



NATIONAL CONSUMER COMMISSION

a member of **the dtic** group

## **EXPLANATORY NOTE 6 OF 2023**

**Date: 29 September 2023**

### **Monetary redress permissible under the Consumer Protection Act**

#### **1. PURPOSE**

- 1.1** In this explanatory note, the NCC seeks to provide clarity concerning circumstances wherein it is permissible for consumers to be awarded monetary redress in terms of section 56 of the Consumer Protection Act (CPA).

#### **2. FACTUAL BACKGROUND.**

- 2.1** Therefore, the CPA only provides for monetary redress in the form of a refund. However, the NCC has seen an increase in the volume of complaints wherein the complainants seek/claim damages within the ambit of the CPA, and this necessitated the publication of this explanatory note in an attempt to address expectations of the consumer when claiming for damages in terms of the provisions of the CPA.
- 2.2** The CPA in its current state does not provide for damages/compensation as one of the remedies available to complainants.
- 2.3** The Act provides for monetary redress in the form of a refund, and this is found in many sections throughout the provision of the CPA depending on the merits of each case, except for certain provisions of the CPA.

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2.4 In this explanatory note the focus is placed on monetary redress in terms of section 56 (2) and (3) of the CPA which provides as follow:

- “(2) *Within six months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty and at the supplier’s risk and expense, if the goods fail to satisfy the requirements and standards contemplated in section 55, and the supplier must, at the direction of the consumer, either—*
- (a) repair or replace the failed, unsafe, or defective goods; or*
  - (b) refund to the consumer the price paid by the consumer, for the goods.*
- (3) *If a supplier repairs any particular goods or any component of any such goods, and within three months after that repair, the failure, defect, or unsafe feature has not been remedied, or a further failure, defect, or unsafe feature is discovered, the supplier must—*
- (a) replace the goods; or*
  - (b) refund to the consumer the price paid by the consumer for the goods.”*

2.5 The NCC has observed that when a consumer has purchased a motor vehicle and discovered that the vehicle is defective within 6 (six) months of the delivery and having requested the supplier to repair the defect without success, the consumer takes it upon himself/herself to have the vehicle repaired by a third party.

2.6 The problem arises when the consumer lodges a complaint with the NCC for the recovery of the repair costs from the supplier within the prescripts of the CPA, as a remedy.

### 3. **EXPLANATORY NOTE.**

3.1 The CPA does not make provision for a consumer to have the vehicle repaired at his/her own costs and later claim compensation where the supplier failed or refused to repair the vehicle, instead it provides that where the consumer discovers a defect within 6 months from date of delivery, the consumer may require the supplier to repair or replace the vehicle. Where the supplier fails to do so then the consumer may cancel the transaction, return the vehicle to the supplier and be refunded the purchase price or replaced with another similar vehicle of the same value.

3.2 The CPA in such circumstances does not provide for compensation of the consumer. If the NCC receives this kind of a complaint, the NCC will only refer this matter to the National

Consumer Tribunal on grounds of contravention of the CPA and not claim damages since the Tribunal does not have jurisdiction to entertain damages claim.

- 3.3 Therefore, the fact that the CPA does not provide for compensation does not mean that the supplier has not contravened the CPA. Consumers are encouraged to lodge these kinds of matters to ensure that the supplier is prevented from further engaging in prohibited conduct and the Tribunal may impose an administrative fine against a non-compliant supplier.
- 3.4. Where the Tribunal has made a finding that the supplier has committed a prohibited conduct, it can then issue a certificate to that effect and such certificate can be used in the civil court to claim any damages suffered by the consumer without having to prove the cause of action/ damages. All that the consumer will be expected to prove at the civil court is the amount of the damages suffered by him/her.