IN THE NATIONAL CONSUMER TRIBUNAL
HELD IN CENTURION

Case Number: **NCT/465107/2026/100(6)(a)**

In the matter between:

NATIONAL CONSUMER COMMISSION APPLICANT

and

AFFORDABLE POWER SOLUTIONS (PTY) LTD RESPONDENT

Coram:
Dr MC Peenze - Presiding Tribunal member
Adv C Sassman - Tribunal member
Mr S Mbhele - Tribunal member

Date of the hearing: - 28 October 2026
Date of judgment: - 30 October 2026

JUDGMENT AND REASONS

THE PARTIES

1. The applicant is the National Consumer Commission (NCC or the applicant), a juristic person established in terms of section 85(1) of the Consumer Protection Act 68 of 2008 (CPA). The applicant is responsible for enforcing the CPA by monitoring the consumer market to ensure that prohibited conduct and offences are prevented, detected, and prosecuted.

2. At the hearing, the applicant was represented by Miehleketo Magagula, the applicant's legal advisor.

3. The respondent is Affordable Power Solutions (Pty) Ltd (the respondent). The respondent is a private company registered in terms of the laws of South Africa, with registration number 2019/203814/07 and is defined as a supplier in section 1 of the CPA.

4. At the hearing, the respondent was represented by Latham William Dixon, an attorney at Dixon Attorneys.

TERMINOLOGY

5. Unless indicated otherwise, a reference to a section in this judgment refers to a section in the CPA.

6. A reference to a rule in this judgment refers to the Rules of the Tribunal[1].

APPLICATION TYPE AND JURISDICTION

7. This is an opposed application made in terms of section 100(6)(a) for the issuing of an administrative fine on the respondent for failure to comply with a compliance notice that the applicant issued in terms of section 100(1) on 15 May 2026.

8. The Tribunal has jurisdiction to hear this matter in terms of section 27(a)(i) of the National Credit Act 34 of 2005.

BACKGROUND

9. On 2 April 2025, the NCC received a complaint from Desire Jacobs (the complainant) on behalf of her husband, Keith Jacobs (the consumer), regarding the respondent's supply and installation of a solar lithium battery that became defective within six months of purchase. The respondent accepted receipt of the returned battery but refused to refund the complainant. Instead, the respondent alleged that the defect resulted from the consumer's negligence, contending that the battery had water damage, thereby voiding the warranty and absolving the supplier of any liability. The applicant formed a reasonable

[1] Published under GN 789 in GG 30225 on 28 August 2007 as amended by GN 428 in GG 34405 on 29 June 2011, GN R203 in GG 38557 on 13 March 2015 and GN 157 in GG 39663 on 4 February 2016.

suspicion that the respondent had contravened certain provisions of the CPA and directed an investigator under section 72(1)(d) to investigate the complaint.

10. Following the investigation, on 15 May 2026, the applicant issued a compliance notice under section 100(1), read with section 73(1)(c)(iv) and **regulation 42**. A copy of the compliance notice was emailed to the respondent on the same day.

11. The compliance notice is drafted in compliance with section 100(3)[2] and details the respondent's contraventions and provides a timeframe for certain steps to be taken. It also advised the respondent of the steps it could take to have the notice reviewed and the consequences of failing to comply with it. A summary of the compliance notice is reflected below:

The compliance notice

11.1 The person to whom the notice applies: Affordable Power Solutions (Pty) Ltd;

11.2 The provisions of the CPA that have not been complied with: Section 55(2)(a)-(c) read with section 56(2)(b);

11.3 The nature and extent of the non-compliance:

a. "On 13 September 2023, you entered into a transaction with the consumer for the supply and installation of a solar unit comprising solar panels, an inverter, and lithium batteries, for a total purchase price of R158 431.00.

b. On 22 March 2024, you supplied and installed an additional lithium battery for an amount of R43 875.00. The battery carried a ten (10) year warranty.

c. Shortly after installation, the battery began manifesting defects during the end of April 2024 and into May 2024.

d. During May 2024, the consumer discovered that the battery was completely flat and non-functional.

e. The consumer reported the defect to you, and on 31 May 2024, you collected the battery for assessment.

[2] See page 100 of the Tribunal record.

f. You subsequently advised the consumer that the battery had allegedly sustained water damage.

g. The consumer disputed this allegation and stated that:

(i) there are no water pipes or taps near the battery;

(ii) the roof is not leaking;

(iii) there was no rainfall during the relevant period;

(iv) the solar system and surrounding items situated near the battery were not damaged by water; and

(v) the battery is a sealed unit, making it highly unlikely for water to penetrate the unit.

h. You thereafter issued the consumer with an invoice in the amount of R32 928.00 for the replacement of the battery, which the consumer rejected.

i. On 9 September 2024, the consumer requested a report confirming the alleged water damage.

j. You subsequently provided the consumer with:

(i) a fault report dated 12 August 2024; and

(ii) photographs dated 12 September 2024.

k. The consumer disputed the reliability of these documents on the basis that the dates reflected therein do not correspond with the period during which the defect allegedly arose, namely July 2024, when the issue of water damage was first raised.

l. Notwithstanding the above, the battery carried a ten (10) year warranty, and the consumer demanded a replacement battery in terms of the warranty, which you refused.

m. As redress, the consumer seeks a full refund in the amount of R43 875.00 in respect of the defective battery.

n. The NCC concludes that there are reasonable grounds to believe that you have engaged in conduct inconsistent with s

o.

p. ection 55(2)(a)-(c) read with section 56(2)(b).

q. Section 55(2) provides that, except to the extent contemplated in subsection (6), every consumer has a right to receive goods that –

(a) are reasonably suitable for the purposes for which they are generally intended;

(b) are of good quality, in good working order and free of any defects;

(c) will be usable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply.

r. Section 56 (2) provides that 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) ..... ; or

(b) refund to the consumer the price paid by the consumer for the goods.[3]

11.4 Steps that are required to be taken and the period within which compliance was to be achieved:

(i) Engage with the consumer within 15 business days to assess the complaint and propose an appropriate remedy in terms of the CPA; and

(ii) Provide proof of compliance to the Commission.[4]

11.5 The penalty that may be imposed if those steps are not taken: "Failure to comply may result in referral to the Tribunal and/or an administrative fine not exceeding the greater of 10 per cent of your annual turnover or One Million Rand."[5]

12. The prescribed period to comply with the compliance notice, 15 business days, is calculated from 15 May 2026, when the compliance notice was emailed to Daniël Nel, the respondent's head of legal, and lapsed on 5 June 2026.

THE APPLICANT'S SUBMISSIONS

13. The applicant submits that it acted in accordance with the prescribed legal requirements when it issued the compliance notice. The respondent failed to comply with the compliance notice and chose not to direct any correspondence or other contact with either the consumer or the applicant during the compliance period.

14. The applicant initially listed four prayers in its application but abandoned three at the hearing, leaving only a request that an administrative fine of

[3] See pages 100-102 of the Tribunal record.
[4] See page 103 of the Tribunal record.
[5] See page 103 of the Tribunal record.

R1 000 000.00 (one million rand) be imposed on the respondent in terms of section 100(6)(a).

THE RESPONDENT'S SUBMISSIONS

15. The respondent's submissions are set out in their answering affidavit and, to a large extent, address the merits of the complaint lodged with the applicant. It is unnecessary to address its contentions in detail. The essential parts of the respondent's argument can be summarised as follows:

15.1 The complainant was not the consumer in the transaction with the respondent, and the application before the Tribunal is, as a result, fatally flawed.

15.2 The respondent supplied goods that were fit for purpose and became defective under the control of the consumer. By relying on the manufacturer's "VOLTA battery faulty report", the respondent acted lawfully in declaring the warranty void.

15.3 In an attempt to find an amicable solution, during the period preceding the applicant's compliance notice, the respondent offered to supply a replacement battery at a significantly reduced cost, but Keith Jacobs rejected this offer.

15.4 The applicant's application is based on a flawed investigation and a misinterpretation of the facts and the law. As there was no contravention of the CPA by the respondent, the applicant lacked a reasonable basis to issue the compliance notice dated 15 May 2026. The notice is therefore invalid and ultra vires. Consequently, the respondent's failure to comply with an invalid notice cannot serve as grounds for imposing an administrative penalty. The penalty sought is grossly disproportionate to the value of the underlying claim and the facts of this matter.

CONSIDERATION OF SUBMISSIONS

16. The Tribunal considered the parties' submissions and is satisfied that the compliance notice had been issued in the format outlined in section 100(3). It

is further undisputed that the respondent failed to comply with the compliance notice.

17. The papers filed in this matter and consequent arguments during the hearing seem to suggest that the parties, incorrectly, assumed that the application for a fine under section 100(6)(a) can be utilised to request the Tribunal to consider and make a finding of prohibited conduct. The Tribunal wishes to clarify that such an assumption is incorrect. Upon receiving a complaint under the CPA, the applicant may take any of the actions outlined in section 72(1), including appointing an investigator to examine the complaint. In casu, the applicant decided to appoint an investigator under section 72(1)(d). Once an investigation is concluded, and the applicant believes that a person has engaged in prohibited conduct, the applicant may take any of the actions outlined in section 73(1)(c), including issuing a compliance notice in terms of section 100 or making a referral to the Tribunal in terms of section 73(1)(c)(iii), read with section 73(2)(b). The applicant cannot do both. A referral in terms of section 73(1)(c)(iii), read with section 73(2)(b), would result in an application for a finding of prohibited conduct and appropriate relief. In contrast, by issuing a compliance notice in terms of section 73(1)(c), read with section 100, the Tribunal can only consider whether prohibited conduct occurred if an application is lodged in terms of section 101. A section 101 application may be filed by the person to whom a compliance notice has been issued. If no section 101 application is made, the compliance notice remains in force.

18. In addition, section 100(6)(a) provides the applicant with the authority to apply to the Tribunal for the imposition of an administrative fine if the person to whom a compliance notice has been issued fails to comply with it.

19. On the evidence before the Tribunal, the applicant had reasonable grounds to believe that the respondent had engaged in prohibited conduct. Their case set out recognised legal and factual elements with an actual, honest belief that the respondent engaged in prohibited conduct. The Tribunal is persuaded that the applicant's subjective belief was founded on reasonable grounds. Accordingly, the Tribunal finds that the applicant acted within its statutory authority in issuing the compliance notice under section 100(1). The respondent's explanation for its refusal to refund the consumer is based on disputed facts, such as whether

the goods were altered after leaving the respondent's control. If the respondent wanted to object to the compliance notice, given the alleged alteration of the goods after leaving the respondent's control, the respondent was entitled to bring an application for review under section 101(1). The respondent failed to do so, and the present proceedings cannot be used to object to the issuing of the compliance notice.

20. Consequently, the compliance notice remains in force until it is set aside by the Tribunal upon application by the respondent or by a court upon a review of the Tribunal's decision concerning the notice, alternatively, where the applicant issues a compliance certificate.[6] Therefore, the compliance notice remains in force even if a fine is issued. A fine does not end the enforcement value of the notice.

CONSIDERATION OF AN ADMINISTRATIVE FINE

21. The Tribunal turns to consider an appropriate fine under section 100(6)(a), read with section 112(3).

22. The respondent elected not to comply with the notice. It provided no valid reason for failing to comply and appeared to have no intention of complying with the notice in the future. The nature of the respondent's disregard for the legislation and the applicant as a regulatory authority justifies the Tribunal imposing an administrative fine on the respondent.

23. When a statutory body (such as the NCC) issues a formal compliance notice, the statutory process has moved beyond an inquiry. Failing to comply with a compliance notice is not merely evasive but appears to be an affront to the rule of law, drawing the ire of the Tribunal for structural arrogance. The rule of law is a fundamental value of the Constitution. It requires that the dignity of statutory bodies such as the NCC be upheld, that statutory processes to object to a compliance notice be followed if a review is required, and that a compliance notice not merely be ignored. This is crucial, as the capacity of statutory bodies and courts alike to carry out their functions depends on it.[7] The NCC, like other

[6] See section 100(4).
[7] See the Constitutional Court being quoted in Pheko v Ekurhuleni City [2015] ZACC 10; 2015 (5) SA 600 (CC); 2016 (6) BCLR (CC).

statutory bodies, serves as an extension of the state's constitutional duty to regulate. Ignoring a compliance notice crosses the line into a clear, objective statutory offence or actionable contempt. Suppliers cannot choose which compliance notices they obey. Allowing a supplier to arrogantly ignore a formal notice, whilst such a supplier chooses not to utilise a statutory process available to object, brings administrative justice into disrepute.

24. Section 112(3) outlines the factors the Tribunal must consider when determining an appropriate fine. These are listed and discussed under separate sub-headings below.

The nature, duration, gravity, and extent of the contravention

25. There is no evidence that the respondent has consistently engaged in this type of conduct. Still, the respondent's conduct in this instance caused continued distress to the consumer, as the respondent failed to engage with the consumer after the compliance notice was issued. No contact was made to assess the complaint and propose an appropriate remedy under the CPA after the notice was issued. As a result, no corrective action was taken, and the delay disadvantaged the consumer.

Any loss or damage suffered as a result of the contravention

26. Failure to comply with a notice issued in terms of section 100(1) cannot be seen as a victimless contravention. In this case, a consumer was financially prejudiced by the respondent's failure to comply with the applicant's instructions in the notice.

The behaviour of the respondent

27. The respondent appears to have acted with a disregard for consumer rights, the legislation enacted to protect consumers and the instructions from the regulatory authority mandated to enforce compliance in the industry.

The market circumstances in which the contravention took place

28. The respondent's conduct illustrates that the market in which the contraventions occurred is one in which consumers expect suppliers to comply with the law

when selling and installing solar products, as the process can be costly. The average consumer cannot easily afford it.

The level of profit derived from the contravention

29. The applicant did not submit the exact profit the respondent derived. Still, it is reasonable to conclude that the respondent stood to earn a profit by retaining the purchase price despite the goods' defective condition.

The degree to which the respondent has cooperated with the National Consumer Commission and the Tribunal

30. The applicant's investigation occurred between 2 April 2025, when the complaint was received and 26 January 2026, when the investigation report was finalised. Although the respondent engaged legal counsel on 6 March 2026, the filed papers make it clear that the respondent dealt directly with the applicant during the investigation. It appears that the respondent's cooperation in such an investigation was limited to justifying their behaviour.[8] During the investigation, the respondent initially ignored the applicant's communications, seemingly due to a robbery at their premises, and responded only after being contacted by telephone. Upon request for their written response to the complaint, the respondent initially failed to provide it, and several follow-ups were required to obtain it. The written response later provided objected to the consumer's representative, the complainant, because her husband made the payment and interacted with the respondent regarding the purchase. Such an objection is without legal basis, as any person can file a complaint with the NCC, and the CPA defines a consumer to include "a user of those particular goods or a recipient or beneficiary of those particular services, irrespective of whether that user, recipient or beneficiary was a party to a transaction concerning the supply of those particular goods or services".

31. The applicant also requested that the respondent provide them with a copy of their financial statements, which the respondent refused. Given that the Tribunal can issue a fine that does not exceed the greater of 10% of the respondent's annual turnover during the preceding financial year or R1 000

[8] See page 29 of the Tribunal record.

000.00 (one million rand),[9] the financial statements or any other documentary proof of the respondent's turnover could have assisted the applicant in motivating an appropriate fine. The respondent's refusal to provide any financial confirmation of its turnover appears to be indicative of continued non-cooperation. During the hearing, the panel also enquired whether the respondent was willing to provide a copy of their financial statements to assess the affordability and appropriateness of the requested fine relative to the company's size. The respondent refused and outlined that it is not a big company.

Whether the respondent has previously been found in contravention of the CPA

32. The applicant submitted that the respondent was previously under investigation by the NCC, the details of which are not before the Tribunal.

CONCLUSION

33. The applicant plays a pivotal role in enforcing compliance with the CPA and protecting consumer rights. Failure to comply with a notice issued in terms of section 100(1) is viewed in a serious light and cannot be condoned. The Tribunal must ensure that consumers' rights are protected and that suppliers comply with the legislation and instructions of regulatory authorities. Imposing an administrative fine on the respondent is warranted in this instance as a punitive measure.

34. The applicant did not submit any evidence of the respondent's turnover. The Tribunal can, however, still impose a fine of up to R1 000 000.00 (one million rand).

35. The Tribunal finds a fine of R200 000.00 (two hundred thousand rand) appropriate in this instance.

ORDER

36. Accordingly, the Tribunal makes the following order:

[9] See section 112(2).

36.1 The respondent must, within 30 business days of issuing this judgment, pay an administrative fine of R200 000.00 (two hundred thousand rand) into the National Revenue Fund referred to in section 213 of the Constitution[10] using the following bank account details:

Bank: Nedbank
Account holder: Department of Trade, Industry and Competition
Branch name: Telecoms and Fiscal
Branch code: 198765
Account number: 126 884 7941
Reference: NCT/465107/2026/100(6)(a) and the name of person or business making the payment; and

36.2 There is no cost order.

(signed)

Dr MC Peenze
Presiding Tribunal member

Tribunal members Adv C Sassman and Mr S Mbhele concur.



[10] Constitution of the Republic of South Africa, Act 108 of 1996.