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A damages award for injury would be likely to include quantifiable financial loss and compensation for pain and suffering and loss of amenities.

“Essentially, this allows you to get a warrant of execution from the High Court, which allows the sheriff to attach and sell the debtor’s goods to pay your damages claim.

“The NCT and the consumer courts do not issue warrants of execution against property, so you always end up in the High Court if you want the sheriff to do something. The benefit of using the NCT is that (in theory) you can just go to the registrar of the High Court with your NCT order and it will be issued – no appearance before a judge is required,” he says.

You should not try more than one CPA channel at once, Esselaar says. “This does not disadvantage you; it simply ensures that there are not two cases about the same thing happening at the same time.”

The Consumer Goods and Services Ombud (CGSO) says in an advisory note on its website (www.cgso.org.za) that once you have consented to an award of damages, you cannot institute a claim in a civil court for damages. “This means that, after agreeing to a compromise, a consumer cannot turn around at a later stage and demand something else.”

1. Ombudsmen

The ombudsman system requires you to try to resolve the matter with the service provider before approaching the relevant ombudsman. (The ombudsmen are listed on page 77.)

The CGSO’s advisory note explains that the goal of the office is the resolution of disputes between

suppliers and customers, ending in an agreement between the parties. If no resolution can be reached, you can approach the NCC or NCT.

2. Alternative dispute resolution

According to section 70 of the CPA, an ADR agent may be a statutory or industry ombudsman, a person who offers services in mediation, conciliation or arbitration (which the Act does not define), or a provincial consumer court. Esselaar says a person who offers mediation or conciliation aims to get a settlement agreement, but if the parties do not agree, there is no resolution.

“Arbitration, on the other hand, gets a result whether or not the parties agree. If there is arbitration, then an ‘arbitral award’ is given, and this is enforced in terms of the Arbitration Act, which is very similar to having a consent order confirmed by the High Court,” he says.

The Act says that if an ADR agent offering mediation or conciliation believes there is no reasonable probability of the parties resolving their dispute, the process is terminated and you can file a complaint with the NCC (see below).

Esselaar says there is some doubt about whether taking a claim to an ADR agent counts as making a claim within the three-year limit and whether it extends the time available to go to court, if necessary. Consequently, he says, a claim should reach court within three years, even if other methods >>