



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



STAKEHOLDER NEWSLETTER

THE QUARTER IN REVIEW

JANUARY – MARCH 2020

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DOING OUR BIT TO FLATTEN THE CURVE

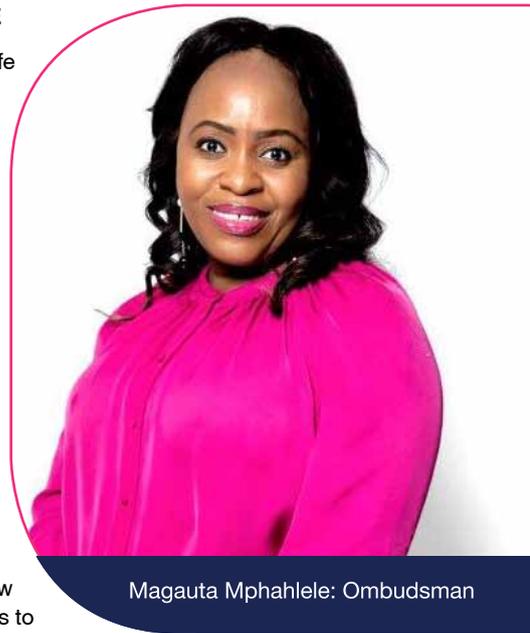
Since my last newsletter to you in January, life as we know it has completely changed. Like the rest of South Africa, the office of the CGSO has been under lockdown since 26 March. We are in much the same boat as our stakeholders – navigating uncharted waters in deeply uncertain times. We are doing our best to help participants, consumers and employees understand the implications of COVID-19 and encourage all stakeholders to do what's fair and what's right in these tumultuous times.

The unprecedented nature of the pandemic has thrown cancellations and the associated rights and responsibilities into the spotlight. While we understand that none of the parties are at fault, we are acutely aware of the impact of mass cancellations on the cashflow of suppliers. We, therefore, appeal to all parties to act reasonably, and where possible, for consumers to accept vouchers or postponements. Where this is not possible, the consumer is entitled to a full refund. Reasonable cancellation penalties apply where the consumer cancels voluntarily and where circumstances are unrelated to illness, death or a lockdown. Consumers and participants who have queries or issues relating to cancellations of travel plans as a result of COVID-19 should contact the CGSO through our online channels.

We have also received queries from participants and consumers on issues relating to the return of defective goods and the challenge of honouring warranties that expire during the lockdown period, either because stores are closed, or the consumer is ill or in quarantine. In this instance, we urge all members to live their brand values and take a humane and reasonable approach concerning goods not returned within the stipulated time frame, or with regards to loyalty vouchers or guarantees that expire during the lockdown period. The companies and brands that emerge intact from this pandemic will be those that put their customers first. This is the time to stay close to your customers and ensure that they are aware of the correct channels to lodge and escalate complaints. Communication is key during this period, whether it's informing consumers of how to go about lodging refunds and returns, or ensuring that your staff are sufficiently trained in any new procedures around the logging and time-stamping of electronic or telephonic queries with respect to defective goods, or goods that need to be returned when lockdown ends.

Finally, we are intensely mindful of the impact that this pandemic will have on our participants, particularly those in the SMME category and our board is currently considering various ways we can assist affected members during this difficult time. We hope to be able to communicate these soonest. To our participants who are staying open during this time to ensure that South Africans have food to eat, and access to medical supplies and essential services, we salute you.

Stay strong, stay healthy, and let's all do our bit to beat this virus.



Magauta Mphahlele: Ombudsman

MESSAGE FROM THE CEO



Queen Munyai: CEO

Our COVID-19 task team has been hard at work, ensuring the safety of our employees and configuring our remote work arrangements to ensure business continuity so that we may continue serving members and consumers.

In compliance with the lockdown directive issued by President Ramaphosa, all CGSO employees are working remotely from home. While this affects our call centre (which is closed temporarily), as well as our planned training and awareness activities, we are fortunate enough to have the systems and procedures in place to continue processing queries through online channels. The vast majority (99%) of complaints are lodged via email and our website, and this service will continue as usual. Equally, 99% of our case resolutions are handled via correspondence, and all our complaints-handling staff have remote access to our case management system.

Our SMS line is also fully functional, and anyone sending an SMS to 48030 with the word "CGSO" will receive a call back from one of our trained staff members. For participants who wish to reach us directly, they may contact us via email. Our social media channels are also operational and being monitored.

In the ordinary course of business, we receive an average of 40 complaints, and 81 calls per day. Given that consumers are unable to buy anything other than essential goods and services, we do not anticipate a spike in demand; however, we will be ready to handle the increase in queries once lockdown ceases and consumers seek guidance on cancellations, refunds and returns. In this regard, I would like to welcome Nicky Stetka, our new Complaints Manager, as well as Phillip Ramalobela, our Senior Adjudicator. They are on-board and on-line and ready to assist you.

While we will endeavour to ensure our usual turn-around and response times, these may be affected by suppliers being unavailable during this period. The majority of our members have indicated that they will be available remotely, while others have advised that they will be operating on a skeleton staff. In this instance, we are offering an extension of the 15-day turnaround time since it is unreasonable to expect members to respond when they are either closed for the duration of lockdown or operating with limited capacity.

These are testing times for all of us, and I would urge everyone to exercise patience and care. Please be assured that the CGSO board, management and staff are committed to helping our valued participants and their customers through this challenging time.

Stay safe.

COMING UP : A REVIEW OF INDUSTRY CODES

As reported previously, the CGSO has been engaging with the Department of Trade and Industry (the dti) and the National Consumer Commission (NCC) regarding the need to drive visible enforcement as well as to amend the Codes and the CPA to close some of the gaps identified during the implementation of the Codes.

We are glad to report that the National Consumer Commission has informed the CGSO that both the Motor Industry and CGSO Codes are now five years old and therefore due for review. The review is conducted on the basis of section 82(5) which empowers the NCC to

review the effectiveness of industry codes. The reviews will take place during the 2020/21 financial year.

We also welcome a more concerted effort to enforce the Code through investigations and referrals to the National Consumer Tribunal where qualifying participants do not cooperate with the Ombud Schemes or where they contravene the Codes and the CPA.

Below are the key issues we have previously raised and that we hope will be addressed in the review and amendment process.

PROPOSED AMENDMENTS

In view of the above, the CGSO, in terms of paragraph 2.3.8 of the CGCSI Code is recommending the following amendments:

- That a section be inserted in the CPA giving the Minister the explicit power to set participation fees and how they should be calculated;
- That the CGSO be enabled to refer matters directly to the NCC where the complaint itself, or the conduct of the supplier, requires the attention or intervention of the NCC;

- That the jurisdiction of the CGSO be defined or be clarified; and
- That the CGSO be given the power to make rulings that are binding on the supplier and not the consumer, subject to the right to appeal to the National Consumer Tribunal.

We will continue updating our stakeholders as this process unfolds.

INABILITY TO IMPOSE SANCTIONS OR MAKE BINDING RULINGS

With regards to sanctions, the Code does not empower CGSO to make binding rulings or impose sanctions. The CGSO is concerned about this shortcoming in the Code and thus has requested the NCC to consider a proposal for the Code to be amended so that the CGSO can, like other Ombuds, make decisions that are binding on the supplier and not the consumer.

Consumers are frustrated by the current process, whereby they have to lodge a fresh complaint with the NCC if the CGSO fails to assist them to reach a settlement with a participant. This applies even after their initial complaint was referred to the CGSO by the NCC.

There are two sections of the CPA that imply that an accredited Ombud should have the power to make binding rulings:

2 (2) When interpreting or applying this Act, a person, court or Tribunal or the Commission may consider...

(c) any decision of a consumer court, Ombud or arbitrator in terms of this Act, to the extent that such a decision has not been set aside,

reversed or overruled by the High Court, the Supreme Court of Appeal or the Constitutional Court;

82(6)(b) the Commission considers that the scheme is adequately situated and equipped to provide alternative dispute resolution services comparable to those generally provided in terms of any public regulation.

The alternative dispute resolution services provided by Ombuds in terms of the Financial Services Ombud Schemes Act 37 of 2004 and the Financial Advisory and Intermediary Services Act 37 of 2002 can all make binding determinations.

From our conversations with other Ombud offices, they seldom, if ever, have to resort to making binding rulings. Their ability to do so, however, acts as a powerful inducement to suppliers to accept recommended settlements at an earlier stage of the process. Where a supplier is not happy with the decision of an Ombud, we propose that they appeal to the National Consumer Tribunal.

CGSO GENERAL JURISDICTION CHALLENGES

With regards to Jurisdiction, the Code defines the CGSO's mandate in very broad terms as follows:

4.1 The Code applies to all Participants, unless they are regulated elsewhere by other public regulation, a Code prescribed by the Minister in terms of section 82 of the CPA and/or where a complaint falls within the jurisdiction of an Ombud with Jurisdiction, or an Industry Ombud accredited in terms of section 82 (6) of the CPA.

This definition is proving to be difficult to interpret and apply as it is too widely framed. The CGSO receives complaints regarding a very broad spectrum of goods and services, from tombstones to wedding photos. It cannot possibly master every field. A further weakness is

that certain sectors, such as the cellular network providers, dispute that they fall within the jurisdiction of the CGSO Code.

The initial intention was for the CGSO to handle retail industry-related complaints. Accordingly, the first version of the Code published in 2013 for comment listed the goods and services to be covered by the Code. This was subsequently replaced by the present general definition quoted above.

It is recommended that in the interests of certainty and efficiency, the definition of CGSO's jurisdiction be revisited and be made more specific. Alternatively, the industries to which the Code applies must be specified.

JURISDICTION OVER THE TELECOMMUNICATIONS SECTOR

Since inception, the CGSO has struggled to sign up all but one service provider in the telecommunications sector, based on an alleged lack of clarity around the CGSO's jurisdiction. This has been the cause of considerable frustration for consumers who do not understand why the CGSO can only deal with complaints levelled at one particular provider and not the industry in general.

The Code was promulgated by the Minister through the normal public consultation process and thus, it should be the norm that all affected parties were consulted. "**Consumer Goods and Services Industry**" means all Participants and/or entities involved in the Supply Chain that provides, markets and/or offers to supply Goods and Services to Consumers, unless excluded in terms of clause 4.4 hereof. Section 4 of the Code deals with the exclusion provisions as follows:

4 APPLICATION, SCOPE AND TYPE OF PARTICIPANT

4.1 The Code applies to all Participants, unless they are regulated elsewhere by other public regulation, a Code prescribed by the Minister in terms of section 82 of the CPA and/or where a complaint falls within the jurisdiction of an Ombud with Jurisdiction, or an industry ombud accredited in terms of section 82 (6) of the CPA.

4.2 It is mandatory for all Participants above to comply with the provisions of this Code, to register with the CGSO in accordance with the procedures provided on the CGSO website from time to time, and contribute towards the funding of the CGSO in accordance with the funding model as set out in clause 6.2.

4.3 This Code shall not be construed as to diminish a Consumer's rights under the CPA or any other law but it shall enhance the Consumer's rights to be equivalent to, or better than, the provisions of the CPA.

4.4 This Code excludes: transaction that are not covered by the CPA and/or that are governed by other public regulation; the automotive industry, Electronic Communication Service as defined in section 1 of the Electronic Communications Act, 2005 (Act No. 36 of 2005) and transactions with organs of state or financial institutions.

The CGSO's view is that the Telecommunications Sector must comply with the CGSIC Code since ICASA's jurisdiction for resolving consumer complaints is limited to:

- Quality-of-service complaints, such as complaints about network coverage; dropped calls; line installation, activation, transfer and suspension; ADSL; mobile-number portability or suspension of service;
- Complaints about the billing of data services, voice services and international roaming.

The CPA covers a much broader range of consumers facing- issues, including contracts, cancellations, quality of handsets and marketing. Consumers are therefore entitled to exercise their right to follow the ADR process outlined in section 70 of the CPA where they have a complaint against any qualifying participant as defined and which in our view, includes the telecommunications sector.

NON-COOPERATIVE PARTICIPANTS AND SUPPLIERS

In terms of section 82(8), “a supplier, must not, in the ordinary course of business, contravene an applicable industry code”. While the CGSO has been able to sign up a majority of large, small and medium retailers, manufacturers, distributors and producers, there are still entities who refuse to sign up or cooperate with the office when complaints are received against them. Some are in the process of challenging the constitutionality of the Codes, while others claim to be regulated elsewhere or allege that they are not in a position to afford the participation fees.

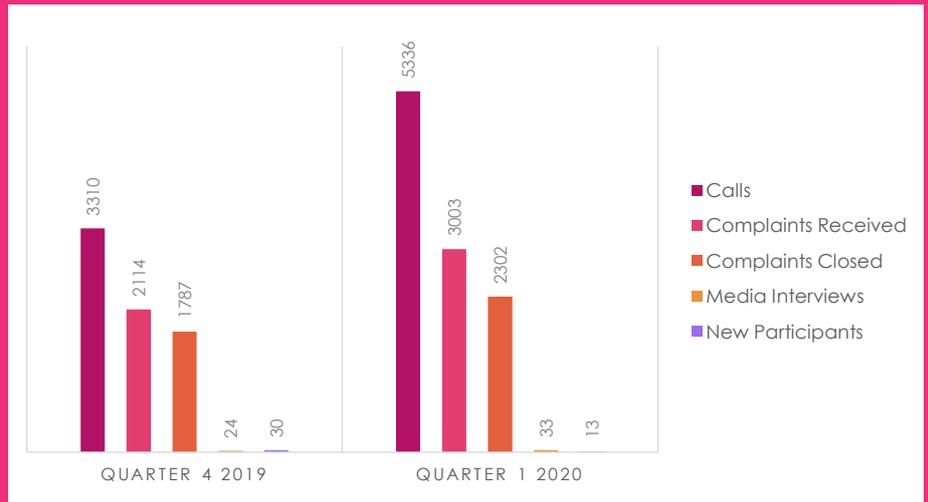
There are several cases that have gone through the courts pertaining to the Motor Industry Code of Conduct. While the Courts have clarified some provisions of the Code, there have been no negative comments relating to the Code itself, which continues to stand as is. We are therefore confident that the Courts understand the need for the Codes, as do the majority of companies operating in South Africa.

The CGSO has no power to sanction wrongdoers and must refer cases of non-compliance to the NCC - hence our plea to see more visible enforcement. This is also in the interests of fairness to those entities that are compliant, and who are contributing to the sustainability of the Codes.

OFFICE STATISTICS

As we continue to drive awareness through face-to-face workshops, media engagement and social media platforms, calls to our call centre as well as complaints received, continue to increase. This has increased our case load per administrator and adjudicator substantially. We are reviewing our internal processes to find creative ways to manage the increased case load. We will be employing part-time adjudicators as well as introducing efficiencies in our processes. In addition, we are empowering our case management team to improve how they handle cases.

We will also be addressing some of the negative feedback we have received from participants regarding the complaints' handling procedure. Please look out for communication in this regard.



Welcome

TO OUR NEW PARTICIPANTS

THE CGSO WELCOMES THE FOLLOWING NEW PARTICIPANTS:

1	GLENDALE FARM PROPERTY TRUST T/A GLENDALE TOMATOES
2	OCEAN BASKET FRANCHISE COMPANY (PTY) LTD
3	M.A P SCIENTIFIC SERVICES
4	REVIEW MANAGEMENT SOLUTIONS (PTY) LTD
5	GREAT DOMAINES CC
6	PRIDEKNIT (PTY) LIMITED
7	K2014146230 (PTY) LTD T/A ANNIQUE HEALTH & BEAUTY
8	EASTDENE LIQUOR STORE CC
9	DIAMOND LOUNGE CC
10	HEAVY FEATHER TRADING 50 CC
11	C.J. RANCE (PTY) LTD
12	EVERGROW IMPORT AND EXPORT CC
13	I B MCINTYRE & COMPANY (PTY) LTD

CASE STUDY:

CAN A TELECOMS PROVIDER CLAW BACK THE HANDSET SUBSIDY ON EARLY TERMINATION BY THE CONSUMER?

The issue of what constitutes a reasonable cancellation penalty keeps cropping up. This time we had to consider a case where the consumer complained that their cellphone provider was charging an unreasonable cancellation penalty. The cancellation penalty was largely made up of the subsidy claw-back as the provider advised that the handset subsidy was viable only if the consumer did not cancel.

1. Summary of the Complaint

On 15 November 2017 the consumer entered into a 24-month cellphone contract. However, the consumer elected to cancel the contract in June 2019, before the expiry date of November 2019, on the basis that the provider had unilaterally changed the terms and conditions of the contract by increasing the monthly contract fee.

The consumer alleges that the cancellation penalty charged by their provider is unreasonable and in breach of S14(2) of the Consumer Protection Act (CPA) read with regulation 5 in that it makes it impossible to cancel the contract as they would end up paying more than if they were to allow the contract to run to term.

2. The Response from the Provider

2.1 The provider argues that the cancellation penalty is in terms of section 14(3)(b)(i) which allows them to impose a cancellation penalty with respect to goods supplied, in contemplation of the agreement not enduring for its fixed term. They further advise that the handset subsidy pricing model is dependent on consumers remaining in contract for the fixed term to enable a return on investment (ROI). A premature cancellation results in a loss of ROI.

2.2 Below is the provider's proposed early termination fee (which is being disputed by the consumer) and how it was calculated:

- i. Current Month outstanding fees, i.e., any out-of-contract costs;
- ii. 20-days' notice period;
- iii. The insurance value is calculated at the start date of the contract/contract term x remaining months of the contract;
- iv. The insurance value is calculated at the start date of the contract/contract term x remaining months of the contract. The insurance value of this device at the start date of the contract was R15,389.00 (Samsung S8). * R15,389/24*4

2.3 According to the provider, the consumer is currently paying R634.63 per month. With 4.15 months remaining on the contract, the consumer would end up paying R2 633.71 if they allowed the contract to terminate at 24 months. If they cancel, the penalty would be R3 199.71 as per the calculation above.

3. Legal considerations/Applicable provisions of the CPA

3.1 Section 14 of the Consumer Protection Act deals with the termination of fixed-term contracts, while regulation 5 provides the criteria to be applied in determining a reasonable cancellation penalty. Section 14 provides that:

14. (1) *This section does not apply to transactions between juristic persons regardless of their annual turnover or asset value.*
- (2) *If a consumer agreement is for a fixed term—*
- (a) *that term must not exceed the maximum period, if any, prescribed in terms of subsection (4) with respect to that category of consumer agreement;*
- (b) *despite any provision of the consumer agreement to the contrary—*
- (i) *the consumer may cancel that agreement—*
- (aa) *upon the expiry of its fixed term, without penalty or charge, but subject to subsection (3)(a); or*
- (bb) *at any other time, by giving the supplier 20 business days' notice in writing or other recorded manner and form, subject to subsection (3)(a) and (b); or*
- (ii) *the supplier may cancel the agreement 20 business days after giving written notice to the consumer of a material failure by the consumer to comply with the agreement, unless the consumer has rectified the failure within that time;*
- (c) *of not more than 80, nor less than 40, business days before the expiry date of the fixed term of the consumer agreement, the supplier must notify the consumer in writing or any other recordable form, of the impending expiry date, including a notice of—*
- (i) *any material changes that would apply if the agreement is to be renewed or may otherwise continue beyond the expiry date; and*
- (ii) *the options available to the consumer in terms of paragraph (d); and*
- (d) *on the expiry of the fixed term of the consumer agreement, it will be automatically continued on a month-to-month basis, subject to any material changes of which the supplier has given notice, as contemplated in paragraph (c), unless the consumer expressly—*
- (i) *directs the supplier to terminate the agreement on the expiry date; or*
- (ii) *agrees to a renewal of the agreement for a further fixed term.*

- (3) **Upon cancellation of a consumer agreement as contemplated in subsection (1)(b)—**
- (a) **the consumer remains liable to the supplier for any amounts owed to the supplier in terms of that agreement up to the date of cancellation; and**

(b) the supplier—

- (i) **may impose a reasonable cancellation penalty with respect to any goods supplied, services provided, or discounts granted, to the consumer in contemplation of the agreement enduring for its intended fixed term, if any; and**
- (ii) **must credit the consumer with any amount that remains the property of the consumer as of the date of cancellation, as prescribed in terms of subsection (4).**

(4) *The Minister may, by notice in the Gazette, prescribe—*

- (a) *the maximum duration for fixed-term consumer agreements, generally, or for specified categories of such agreements;*
- (b) *the manner and form of providing notices to the consumer in terms of subsection (2)(c);*
- (c) *the manner, form and basis for determining the reasonableness of credits and charges contemplated in subsection (3); and*
- (d) *other incidental matters as required to provide for the proper administration of this section.*

3.2 What is a Reasonable Cancellation Penalty?

Regulation 5(2) provides guidance as to what criteria must be applied to determine a reasonable cancellation penalty. The regulation reads as follows:

- 5(2) *for the purposes of section 14(3), a reasonable credit or charge as contemplated in section 14(4)(c) may not exceed a reasonable amount, taking into account—*
- a) *The amount which the consumer is still liable for to the supplier up to the date of cancellation;*
- b) *The value of the transaction up to cancellation;*
- c) *The value of the goods which will remain in the consumer's possession after cancellation;*
- d) *The value of the goods that are returned to the supplier;*
- e) *The duration of the consumer agreement as initially agreed;*
- f) *Losses suffered or benefits accrued by the consumer as a result of the consumer entering into the consumer agreement;*
- g) *The nature of the goods or services that were reserved or booked;*
- h) *The length of notice of cancellation provided by the consumer;*
- i) *The reasonable potential for the services provider, acting diligently, to find an alternative consumer between the time of receiving the cancellation notice and the time of the cancelled reservation;*
- j) *The general practice of the relevant industry.*

5(3) **Notwithstanding sub-regulation (2) above, the supplier may not charge a charge which would have the effect of negating the consumer's right to cancel a fixed term consumer agreement as afforded to the consumer by the Act.**

3.3 The complainant signed the provider subscriber agreement. These include: Section 8 (Ownership of Devices), Section 16 (Cancellation of the Contract) and Section 17 (Amounts to be paid if the contract is cancelled). Section 8 provides that:

"PROVIDER will be the owner of the mobile device until you have paid the purchase price of the mobile device (which might be included in your monthly subscription) in full, except that where this contract is cancelled in terms of a breach of contract or as per your cancellation rights under the Consumer Protection Act, then PROVIDER will remain the owner of the mobile device until you have paid the purchase price of the mobile device in full, together with the cancellation fees."

3.4 Nowhere in the contract is the purchase price disclosed, nor the fact that the handset is subsidised and that this subsidy will be recovered if the contract is terminated prematurely. However, section 10.1 of the subscriber agreement indicates that the subscriber will be charged rates that are detailed on the provider's "website and/or your package option/price plan terms and conditions".

3.5 With regards to the subscriber's liability on cancellation, section 17 of the subscriber agreement provides that:

- 71.1 *If this contract is cancelled, you will be required to pay:*
- 17.1.1 *The monthly subscription applicable up to the cancellation date, except that if the cancellation date is not at the end of a particular month, then the monthly subscription for that month will be prorated;*
- 17.1.2 *All the usage charges up to and including the cancellation date;*
- 17.1.3 *All other amounts which PROVIDER is entitled to charge you up to the cancellation date or for any failure to make payment by you before or after the cancellation date; and*
- 17.1.4 *The cancellation charges, which will include (but may not be limited to) the balance of the purchase price of the mobile device.*
- 17.2 *You will also be required to pay PROVIDER the balance of the purchase price of your mobile device if you migrate to a lower mobile device subsidy package.*

3.6 At first glance - and based on the breakdown provided to us - the provider seems to have imposed changes in its proposed cancellation fee that are in line with section 14(3) read with regulation 5(2). These charges are:

- a) *1 month subscription fee to cover the 20 days notice period; and*
- b) *The balance of the handset cost, which is provided for in section 14(3)(b)(i) read with regulation 5(2)(c).*

3.7 An assessment of the cancellation fee breakdown as per the provider shows that 80% (R2 564.83) of the cancellation fee (R3 199.46) being charged by the provider is for the remaining cost of the subsidised handset. There are no other penalties or charges added.

3.8 While the cancellation charge imposed by the provider seems to be in line with the Act and its Regulations, a careful reading of section 14 (3), requires us to consider whether this proposed fee meets the full requirements of the said section, which provides that "Upon cancellation of a consumer agreement as contemplated in subsection (1)(b)—

- (a) *the consumer remains liable to the supplier for any amounts owed to the supplier in terms of that agreement up to the date of cancellation; and*
- (b) *the supplier—*
- (i) *may impose a reasonable cancellation penalty with respect to any goods supplied, services provided, or discounts granted, to the consumer in contemplation of the agreement enduring for its intended fixed term, if any;*

3.9 The charges levied by the provider are in line with the above section, however they still have to pass the test of reasonability as well as meet the requirements of regulation 5(3) which provides that while the provider is within its rights to charge all the cancellation fees it has charged, including recouping the benefits of a subsidised handset, the cancellation penalty should not have **the effect of negating the consumer's right to cancel a fixed-term consumer agreement as afforded to the consumer by the Act.**

3.10 The provider has explained that the level of handset subsidisation varies depending on the device type and price plan taken. Higher-end devices will receive substantial subsidisation on

high-value price plans i.e. an iPhone Xs on a Sky price plan will be subsidised more than an iPhone Xs on a Made for Me S contract. In our view, this seems to suggest that the price plan that the consumer chooses, in addition to the promo fee, contributes substantially to the provider's ability to recoup the handset subsidy. Based on the information provided, it is not possible to say exactly how much the price plan contributes to the recovery of the handset subsidy. This information could assist in determining a reasonable cancellation penalty.

3.11 The provider's subscriber terms refer to the "cost of the handset" but this cost is not disclosed, neither is the subsidy portion. As a result, the only time a subscriber becomes aware of the true cost of the handset is when they want to cancel. This makes it difficult for anyone, including this office, to determine the actual loss suffered by the provider at the point of cancellation, and based on that, to determine what the reasonable charge should be. Disclosing the cost of the handset in the subscriber agreement will ensure that consumers choose a handset that is within their means and for which they can meet the penalty charges should they cancel prematurely.

3.12 In this case, if the consumer does not cancel, it will cost them R2 633.71 whereas if they cancel, they will end up paying R565.75 more as the cancellation fee proposed by the provider is R3 199.46. The cancellation fee is higher than the full-term contract costs because the provider is reverting to charging the consumer the full value of the handset on the basis that they have to recoup the benefit to the consumer as it was provided on the condition that the contract endures for the full term. There is no disclosure in the contract regarding the actual cost of the handset.

3.13 While recouping the discount benefit is allowed in terms of section 14(3)(b)(i) of the Act, we still have to ask whether it is reasonable for the provider to charge it, and whether this charge has the effect of making it impossible for the consumer to exit the contract in contravention of regulation 5(3). Any reasonable person who conducts a cost benefit analysis of cancelling versus allowing the contract to endure for the full term, will be inclined not to cancel if the cancellation fee is higher than the amount they would end up paying if they allowed the contract to endure for the full term. It is therefore doubtful that the cancellation fee charged is compliant with regulation 5(3) which provides that **"Notwithstanding sub regulation (2) above, the supplier may not charge a charge which would have the effect of negating the consumer's right to cancel a fixed term consumer agreement as afforded to the consumer by the Act"**.

4. Suggested Resolution

4.1 Based on the reading of section 14 and more specifically section 14(3)(b)(i) read with regulation 5(2) and (3), we are of the view that the provider's cancellation charge negates the right of the consumer to cancel the contract, as provided for in the Act. It is our view that whatever method is used to calculate the cancellation charge, it must give a reasonable result that is demonstrably proportional to the actual loss suffered, and that complies with the CPA.

4.2 Due to limited disclosure regarding pricing and subsidies, this office is not in a position to prescribe what a reasonable cancellation calculation should be for the provider's customers, except to recommend that the provider revise its cancellation policy to ensure that there is full and upfront disclosure in the subscriber agreement of the handset cost. The policy must further be fully compliant with the spirit and intent of section 14 read with regulation 5. In this regard, we are of the view that the cancellation policy will need to pay particular attention to the requirements of regulation 5(2) and 5(3), which requires the provider to cater for different circumstances of cancellation, and most importantly, not make it impossible for the consumer to exercise their right of cancellation.

INTRODUCING OUR NEW TEAM MEMBERS



Nicky Stetka
Complaints Manager



Nomsa Tokoane
Marketing Assistant



Phillip Ramalobela
Senior Adjudicator



William Mmotong
Call Centre Agent



USEFUL CONTACTS

Ombudsman	Magauta Mphahlele	magautam@cgso.org.za
CEO	Queen Munyai	queenm@cgso.org.za
Participant Subscription, Fees and Billing	Rhoda Maphosa	accountant@cgso.org.za
Complaints	Nicky Stetka	NickyS@cgso.org.za
Media and Participant Training	Ouma Ramaru	oumar@cgso.org.za
New Participant Sign Up	Katlego Lehabe	Katlego@cgso.org.za

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SHARECALL: 0860 000 272 (CPA), FAX: 086 206 1999,
WEB: <http://www.cgso.org.za>, EMAIL: info@cgso.org.za
PHYSICAL ADDRESS: 292 on Surrey,
292 Surrey Avenue, Ferndale, Randburg.
POSTAL ADDRESS: PO Box 3815, Randburg, 2125