

Seal 3/2/26  
MJS

CASE FILE NUMBER: CONS/08/05/2025/00442/KSM/MK

**IN THE MATTER BEFORE THE BOARD  
OF THE COMPETITION AND CONSUMER  
PROTECTION COMMISSION**

**BETWEEN**

**Tamara Phiri**

**COMPLAINANT**

**AND**

**Evolve Limited**

**RESPONDENT**

**BEFORE:**

**Commissioner Angela Kafunda**  
**Commissioner Sikambala M. Musune**  
**Commissioner Derrick Sikombe**  
**Commissioner Bishop Dr. Wilfred Chiyesu**  
**Commissioner Pelmel Bonda**  
**Commissioner Onesmus Mudenda**

- Chairperson  
- Vice Chairperson  
- Member  
- Member  
- Member  
- Member

---

**DECISION**

---

Below is a summary of the facts and findings presented by the Commission to the Board of the Commission following investigations carried out in the above case.

**Introduction and Relevant Background**

***It was submitted that:***

1. On 5<sup>th</sup> May 2025, the Competition and Consumer Protection Commission ("the Commission") through its Lusaka office received a complaint from Ms. Tamara Phiri ("the Complainant") against Evolve Limited ("the Respondent"). Specifically, the Complainant alleged that on 15<sup>th</sup> April 2025, she purchased a one-month gym membership package which included a personal trainer from the Respondent at the price of K2,200.00 (receipt numbers 11338 and 11339). The Complainant alleged that the Respondent allocated her membership ID number 103712. The Complainant alleged that on the morning of 16<sup>th</sup> April 2025, she contacted the Respondent to cancel the membership and to request for a refund. The Complainant alleged that the Respondent instructed her to submit an email explaining why she was cancelling the membership. The Complainant alleged that she submitted the email as instructed, but the Respondent declined her refund request citing a contractual clause which stated that: "memberships are not refundable or

transferable". The Complainant alleged that the Respondent's response to her was contrary to the contract she had signed which only specified that: "yearly and 6-month memberships are non-refundable". The Complainant alleged that she had not been refunded despite her numerous follow-ups with the Respondent. The Complainant wanted the Respondent to refund her K2,200.00, immediately.

### **Legal Contravention and Assessment Tests**

#### **Legal Contravention**

##### ***It was submitted that:***

2. The alleged conduct appeared to be in contravention of Section 48(1) and Section 53(1) of the Competition and Consumer Protection Act No. 24 of 2010, as amended by the Competition and Consumer Protection (Amendment) Act No. 21 of 2023 ("the Act").
3. Section 48(1) of the Act stated that;

*"An owner or occupier of a shop or other trading premises or platform shall not cause to be displayed any sign or notice that purports to disclaim any liability or deny any right that a consumer has under this Act or any other written law."*

4. Section 48(2) of the Act stated that;

*"A person who, or an enterprise which, contravenes subsection (1) is liable to pay the Commission-*

- (a) *in the case of a person, a penalty not exceeding one hundred and fifty thousand penalty units; or*
- (b) *in the case of an enterprise, a penalty not exceeding ten percent of that enterprise's annual turnover."*

5. Section 53(1) of the Act stated that;

*"In a contract between an enterprise and a consumer, the contract or a term of the contract shall be regarded as unfair if it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer."*

6. Section 53(2) of the Act stated that;

*"An unfair contract or an unfair term of a contract between a consumer and an enterprise shall not be binding."*

7. Section 53(3) of the Act stated that;

*“Notwithstanding subsection (2), a contract shall bind the parties if it is capable of being enforced without the unfair term.”*

**Assessment Tests**

***It was submitted that:***

***The following assessment tests were used to consider Section 48(1) of the Act;***

8. Whether the Respondent was an owner or occupier of a shop or other trading premises or platform;
9. Whether the Complainant was a consumer;
10. Whether the Respondent displayed a sign or notice; and
11. Whether the sign or notice purported to disclaim any liability or deny any right that a consumer has under the Act or any other law.

***For the purposes of Section 53(1), the following assessment tests were used;***

12. Whether the Respondent was a “person” or an “enterprise”;
13. Whether the Complainant was a consumer;
14. Whether there was a “contract” or “term of the contract” between an “enterprise” and a “consumer”; and
15. Whether the contract or term of the contract caused a significant imbalance in the parties’ rights and obligations and the significant imbalance was detrimental to the consumer.

**Investigations Conducted**

***It was submitted that:***

16. The Notice of Investigation (“NoI”) and accompanying letter was duly served on the Respondent on 29<sup>th</sup> May 2025.<sup>1</sup> The Respondent made submissions in a

<sup>1</sup> Acknowledgement of receipt dated 29<sup>th</sup> May 2025

**BOARD DECISION ON ALLEGATIONS OF UNFAIR TRADING PRACTICES AGAINST EVOLVE LIMITED  
BY MS. TAMARA PHIRI OF LUSAKA DISTRICT**

---

letter dated 5<sup>th</sup> June, 2025. The Commission further reviewed the Respondent's membership form dated 15<sup>th</sup> April 2025.

**Findings**

**The Parties**

**The Complainant**

***It was submitted that:***

17. The Complainant was Ms. Tamara Phiri of Lusaka District.<sup>2</sup> Section 2 of the Act defined a consumer as "*any person who purchases or offers to purchase goods or services otherwise than for the purpose of re-sale, but does not include a person who purchases goods or services for the purpose of using the goods or services in the production and manufacture of any other goods for sale, or the provision of another service for remuneration.*"<sup>3</sup> The Complainant was a consumer pursuant to Section 2 of the Act because she paid K2,200.00 to the Respondent on 15<sup>th</sup> April 2025, for the purchase of a one-month gym membership for personal benefit.<sup>4</sup>

**The Respondent**

***It was submitted that:***

18. The Respondent was Evolve Limited whose registered address was Plot No. 161, Kudu Road, Kabulonga, Lusaka.<sup>5</sup> The Respondent, however, traded from Plot No. 331, Independence Avenue, Woodlands, Lusaka. The Respondent was registered as a local company (Registration No. 120180000044) with the Patents and Companies Registration Agency (PACRA).<sup>6</sup> According to PACRA, the Respondent was engaged in the business of providing fitness and wellness services. According to the Act, an 'enterprise' means *a firm, partnership, joint-venture, corporation, company, association and other juridical persons, which engage in commercial activities, and includes their branches, subsidiaries, affiliates or other entities, directly or indirectly, controlled by them.*<sup>7</sup> The Respondent was therefore an enterprise as envisaged under the Act as it was a company engaged in commercial activities of providing fitness and wellness services to its clients.

---

<sup>2</sup> CCPC Form IV dated 5<sup>th</sup> May 2025

<sup>3</sup> Competition and Consumer Protection Act No. 24 of 2010 as amended

<sup>4</sup> CCPC Form IV dated 5<sup>th</sup> May 2025

<sup>5</sup> Patents and Companies Registration Agency (PACRA) printout dated 6<sup>th</sup> June 2025

<sup>6</sup> Patents and Companies Registration Agency (PACRA) printout dated 6<sup>th</sup> June 2025

<sup>7</sup> Competition and Consumer Protection Act No. 24 of 2010 as amended

**Submissions from the Respondent<sup>8</sup>**

***It was submitted that:***

19. In a letter dated 5<sup>th</sup> June 2025, the Respondent submitted that the Complainant signed up for a one-month full gym membership and personal training package at the total cost of K2,200.00.
20. The Respondent submitted that although the front page of the membership agreement primarily highlighted that; *“six-month and annual memberships are non-refundable,”* the terms and conditions which the Complainant agreed to were clearly outlined under Section 5 of the contract which stated that; *“Memberships are not refundable or transferable.”*
21. The Respondent submitted that clause 5 in the wellness centre membership form was applicable to all membership categories, including monthly, six-month, and annual plans. The Respondent submitted that their position remained consistent with the contractual terms agreed upon at the time of registration.
22. The Respondent submitted that in the spirit of good faith and with a view to resolve the matter amicably, they were willing to offer a refund to the Complainant without admission of liability. The Respondent submitted that they were committed to transparency, fairness, and compliance with all relevant laws and regulations. The Respondent submitted that they were undertaking measures to enhance their internal processes and improve communication with consumers to ensure that membership terms were clearly understood.
23. The Respondent submitted that they hoped their response and willingness to resolve the matter amicably would assist the Commission to conclude the investigations. The Respondent submitted that they remained open to any further inquiries or clarification that may be required.

**Further Submissions from the Complainant**

***It was submitted that:***

24. On 12<sup>th</sup> June 2025, the Complainant submitted that the Respondent had issued her with a refund of K2,200.00 on 11<sup>th</sup> June 2025.<sup>9</sup>

---

<sup>8</sup> The Respondent's letter dated 5<sup>th</sup> June 2025

<sup>9</sup> Telephone conversation between I-Kasama and the Complainant dated 12<sup>th</sup> June 2025

**Review of the Respondent's Wellness Centre Membership Form dated  
15<sup>th</sup> April 2025<sup>10</sup>**

***It was submitted that:***

25. The Commission's review of the membership form revealed that the Complainant subscribed to a one-month personal training membership package for non-members at the cost of K2,200.00. The review of the membership form revealed that the first page contained a notice stating that: "*Yearly and six-month memberships are Non-Refundable.*"
26. Further review of the membership form revealed that on the second page was a notice under clause 5: membership terms & conditions – waiver and release, which stated that: "*Memberships are not refundable or transferable.*" **Kindly refer to Annexure 1.**

**Submissions to the Commission's Preliminary Report**

***It was submitted that:***

27. The Commission served the preliminary report on the Complainant on 21<sup>st</sup> July and on the Respondent on 24<sup>th</sup> July 2025. The Respondent made submissions through their legal representatives, Mazuba Banda and Company ("MBC"), on 25<sup>th</sup> August 2025. There were no submissions from the Complainant.

**Further submissions from the Respondent**

***It was submitted that:***

28. MBC submitted that after investigations, the Commission issued a preliminary report on allegations of unfair trading practices dated 24<sup>th</sup> July 2025 ("the Report") against its client, in which the following recommendations were made:
  - i. *The Respondent deletes the disclaimers stating; "Yearly and Six-month memberships are Non-Refundable" and "Memberships are not refundable..." from their membership forms; and submits evidence thereof to the Commission within 30 days of the receipt of the Board Decision in accordance with Section 58(1) of the Act;*

---

<sup>10</sup> The Respondent's Wellness Centre Membership Form dated 15<sup>th</sup> April 2025

- ii. *The Respondent comes up with new clauses on refunds and submits them to the Commission for review within 30 days of receipt of the Board Decision in accordance with Section 58(1) of the Act;*
- iii. *The Respondent pays a penalty of 0.5% of their annual turnover for the year 2024 with a cap of K40,000.00 for displaying a disclaimer on their wellness centre membership form dated 15<sup>th</sup> April 2025 in accordance with Section 48(2) of the Act and in line with the Competition and Consumer Protection Commission Guidelines for Administration of Fines, 2019, (Refer to Appendix 1); and*
- iv. *The Respondent be ordered to submit to the Commission, their latest audited annual books of accounts for the year 2024 for calculation of the actual penalty within 30 days of receipt of the Board Decision in accordance with Section 58(1) of the Act.*

29. MBC submitted that its client had since amended the offending clause from its membership form by redrafting its Refund and Cancellation Policy. MBC submitted that this corrective action demonstrated its client's good faith and commitment to compliance.

30. MBC further submitted that, in light of these corrective measures, there had been a significant change in circumstances pursuant to which the Commission may apply the provisions of Section 63(2) of the Act, which states:

- i. *"The Commission may, where it is satisfied that has been a material change of circumstances;*
  - (a) *Agree to vary or terminate a direction; or*
  - (b) *Accept a variation to an undertaking, or release an enterprise from an undertaking"*

31. MBC submitted that the above provision empowers the Commission to vary its recommendations where there was a material change in circumstance. Accordingly, MBC submitted that its client should be exempted from paying the recommended fine of 0.5% of its annual turnover for 2024 owing to the prompt corrective measures it had undertaken.

32. MBC submitted that the severe penalties proposed in the Report would be disproportionately damaging to its client's business. MBC submitted that such penalties could jeopardise the operational viability of the Respondent and, by extension, adversely affect its clientele.

33. MBC submitted that a more appropriate resolution would be one that focused on consumer remediation and future compliance, which its client had already

initiated through the amendment of its membership forms and the adoption of a Refund and Cancellation Policy.

### **Commission's Rebuttal**

***It was submitted that:***

34. The Commission noted that the Respondent amended its membership form.
35. The Commission noted the Respondent's request to be exempted from paying the recommended penalty of 0.5% of its annual turnover for the year 2024 on the basis that it had taken prompt corrective measures by amending its membership forms and refund policy. The Commission however, established that compliance after detection does not absolve an enterprise from liability for past contraventions, as this would set a precedent that encourages businesses to disregard the law until investigated. In the Tribunal the case of **Competition and Consumer Protection Commission vs Yembe Driving School, 2018**. The tribunal held that "*We are in agreement with the Applicant's argument in paragraph 8 of its affidavit in reply that the act of refunding the Complainant let alone a part refund, does not absolve the Respondent of the breach of Sections 48(1) and 53(1) of Act No. 24 of 2010. This is because the breach of Section 48(1) would have already taken place....*".
36. The Commission established that Section 63(2) of the Act allowed for variation or termination of directions only where there had been a *material change of circumstances*. However, in the present matter, the Commission established that the Respondent's actions did not constitute a material change of circumstance but rather a delayed compliance with obligations already required under the Act.
37. The Commission therefore, established that the imposition of penalties under Section 48(1) of the Act is not solely punitive but also corrective and deterrent in nature. Waiving the penalty would undermine the deterrence objective of the Act and send a wrong signal to other enterprises that may be inclined to engage in unfair trading practices. As such, the Commission maintained that the Respondent remains liable to pay the prescribed penalty.

### **Relevant Findings**

***It was submitted that:***

38. The Commission established that on 15<sup>th</sup> April 2025, the Complainant subscribed to the Respondent's one-month personal training membership for non-members at the cost of K2,200.00.<sup>11</sup>
39. The Commission established that the Respondent had displayed a notice on the first page of the wellness centre membership form dated 15<sup>th</sup> April 2025,

---

<sup>11</sup> The Respondent's Wellness Centre Membership Form dated 15<sup>th</sup> April 2025

stating that: "Yearly and Six-month memberships are Non-Refundable." Furthermore, the second page of the form contained a term under clause 5: membership terms & conditions—waiver & release which stated: "memberships are not refundable or transferable."<sup>12</sup>

40. The Commission established that the Respondent had redressed the Complainant by issuing her a full refund of K2,200.00 on 11<sup>th</sup> June 2025.<sup>13</sup>
41. The Commission established that the Respondent amended its membership form. *See annexure 2.*

#### **Previous Cases Involving the Respondent**

***It was submitted that:***

42. A review of the Respondent's case file revealed that there was no case in which the Respondent was found to have violated Section 48(1) or Section 53(1) of the Act.

#### **Analysis of Conduct**

***It was submitted that:***

***In analyzing the case for possible violation of Section 48(1) of the Act, the following assessment tests were used:***

***Whether the Respondent was an owner or occupier of a shop or other trading premises or platform;***

***It was submitted that:***

43. The Black's Law dictionary defined an Owner, "as one who has the right to possess, use, and convey something; a person in whom one or more interests are vested". Furthermore, the Black's Law dictionary defined an Occupant, "as one who has possessory rights in, or control over, certain property or premises".<sup>14</sup> The Respondent carried out their business at Plot No. 331, Independence Avenue, Woodlands, Lusaka where the NoI was served and where the Complainant was supposed to be training from. Therefore, the Respondent was an occupier of the trading premises.

---

<sup>12</sup> The Respondent's Wellness Centre Membership Form dated 15<sup>th</sup> April 2025

<sup>13</sup> Telephone conversation between I-Kasama and the Complainant dated 12<sup>th</sup> June 2025

<sup>14</sup> Black's Law dictionary, fifth edition, page 987

**Whether the Complainant was a consumer;**

***It was submitted that:***

44. The Complainant was a consumer. Please refer to paragraph 17 above.

**Whether the Respondent displayed a sign or notice;**

***It was submitted that:***

45. In the Tribunal case of **Zamm Imports Limited Vs the Commission 2014/CCPT/008/CON**, “display” was defined as “*to notify, inform or send a message to one who is a customer or consumer publicly or privately.*”; and that it could be also stretched to mean “*displaying on a consumer’s or customer’s receipt*”.<sup>15</sup> It was further held that “*display can not only be restricted to public, on a wall, bill board, notice board, or public place but also on a receipt*.<sup>16</sup> This, therefore, meant that the exhibit can either be notice on the wall, at the till or printed on the receipt, invoice or any other document related to a transaction between a consumer and an owner or occupier of a shop or any other trading premises. In the matter at hand, the Commission established that the Respondent’s wellness centre membership form dated 15<sup>th</sup> April 2025, contained two notices which read: “*Yearly and Six-month memberships are Non-Refundable*” and “*Memberships are not refundable or transferable*.<sup>17</sup> Therefore, the Respondent did display notices.

**Whether the sign or notice purported to disclaimed any liability or deny any right that a consumer has under the Act or any other law.**

***It was submitted that:***

46. The Act inferred a disclaimer as “*any sign or notice that purports to disclaim any liability or deny any right that a consumer has under the Act or any other written law.*”<sup>18</sup> On the other hand, Black’s Law Dictionary defined a disclaimer as “*a repudiation of another’s legal right or claim.*”<sup>19</sup> Disclaimers frequently serve to unjustly absolve traders of responsibility, denying consumers the ability to seek redress when they receive unsuitable goods or services. This practice undermined consumer protection, as it allowed traders to escape accountability for the quality and appropriateness of their offerings simply by displaying disclaimers. As a result, consumers are left without recourse when

---

<sup>15</sup> Zamm Imports Limited v Commission (2014) CCPT 008 CON, Page. 12.

<sup>16</sup> Zamm Imports Limited v Commission (2014) CCPT 008 CON, Page 12.

<sup>17</sup> The Respondent’s Wellness Centre Membership Form dated 15<sup>th</sup> April 2025

<sup>18</sup> Competition and Consumer Protection Act No. 24 of 2010 as amended by the Act No. 21 of 2023

<sup>19</sup> Black’s Law dictionary, fifth edition, page 989

faced with substandard or poorly delivered services. To counter these negative effects, the display of such unreasonable disclaimers is prohibited to ensure fair trading and consumer protection. In the matter at hand, the Commission established that the Respondent's wellness centre membership form dated 15<sup>th</sup> April 2025, had two notices which read: "Yearly and Six-month memberships are Non-Refundable" and "Memberships are not refundable or transferable."<sup>20</sup>

47. The Commission established that the notices "Yearly and Six-month memberships are Non-Refundable" and "Memberships are not refundable..." effectively created a barrier that could unjustly strip consumers of their right to a refund in an event, for example, if the Respondent failed to supply its wellness and fitness services with reasonable care and skill, as outlined in Section 49(7) of the Act which provided that where a service had not been supplied to a reasonable standard, the service provider must "within fourteen days of the provision of the service concerned, refund to the consumer the price paid for the service..."<sup>21</sup> The Commission established that the two notices implied an absolute prohibition against refunds, regardless of the circumstances, even when the need for a refund arose due to the Respondent's own actions or negligence in handling their clients.
48. The Commission established that the notices "Yearly and Six-month memberships are Non-Refundable" and "Memberships are not refundable..." amounted to a blanket denial of refunds, which contradicted consumer protection objectives that aim to ensure consumers have access to fair remedies when service providers fail to meet their obligations. The Commission established that in the wellness and fitness industry, it is important to offer consumers a reasonable opportunity to withdraw from a contract within a defined period which is commonly referred to as a cooling-off period, during which a full refund may be granted if no services had been utilized. The Commission opined that where services had been accessed after entering the contract, a partial refund should ordinarily be granted based on the number of days the customer made use of the services. For instance, in this case, the Complainant had not utilized any of the Respondent's services, as she contacted the Respondent to cancel the membership and requested for a refund just one day after paying, and did not use the service. The Commission therefore opined that under such circumstances the Complainant was entitled to a full refund or should have been made to pay a minimal penalty for inconvenience to the Respondent, as she had not accessed any services from the Respondent.

<sup>20</sup> The Respondent's Wellness Centre Membership Form dated 15<sup>th</sup> April 2025

<sup>21</sup> Section 49(7)(a) of the Competition and Consumer Protection Act No. 24 of 2010, as amended by the Act No. 21 of 2023.

**BOARD DECISION ON ALLEGATIONS OF UNFAIR TRADING PRACTICES AGAINST EVOLVE LIMITED  
BY MS. TAMARA PHIRI OF LUSAKA DISTRICT**

---

49. The High Court ruling in **Zambiri Traders Limited Vs the Commission 2014/HPC/0011**<sup>22</sup> established that disclaimers are treated as strict liability cases under Section 48(1) of the Act. In this case, the Respondent's wellness centre membership form dated 15<sup>th</sup> April 2025, displayed the words "Yearly and Six-month memberships are Non-Refundable" and "Memberships are not refundable..."<sup>23</sup> which effectively communicated to its customers that once they had subscribed for wellness and fitness services, they had no right to a refund even where the Respondent engaged in unfair trade practices such as misleading conduct or failing to supply suitable services. Consequently, by displaying the notices in question, the Respondent was in contravention of Section 48(1) of the Act because the notices purported to deny consumers the right to a refund that they have under the Act if they are victims of unfair trade practices by the Respondent.

50. The Commission determined that the term "memberships are not transferable" on the Respondent's wellness centre membership form dated 15<sup>th</sup> April 2025, appeared to constitute an unfair contract term. The term was, therefore, analyzed pursuant to Section 53(1) of the Act below.

***In analyzing the case for possible violation of Section 53(1) of the Act, the following assessment tests were used:***

***Whether the Respondent was an enterprise;***

***It was submitted that:***

51. The Respondent was an enterprise. Refer to paragraph 18 above.

***Whether the Complainant was a consumer;***

***It was submitted that:***

52. The Complainant was a consumer. Refer to paragraph 17 above.

***Whether there was a "contract" or "term of a contract" between the Respondent as an enterprise and the Complainant as a consumer;***

***It was submitted that:***

53. Having established that the Respondent was an enterprise and the Complainant was a consumer pursuant to Section 2 of the Act, the

---

<sup>22</sup> Zambiri Traders Vs CCPC delivered on 3<sup>rd</sup> June 2014

<sup>23</sup> The Respondent's Wellness Centre Membership Form dated 15<sup>th</sup> April 2025

Commission needed to assess if there was a contract or term of contract between the parties.

54. A contract was defined by Black's Law Dictionary as "*an agreement between two or more parties creating obligations that are enforceable or otherwise recognized at law*".<sup>24</sup> "*The contents of a contract are known as terms or clauses. An agreement will generally consist of various terms. Even the simplest forms of contract will have terms. The main terms generally being the price paid and the subject matter of the contract, e.g., the goods or services provided.*"<sup>25</sup> The Commission established that the Complainant entered into a contract with the Respondent for a one-month personal training membership package at the cost of K2,200.00, as evidenced by the signed wellness centre membership form dated 15<sup>th</sup> April 2025.<sup>26</sup> The Commission established that the Respondent, on their membership form had displayed a term that read in part that: "*memberships are not.....transferable.*" Therefore, there was a term of contract.

**Whether the term of contract causes a significant imbalance in parties' rights and obligations and the significant imbalance is detrimental to the consumer;**

***It was submitted that:***

55. According to Black's Law Dictionary, 'transferable' was an adjective that meant that a contract was "*Capable of being transferred, together with all rights of the original holder.*"<sup>27</sup> The word *Not-Transferable* was defined by the Business Dictionary as "*rights, property, or obligations that cannot be assigned, sold, or transferred from one party to another*".<sup>28</sup> The Commission established that when something was deemed *Not-transferable*, it meant the person who had signed the contract had the right or obligation solely responsible for its fulfillment and could not delegate or assign it to another party without explicit consent. The Commission established that *Not-transferable* provisions were common in contracts to ensure that specific duties or privileges remained with the original contracting party. The Commission established that breach of *Not-transferable* provision could result in invalidation of the contract or other legal penalties.

56. In the case under review, the words "*memberships are not...transferable*"<sup>29</sup> on the wellness centre membership form dated 15<sup>th</sup> April 2025, legally meant that

<sup>24</sup>Black's Law Dictionary, 11<sup>th</sup> ed., 2019, p. 408

<sup>25</sup><http://e-lawresources.co.uk/Contents-of-a-contract.php>, retrieved on 16<sup>th</sup> June 2025

<sup>26</sup>The Respondent's Wellness Centre Membership Form dated 15<sup>th</sup> April 2025

<sup>27</sup>Black's Law Dictionary, 8<sup>th</sup> ed., 2004, p. 4670

<sup>28</sup>Retrieved from <http://www.businessdictionary.com/definition/non-transferable.html> on 4th October 2024

<sup>29</sup>The Respondent's Wellness Centre Membership Form dated 15<sup>th</sup> April 2025

the Complainant being the owner or the holder of the membership could not assign or transfer the membership to another person. The Commission established that the Complainant was the only one authorized to use it for accessing the services from the Respondent, and attempting to transfer the membership would breach the terms of the contract. The Commission established that the inclusion of “memberships are not...transferable” was a means by the Respondent to maintain control over who used their services and, preventing complications or liability that could arise from third-party usage. The Commission established that this provision helped the Respondent to enforce its contractual agreement strictly with the Complainant, reflecting a standard contractual practice upheld in many legal contexts to maintain the intended contractual relationship.

57. The Commission further established that the clause in issue also bordered on freedom of contract. According to Black’s Law dictionary, freedom of contract referred to “*the doctrine that people have the right to bind themselves legally; a judicial concept that contracts are based on mutual agreement and free choice, and thus should not be hampered by external control such as governmental interference.*”<sup>30</sup> The Commission opined that parties have a right to choose whom they enter into a contract with and the clause in question served to enshrine that choice because both parties cannot transfer the membership. Therefore, there was no imbalance in the parties’ rights. The Commission established that if the Respondent fails to provide the service, their clients had a right to a refund as redress.
58. The Commission further established that the “memberships are not...transferable” clause in the membership form ensured that the performance of the obligations under the membership met the expectations set by the Respondent and the Complainant. The Commission established that if certain duties or rights were to be transferred to an unknown third party, the quality of performance may diminish, which could be detrimental to the other party’s interests. For instance, in service contracts, a non-transferable clause would prevent the hiring party from transferring its duties to a contractor without the skills or qualifications required by the contract.
59. The Commission’s position above was supported by the Board of the Commission’s ruling dated 9<sup>th</sup> June 2025, in the case **The Competition and Consumer Protection Commission vs LG Travelers Limited.** In the said case the Board ruled that the non-transferable clause was fair because the refundability reinforced the fairness of the clause, as it balanced the interests of both parties by making sure the consumer recovered their funds while protecting the integrity of the agreement.

---

<sup>30</sup> <sup>30</sup> Black’s Law Dictionary, 8<sup>th</sup> ed., 2004, p. 1959

60. The Commission therefore, established that the Respondent was not in violation of Section 53(1) of the Act.

**Board Deliberation**

61. Having considered the facts, evidence and submissions in this case, the Board resolves that the Respondent did engage in unfair trading practices as relates to the display of a disclaimer in violation of Section 48(1) of the Act.

62. The Board further resolves that the Respondent did not violate Section 53(1) of the Act.

**Board Determination**

63. The facts and evidence of this case have shown that the Respondent was in violation of Section 48(1) of the Act. The facts and evidence of the case further showed that the Respondent had not violated Section 53(1) of the Act.

**Board Directive**

64. The Board hereby directs that:

- The Respondent pays a penalty of 0.5% of their annual turnover for the year 2024 with a cap of K40,000.00 for displaying a disclaimer on their wellness centre membership form dated 15<sup>th</sup> April 2025 in accordance with Section 48(2) of the Act and in line with the Competition and Consumer Protection Commission Guidelines for Administration of Fines, 2019, (**Refer to Appendix 1**); and
- The Respondent is ordered to submit to the Commission, their latest audited annual books of accounts for the year 2024 for calculation of the actual penalty within 30 days of receipt of the Board Decision in accordance with Section 58(1) of the Act.

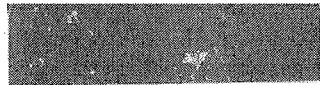
*Note: Any party aggrieved with this order or directive may, within 30 days of receiving the order to direction, appeal to the Competition and Consumer Protection Tribunal (CCPT).*

Dated this 10<sup>th</sup> day of October 2025

*Aletuwele*

**Chairperson  
Competition and Consumer Protection Commission**

**Annexure 1: Respondent's Membership Form**



**WELLNESS CENTRE MEMBERSHIP FORM**

**1. MEMBERSHIP DETAILS**

First Name: TAMARA Last Name: ONEALE

ID Number (NRIC/Passport/Driver's License): 56673311011

Date: 16/14/2025

**Membership Type:**

- ZMW 880/month class membership
- ZMW 8,800 annual membership
- ZMW 4,400 half yearly membership
- ZMW 2,200/month personal training-nonmembers
- ZMW 850/Month personal training member top up
- ZMW 1350/Month full Gym Membership
- ZMW 13,500 Annual full Gym Membership
- ZMW 6,750 half yearly full Gym Membership

\*\*Yearly and 6 month memberships are NON-REFUNDABLE\*\*

**2. MEMBER DETAILS** (Renewing members complete if details have changed)

Sex:  Female Birth Date (dd/mm/yy): 10/10/1997

Address: 1054 Meanwood

City: LUSAKA

Telephone: 4260779568822

Email: lomaramejute@gmail.com

Emergency Contact Name: TAJARA ONEALE

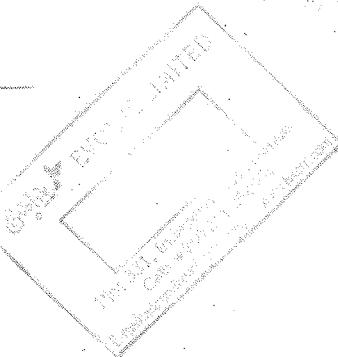
Emergency Contact Phone: 6966230763

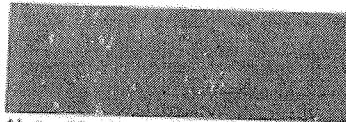
**3. MEMBERS DECLARATION & PAYMENT DETAILS**

Before signing this document, I have read, understand and hereby agree to the terms and conditions of membership as defined in Sections 4 and 5 of this membership form and know that it affects my legal rights. I agree to pay the following:

Monthly Membership Fee of ZMW 22.00

Start Date (today's date): 16/10/2025





**Note: Membership fees are due on the start date of your membership agreement and every month in advance thereafter. If payment is not received by the due date, Evolve Wellness Centre and its management and staff reserve the right to restrict your access to the Centre.**

#### **4. MEMBERSHIP CANCELLATION TERMS & CONDITIONS**

I acknowledge that Evolve may cancel my membership without notice if I commit a material breach of this agreement including, but not limited to, a breach of the Wellness Centre rules, abuse or threatening behaviour or vandalism or other illegal activity.

#### **5. MEMBERSHIP TERMS & CONDITIONS – WAIVER & RELEASE**

##### **Acknowledgment of Risks, Injury & Obligations**

I acknowledge that the activity I am to undertake is a dangerous activity and that by participating in it I am exposed to certain risks. I acknowledge and understand that whilst participating in such activity:

- I may be injured, physically or mentally, or may die;
- My personal property may be lost or damaged;
- Other persons participating in such activity may cause me injury or may damage my property;
- I may cause injury to other persons or damage their property;
- The conditions in which the activity is conducted may vary without warning;
- There may be no or inadequate facilities for treatment or transport of me if I am injured;
- I assume the risk of and responsibility for any injury, death or property damage resulting from my participation in the activity.

##### **Release and Indemnity**

I participate in the activity at my sole risk and responsibility. I release, indemnify and hold harmless Evolve Limited, its servants and agents, from and against all and any actions or claims which may be made by me or on my behalf or by other parties for or in respect of or arising out of any injury, loss, damage or death caused to me or my property whether by negligence, breach of contract or in any way whatsoever.

##### **Administration**

- Memberships are not refundable or transferable.
- In addition to Membership fees, we may also charge fees for personal training, locker rental, towel and robes (rental), massages, equipment and accessory rental and any other services the Wellness Centre may provide from time to time.
- The Centre reserves the right to charge members for replacement of lost membership cards, unreturned or damaged rented items. Please note that this charge is not refundable.
- Your membership fees are subject to periodic increases and we reserve the right to pass on any changes in the rate of VAT/Sales Tax to you. Fees will normally be reviewed on an annual basis but circumstances may dictate an earlier revision.
- Appropriate covered footwear & gym attire must be worn at all times whilst in the Wellness Centre.
- All weights and equipment must be put back after use.
- Photo ID cards (i.e. NRC, Passport or driver's license) must be carried and shown upon request.
- Shared access to the Wellness Centre with a non-member will result in forfeiture of membership effective immediately.
- Each member must respect other Wellness Centre users and behave in an appropriate manner at all times.
- Evolve Wellness Centre Staff reserve the right to rescind the rights of members not complying with the terms and conditions of the membership.
- You must be a minimum age of 18 years to join Evolve Wellness Centre. All members below the age of 18 require a signed parental consent form. The parent/guardian will be required to sign this membership form on behalf of children below the age of 18 years.
- Members shall not consume drugs, alcohol, or tobacco products within the Wellness Centre. Use of the Wellness Centre whilst under the influence of any of these substances is strictly forbidden.
- Members shall adhere to all rules and instructions designed to ensure safety whilst in the Wellness Centre as described in this agreement and as issued by management and staff from time to time, both verbally and in writing.
- You must complete the PAR Questionnaire before you start using your membership and by completing the PAR Questionnaire warrant to us that you have no known condition or are undergoing any treatment that would prevent you from being capable of physical exercise in all material respects. Parents/guardians of children below the age of 18 years shall make the above declarations in the parental consent form.

I have read and agree with all of the above.

Name: Tamara Phiri

Signature: Phiri

Date: / /

## **BOARD DECISION ON ALLEGATIONS OF UNFAIR TRADING PRACTICES AGAINST EVOLVE LIMITED BY MS. TAMARA PHIRI OF LUSAKA DISTRICT**

### **MEMBERSHIP AGREEMENT**

**Note: Membership fees are due on the start date of your membership agreement and every month in advance thereafter. If payment is not received by the due date, Evolve Wellness Centre and its management and staff reserve the right to restrict your access to the Centre.**

#### **4. MEMBERSHIP CANCELLATION TERMS & CONDITIONS**

I acknowledge that Evolve may cancel my membership without notice if I commit a material breach of this agreement including, but not limited to, a breach of the Wellness Centre rules, abuse or threatening behaviour or vandalism or other illegal activity.

#### **5. MEMBERSHIP TERMS & CONDITIONS – WAIVER & RELEASE**

##### **Acknowledgment of Risks, Injury & Obligations**

I acknowledge that the activity I am to undertake is a dangerous activity and that by participating I will be exposed to certain risks. I acknowledge and understand that whilst participating in such activity:

- I may be injured, physically or mentally, or may die;
- My personal property may be lost or damaged;
- Other persons participating in such activity may cause me injury or may damage my property;
- I may cause injury to other persons or damage their property;
- The conditions in which the activity is conducted may vary without warning;
- There may be no or inadequate facilities for treatment or transport of me if I am injured;
- I assume the risk of and responsibility for any injury, death or property damage resulting from my participation in the activity.

##### **Release and Indemnity**

I participate in the activity at my sole risk and responsibility. I release, indemnify and hold harmless Evolve Limited, its servants and agents, from and against all and any actions or claims which may be made by me or on my behalf or by other parties for or in respect of or arising out of any injury, loss, damage or death caused to me or my property whether by negligence, breach of contract or in any way whatsoever.

##### **Administration**

Memberships are not transferable.

• **Additional:** Membership fees, we may also charge fees for personal training, locker rental, towel and robes rental, massages, equipment and accessory rental and any other services the Wellness Centre may provide from time to time.

• The Centre reserves the right to charge members for replacement of lost membership cards, unclipped or damaged rented items.

Please note that this charge is not refundable.

Your membership fees are subject to periodic increases and we reserve the right to pass on any changes in the rate of VAT/USales Tax to you. Fees will normally be reviewed on an annual basis but circumstances may dictate so earlier revision.

Appropriate covered footwear & gym attire must be worn at all times while in the Wellness Centre.

All weights and equipment must be put back after use.

Photo ID cards (e.g. NRIC, Passport or driver's license) must be carried and shown upon request.

Shared access to the Wellness Centre with a non-member will result in forfeiture of membership effective immediately.

Each member must respect other Wellness Centre users and behave in an appropriate manner at all times.

Evolve Wellness Centre shall reserve the right to rescind the rights of members not complying with the terms and conditions of the membership.

• You must be a minimum age of 18 years to join Evolve Wellness Centre. All members below the age of 18 require a signed parental consent form. The parent/guardian will be required to sign this membership form on behalf of children below the age of 18 years.

• Members shall not consume drugs, alcohol, or tobacco products within the Wellness Centre. Use of the Wellness Centre while under the influence of any of these substances is strictly forbidden.

• Members shall adhere to all rules and instructions designed to ensure safety whilst in the Wellness Centre as described in this agreement and as issued by management and staff from time to time, both verbally and in writing.

• You must complete the PAR Questionnaire before you start using your membership and by completing the PAN Questionnaire warrant to us that you have no known condition or are undergoing any treatment that would prevent you from being capable of physical exercise in all material respects. Parents/guardians of children below the age of 18 years shall make the above declarations in the parental consent form.

##### **Refund Policy:**

We offer a 48-hour cooling-off period on all new membership agreements.

You may cancel your membership for any reason within 48 hours of signing the agreement without penalty if you have not accessed membership services.

To cancel, you must notify us in writing (Email to: [admin@evolveazm.com](mailto:admin@evolveazm.com)) or in person by filing and signing a form within the 48-hour window.

Customers who access services during the cooling-off period shall only be charged for the accessed services.

Upon valid cancellation during the cooling off period, we will provide a full refund of all monies paid, including any initiation or enrollment fees.

**Appendix 1- Calculation of the Penalty**

The Calculation of the recommended penalty was determined as follows-

(a) ***The Competition and Consumer Protection Commission Guidelines for Administration of Fines, 2019 sets a base of 0.5% for offences relating to Part VII of the Act with the following caps;***

| <b>Offence</b>  | <b>Starting Penalty</b> | <b>Maximum Penalty<br/>in Fee Units</b>   |
|---|-------------------------|---|
| Unfair trading practice                               | 0.5% of turnover        | <ul style="list-style-type: none"><li>• 3,333.33 for turnover up to 166,666.67</li></ul>                      |
| False or misleading representation                    |                         | <ul style="list-style-type: none"><li>• 33,333.33 for turnover above 166,666.67 up to 833,333.33</li></ul>    |
| Price Display   |                         | <ul style="list-style-type: none"><li>• 133,333.33 for turnover above 833,333.33 up to 1,666,666.67</li></ul> |
| Supply of defective and unsuitable goods and services |                         | <ul style="list-style-type: none"><li>• 233,333.33 for turnover above 1,666,666.67 up to 5,000,000</li></ul>  |
| Section 49 except for Section 49(1)                   |                         | <ul style="list-style-type: none"><li>• 500,000 for turnover above 5,000,000 up to 10,000,000</li></ul>       |
|   |                         | <ul style="list-style-type: none"><li>• 666,666.67 for turnover above 10,000,000 up to 16,666,666.7</li></ul> |
|   |                         | <ul style="list-style-type: none"><li>• 1,666,666.67 for turnover above 16,666,666.7</li></ul>                |
| Display of Disclaimer                                 | 0.5% of turnover        | 100,000   |

**(b) The Competition and Consumer Protection Commission Guidelines for Administration of Fines, 2019 further provides for additions as follows:**

- (i) The starting point of a financial penalty will be a penalty not less than 0.5% of the annual turnover for first time offenders.
- (ii) The starting point of a financial penalty for a repeat offender will be the previous penalty charged by the Commission.
- (iii) Thereafter, the Commission will be adding a 10% of the fine determined in step (ii) above.

**(c) Whether the Respondent is a repeat offender under Section 48(1) of the Act;**

The Commission's review of the case file for the Respondent showed that the Respondent is a first offender under this provision of the Act. As such, the penalty will be 0.5%.