



Matters arising from the 2012/13 Annual Report of the National Consumer Commission

1. Introduction

The National Consumer Commission (NCC) was established by the Consumer Protection Act (CPA) (No. 68 of 2008) and became operational on 1 April 2011. The NCC's core mandate is to assist in protecting consumer rights by increasing consumer awareness of what these rights are and investigating prohibited conduct by business and enforcing compliance with the provisions of CPA. This core mandate falls within the Department of Trade and Industry's strategic objective to "create a fair regulatory environment that enables investment, trade and enterprise development in an equitable and socially responsible manner". The NCC, therefore, has a critical role to play in empowering rural and low income consumers, who are often most affected by unfair business practices and least able to address these challenges.

According to the Act, the NCC's functions include the:

- 1.1. Development of codes of good practice relating to the provisions of the Act.
- 1.2. Promotion of legislative reform through consultation with provincial consumer protection authorities, national organs of state and consumer protection groups, alternative dispute resolution agents and suppliers.
- 1.3. Promotion of consumer protection within organs of state.
- 1.4. Enforcement of the Act including the investigation and evaluation of any prohibited conduct and offences, issuing and enforcing compliance notices.
- 1.5. Research to increase knowledge of the nature and dynamics of the consumer market.
- 1.6. Promotion of public awareness of consumer protection matters.
- 1.7. Liaison with other regulatory authorities on matters of common interest.
- 1.8. Provision of advice and recommendations to the Minister.

2. Core issues identified by the Committee

During the Portfolio Committee on Trade and Industry's previous engagements with the NCC, the following core issues were identified:

- 2.1. Lack of compliance with the Public Financial Management Act (PFMA), especially related to the implementation of governance structures.
- 2.2. Lack of leadership in ensuring sufficient oversight over financial reporting, legal compliance and related controls.
- 2.3. Substantial irregular expenditure of R8.5 million or 25.5 per cent of total expenditure.
- 2.4. Performance targets and actual performance measured appeared to be misaligned in certain instances.
- 2.5. Procedural discrepancies in the issuing of compliance notices leading to legal cases against the NCC and substantial financial burden on the NCC.

- 2.6. There was a breakdown in the relationship between the NCC and the National Consumer Tribunal.
- 2.7. The high vacancy rate within the NCC, especially of key positions.

3. Auditor-General's Report

3.1. Financial statements

In terms of the financial statements, the Auditor-General's opinion was qualified compared to an unqualified opinion in the 2011/12 financial year. The qualified opinion was based on:

- Irregular expenditure that could not be adequately confirmed due to supporting information being stolen from the NCC's premises and inadequate filing of information.
- Operating expenditure for the prior year was incorrectly allocated to the 2012/13 financial year.

Other emphasis of matters related to (i) significant uncertainties linked to disclosed contingent liabilities for a lawsuit and a claim for cancelling contracts and the retention of R2.8 million without Treasury approval; (ii) the restatement of corresponding figures; and (iii) material impairments as a result of long outstanding receivables.

3.2. Predetermined objectives

He found no material findings on the annual performance report concerning the usefulness and reliability of the information. However, 81 per cent of the planned targets were not achieved during the 2012/13 financial year and there were material misstatements that were subsequently corrected by management.

The then Acting Commissioner had attributed this to the late revision of the Strategic Plan to realign the work of the NCC to its legislative mandate as prescribed in the CPA.

3.3. Compliance with laws and regulations

He raised a number of areas of non-compliance with laws and regulations and internal control matters. Many of these have remained and worsened since the Auditor-General's report for the 2011/12 financial year.

- *Internal audit:* The Commissioner had not ensured that the internal audit function was established, which resulted in poor reporting to the audit committee, lack of evaluation of the effectiveness and efficiency of internal controls, the reliability and integrity of financial and operational information and compliance with laws and regulations.
- *Audit committees:* Due to the abovementioned concerns, the audit committee was unable to fulfil its functions of reviewing the effectiveness of the NCC's internal audit function, internal control systems, the adequacy, reliability and

accuracy of the financial information and the institution's compliance with legal and regulatory provisions.

- *Budgets*: Quarterly reports of actual and projected revenue and expenditure were not submitted to the DTI and the NCC retained its accumulated surpluses without Treasury approval.
- *Annual financial statements, performance and annual report*: Firstly, financial statements were not fully prepared in all material respects in relation to the prescribed financial reporting framework and/or were not supported by full and proper records. Secondly, there had been material misstatements on the initial financial statements received by the Auditor-General's office but these had been subsequently corrected.
- *Expenditure management*: Reasonable steps had not been taken to prevent and detect irregular and fruitless and wasteful expenditure. Furthermore, no disciplinary action had been taken against officials responsible for these types of expenditure. In addition, payments for goods and services were paid prior to their receipt, which is in contravention of Treasury regulations.
- *Procurement and contract management*: There had been non-compliance with Treasury regulations with transactions above and below the value of R500 000. Due to documents being stolen and the NCC's inadequate filing system, sufficient appropriate audit evidence could not be obtained.
- *Asset management*: Proper control systems to safeguard and maintain assets were not implemented.

The following related internal control concerns were raised:

- *Leadership*: The accounting authority had not ensured sufficient oversight over financial reporting, legal compliance and related controls; human resource management; establishment and communication of policies and procedures; and the development and monitoring of the implementation of action plans to address internal control deficiencies.
- *Financial and performance management*: Management had not exercised adequate monitoring to prevent legal non-compliance; implemented proper record keeping; and prepared regular, accurate and complete financial and performance reports.
- *Governance*: The internal audit unit was not adequately resourced and functioning and the audit committee had not promoted accountability and service delivery through evaluating and monitoring responses to risks and providing oversight over the effectiveness of the internal control environment.

3.4. Investigations

Two investigations had been on-going during the 2012/13 financial year:

- An independent consulting firm were investigating certain procurement irregularities with regard to the appointment of certain officials at the NCC. This was concluded in May 2013 and certain recommendations were made for follow-up.
- The Public Protector South Africa's investigation regarding allegations of irregular procurement and recruitment was concluded and recommendations were made

to improve the NCC's financial controls and supply chain management processes.

4. Non-financial performance

4.1. Realignment of non-financial performance indicators

Under the previous Commissioner, the NCC had set eleven priorities for the 2012/13 – 2016/17 periods. These were (NCC 2012: 15):

- Protect consumers from hazards through advocacy, education and awareness.
- Improve consumer redress as envisaged by the CPA (complaints handling system)
- Protect consumers from unethical business practices and misconduct through law enforcement and compliance.
- Conduct research for policy, legislative and regulatory framework improvement.
- Achieve customer and stakeholder expectations.
- Ensure the establishment of a functional organisation.
- Achieve the mandate of the NCC with an optimal staff complement.
- Implement an organisation wide performance management system.
- Create the brand of the NCC as South Africa's consumer voice.
- Provide an effective Information and Communication Technology (ICT) infrastructure and network.
- Implement an effective and efficient financial management system.

However, the strategic plan was revised in January 2013. This led to a simplification of the NCC's strategic objectives, namely to (NCC 2013a: 13):

- Promote compliance with the Consumer Protection Act.
- Be a well-governed and capacitated organisation.

Furthermore, performance indicators and targets were refined to ensure that these were aligned to the NCC's core mandate and were measurable and achievable. This refinement has impacted on the ability to monitor the NCC actual performance against the targeted performance, as the targets and the performance indicators have been significantly changed from those in the initial Strategic Plan (NCC 2012) and the revised Strategic Plan (NCC 2013a) does not provide performance indicators or targets.

4.2. Actual performance

As the Auditor-General indicated, only 3 of the 16 targets were achieved. This was linked to the following key challenges:

- Lack of human resources and ICT support.
- Lack of financial resources.
- Late assessment and analysis of performance, as the revised Strategic Plan was implemented in quarter 3 and 4.

Progress made was concentrated in the area of consumer advocacy, education and awareness, with the exception of capacitating consumer protection groups and creating the brand of the NCC as the South African consumer voice. However, it will be critical to establish the effectiveness of these programmes in empowering consumers and raising their awareness of their rights.

Furthermore, there has been a significant shift in the operations of the Enforcement and Investigations Unit, with the focus returning to investigations and the NCC referring complaints to the relevant authorities, where the NCC has been the first port of call, rather than handling all complaints itself. There appears to have been good progress made in addressing areas of non-compliance when a less confrontational approach was adopted by the NCC in dealing with the ICT, medical and pharmaceutical and retail and manufacturing sectors.

The NCC has “withdrawn” matters that were before the National Consumer Tribunal and revised its internal processes to ensure that matters were procedurally correct. The two changes will lower the number of legal cases the NCC is involved in and thus lower the associated legal costs.

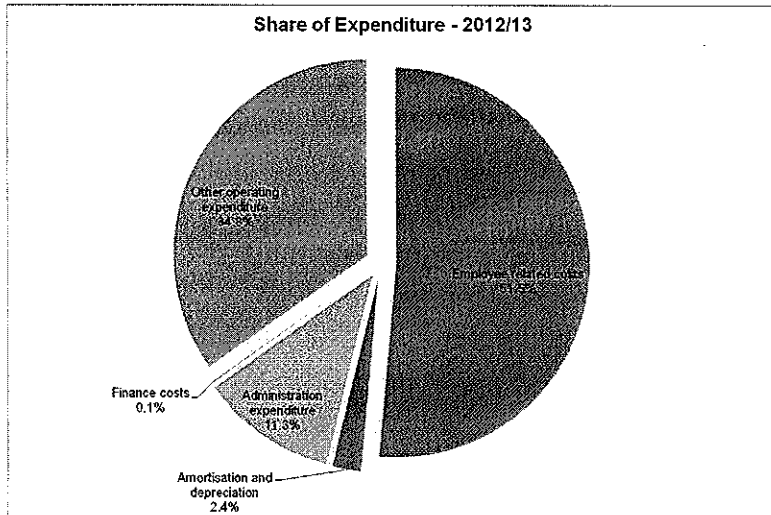
4.3. Human resources

Based on the human resource information provided on pages 33-36 of the Annual Report (NCC 2013b), the following is highlighted:

- The NCC has an approved structure with 132 positions. However, only 32 of these positions were filled at the end of March 2013, representing a vacancy rate of 75.8 per cent.
- The NCC was also employing a further 33 employees that were outside of the approved structure, two contractors and one seconded official, resulting in a total staff complement of 68.
- The then Acting Commissioner had indicated that the NCC had been undergoing a skills audit in an attempt to place the 33 employees within the approved structure and to ensure that the appropriate skills were available within the NCC.
- The vacancy rate was expected to remain high over the current financial year due to financial constraints, which cannot be addressed without adequately functioning governance structures and policies and procedures in place to ensure compliance with the PFMA.
- The high vacancy rate, especially related to certain critical positions, will affect service delivery into the future, as the demand for the NCC’s services increase and alternative consumer protection mechanisms are not accredited and functional.

5. Financial performance

The NCC received a transfer of R48.3 million from the DTI, a 36.6 per cent increase from the 2011/12 financial year. The NCC spent R44.7 million, leaving a surplus of R3.7 million or 7.7% of total revenue, which is outside the accepted range of 5 per cent of revenue. A breakdown of the expenditure for the 2011/12 financial year is provided in the figure below:



Source: (NCC 2013b: 103)

Employee related costs include remuneration for employees, the members of the audit committee and the executive management. The executive management's total remuneration consisted of 25.5% of this budget.

The notes on the administration and other operating costs continue to not provide much further detail on the actual amounts spent on sub-categories. This is concerning as these two categories contribute 98 per cent to the other operating expenditure. There had been a decline in expenditure on travel and subsistence costs from R0.47 million in 2011/12 to R 0.33 million in 2012/13.

Comment

Many of the NCC's service delivery challenges link directly or indirectly to the lack of financial resources. However, additional financial resources cannot be secured without a proven track record of spending and good governance, which in turn require the proper management of resources in compliance with the PFMA. Failing the establishment of well-functioning governance systems and implementing appropriate policies and procedures, the NCC's access to additional funding will be limited. In this regard, the filling of critical management positions is essential.

5.1. Irregular expenditure

Irregular expenditure increased from R8.5 million in 2011/12 to R15.6 million in 2012/13 (34.9 per cent of total expenditure), of which:

- R8.2 million (52.7% of irregular expenditure) was due to not following the proper procurement process.
- R2.9 million (18.4% of irregular expenditure) was due to irregular legal fees.
- R2.4 million (15.5% of irregular expenditure) was as a result of documentation/contracts not being available. This was linked to an alleged burglary at the NCC offices.
- R1 million (6.4% of irregular expenditure) was linked to a deposit paid for the call centre management system that was contracted to RAM (see NCC (2012b: 108) for further detail).
- R0.8 million (5.4% of irregular expenditure) was irregular in terms of the PFMA.

- R0.2 million (1.5% of irregular expenditure) was due to non-compliance with procurement processes for goods and services between R10 000 and R500 000.

5.2. Fruitless and wasteful expenditure

Fruitless and wasteful expenditure increased significantly from R135 in 2011/12 to R3.6 million in 2012/13 (8 per cent of total expenditure). However, R1.6 million of this was identified in the 2012/13 financial year but was attributable to the previous financial year. This expenditure included:

- Legal fees for the former Commissioner in her personal capacity (R45 600 in 2011/12 and R27 622 in 2012/13).
- Assets paid for and never received (R1 million in 2011/12 and R0.3 million in 2012/13).
- Assets no longer in use (R0.13 million in 2012/13).
- VAT incorrectly claimed (R0.48 million in 2011/12 and R0.76 million in 2012/13).
- Call centre management system (R0.72 million in 2012/13).

Comment

The sources of irregular and fruitless and wasteful expenditure are primarily indicative of financial management and governance systems failures. The new Commissioner has indicated that many of these systems have subsequently been implemented and are better functioning. However, irregular expenditure linked to the loss of documentation may linger for the foreseeable future.

6. Issues for the Committee's consideration

- The status of the NCC's establishment and implementation of internal control mechanisms, as well as the functioning of governance systems such as the internal audit unit and audit committee.
- Outcomes of the skills audit.
- The strategy to address the vacancy rate to improve its service delivery.
- Progress made in accrediting industry ombud bodies and establishing links with provincial consumer protection authorities to ensure that complaints handling is addressed at the appropriate levels and freeing the NCC's existing human resources to achieve its other priorities.
- The effectiveness of consumer advocacy, education and awareness programmes.
- Progress in developing the ICT strategy.
- Accessibility of the NCC including the availability of its website.

References

National Consumer Commission (2012) *Strategic Plan 2012/13-2016/17*.

National Consumer Commission (2013a) *Revised Strategic Plan 2012/13-2016/17*.

National Consumer Commission (2013b) *Annual Report 2012/13*.