

GUIDELINES FOR
STANDARDISED
COURT ORDERS AND
EXTENSION OF
PRESCRIBED WORKING
DAYS IN THE DC
REGULATIONS OF
2012



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1. INTRODUCTION

The Credit Industry Forum (CIF) identified implementation challenges occasioned by the use of different templates for the debt re-arrangement court orders. As a result of the inconsistent information used on the granted court orders, implementation of these court orders were reported to be problematic by debt counsellors (DCs) and credit providers (CPs).

Furthermore, DCs reported the inability to comply with the National Credit Act(NCA) Debt Counselling Regulations 2012, published under GN R362 in GG 35327 of 10 May 2012 (“the Regulations”) as a result of the delays by the courts to make the granted court orders available within the five (5) working days of issue.

Following an intensive review of these challenges and deliberations by various related stakeholders, the National Credit Regulator (“the NCR”) is pleased to announce that the paper and template developed by the CIF with proposed operational solutions have been signed off and issued as guidelines to be applied by all industry participants effective immediately.

Please note that the amendments to the NCA, its regulations, relevant legislation or case law supersede provisions made in these guidelines and will when necessary be amended.

2. GUIDELINES

Please note that these guidelines should be applied with the attached “Annexure A” which is a court order template.

2.1 General inclusions in court orders

Although not exhaustive, the following general information has been Identified as fundamental and standard for inclusion in the court order template:

- 2.1.1 The jurisdiction of the court where the court order is to be granted;
- 2.1.2 Court case number/reference number;
- 2.1.3 Full names, surname and registration number of the debt counsellor;
- 2.1.4 Full names, surname and identity number of the consumer;
- 2.1.5 Name(s) and registration number(s) of the applicable credit provider(s);
- 2.1.6 Credit agreement(s) details to include type, account/reference number(s);
- 2.1.7 The clauses in the court order should align with the prayers in the notice of motion;
- 2.1.8 A clause confirming that the consumer(s) is/are over-indebted; and
- 2.1.9 Where the court order refers to annexures, these should be clearly marked and attached to the court order.

NOTE: The Magistrate/Clerk of the Court/ Registrar at the National Consumer Tribunal (NCT) should indicate the date when the court order was granted, attach the signature and stamp the court order and annexures.

2.2 Payment related inclusions in the court orders

Although not exhaustive, the following general information/documentation has been identified as fundamental and standard for inclusion in and as part of the court order pack relating to the payment information:

- 2.2.1 The copy of the debt re-arrangement proposal to be approved by the court which amongst others must include the following information per credit agreement:
 - (i) proposed monthly instalment;
 - (ii) proposed and estimated repayment period; and
 - (iii) contractual/amended (agreed-upon) interest rate.
- 2.2.2 The estimated start date and subsequent dates for payments per credit agreements should be clearly indicated;
- 2.2.3 A clause confirming that the consumer funds available for distribution amongst the credit providers is subject to the principle of cascading repayments (where applicable), and when a debt becomes settled, the funds that become available subsequent to such settlement, will be distributed pro-rata amongst the remaining debts, thereby reducing the repayment terms of the remaining debts; and
- 2.2.4 The final debt re-arrangement proposal acceptance letters of the impacted credit providers (where relevant) together with the full repayment proposal should be attached to the court order and should either be referenced as an annexure or be stamped by the Magistrate/Registrar at the NCT.

2.3 General exclusions from court orders

Although not exhaustive, the following clauses should be excluded and not be referred to in the court order template:

- 2.3.1 A clause referring to a Payment Distribution Agent (PDA) because a PDA is not a party to the court order; and
- 2.3.2 A clause referring to the appointment of the debt counsellor since debt counsellors are subject to change. This is to avoid any court order variation applications when a consumer is transferred to a new debt counsellor due to choice, deregistration, lapsing or death of the current debt counsellor.

3. Regulation 3 of the NCA: Extension of working days

Regulation 3 of the NCA provides that the NCR can, on good cause shown, extend the business days as prescribed in the NCA. As a result of the delays by the courts to make the granted court orders available to debt counsellors within the five (5) working days of issue as per Debt Counselling Regulations 2012, published under GN R362 in GG 35327 of 10 May 2012, after careful consideration of all factors, the NCR has decided to extend these working days as follows:

REGULATION 2(3)

The debt counsellor must collect a copy of the court order from the clerk of the court and deliver it within fifteen (15) working days from the date of issue to the affected consumer and each credit provider.

REGULATION 3(3)

The debt counsellor must collect a copy of the court order from the clerk of the court and deliver it within fifteen (15) working days from the date of issue to the affected consumer and each credit provider.

FURTHER INFORMATION

Please contact Timmy Van Der Grijp on **011 554 2802**, tvandergrijp@ncr.org.za should you have any queries.