

A Plague of Procedural Unfairness: Joburg City's Invisible "Pre-Termination Notices"

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INTRODUCTION

For the last few months, the City of Johannesburg Metropolitan Municipality ("the City") has adopted a new practice of including a generic notification at the very bottom of every customer's monthly municipal statements, which warn that in the event of non-payment, cut off will follow.

Fig 1: Monthly municipal invoice and pre-termination notice

Stand Size: 1, Number of Drawings: 1, Date of Valuation: 2023/04/13, Portion: U1, Municipal Valuation: R 0.00, Region: [blank]

Invoice Number: [blank], Client VAT Number: [blank], Next Reading Date: 2023/04/13, Deposit: R 251,736.03

Account Number: [blank], PIN CODE: xxxxxx

Previous Account Balance: 135,734.89
 Less: Incoming Payment (Last Payment Made 2023/03/20): -135,734.89
 Sub Total: 0.00
 Current Charges (Excl. VAT): 33,910.16
 VAT @ 15%: 5,086.53

90 DAYS: 0.00, 60 DAYS: 0.00, 30 DAYS: 0.00, CURRENT: 38,996.09, INSTALMENT PLAN: 0.00, TOTAL AMOUNT OUTSTANDING: 38,996.09, Total Due: 38,996.09, Due Date: 2023/04/13

Dear customer, kindly note that the inspection & objection period for GVR 2023 is extended from 31 March - 5 May 2023. Log onto www.joburg.org.za for more info

Remittance Advice: This document is for your information only. Please do not detach it from the invoice. EasyPay 9111 55050310094, Postal Office: 0146 5505031009

Total Due: 38,996.09, Due Date: 2023/04/13

Remarkably, these notices appear on statements where the account is in a credit, sometimes millions of rand worth of credit. They are included on every customer's statement, whether they are in credit or debit and whether they have any disputes pertaining to the account, or not.

Fig 2: Monthly municipal invoice with pre-termination notice despite credit

Stand Size: 1, Number of Drawings: 1, Date of Valuation: 2023/07/01, Portion: U1, Municipal Valuation: [blank], Region: [blank]

Account Number: [blank], PIN CODE: xxxxxx

Previous Account Balance: -4,086,563.06
 Less: Incoming Payment (Last Payment Made 2024/06/21): -1,541,861.16
 Sub Total: -5,630,544.22
 Current Charges (Excl. VAT): 1,282,565.77
 VAT @ 15%: 138,948.41

90 DAYS: 0.00, 60 DAYS: 0.00, 30 DAYS: 0.00, CURRENT: 4,209,010.04, INSTALMENT PLAN: 0.00, TOTAL AMOUNT OUTSTANDING: -4,209,010.04, Total Due: -4,209,010.04, Due Date: 2024/09/11

This Pre-termination Notice is issued in respect of MUNICIPAL SERVICES charges reflecting arrears over thirty (30) days. Paying your municipal account in full and/or enter payment arrangement will avoid services being cut off. Do you have a longstanding or unresolved service delivery-related issue with the City of Johannesburg? You may lodge your complaint today with the Office of the Ombudsman by contacting us 010 288 2800 or emailing complaints@joburgombudsman.org.za

Remittance Advice: This document is for your information only. Please do not detach it from the invoice. EasyPay 9111 55050699772, Postal Office: 0146 5505069977

Total Due: -4,209,010.04, Due Date: 2024/09/11

WHAT IS THE LEGAL CONSEQUENCE OF THIS NOTIFICATION?

In short, nothing. Read on to understand why.

PROCEDURAL FAIRNESS IN CUT OFF PROCEDURES

In terms of the City's Debt Collection and Credit Control Policy ("the Policy") and according to the Constitutional Court, the disconnection of municipal services by the City can only take place after the delivery of a pre-termination notice to the party posed to be disconnected. Moreover, a pre-termination notice must afford a consumer a reasonable period in which to settle their account or make representation regarding the accuracy of the billed amounts.

According to the Constitutional Court, this “reasonable period” should be, at the very least, 14 days.

Being furnished with a pre-termination notice is therefore an essential aspect of procedural fairness regarding disconnections of municipal services. Our law provides that when a state body like a municipality is going to take a decision against a citizen or resident that would adversely and materially affect their rights (such as a decision to disconnect their service supply for non-payment), they must first notify that person of the proposed decision, and give that person a reasonable opportunity to make representations to the decision-maker.

This element of our law ensures that people are given an opportunity to “have their say” – so that their side of the story can be heard – before decisions that negatively affect them are taken. The idea is that if there are any errors in the decision, they can be brought to the attention of the decision maker and the proposed decision can be amended, or not implemented, to avoid any unlawfulness or unfairness occurring as a result of that decision.

A classic example would be where the municipality has accidentally not recorded a customer’s payment on their invoice, with the result that the invoice is reflecting a debit balance (an amount owing), when in fact the customer’s account should be in credit. In this case the municipality’s giving of a pre-termination notice to the customer, which permits the customer time to raise the issue with the decision maker, stops the decision maker implementing what would have turned out to be a bad, and unlawful, decision.

THE PLAGUE OF PROCEDURAL UNFAIRNESS: HOW THE GENERAL ONE-LINE NOTIFICATIONS DO NOT COMPLY WITH PAJA

Our Constitution protects the right to just administrative action. This right is codified through various legislative mechanisms but specifically through the Promotion of Administration of Justice Act (known as “PAJA”), which provides in section 3 that there are several mandatory aspects to how notice of a pending decision must be given to the person who will be affected thereby, failing which that decision will be unlawful.

An extract from section 3(2)(b) of PAJA is below:

- (b) In order to give effect to the right to procedurally fair administrative action, an administrator, subject to subsection (4), must give a person referred to in subsection (1)-
- (i) adequate notice of the nature and purpose of the proposed administrative action;
 - [Sub-para. (i), previously para. (a) , renumbered by s. 46 of Act 42 of 2001.]
 - (ii) a reasonable opportunity to make representations;
 - [Sub-para. (ii), previously para. (b) , renumbered by s. 46 of Act 42 of 2001.]
 - (iii) a clear statement of the administrative action;
 - [Sub-para. (iii), previously para. (c) , renumbered by s. 46 of Act 42 of 2001.]
 - (iv) adequate notice of any right of review or internal appeal, where applicable; and
 - [Sub-para. (iv), previously para. (d) , renumbered by s. 46 of Act 42 of 2001.]
 - (v) adequate notice of the right to request reasons in terms of section 5.
 - [Sub-para. (v), previously para. (e) , renumbered by s. 46 of Act 42 of 2001.]
- (3) In order to give effect to the right to procedurally fair administrative action, an administrator may, in his or her or its discretion, also give a person referred to in subsection (1) an opportunity to-
- (a) obtain assistance and, in serious or complex cases, legal representation;
 - (b) present and dispute information and arguments; and
 - (c) appear in person.

The requirements of administrative justice are further included in the City’s own Policy. Clause 14.1.1 of the Policy is not complied with insofar as same requires that a pre-termination notice be delivered in conjunction with the services invoice. This clause of the Policy empowers the City to deliver a pre-termination notice along with services invoices – it does not empower the City to amalgamate the two species of document into a singular invoice. It especially does not empower the City to formulate the design of its pre-termination notices in such a way that they are non-descript from the regular content of municipal services invoices. This interpretation is bolstered by the fact that the Policy at all times refers to a “Pre-Termination/Final Demand Notice” as its own discrete document with its own intrinsic requirements.

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The generic line-item notations appearing at the bottom of customer invoices are also so small that they are unlikely to be noticed by most customers, who are not in the habit of reading the fine print underneath the “debt aging” section of their invoice, which usually contains nothing more than banking details. This tiny fine-print most certainly does not conform to the legal requirement of being a “clear statement of the administrative action” which constitutes “adequate notice”.

Clause 14.1.3 of the Policy is not complied with insofar as paragraph (e) thereof requires a proper pre-termination notice to evince upon what date payment in respect of the arrear amount(s) is due. The “pre-termination notice” affixed by the City does not contain such information. The purported “pre-termination notice” therefore fails to comply with Clause 14.1.3. of the Policy.

Clause 29.1.13 of the Policy is not complied with insofar as the City does not afford consumers the requisite period of 7 days in which to remedy any circumstances/ make representations regarding such circumstances. The purported “pre-termination notice” therefore fails to comply with Clause 29.1.13. of the Policy.

As such, the generic notification which the City includes at the bottom of its monthly invoices would have needed to comply with these requirements as set forth by the Constitutional Court and the City’s own Policy, to have legal effect. ***They do not.***

TROJAN HORSES AND INSIDIOUS WARFARE

What the City attempts to do in its practice of including these generic payment warnings at the bottom of services invoices is, effectively, to exempt itself from the requirement of having to comply with the provisions of the law and make the effort to notify customers at their properties of a pending disconnection in the proper manner.

In essence, this amounts to an attempt to equate these generic line-item notifications in the fine print of customer invoices, with formal written notification documents which must be delivered to a customer’s premises before cut off can lawfully occur. This strategy can be described as a Trojan horse, using the customer statements to “sneak in” a pre-termination notification which the customer does not notice, so that the City can later claim it did comply with the law when it later cuts off a customer’s supply.

CONCLUSION

Ultimately, the generic line item sentences hidden at the bottom of customer invoices which warn all customers broadly against termination resulting from non-payment are not to be regarded in law as “pre-termination notices” – at best they are a reiteration of the law. They do not include the required information in order to satisfy the requirements of the City’s own Policy, or PAJA, in order to constitute “pre-termination notices”.

Therefore, any disconnection of municipal services which occurs on the strength of and which is said to be preceded by these generic “pre-termination notices” is procedurally unfair and therefore unlawful.

Should you have been disconnected without receiving a pre-termination notice which complies with the above prescripts, such disconnection occurred unlawfully. Contact HBGSchindlers Attorneys today to find about your rights and recourse.



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