

Cancellation of orders for product not in writing: Supplier should accept cancellation

Complaint ref : 20131021759; 201310281082;
201310281117 and 20131119991
Adjudicator : N Melville
Date : 21 May 2014

1. Introduction

The Consumer Goods and Services Ombud (CGSO) received the above list of complaints regarding A products that were sold by a diversion distributors but have in common that the purchases were financed by Cl. A further business, G, is involved as it provides the warranty and after sales service on the products.

2. Consideration of complaints

Taken together, the complaints raise a number of concerns that may collectively be indicative of an undesirable business practice. The first area of concern is that in cases one and four, the complainant soon realized that they could not afford the machines: Thus gives rise to the question regarding whether the credit was not extended recklessly. This aspect falls within the domain of the National Credit Regulator (NCR).

The second concern is that in all four cases, the complainants experience varying degrees of difficulty in the cancellation of the agreements

There is a matter of clarity as to whether the section 16 CPA cooling off period or the section 121 NCA cooling off period would apply. The former permits notice of termination in writing or by other recorded form, while the latter requires the delivery of a notice in the prescribed manner. Section 2(9)(b) of CPA provides that the provision that extends the greatest protection to the consumer will prevail if there is variance between two acts. In this case, the CPA offers the greater protection.

Beyond the cooling off period, in terms of section 122 of NCA, a consumer may terminate an agreement at any time, subject to payment of the settlement amount, and under section 14 of CPA, a consumer may cancel a fixed term agreement subject to the payment of a cancellation fee. In all four complaints, it appears that the consumers' attempts to cancel the agreements were thwarted and then recovery action resorted to. It is not clear whether the correct processes were followed in this regard.

3. Recommendation

The supplier is given the opportunity to resolve all four cases by backdating the acceptance of the respective cancellations to the dates on which the complainants say they first gave notice of intention to cancel the agreements and calculated refunds in terms of the relevant sections of the CPA or in NCA, depending upon when the notice was given. Further, the supplier is requested to give an undertaking that it will take appropriate remedial action to prevent the recurrence of the problem.

