

SharedLiving

Issue 10

October - December 2019

GOVERNANCE CORNER



TO CUT OR NOT TO CUT
**ELECTRICITY OR
WATER SUPPLY**

STREAMLINING HARMONIOUS LIVING
THROUGH TRAINING

CASE CLOSED

A case where the CSOS dismissed an application for the payment of soundproofing of a wall that separates units, p20.

Service Excellence, Independence,
Integrity and Accountability

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Affordable Reliable Justice

Gedeelde Lewe Ukuhlalisana Tsamisana Ho Dulisana Mmoho

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CASE CLOSED

The CSOS Ruled In Favour
Of The Neighbour And
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VISION: To establish a world-class dispute resolution service within community schemes.

MISSION: To facilitate and maintain a world-class dispute resolution service to promote good governance of community schemes by providing education and training to all relevant stakeholders.

VALUES: Service Excellence, Independence, Integrity and Accountability.



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CHIEF OMBUD FOREWORD

In this regard, we have introduced an online functionality for the registration of a community scheme. The ability to download and complete the CS1 Form manually is still available on our website and we will be rolling out the online functionality for dispute applications soon. I am pleased with the great reviews we have had on our Training. This is one area that community schemes have been looking forward to and we are providing the 1-day course, at no cost. Updates on the Training dates and venues is available on our website www.csos.org.za

Concerningly, there are still low levels of registration compliance. Currently a third of the sector has been captured under community scheme registration. I acknowledge some of the operational challenges we have had and that has been a cause of frustration for some community schemes. We are working on it. A data cleansing exercise is planned to clean up the duplicate registration numbers and we are currently contacting every scheme to ensure they have a registration number. If you have not received a registration number, please contact us on registration@csos.org.za

In this issue we present to you our performance information for the period October to December 2019. Applications for dispute resolution are on the rise. Already, this year alone we have dealt with double the amount we did in the previous year.

Dear Stakeholders,

Welcome to the latest issue of our quarterly electronic newsletter, Shared Living. I hope you enjoy the quarter's selection of articles and the update on our performance to date.

Inside the CSOS, there is an urgent drive to make things significantly simpler. Simpler for the CSOS, the applicants for dispute resolution and the community schemes that we regulate.

Sincerely,
Ndivhuo Rabuli
Acting Chief Ombud



DID YOU KNOW?

As the people in charge of running a community scheme, the management of a body corporate has certain rights and obligations to its members. The body corporate needs a unanimous decision to make improvements to the common property that are 'not necessarily necessary'.

If alterations or improvements are 'reasonably necessary', then members must be given at least 30 days written notice with:

- Estimated costs
- Details of how costs will be met
- A motivation with drawings of the alteration

The body corporate must ensure owners and occupiers do not do any of the following:

- Unreasonably interfere with others lawfully
- Cause a nuisance
- Make alterations that impair the building's stability
- Use a section or exclusive use area inappropriately

LANGUAGE AND TERMS

If you live in a community scheme, it is useful to understand some of the language and terms used in official documents.

- **Trustee** – tenants or owners who are appointed by the members of a body corporate to look after the finances and management of a community scheme.
- **Reserve funds** – to ensure unexpected costs can be covered by a body corporate. It is now a requirement that a portion of funds from levies be allocated to a reserve fund.
- **Managing agent** – any person who provides scheme management services to a body corporate for reward, whether monetary or otherwise, including any person who is employed to render such services.
- **Scheme management service** – any financial, secretarial, administrative or other service relating to the administration of a scheme.
- **Utility section** – in terms of local municipality by-laws, is designed to be used as an accessory to a primary section, such as a bathroom, toilet, storeroom, workshop, shed, servant's quarters, parking garage, parking bay or other utility area, not being a primary section.

GOVERNANCE CORNER

with Johlene Wasserman



Wishing to live in a gated community, for security and lifestyle benefits, sound investment opportunity or to recapture the charm and spirit of communal living? With excellent security features, an array of amenities and beautifully landscaped public spaces, gated living has a charm and prestige like no other. But before immersing yourself in this aesthetics you need to understand the Scheme Governance rules of the community scheme prior to purchasing or renting in one of these.

Each potential buyer and occupier who is interested

in buying or renting in a Community Scheme should ask for a copy of the code of conduct, management rules or governance documents of that schemes prior to signing the Deed of Sale or the Lease agreement. Each member and occupier as well as their visitors are bound by the rules of the scheme and should there be a transgression of the rules the scheme will take the appropriate action which may lead to a fine being imposed on them.

Factors that should be considered prior to purchasing/leasing a unit

- finances of the scheme
- pets' policy

- Number of parking bays allocated to the unit
- Whether the municipal bill is up to date
- Special levies

The documents which you may request prior to signing

- Scheme rules
- Copy of a municipal account
- Copy of a list of number of defaulters
- Minutes of the last AGM (Annual General Meeting)

As the CSOS, we encourage potential buyers and occupiers to conduct extensive research into a scheme before purchasing or leasing, as they are bound by the rules of the scheme.

CSOS LEVY PAYMENT PROCESS



- In terms of the Act, all community schemes must register with the CSOS
- Registration is done by completing the CS1 Form and can be submitted online www.csos.org.za, hand delivered or emailed to registration@csos.org.za
- All complete registrations are provided a unique registration number, e.g. CSOS/REG/16/KZN/123456
- Payments must be made quarterly in arrears; however schemes can make annual payments in advance
- The CSOS banking details are as follows:
 - FNB
 - Account Name: Community Schemes Ombud
 - Account no. 62682595205
 - Account type: Public Sector Cheque Account
 - Branch Code: 200607
 - Swift Code: FIRNZ AJJ
 - Reference: CSOS registration number, eg. CSOS/REG/16/KZN/123456

Please note: The orange bolded part is the most important, should the bank reference field not provide for all the characters

The proof of payment must be sent to:
levypayment@csos.org.za

THE PROOF OF PAYMENT MUST BE ACCOMPANIED BY A LEVY SCHEDULE, WHICH DETAILS THE LEVY CALCULATION. PLEASE SEE THE EXAMPLE BELOW:

CSOS Levies Calculator:			
Unit number	Scheme levy		Unit CSOS levy
1	R	500.00	R -
2	R	1,000.00	R 10.00
3	R	1,500.00	R 20.00
4	R	2,000.00	R 30.00
5	R	2,500.00	R 40.00
6	R	3,000.00	R 40.00
7	R	3,500.00	R 40.00

Scheme CSOS Levy	R 180.00
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The Levy calculator can be downloaded from the website, on the following link <https://www.csos.org.za/one-register-scheme/>

Once the payment has been allocated to the community scheme by the CSOS, a receipt statement will be issued. Kindly note that the CSOS does not issue invoices as yet.

CONTACT DETAILS:

Registration related queries: Registration@csos.org.za | Levy payment related queries: levypayment@csos.org.za
Contact the CSOS Finance Team **010 593 0533**

OUT AND ABOUT

IN OCTOBER THE CSOS JOINED THE DEPARTMENT OF HUMAN SETTLEMENTS AT ITS FIRST NATIONAL STUDENT CONFERENCE FOR HUMAN SETTLEMENTS.

Hosted by the Department of Human Settlements, Water & Sanitation, the CSOS participated in this event targeted at students from the Nelson Mandela University, the University of KwaZulu-Natal and the University of the Witwatersrand. The aim of the conference was to introduce the services of the department and to create an understanding of its challenges, policies and practices.



TO CUT OR NOT TO CUT

IS A BODY CORPORATE OR HOA
ALLOWED TO CUT ELECTRICITY
OR WATER SUPPLY DUE TO NON-
PAYMENT OF LEVIES?

by Karen Bleijs, CSOS Gauteng Adjudicator

THE ANSWER IS SIMPLE . . . NO!!!

It seems so easy, and let's face it, it works. As a Trustee or Director you've been struggling for years to get a recalcitrant owner to pay his levies on time, and with one simple flick of the trip-switch, you can thoroughly and completely 'convince' him to pay (if he has the money, that is)!

Our Courts disagree.

In the November 2018 case of *Niehaus v High Meadow Grove*, the Body Corporate reduced the electricity supply to Ms Niehaus's unit at High Meadow Grove in Paulshof because she had fallen into arrears with her levies. With her two children having to study for their upcoming exams, and her inability to cook a proper meal for them and so on, she brought an urgent application to the High Court for an order to

compel the Body Corporate to reconnect the full electricity supply to her unit.

The Court considered the matter and confirmed the decision that NO ONE CAN TAKE THE LAW INTO HIS OR HER OWN HANDS and disconnect the electricity supply to a unit in the scheme.

The Judge referred to the 1998 decision in *Queensgate Body Corporate v Claesen*, where it was said that "the right to the supply of electricity is, as a matter of fact, an incident of the possession of immovable property". The Court will step in and protect this right of possession if anyone interferes with it, and it is for this reason you cannot disconnect or reduce the electricity or water supply to Mr van der Merwe's unit, irrespective of whether he owes R 5 or R 500 000.

If Mr van der Merwe is in arrears with his levies the Body Corporate must either lodge a dispute against him with the CSOS or issue summons against him out of court – that's the right way to go, but you cannot take the law into your own hands.

Depriving a person of electricity supply (or even reducing the electricity supply) to a unit is known in law as spoliation and is completely and utterly illegal.

If, as Trustees of a Body Corporate, you want to disconnect the electricity supply to a unit, you can do so if you have sought and obtained the Court's consent first.

This happened in 2015 in the unreported case of *Cathkin Peak Body Corporate v Johnson and Another*, where Ms Johnson and another owner were what is known colloquially as 'repeat levy defaulters'. Out of desperation the Trustees applied to the Court for an order giving the Trustees permission to disconnect the electricity supply to these non-payers. The Court granted the order on good cause shown and the Body Corporate disconnected the electricity supply to their units.

Exactly the same principal applies if you stop someone from entering a scheme because they are in arrears with their levies.

Take the example of the 2012 case of *Fisher v Misty Bay Body Corporate*. Mr Fisher was in arrears with his levy, so the Body Corporate decided to stop him from gaining access to the scheme because the Conduct Rules said that they could do so. They blocked his access tag so that when he next visited the scheme, which was situated on the banks of the Vaal River, he could not get through the boom gate (but he could park his car outside and walk to his unit).

He was furious and launched an urgent application to force the Body Corporate to allow him free and unimpeded access, which the Court granted despite what the Rules stated..

Of the spoliation remedy, the Court said that it is intended to secure the status quo, that is, to restore possession that was taken away by the Body Corporate.

The merits of the dispute, i.e. whether there are in fact levies owing to the Body Corporate, must be determined in the appropriate forum, such as the CSOS or the Court.

STREAMLINING HARMONIOUS LIVING THROUGH TRAINING



Section 4(2)(b) of the CSOS Act says that one of the functions of the CSOS is to provide education, information, documentation and such services as may be required to raise awareness to owners, occupiers, executive committees and other persons or entities who have rights and obligations in community schemes. In other words, provide education and training. The function may seem a daunting task, but not to Johlene Wasserman, an admitted attorney and Manager in the CSOS' Governance, Compliance and Enforcement unit.

The CSOS training covers key aspects of the CSOS and STSM Acts as well as the CSOS dispute process, the body corporate memory,

pets and parking and the impact of key court findings. "It's free and the plan is to provide comprehensive training in all nine provinces" says Wasserman.

One of the impacts of the training is that it creates universal understanding of how to run a scheme in compliance to the CSOS and STSM Acts. Many matters of dispute could be avoided if there is clear and open communication between the owners and executive committees of community schemes.

Request for training can be made on www.csos.org.za The national training programme will be published soon.

CSOS can assist.

The Community Schemes Ombud Service (CSOS) is the Regulator and Ombud for all sectional title development schemes, home or property owners' associations, housing schemes for retired persons, share block companies, and housing cooperatives.

Established in terms of the Community Schemes Ombud Service Act, 2011 (Act 9 of 2011) to regulate the conduct of parties within community schemes and to ensure their good governance, the CSOS is also mandated to manage the prescripts of the Sectional Titles Schemes Management Act, 2011 (Act 8 of 2011).

The CSOS calls on all executive committees and those in the management of community schemes (as defined by the Act,) to register with the CSOS.

Community scheme registration is free and forms can be found on www.csos.org.za

For more information contact

Gauteng: 63 Wierda Road East, Sandton | Tel: 010 593 0533

KwaZulu-Natal: 7th Floor Aquasky Towers, 275 Anton Lambede Street, Durban | Tel: 031 001 4215

Western Cape: 8th Floor Constitution House, 124 Adderly Street, Cape Town | Tel: 021 001 2569

www.csos.org.za



Affordable Reliable Justice

PERFORMANCE INFORMATION

1 OCTOBER - 31 DECEMBER 2019

APPLICATIONS FOR DISPUTE RESOLUTION

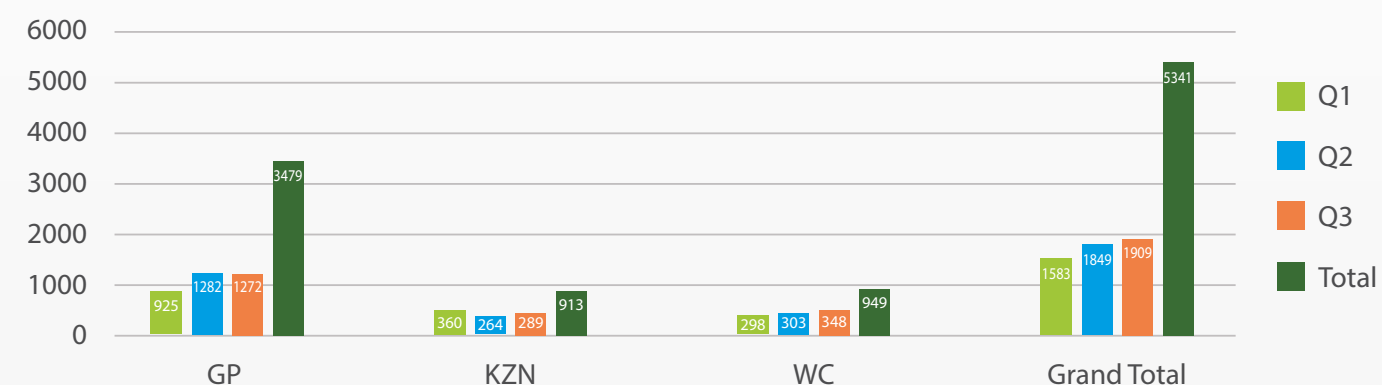
The table and diagram below depict the number of applications for dispute resolution that were received for each regional office and per month for the third quarter (October 2019, November 2019 and December 2019).

Table 1: Applications for Dispute Resolution

REGIONS	Q1	Q2	Q3	Quarterly totals
GP	925	1282	1272	3479
KZN	360	264	289	913
WC	298	303	348	949
GRAND TOTAL	1583	1849	1909	5341

The total number of the new application for dispute resolutions received for the Gauteng Office is an indication that Gauteng has a high number of people residing in community schemes. This is becoming a growing trend in the other provinces.

Figure 1: Applications for Dispute Resolution



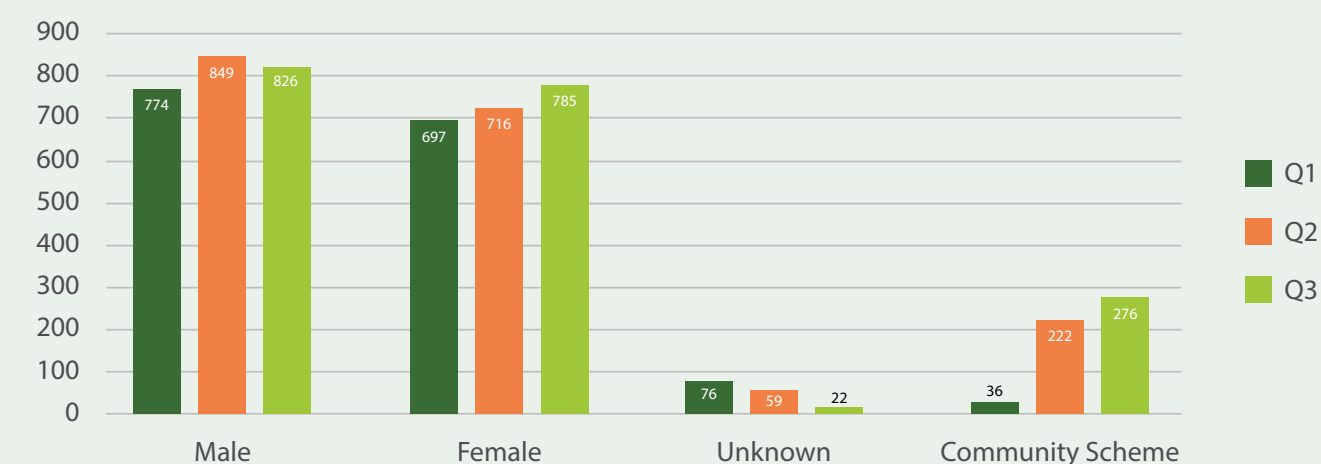
a) Number of Applicants Per Gender and Race

The number of applicants per gender who submitted applications for dispute resolution is depicted in the table, and diagram below, per month for the third quarter (October 2019, November 2019 and December 2019).

Table 2: Applicants Per Gender who Submitted Applications for Dispute Resolution

Gender	Q1	Q2	Q3	Total
Male	774	849	826	2449
Female	697	719	785	2201
Unknown	76	59	22	157
Community Scheme	36	222	276	534
Grand Total	1583	1849	1909	5341

Figure 2: Applicants Per Gender who Submitted Applications for Dispute Resolution



The CSOS received a higher number of complaints from males. The CSOS is working on correcting the “unknown” indicator.

PERFORMANCE INFORMATION

CONTINUED

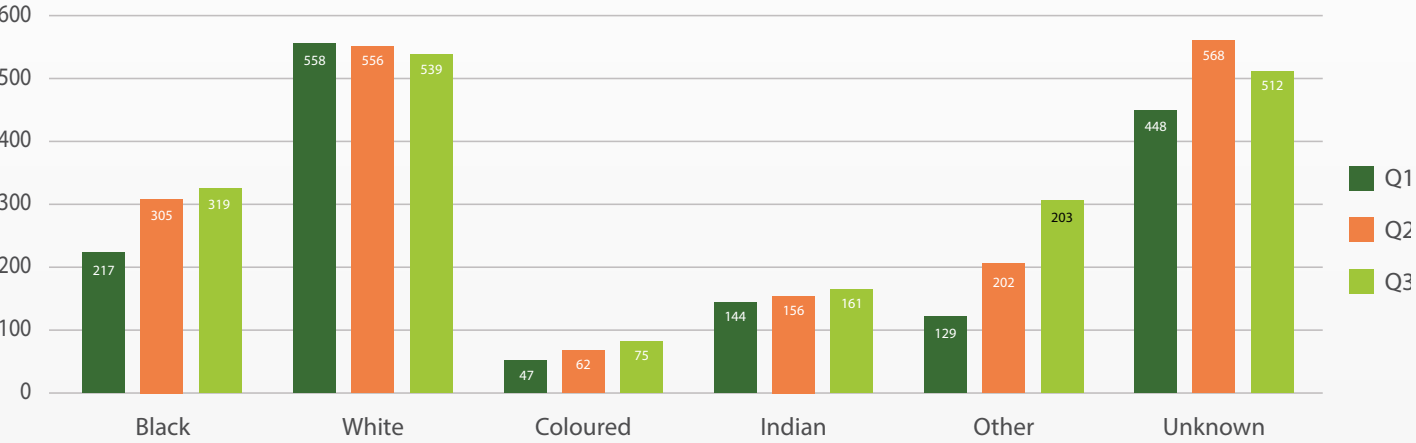
b) Race

The number of applicants per race who submitted applications for dispute resolution is depicted in the table and diagram below, reported on per month and for the third quarter (October 2019, November 2019, and December 2019). The CSOS will utilise this data to inform the transformation agenda.

Table 3: Applicants Per Race who Submitted Applications for Dispute Resolution

Race	Q1	Q2	Q3	Total
African	217	305	319	841
White	558	556	539	1653
Coloured	47	62	75	184
Indian	144	156	161	461
Other	129	202	303	634
Unknown	488	568	512	1568
Grand Total	1583	1849	1909	5341

Figure 3: Applicants Per Race who Submitted Applications for Dispute Resolution



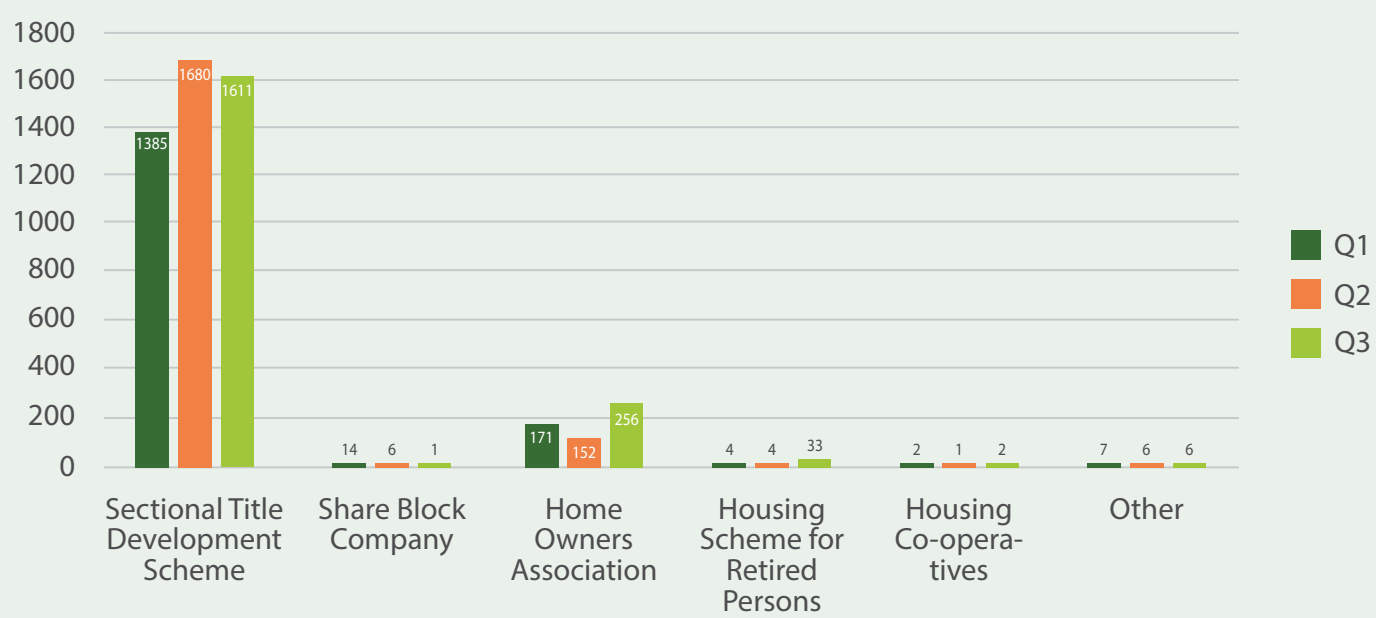
c) Type of Scheme

As part of empirical evidence, CSOS records all disputes lodged and uses that information to determine the various schemes' types where disputes are prevalent. The number of disputes lodged per scheme type is depicted in the table and diagram below and further classified by month for the third quarter (October 2019, November 2019 and December 2019).

Table 4: Disputes Lodged Per Scheme Type

Types of schemes	Q1	Q2	Q3	Total
Sectional Title Development Scheme	1385	1680	1611	4676
Share Block Company	14	6	1	21
Homeowners Association	171	152	256	579
Housing Scheme for Retired Persons	4	4	33	41
Housing Co-operative	2	1	2	5
Other	7	6	6	19
Grand Total	1583	1849	1909	5341

Figure 4: Disputes Lodged Per Scheme Type



PERFORMANCE INFORMATION

CONTINUED

d) **Classification (S39 Of the CSOS Act, No 09 Of 2011)**

Section 39 of the Community Schemes Ombud Service Act, No. 09 of 2011, prescribes Prayers for Relief which must be ordered and, depending on merits, in resolving disputes emanating from community schemes. It is important for the CSOS to understand, and record, the various prayers for relief sought by the applicants. The numbers per prayer for relief are depicted in the table and diagram below, per month for the second quarter (October 2019, November 2019 and December 2019).

Table 5: Applications per prayer for relief

Prayers for Relief	Q1	Q2	Q3	Total
Financial Issues	831	991	1116	2938
Behavioural Issues	147	148	151	446
Governance Issues	14	26	44	84
Meetings Issues	76	91	92	259
Management Services	72	67	24	163
Private and Common Areas	266	321	272	859
General and Other Issues	83	108	139	330
Not Clearly Defined	109	97	56	262
Grand Total	1583	1849	1909	5341

e) **Matters Finalised**

The CSOS Dispute Resolution Model (DRM) maps out stages to be followed in the dispute resolution process, including but not limited to, the manner and instances upon which matters must be finalised. The numbers and the way matters have been finalised are as depicted in the table and diagram below, analysed for each month for the third quarter (October, November and December 2019).

Table 6: Matters Finalised

Manner finalised	Q1	Q2	Q3	Total
Withdrawn	134	126	111	371
Settled by Parties	56	72	74	202
Rejection (Non- Jurisdiction, Referral)	183	194	170	547
Referral to Conciliation	1054	1007	830	2891
Conciliation	267	305	267	930
Referral to Adjudication	527	590	484	1601
Adjudication	192	253	403	848
No Further Particulars	328	218	143	689
Other / No application fee received	77	49	82	208
Appeals	13	6	3	22

f) **Quarter 3 overall Regional dispute resolution statistics:****Gauteng**

- 775 finalised matters out of 1272 = 61%
- 265 referred for adjudication
- 287 adjudications completed
- 259 awaiting adjudication and at various stages

KwaZulu-Natal

- 244 finalised matters out of 289 = 84.42%
- 155 referred for adjudication
- 43 adjudications completed
- 295 awaiting adjudication and at various stages

Western Cape

- 231 finalised matters out of 348 = 66%
- 64 referred for adjudication
- 73 adjudications completed of which some have been carried over from the previous quarter
- 114 waiting adjudication and at various stages most scheduled to be conducted January and February 2020

Table 7: Overall Dispute Resolution Statistics

	Q1	Q2	Q3	Total	Percentage
Referral to Conciliation	1054	1007	830	2891	54.12%
Conciliation	267	305	358	930	32%
Referral to Adjudication	527	590	484	1601	25.35%
Adjudication	192	253	403	848	53%
Total matters received	1583	1849	1909	5341	
Other manner finalised	0	0	0	0	0%
All matters finalised	1237	1217	1341	3795	71%

CASE CLOSED

The CSOS ruled in favour of the neighbour, Mr Marriott and his tenants Mr and Mrs Kwatala against Ms I Mock, the applicant.

On the 18th December 2019, the CSOS Head Office in Sandton dismissed an applicant's case of payment for soundproofing the wall that separates the units from the neighbour. The CSOS ruled in favour of the neighbour, Mr Marriott and his tenants Mr and Mrs Kwatala against Ms I Mock, the applicant.

The applicant testified that she is the owner of a unit at Saddlebrook Place in Bryanston. A year ago, Mr and Mrs Kwatala moved in as tenants in Mr Marriott's unit, and they made it impossible for her to sleep in her bedroom due to noise. She indicated that in terms of the rules of

scheme, silence must be maintained between 22:00 and 07:00. The applicant says the tenants made noise in their kitchen. The noise included banging pots and pans around. The kitchen is adjacent to the applicant's bedroom and when the noise became intolerable, she had to summon the managing agent. "After calling the managing agent the tenants undertook to stop making noise at 21:30, and they did not stick to their word" said the applicant.

The applicant further testified that she recorded the noise which was 49 (forty-nine) times since the end of February 2019. Ms Mock

stated that she had breast cancer, broke her pelvis and had five operations. She indicated that the noise had an adverse impact on her health.

In his response, Mr Marriott, first respondent who owns the place that Mr and Mrs Kwatala are occupying, explained that Saddlebrook Place consists of fifty-two (52) apartments. "There are children, cats and dogs in the scheme; thus, expecting complete silence will be impossible", he said. He further said an applicant complained about the previous tenant's dog. He had to cover the front gate to satisfy her.

Mr Marriott said his tenants feel intimidated and have tendered a notice to vacate due to the applicant's behaviour. The previous tenants shared the same and there was a consequent loss of income to him. "She banged the walls and the doors to intimidate the tenants," said the respondent.

In evaluating the evidence and information submitted, Adjudicator, Lindiwe Bulu, said that she perused all written submissions and had taken all submissions stated before her. The applicant brought in a recorder, empty pans and pots to demonstrate the level of noise from the tenant, which was not allowed to form part of evidence solely because the veracity of the audio could not be confirmed. "The empty pots and pans were also denied as evidence on the basis that the venue is different. Therefore, the precise decibels of the noise cannot be measured," said the Adjudicator.

"The relief sought by the applicant falls within the provisions of Section 39 (2)(a) of the CSOS Act. The applicant is seeking an order that the behaviour of some residents of the scheme constitutes a nuisance and requires such residents to refrain from the conduct," said Bulu when handing down the order.

"The Court held in **PGB Boerdery Beleggings (Edms) Bpk v Somerville 62 (Edms) Bpk 2008 (2) SA 428 SCA para 9**, that 'An

interference with the property rights of another is not actionable as a nuisance unless it is unreasonable. *An interference will be unreasonable when it ceases to be a "to-be-expected-in the circumstances" interference and is of a type which does not have to be tolerated under the principle of "give and take, live and let live".* (own emphasis) The determination of when an interference so exceeds the limits of expected toleration is achieved by invoking the test of what, in the given circumstances, is reasonable. The criterion used is not that of a reasonable man but rather involves an objective evaluation of the circumstances and milieu in which the alleged nuisance has occurred."

Adjudicator Bulu also stated that the applicant's listed illnesses pre-dates the tenants and the demand for wall soundproofing to be paid for by Mr Marriott is without basis, taking into consideration that the tenant has tendered a notice to vacate the premises. In the evidence led by the applicant, the Adjudicator said she is not convinced that the tenants' conduct constitutes a nuisance as provided for in Section 39 (2) (2) of the CSOS Act. She therefore dismissed the application in terms of section 53 (1) of the CSOS Act on the basis that the application is frivolous, vexatious, misconceived and without substance.

The parties' attention was also drawn to Section 57 (1) of the CSOS Act of 2011 which refers "An applicant, the association or any affected person who is dissatisfied by an adjudicator's order, may appeal to the High Court, but only on a question of law."

In terms of Sections 50, 51, 53, 54 and 55 of the Community Schemes Ombud Act, the Adjudicator is empowered to investigate, adjudicate and issue an adjudication order. The CSOS Act enables residents of the community schemes to take their disputes to a statutory dispute resolution service instead of a private arbitrator or the courts. The purpose of the order is to bring closure to the case brought by the applicant to the CSOS.

CONTACT US!



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Twitter: @CSOS_SA

Facebook: CSOS.SouthAfrica

COMPLAINTS

1. Gauteng, Limpopo and North West

Email applications to gp-complaints@csos.org.za

Contact (+27 10) 593 0533

Visit 1st Floor, 63 Wierda Road East, Sandton

2. KwaZulu-Natal, Free State and Mpumalanga

Email applications to kzn-complaints@csos.org.za

Contact (+27 31) 001 4215

Visit 7th Floor Aquasky Towers, 275 Anton
Lembede Street, Durban

3. Western Cape, Eastern Cape and Northern Cape

Email applications to wc-complaints@csos.org.za

Contact (+27 21) 001 2569

Visit 8th Floor Constitution House, 124 Adderley
Street, Cape Town

COMMUNITY SCHEME REGISTRATION

Register a Community Scheme online at
www.csos.org.za or [Click Here](#)



Affordable Reliable Justice