



NATIONAL CONSUMER COMMISSION

a member of **the dtic** group

## EXPLANATORY NOTE 7 OF 2023

Date: 27 October

### The right to elect remedies in terms section 56 of the Consumer Protection Act

#### 1. PURPOSE.

The purpose of this explanatory note is to guide consumers and suppliers on who has the right to elect amongst the three remedies provided in terms of Section 56 of the CPA. This will be done by thoroughly interpreting the provisions of section 56 of the Consumer Protection Act (CPA) and case law.

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

2.1 The Commission has noticed a trend by suppliers who believe that they have a right to choose remedies in terms of section 56 of the CPA i.e. **Repair, Refund or Replacement** of the damaged or unsafe goods, where the defect occurred within 6 months from the date of purchase of goods. This defence is always couched in the following manner, “***surely, we have a right to choose to repair the goods, the Consumer does not have a right to cancel***”.

2.2 This Explanatory Note will clarify the provisions of section 56 of the CPA.

The right to elect remedies in terms section 56 of the Consumer Protection Act.

Section 56 provides as follows:

***“Implied warranty of quality”***

**56.(1)** *In any transaction or agreement pertaining to the supply of goods to a consumer there is an implied provision that the producer or importer, the distributor and the retailer each warrant that the goods comply with the requirements and standards contemplated in section 55, except to the extent that those goods have been altered contrary to the instructions, or after leaving the control, of the producer or importer, a distributor or the retailer, as the case may be.*

(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.*

2.2 Section 56(2) affords the consumer the right to return the goods where defect occurs within 6 months from the date of purchase and to choose whether he/she wants repairs or replacement, or whether he/she wants a refund of the purchase price if goods supplied do not satisfy the requirements and standards of section 55 of the CPA.

2.3 Despite the provisions of section 56 (2), some suppliers insist on repairing the goods when the consumer has elected a refund. In the case of **National Consumer Commission v Neil Reyneke Exclusive Auto t/a Exclusive Auto One**, the consumer purchased a motor vehicle on 19 December 2019 and took delivery on the same day. On 20 December 2019, the motor vehicle started to exhibit a strange noise from the engine bay.

2.4 The consumer notified the respondent of the defects, and the respondent advised the consumer to take the motor vehicle to the nearest garage for inspection. On 30 December 2019, the consumer took the motor vehicle to Ford Vereeniging Auto (For McCarthy (Pty) Ltd) as directed by the respondent. Ford Vereeniging Auto diagnosed the problem and issued a quote to replace one part. However, the consumer was later informed that the engine was faulty and had to be replaced. Ford Vereeniging Auto quoted the costs of repairs to be R78,599.44.

2.4 The respondent sent an email to the consumer's attorneys wherein it stated that it was taking responsibility for the damage to the vehicle sold to the consumer and offered to replace the motor vehicle's engine with an original Ford engine. However, the consumer refused the offer and demanded that the sale agreement be cancelled and that she be

refunded the purchase price. The Respondent argued that it has the Right to repair the motor vehicle and refused to refund the consumer the purchase price.

2.3 The Tribunal concluded that as a defective vehicle was sold, the consumer was entitled to cancel the agreement and claim a refund within six months after purchase. She was under no statutory obligation to first consider or allow any repairs by the respondent to the motor vehicle. Any other interpretation of the consumer's right, as outlined in section 56(2), would be erroneous.

### 3. **EXPLANATORY NOTE**

#### **Who has the right to decide between the Supplier and the Consumer?**

3.1 Consumers have the right to elect remedies in terms of section 56 (2) of the CPA. The supplier may make an offer to repair the goods when the consumers has elected a refund. However, the consumer is not bound by the supplier's offer.

3.4 Section 56 (2) (b) gives the consumer a right to elect whether they intend to repair; replace or cancel the transaction and request for a refund. It is only where the defect does not a major defect to warrant a refund or replacement, where a supplier can persist on the repair and not refund or replacement.