



**UNIVERSITIES  
SOUTH AFRICA**

## **CONSUMER PROTECTION ACT**

# **GUIDELINES FOR HIGHER EDUCATION INSTITUTIONS**

**AUGUST 2015**

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# CONSUMER PROTECTION ACT – GUIDE FOR HIGHER EDUCATION INSTITUTIONS

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## Introduction

The Consumer Protection Act, 2008, (**CPA**) came into force on 1 April 2011 and has far reaching consequences for universities. The CPA affects all transactions and interactions with consumers for the provision of goods or services. Consumers in the context of these guidelines include students as well as other persons or entities to which universities provide goods or services that are protected by the CPA. Universities must therefore ensure that all its consumers are treated fairly and afforded the rights as prescribed by the CPA.

Universities are bound by the CPA in the provision of its primary services (education) and any ancillary services (access to facilities, accommodation, provision of goods) provided to consumers. Accordingly, Universities South Africa has developed these guidelines to assist universities in applying the CPA in its daily operations and resolving complaints in a manner that is consistent with the CPA. Universities South Africa is of the view that compliance with the CPA will have reputational benefits throughout the sector.

Each university is responsible for its own compliance. These guidelines are aimed at assisting each university in complying with the CPA, by ensuring that:

- (1) **all** employees dealing with consumer related matters are adequately trained on the application of the CPA;
- (2) the marketing, promotion and sale of goods and performance of all services are carried out in compliance with the CPA,
- (3) its terms and conditions, policies, agreements, application or registrations forms are compliant with the CPA;
- (4) it has protection in its agreements with third party suppliers who act on its behalf in providing goods and/or services to consumers;
- (5) consumers are provided with all necessary information in relation to warnings, hazards or safety related concerns as well as terms and conditions which need to be brought to their attention; and
- (6) consumers, staff, contractors and other relevant stakeholders are aware of the university's internal complaints resolution processes.

## Application of the CPA

Before considering the implications of the CPA, it is important to understand exactly which transactions or agreements the CPA applies to. This section briefly summarises the application of the CPA.

The CPA **applies** only to transactions with consumers which occur in South Africa after 1 April 2011, and which involve:

- (1) the **marketing** or **promotion** of goods or services;
- (2) the **supply** of goods;
- (3) the **performance** of services; and
- (4) any **transaction** or **agreement** entered into with a consumer for the supply of goods or performance of services.

A transaction includes any agreement for the supply or potential supply of goods or services to a consumer in exchange for consideration. Consideration can be any form of payment, including labour, loyalty credits, an undertaking, promise, agreement or assurance given in exchange for goods and services.

It does not matter if the consideration is paid by someone other than the consumer (for example a parent or financial institution or other third party), the contract is with the consumer who will be the beneficiary of the services.

The CPA applies to all marketing of the universities' goods or services, the actual performance of those services or provision of goods, and any agreement entered into between universities and consumers. An agreement includes a written or oral agreement, any terms and conditions, forms or applications which contain terms and conditions which apply to the provision of goods or services by universities.

If services or the supply of goods is undertaken by a third party on behalf of a university, any liability remains with the university that enters into the transaction with a consumer.

The implications of the CPA will differ depending on whether the university is supplying goods or services. This is because consumer's rights in respect of services differ from the rights it has in respect of the supply goods. Therefore it is important to know when something is a good and when it is a service.

<b><i>Services</i></b>	<b><i>Examples</i></b>
<ul style="list-style-type: none"> <li>• provision of education, information or advice</li> <li>• transportation of individuals or goods</li> <li>• access to or use of premises in terms of a rental</li> <li>• access to an event or any premises or activity or facility</li> <li>• any work performed for the benefit of another party</li> </ul>	<ul style="list-style-type: none"> <li>• Lectures, tutoring, mentoring, supervising, counselling</li> <li>• Transporting students to and from campus or sporting events</li> <li>• Student accommodation on and off-campus</li> <li>• Access to lecture rooms, laboratories, sporting venues or facilities</li> <li>• Research undertaken for a third party</li> </ul>

<b>Goods</b>	<b>Examples</b>
<ul style="list-style-type: none"> <li>• Anything marketed for human consumption</li> <li>• Any tangible object, including any medium on which anything is written or encoded</li> <li>• Any literature, music, photograph, motion picture, game, information, data, software, code or other intangible product or licence to use the product</li> </ul>	<ul style="list-style-type: none"> <li>• Food and beverages supplied to students by universities</li> <li>• Study materials, textbooks, notes, etc. supplied by universities to students</li> <li>• Online studying or research tools, learning videos or CD's, applications or other electronic material</li> </ul>

The CPA does **not apply** in the following circumstances:

- (1) where goods or services are provided to a juristic person (company; trust, partnership) which has an annual asset value or turnover of R2 million or more;
- (2) where goods or services are promoted or supplied to the State (government is not ever a consumer for the purposes of the CPA);
- (3) where goods or services are provided at no cost (except in the case where students or other consumers are harmed by the goods provided by the university (see product liability)) and to a limited extent when a prize is awarded by way of a promotional competition;
- (4) where the services provided are intermediary services that are subject to the Financial Advisory and Intermediaries Act;
- (5) if an agreement constitutes a credit agreement as defined in the National Credit Act 2005 namely a loan, instalment sale or credit facility;
- (6) where services are rendered in terms of an employment contract; or
- (7) where a transaction or agreement gives effect to a collective bargaining agreement or a collective agreement as contemplated by the Labour Relations Act, 1995.

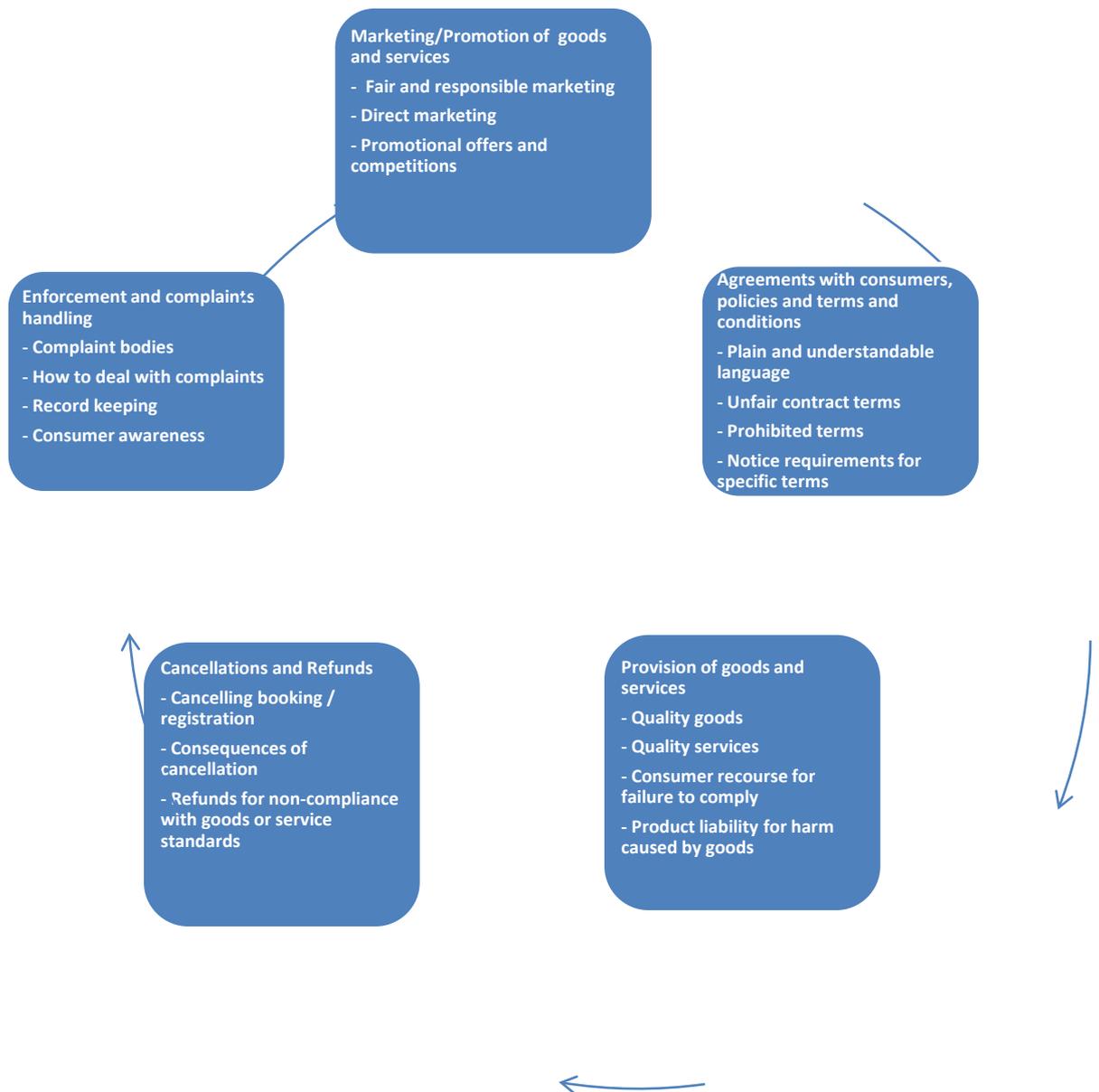
***These guidelines only apply to instances where the CPA is applicable as described above.***

In these guidelines:

- **Consumer(s)** means:
  - **students** who are enrolled (for formal and non-formal qualifications) with the university and with whom the university has a contractual relationship. This includes post-graduate and prospective students as the context requires; or
  - any other **individuals** or **juristic persons** (with an annual turnover or asset value of less than R2 million) to whom the university sells, delivers, licenses or otherwise provides goods or services.

- **CPA or the Act** refers to the Consumer Protection Act, 68 of 2008, its regulations.
- All other terms used have the same meaning as defined in the CPA.

The flow chart below depicts the main areas within the university where the CPA applies and where universities should focus its compliance initiatives. These guidelines follow the flow chart, and explain the application of the CPA in relation to each step.



## 1 Marketing / Promotion of Goods and Services

- 1.1 Marketing includes everything the university does to inform consumers about the services or goods it offers. Consumers have the right to fair and responsible marketing and fair and honest dealing.
- 1.2 All marketing practices must be conducted in compliance with the general standards and restrictions set out in the CPA. This applies to universities and any third parties or agents conducting marketing activities on behalf of universities.

### 1.3 General standards for marketing

- (1) As a rule, all claims and statements made must be capable of objective justification. Do not tell consumers anything you do not believe or that you cannot back up.
- (2) Do not make any false or misleading claims about services or goods, including in relation to the nature, properties, advantages or uses of goods or services.

**Examples:**

- (a) Making claims that a particular programme will result in students being qualified to take up a specific profession when this is not factually correct.
  - (b) Stating that a particular programme has a certain number of modules only and can be completed within a specific period when this is not true.
  - (c) Stating that a particular well-known individual studied at the university when this is not factually correct.
  - (d) Claiming that the university has the ability or capacity to conduct specific types of research when it does not have the expertise or resources to do so;
- (3) Do not mislead consumers or potential consumers in any way regarding:
- (a) the manner in which services will be rendered;
  - (b) the fees or prices at which services will be rendered or goods supplied;
  - (c) the fees or prices of services or goods compared to a previous price or to a competing university's fees or pricing; and
  - (d) any other material aspect of the services provided by universities.

**Examples:**

- (a) Marketing a programme as being presented by a well-known lecturer and then changing the lecturer without notice to students;
  - (b) Giving students false information about the fees charged for programmes, study materials, supplementary exams, etc. All fees must be disclosed clearly and there should be no hidden costs or fees.
  - (c) Comparing fees or prices with that of another university and informing consumers that your university offers lower fees or prices when this is not factually correct.
  - (d) Marketing the university facilities by saying it has a certain number of residences or off-campus accommodation available when this is not factually correct.
  - (e) Informing consumers that research can be conducted within a certain period of time when that is not feasible or true
- (4) Goods or services must not be marketed using exaggeration or ambiguity which may deceive consumers.
- (5) If the university fails to correct an apparent misunderstanding on the part of a consumer regarding the university's services, fees, acceptance, products offered etc, such a failure will be regarded as a misleading representation on the part of the university.
- (6) Misleading marketing can impact on the enforceability of a transaction and engaging in this conduct contravenes the Act.

## 1.4 Direct Marketing

- (1) Direct marketing is a direct approach to students or potential students in person or by mail or electronic communication for the purpose of promoting or offering to supply any goods or services or to request a donation. Communications such as Alumni newsletters, request for donations, invitations to events, will therefore also be considered direct marketing.
- (2) Direct marketing is not unlawful, but is restricted by the CPA. Universities must use direct marketing tools only within the restrictions set out in the CPA.
- (3) The ability to engage in direct marketing is limited by consumer's right to privacy, which includes the right to:
  - (a) refuse to accept any direct marketing communication;
  - (b) request the university to stop any direct marketing communication; or
  - (c) block any direct marketing communication in advance.
- (4) Universities must facilitate requests by consumers to opt-out of receiving direct marketing communication and such requests must not only be adhered to, but must also be confirmed in writing by the university to consumers. Universities are advised to centralise databases or develop systems to communicate opt out requests between faculties or departments.
- (5) Anyone receiving direct marketing communication from universities may not be charged to opt-out, even if they opt out by SMS.
- (6) If universities distribute marketing materials by post, no direct marketing material may be placed in or near any postal box or other mail container having a sign indicating that that person does not wish to receive any marketing materials.
- (7) It is best practice to obtain consent from consumers to contact them for marketing purposes and to keep a record of such consent. These processes will also assist universities to prepare for the implementation of the Protection of Personal Information Act.
- (8) Consumers may only be contacted for direct marketing purposes during the following times:
  - (a) between 08h00 and 20h00 on weekdays; and
  - (b) 09h00 and 13h00 on Saturdays.
- (9) No direct marketing may take place outside of the prescribed times or on Sundays and public holidays, unless the consumer expressly or implicitly agrees otherwise.
- (10) When a transaction or agreement is concluded with the university as a result of direct marketing conducted by the university, the consumer has five days within which to cancel the transaction or agreement without reason or penalty (this includes donations).
  - (a) The five day period starts on the day the transaction is concluded or the day on which the consumer receives the goods or services to be supplied (whichever occurs later).
  - (b) The university must refund the consumer any monies paid in respect of such goods or services within 15 business days after receiving the notice of cancellation (in the case of services) or receiving the goods back from the consumer.

## 1.5 Promotional Offers

- (1) A “promotional offer” includes any offer of a prize, reward, gift, free good or service, price reduction or discount, upgrade in quantity or quality of goods or services.
- (2) If a university makes use of promotional offers to market its goods or services, any document or marketing material which sets out the offer must contain the minimum requirements prescribed by the CPA. This includes:
  - (a) What the offer entails.
  - (b) The goods or services to which it relates.
  - (c) Steps required for a consumer to accept the offer or receive the benefit of the offer.
  - (d) The person from whom and place where the consumer can receive the benefit of the offer.

### Example:

If the university offers a discount on tuition fees for students who achieve a particular academic average, the offer, or any document describing the offer, must set out:

Requirement	Example
What the offer entails	Discount on fees
The goods or services to which it relates	Relates to the particular programme taken by the student and offered by the university
Steps required for a student to accept the offer or receive the benefit of the offer	Student must achieve the required percentage within an academic year/any other requirements or limitation for receiving the benefit must be set out
The person from whom and place where the student can receive the benefit of the offer -	Student must contact the finance or administration office

## 1.6 Promotional Competitions

- (1) A promotional competition is any competition, game, scheme, arrangement for distributing prizes **by lot or chance**, regardless of any demonstration of skill, conducted in the ordinary course of business to promote a university or its services and where the prize exceeds R1.00 (excl. VAT).

### Example 1:

Promotional competition: Consumers are entered into a lucky draw by purchasing a certain product, like a new online learning tool, or subscribing to a service such as university tutoring services, and the prize is anything from a fee discount to a holiday of the winner’s choice.

- (2) If the winner of a competition is not selected by lot or by chance (randomly) then the competition is not a promotional competition for the purposes of the CPA.
- (3) For example:

- (a) a student is required to be the top student in their class in order to win the competition. The winner is not selected randomly but rather by virtue of being the top student.
  - (b) a consumer is required to purchase 50 subscriptions to an online product in order to win the competition. Similarly, the winner is not selected randomly but rather by virtue of making a certain number of purchases.
- (4) Such a competition **would not** have to comply with the requirements for a promotional competition, but may still fall within the definition of a promotional offer.
- (5) When making use of promotional competitions, the following requirements must be met:
- (a) Competition rules must be made available before the competition starts;
  - (b) The rules may not contain a clause requiring a prize winner to allow the use their image, participate in marketing or be present at the draw, without giving the prize winner an opportunity to opt-out.
  - (c) Affiliates of the university or suppliers of the goods or services being promoted may not enter the promotional competition.
  - (d) An **offer** to participate in a promotional competition **MUST** contain:
    - (i) the benefit or prize which is being offered;
    - (ii) how to enter the competition;
    - (iii) how the winners will be chosen and how they will be informed they have won;
    - (iv) the closing date; and
    - (v) where, when and from whom the copy of the rules can be obtained or where the prize can be redeemed if won.
  - (e) The offer must be on the entry form, or any document attached to the medium of entry, or advertised during the time of the competition and throughout the area in which it is being run, in an obvious way, such as a newspaper or intranet.
  - (f) Participants must not be misled in relation to the prizes available, their right to a prize, the nature of the competition, or be required to accept a different prize.
  - (g) The university cannot charge more than R1.50 for electronic submission of an entry or more than usual for goods required for entry.
  - (h) The right to a prize in terms of a competition cannot be conditional unless the condition is disclosed in the rules. Unless the consumer is informed otherwise prior to entering into a competition, a consumer has the right to participate in a competition when the consumer complies with the conditions and acquires the medium through which a consumer is required to participation the competition.
  - (i) A prize may not be awarded to:
    - (i) a winner to whom it is unlawful to supply the goods or services. Example - an alcoholic prize awarded to a minor;
    - (ii) a director, member, partner, employee, or agent of, or consultant to the promoter or who directly or indirectly controls or is controlled by the promoter; or

- (iii) a supplier of goods or services in connection with that particular competition.
- (j) The Regulations to the CPA require the promoter (the university) of a promotional competition to appoint an **independent** auditor, advocate, attorney or accountant to oversee and certify the conducting of the competition. The independent auditor, advocate or attorney must then report their findings through the university's internal audit reporting or other appropriate validation or verification procedures.
- (k) There are strict record keeping requirements. Promotional competition records must be kept for at least three years after the competition is completed. This information includes:
- (i) full details of the promoter, including the identity or registration number;
  - (ii) the rules of the promotional competition;
  - (iii) a copy of the offer to participate in the promotional competition;
  - (iv) the names and identity numbers of the persons responsible for conducting the promotional competition;
  - (v) a full list of all the prizes offered in the promotional competition;
  - (vi) a representative selection of materials used to market the promotional competition or an electronic copy, [but must be easily accessible in a generally available format;]
  - (vii) a list of all instances when the promotional competition was marketed, including details on the dates, the medium used and places where the marketing took place;
  - (viii) the names and identity numbers of the persons at the university who are responsible for conducting the selection of prize winners in the promotional competition;
  - (ix) an acknowledgment of receipt of the prize signed by the prize winner, or legal guardian where applicable, and his or her identity number, and the date of receipt of the prize, or where this is not possible, proof by the promoter that the prize was sent by post or other electronic means to the winner using his or her provided details;
  - (x) declarations by the persons at the university who are responsible for the organising or conducting of the competition, made under oath or affirmation that the prize winners were, to their best knowledge, not directors, members, partners, employees, agents or consultants of or any other person who directly or indirectly controls or is controlled by the promoter or marketing service providers in respect of the promotional competition, or their spouses, life partners, business partners or immediate family members;
  - (xi) the basis on which the prize winners were determined;
  - (xii) the summary describing the proceedings to determine the winner, including the names of the persons participating in determining the prize winners, the date and place where that determination took place and whether those proceedings were open to the general public;
  - (xiii) whether an independent person oversaw the determination of the prize winners, and his or her name and identity number;

- (xiv) the means by which the prize winners were announced and the frequency thereof;
  - (xv) a list of the names and identity numbers of the prize winners;
  - (xvi) a list of the dates when the prizes were handed over or paid to the prize winners;
  - (xvii) in the event that a prize winner could not be contacted, the steps taken by the promoter to contact the winner or otherwise inform the winner of his or her winning a prize; and
  - (xviii) in the event that a prize winner did not receive or accept his or her prize, the reason for his or her not so receiving or accepting the prize, and the steps taken by the promoter to hand over or pay the prize to that prize winner.
- (l) When making use of promotional competitions universities must have measures in place to record and store this information for the three year period and must ensure that its competition rules are compliant with the CPA in all respects.

### 1.7 Other forms of marketing

- (1) The CPA also restricts certain other types of marketing and prohibits universities or other suppliers from engaging in certain prohibited types of marketing.

Restricted forms of marketing	Prohibited marketing
Catalogue marketing	Negative option marketing
Trade coupons	Bait marketing
Loyalty programmes	Referral selling

- (2) Although universities do not generally engage in these forms of marketing, it is important to remember the forms of marketing that are prohibited, as there can be serious consequences.

- (3) Be aware of Negative option marketing

- (a) Silence does not constitute acceptance of an offer. Do not market any services or goods or enter into an agreement with a consumer on the basis that the goods or services will be provided or the agreement will come into existence, unless the consumer declines.

**Example 1:** If students renew their registration with the university on an annual basis, the university is not permitted to state that the student's registration will automatically be renewed, and they will be liable for the fees, unless the student cancels.

**Example 2:** If a consumer has subscribed to a 6 month online service, the university is not permitted to state that the subscription will automatically be renewed unless the consumer cancels the subscription.

- (4) Bait Marketing

- (a) Universities must not advertise its goods or services as being available at a particular price or fee in order to attract consumer's attention when goods or services will not actually be provided at that price.

- (b) If there are limits on the availability of goods or services at a specific advertised price, the university must clearly set out what these limitations are.
- (5) Referral Selling
- (a) Universities may not market its goods or services by including a condition that consumers will receive a discount, or commission or other benefit if they give the university the names of other potential consumers, or assists the university in recruiting other consumers.
- (b) This prohibition only applies if the discount, commission or benefit is dependent on an event occurring after the consumer agrees to conclude the transaction with the university.
- Example:** The university induces Student A to register by saying that Student A will receive a discount on his tuition fees if he gets Student B to register at the university also. However, the discount will only take effect after Student A has already registered and only if Student B actually registers as well.
- (6) These restrictions and prohibitions on marketing are equally applicable social media advertising.

## 2 University terms and conditions

2.1 Any agreement, transaction, terms and conditions, policies or any application which sets out the terms on which services will be rendered or goods offered to consumers, must comply with the CPA. This is because all of these documents ordinarily contain terms and conditions that regulate the relationship between the consumer and the university. In addition to any other requirements contained in the CPA, this section sets out specific requirements which such documents must comply with.

### 2.2 Plain language requirement

- (1) All agreements, transactions or terms and conditions (and indeed all communication) between universities and consumers must be in plain and understandable language. This requirement also applies to notices, warning signs, disclaimers and any other documents which are made available to consumers and contain important information.

*What is plain and understandable language?*

*Language that an ordinary consumer with average literacy skills and little experience with the goods or services can understand without too much effort.*

<b>Do</b>	<b>Don't</b>
<ul style="list-style-type: none"> <li>• Use simple vocabulary</li> <li>• Use short sentences</li> <li>• Write as you speak</li> <li>• Use pictures and examples</li> </ul>	<ul style="list-style-type: none"> <li>• Use jargon</li> <li>• Use confusing acronyms</li> <li>• Use unnecessary words</li> <li>• Use small print</li> </ul>

### 2.3 Attention to specific contractual terms and conditions

- (1) There are certain terms and conditions which the university must bring to the attention of consumers **before** they are required to enter into a transaction with the university.

- (2) These clauses are aimed at preventing the university from limiting its liability, or requiring consumers to accept liability; give an indemnity or acknowledge facts, unless the requirements of the CPA are met.
- (3) The reasoning behind these special notice clauses is to ensure that the consumer really understands what they are giving up or what they are required to do (like pay for damage caused to the university) by agreeing to the terms. It is designed to ensure that the university and the consumer are 'on the same page' regarding the meaning of the agreement and with this understanding the consumer agrees to take the risk or accept the terms.
- (4) Any notice or term of an agreement which:
- (a) **limits** the university's risk or liability towards consumers;
  - (b) constitutes an **assumption** of risk or liability by a consumer;
  - (c) imposes an obligation on the consumer to **indemnify** the university; or
  - (d) constitutes an **acknowledgement** of any facts by the consumer

must be drawn to the consumer's attention in plain language.

- (5) An indemnity in the context of these guidelines includes any provision or notice which has the effect of requiring a consumer compensate, reimburse or otherwise release the university from liability to the consumer or any other third party.
- (6) These terms must also be brought to the consumer's attention in a manner that is likely to attract the attention of the ordinary alert consumer and they must be given on opportunity to understand and comprehend the terms **before** entering into the agreement or before any services are rendered or goods supplied.
- Example:** If the university's application form contains clauses which state that the university will not be liable for its negligence or harm caused to a student on the university's premises, such a clause must be brought to the student's attention when the application form is completed. This can be done by highlighting the particular term in colour or in bold font, and indicating in the front of the document that the student must pay attention to the clauses in bold, alternatively a separate list of clauses can be provided to the consumer. The same applies to any other agreement with consumers.
- (7) The nature and effect of such clauses must be made clear.
- Example:** "This clause or notice limits our responsibility to you. If you suffer harm because of our negligence you will have no claim against us".
- (8) Failure to bring these clauses to the attention of consumers in the required manner may result in the clause being unenforceable and the university would therefore not be able to rely on any such limitation, assumption, indemnity or acknowledgment.
- (9) If any goods or services supplied by the university are subject to any risk of an unusual nature, or risk which consumers would not reasonably be aware of, or which could result in serious injury or death, the university must also:
- (a) specifically draw the fact, nature and potential effect of the risk to the consumers attention as described above; and
  - (b) ensure that the consumer (or the parent/guardian in case of a consumer under the age of 18) has consented to that risk by signing or initialling that particular notice or clause, or acting in the manner consistent with an acknowledgement of notice of the risk.

**Example:** If the university provides access to laboratories where there may a risk of harm to consumers which they may not ordinarily be aware of, then this must be drawn to their

attention and they must initial the relevant clause which sets out the risk. Alternatively, if the consumer continues to make use of the laboratory after being informed of the risk, they are deemed to have acknowledged and accepted the risk.

- (10) Failure to comply with the above notice requirements may result in the university being liable to the consumer in the event that the consumer is harmed as a result of the risk.

#### 2.4 Risk and Warning Notices

- (1) In many instances universities have facilities on premises used by consumers which pose some sort of risk to consumers, or a particular area is temporarily under construction or water may be contaminated, for example.
- (2) Consumers must be warned if facilities pose a risk and care must be taken to ensure that consumers are fully aware of these risks.
- (3) The university must specifically draw the existence, nature and potential effect of that risk to the attention of consumers in a way likely to attract the attention of an ordinary alert consumer in the circumstances. Where necessary, adequate instructions for the use of facilities which present a danger to consumers must be provided.
- (4) Risk and warning notices must be clearly visible and be displayed in plain language.
- (5) This also applies to staff and visitors of the university who make use of the universities premises.

#### 2.5 Unfair terms and conditions

- (1) Consumers have the right to terms and conditions which are fair, reasonable and just. Universities may not subject consumers to agreements, terms and conditions, or fees and pricing that is unfair, unreasonable or unjust.
- (2) The terms "unfair, unreasonable or unjust" are not defined in the CPA but there are examples given of where a clause or agreement would be considered unfair, unreasonable or unjust. A clause is unfair, unreasonable or unjust if:
  - (a) is excessively one-sided in favour of any person other than the consumer;
  - (b) is so adverse to the consumer that it is inequitable;
  - (c) the consumer relied on false, misleading or deceptive representation to their detriment; and
  - (d) where the clause excludes or limits the liability or indemnifies the university on terms that are unfair, unreasonable, unjust or unconscionable and the clause is not drawn to the attention of the consumer as described above.

**Example:** Requiring a consumer to accept a condition that the university will not refund the consumer any amount if they cancel their studies before a programme is completed.

- (3) In relation to unreasonable pricing, this is not defined, however universities should nevertheless ensure that its pricing is both cost and market related and that there is commercial and rational justification for the prices or fees charged or that they are in line with any applicable regulations. For example if consumers must buy certain materials from the university there must be a demonstrable economic and convenience benefit that outweighs any limitation on choice. Pricing must not be "excessive" because the consumers are a "captive market" with no alternative provider.
- (4) Universities are not permitted to require a consumer to waive any rights, assume any obligations or waive any liability of the university on terms that are unfair, unreasonable or unjust.

## 2.6 Prohibited terms and conditions

- (1) In addition to terms and conditions which may be considered to be unfair, certain terms are prohibited outright and may not be contained in any agreement with a consumer. If a term or condition is found to be prohibited in terms of the Act it will be void to the extent that it contravenes the CPA. It is also a prohibited practice to subject any consumer to prohibited terms. These provisions are set out below.
- (2) As a general rule, universities must not make an agreement subject to any term, which has the general effect of defeating the purposes of the Act, misleading or deceiving consumers; or which subjects consumers to fraudulent conduct.
- (3) The following clauses are similarly prohibited. These include clauses which:
  - (a) waive or deprive a consumer of their rights in terms of the Act;
  - (b) avoid the university's obligation or duty in terms of the Act;
  - (c) sets aside or override any of the provisions of the Act;
  - (d) authorises the university to do anything that is unlawful, or fail to do anything that is required, in terms of the CPA;
  - (e) limits or exempts liability for loss suffered by consumers caused by the university's gross negligence;
  - (f) constitutes an assumption of liability by students for a loss resulting from the university's gross negligence;
  - (g) falsely expresses an acknowledgement by a consumer that:
    - (i) before the they entered into an agreement or registered, no representations or warranties were made by the university; or
    - (ii) the consumer has received the goods or services or a document which the CPA requires to be provided to the consumers,
  - (h) requires consumers to forfeit any money to the university when they exercise any right in terms of the CPA, or to which the university is not entitled in terms of the CPA or any other law (only financial penalties permitted in terms of the CPA or Conventional Penalties Act 15 of 1962 will be allowed);
- (4) A transaction may also not be subject to any term which expresses, on behalf of the consumer:
  - (i) an authorization for the university to enter any premises to take possession of goods (even on university property like a residence)
  - (ii) consent to a pre-determined value of costs relating to the enforcement of the agreement, except to the extent consistent with the CPA; or.
  - (iii) an agreement by the consumer to lodge their identity document, credit or debit card, banking account or ATM access card, or provide a personal identification code or number to be used to access an account.

2.7 These are the primary terms prohibited by the CPA. However, the CPA Regulations contain additional terms which are presumed to be unfair and unreasonable. Universities must ensure that its agreements, and terms and conditions are reviewed in line with these provisions, to keep agreements enforceable.

### 3 Disclosure of fees and taking deposits

#### 3.1 Pricing disclosure

- (1) Universities must make available to consumers all applicable fees and additional costs or potential costs which may be incurred by consumer when registering and subsequently studying at the university, or purchasing any other goods or services from the university.
- (2) To the extent that certain costs cannot be accurately calculated, the university must at least indicate that there may be other potential costs or give an estimate of such costs.
- (3) Consumers cannot be required to pay more for any goods or services than the prices advertised or disclosed by the university and therefore it is important to ensure that all pricing is accurate and up to date and that there are no “hidden” costs.
- (4) All increases in fees and other costs must be communicated to consumers.
- (5) The CPA also stipulates that all suppliers of goods and services must provide a written record of each transaction to the consumer to whom any goods or services are supplied. This does not mean that the university must furnish a consumer with a receipt for every programme, goods or other services purchased, as this may be impractical. However, for purchases where receipts or invoices are not issued, the university must ensure that consumers are issued with a statement of account, which sets out an itemised list of the goods and services purchased by the consumer as well as the price of such goods and services.

#### 3.2 Deposits

- (1) To the extent that a university requires students to pay a deposit to secure their places at the university or residence or in any other instance requires consumers to pay a deposit, it must comply with the deposit taking rules in the CPA as set out below.
- (2) Any money which is paid by a consumer to the university in the form of a deposit remains the property of the consumer until the goods or services in respect of which that deposit was paid are delivered or rendered to the consumer.
- (3) If consumers agree or are required by the university to pay:

- (a) any fees (for services or memberships) in advance, either monthly or by way of a once-off advance payment;

**Example:** A student pays their entire tuition fees in advance

- (b) any other money for services or access to services which will only be provided to students more than 25 business days after the payment is made

**Example:** A student pays a monthly fee in advance for access to a laboratory or a monthly transport facility which will only be provided 25 business days after the student pays,

the university can only claim against the consumer’s payment once each month in advance for the portion required to pay the following month’s cost of the services or membership.

- (4) If a university is planning to close a facility or service to which it has committed to provide future access to and the university does not make a reasonably accessible alternative facility or service available, the university must:
  - (a) give written notice to consumers of its plans to close the facility or service at least 40 business days before the intended date of closure; and

- (b) refund consumers the balance of any money belonging to the consumers for access or services which have not been provided to consumers.
- (5) Such notice can be given on the university website, by sending emails to consumers, placing it on the applicable notice boards or in any other manner which will ensure that consumers receive the notice.
- (6) This applies to both voluntary and involuntary closing of facilities or services, and in the case of involuntary closure, notice must be given as soon as reasonably possible.
- (7) Such amounts paid by consumers or on behalf of consumers remain the property of the consumer or the person who made the payment until the university is entitled to claim payments as discussed above.
- (8) If a consumer, having paid a deposit in respect of certain goods or services to be delivered by the university, cancels the reservation, booking or order, the university must refund the deposit to the consumer less a reasonable cancellation fee which may be charged by the university in accordance with section 7 below.

#### 4 **Quality of Goods and Services**

4.1 Universities are bound by the standards set out in the CPA in relation to the quality of goods supplied or services provided.

##### 4.2 Quality of goods supplied

- (1) Consumers have the right to purchase goods which comply with the quality standards set out in the CPA. Therefore, goods supplied by the university to consumers must be:
  - (a) of good quality, in good working order and free of any defects;
  - (b) reasonably suitable for the purposes for which they are generally intended;
  - (c) useable 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; and
  - (d) comply with applicable regulations and standards.
- (2) If consumers agree to accept goods in a specific condition disclosed by the university, the obligations relating to good quality, defect-free products would not apply, but the goods must still be useable and durable for a reasonable period of time, and comply with all applicable standards.
- (3) If a consumer informs the university that it requires goods for a specific purpose, and the university agrees to supply such goods or acts in a manner consistent with being knowledgeable about the use of such goods, then the consumer has the right to expect that those goods will be suitable for the desired purpose.
- (4) The university is responsible to ensure that the food and beverages, study material, equipment, furniture in residences and any other goods supplied to consumers comply with these requirements.
- (5) If the university contracts third parties to supply goods on its behalf, the university must ensure that its contracts with such third parties contains the relevant indemnities and contractual protections ensure that such parties provide goods which comply with these standards.

##### 4.3 Consequences of failure to supply good quality goods

- (1) If, within six months after the goods are supplied to consumers, it is found that the goods supplied by the university do not comply with the above standards, the goods may be

returned for a full refund, replacement or a repair, at the election of the consumer. In these circumstances, the university may not dictate what recourse the student should get and the student may not be charged any administration fees.

- (2) In any transaction or agreement relating to the supply of goods to a consumer there is an implied warranty that the goods comply with the quality standards, if the goods have been not been altered contrary to instructions or after supply. Therefore even if goods are returned after the 6 month period, consumers are still entitled to recourse under the common law or as provided for in the university's warranties.
- (3) The consumer cannot hold the university liable for defects or quality problems that the consumer accepted at purchase. Therefore it is possible to contract out of the university's obligations to provide goods which are of good quality and free of defects , but the university can never contract out of the obligation to supply goods which are durable for a reasonable period of time (taking into account its use) and compliant with the applicable standards.

**Examples:**

- (a) If the university supplied a consumer with a textbook and the textbook has missing pages, it does not comply with the quality standards and the student would be entitled to choose whether to accept a refund, replacement or repair within 6 months or purchasing the textbook. After the 6 month period, the university can offer the consumer a replacement or repair, at their option.
- (b) If the university sells second-hand textbooks to consumers and discloses the fact that the textbooks are second-hand and may be incomplete and the consumer agrees to accept the textbooks on that basis, the consumer has no recourse, if pages are missing.

#### 4.4 Service Standards

- (1) A university's main purpose is the provision of education services. The quality standard for services differs from the standard for supplying goods and it is important to distinguish goods from services.
- (2) Services must be:
  - (a) Performed timeously, with timely notice of any unavoidable delay in the performance of services; and
  - (b) Performed in a manner and quality that persons are generally entitled to expect.
- (3) The timely performance of services must be determined in accordance with the time prescribed for the performance of the services, if any, or within a reasonable period of time.

**Example:** If a consumer enrolls for a programme in which lectures are due to start in February and finish in June, the lectures must occur within that period, and if not, then consumers must be timeously notified of the delay.

- (4) The quality of services is not the standard that an individual expects but rather the generally expected standard. This is an objective test based on what the reasonable person is entitled to expect in the circumstances.

**Example:** If a student complains that the quality of the lecturer is not of the expected standard and the student wants a refund of fees, the quality of the lecturer would have to be analysed by objective factors such as:

- Other complaints received in respect of the lecturer from other students;
- The average class pass rate of the lecturer;

- The content produced by the lecturer relative to the content of similar courses supplied by similar lecturers, for a similar course; and
  - Whether the content prescribed for the course was addressed by the lecturer;
- (5) A student would be entitled to recourse if it can be proven that, measured against objective factors, the standard of the education provided by the university is not of a standard or quality that students are generally entitled to expect. The same applies in relation to other services provided by the university to other consumers.

#### 4.5 Consequences of failure to provide quality services

- (1) If it is proven that the university failed to perform a service to the standards contemplated above, consumers may require the university to either:
- (a) remedy the defect in the quality of the services performed or goods supplied (re-do the service); or
  - (b) refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure.

**Example:** If it is found that a lecturer did not provide quality education to students, students may request that they be put in another class with a different lecturer or that they receive a proportionate refund of the course fee.

Similarly, if a programme fails to start at the time specified, students have the right to cancel their enrolment and claim a full refund, or if the programme has already started but is significantly delayed, students may claim for a proportionate refund.

- (2) What the proportionate refund would be must be determined in accordance with any services which were rendered to the consumer and any benefit which the consumer may have derived.

**Example:** If a programme fee is R5000, and the content or lecturer of the programme is found not to be compliant with the quality standards, the student derived some benefit from the course and the university may refund the student 25% of the fee depending on the finding in relation to the quality of the course or lecturer.

- (3) Although this provides guidance, each case would have to be assessed on its merits and the university has the right to conduct a thorough investigation before giving any recourse.
- (4) A consumer may not claim consequential damages under these circumstances for a failure to provide quality service.

**Example 1:** A consumer cannot claim for the harm suffered as a result of the programme not finishing in time and therefore the consumer did not get the job he or she applied for.

**Example 2:** A consumer cannot claim for damages as a result of the quality of the programme not being good enough for the consumer to the programme or get a bursary.

- (5) This does not prevent a consumer from attempting to obtain such recourse through an ordinary delictual claim if the claim can be proven, but the consumer will not be entitled to such recourse in terms of the CPA provisions in respect of quality standards.

## 5 Product Liability

5.1 The CPA significantly changes the manner in which claims for harm caused by goods supplied are with. It introduces statutory liability that does not require the proof of fault on the part of the supplier of any kind.

5.2 Any party in the supply chain can be held liable for harm caused wholly or partially as a result of:

- (1) the supply of any unsafe goods;
- (2) product failures, defects or hazards in goods; or
- (3) inadequate instructions or warnings to consumers about any hazard arising from or associated with the use of the goods.

5.3 This section is only applicable to **goods** (and not services) supplied by the university. However, the university will be regarded as a supplier of goods if those goods are supplied in conjunction with the performance of services. Therefore, the university is a supplier of goods to its consumers to the extent that it provides consumers with goods or access to goods in the course of rendering services.

**Examples: A university may be held liable for:**

- (a) Providing students with access to sporting equipment and a student suffers physical injury due to the equipment being defective.
- (b) Issuing students with laboratory kits and a student is injured due to a lack of instructions and precautions on how to use the kit.
- (c) Giving student access to a laboratory and due to a defect in one of the instruments in the laboratory, a student suffers bodily injury.
- (d) Unsafe furniture is supplied in residences.

5.4 The product liability provisions in the CPA as described above, apply irrespective of whether the CPA applies to the agreement or transaction or whether the student or consumer falls within the definition of a consumer as contained in the CPA. This means even parties who are not consumers or students of the university, but who suffer harm attributable to the university, can institute a claim against the university

5.5 Harm for which liability can arise in terms of this section includes:

- (a) the death of, or injury to, any natural person;
- (b) an illness of any natural person;
- (c) any loss of, or physical damage to, any property, irrespective whether it is movable or immovable; and
- (d) any economic loss that results from harm in a, b or c above.

5.6 Any harm for which a party seeks to hold the university liable is limited to the above forms of harm. To the extent that a party seeks to claim for pure economic loss, this is similarly limited to economic loss that is a direct result of the above forms of harm.

5.7 The onus remains on the party wanting to claim for harm to prove that the harm and the fact that the harm was actually caused by a unsafe or defective goods supplied by the university or a lack of adequate instructions or warning regarding the risk associated with the goods.

5.8 However, the party claiming for the harm does not need to prove fault or negligence by the university or its suppliers in order to succeed with a claim.

5.9 Any party suffering harm as contemplated in this section will still have to approach a court for relief and the court retains its discretion to determine the reasonableness and validity of any claim.

5.10 Product liability defences

- (1) In addition to the common law defences available in the event of a product liability claim, universities faced with product liability claims in terms of the CPA will not be held liable if:

- (a) the unsafe product characteristic, failure, defect or hazard that results in harm is wholly attributable to compliance with any public regulation;

**Example:** a testing device produced by the university causes harm as a result of certain specifications determined by public regulation (eg by the Department of Health).

- (b) the alleged unsafe product characteristic, failure, defect or hazard was wholly attributable to compliance by the university with the instructions provided by the party who supplied the goods to the university; or

**Example:** the university installed certain sporting equipment which causes harm to a consumer but an investigation reveals that the harm was, due to the manner in which it was installed in accordance with the supplier's directions, or by the supplier itself.

- (c) it is unreasonable to expect the university to have discovered the unsafe product characteristic, failure, defect or hazard, having regard to the role of the university in marketing the goods and university's knowledge of the goods supplied at the time the goods were under the control of that person.

**Example:** if the university is being sued for harm caused by supplying defective laboratory kits supplied to the university by a third party and the university could not reasonably have discovered that they were defective.

- (2) Product liability claims are subject to a prescription period of three years from the date on which the claimant became aware of the injury, damage or loss or the latest date on which the claimant suffered economic loss.
- (3) This new product liability regime must be taken into account when universities consider insurance cover as many public liability policies do not cover no fault liability.
- (4) Universities must ensure adequate indemnities in place with all of its third party suppliers in the event those goods which they supply to the university result in harm to students.

#### 5.11 Class actions

- (1) The CPA also introduces the possibility of class actions for damage caused to a group of claimants.

**Example:** If the university supplies students with food that is beyond its expiry date and this results in food poisoning and hospitalisation or illness of a group of students, those students could institute a class action to claim damages from the university.

- (2) The South African law in relation to class actions is not yet fully developed but this is one aspect of the CPA which may present a high risk in future as the law develops and consumers become more aware of their rights.

## 6 Indemnities and Disclaimers of Liability

6.1 The CPA also affects the types of indemnities and/or disclaimers that universities may require consumers to sign or accept.

6.2 Any indemnity or disclaimer which attempts to waive the rights of consumers under the CPA is void and therefore unenforceable.

**Example 1:** A clause stating that the consumer "hereby indemnifies and agrees to hold harmless the university against all and any damages, costs or expenses which may arise from the goods or services supplied by the university"

Such a blanket indemnity is void since it requires students to waive their rights to claim damages for harm suffered as a result of defective goods supplied by the university, and cover the costs to the university, including legal costs.

- 6.3 Similarly, any notice or signage displayed on the university premises or terms in the university's agreements, terms and conditions or policies which have the effect of avoiding the university's obligations under the CPA will be void.

**Example 2:** A notice or term states that: "The student acknowledges that the university will not be liable for any interruptions in the duration of courses or studies even if caused by the university and students will have no claim against the university in the event of such interruptions.

Such a clause is void because it attempts to avoid a university's obligation to provide education services timeously and waives the student's right to cancel their studies and claim a proportionate refund as a result of such interruptions.

- 6.4 Universities may not, in any way contract out of their obligations in the CPA, for example, its liability to supply quality goods, provide quality service, or liability for harm caused by the supply of defective goods.

- 6.5 What liability can universities contract out of?

- (1) The CPA substantially limits the university's ability to exclude liability.
- (2) Provided the limitation does not waive a student's rights or exclude the university's obligation as specifically provided for in the CPA, the university may contract out of some responsibility for harm caused by its negligence and other liabilities. In doing so it must comply with the notice requirements to ensure that consumers are aware of the risk or responsibility that they are taking on.
- (3) The university may not however **under any circumstances** contract out of gross liability for their negligence or any obligation that the supplier has under the CPA.
- (4) Universities may **not** contract out of harm caused to anyone or their property because of hazardous, unsafe goods supplied or inadequate instructions for the safe use of the goods.

## 7 Refunds and cancellations

- 7.1 Most universities have policies stipulating how and when refunds will be granted to consumers. These policies must comply with the requirements of the CPA.

- 7.2 As a general rule, universities are not permitted to have a blanket "no refunds" policy. Subject to the reasonable charges for cancellation, students are entitled to a refund of all monies paid for services which have not been rendered or goods which have not been supplied.

- 7.3 Consumers remain liable to the university for any amounts owed to the university, as at the date of cancellation, for goods or services which have already been rendered by the university.

- 7.4 Cancellations

- (1) Advanced reservations / registrations
  - (a) Consumers have the right to cancel any advanced registration, reservation, booking or order.

**Example:** A prospective student, who applies to the university for admission and pays a deposit, or a registration fee, or the 1<sup>st</sup> instalment of tuition or residence fees, has the right to cancel their application and claim a refund.

- (b) Any term or condition which provides that consumers are not permitted to cancel any application or advanced reservation or that they will forfeit any money paid for such application or reservation is void, as it limits consumer right to cancel.
- (c) The university may impose a reasonable charge for such cancellation but may not withhold the entire amount paid.
- (d) A cancellation fee may not be charged where the student is unable to commence his or her studies due to the death or hospitalisation of the student. Similarly in the case of any other consumer, no cancellation fee may be charged if the consumer is unable to honour the booking, reservation or order due to the death or hospitalisation of the person for whom or to whose benefit the booking, reservation or order was made.
- (e) When is a cancellation charge unreasonable?
  - (i) Whether a charge is reasonable must be determined according to the circumstances of each case. A charge is unreasonable if it exceeds a fair amount taking into account the following factors:
    - (A) the nature of the goods or services which were to be provided by the university;
    - (B) the notice period given by the consumer;
    - (C) whether the university, acting diligently, is able to find alternative consumers within the time that notice of cancellation is given and the goods being supplied or services rendered; and
    - (D) any general practice or industry norms.
  - (ii) A sliding scale of charges for cancellation can be used to determine the amount to be charged based on the circumstances of the cancellation.
 

**Example:** A student who cancels their registration three months prior to commencement may be charged 2.5% of the fees, whereas a student who cancels one week prior to the commencement of their studies may be charged 10% of the registration fee.

(2) Cancellation of studies before completion

- (a) In the event that students cancel their studies before completion, the university will be entitled to claim from the student payment for all services rendered until the date of cancellation.
- (b) If a student has paid their total fees in advance, but cancels their studies prior to completing the academic year, the university may charge the student for all services rendered until the date of cancellation and must refund the student the remainder of the fees paid in advance.
 

The university may charge a cancellation penalty but this must not take away from the consumer's right to cancel.
- (c) A sliding scale can also be used according to the period of cancellation, subject to what is reasonable in the circumstances.

(3) Over-subscription or over-booking

- (a) Universities must not accept any payment from consumers when it no longer has the capacity to accommodate students either in relation to programmes, lectures or student accommodation.
- (b) If the university accepts such payment and then is unable to provide the service to the student because of a lack of capacity, the university must:
  - (i) refund the student the amount paid, plus interest at the prescribed rate (currently at 9%) from the date the student made payment to the date the student is reimbursed; and
  - (ii) compensate the student for directly incidental costs if the lack of capacity was within the control of the university and the university failed to take adequate steps to notify the student of the lack of capacity in advance.

(4) When to refund a consumer?

- (a) Consumers are entitled to be refunded in the following circumstances, some of which have been previously addressed:

<b>Conduct</b>	<b>Refund</b>
Supply of defective goods	Full refund, replacement or repair at the election of the student within six months of delivery  No charge or penalty  Returned at the university's risk and expense
Supply of services which do not comply with service standards	Proportionate refund determined according to the circumstances and any benefit derived by the student  No charge or penalty
Direct marketing	Full refund if transaction entered into based on direct marketing is cancelled within five business days  No charge or penalty  Returned at the student's risk and expense
Good supplied which consumer did not have an opportunity to examine before delivery and student rejects delivery because goods do not comply with order	Full refund within 10 business days of delivery  No charge or penalty  Returned at the university's risk and expense
A mixture of goods supplied some of which the consumer did not order, and therefore rejects delivery	Full refund within 10 business days of delivery

	No charge or penalty Returned at the university's risk and expense
Goods intended to fulfil a specific purpose and within 10 business days after delivery they are found to be unsuitable for that purpose	Full refund within 10 business days of delivery No charge or penalty Returned at the university's risk and expense
Cancellation of advanced registration, reservation, order, or booking	Full Refund Reasonable deposit may be taken Cancellation penalty dependent on circumstances and time of cancellation
Over-subscription or Overbooking	Full refund within interest; or Full refund plus compensation for directly incidental costs if overbooking was within the control of the university and the university failed to notify students.

## 8 Enforcement and Dealing with Complaints

8.1 The CPA not only gives certain rights to consumers but also gives consumers various methods of enforcing those rights.

8.2 Consumers may seek to enforce any of their rights under the CPA or in terms of a transaction or agreement, or resolve any dispute in the following ways:

- (1) filing a complaint with the National Consumer Commission (the **Commission**);
- (2) referring a complaint directly to the National Consumer Tribunal (the **Tribunal**);
- (3) referring the matter to the relevant accredited ombud eg: Ombud for Consumer Goods and Services;
- (4) applying to the consumer court in the relevant province, if there is such a court, subject to the law establishing or governing that consumer court;
- (5) referring the matter to an alternative dispute resolution agent;
- (6) approach a court with jurisdiction over the matter, if all other available remedies have been exhausted.

### 8.3 Alternative Dispute Resolution

- (1) A dispute between the university and a consumer may be resolved by way of an alternative dispute resolution process. This process involves instructing an alternative dispute resolution agent who can be an industry ombud, a person or entity providing conciliation, mediation or arbitration services in relation to consumer disputes.

- (2) If the alternative dispute resolution agent finds that there is no reasonable probability of the parties resolving their dispute through this process, the agent can terminate the process and the consumer may file a complaint with the Commission.
- (3) If the dispute is resolved by the agent, the agent may record the resolution of the dispute in the form of an order, and if the parties to the dispute consent to the order, submit it to the Tribunal or the High Court to be made a consent order. The consent order may include an award of damages to the complainant, if the complainant consents to this.

#### 8.4 The National Consumer Commission

- (1) One of the Commission's primary tasks is dealing with complaints from consumers arising out of possible contraventions of the CPA. Any person may file a complaint with the Commission. The Commission may also initiate a complaint concerning alleged prohibited conduct either on its own, or when directed to do so by the Minister or at the request of a provincial consumer protection authority, another regulatory authority or an accredited consumer protection group.
- (2) The Commission will either refer the complaint to an alternative dispute resolution agent, a provincial consumer protection authority or a consumer court in order to resolve the dispute, unless the parties have previously attempted to resolve the dispute in this manner and have been unsuccessful.
- (3) The Commission can also conduct an investigation into the alleged contravention and has wide ranging powers in doing so. This includes issuing of summons to persons believed to have relevant information or documentation and **conducting search and seizure operations** on the premises where the alleged contravention has taken place, is taking place or is likely to take place.
- (4) The Commission can also refer the matter to the consumer court in the relevant province or to the Tribunal for adjudication. A court considering any matter in terms of the CPA may order a supplier to alter or discontinue any conduct that is inconsistent with the CPA and award damages against the relevant supplier.

#### 8.5 Administrative Penalties

- (1) The Tribunal may impose an administrative penalty in respect of prohibited conduct, a failure to comply with a compliance notice issued by the Commission or the failure to do anything required in terms of the CPA. The CPA provides that such fines may not exceed **the greater** of:
  - (a) 10% of the respondent's annual **gross** turnover during the preceding financial year; or
  - (b) R1 000 000.00.
- (2) The CPA lists certain factors which the Tribunal must take into account when considering the appropriate fine to impose. This includes the nature and extent of the contravention, any loss or damage as a result of the contravention, the level of profit derived from it, market circumstances, co-operation with the Commission and Tribunal, the behaviour of the respondent and any previous contraventions.
- (3) In serious cases the Commission can refer individuals to the National Prosecuting Authority for criminal prosecution.
- (4) Consumers are not obliged to approach the Commission and are still entitled to approach the regular courts for recourse in terms of the CPA.

#### 8.6 Dealing with complaints

- (1) Complaints to the Commission / Tribunal or court potentially results in:

- (a) reputational damage;
  - (b) wasted management time;
  - (c) legal costs;
  - (d) damages claims; and
  - (e) potentially huge fines.
- (2) It is essential to develop a policy for dealing with complaints.
- (a) Having such a policy in place will allow for the speedy resolution of complaints and give consumers the comfort of knowing that there is an easily accessible platform through which their complaints can be addressed.
  - (b) It will also ensure that universities become aware of any possible non-compliance with the CPA and are able to remedy such non-compliance, before a complaint is escalated to the Commission.

#### 8.7 How to deal with complaints

- (1) It is advisable to have an internal procedure on how to deal with complaints. This procedure can be specific to each department or faculty, but must be reported through a central point (eg: risk and compliance / legal departments) so that a record can be kept of all complaints for the purposes of monitoring compliance and keeping a record of how complaints were resolved.
- (2) The following general procedure should be followed when dealing with complaints:
- (a) ensure that consumers are aware of the complaints procedure (contact number, email address, contact person);
  - (b) keep a record of consumer complaints (perhaps have a prescribed form for complaints);
  - (c) evaluate the complaint;
    - (i) if it's obvious that the consumer is entitled to recourse (either in terms of the university's own policies or in terms of the CPA) then proceed to resolve the complaint and notify the risk, compliance or legal division of the university; or
    - (ii) if it's contentious, refer the complaint to the legal division.
  - (d) Keep consumers informed of how the complaint will be addressed and the progress of the investigation. This will ensure that consumers are aware that their complaints are being dealt with which will reduce the likelihood of complaints being made to the Commission.
  - (e) Keep a record of the complaint resolution and who dealt with it.
- (3) If a complaint is received from the Commission, immediately refer the complaint to the legal division, or seek external legal advice.
- (4) Universities must also manage its social media accounts in order to take note of complaints. Complaints should not be addressed on social media and the appropriate response is to acknowledge the complaint and take the persons contact details and contact them separately to resolve the complaints.
- (5) Always treat consumers politely, with respect and listen attentively to their problems.

**Disclaimers:**

- These guidelines address the CPA concerns for universities which pose the highest risk and should not be construed as comprehensive advice in respect of the CPA.
- Universities should familiarise themselves with these guidelines and ensure that it takes responsibility to implement the necessary actions in order to comply with the CPA. It is the responsibility of each university to comply and Universities South Africa will not be responsible for any non-compliance by universities with the provisions of the CPA.

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