

# AFTER THE EVENT



We consumers are becoming ever more conscious of our rights of redress when we suffer harm as a result of using services, products or facilities offered by others. But what must we do to assert these rights? The options are neither simple nor straightforward, as **Margie King** discovers.

**A**N INJURY THAT PROMPTS A CLAIM FOR damages is likely to be traumatic and expensive, so the aftermath of such an event is a particularly bad time to face the unfamiliar, difficult and complicated process of getting justice.

In the previous issue of *PERSONAL FINANCE* magazine (“No blame, no shame?”, volume 59, 2nd quarter 2014), we highlighted the case of Christian Rabie, the 23-year-old who was awarded compensation of R23.5 million for serious injuries he sustained at age 13 while playing unsupervised in a school playground. But you might suffer significant harm in less serious incidents caused by the negligence of others – for example, a slip on a dirty supermarket floor, a car accident as a result of mechanical failure that should have been picked up in a recent service, or a severe reaction to a tainted food product.

You could choose to start litigation and, if funds for legal fees are a problem, pursue the matter on a no-win, no-fee basis. Or, at minimal cost, you could seek redress through statutory channels, including those provided by the Consumer Protection Act (CPA).

In its preamble, the CPA says it is intended to “ensure accessible, transparent and efficient redress for consumers who are subjected to abuse or exploitation in the marketplace”. So it applies to all injustices suffered by consumers, but also has profound implications for claims for liability and negligence. If you base your negligence claim on this Act, it requires (in section 69) that you pursue your case first through

one of the channels it has made available and turn to the conventional courts only when these have been exhausted.

It is too early to tell whether the CPA can deliver on its intentions, but the channels are:

1. Ombudsmen;
2. Alternative dispute resolution (ADR);
3. The National Consumer Commission (NCC);
4. The National Consumer Tribunal (NCT); and
5. Consumer courts.

Generally speaking, there is a cut-off time of three years after the event for referring complaints to any of these channels. The first three forums – ombudsmen, ADR and the NCC – try to help the parties reach an agreement. If they are successful, the next step is to have the agreement made an order of the NCT or the High Court, and either of these orders can include an award of damages to you.

The NCT pre-existed the arrival of the CPA, having been introduced as an adjudicative body for consumers under the National Credit Act, but with the broader task of achieving justice for consumers in matters other than credit. NCT consent orders have the same status as orders of the High Court – in other words, failure to adhere to the terms of a consent order results in the debtor being held in contempt of court and liable for criminal prosecution (see “Consumer courts” on [page 42](#)).

Paul Esselaar, of Esselaar Attorneys in Cape Town, says the reason you would have an agreement confirmed as an order of court is to be able to use the normal court procedures to recover your money.