

**NCR/University of Pretoria research investigates blockages hindering effective debt counselling processes**

Debt counselling was introduced in South Africa (SA) through the National Credit Act (NCA) in 2007. As a groundbreaking first for the SA credit industry, it enables over-indebted consumers, through the assistance of debt counsellors, to renegotiate their repayment obligations, with approval from the Magistrates Courts.

Peter Setou, National Credit Regulator's (NCR) Senior Manager: Education and Strategy, says the debt counselling process has disappointingly been obstructed by uncertainty and inconsistencies in procedures among the various parties participating in the process, and on interpretation of some of the key sections of the NCA and its Regulations.

"There are too many instances of debt restructuring not being successfully achieved. Applications for restructuring are not being smoothly and quickly processed and finalised by the courts. An obstructed debt review process can have severe consequences for the consumer (in the form of house or vehicle repossessions), for the lenders themselves, and for the broader SA credit industry."

Setou says that the NCR commissioned a research project, conducted by the University of Pretoria Law Clinic, to highlight shortcomings in the debt restructuring process and applicable law, and identify the parties responsible for delays or preventing the finalisation of the process. The study would then make proposals to improve the debt review process and identify where the NCA and its Regulations require amendment.

In examining the practices of *credit providers/lenders*, the study considers the level of their co-operation with debt counsellors, and the extent and degree to which they are renegeing on agreements reached. It also looks at several areas where there is non-compliance with the NCA. For example, some take too long to issue a certificate of outstanding balance (COB) of debt – the requirement for this is five days, with the research study average shown to be at around ten days, although this has come down from a very lengthy 20 days. Some are not even responding to certificate of balance requests or some of these certificates contained incorrect and incomplete information.

In general the COB's are getting closer to the 10 days period, however, are still outside the 5 days requirement period. Some credit providers failed to furnish copies of credit agreements when requested by the debt counsellor or consumer.

Many credit providers are not responding to debt restructuring proposals, others take too long to respond, and some even respond negatively by offering ridiculous offers for consumers' debts. Many of their objections to restructuring proposals are based on legal technicalities relating to court geographic or monetary jurisdiction. In general, they are exploiting certain shortcomings in the NCA to obstruct the debt review process.

These types of undesirable practices have meant debt counsellors have been compelled to refer debt review matters to court without sending restructuring proposals for consideration and approval to credit providers.

Credit providers are also engaging in other unacceptable practices such as inappropriate set-off of consumer assets against specific debts, and failing to stop debit orders when requested. They also continue to enforce repayment of debts while the consumer is formally under debt counselling, they sometimes terminate a debt review process that has already commenced, or take legal action against a consumer after a debt restructuring application has been lodged in the courts. The various product lines and divisions within a single credit provider do not communicate with each other, giving rise to inconsistencies.

Several other problems relating to credit providers were examined – incorrect or inappropriate interest rate reductions being used in their restructuring counter proposals; incorrect or unavailable documentary proof and affidavits; and obstructively excluding vehicle financing agreements from restructuring proposals, by claiming these are rental rather than finance agreements.

The *debt counsellors* themselves were also at fault in some instances. For example, the NCA requirement is that a debt counsellor must make a determination as to over-indebtedness within 60 business days of receipt of the consumer's application for debt review. Several were found to be well outside this time limit, with the majority citing non co-operation of credit providers as the reason. Several cases of lack of education, experience and competence by debt counsellors were identified, leading to ill-informed debt restructuring proposals for consumers. There were cases of unacceptable proposals, and even no proposals, being sent to credit providers.

The study has made several recommendations with regard to practices and procedures which should improve the debt counselling process:

- Improved training of debt counsellors and credit provider staff;

- Improved communication between debt counsellors and credit providers;
- The formulas/software used by debt counsellors in evaluating indebtedness and the format of their restructuring proposals need to be standardised;
- The establishment of a special Ombuds office catering for debt review related matters, in order to streamline complaints and offer specialised dispute resolution. (The NCR is presently responsible for all complaints lodged against credit providers and debt counsellors.)

Several legislative and regulatory amendments to the NCA and its Regulations were also proposed, relating to:

- The education, experience and competency requirements for debt counsellors;
- The Certificate of Balance request should be standardised and included in NCA Regulations;
- The powers of the courts in cases where consumers are determined to be over-indebted;
- An improved Form 16 (the form completed by the consumer at time of debt review application), which will assist debt counsellors to obtain sufficient and more detailed information;
- The burden and recovery of debt counselling costs, with credit providers also possibly bearing some of these;
- Several other recommendations on court processes, referrals to court when consensus on restructuring cannot be met, declarations of reckless credit and the consequential discharge of a consumer's debt, the correct process when one of the parties withdraws from the debt review process, and cases when the consumer himself applies to court for relief from disabilities resulting from debt-rearrangement.

Setou concludes that this research makes an invaluable contribution in resolving the current challenges experienced in the debt counselling process. "Debt review is an extremely effective debt relief measure and the NCR is committed to ensuring its optimal operation."

ENDS

---

**ISSUED BY:**

FEZILE AFRICA

BULLION PR & COMMUNICATION

TEL: (011) 803 3615

CEL: 083 386 0839

**ON BEHALF OF:**

LEBOGANG SELIBI

THE NATIONAL CREDIT REGULATOR

(011) 803 3615

[lselibi@ncr.org.za](mailto:lselibi@ncr.org.za)