.com/cgsombud) 

[www.youtube.com/channel/UCtyfp8cOY3uPEUao1sIDOMA](https://www.youtube.com/channel/UCtyfp8cOY3uPEUao1sIDOMA) 



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