

Magistrates to be trained on the debt counselling process

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Judicial Officers Association of South Africa (JOASA) in collaboration with the National Credit Regulator (NCR) and Justice College will host a conference to be attended by about 140 magistrates on Saturday, 28 August 2010.

The morning session of the conference is dedicated to the National Credit Act (NCA), with specific emphasis on the debt counselling provisions. This session will assist participants to understand the debt counselling process, challenges faced in taking matters to court including initiatives that have been put in place, such as the recommendations of the Task Team on debt counselling to address backlogs in the court system.

Magistrates play an important role in the debt review process as they interpret the National Credit Act, grant consent orders for consumers to enter the debt review process and also grant judgments against consumers who are unable to pay back their debt.

President of the Judicial Officers' Association of South Africa, Dario Dosio says the session will help magistrates to better understand the NCA and the debt counselling process. "One of the challenges magistrates face is that debt counselling is just one area of specialisation in the civil courts," says Dosio. "The training gives them an opportunity to understand the main role players, objectives that the National Credit Act is trying to achieve and to try and help indebted consumers where possible."

Debt counselling applications make up an increasing proportion of magistrates' work. As at the end of July 2010 over 190 000 consumers had applied for debt counselling with an average of 7500 new applications being received each month. A Task Team convened by the NCR recently found that a lack of capacity and delays in the Magistrates Court caused by uncertainty around the interpretation of the relevant sections of the National Credit Act were creating bottlenecks in the debt review process.

In August 2009, the NCR obtained a High Court Declaratory Order which gave clarity on the interpretation of a number of contentious sections of the Act. Since then, the volume of cases processed through the Magistrates Courts has increased significantly, but the backlogs remain high. "The quicker debt review cases can be dealt with in the Magistrates Court, the quicker over-indebted consumers can get back on their feet," says Peter Setou, Senior Manager: Education & Strategy at the National Credit Regulator.

The courts are a critical element in the smooth functioning of the debt review process. When consumers are unable to pay back their debts, they can approach a debt counsellor who negotiates with credit providers to reschedule their debt repayments. Should all parties agree, then the debt counsellor can approach the courts for a consent order. However, if a credit provider does not agree to the new terms, the debt counsellor still needs to refer the matter to court for a hearing.

“Without the protection of the debt review process or the matter being before court, consumers face the risk of their assets being attached by credit providers who seek to recover their debt”, added Setou.

Setou says it is important to remember that credit providers cannot terminate the debt review process and recover an outstanding debt if the debt counsellor has referred the debt review case to a Magistrates Court for consideration.

“Magistrates do try to follow the spirit and intention of debt review as defined in the NCA and therefore do act in the best interest of over-indebted consumers,” says Dosio. “They will consider various aspects of each case, such as whether the proposed restructuring plan is reasonable.”

“The Conference is the culmination of separate workshops which have already been successfully held in the Free State, Western Cape, Gauteng and Kwa-Zulu Natal which reached in excess of 300 magistrates. The NCR plans to roll out the workshops to more of the country’s 1800 magistrates, concluded Setou”.