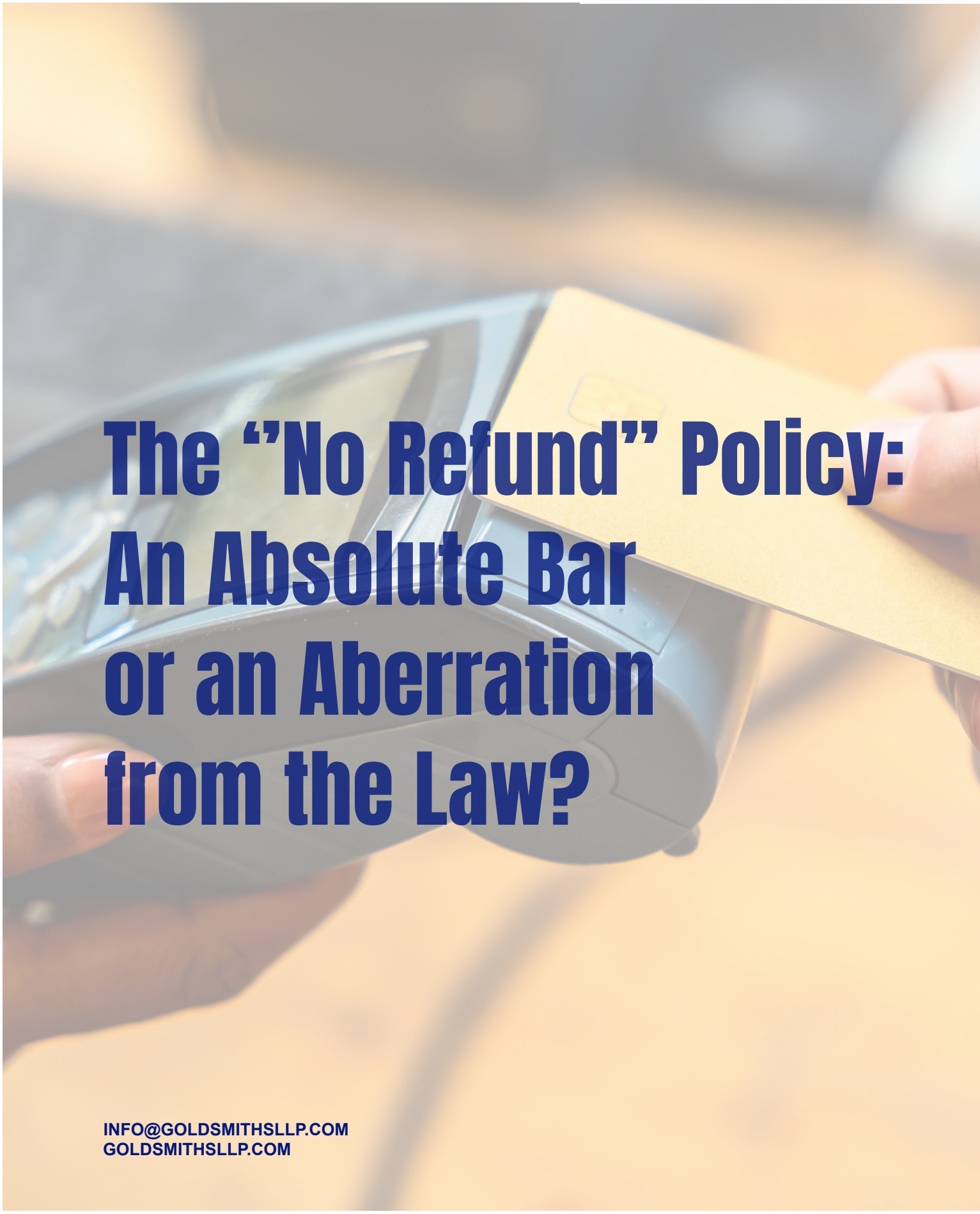
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The "No Refund" Policy: An Absolute Bar or an Aberration from the Law?

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Introduction

The notice “Goods sold are not returnable” is one of the most commonplace disclaimers in Nigerian retail transactions. Variants of no refund policy appear on transport tickets, receipts, booking platforms and some e-commerce checkout pages, and it is commonly treated as a complete answer to any request for a refund. Whether it is to be regarded as an answer to a request for refund is a question of law after a consideration of the facts leading to the request for a refund. Businesses have understandable reasons for these policies, they want to prevent fraudulent returns, avoid disputes over used or damaged items, and protect thin margins, a seller is generally free to set the terms on which it trades, but the difficulty arises when those terms attempt to take away the rights that the law already provides to the buyer.

This article examines whether a non-refund policy operates as an absolute bar to a consumer’s claim or is an aberration from the statutory provisions.

The Legal framework

The Federal Competition and Consumer Protection Act, 2018 (the “Act”) protects consumers against unfair, unreasonable and deceptive conduct and restricts supplier’s ability to exclude liability by contract. Since the enactment of this Act, the answer is less favourable to suppliers than commercial practices assume. Two groups of provisions bear directly on no-refund terms.

First, the Act establishes substantive remedial rights for consumers. Section 120 recognises a consumer's right to cancel an advance booking, reservation or order for any goods or services and be refunded subject a reasonable charge for cancellation, while section 122 entitles a

consumer to return defective goods and obtain a full refund.

Secondly, the Act regulates the contractual terms imposed by suppliers. Sections 127 to 130 address terms that are unfair, unjust or unreasonable, as well as conditions that seek to waive or restrict consumer rights. Section 130 (2)(a) specifically allows consumers to obtain refunds subject to the extent of the failure of the business where the business fails to perform the service to meet the ag reed standards.



The Judicial Approach

The Nigerian courts that have decided on cases of no-refund policies have relied on the provisions of the Act to arrive at the decision to nullify the terms of no-refund policies that have been put forward as a defence to failure to refund consumers who demanded refunds. Two decisions illustrate the treatment of no-refund terms by the Nigerian courts.

In Patrick Chukwuma v Peace Mass Transit Ltd, a passenger who had purchased a N500 (Five Hundred Naira) ticket was refused a refund after a two-hour delay.

The defendant relied on a statement on its ticket that money paid could not be refunded. The High Court of Enugu State declared t the policy as illegal, null and void,and on that basis, awarded the sum of N500,000 (Five Hundred Thousand Naira) in damages. The court arrived at the decision to declare the no-refund policy of the defendant as illegal by relying on sections 104,120 and 129 (1) of the FCCPA.

In Edem Ewa Ekeng & Anor v Wakanow.com Ltd, the claimants sought a refund following the defendant's failure to provide the services relating to flights booked through its platform. The defendant relied on a no-refund policy, which was disclosed only after payment had been made and was reportedly declared illegal. Two principles may be drawn from the decision. First, a supplier cannot rely on a no-refund policy to shield itself from liability arising from its own non-performance. Secondly, a contractual term disclosed only after payment cannot readily be regarded as having formed part of the bargain or as having been accepted by the consumer at the point of contracting.

No-Refund Policies: An Absolute Bar or an Aberration?

Having regard to the applicable statutory provisions and judicial authorities, an unqualified no-refund policy cannot operate as an absolute bar to a consumer's right to a refund. To the extent that such a no-refund policy purports to extinguish statutory consumer rights to demand a refund for the cancellation of an advance booking, order, reservation or the unsatisfactory performance of a service, it is an aberration of the law. The following considerations support this conclusion. First, statutory rights cannot be excluded by mere notice. The entitlements conferred by sections 120 and 122 of the Act arise by operation of law, while the Act frowns against inconsistent contractual terms and prohibits conditions that seek to waive or restrict consumer rights. Accordingly, a notice displayed by a supplier cannot, in itself, displace these statutory protections.



Secondly, an absolute no-refund notice is difficult to reconcile with the Act's emphasis on fair and transparent commercial dealings. A statement suggesting that a consumer has no right to a remedy, where the law expressly provides otherwise, contradicts the extent of the protection afforded to consumers under the Act. The timing of disclosure further undermines a supplier's reliance on such a notice, particularly where the policy is communicated only after payment has been made, as illustrated by Ekeng's case.

Thirdly, it does not follow that every restriction on refund is unlawful. The Act does not establish a general right to return goods that conform to the agreed description and quality merely because a consumer has changed their mind. The legal distinction, therefore, lies not simply in the existence of a no-refund policy, but in its scope, application and disclosure.

A refund restriction may be enforceable in appropriate circumstances, provided it does not derogate from statutory consumer rights or otherwise contravene the requirements of the Act.

Conclusion

The article has shown that it is not unusual for suppliers of goods and services to put in place and enforce no-refund policies. The application of these no-refund policies has therefore been considered against the provisions of the Federal Competition and Consumer Protection Act, 2018 to determine whether no-refund policy can constitute absolute bars to consumers' claims for refunds or it is simply an aberration.

Consumers are allowed by the Act to cancel any advance booking, reservation or order for goods and services and the suppliers are prohibited from insisting on a no-refund policy to deny the consumers' claims for a refund. The remedy the supplier has is to deduct a reasonable amount as cancellation fee. Furthermore, consumers are allowed to request for a full refund where defective goods are returned to the supplier. The courts have shown the judicial attitude to no-refund policies by declaring them as illegal, null and void in appropriate cases.

No-refund policies cannot constitute an absolute bar to consumers' claims for refund and in most cases, as can be seen from Ekeng and Patrick's cases, no-refund policies can amount to an aberration from the law where it insists on what is contrary to statutorily established consumer rights.

Please note that the contents of this Article are for general guidance on the Subject Matter. It is NOT legal advice.
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