

## **Task Team recommends ways to remove obstacles in the debt review process**

*For Immediate Release*

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The National Credit Regulator's debt review Task Team today released its report along with proposed improvements in the debt counselling process. The Task Team was set up by the NCR in October last year to propose measures to reduce the backlog of unresolved cases under debt review. The Task Team was chaired by Advocate Neville Melville, with the following members: Paul Slot (Debt Counselling Association of SA); Johan de Ridder (Banking Industry) and Rob Easton-Berry (Consumer Friend). The team was assisted by Marlene Heymans (NCR); Sue Hutton (Consultant) and Mareesa Kreuser of the University of Pretoria Law Clinic.

As at the end of June 2010 over 180 000 consumers had applied for debt counselling with an average of 7500 new applications being received each month. "Our findings show that backlogs in the debt review process are being caused by a complex set of factors including severe capacity constraints in the judicial system, weaknesses in the process, inadequate operational compliance by credit providers and debt counsellors as well as possible abuse of the process by consumers," says Task Team chairman, Neville Melville.

Over the past eight months, the Task Team conducted an extensive consultation with debt counsellors, credit providers and payment distribution agents (PDA). PDAs are responsible for the collection and distribution of payments on behalf of consumers who are under debt counselling.

The NCR obtained a High Court Declaratory Order in August 2009, which gave clarity on the interpretation of a number of the contentious sections of the Act. Since then, the volume of cases processed through the Magistrates Courts increased significantly, but the backlogs remain high. "It is obviously not to the advantage of either credit providers or over-indebted consumers for debt review cases to drag on for years," says Melville. "It poses a risk to the financial system and is contrary to the intention of the NCA of speedily getting over-indebted consumers back on their feet and into the economy."

The team found that there was a lack of standardisation of debt review documentation as well as problems related to the receipt and distribution of consumer repayments. For example, there is no provision in the NCA for interim payment arrangements pending the date of the Magistrate Court hearing, resulting in payment interruptions being treated as defaults. "There is also no effective collection mechanism to ensure that consumers continue making monthly payments to meet their obligations in terms of restructured payment plans," says Melville.

There are currently more than 1642 debt counsellors registered with the National Credit Regulator (NCR). Gabriel Davel says that the report highlights that there are shortcomings on the part of both debt counsellors and credit providers. He notes that many debt counsellors do not provide realistic debt restructuring proposals to credit providers and do not provide follow-up support to consumers to ensure that they continued to meet their financial obligations under the new arrangements. "We also found many cases where debt counsellors promote the debt review process as a payment holiday, with no realistic intention of effective rehabilitation" says Davel.

Paul Slot, one of the leading debt counselling groups and a member of the Task Team says that technology could play an important role in helping debt counsellors and credit providers to accurately assess the financial situation of indebted consumers and help them to restructure their debt. "The computer programmes which support debt counsellors constitutes a critical factor in the success of the debt review process," says Slot. "Software packages therefore need to comply with minimum standards and must be thoroughly tested."

Rob Easton-Berry, a specialist attorney who does work for major retailers and a member of the Task Team, says the accurate assessment of the consumer's financial position is an important first step in the debt counselling process. "Retail credit providers believe the financial assessment should be fair to all parties involved". "For the consumer, the budget should reduce lifestyle costs within reason and for credit providers the budget should be drawn up to ensure that the maximum possible amount has been made available to repay the debt."

Johan de Ridder, a banker and member of the Task Team, says credit providers support the Task Team's proposals and would work to combat over-indebtedness. "Banks and debt counsellors need and should be able to co-operate more effectively from an administrative perspective under the proposed debt review process enhancements, format standardization and debt restructuring rule principles in the Task Team recommendations with the aim to solve increasing numbers of cases through consent agreements, rather than through contested court hearings," he says.

He added that the banking industry is encouraged by significant progress made during the last few months. Progress include broad credit industry support for the proposed process improvements as well as the set of consensual debt restructuring rules for deserving cases in the Task Team report.

The deployment of the restructuring rules will be supported by a centralized, independently governed web-based rules system which will enable the application and validation of debt restructuring proposals. This system is sponsored by the banking industry and is presently under development.

The industry also believes that ongoing efforts are required to inform consumers of the benefits, risks, costs and obligations of the debt review process and to advise consumers on dealing with debt distress. There were also indications that a growing number of consumers may be abusing the debt counselling process and using debt counselling as an excuse for not meeting their payment obligations. "The problem is being

compounded by certain debt counsellors who are encouraging consumers to abuse the system," says Melville. The banking industry is working with the NCR on a public awareness campaign dealing with these issues.

The Task Team recommended significant process changes for debt counsellors and credit providers in order to streamline the resolution of cases. It also proposed a number of improvements to the documentation produced by both credit providers and debt counsellors.

The Task Team further recommended that a national debt review committee be established consisting of representatives from credit providers, debt counsellors and payment distribution agents. This committee would serve as a forum for the collaboration between the different stakeholders in order to improve the efficiency and effectiveness of the debt review process. The implementation of codes of conduct and establishment of a debt review ombud to adjudicate disputes would also play an important role.

"The Task Team's recommendations are largely voluntary measures and will depend on the co-operation of different players in the industry," says Melville. "However, whilst the implementation of these voluntary measures is important, it is critical that the Act be amended in order to address the problems which have been identified in the report." "Debt counselling has an important role to play in dealing with the impact of the financial crisis. A more efficient and effective debt review process will not only benefit individual consumers, but the economy as a whole", added Davel.

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