



Press Release – May 2020

DISCLOSURE FOR RETURNS AND REFUND POLICIES DURING LEVEL 4 LOCKDOWN

The CGSO has received several complaints relating to returns, especially of clothing during the Level 4 lockdown. We are advised that some clothing suppliers are not allowing fittings or returns, and that consumers only find out about this when they attempt to return.

Ms Magauta Mphahlele, the CGSO Ombudsman advised that “lockdown related returns policies must be judged against the very real health concerns regarding the spread of the virus and measures to mitigate this. “The CGSO fully understands why suppliers would want to limit the fitting and return of clothing because of the potential of the virus to be spread. However, a balance must be struck between the very necessary measures required to minimise the spread of the virus and compliance with the Consumer Protection Act (CPA)”.

In terms of the CPA, suppliers of goods and services have the right to implement their own returns and refunds policies as long as these do not breach the general right to choose and examine goods provided for in section 18 and the right to return goods provided for in sections 20 and 56 of the CPA. “At the same time, the pandemic and the resulting lockdown restrictions to curb its spread presents new challenges that are not necessarily fully provided for in current laws. In the absence of clear legal directives, we must find a middle ground that will allow for the management of the spread of the virus and taking care of consumers’ rights”, said the Ombudsman.

Section 20 provides as follows:

20. (1) This section is in addition to and not in substitution for—

(a) the right to return unsafe or defective goods, contemplated in section 56; or

(b) any other right in law between a supplier and consumer to return goods and receive a refund.

(2) Subject to subsections (3) to (6), the consumer may return goods to the supplier, and receive a full refund of any consideration paid for those goods, if the supplier has delivered—

(a) goods to the consumer in terms of an agreement arising **out of direct marketing, and the consumer has rescinded that agreement during the cooling off period, in accordance with section 16;**

(b) goods that **the consumer did not have an opportunity to examine before delivery,** and the consumer has rejected delivery of those goods for any of the reasons contemplated in section 19(5);

(c) **a mixture of goods, and the consumer has refused delivery** of any of those goods, as contemplated in section 19(8); or

(d) **goods intended to satisfy a particular purpose communicated** to the supplier as contemplated in section 55(3), **and within 10 business days after delivery to the consumer, the goods have been found to be unsuitable for that particular purpose.**

(3) Subsection (2) does not apply with respect to any goods if—

(a) for reasons of public health or otherwise, a public regulation prohibits the return of those goods to a supplier once they have been supplied to, or at the direction of, a consumer; or

(b) after having been supplied to, or at the direction of, the consumer, the goods have been partially or entirely disassembled, physically altered, permanently installed, affixed, attached, joined or added to, blended or combined with, or embedded within, other goods or property.

The above section means that if a consumer walks into a clothing store and buys clothing without fitting them, the store is under no legal obligation to accept the return of the clothing as long as the clothing or any other goods are not defective. In this instance the consumer was allowed to exercise the discretion whether to fit or not so the suppliers cannot be held liable if the clothes do not fit or the consumer changes their mind for any other reason. However, where the supplier specifically prohibits fitting then there would be a possible contravention of the CPA as section 18 of the CPA accords the consumer the right to choose and examine goods displayed for sale to ensure that they are fit for purpose.

Where the consumer was accorded the right to choose and examine goods and the goods are not defective, suppliers can set their own refunds and returns policies. Currently for change of mind returns, eg clothes not fitting etc, some suppliers would require that clothing be returned within a specific number of days, with the price tag attached and a receipt. Some will have a no returns and refunds policy. These types of policies fall outside the ambit of the CPA and are entirely up to suppliers.

Fitting, returns and refunds are not allowed for some items where public regulation prohibits such. In terms of section 20(3)(a) above, the consumer has no right of return if for reasons of public health, a public regulation prohibits the return of those goods. While there are valid public health concerns regarding the spread of the virus, the CGSO is of the view that it may be possible to mitigate this risk by allowing fitting and returns under strict health conditions to accord the consumer the right to ensure that the clothes are fit for purpose and minimise the need for clothes to be returned. Without allowing consumers to fit, it is difficult to see how a no return policy can be justified, even under lockdown.

As consumers are also purchasing through online platforms, it is important to note the provisions of section 44 of the ECT Act as well as section 18(3) of the CPA which require goods that are bought on the basis of a sample or a description (from a catalogue or online platform for example), to fit the sample and description when delivered. If not, the consumer has a right of return and refund. At the same time Section 44 of the ECT Act allows the right to return goods without reason within 7 days of receipt of the goods.

In order to minimise disputes, it is important that consumers are well informed about any new lockdown return and refund policies. The FAQs on websites and other online platforms should be updated to cover these new policies. The new policies should also be prominently displayed in store and on other platforms so that consumers can make informed decisions prior to purchasing. Clear directives on the safe handling of goods to minimise the spread of the virus should be communicated including any measures that the suppliers will implement to disinfect returned clothing.

Ends

The Office of the **Consumer Goods and Services Ombud** (CGSO) is the consumer goods and services industry's compulsory Ombud scheme which has been accredited by the Minister of Trade and Industry in terms of section 82(2) of the **Consumer Protection Act(CPA)**. The CGSO enforces the Consumer Goods and Services Industry Code of Conduct by mediating disputes between consumers and suppliers of goods and services. The service is free to consumers.

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