



CGSO Press Release – March 2020

**The Consumer Protection Act: Cancellations of Bookings and Reservations in the Context of COVID-19 Travel Bans and Restrictions**

The breakout of COVID-19 and the resulting travel bans and restrictions on gatherings has resulted in a flood of cancellations of flights, accommodation and other services. These cancellations will clearly have a negative impact both on consumers, suppliers and the economy. There is a widespread confusion about the rights and responsibilities of affected parties in relation to claims for refunds.

Consumer Protection Laws always tries to balance the rights of consumers and suppliers. The CGSO empathises with businesses who stand to carry massive losses due to cancellations. “Therefore, we urge all parties to act reasonably and fairly as well as work together to minimise the impact on the economy, individuals and households. We also hope that our government will consider some relief measures for suppliers to stem potential job losses and the collapse of the economy” said Ms Magauta Mphahlele, the Ombudsman.

“While it is the view of the CGSO, based on its interpretation of the spirit and intent of the CPA, that consumers have a right to a full refund in these circumstances, if a postponement is possible we urge consumers to rather take this option rather than request a refund to minimise the impact on suppliers who are also not at fault” said Ms Mphahlele. She advised suppliers to treat each case on its merits and develop incentives to encourage consumers to accept postponements where possible.

Sections 17 and 47 of the CPA regulates how voluntary cancellations by a consumer as well as cancellations arising out of the inability of a supplier to provide a service either due to their own fault or circumstances that are outside of their control. The declaration of a state of national disaster has forced both consumers and suppliers to cancel advance bookings and reservations due to the travel bans and restrictions on various types of gatherings. It is therefore common cause that in most cases none of the parties are at fault where a cancellation must be processed.

Section 17 of the CPA deals with consumers’ rights to cancel bookings and reservations. In this section suppliers can charge a reservation deposit and a reasonable cancellation fee should a consumer cancel prematurely. However section 17(5) provides that **“17 (5) A supplier may not impose any cancellation fee in respect of a booking, reservation or order if the consumer is unable to honour the booking, reservation or**

**order because of the death or hospitalisation of the person for whom, or for whose benefit the booking, reservation or order was made”.**

It is therefore clear in the above section “that consumers are not to be penalised for a cancellation that is due to illness or death” said Ms Mphahlele. While many individual consumers have not been tested for the COVID-19 virus, the restrictions imposed by the President and the Health Department is treating everyone as being “ill”, hence the restrictions. As a result, it is the interpretation of the CGSO, based on the intention behind section 17(5) of the CPA, that consumers are entitled to full refunds when they cancel due to the travel bans and restrictions on gatherings.

However, there is some respite for suppliers. Section 47 deals with overbooking and overselling. While in this context suppliers are not guilty of overbooking or overselling, this section speaks to what should happen if cancellations arise due to no fault of the supplier. Section 47(3) provides that:

*(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.**

The above section entitles the consumer to two types of recourse if the supplier is at fault, a full refund with interest plus compensation for direct incidental costs. However, where the supplier is not at fault and has taken reasonable steps to inform consumers about the shortage of stock or capacity, the consumer is only entitled to a refund and not consequential damages as per section 47(5):

*(5) Subsection (3)(b) does not apply if—*

**(a) the shortage of stock or capacity is due to circumstances beyond the supplier’s control, subject to subsection (6); and**

**(b) the supplier took reasonable steps to inform the consumer of the shortage of stock or capacity as soon as it was practicable to do so in the circumstances.**

The CGSO’s view is that consumers cannot be charged a cancellation penalty and be refused a refund irrespective of who initiates the cancellation due to the travel bans and restrictions on gatherings. Many suppliers are offering consumers the option to postpone the bookings or reservations to a future date instead of a refund and this raises questions of whether suppliers have the right to do so and if consumers must accept that offer. Section 47(4) does allow the supplier to rely on a legal defence against a claim for a refund if they make an alternative offer to satisfy the promise to deliver, but the consumer has to consider and choose if they want to accept that offer. Where the consumer is being unreasonable, the supplier has some recourse as per section 47(4) below.

**(4) It is a defence to an alleged failure to supply any goods or services, as contemplated in subsection (3), if—**

**(a) the supplier offered to supply or procure another person to supply a consumer with comparable goods or services of the relevant kind to satisfy the consumer’s request; and**

(b) the consumer—

(i) accepted the offer, and the supplier has supplied or procured another person to supply the goods or services so offered and accepted; or  
(ii) unreasonably refused that offer.

It is therefore important for consumers to consider alternative offers by suppliers in place of a cancellation refund and be reasonable considering the circumstances. However, suppliers must understand that they cannot impose a blanket no refund, voucher policy or other alternative.

Ms Mphahlele further cautioned suppliers not to use the disaster to circumvent the law and unnecessarily inflate the prices of goods and services. She further urged businesses to ensure that their cancellation policies are in line with the CPA, are communicated to consumers through accessible channels and that the claims and disputes contact details and channels are displayed or communicated in plain and understandable language.

If suppliers are not able to resolve disputes relating to cancellations between themselves and consumers, they are to advise consumers to approach the CGSO.

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ISSUED BY **OUMA RAMARU** ON BEHALF THE CONSUMER GOODS AND SERVICES OMBUD

TEL: (011) 781-2607      CELL: 073 899 9551

EMAIL: [oumar@cgso.org.za](mailto:oumar@cgso.org.za)

CGSO sharecall helpline (0860 000272)