

CGSO ADVISORY NOTE 3: CREDIT RELATED COMPLAINTS

Overlapping of CPA and NCA

Many transactions under the Consumer Protection Act (CPA) are accompanied by credit agreements which are covered by the National Credit Act (NCA). This causes confusion as to which regulatory system complaints fall under: the National Consumer Commission/ the Consumer Goods & Services Ombud or the National Credit Regulator / Credit Ombud (both Acts provide for consumers approaching an ombud as an alternative to going to the respective regulator).

Section 5(2)(d) of the Consumer Protection Act provides:

This Act does not apply to any transaction—

(d) that constitutes a credit agreement under the National Credit Act, but the goods or services that are the subject of the credit agreement are not excluded from the ambit of this Act;

This ensures that goods sold through a transaction in terms of the NCA will be subject to the protections afforded by the CPA. These protections include the imposition of strict liability upon suppliers for damages suffered by consumers as a result of defects in products sold to them by the suppliers.

This approach seems at first glance to be the perfect solution, but there is a problem in that not all of the sections of the CPA relate to either goods, services or the agreement. In fact, many of the important safeguards created for consumers relate to the marketing, or promotion, of goods.¹

Where there are two separate parts to the transaction, the CPA would apply in its entirety to the non-credit-related part of the transaction, for example, where someone purchases goods by using a credit card, the transaction with the supplier regarding the sale of the goods would be covered by the CPA, while the credit card transaction would not.

Where there is a single agreement that covers both the terms of the sale of the goods or services and the provision of credit to finance the transaction, both Acts apply, but to different aspects of the transaction. The CPA applies, for instance, to the delivery and quality of the goods and services while the NCA applies to the form and content of the agreement. It follows that the CPA then does not apply to aspects of the agreement covered by the NCA. The Table on the following page suggests a list of CPA provisions that would not apply to the agreement.

¹ Neville Melville & Robin Palmer 'The applicability of the Consumer Protection Act 2008 to credit agreements' SA Mercantile Law Journal Vol 22 No 2 2010, 272-278

SUBJECT MATTER	SECTION(S)
Expiry and renewal of fixed-term agreements	14
Consumer's right to cooling-off period after direct marketing	16 & 32
Consumer's right to cancel advance reservation, booking or order	17
Right to information in plain and understandable language	22
Sales records	26
Agreements with persons lacking legal capacity	39
Changes, deferrals, and waivers and substitution of goods	46
Unfair, unreasonable or unjust contract terms	48
Notice required for certain terms and conditions	49
Written consumer agreements	50
Prohibited transactions, agreements, terms or conditions	51
Powers of court to ensure fair and just conduct, terms and conditions	52

Table 1: Provisions of the CPA that do not apply to credit agreements

The following guideline is provided in an attempt to provide practical assistance to members of staff of CGSO with regard to which ombud office has jurisdiction in a particular case:

Complaint:

- No product delivered,
- Wrong product delivered,
- Product defective,
- Product taken for repairs,
- Product caused damage/ made sick
- Price not as advertised

=FOR CGSO.

Complaint:

- I cannot pay my account,
- They will not give me a copy of the contract,
- The amounts in the contract are wrong,
- They did not tell me that the total price would be --,
- I paid the amount outstanding but was handed over to debt collectors/ black listed,
- The account was opened in my name but not by me,
- The goods were repossessed

= FOR CREDIT OMBUD

Complaint: Combined:

I stopped paying my account because the goods were not delivered/ were defective/ were not returned from repair:

CGCO should advise the consumer to continue paying while the matter is sorted out and deal with it. We may have to refer the credit account side to the Credit Ombud later if that is not resolved by the supplier as well.

The approach to be adopted is:

- 1] Find out if the consumer has unsuccessfully attempted to resolve the complaint with the supplier's complaints department;
- 2] If they have not, refer them to the supplier using Format 2(b) and inform the consumer if the consumer is not happy or it takes longer than 20 business days (about one month), then the consumer can lodge a dispute with the Credit Ombud and provide the consumer with their details;
- 3] If the consumer has attempted to resolve the complaint with the supplier's complaints department, refer the complaint to the Credit Ombud.

All supporting documents and the branch details of the suppliers should be forwarded to Daisy Gunter.

Daisy's contact details are as follows:

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Fax: 086 675-6217

E-mail: dguntert@creditombud.org.za