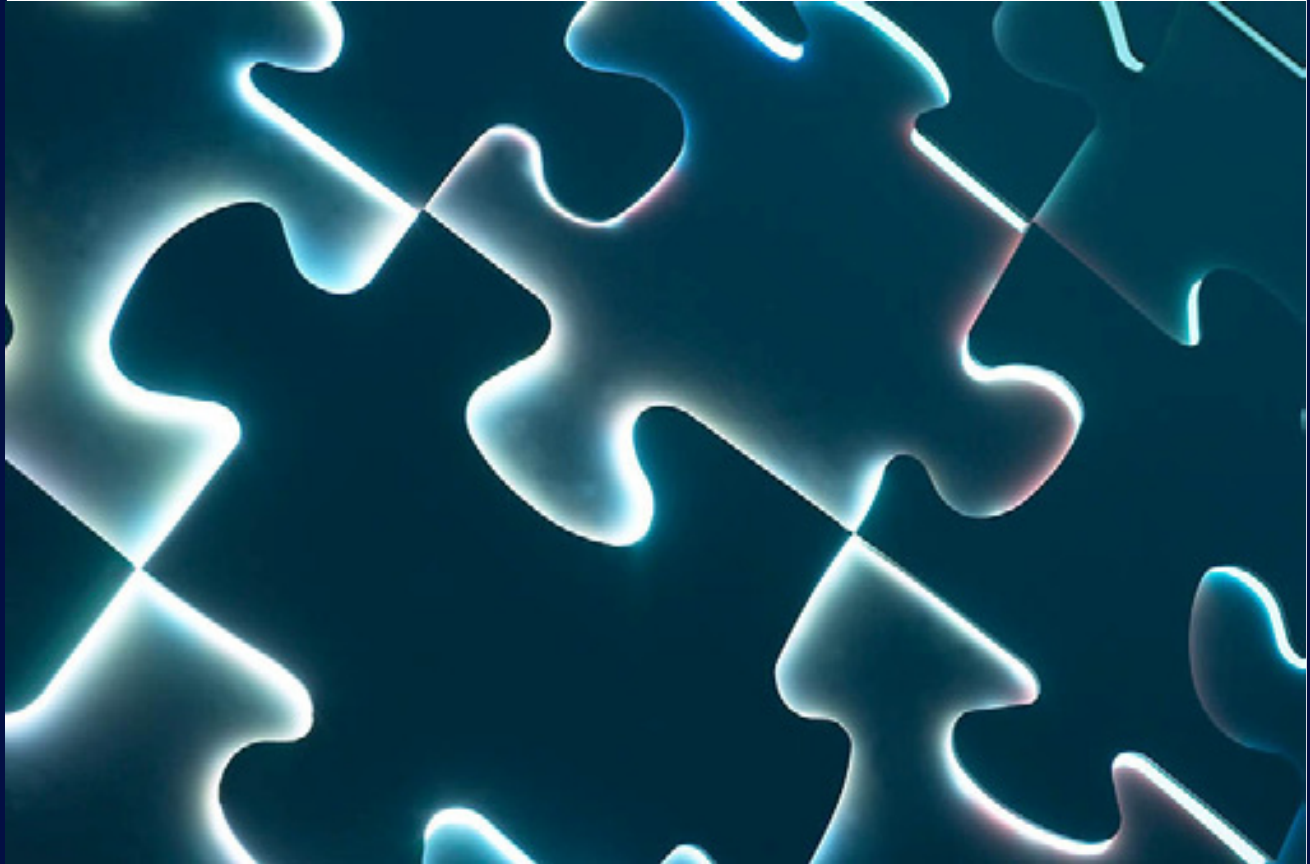


# **The debt counselling process: challenges to consumers and the credit industry in general**



**April 2009**



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# **The debt counselling process: challenges to consumers and the credit industry in general**

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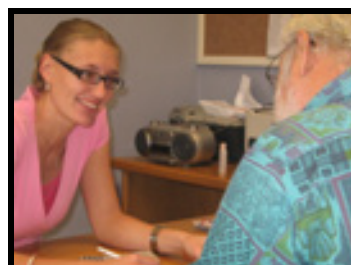
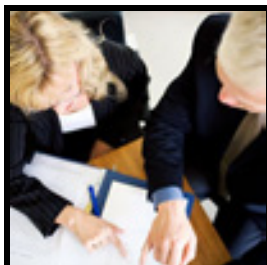
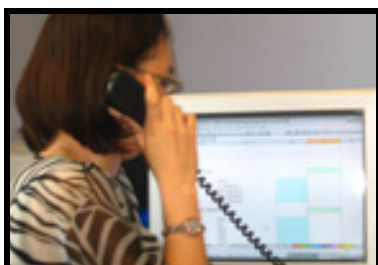
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## **EXECUTIVE SUMMARY**

### **1 BACKGROUND**

The National Credit Regulator and Business Enterprises at the University of Pretoria entered into an agreement, in terms of which, desk and empirical research into the incidence and impact of debt counselling challenges was to be conducted. The research was carried out during the period January to April 2009 by the Law Clinic of the University of Pretoria in collaboration with the University's Bureau for Statistical and Survey Methodology (Statomet).

### **2 OBJECTIVES OF THE INVESTIGATION**

The objective of the investigation was “to conduct an assessment of the reasons for debt restructuring not being achieved and applications not being finalised by Magistrates’ Courts and identify the parties responsible for the delay or preventing the finalisation of cases and the approach followed”.

### **3 SCOPE OF THE STUDY**

The report was to include (but not necessarily limited to) the following:

- The extent and degree to which credit providers are reneging on agreements reached with debt counsellors as part of industry initiatives to facilitate effective resolution of debt counselling cases, including implications for the consumer and the industry.
- The level of co-operation with debt counsellors and potential non-compliance with the Act, including:
  - The extent to which credit providers are complying with requests for issuing debt counsellors with a certificate of outstanding balance. In particular, the length of time this takes and the impact of this on the process as a whole, including the impact on consumers.

- The co-operation by banks, in particular to requests to furnish debt counsellors or consumers with copies of credit agreements when called upon to do so in cases where consumers do not have copies of their agreements.
  - The response by credit providers in general and banks to notification of consumers' applications for debt review.
- Other aspects that were dealt with included:
  - Set-off ("money grabbing").
  - Failure by banks to stop debit orders when requested to do so.
  - Incidences on enforcement whilst consumers were under debt counselling.
  - Incidences of termination.
  - Incidences of legal action after the lodging of an application in the Magistrate's Court.
- Based upon a review of selected cases, a report on the attitude of major credit providers, with special attention to banks, and their responses when debt review cases are brought before Magistrates' Courts.
- Communication, or lack thereof, between different mono lines (product houses) within banks and the impact this has had on consumers and the industry in general.
- Generally assess levels of case resolution, cases that are successfully dealt with in courts and reasons therefore, applications that have been refused and reasons therefore and quantify:
  - The number of cases affected and the potential loss for the banking sector.
  - The actual and potential loss for consumers (e.g. through repossession of houses and cars).

As will more fully appear from the report, additional matters were also investigated and reported on. Some of the aspects mentioned above, could not be investigated and reported on as a result of lack of information, sample sizes being too small to warrant valid inferences, or the research team not being able to find evidence corroborating anecdotal "evidence".

## **4**

### **PROJECT APPROACH**

The study comprises of and the report is divided into the following sections:

- Legislative framework
- Selected case studies
- Qualitative and Quantitative survey
- Recommendations

#### **4.1**

##### **Legislative framework**

The legislative framework was researched with reference to relevant legislation, reported and unreported court cases as well as academic and other publications. The aim of this part of the research project was to investigate and to report on the formal debt counselling process introduced by the National Credit Act and Regulations as well as agreements reached between various role players in the credit industry (the so-called work stream agreements). In this regard, the office of the debt counsellor, the debt review process as well as other related problematic issues were investigated. The purpose was to identify possible shortcomings of legislation pertaining to the debt review process which causes the lack of legal certainty and which contributes to the apparent ineffectiveness of the debt counselling process. Although the work stream guidelines are to be welcomed for their attempt to find a solution for these problems, the research team was of the view that the current situation is still not desirable. Many credit providers and debt counsellors did not form part of the work stream processes and therefore cannot be bound by these agreements. The NCR's application to the High Court for a declaratory order may shed some light on the problems currently experienced, however, it is submitted that the best solution is, for the legislator to address these shortcomings in order to bring about a proper and effective debt review process. Proposals for the amendment of provisions of the NCA and certain regulations were made in respect of the following issues as set out more fully in Chapter 2:

- The requirements pertaining to the education, experience and competence of debt counsellors.
- The issue as to whether the High Court or the Magistrate's Court has the powers in terms of section 85 if a finding in the High Court is made that a consumer is over-indebted.
- A new Form 16 which would assist debt counsellors in obtaining sufficient and correct detail from the clients and better inform their clients of the debt review process.
- The fees that may be recovered by debt counsellors and the amendment of section 86(3) to provide for the possibility that credit providers could also bear some of the debt counselling costs.
- The amendment of section 86(2) by substituting the words "section 129" with "section 130".
- The type of information a credit provider is required to provide to the debt counsellor pursuant to a request in terms of regulation 24(3) for verification of information provided by the consumer.
- Amendment of section 86(8) to include the instance where a recommendation is made by the debt counsellor in terms of section 86(7)(c) and to specifically provide for the obtaining of a consent order when a debt restructuring proposal is accepted by all credit providers.
- The procedure to be followed in court when a matter is "referred" to the Magistrate's Court because the consumer and credit providers could not reach consensus on a debt restructuring proposal as well as related issues, such as the jurisdiction of the court to entertain debt review matters, the person who should approach the court and the issue of notification regarding the eventual hearing for debt re-arrangement.
- Amendment of sections 86(7)(c) and 87 to provide for the possibility that the court could enforce a discharge of a part of the consumer's debt obligations.
- With regard to the debt counselling payment distribution system, issues such as the appointment of PDA's by the court as well as the registration and monitoring of PDA's by the NCR.

- The process to be followed when a consumer or the debt counsellor withdraws from the debt review process.
- A new provision in terms of which the court, on application by the consumer, may relieve the consumer from the disabilities resulting from debt-rearrangement.

## **4.2**

### **Selected case studies**

A number of case studies were undertaken and reported on. The following issues were identified:

#### **4.2.1**

##### **Reneging on the work stream agreement regarding court procedures**

The research team found that one of the main causes leading to the non-functioning of the debt counselling process, flowed from a breach of the work stream agreement reached between major credit providers and a number of debt counsellors regarding the court procedure. To illustrate the non-compliance by credit providers the research team quoted from affidavits filed by duly authorised representatives of major banks. The research team identified a breach in respect of the various issues on which agreement was reached. These issues included the following:

- Geographic jurisdiction.
- Monetary jurisdiction.
- The procedure for referring debt review matters to court where the consumer was found to be over-indebted.
- Interest rate reductions.
- Particularity of consumers' founding affidavits and availability of documentary proof.
- Service of application.

Apart from non-compliance by credit providers, the research team also found evidence of non-cooperation and non-compliance with the Act, Regulations and work stream agreement by debt counsellors. This appeared to be the result of a

lack of knowledge and experience in some cases, but in other instances a deliberate retaliation in response to what is perceived by some debt counsellors as a lack of good faith by credit providers. Cases where unacceptable proposals were provided to credit providers or no proposals were sent to credit providers were reported on.

#### **4.2.2**

##### **Non-compliance with the regulations and work stream agreement regarding financial information**

The research team has come across numerous cases where problems were experienced with the so-called “certificates of balance” (COBs) that:

- Failed to provide all the required information.
- Were not legible.
- Contained particulars of accounts not belonging to the relevant consumer.
- Failed to disclose all credit agreements which the consumer concluded with the particular credit provider.

#### **4.2.3**

##### **Negligent mistakes**

Apart from mistakes regarding the content of COBs, negligent mistakes pertaining to the procedure and process were also encountered. These included:

- Notices addressed to the wrong debt counsellor.
- Mislaid Form 17.1's that could be proof to have been faxed to credit providers.
- Acceptance of terms which do not correspond with the terms actually proposed by the consumer.
- Counter proposals with incorrect interest rates.
- Counter proposals with higher interest rates than quoted in the COBs.
- Termination of the debt review process before the required 60 business days have lapsed.

- Termination of the debt review process after notice of court application was given.

#### **4.2.4**

##### **Other findings**

Other findings pertaining to credit providers' non-cooperation in the process of debt review included the following:

- Inordinate long time for replying to proposals.
- Reply to proposals after termination by debt counsellors.
- Declining of proposals even though the counter proposal's repayment term is longer than the proposed term.
- Alleging the exclusion of vehicle financing agreements from debt review on the basis of it being "rental agreements".
- Whilst much has been made of the qualifications and training of debt counsellors the qualifications and training of bank officials should also be addressed.

#### **4.2.5**

##### **Payments**

- **Payment distribution agencies**

The research team came across numerous examples of problems encountered with the collection, distribution, payment and acceptance of monthly payments. However, it was decided not to elaborate on these as it is dealt with in a report authored by Marlene Heymans ("Blockage in payment distribution – An investigation into the matters that influence the effectiveness of payment distribution in the debt counselling system"). It is suggested that this report should be read in conjunction with the present report.

- **Non-payment by consumers whilst entering debt counselling / “payment holidays”**

The reasons for non-payments can be the result of credit provider’s refusal to stop debt orders or settle. Further debt counsellors failure to inform consumers of the need to maintain payments, misrepresenting the effect of non-payments and consumers abusing the process or the inherent nature of the process itself.

## 5 QUANTITATIVE AND QUALITATIVE SURVEYS

### 5.1

#### **Data Set A:**

#### **Perceptions of and experiences with credit providers regarding their compliance with NCA, industry agreements and service levels**

A total of 300 consumer applications for debt counselling, ranging from the last quarter of 2007 to the first quarter of 2009, obtained randomly from the offices of seven debt counsellors were perused and analysed. This represented 3 288 credit agreements.

The credit industry demographics in respect of these applications were as follows:

Table 4, Chapter 4: Demographics of credit industry

<b>Industry</b>	<b>Number of agreements</b>	<b>Percentage</b>
Major banks	1 724	52.43%
Retailers	670	20.38%
Other credit providers (MFC, SA Home Loans, smaller banks)	476	14.48%
Micro lenders	230	7.00%
Service providers	141	4.29%
Others (e.g. private loans)	47	1.43%



The demographics according to credit type / product are summarised below:

Table 6, Chapter 4: Demographics according to credit type / product

<b>Credit Type</b>				
	<b>Frequency</b>	<b>Percent</b>	<b>Cumulative Frequency</b>	<b>Cumulative Percent</b>
<b>Credit Card</b>	675	20.53	675	20.53
<b>Home Loan</b>	167	5.08	842	25.61
<b>Micro Loan</b>	230	7.00	1072	32.60
<b>Other debts</b>	179	5.44	1251	38.05
<b>Over Draft</b>	201	6.11	1452	44.16
<b>Personal Loan</b>	562	17.09	2014	61.25
<b>Retail</b>	886	26.95	2900	88.20
<b>Service</b>	141	4.29	3041	92.49
<b>TV License</b>	6	0.18	3047	92.67
<b>Vehicle Financing</b>	241	7.33	3288	100.00

The data obtained was classified and analysed to report on the following:

***Average time from date of request for COB to date of response***

- Per industry
- Per major bank and credit provider
- Per major retailer
- Per major micro lender
- Per quarter (4<sup>th</sup> 2007 – 1<sup>st</sup> 2009)
  - Banking industry
- Per quarter (4<sup>th</sup> 2007 – 1<sup>st</sup> 2009)
  - Absa
  - Direct Axis
  - FNB
  - Nedbank
  - Standard Bank
  - WesBank

- Per credit type
  - Credit cards
  - Personal loans
  - Vehicle financing

***Incidence of no reply to requests for COBs***

- Banking industry per bank
- Banking industry percentage of COB received: quarterly analysis
- Retail industry per credit provider
- Micro lending industry per credit provider

***Average time from date of proposal to date of response***

- Per industry
- Per major bank
- Per major retailer

***Average time from Form 16 (application for debt counselling) to COB request***

- Per debt counsellor

***Average time from application for debt counselling to date of proposal sent***

- Per debt counsellor

***Average time from date of application for debt counselling to date of receipt of response to proposal***

- Per debt counsellor

***Time line indicating average days in debt review process***

## **5.2**

### **Data Set B:**

#### **Debt counsellors' perceptions of and experiences with credit providers, consumers and the debt counselling process**

64 debt counsellors representing 10.46% of registered debt counsellors at date of commencement of the study, were interviewed. The methodology employed can be described as non-scheduled structured telephonic interviews during which fixed questions were put to the debt counsellors.

The responses to these questions were then grouped and quantified in order to report on the following:

- Perceptions of and experiences with credit providers regarding compliance with the NCA, work stream agreement and service level agreements.
- Debt counsellors' level of trust of debt counsellors regarding credit providers and consumers.
- Perspectives on the debt counselling process itself.

A further set of questions were asked to gather information regarding debt counsellors practice, procedures and success rate.

### **5.2.1**

#### **Limitations**

Regarding Data Set A, the limited size of the sample for certain credit providers, some types of agreements and credit products made some data unusable or cast doubt on the reliability of possible findings. These were either discarded or suitably qualified.

Regarding Data Set B, a specific question was formulated in such a way that it was open to different interpretations and therefore discarded.

## 5.2.2 Findings

All the findings are set out in Chapter 4 of this report. The most important findings were as follows:

In the graphs following hereunder, the top line indicates the upper confidence limit, the bottom line the lower confidence limit and the dot represents the average response time. The closer the top and bottom lines are to each other, the more accurate the data is.

### 5.2.2.1 Turnaround time COB request to response received

Analysing the period stretching from the 4<sup>th</sup> quarter 2007 to the 1<sup>st</sup> quarter of 2009, credit providers in general did not furnish the required information within the 5 day period prescribed by regulations 24(4) of the Act.

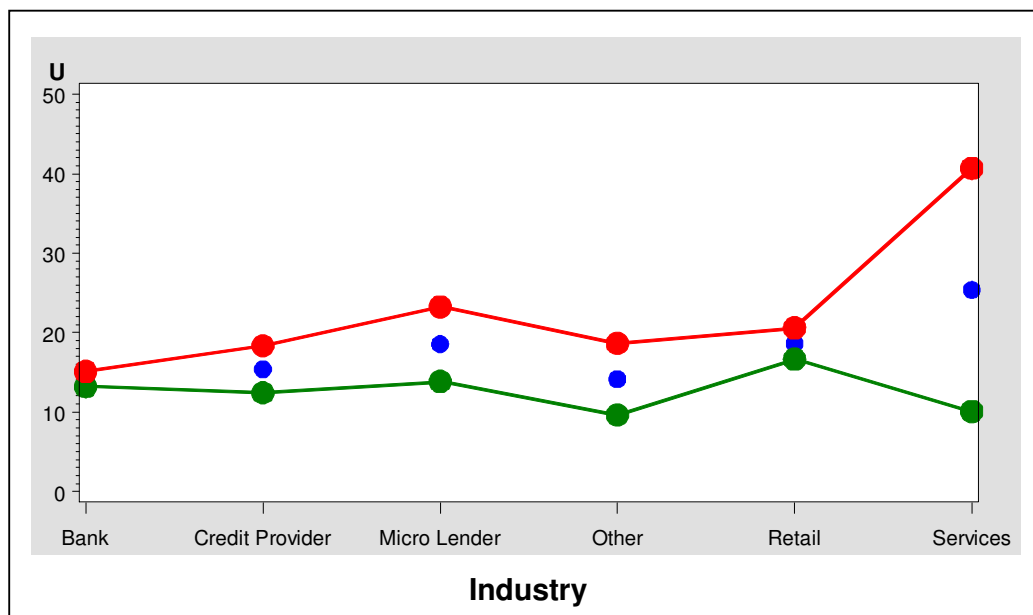


Figure 1, Chapter 4: Industry turnaround time from Form 17.1 sent to date COB received

In the case of the major banks and SA Home Loans (mortgages) the average time period ranged from 6 business days to 20 business days which is well outside the 5 day period.

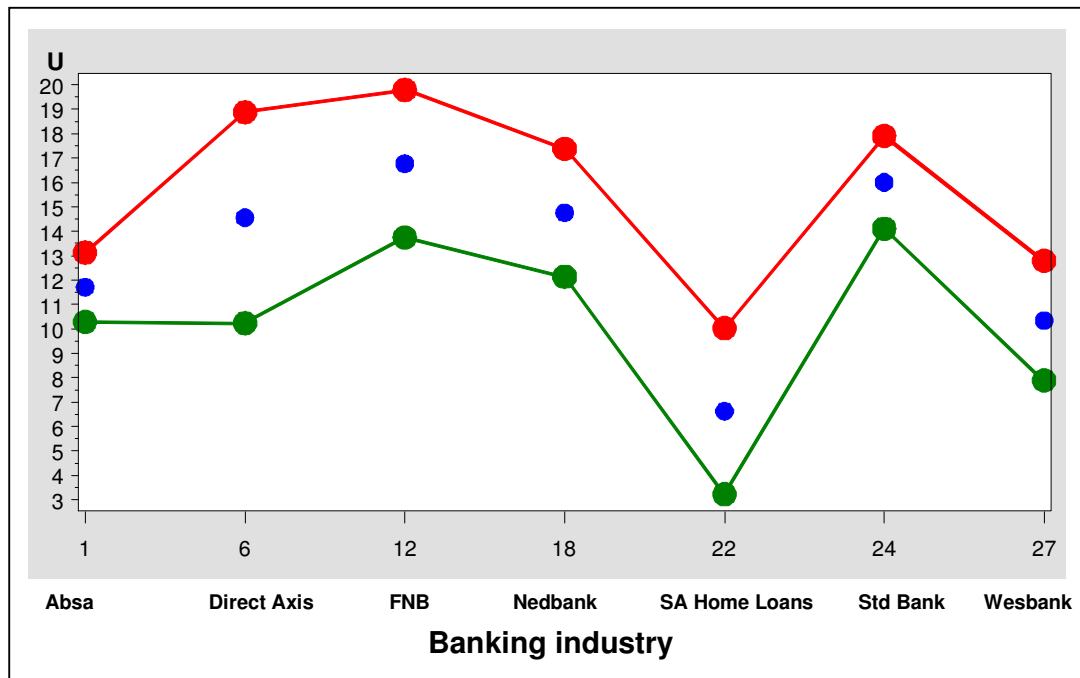


Figure 2, Chapter 4: Banking industry turnaround time from Form 17.1 sent to date COB received

The position is similar in the case of the retail industry, with averages ranging from 8 to 25 days.

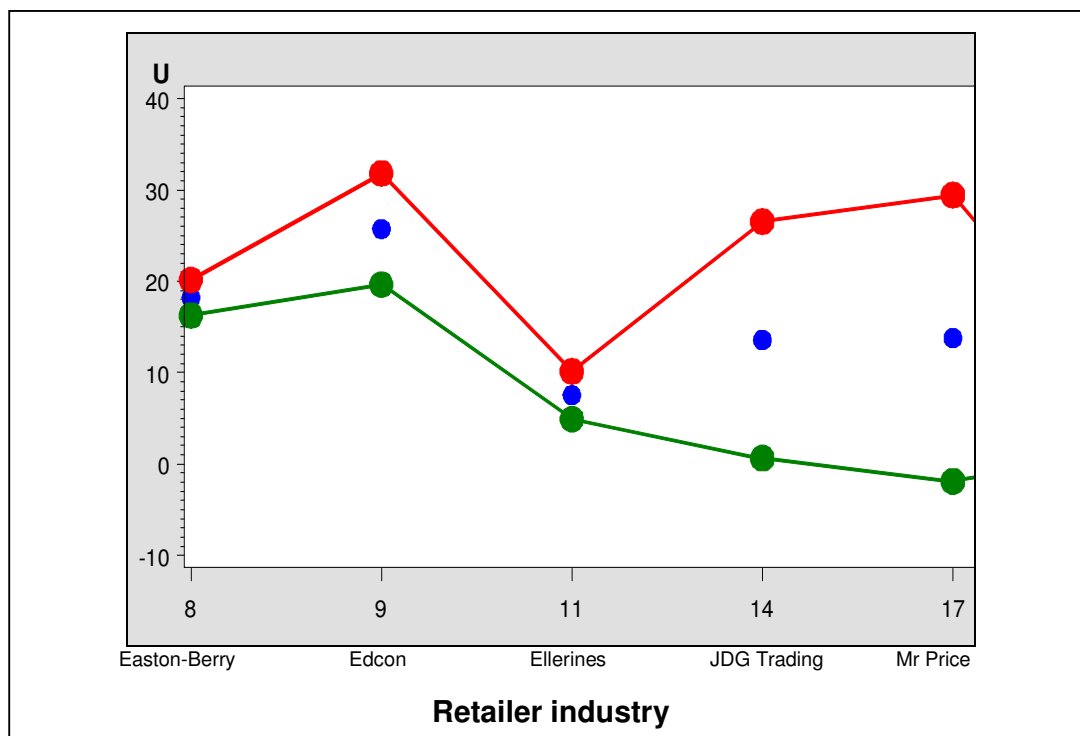


Figure 3, Chapter 4: Retailer industry turnaround time from Form 17.1 sent to date COB received

The same applies in the case of micro lenders, with an average of 19 business days.

There are no significant differences as per credit type – again non-compliance with the 5 day period is evident throughout.

However, on a quarterly basis the trend in general, with a few notable exceptions, has been an improvement in response time as can be seen from the graph hereunder. The results of the 1<sup>st</sup> quarter of 2009 must be viewed with caution. Only cases where replies were received were recorded. Cases of non-reply or replies received after the recorded dates will extend the average period.

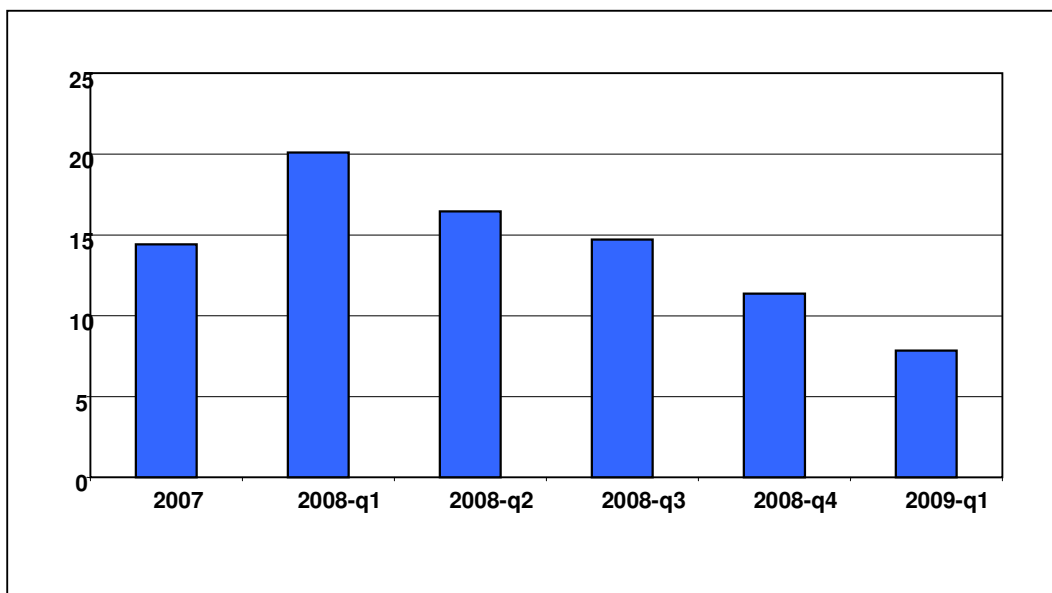


Figure 5, Chapter 4: Quarterly analysis banking industry turnaround time from Form 17.1 to date COB

In general COBs are getting closer to the 10 day period but are still outside the 5 day period.

### **5.2.2.2 No answer to request for COB**

The research has shown a very high percentage (25%) of no response received to a request for COBs by debt counsellors.

Time and financial constraints prevented the research team from embarking on a thorough investigation with regard to the reasons for this situation (forensic type of investigations would be needed for this). It appears that both debt counsellors and credit providers are responsible for this state of affairs. The research team came across cases where the requests for COBs were sent to wrong credit providers, wrong fax numbers or with insufficient detail to enable a credit provider to respond. Likewise, the research team came across instances where COBs were sent to the wrong debt counsellor or containing mistakes or omissions that made them unusable (see the cases reported on in Chapter 3 above).

### **5.2.2.3 Rate of response to proposals**

Out of the 3 288 credit agreements reviewed, only 1 493 were included in proposals sent. With regard to the 1 493 agreements addressed in proposals, only 350 responses were received. The average response time varies from 20 to 36 business days.

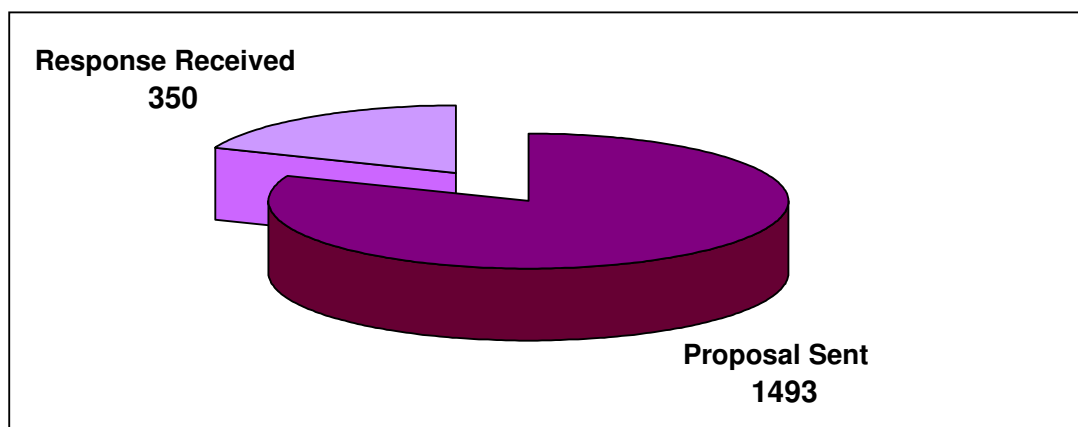


Figure 22, Chapter 4: Total accounts recorded, total proposals sent and total responses received

There is increasing evidence that the lack of response, predominantly negative responses, and the long time it takes to respond, have led debt counsellors to refer matters to court without sending proposals to credit providers.

#### **5.2.2.4 Time from when consumer applies for debt counselling to date of request for COB**

Four of the seven debt counsellors whose files were perused, sent the 17.1 form within 5 business days as required in terms of the Regulations. The other three had an average of 8, 12 and 20 business days in this regard.

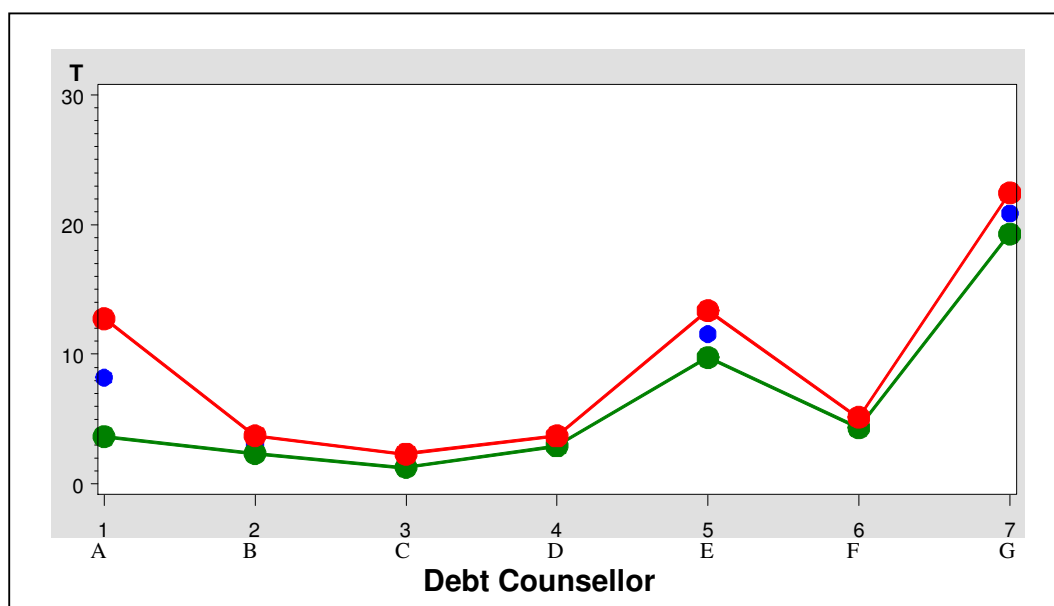


Figure 25, Chapter 4: Turnaround time from Form 16 to date Form 17.1 sent



### 5.2.2.5 Time from date of application (Form 16) to date of proposal sent

Here reliable data in respect of six debt counsellors was obtained. The average in this regard was 58 days. Three of the debt counsellors sent proposals within 40 business days. One's proposals were sent within 60 business days and the remaining two sent their proposals well outside the 60 day period.

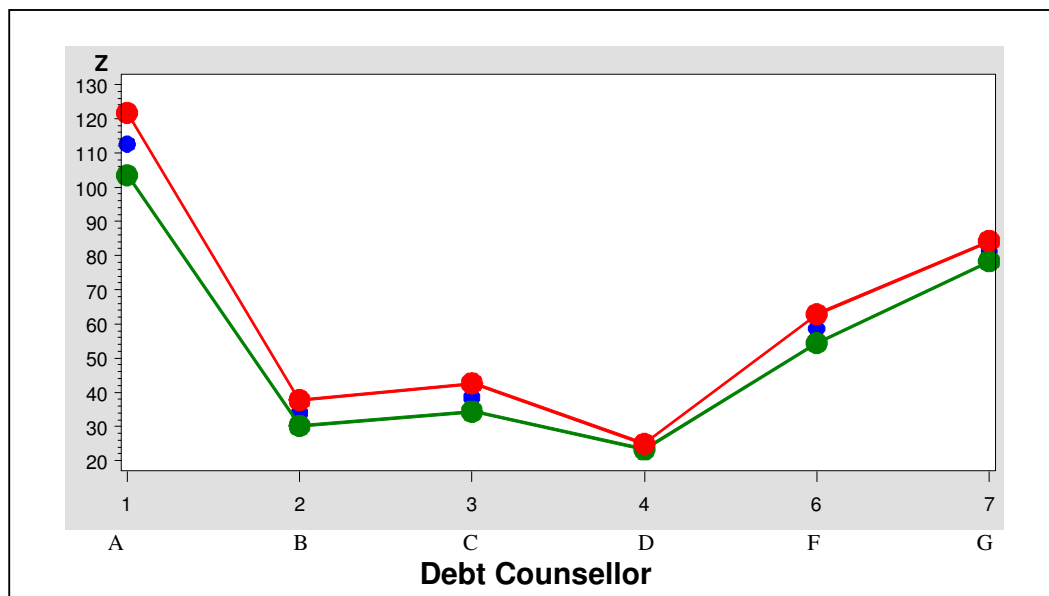


Figure 26, Chapter 4: Debt counsellors: Form 16 signed to date proposal sent

### 5.2.2.5 Time from date of application (Form 16) to date of receipt of response to proposal

The average time from the date when a consumer applies for debt counselling to the date of receipt of a response to a proposal is 80 days. This exceeds the 60 day period after which a credit provider may terminate in terms of section 86(10) of the Act.

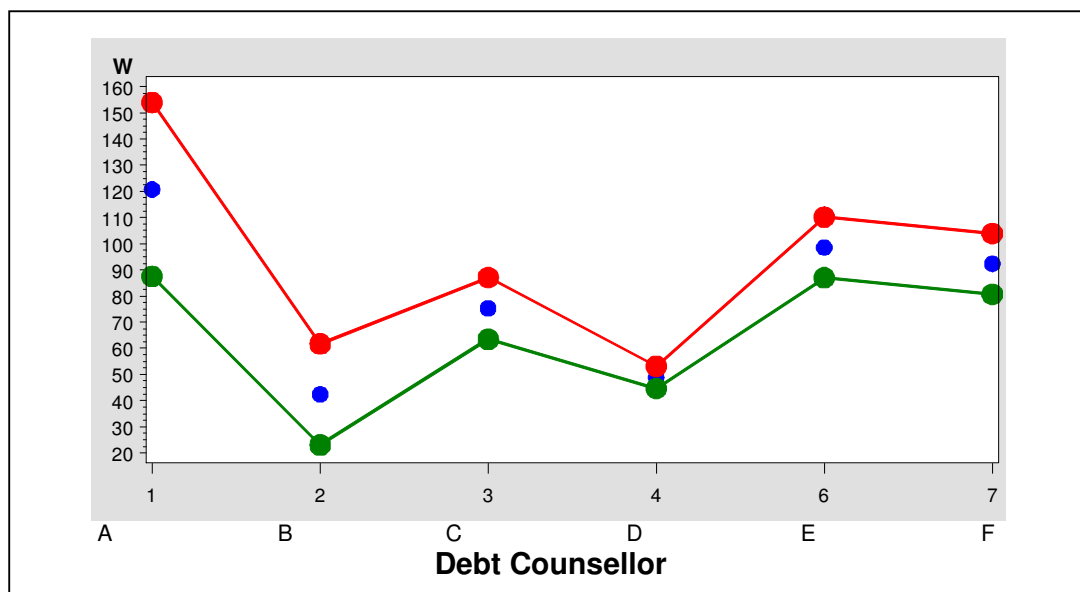


Figure 27, Chapter 4: Turnaround time from date Form 16 signed to date response received on proposal

## 5.3 Information on debt counsellors' practice, procedures and success rate

### 5.3.1 Findings

Regarding the rating of credit providers by debt counsellors in respect of the supply of financial information (COBs), in terms of faster or slower than industry average, it was clear that perceptions differ.

Only three credit providers, namely MFC, Mr Price and Nedbank were rated faster than average by the majority of debt counsellors. Standard Bank and Ellerines were rated slower by more debt counsellors whilst other credit providers were rated average by most debt counsellors.

### **5.3.1.1 Copies of credit agreements**

77% of debt counsellors in this sample had requested copies of credit agreements at some stage.

Of these only 28.50% indicated receipt of these contracts within 2 weeks. The remaining 71.50% indicated:

- 24.50% within one month
- 10.00% within 2 months
- 12,50% longer than 2 months
- 24.50% never

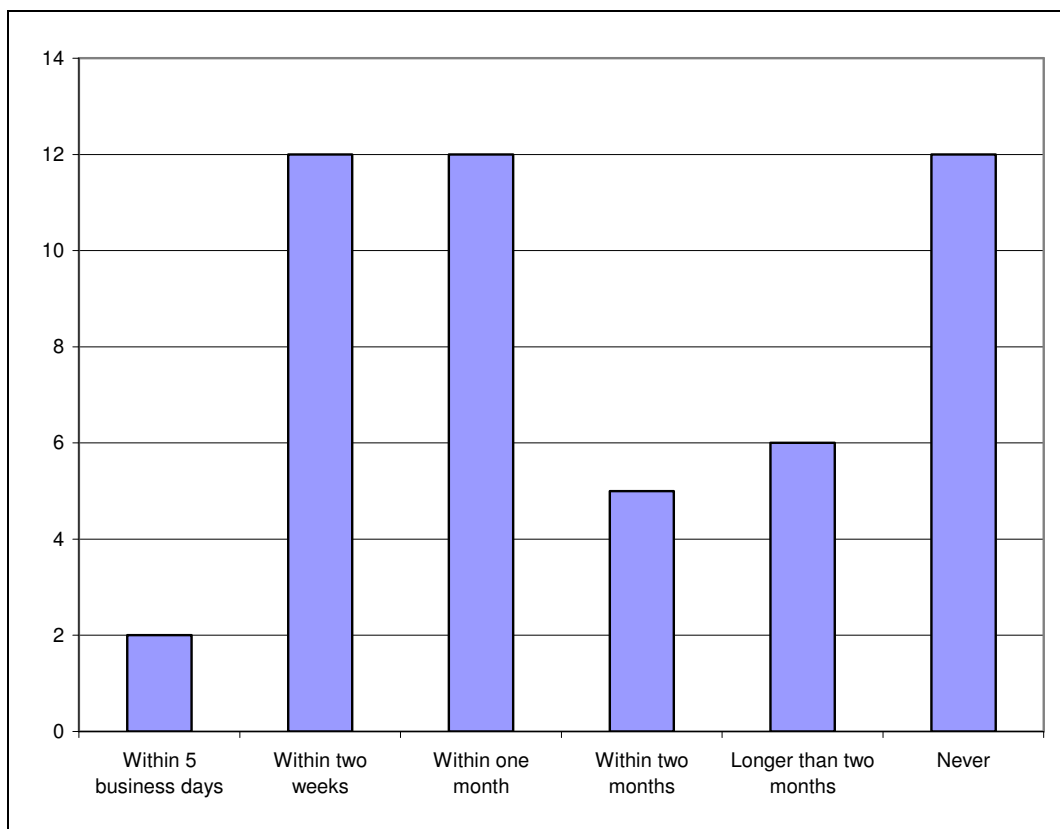


Figure 31, Chapter 4: **Illustrating time period for credit providers to supply a copy of the consumer's credit agreements**

### **5.3.1.2 Stopping debit orders upon request**

Debt counsellors expressed frustration at the unwillingness or inability of banks to stop payment per debit order when requested to do so. 78% of debt counsellors indicated problems in this regard.

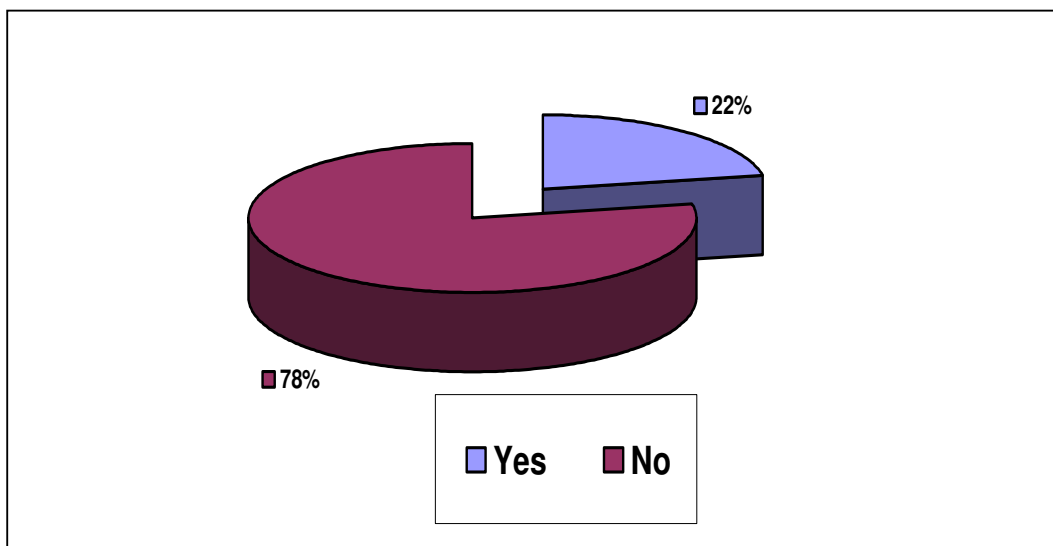


Figure 32, Chapter 4: **Illustrating how many Debt Counsellors experiencing credit providers stopping debit orders upon request**

### 5.3.1.3 *Experiencing problems with banks in applying “money grabbing” / set-off*

62% of debt counsellors interviewed indicated that they had experienced problems with credit providers using set-off.

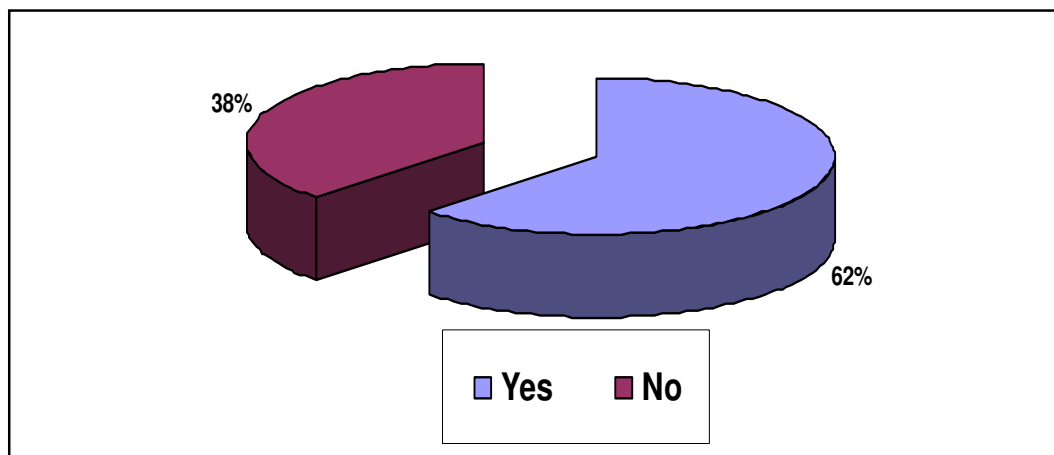


Figure 33, Chapter 4: Percentage of debt counsellors experiencing problems with “money grabbing” / set-off

Table 34, Chapter 4: With which banking institutions Debt Counsellors are experiencing problems with “money grabbing” / set-offs

Credit provider	Number of DCs	Percentage
First National Bank	26	40.63%
Absa	25	39.06%
Nedbank	17	26.56%
Standard Bank	15	23.44%
Others	6	9.38%

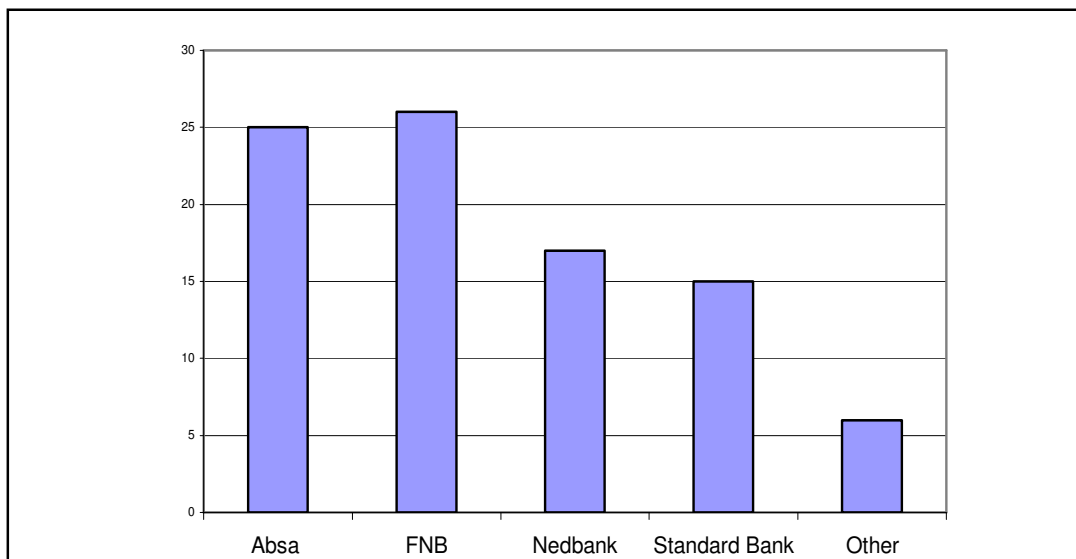


Figure 34, Chapter 4: Illustrating with which banking institutions debt counsellors are experiencing problems with “money grabbing”

#### **5.3.1.4 Grounds for opposing applications**

The finding as per case study in Chapter 3 was confirmed by debt counsellors, with nearly one of two banks opposing on grounds of geographic jurisdiction and nearly one out of four, on monetary jurisdiction.

Although it was agreed to in the work streams that court applications would not be opposed on these grounds, it seems that credit providers use these loopholes in the Act to their benefit as the debt review cases can then not be heard on its true merits.

The purpose of the work streams was to agree upon a suitable court application that was to everyone’s advantage. Credit providers and debt counsellors appreciated the fact that certain issues were not addressed and that no proper legal process for debt review was provided for in the Act. It is submitted that the exploitation of the shortcomings of the Act by credit providers for their own benefit is contrary to the Act which required credit providers to participate in good faith in the process of debt review. Moreover, this conduct often leaves the *bona fide* consumer in more debt than before.

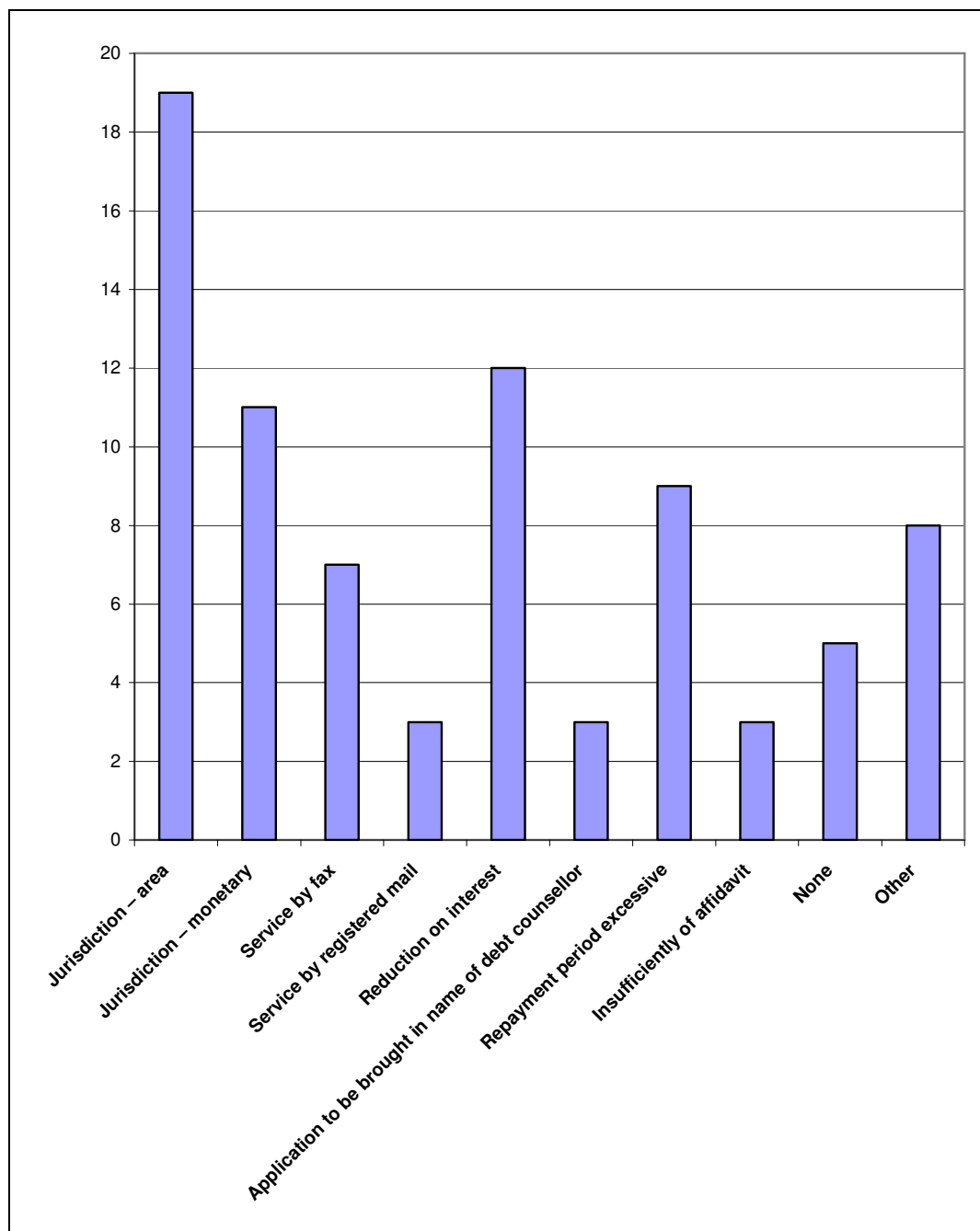


Figure 37, Chapter 4: Reasons advanced by credit providers in opposing applications to court

### 5.1.3.5 Rating credit providers for service delivery

Mr Price, Easton-Berry, WesBank, Direct Axis, Ellerines, FNB and Nedbank were rated positively by the majority of debt counsellors, while all the other credit providers received negative ratings.

Standard Bank, SA Home Loans, JDG Trading, Edcon and others (micro lenders) were specifically rated negatively.

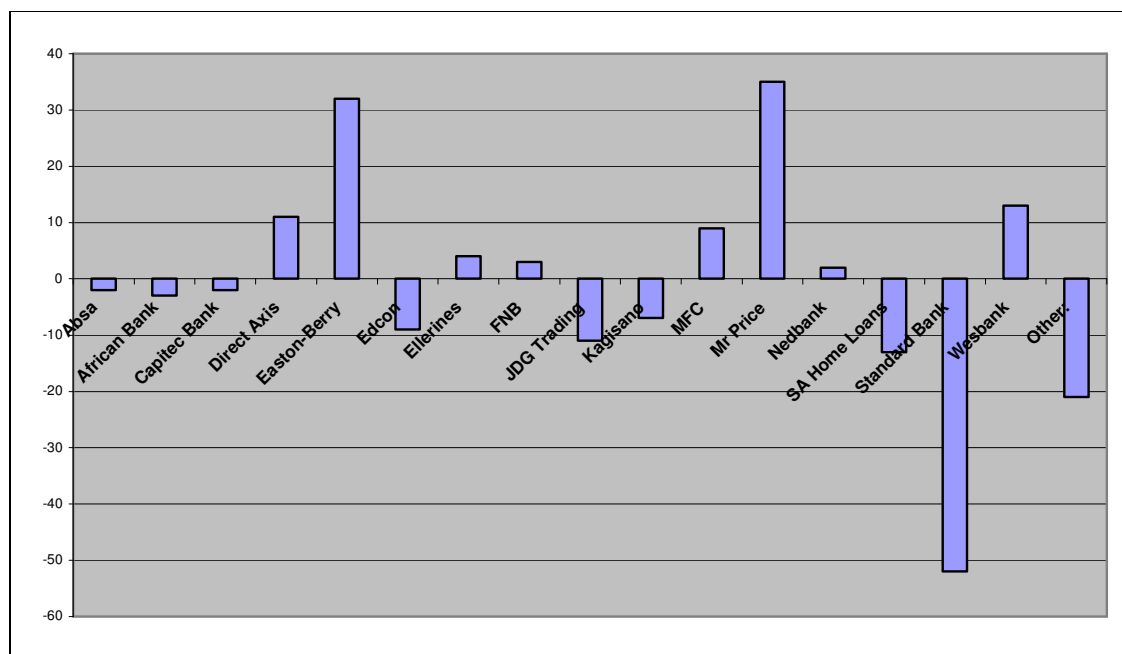


Figure 38, Chapter 4: Rating of credit providers by debt counsellors for service delivery



### 5.1.3.6 Trust levels

The National Credit Act requires all consumers and credit providers to act in good faith in the review and negotiation process. Debt counsellors were asked whether credit providers, in their experience, were acting in good faith in the debt review process. Rather than just to elicit a simple “yes” or “no”, they were informed that they could indicate the percentage of credit providers that acted in good faith or not. An answer that 60% of credit providers were acting in good faith would lead to a 0.6 added to the “yes” column and a 0.4 added to the “no” column. The lack of trust by debt counsellors of credit providers is clearly illustrated in the graph hereunder.

Based on percentage ratings, bad faith recorded 61% and good faith, 39%. This is a disturbing finding as acceptance of the *bona fides* of the other party in negotiations would seem to be a prerequisite for meaningful negotiations.

There seems to be disillusion with consumers as well, although not to the same extent as with credit providers. There is a 35% recording of bad faith on the part of consumers.

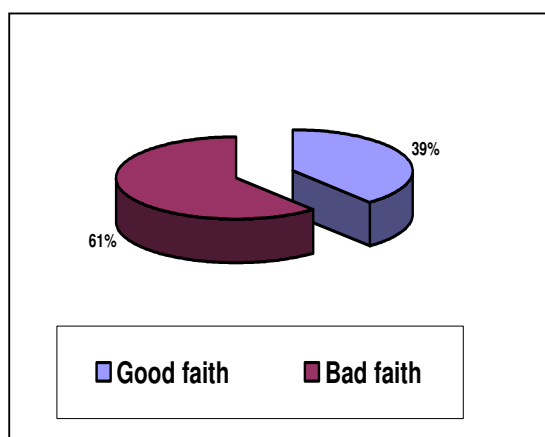


Figure 39, Chapter 4: Percentage of credit providers acting in good / bad faith according to debt counsellors

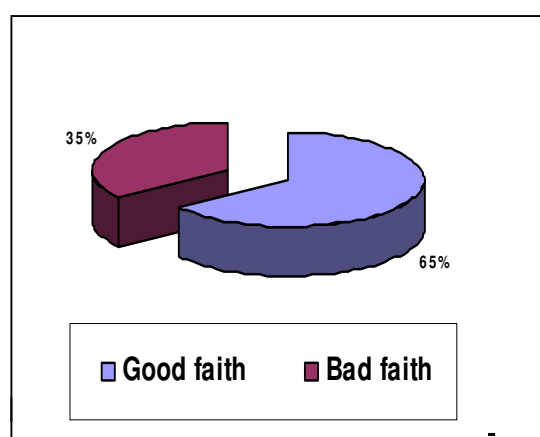


Figure 40, Chapter 4: Percentage of consumers acting in good / bad according to debt counsellors

In spite of the challenges experienced in the debt counselling process the vast majority of debt counsellors (91%) still regarded the process as an effective debt relief measure.

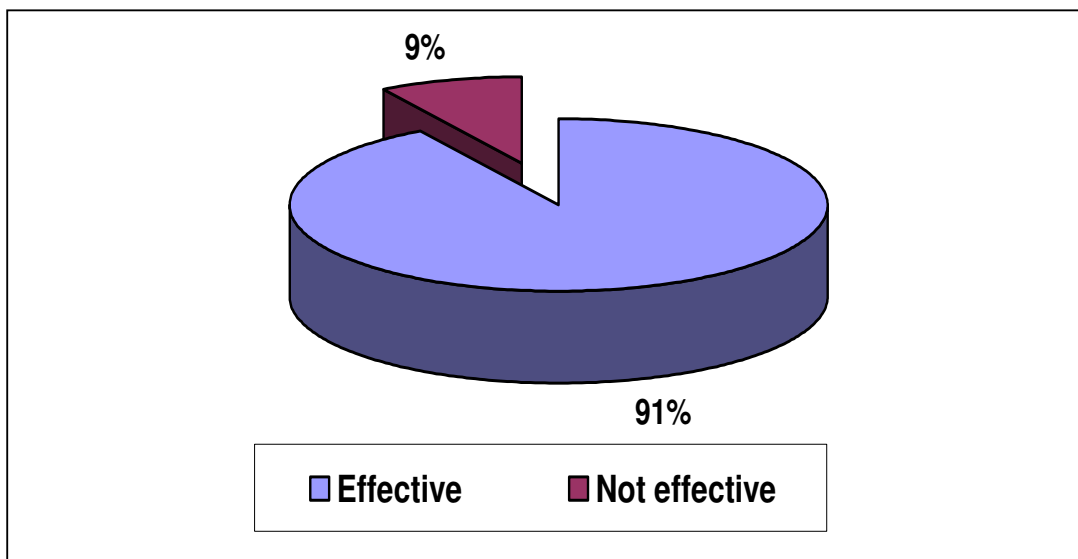


Figure 41, Chapter 4: Percentage of debt counsellors indicating whether debt review process is an effective debt relief measure

### 5.1.3.7 *Major obstacles in the debt review process*

The major obstacles were listed by debt counsellor respondents with credit providers not cooperating (72%) again heading the list. This was followed by insufficiency of the Act and Regulations (53%); consumers not cooperating (36%) and incompetent debt counsellors (27%).

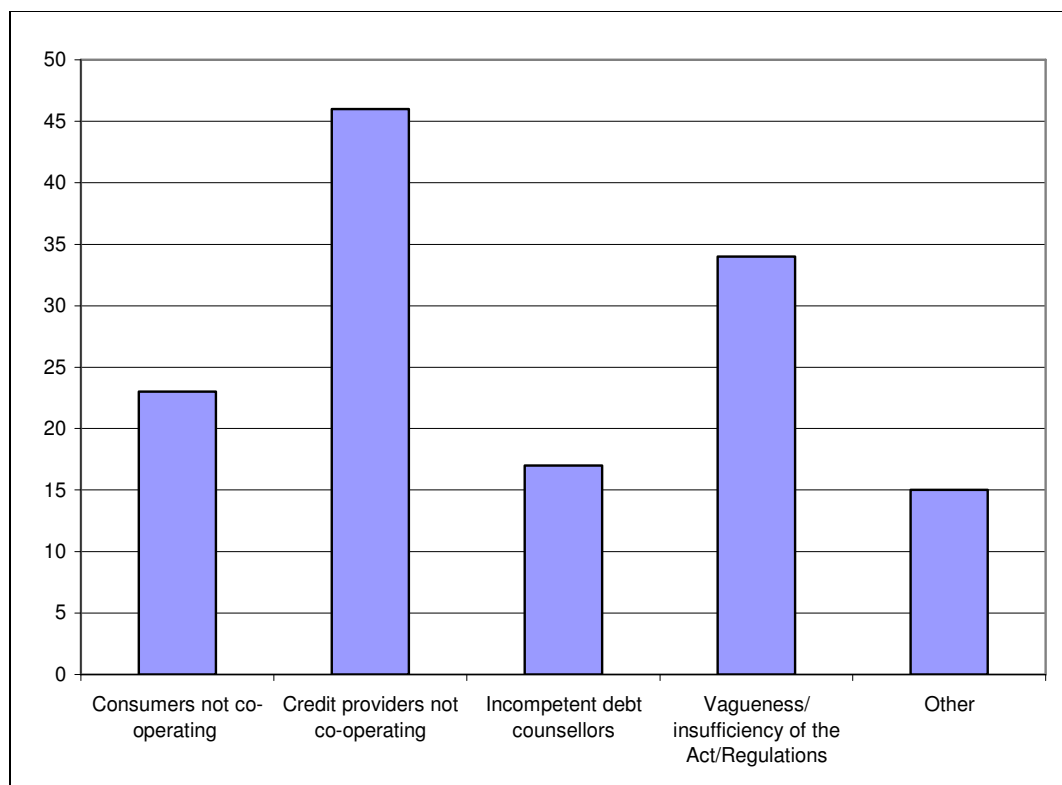


Figure 42, Chapter 4: The main obstacles in the debt review process according to debt counsellors

### 5.1.3.8 60 day period sufficient / not sufficient

59% of debt counsellors indicated that the 60 business day period was not sufficient. The main reasons advanced by debt counsellors being non-cooperation of credit providers (46.67%), or the process in general requiring a longer period (36.67%). The remaining 16.66% cited problems experienced with obtaining information from consumers as reason.

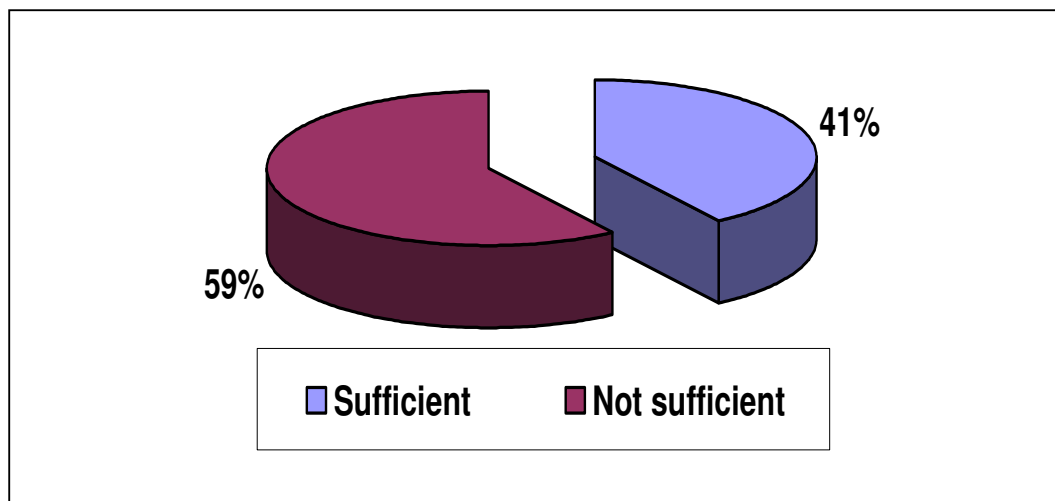


Figure 43, Chapter 4: Time limit of 60 business days for completion of debt review is sufficient / not sufficient

77% of debt counsellors interviewed indicated that they do send out reminders to credit providers not complying, whilst 23% indicated that they do not.

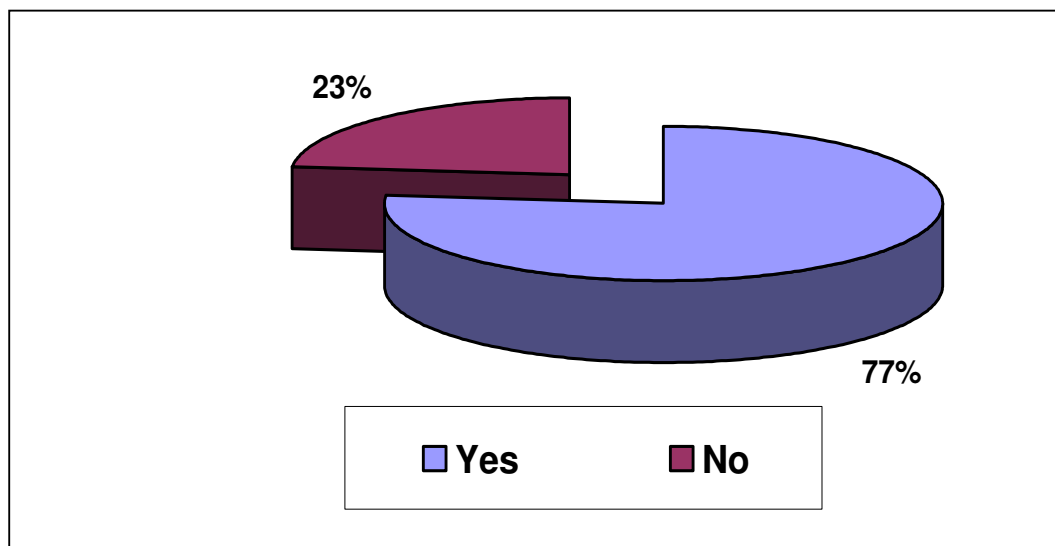


Figure 45, Chapter 4: Debt counsellors sending reminders upon non-receipt of COB in prescribed period

All of the 64 debt counsellors interviewed used software packages in drafting proposals. Of these, seven debt counsellors had developed their own system, whilst the others made use of:

- 27 Care
- 18 Debtpro
- 7 Octogen
- 5 Other systems

#### **5.1.3.9 *The non-standardised programmes used, led to different formulas and results***

A set of facts presented to debt counsellors employing different systems showed huge differences and formats of proposals (ranging from 2 to 40 pages). The choice of a specific debt counsellor and more importantly, the use of a specific software program could lead to acceptance or rejection of a proposal. The set of facts and different proposals are included as addenda to this report and summarised in Chapter 3.

## **6 CONCLUSION**

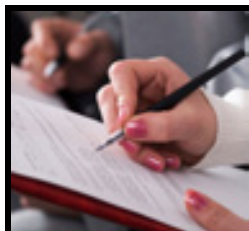
The overall impression of the research team is that:

- The Act and Regulations are inadequate in regulating the debt counselling process and needs to be amended and supplemented.
- The credit providers have largely reneged on the industry agreements and have fully exploited the lacunae in the Act, thereby preventing debt counselling proposals to be heard on the merits by courts.
- Consequently debt counsellors have also increasingly made themselves guilty of not adhering to the work stream agreement.
- Credit providers and debt counsellors are not able to keep to the time limits as set out in the Act and Regulations, resulting in the 60 day period not being attained.
- A lack of trust in the *bone fide* of credit providers exist.

- Some debt counsellors and some employees of credit providers lack the skills and knowledge to perform effectively and efficiently, leading to ill informed proposals and actions.
- The use of different software packages and non-adherence to work stream agreement formulas influence the contents and scope and eventual acceptance or rejection of proposals.
- The situation has changed for the worse as various problems with PDA systems, (emanating from consumers, debt counsellors, credit providers and the PDA's themselves), have been identified.

## 7 RECOMMENDATIONS

Recommendations are found in Chapter 5 of the report.



## CHAPTER 1 : INTRODUCTION

### 1.1 BACKGROUND

**The National Credit Regulator (NCR)** was established as the regulator under the National Credit Act 34 of 2005 (the Act) and is responsible for the regulation of the South African credit industry. It is tasked with carrying out education, research, policy development, registration of industry participants, investigation of complaints and ensuring enforcement of the Act.

**BE at UP (Pty) Ltd (BE@UP)** is an enterprise established by the University of Pretoria in 2000 as a structure for the development of campus enterprises that acts as the intermediary between the business world and the pool of multidisciplinary resources at the University. It provides consultative and commercial contract research services to the private and public sector.

**UP Law Clinic**, comprising of attorneys, candidate attorneys and administrative personnel, forms part of the Law Faculty of the University of Pretoria. The Law Clinic provides clinical legal education and experiential training opportunities to final year law students as well as to candidate attorneys. It offers a wide array of legal services to indigent clients. Since 2001, the Law Clinic has participated in various debt relief projects with the primary objective of assisting over-indebted consumers. The Clinic runs a small debt counselling unit and is the principal presenter of the NCR accredited course for aspirant debt counsellors. Members of staff have lectured, published and presented papers on various aspects of the National Credit Act, both in South Africa and abroad.

**Statomet** is a bureau at the University of Pretoria that focuses on the scientific design and management of research.



## **1.2 PROJECT APPROACH**

The study comprises of and the report is divided into the following sections:

### **1.2.1 Literature framework (Chapter 2)**

- The formal debt counselling process, introduced by section 86 of the National Credit Act and Regulations to the Act as well as credit industry agreements reached between various role players, are reviewed.
- The general civil procedure relating to applications to the Magistrate's Court is examined.
- Relevant legislation, case law, as well as academic and popular articles are researched and reported on.
- Recommendations for amendment of the Act and Regulations are made.
- This part of the study is presented in the format of an academic article.

### **1.2.2 Selected case studies (Chapter 3)**

A number of case studies are researched and reported on regarding the following:

- Reneging on the work stream agreement by credit providers
- Non-compliance with the Act, Regulations and Work Stream Agreement by debt counsellors
- Problems associated with financial information
- Negligent mistakes
- Other findings
- PDA payments

### **1.2.3 Quantitative and qualitative surveys (Chapter 4)**

Two data sets are analysed and reported on. Data Set A comprises 300 applications for debt counselling, representing 3 288 credit agreements. It addresses the following:



- Average turnaround time from date of request for COB to date of response.
- Cases of no reply to requests.
- Turnaround time.
- Average time from Form 16 (application for debt review) to COB request / Form 17.1 sent.
- Average time from date of application to date of response received to proposal.
- Average time from application for debt counselling to date of proposal sent.

Data Set B comprises the responses of 64 randomly selected debt counsellors to questions put to them during non-scheduled structured telephonic interviews and addresses the following:

- Perceptions of and experiences with credit providers regarding compliance with the NCA, work stream agreement and service levels.
- Levels of trust of debt counsellors regarding credit providers and consumers.
- Perspectives on the debt counselling process itself.
- Information on debt counsellors practices, procedures and success rate.

### **1.3 RECOMMENDATIONS**

On the basis of literature studies, case law reviews and survey results, a detailed analysis and evaluation of the situation is compiled. A number of recommendations are suggested in Chapter 5.

### **1.4 METHODOLOGY AND LIMITATIONS**

The methodologies followed and the limitations experienced are discussed throughout the report where applicable.

## CHAPTER 2 : LEGISLATIVE FRAMEWORK

### 2.1 INTRODUCTION

Releasing its consumer credit records report, the National Credit Regulator (NCR) pointed out that nearly half of the 17.57 million credit-active South Africans had “impaired records” in December 2008. This “impaired records” figure rose by 4% when compared to the quarter which ended in December 2007.<sup>1</sup> Further statistics<sup>2</sup> show that to date, just over 42 000 consumers have applied for debt review in terms of section 86 of the National Credit Act (NCA),<sup>3</sup> however, less than 1600 cases have managed to proceed through our courts. Consequently, many consumers are denied the protective measures afforded by the Act.

It should be clear that the success of debt counselling and the debt review process depends on a positive working relationship between the over-indebted consumer, credit providers and debt counsellors who must act as intermediaries and aim to strike a balance between the different role players’ conflicting needs and interests.<sup>4</sup> This challenge has been explained as follows:<sup>5</sup>

“On the one side is a consumer who is over-indebted but does not want to accept that he is living beyond his means and will have to reduce expenditure, and on the other side is an average of 13 credit providers who all want their money.”

The fact that only 1600 out of a possible 42 000 debt review cases have proceeded through our courts indicates that the debt counselling process is not functioning effectively and the question arises, as to whom of the role players and to what extent they are responsible for the ineffectiveness.

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<sup>1</sup> *Legalbrief Today* (25 March 2009).

<sup>2</sup> Provided by the NCR.

<sup>3</sup> 35 of 2005; hereafter the NCA.

<sup>4</sup> Kelly-Louw “The prevention and alleviation of consumer over-indebtedness” 2008 *SAMercLJ* 200 226; Du Plessis “The National Credit Act: Debt counselling may prove to be a risky enterprise” 2007 *Journal for Juridical Science* 74 75.

<sup>5</sup> *Sunday Times* (1 June 2008).

The following reasons have *inter alia* been indicated in the South African Media for the present ineffectiveness of the debt counselling process:

- A sharp increase in the number of consumers applying for debt review and a concomitant shortage of (good) debt counsellors.<sup>6</sup>
- Many debt counsellors trained and registered by the NCR do not practice because it is not feasible for them to do so.<sup>7</sup>
- Consumers are still uneducated on the objectives of the debt relief process. Debt counsellors sometimes fail to inform consumers of the consequences of debt counselling. Consumers often think that debt counselling affords them a payment holiday.<sup>8</sup> Some consumers do not always appreciate the fact that the NCA does not create a mechanism to enable them to run away from their debts.<sup>9</sup>
- Consumers are often not willing to accept that they cannot maintain the same standard of living that got them into their financial predicament in the first place.<sup>10</sup>
- Credit providers must take greater responsibility for the negative consequences of credit granting and appreciate the fact that they will have to take losses and write off debts.<sup>11</sup>
- Although an application for debt review precludes credit providers from taking legal action against the consumer, nothing stops the credit provider from pursuing the debt.<sup>12</sup>
- The amount of debt concerned<sup>13</sup> often does not justify the legal costs that will be incurred to take the matter to court.<sup>14</sup>

Phase 2 and 3<sup>15</sup> of this research project will address the question as to the reasons for the present ineffectiveness of the debt counselling process. The aim of this part of the research project is to attempt to identify the parties who are

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<sup>6</sup> *Daily Dispatch* (21 Augustus 2008); *Saturday Weekend Argus* (21 June 2008).

<sup>7</sup> *Sunday Independent* (1 June 2008).

<sup>8</sup> *Star* (12 March 2008).

<sup>9</sup> *Mail and Guardian* (5 June 2008).

<sup>10</sup> *Sunday Times* (1 June 2008).

<sup>11</sup> *Mail and Guardian* (5 June 2008).

<sup>12</sup> *Star* (12 March 2008).

<sup>13</sup> Especially in the low income market.

<sup>14</sup> *Saturday Star* (6 October 2007).

<sup>15</sup> See ch 3 and 4 below.

responsible for delaying the debt review process and preventing debt review cases to be finalised by our Magistrates' Courts.

It is obvious that legislative gaps also contribute to the perceived ineffectiveness of the debt counselling process.<sup>16</sup> The aim of Phase 1<sup>17</sup> of this research project is therefore, first of all, to investigate and to report on the complete formal debt counselling process introduced by the NCA and Regulations as well as agreements reached between various role players in the credit industry. In this regard the office of the debt counsellor, the debt review process as well as other related problematic issues will be investigated. The aim of this part of the research project is to identify possible shortcomings of legislation pertaining to the debt review process which causes the lack of legal certainty and which contributes to the apparent ineffectiveness of the debt counselling process. Proposals to remedy these deficiencies will also be made.

## **2.2 THE DEBT COUNSELLING PROCESS AND RELATED ISSUES**

### **2.2.1 The office of the debt counsellor**

#### **2.2.1.1 The functions of a debt counsellor**

One of the main purposes of the NCA is to provide debt relief to the over-indebted consumer,<sup>18</sup> by affording the consumer the opportunity to survive the

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<sup>16</sup> Cf Scholtz *et al Guide to the National Credit Act* (2008) 14-19.

<sup>17</sup> See par 2.2 and 2.3 below.

<sup>18</sup> Cf s 3(g) and (i) of the NCA. It should be noted that the Act only applies to a consumer who is a party to a *credit agreement* to the Act – see s 4(1) and Renke, Roestoff and Haupt “The National Credit Act: New parameters for the granting of credit in South Africa” 2007 *Obiter* 229 230 *et seq* and Stoop “Kritiese evaluasie van die toepassingsveld van die ‘National Credit Act’” 2008 *De Jure* 352 for a discussion of the field of application of the Act. See also Roestoff and Renke “Debt relief for consumers – the interaction between insolvency and consumer protection legislation” (Part 2) 2006 *Obiter* 98 99 *et seq* for a discussion of alternative debt relief measures to the Insolvency Act 24 of 1936, the Magistrates’ Courts Act (MCA) 32 of 1944 (s 74 administration orders) and the proposed pre-liquidation composition (by the South African Law Reform Commission) and the interaction between these measures. Also see Boraine “The reform of administration orders within a new consumer credit framework” in Kelly-Louw *et al The future of consumer credit regulation – Creative approaches to emerging problems* (2008) 187 (hereafter Boraine). In *Ex parte Ford*; *Ex parte Venter*; *Ex parte Botes* (Unreported case no 21084/08; 1034/09; 1035/09 (WCC)) the court refused to exercise its discretion in favour of the applicants for an order for the voluntary surrender of the respective applicants’ estates. The court found that debt review to the NCA was the more appropriate debt relief mechanism to be used as the major portion of the applicants, debt arose out of credit agreements to the NCA – par 17 *et seq*.

immediate consequences of his or her financial predicament and to attain a manageable financial position.<sup>19</sup> The success of the Act's provisions in this regard depends to a great extent on the effectiveness of the debt counselling process and the debt counsellor whose principal function is to assist the over-indebted consumer with the process of debt review as prescribed in section 86 of the Act.<sup>20</sup>

As pointed out by Du Plessis,<sup>21</sup> the duty of a debt counsellor is specifically outlined in the Act. Therefore, interference in the affairs of a consumer is not permitted. A debt counsellor cannot give financial advice to a consumer regarding investments, insurance and purchasing or variation of financial products, unless he is registered with the Financial Services Board as a financial advisor in terms of the Financial Advisory and Intermediary Services Act (FAIS).<sup>22</sup> Du Plessis<sup>23</sup> points out however, that a debt counsellor is not precluded from consulting with a consumer without providing financial advice. In terms of section 86(5) of the NCA a consumer who has applied for debt review must "comply with any reasonable request by the debt counsellor to facilitate the evaluation of the consumer's state of indebtedness and the prospects for responsible debt rearrangement". Moreover, a debt counsellor is also not precluded from making suggestions regarding the debtor's investments in the recommendation to the Magistrate's Court in terms of section 86(7) of the Act.<sup>24</sup> Du Plessis<sup>25</sup> however poses the question as to what would prevent a debt counsellor from also being registered as a financial advisor in terms of FAIS and thereby being able to charge a client a fee for both the debt counselling and the

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<sup>19</sup> *First Rand Bank Ltd v Olivier* [2008] JOL 22138 (SE) 6; *Standard Bank of SA Ltd v Panayiotts* (Unreported case no 08/00146 (WLD)) par 81. Also see Roestoff and Renke "Debt relief for consumers – the interaction between insolvency and consumer protection legislation" (Part 1) 2005 *Obiter* 561 569 *et seq* for a general discussion of the debt relief measure created by the NCA.

<sup>20</sup> *Cf* Kelly-Louw 225. The Act does not define the concept "debt counselling" but the regulations define it as "performing the functions contemplated in section 86 of the Act", which refers to the debt review process.

<sup>21</sup> 79.

<sup>22</sup> 37 of 2002.

<sup>23</sup> 79.

<sup>24</sup> *Ibid.*

<sup>25</sup> Du Plessis 79-80.

financial counselling. In our view, this may however lead to a conflict of interests which the debt counsellor, who should act professionally, must avoid.<sup>26</sup>

In addition to his duty to perform the functions in terms of section 86 of the Act, the Act also requires the debt counsellor to keep certain records<sup>27</sup> and to maintain certain information in a register<sup>28</sup> which may be in electronic format.<sup>29</sup>

The debt counsellor also has a duty to submit a compliance report in Form 41 to the NCR by the 15<sup>th</sup> of February each year as well as a statistical return in Form 42 every quarter.<sup>30</sup>

### **2.2.1.2 Registration of debt counsellors**

“Debt counsellor” in terms of regulation 1 “means a neutral person who is registered in terms of section 44 of the Act offering a service of debt counselling.” A person may not offer debt counselling-services unless he or she is registered as a debt counsellor by the National Credit Regulator (NCR), the regulatory body of all debt counsellors.<sup>31</sup> Only natural persons<sup>32</sup> may apply to be registered as debt counsellors and must satisfy certain prescribed requirements relating to education,<sup>33</sup> experience and competence, or satisfy within a reasonable time, such requirements as the NCR may determine as a condition to the applicant’s registration.<sup>34</sup> With regard to experience and competence, regulation 10(b) requires a debt counsellor to have at least two years working experience in any of the following fields:<sup>35</sup>

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<sup>26</sup> Cf Da Silva *et al Debt Counselling – Principles and Guidelines 5 et seq* (hereafter *Principles and Guidelines*) which contains the “work stream guidelines” agreed to by most of the major credit providers, established debt counsellors and the National Credit Regulator.

<sup>27</sup> Eg the application for debt review iro each consumer, the debt restructuring proposals and copies of documents submitted by consumers – reg 55(1)(a).

<sup>28</sup> Eg the consumer’s full names and surname, the date of application for debt review, the status of the case etc – reg 60(1).

<sup>29</sup> See in general Du Plessis 87.

<sup>30</sup> Reg 69. Also see Du Plessis 87-88.

<sup>31</sup> Ss 45 and 44(2). See on the registration of debt counsellors in general Vessio “What does the National Credit Regulator regulate?” 2008 *SAMercLJ* 227 238.

<sup>32</sup> S 44(1).

<sup>33</sup> Reg 10(a) requires a Grade 12 certificate or equivalent Level 4 qualification issued by the South African Qualifications Authority and the successful completion of a debt counselling course approved by the NCR and provided by an institution approved by the NCR.

<sup>34</sup> S 44(3). See also s 48(2) and (3).

<sup>35</sup> Scholtz *et al* 11-7 n 33 points out that it is unnecessary to have experience in all these fields. Experience in one of them is sufficient.

- consumer protection, complaints resolution or consumer advisory services
- legal or paralegal services
- accounting or financial services
- education or training of individuals
- counselling of individuals
- general business environment

In addition, a debt counsellor must also have demonstrated the ability to manage their own finances when applying for registration and to provide counselling or transfer skills.<sup>36</sup> Du Plessis<sup>37</sup> points out that the regulations are silent as to how a person's ability to manage his own affairs will be measured. The question arises as to whether this will be measured purely by the fact that such a person is not registered with a credit bureau for bad debt? The regulation is also silent on the measuring of a person's ability to transfer skills or provide counselling. The criteria are also criticised for requiring no higher education or technical expertise from the debt counsellor.<sup>38</sup> A debt counsellor must have sufficient knowledge in order to best protect his or her client's interest.<sup>39</sup> A further question therefore arises as to whether a review of the requirements pertaining to education, experience and competence of debt counsellors have not become necessary as one of the reasons indicated for the ineffectiveness of debt counselling has indeed been the shortage of competent, experienced and knowledgeable debt counsellors.<sup>40</sup>

The Regulator will not register a debt counsellor if any of the disqualifying criteria in terms of section 46 and 47 apply to the applicant. For example, in terms of section 46(4)(c) a person may not register as a debt counsellor if such a person is engaged in, employed by or acting as an agent for a person engaged in debt collection,<sup>41</sup> the operation of a credit bureau, credit provision or

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<sup>36</sup> Reg 10(b)(ii).

<sup>37</sup> 76.

<sup>38</sup> See Du Plessis 76.

<sup>39</sup> *Principles and Guidelines* 7.

<sup>40</sup> *Cf Daily Dispatch* (21 Augustus 2008).

<sup>41</sup> Du Plessis 75 points out that this provision disqualifies a sizeable number of attorneys and paralegals and raises the question whether this exclusion will apply to non governmental organizations assisting the

any other activity prescribed by the Minister on grounds of conflict of interest. It should be clear that this provision was inserted to avoid a conflict of interest between a person's duty to act in the best interest of a consumer as a debt counsellor, and a person's duty to act in the best interest of the credit provider or debt collector, as the case may be.<sup>42</sup>

Before registration will be effected the NCR will require the debt counsellor to sign certain conditions for registration which, *inter alia*, states the following:<sup>43</sup>

- The debt counsellor must fulfil his duties in a manner which is consistent with the purpose and requirements of the Act.
- In providing debt counselling the debt counsellor must act professionally, reasonably and in a manner that is fair and non-discriminatory.
- The debt counsellor must act in the best interest of the consumer and refrain from taking part in activities which could lead to a conflict of interests.
- The debt counsellor may not charge or recover fees apart from those allowed in terms of the Act and Regulations.
- Except with the written permission of the consumer the debt counsellor may not disclose any information relating to the consumer to a third party.

Any complaints or queries concerning debt counsellors must be lodged with the NCR. If a complaint is lodged against a debt counsellor the NCR may issue the debt counsellor with a compliance notice and if the debt counsellor fails to remedy the default, the NCR may apply to the National Consumer Tribunal to have the debt counsellor deregistered.<sup>44</sup>

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indigent and law clinics whose main function is not debt collection, but attend to a few such cases at any given time.

<sup>42</sup> *Principles and Guidelines* 6.

<sup>43</sup> *Idem* 9-10.

<sup>44</sup> *Cf* ss 14(b), 15(b), (e), (i) and 57(1).



## 2.2.2

### The debt review process

#### 2.2.2.1 *Initiation of the debt review process*

In terms of section 86(1) a consumer who is of the opinion that he is over-indebted may apply to a debt counsellor in the prescribed manner and form to have him declared over-indebted. One of the first steps in the debt review process is therefore, a determination by the debt counsellor whether the consumer is over-indebted, likely to become over-indebted, or not over-indebted at all.<sup>45</sup> If it is alleged in any court proceedings in which a credit agreement is considered<sup>46</sup> that the consumer is over-indebted, the court<sup>47</sup> is in terms of section 85 given the power to either refer the matter to a debt counsellor,<sup>48</sup> or to declare and relieve<sup>49</sup> the over-indebtedness.<sup>50</sup> Consumers who are over-indebted may therefore apply for debt review themselves or alternatively wait for a credit provider to enforce a credit agreement in respect of which the consumer is in default, and then raise the issue of over-indebtedness in court.<sup>51</sup> In this regard, the court, in the *Panayiotts* case,<sup>52</sup> held that a mere allegation of over-indebtedness is not sufficient. The over-indebtedness should be established on a balance of probabilities as envisaged in section 79(1) which refers to “the preponderance of available information at the time a determination is made”.<sup>53</sup>

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<sup>45</sup> S 86(6) and (7) and see the discussion in par 2.2.2.4 and 2.2.2.5 below.

<sup>46</sup> In *Ex parte Ford* par 12 the court found that the application of s 85 is not restricted to proceedings in which the enforcement of a credit agreement is the issue and that it would also be applicable in proceedings for voluntary surrender under the Insolvency Act.

<sup>47</sup> Scholtz *et al* 11-17 points out that s 85 refers to the word “court” which suggests that any court (ie also the High Court) can declare and relieve over-indebtedness. They suggest however, that if s 85 is read together with the sections it refers to (ss 86(7) and 87), it should be clear that the legislature intended that the actual debt restructuring process should be dealt with by the Magistrate’s Court.

<sup>48</sup> Ito s 85(a) the debt counsellor should be requested to evaluate the consumer’s circumstances and make a recommendation to court ito s 86(7).

<sup>49</sup> Ito s 87.

<sup>50</sup> S 85(b).

<sup>51</sup> Scholtz *et al* 11-6. *Cf* the *Panayiotts* case par 3. In the *Panayiotts* case par 28 *et seq* the court pointed out that the consumer must however, in such a case, explain his failure to approach a debt counsellor prior to litigation as it is undesirable that the more costly procedure of the High Court should be implemented and that the High Court should deal with frequent applications for debt restructuring along the lines of a section 65 court. Furthermore, the High Court should not deal with a matter where there is an alternative, simple and effective procedure available (*in casu* the debt review procedure ito s 86). *Cf* also the *Olivier* case 10 *et seq*. In *Olivier* the court found that the defendant’s case for a s 85 order was not persuasive as he did not explain his failure to approach a debt counsellor prior to litigation. In the *Panayiotts* case (par 37) the court however granted condonation as the s 129 notice, although properly served, did not come to the notice of the defendant.

<sup>52</sup> Par 24, 42 and 55.

<sup>53</sup> *Ibid*. See par 2.2.2.4 for a discussion of s 79.

If a consumer alleges in the High Court that he is over-indebted and the High Court refers the matter to a debt counsellor in terms of section 85(a), the recommendation that the debt counsellor has to make to the court in terms of section 86(7) must be made to the relevant High Court who must also deal with the matter in terms of section 86(7)(c).<sup>54</sup> In the *Panayiotts* case,<sup>55</sup> the court pointed out that section 85(a) requires the debt counsellor to make a recommendation “to the court”, which is not limited to the Magistrate’s Court and is therefore clearly a reference to the court which referred the matter to the debt counsellor. The court explained as follows:<sup>56</sup>

“Any other interpretation could lead to absurdity, since, if different courts were involved, a Magistrates’ Court would be adjudicating a matter whilst it is pending in the High Court. The element of policing would also be problematic, since the High Court would not necessarily know if its request has been heeded and carried out in the Magistrates’ Court.”

If the High Court in terms of section 85(b) elects to declare that the consumer is over-indebted, the power to relieve the consumer’s over-indebtedness in terms of section 87 would fall on the relevant High Court in which the defence was raised.<sup>57</sup>

It should be noted that only a court can declare a consumer to be over-indebted.<sup>58</sup> A debt counsellor’s function in terms of section 86(6)(a) is merely to conduct a debt review in order to determine whether a consumer appears to be over-indebted.<sup>59</sup> Should the consumer seek a declaration of reckless credit, the

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<sup>54</sup> *Panayiotts* case par 19. Cf however Scholtz *et al* 11-18 who are of the view that the recommendation has to be made to the Magistrate’s Court.

<sup>55</sup> Par 17.

<sup>56</sup> Par 18.

<sup>57</sup> *Panayiotts* case par 21. Also see s 130(4)(c)(ii)-(iii) which, in our view, provides further support for the interpretation in the *Panayiotts* case that any court (ie also the High Court) can declare and relieve over-indebtedness ito s 85. Scholtz *et al* 11-29 suggest that the matter in such a case should be referred to the Magistrate’s Court for debt-rearrangement. They suggest that such referral will probably have to be done ito the inherent jurisdiction of the High Courts as there are no designated procedure for it. R 39(22) pertains to the monetary value of a claim and is therefore not applicable.

<sup>58</sup> Scholtz *et al* 11-6.

<sup>59</sup> *Ibid.*

debt counsellor is also in terms of this section<sup>60</sup> empowered to determine whether any of the consumer's credit agreements appear to be reckless.<sup>61</sup>

#### **2.2.2.2 The first consultation and the taking of instructions**

The practical execution of the debt review process and the exact procedure to be followed is not fully regulated in the Act or Regulations. Consequently, major credit providers in consultation with established debt counsellors and the NCR at various work stream sessions, agreed to certain guidelines which should be followed in order to streamline the debt counselling procedure.<sup>62</sup> According to these guidelines the first consultation with the consumer should first of all inform the client of what debt review entails and how the process works. The following matters should also be explained to the consumer:<sup>63</sup>

- Which information and documentation the consumer is required to submit to the debt counsellor and that this information will be verified by the debt counsellor.
- The consequences of debt review. In this regard, the debt counsellor must explain to the consumer that he may not enter into any further credit agreements for the duration of the debt review process. The consumer may also not incur any further charges, by for example, using an overdraft facility or credit card. Credit cards, store cards and garage cards must be destroyed.
- The time constraints applicable to the process.
- The rights of the consumer and credit providers during the debt review process.
- The effect of debt review on the consumer's joint household.<sup>64</sup>
- The implications of debt review on the consumer's standard of living as well as his living expenses.

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<sup>60</sup> S 86(6)(b).

<sup>61</sup> See in this regard ss 80-84 and in general regarding reckless credit granting Scholtz *et al* 11-19 *et seq.*

<sup>62</sup> Scholtz *et al* 14-2 n 2; *Principles and Guidelines* 3.

<sup>63</sup> Scholtz *et al* 14-2 *et seq*; *Principles and Guidelines* 13.

<sup>64</sup> It should be noted that the income of the spouse to whom a consumer are married in community of property should be included when a determination with regard to over-indebtedness ito s 86(6) are made and a joint debt review application should be made. If the parties are married out of community of property or are living together, a joint exposition of income should be provided in order to prevent the situation of one party from being liable for all debt while the other party's income is used by both to fund a comfortable and luxurious lifestyle – *cf* *Principles and Guidelines* 22 and also s 78(3)(b).

- Listing at credit bureaux and the consequences thereof.
- The consumer's responsibility to continue with interim payments until a court or tribunal order has been made. Insurance premiums for asset-finance and vehicle finance agreements, mortgage loans and life cover should be paid in full.
- The costs that are involved, that is, the debt counsellor's fee<sup>65</sup> and if applicable, the legal fee of the attorney when the matter is referred to court.
- All credit agreements must be included.

As soon as the consumer has been informed of what the debt review process entails and if the consumer indicates that he wishes to proceed with the process, the debt counsellor will explain and assist the consumer in completing and signing Form 16, which forms the basis of the client's instructions.<sup>66</sup> The debt counsellor may then charge the consumer a R50 application fee, whereupon the debt counsellor provides the consumer with a receipt as proof of the application<sup>67</sup> for debt review as well as a copy of the Form 16 for the consumer's own records.<sup>68</sup>

As pointed out above,<sup>69</sup> one of the reasons why the debt counselling process is perceived to be ineffective, is the fact that debt counsellors do not properly inform consumers about what the process and its consequences entail. In order to ensure that consumers are properly informed, it is suggested that a revised Form 16, which deals with the matters listed above more comprehensively, could help to ensure that consumers are properly informed of the consequences of debt review.

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<sup>65</sup> See the discussion below.

<sup>66</sup> Cf *Principles and Guidelines* 15 and Scholtz *et al* 14-3.

<sup>67</sup> S 86(4)(a).

<sup>68</sup> *Principles and Guidelines* 15.

<sup>69</sup> Par 2.1.

It is also important that the debt counsellor informs the consumer of the effect of section 86(2) when he applies for debt review.<sup>70</sup> This subsection provides that an application for debt review in terms of section 86:

“may not be made in respect of, and does not apply to a particular credit agreement if, at the time of the application, the credit provider under that credit agreement has proceeded to take the steps contemplated in section 129 to enforce the agreement.”

In terms of the Act, a credit provider may, under part C of chapter 6 of the NCA commence legal proceedings to “enforce” the agreement. The Act however does not define the concept of enforcement, and the question arises whether enforcement of a credit agreement means the exercise of *any* of his remedies by a credit provider.<sup>71</sup> Van Loggerenberg<sup>72</sup> submits that even though part C sets out the requirements for debt enforcement by repossession or judgment “debt enforcement” under part C also includes cancellation of the agreement and an occupying claim to repossess the goods. The phrase “debt enforcement” should therefore not be interpreted to mean enforcement of a contract by means of a claim for specific performance only, and a notice in terms of section 129(1)(a)<sup>73</sup> would also be required if the credit provider elects to cancel the agreement.<sup>74</sup>

It is submitted that enforcement commences upon the issuing *and* service of a summons, after the credit provider has complied with the requirements set out in section 129(1)<sup>75</sup> read with 130(1) of the Act.<sup>76</sup> A section 129(1)(a) notice delivered to a consumer by a credit provider does not constitute enforcement,

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<sup>70</sup> *Principles and Guidelines* 13.

<sup>71</sup> Cf Otto *The National Credit Act explained* (2006) 87-88; Scholtz *et al* 12-2; Boraine and Renke “Some practical and comparative aspects of the cancellation of instalment agreements in terms of the National Credit Act 34 of 2005” (Part 1 and 2): 2007 *De Jure* 222 224 and 2008 *De Jure* 1 2.

<sup>72</sup> Van Loggerenberg *et al* “Aspects of debt enforcement under the National Credit Act” Jan 2008 *De Rebus* 40.

<sup>73</sup> See the discussion below.

<sup>74</sup> Boraine and Renke 2008 *De Jure* 2. In this regard the wording of ss 123(2) and 129(3)(a) is relevant as it provides that a credit provider may take the steps set out in Ch 6 Part C to enforce and *terminate* an agreement – cf Otto 88, Boraine and Renke 2008 *De Jure* 2 and Van Loggerenberg *et al* 40.

<sup>75</sup> It should be noted that compliance with s 129(1) is not required if a consumer is in default with regard to a credit agreement that is subject to debt review or debt rearrangement and the credit provider wants to enforce that agreement – see s 129(2) and Boraine and Renke 2008 *De Jure* 2 n 15.

<sup>76</sup> *Principles and Guidelines* 14; Van Loggerenberg *et al* 40. Boraine and Renke 2008 *De Jure* 9 are of the view that enforcement commences as soon as summons is *issued* and that the consumer is then precluded from applying for debt review.

as section 129 refers to steps required *before* debt enforcement.<sup>77</sup> Section 129(1)(a) provides that:

“if the consumer is in default under a credit agreement the credit provider may<sup>78</sup> draw the default to the notice of the credit provider in writing and propose that the consumer refer the credit agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the parties resolve any dispute under the agreement or develop and agree on a plan to bring the payments up to date...”<sup>79</sup>

It would therefore appear that the legislator’s reference to section 129 in section 86(2) is a reference to the commencement of legal proceedings mentioned in section 129(1)(b)<sup>80</sup> and that a consumer should not be precluded from applying for debt review in respect of the specific credit agreement after receipt of a section 129(1)(a) notice.<sup>81</sup> Section 129(1)(b) provides that, subject to section 130(2) a credit provider may not *commence any legal proceedings to enforce the agreement*<sup>82</sup> before first providing notice to the consumer in terms of section 129(1)(a) or<sup>83</sup> section 86(10), as the case may be, and complying with any further requirements set out in section 130.

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<sup>77</sup> Van Heerden and Otto “Debt enforcement in terms of the National Credit Act 34 of 2005” 2007 *TSAR* 655 667; Van Loggerenberg *et al* 40; *Principles and Guidelines* 14; Scholtz *et al* 11-9.

<sup>78</sup> Scholtz *et al* 12-7 points out that the word “may” is misleading as it might create the impression that the credit provider is not obliged to comply with the procedure contemplated in section 129(1)(a). If, however, s 129(1)(a) is read together with ss 129(1)(b) and 130(1) it should be clear that compliance is indeed required. *Cf* also *Absa Bank Ltd v Prochaska* (Unreported case no 14839/2007 (D)) par 35 and Boraine and Renke 2008 *De Jure* 3 n 16.

<sup>79</sup> Regarding the purpose of s 129(1)(a) it was suggested in the *Prochaska* case that it “is a mechanism created by the Act to enable the consumer to take one or other of those steps proposed by the credit provider in the notice in terms of the subsection, before the credit provider commences litigation.” Further to this, Boraine and Renke 2008 *De Jure* 9 n 64 submit that the s 129(1)(a) notice “has as purpose to inform the consumer about his or her right to apply for debt review.” Its purpose is further to “encourage parties to iron out their differences before seeking court intervention ...this view ... tallies with the overall purpose of the National Credit Act, which is mainly to protect the consumer – in this instance against costly and protracted litigation” – Scholtz *et al* 12-8. Scholtz *et al* 12-7 point out that s 129(1)(a) does not limit this requirement to claims for return of goods only and does not specify the type of agreement to which this section applies. Consequently, in all cases where the consumer is in default, regardless of the type of credit agreement, delivery of the section 129(1)(a) notice will be compulsory.

<sup>80</sup> *Cf* par 69-71 of the founding affidavit to the NCR’s application for a declaratory order ito s 16(1)(b)(ii) of the NCA (hereafter NCR: Founding Affidavit) – *National Credit Regulator v Nedbank and others* (Unreported case no. 19638/08 TPD).

<sup>81</sup> *Cf* Scholtz *et al* 12-6.

<sup>82</sup> These words mean “the actual institution of an action or the launching of an application to uphold, enforce, compel observance of or compliance with any obligation arising from a credit agreement – see the *Prochaska* case par 27.

<sup>83</sup> The institution of legal proceedings must therefore be preceded by either a s 129(1)(a) or a s 86(10) notice – Boraine and Renke 2008 *De Jure* 3. A s 129(1)(a) notice is required in instances where the

In the case of *Frederick v Greenhouse Funding (Pty) Ltd*,<sup>84</sup> the court however found that the only step which a credit provider can take in terms of section 129, is the step in section 129(1)(a) namely, the sending of the letter. The court rejected the argument that the sending of the letter is not a step to enforce the agreement and found with reference to the matter of *Nedbank Ltd v Motaung*:<sup>85</sup>

“If section 86(2) is read to mean that the sending of the letter is not a step under section 129 to enforce the agreement, then the section is rendered nugatory. In my view a proper interpretation must be provided to the section. The section must be interpreted so as to not have an absurd result and so as to reflect commercial reality. Such an interpretation would involve an interpretation of Section 86(2) as meaning that the sending of a letter constitutes a step contemplated in Section 129 to enforce the agreement.”

It is submitted that the interpretation of the court does not take into consideration the content of section 129(1)(a) namely that the credit provider may propose to the consumer that he refer the relevant credit agreement to a debt counsellor. It does not make sense to propose to the consumer to approach a debt counsellor and at the same time also preclude the consumer from applying for debt review.<sup>86</sup> As a matter of fact, it would therefore appear that the interpretation the court attributes to section 86(2) actually leads to an absurd result. To clarify the uncertainty with regard to the question as to when enforcement for the purposes of section 86(2) commences, it is submitted that section 86(2) should be amended by substituting the words “section 129” with “section 130”.<sup>87</sup>

In terms of section 130(1) a credit provider may *only* approach the court for an order to enforce a credit agreement, if,

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matter is not subject to debt review, while a s 86(10) notice is required in instances where debt review is already under way – Boraime and Renke 2008 *De Jure* 4.

<sup>84</sup> Unreported case no 31825/2008 (WLD).

<sup>85</sup> Unreported case no 22445/07 (TPD).

<sup>86</sup> Cf also Van Loggerenberg *et al* 40 and Boraime and Renke 2008 *De Jure* 9 n 61. *Contra* Otto 85. Also see NCR: Founding Affidavit par 70.

<sup>87</sup> Van Heerden and Otto 668.

- at that time the consumer is in default and has been in default under that credit agreement for at least 20 business days,<sup>88</sup> and
- at least 10 business days have elapsed since the credit provider delivered a notice to the consumer in terms of section 86(10),<sup>89</sup> or section 129(1), as the case may be,<sup>90</sup> and
- in the case of a notice in terms of section 129(1), the consumer has not responded to the notice,<sup>91</sup> or responded by rejecting the credit provider's proposals,<sup>92</sup> and
- in the case of an instalment agreement, secured loan, or lease, the consumer has not surrendered the relevant property to the credit provider as contemplated in section 127.<sup>93</sup>

The two pre-requisites that should be complied with before a credit provider can commence with enforcement proceedings<sup>94</sup> are therefore to be found in section 129(1) read with section 130(1):<sup>95</sup>

- A section 129(1)(a) notice or a section 86(10) notice should have been delivered to the consumer at least 10 business days<sup>96</sup> prior to enforcement proceedings, and

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<sup>88</sup> S 130(1)(a).

<sup>89</sup> The Act refers to section 86(9) which is submitted to be wrong – *cf* Scholtz *et al* 12-5 n 37 and Boraine and Renke 2008 *De Jure* 6 n 32. S 86(10) is discussed in par 2.2.2.7 below.

<sup>90</sup> S 130(1)(a).

<sup>91</sup> S 130(1)(b)(i). Also see *Absa Bank Ltd v Whelpton* (Unreported case no 35313/2008 (TPD)) par 11 *et seq.* Although the court did not specifically refer to s 130(1)(b)(i) it appears that the court applied this subsection to the facts *in casu*. The court held that despite a valid section 129(1)(a) notice and the institution of action thereafter, the credit provider was precluded from proceeding with enforcement of the credit agreement concerned in circumstances where the evidence proved that the parties agreed to postpone the matter with the view to enter negotiations relating to a repayment plan and debt rescheduling to the NCA.

<sup>92</sup> S 130(1)(b)(ii).

<sup>93</sup> S 130(1)(c).

<sup>94</sup> It should be noted that a section 129(1)(a) notice is also a prerequisite before a credit provider may proceed to apply for judgment on the basis of the consumer's consent to judgment in terms of section 57 or 58 of the MCA. See Scholtz *et al* 12-44. S 129 prevails over ss 57 and 58 – see s 172 (1) and Schedule 1 to the Act.

<sup>95</sup> *Principles and Guidelines* 14; *Standard Bank of SA Ltd v Oosthuizen* [2008] JOL 22036 (T) 7; Visagie "Collecting your debts against the odds" June 2006 *De Rebus* 21.

<sup>96</sup> Scholtz *et al* 12-8 points out that s 129(1)(a) does not indicate any time limits applicable to the section itself. The 10 days requirement is derived from s 130(1)(a). They submit however, that a s 129(1)(a) notice should expressly state that a response is required within 10 business days from delivery of the notice. Also see Van Heerden and Otto 662.



- The consumer is in default under that credit agreement for at least 20 business days, which two periods run concurrently.<sup>97</sup>

It should however be noted that a credit provider must additionally also comply with the other requirements set out in section 130.<sup>98</sup> So, for example, section 130(3)(c)(i) precludes the court from determining a matter unless it is satisfied, *inter alia* that the credit provider has not approached the court during the time that the matter was before a debt counsellor. Additionally, in terms of section 130(3)(c)(ii), the credit provider is also prevented from approaching the court in respect of a credit agreement to which the Act applies, where the consumer has taken and fulfilled any of the steps mentioned in section 129(1)(a).<sup>99</sup>

The NCA represents a radical departure from its predecessor, the Credit Agreements Act (CAA),<sup>100</sup> with regard to the notice in terms of section 129(1)(a).<sup>101</sup> Whereas the CAA merely required the credit receiver to notify the creditor of his default by prepaid registered mail, section 129(1)(a) requires the credit provider to “draw the default to the notice of the consumer in writing”.<sup>102</sup> Section 129(1)(b) precludes the credit provider from commencing any legal proceedings to enforce the agreement before “providing notice” to the consumer in terms of section 129(1)(a).<sup>103</sup> Further to this, a credit provider may only approach a court for an order to enforce an agreement if, *inter alia* at least 10 business days have elapsed since a credit provider “delivered a notice”, as contemplated in section 129(1)(a) of the Act, to the consumer.<sup>104</sup> According to the court in the *Prochaska* case, the words emphasised

“cumulatively reflect an intention on the part of the legislature to impose upon the credit provider an obligation which requires much more than the mere dispatching of the

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<sup>97</sup> *Principles and Guidelines* 14; Otto 91; Scholtz *et al* 12-21.

<sup>98</sup> S 129(1)(b)(ii) – *cf* Visagie 21 *et seq*.

<sup>99</sup> If the court determines that the credit provider has indeed approached the court in circumstances contemplated in subsection 3(c) the court must adjourn the matter and make an appropriate order setting out the steps the credit provider must complete before the matter may be resumed – s 130(4)(b).

<sup>100</sup> 75 of 1980.

<sup>101</sup> *Prochaska* case par 55. See in general with regard to the requirements for a section 129(a) notice Scholtz *et al* 12-6 *et seq*, Van Heerden and Otto 658 *et seq*; Boraine and Renke 2008 *De Jure* 3 *et seq*.

<sup>102</sup> *Prochaska* case par 55.

<sup>103</sup> *Ibid*.

<sup>104</sup> *Ibid*.

notice contemplated by section 129(1)(a) of the Act, to the consumer in the manner prescribed in the Act and Regulations. The credit provider is required, in my view, to bring the default to the attention of the consumer in a way which provides assurance to a court considering whether or not there has been proper compliance with the procedural requirements of section 129 and 130 of the Act, that the default has indeed been drawn 'to the notice of the consumer'."<sup>105</sup>

Regarding the fee of a debt counsellor, section 86(3)(a) provides that the debt counsellor may, before accepting a debt review application require the consumer to pay an application fee which may not exceed the prescribed amount. Currently schedule 2 of the regulations merely provides that "an application fee charged by a debt counsellor to a consumer when applying for debt restructuring may not exceed R50.00." One of the initial concerns after commencement of the NCA was that the prescribed fee for debt counsellors is so dismal that no one would be willing to practice as a debt counsellor.<sup>106</sup> As a result, a recommended cost and fee structure was drafted by the Debt Counselling Association of South Africa (DCASA) which was endorsed by the NCR. To date however, the regulations remain unchanged. It is submitted that the uncertainty pertaining to debt counsellors' fees and the problem of possible overcharging of consumers should be resolved by specifically prescribing the fees that may be recovered by debt counsellors. Section 86(3)(b) currently provides that a debt counsellor may not require or accept a fee from a credit provider in respect of a debt review application. It has been suggested that credit providers should also bear some of the debt counselling costs, since the restructuring of consumer debt would enable them to recover claims.<sup>107</sup> It is suggested, that the legislator should consider the amendment of section 86(3) to provide for this possibility.

### **2.2.2.3 Notification of credit providers and credit bureaux**

The debt counsellor must deliver a completed Form 17.1<sup>108</sup> within five business days after receiving the debt review application to all credit providers<sup>109</sup> that are

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<sup>105</sup> *Ibid.*

<sup>106</sup> *Cf* Du Plessis 88.

<sup>107</sup> *Idem* 90-91.

<sup>108</sup> The debt counsellor may provide the consumer's address and contact details on this form only if the debt counsellor has obtained the consumer's written consent. The address will however not be deemed as an amendment to the consumer's *domicilium* address — *Principles and Guidelines* 15.

listed in the application and every registered credit bureau.<sup>110</sup> This ensures that credit providers are notified of the consumer's application for debt review and prevents them from entering into further credit agreements whilst the consumer is under debt review. It also prevents reckless credit granting in terms of section 88(4).<sup>111</sup>

In terms of regulation 24(3), the debt counsellor must verify the information provided by the consumer in terms of regulation 24(1), by requesting documentary proof from the consumer. The debt counsellor must also contact the relevant credit providers or employer or utilise any other method of verification.<sup>112</sup> If the credit provider fails to provide the requested information within five business days of such verification being requested, the debt counsellor may accept the information provided by the consumer as correct.<sup>113</sup> Credit providers, who are work stream participants, have undertaken to provide a "Certificate of Balance"<sup>114</sup> which contains the following important financial information pertaining to the credit agreement:<sup>115</sup>

- The account number for each of the consumer's credit agreements;
- the account type;<sup>116</sup>
- the opening date, which is the date on which the loan or finance was granted or, in the case of a facility, the date on which the facility was last reviewed upwards;<sup>117</sup>

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<sup>109</sup> See the "Credit Provider List" which contains their addresses and other contact details. Debt counsellors who deliver proposals to these addresses have a much better chance of a speedy response – *Principles and Guidelines* 16.

<sup>110</sup> Cf s 86(4)(b) read with reg 24(2). Ito reg 24(5) this notice must be sent by fax, registered mail or e-mail, provided that the debt counsellor keeps a record of the date, time and manner of delivery of the notice.

<sup>111</sup> Scholtz *et al* 14.9 *et seq.*

<sup>112</sup> Reg 24(3).

<sup>113</sup> Reg 24(4). Ito the work stream guidelines the debt counsellor should send a reminder to the credit provider if no response has been received after the 5 days period – *Principles and Guidelines* 16

<sup>114</sup> See *Principles and Guidelines*: Annexure E.

<sup>115</sup> *Principles and Guidelines* 34 *et seq.*

<sup>116</sup> This information is important as it is required for the debt counsellor's statistical returns – *Principles and Guidelines* 34.

<sup>117</sup> This information is important as the debt counsellor need not investigate for possible reckless lending if the agreement or facility pre-dates 1 June 2007. Furthermore the opening date is, in the case of vehicle or asset finance, used as part of the proposal structuring – *Principles and Guidelines* 35.

- the expiry date, which is the date on which the credit agreement should be paid off by, or in the case of certain facilities such as overdrafts, the date on which the review should take place;
- the registered bond amount in the case of a home loan;<sup>118</sup>
- where an asset has been financed, the goods description;<sup>119</sup>
- the credit limit, which is the amount available to a consumer under a credit facility;<sup>120</sup>
- the outstanding balance (including arrears);<sup>121</sup>
- the arrears amount;<sup>122</sup>
- the monthly instalment that the consumer is liable to pay each month towards the repayment of his debt, excluding fees and charges;<sup>123</sup>
- monthly charges that may be charged in terms of section 101;
- insurance or assurance premiums;
- method of payment of the monthly instalment;<sup>124</sup>
- the interest rate quoted as a percentage per annum on a net annual compounded monthly basis;<sup>125</sup>
- the type of interest rate which can either be fixed or variable;<sup>126</sup>
- the status of the account.<sup>127</sup>

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<sup>118</sup> This is important as it assists the debt counsellor to recommend to the consumer that his obligations may be restructured without a debt review – *Principles and Guidelines* 35.

<sup>119</sup> This information assists the debt counsellor to make recommendations to the consumer regarding the suitability of the goods – *Principles and Guidelines* 35.

<sup>120</sup> This information assists the debt counsellor in establishing whether the consumer is abusing his credit facilities – *Principles and Guidelines* 35.

<sup>121</sup> This includes the capital amount, interest up to a specific date and charges, but excludes future interest and/or charges – *Principles and Guidelines* 35.

<sup>122</sup> Which include arrear interest and overdue payments – *Principles and Guidelines* 35.

<sup>123</sup> Where there is no contractual instalment, eg in the case of an overdraft, the instalment will be deemed to be the outstanding amount at the interest rate agreed upon over 12 months. In the case of credit card instalments the instalment includes the contractual monthly repayments on both the straight and budget facility account – *Principles and Guidelines* 36.

<sup>124</sup> Especially in cases where the instalment is paid by way of stop order, it is important for the debt counsellor to take note of the method of payment as he must make arrangements for a reduced instalment – *Principles and Guidelines* 36.

<sup>125</sup> The debt counsellor will include interest on the agreement when preparing a proposal – *Principles and Guidelines* 36.

<sup>126</sup> This information is needed in order to ascertain whether the rate complies with reg 42(1) Table A – *Principles and Guidelines* 37.

<sup>127</sup> If summons has been issued and served the debt counsellor must exclude the agreement from debt review – s 86(2). The debt counsellor may however include a “legal” agreement with the permission of the relevant credit provider – *Principles and Guidelines* 37.

As the above information is important for the debt counsellor to properly perform his duties in terms of the Act, it is suggested that the legislator should consider to regulate the type of information a credit provider is required to provide to the debt counsellor.

#### **2.2.2.4 Determination of over-indebtedness and recommendation by debt counsellor**

In terms of section 79(1) a consumer is considered to be over-indebted:

“if the preponderance of available information at the time a determination is made indicates that the particular consumer *is or will be unable to satisfy*<sup>128</sup> in a timely manner all the obligations under all the credit agreements<sup>129</sup> to which the consumer is a party.”

The determination in terms of section 79(1)<sup>130</sup> is made by having regard to the consumer's:

- “(a) Financial means, prospects and obligations;<sup>131</sup> and
- (b) Probable propensity to satisfy in a timely manner all the obligations under all the credit agreements to which he is a party, as indicated by the consumer's history of debt repayment.”<sup>132</sup>

“Financial means prospects and obligations” in respect of a consumer or prospective consumer includes:

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<sup>128</sup> These words indicate that over-indebtedness does not only relate to existing inability to satisfy obligations but also to future inability – Scholtz *et al* 11-5.

<sup>129</sup> Over-indebtedness for the purposes of the Act only pertains to credit agreements to which the Act applies – Scholtz *et al* 11-5.

<sup>130</sup> When making the determination the criteria set out in section 79(1) must be applied as they exist at the time the determination is being made – s 79(2). The reason for this is that a consumer might have been able to afford the credit when he concluded the credit agreement, but became over-indebted thereafter because of other factors, eg retrenchment – Scholtz *et al* 11-4. This situation should be distinguished from the situation where the concluding of the agreement actually caused the consumer to become over-indebted as the granting of credit in such a case amounts to reckless credit granting – *cf* Scholtz *et al* 11-4 and 11-5.

<sup>131</sup> S 79(1)(a).

<sup>132</sup> S 79(1)(b). Ito s 79(3)(a), when making a determination ito s 79(1) the value of any credit facility is the settlement value at the time of the determination under that facility. The value of any credit guarantee is the settlement value of the credit agreement it guarantees, if the guarantor has been called upon to honour that guarantee, or the settlement value of the credit agreement that it guarantees, discounted by a prescribed factor – s 79(3)(b).

- “(a) Income, or any right to receive income, regardless of the source, frequency or regularity of that income, other than income that the consumer or prospective consumer receives, has a right to receive or holds in trust for another person;
- (b) The financial means, prospects and obligations of any other adult person within the consumer’s immediate family or household, to the extent that the consumer, or prospective consumer and that other person customarily
  - (i) Share their respective financial means; and
  - (ii) Mutually bear their respective financial obligations; and
- (c) If the consumer has or had a commercial purpose for applying for or entering into a particular credit agreement, the reasonably estimated revenue flow from that business purpose.”<sup>133</sup>

It should be noted that the above is not a closed list. In the *Panayiotts* case,<sup>134</sup> it was held that “financial means” also includes assets and liabilities and “prospects” includes prospects of improving the consumer’s financial position, such as increases and liquidating assets. In the case of credit agreements which involve goods as the subject matter of the agreement, the consumer’s financial means and prospects must include the prospect of selling the goods in order to reduce the consumer’s indebtedness.

In terms of regulation 24(6) the debt counsellor has 30 days from the date of the application for debt review to make a determination in terms of section 86(6).<sup>135</sup> It should be noted however, that the debt review can only be terminated in accordance with section 86(10) after a lapse of 60 business days after the date of application. When assessing the consumer’s application for debt review the debt counsellor must make use of the information provided by the credit providers by referring to section 79. Furthermore, it must also consider the provisions of regulation 24(7):

- “(a) A consumer is over-indebted if his/her total monthly debt payments exceed the balance derived by deducting his/her minimum living expenses from his/her net income;

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<sup>133</sup> S 78(3)(a)-(c).

<sup>134</sup> Par 9, 10 and 77.

<sup>135</sup> Ito the workstream guidelines the debt counsellor must make the determination within 10 days after the expiry of the 5 days grace given to a credit provider who has not responded to the request for financial information ito reg 24(3) – *Principles and Guidelines* 16.

- (b) Net income is calculated by deducting from the gross income,<sup>136</sup> statutory deductions<sup>137</sup> and other deductions that are made as a condition of employment;<sup>138</sup>
- (c) Minimum living expenses<sup>139</sup> are based upon a budget provided by the consumer, adjusted by the debt counsellor with reference to guidelines issued by the National Credit Regulator.”

As soon as the debt counsellor has completed the assessment, he must submit Form 17.2 to all the affected credit providers and all registered credit bureaux within five business days.<sup>140</sup>

If the debt counsellor determines that the consumer is not over-indebted, the debt counsellor must reject<sup>141</sup> the consumer’s application, even if he has concluded that a particular agreement was reckless at the time it was entered into.<sup>142</sup> In such a case the consumer can however still, with leave of the Magistrate’s Court and within 20 business days after the debt counsellor has provided the consumer with a letter of rejection,<sup>143</sup> apply directly to that court, in

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<sup>136</sup> See with regard to deductions for irregular income (eg overtime and commission) *Principles and Guidelines* 23. Also see *Principles and Guidelines* 24 iro the guidelines to be followed in respect of other income eg drawings of self-employed individuals, rent, maintenance, interest from investments etc.

<sup>137</sup> These are deductions that an employer must make because of a court order or an act of parliament and include PAYE and SITE, UIF, emoluments attachment orders and garnishee orders. Salary stop orders where a service provider or employer has made an arrangement to deduct an amount from the employee’s salary eg for services provided by the employer must however be excluded here – *Principles and Guidelines* 24.

<sup>138</sup> Ie deductions by an employer for services that the employee must subscribe to as a condition of employment eg pension, group life insurance and medical aid deductions – *Principles and Guidelines* 24.

<sup>139</sup> Expenses consist of essential and non-essential expenses. Essential expenses are those that a consumer has little control over and which are necessary to conduct his daily life, eg rental, groceries, water and lights etc – *Principles and Guidelines* 27 *et seq.* With regard to financial services it should be noted that debt counsellors may not recommend any reductions in medical aid, insurance or assurance. If an amount seems to be exorbitant the debt counsellor should refer the consumer to a FAIS approved financial advisor – *Principles and Guidelines* 28 *et seq.* Apart from having to make sure that an expense is essential the debt counsellor must also ascertain whether the expense is reasonable. Non essential expenses are those expenses that are not absolutely necessary but are nevertheless an important part of the consumer’s daily existence, eg domestic workers, garden service, entertainment, club memberships etc. Allowance could be made for these expenses provided that it is reasonable in the circumstances. Luxurious items are those that the consumer do not need, eg multiple properties, M-Net, DSTV, holiday clubs, gambling etc – *Principles and Guidelines* 30.

<sup>140</sup> Reg 24(10).

<sup>141</sup> Ito regulation 25 the debt counsellor must then provide the debt counsellor with a letter of rejection containing certain prescribed information.

<sup>142</sup> S 86(7)(a).

<sup>143</sup> Cf reg 26(1) read together with reg 25(5). The 20 days period may be extended by court if the consumer brings an application for such extension and is able to show good cause – reg 26(2).

the prescribed manner and form,<sup>144</sup> for an order in terms of section 86(7)(c).<sup>145</sup> Section 86(9) read together with section 87 obliges the consumer to use the application procedure<sup>146</sup> to apply to the court, which must then conduct a hearing in terms of section 87.<sup>147</sup>

If a determination is made that the consumer is not over-indebted but is nevertheless experiencing, or likely to experience difficulty satisfying in a timely manner all of his obligations under credit agreements, the debt counsellor may in terms of section 86(7)(b) recommend that the consumer and the respective credit providers voluntarily consider and agree on a debt arrangement plan. In this regard it should be noted that section 86(5) compels credit providers to “participate in good faith in the review and in any negotiations designed to result in responsible debt re-arrangement”. If a proposal in terms of section 86(7)(b) is accepted by the consumer and the credit providers concerned, the debt counsellor must record it in the form of an order and if it is consented to by the parties it must be filed as a consent order in terms of section 138.<sup>148</sup> If, however, the proposal is not accepted the debt counsellor must refer the matter to the Magistrate’s Court with the recommendation.<sup>149</sup>

If the debt counsellor concludes that the consumer is indeed over-indebted the debt counsellor may issue a proposal recommending that the Magistrate’s Court make an order that one or more of the credit agreements be declared to be reckless credit<sup>150</sup> and/or that one or more of the consumer’s obligations be re-arranged.<sup>151</sup>

Re-arrangement in terms of section 86(7)(c)(ii) can occur by:

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<sup>144</sup> See reg 26(3) referring to Form 18 which is a standard form giving notice that application will be made for an order: (a) granting the applicant leave to s 86(9) to bring this application; (b) that the applicant is over-indebted to s 79; (c) that certain agreements be declared reckless credit (if applicable) and (c) that the applicant’s debt obligations be restructured.

<sup>145</sup> S 86(9).

<sup>146</sup> Provided for in r 55 of the Magistrates’ Courts Rules.

<sup>147</sup> Cf Scholtz *et al* 11-12.

<sup>148</sup> S 86(8)(a).

<sup>149</sup> S 86(8)(b).

<sup>150</sup> S 86(7)(c)(i).

<sup>151</sup> S 86(7)(c)(ii).



- “(aa) extending the period of the agreement and reducing the amount of each payment due accordingly;
- (bb) postponing during a specified period the dates on which payment are due under the agreement;
- (cc) extending the period of the agreement and postponing during a specified period the dates on which payments are due under the agreement; or
- (dd) recalculating the consumer’s obligations because of contraventions of Part A or B of Chapter 5, or Part A of Chapter 6.”<sup>152</sup>

Although section 86(7) does not provide for an order declaring the consumer over-indebted as envisaged in section 79 of the Act, it is obvious that such an order should be included as a consumer may only take part in the statutory debt review process if he is indeed over-indebted.<sup>153</sup>

#### **2.2.2.5 Procedure in referring matters to court**

Section 86 is silent on the procedure to be followed by the debt counsellor after he has “issued” a proposal recommending that the Magistrate’s Court make one of the orders as contemplated in section 86(7)(c)(i) and (ii). It is submitted that although section 86(8) does not refer to the procedure to be followed when a recommendation in terms of section 86(7)(c) is made,<sup>154</sup> section 86(8)(b) should apply in such a case, and that the debt counsellor should refer the recommendation to the Magistrate’s Court for a hearing under section 87.<sup>155</sup> To remedy any uncertainty in this regard, it is submitted that s 86(8) should be amended to also refer to s 86(7)(c).

The debt counsellor should however, not make any recommendations to court before he has not prepared and submitted a debt restructuring proposal to the

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<sup>152</sup> These parts in Ch 5 and 6 deal with unlawful agreements and provisions, disclosure, form and effect of credit agreements and with collection and repayment practices. Scholtz *et al* 11-15 point out that a court may not reduce the interest rate which applies to an agreement in order to provide debt relief to the consumer. Boraine 212 points out that although the court has the power to enforce a recommendation of the debt counsellor on the credit providers, the NCA does not sanction a statutory discharge of the debt in general.

<sup>153</sup> *Cf Principles and Guidelines* 48.

<sup>154</sup> S 86(8) only pertains to a recommendation to subsection (7)(b), while s 86(9) pertains to the procedure that could be initiated when the debt counsellor rejects the debt review application to s 86(7)(a).

<sup>155</sup> *Cf* Scholtz *et al* 14-17 and NCR: Founding Affidavit par 38.

credit providers.<sup>156</sup> If the proposal is accepted by the credit providers a consent order by the Magistrate's Court should be obtained.<sup>157</sup> The Act, however, does not specifically provide for the obtaining of a consent order in such a situation and it is submitted that the legislator provide for this to clarify any uncertainty in this regard.<sup>158</sup>

If consensus cannot be reached between the consumer and the credit providers, the matter should, as explained above, be referred to the court. Yet again, however, the Act and Regulations are silent on the procedure for referral of a debt review matter to the Magistrate's Court.<sup>159</sup> The following issues need to be clarified:<sup>160</sup>

- *Should the consumer or the debt counsellor approach the court?*

Scholtz *et al*<sup>161</sup> submit that the consumer must approach the court.<sup>162</sup> This viewpoint is, however, not without any problems as the consumer will probably have to instruct an attorney to bring the matter before the court which will bring about additional legal costs which the already over-indebted consumer will not always be able to afford.<sup>163</sup>

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<sup>156</sup> Cf Scholtz *et al* 14-13. See *Principles and Guidelines* 30 *et seq* regarding the guidelines to be followed when preparing a debt restructuring proposal. Ito the workstream guidelines the proposal must be sent within 25 days from the date of application and must be submitted to all credit providers who will then have 10 days to respond – *Principles and Guidelines* 17. If the debt counsellor fails to send a proposal within 25 days from the date of application the workstream agreed that credit providers should send a reminder whereafter the debt counsellor must submit his proposal within 5 days of this notice. If the credit providers have not responded within 10 days of submitting the proposal, it was agreed that the debt counsellor should send a reminder which gives the credit provider a further 5 days to respond. If the credit provider still fails to respond the debt counsellor must notify the credit provider that he will proceed as if the proposal had been declined – *Principles and Guidelines* 17.

<sup>157</sup> *Principles and Guidelines* 17.

<sup>158</sup> S 86(8)(a) only refers to the case where the debt counsellor makes a recommendation ito s 86(7)(b), ie where the debt counsellor found that the consumer is not over-indebted, but is nevertheless experiencing financial problems and recommends that the consumer and credit providers voluntarily consider and agree on debt re-arrangement.

<sup>159</sup> Cf Scholtz *et al* 14-16, *Principles and Guidelines* 45 and presentations by Cheryl Loots and Sybrand Stadler at a conference entitled "Safari into Debt Enforcement" on 16 and 17 March 2009 in Midrand.

<sup>160</sup> Scholtz *et al* 14-16 *et seq*.

<sup>161</sup> 14-16.

<sup>162</sup> Cf also *Principles and Guidelines* 47.

<sup>163</sup> Scholtz *et al* 14-7 *et seq*.

- *The procedure to be employed in court.*<sup>164</sup>

Section 87 provides that the Magistrate's Court must conduct a "hearing". However, neither the NCA, the Magistrates' Courts Act (MCA) nor the Magistrates' Courts Rules provide for a procedure in terms of which such a hearing should be conducted.<sup>165</sup> Consequently, some Magistrate's Courts rely on their status as "creatures of statute" and refuse to entertain debt re-arrangement proceedings.<sup>166</sup> In practice the motion (application) procedure in terms of rule 55 of the Magistrates' Court Rules are followed, which entails the issuing and service of the notice of motion together with the founding and supporting affidavits.<sup>167</sup> As relief is sought against the credit providers they will obviously be cited as respondents.<sup>168</sup>

The work stream agreed on the following minimum information in the founding affidavit of the consumer:<sup>169</sup>

- *Particulars of the consumer*<sup>170</sup>

A disclosure as to whether the consumer is married in or out of community of property should be included.<sup>171</sup>

- *An allegation that the court has jurisdiction to entertain the matter*

It should be noted that the NCA contains no provision which expressly deals with jurisdiction. According to the work stream guidelines it was the intention of the legislature that only the Magistrates' Courts should have jurisdiction to entertain debt review applications and to restructure credit agreements.<sup>172</sup>

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<sup>164</sup> *Ibid.* Also see Vessio 239 n 85.

<sup>165</sup> Scholtz *et al* 11-28.

<sup>166</sup> *Idem* 11-29.

<sup>167</sup> *Ibid*; *Principles and Guidelines* 46 *et seq.*

<sup>168</sup> *Principles and Guidelines* 49.

<sup>169</sup> *Cf* Scholtz *et al* 14-17 *et seq.*

<sup>170</sup> I.e the full names, id number, residential and work address and occupation of the consumer.

<sup>171</sup> As pointed out above, both spouses will be under debt review if the parties are married in community of property and only one application will be brought before court. If parties are married out of community of property only one partner will be applicant and under debt review – *Principles and Guidelines* 51.

<sup>172</sup> *Cf* Ss 86(7)(c), 86(8), 86(9) and (11) and 87 which refer to the Magistrate's Court and *Principles and Guidelines* 51. Also see NCR: Founding Affidavit par 54-58. Ss 83 and 85 refer to "court", therefore it would appear that either the Magistrate's Court or the High Court has jurisdiction to declare a consumer over-indebted or to make a declaration of reckless credit granting – Scholtz *et al* 11-29.

The NCR suggested that the hearing of the recommendation by the Magistrate's Court in terms of section 87, is not one that takes place in terms of jurisdiction conferred on it by the MCA. It is submitted that a referral under section 87 is not an "action on or arising out of any credit agreement" and therefore section 29(1)(e) does not apply.<sup>173</sup> Section 87 therefore applies and the debt counsellor may choose which Magistrate's Court he or she wants to approach.<sup>174</sup>

In terms of the work stream agreement, the person of the applicant-consumer<sup>175</sup> rather than that of the respondent(s) (credit providers) should be taken into consideration when the issue of jurisdiction is to be determined.<sup>176</sup> Even in the absence of such an agreement, it should be noted that section 28(1)(d) of the MCA states that the Magistrate's Court has jurisdiction to entertain matters where the whole cause of action arose within its area of jurisdiction.<sup>177</sup> In this regard, it is argued that the application for debt review is the reason why the courts are approached, and not the disputes in terms of the individual agreements. Therefore, the Magistrate's Court in whose jurisdiction the debt review took place will have jurisdiction to entertain the matter.<sup>178</sup>

Credit providers participating in the work streams agreed not to oppose the monetary jurisdiction<sup>179</sup> of the Magistrates' Courts.<sup>180</sup> Even in the absence of such an agreement, it is however submitted that the court will still have jurisdiction to entertain a matter where the total outstanding amount on all credit agreements exceeds the current monetary limit, since section 86<sup>181</sup> clearly states that the Magistrates' Courts should hear the matters.<sup>182</sup> According to the

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<sup>173</sup> NCR: Founding Affidavit par 56.

<sup>174</sup> It is submitted that there is no limitation on the debt counsellors choice of court by s 86(8)(b) as it merely refers to "the Magistrate's Court", in the singular – NCR: Founding Affidavit par 57.

<sup>175</sup> Cf also the NCR: Founding Affidavit par 58.

<sup>176</sup> As suggested by the NCR in the NCR: Founding Affidavit par 58 the argument that only the court in whose jurisdiction the credit providers carry on business is not justified as it will render any attempt to hold a hearing impossible. Furthermore, ss 86(8)(b) and 87 do not place any limitation on the debt counsellor's choice of court, it simply refers to the "Magistrate's Court".

<sup>177</sup> *Principles and Guidelines* 51.

<sup>178</sup> *Ibid.*

<sup>179</sup> Which is currently determined by the Minister at R100 000 to s 29(1)(g) of the MCA.

<sup>180</sup> *Principles and Guidelines* 51.

<sup>181</sup> Cf Ss 86(7)(c), 86(8), 86(9) and (11).

<sup>182</sup> *Principles and Guidelines* 51. Also see NCR: Founding Affidavit par 59-60.

work stream guidelines support for this argument is also to be found in section 29(1)(e) of the MCA, in terms of which actions based on or arising from credit agreements, as described in section 1 of the NCA, may be heard by Magistrates' Courts. It should be noted that no monetary jurisdiction has been placed on these matters.<sup>183</sup>

- *An allegation that the consumer is over-indebted*

This allegation should be supported by proof of the consumer's income, the Form 17.1 and the certificates of balance which should be attached to the founding affidavit as an annexure. Details should be provided regarding which credit providers furnished balances and which failed to do so. A summary of the content of the certificate of balances should also be provided.<sup>184</sup>

- *The total exposure of the consumer*

A breakdown of the total exposure of the consumer must be provided and attached to enable the court to determine the reasonability of the original offer. An explanation regarding the process followed by the debt counsellor to establish that the consumer is over-indebted, must also be given.<sup>185</sup>

- *The restructuring proposal*

A copy of the proposal, as provided to the credit providers, must be attached to the application. The affidavit must provide an explanation of how the restructuring proposal was drawn up with specific reference to the breakdown and re-apportionment of the debt and instalments as from the date of commencement until the date of the final payment.<sup>186</sup>

- *Details of which credit providers accepted or declined proposals*

The outstanding balance, term, interest rate and first payment date regarding the payments to be made to the credit providers who accepted the proposals,

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<sup>183</sup> *Principles and Guidelines* 51.

<sup>184</sup> *Idem* 52.

<sup>185</sup> *Ibid.*

<sup>186</sup> *Ibid.*

should be provided. Where proposals have been declined the reasons for refusal should be provided.<sup>187</sup>

- *An explanation as to the specific circumstances of the consumer which makes the proposal reasonable*

The NCR<sup>188</sup> suggests that the legislator has not intended that the application procedure in terms of rule 55 should be followed when a matter is referred to the Magistrate's Court in terms of section 86(8)(b). It is pointed out that section 86(8)(b), unlike section 86(9) which expressly refers to an application, uses the word "refer". Furthermore, the legislator intended a speedy and inexpensive procedure to be employed and not the cumbersome, costly and slow procedure in terms of rule 55. Accordingly, it is submitted that the Magistrate, in discharging his duties under section 87,

"fulfils an administrative as opposed to a judicial role. He or she must consequently comply with the relevant provisions of the Constitution and the Promotion of Administrative Justice Act, 2000 ("PAJA"). That entails that the relevant magistrate must devise procedures which will facilitate a speedy, fair and expeditious hearing in terms of section 87 of the NCA."<sup>189</sup>

In order to remove any uncertainty with regard to the procedure to be employed when a matter is referred to the Magistrate's Court in terms of section 86(8)(b), it is suggested that the Act and Regulations be amended to specifically regulate the procedure to be followed. The main purpose of the Act, namely to protect consumers, obviously includes the purpose to avoid costly and cumbersome procedures and this factor should be taken into consideration when such a procedure is designed. Additionally, the issue of jurisdiction in respect of debt review matters should also be addressed in this light.<sup>190</sup>

Regarding the powers bestowed on the Magistrate's Court in terms of section 87, it should be noted that this section allows the court to only re-arrange the

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<sup>187</sup> Cf Scholtz *et al* 14-18.

<sup>188</sup> NCR: Founding Affidavit par 43-51.

<sup>189</sup> *Idem* par 51.

<sup>190</sup> Cf *Absa Bank Ltd v Myburgh* (Unreported case no 31827/2007 (TPD)) par 43 and the discussion by Roestoff and Coetzee "Consent to jurisdiction – Unlawful provision in a credit agreement – Is the jurisdiction of a court ousted thereby?" 2008 *Journal of Contemporary Roman-Dutch Law* 678.

consumer's obligations. It does not make provision for a discharge of any of the consumer's debt.<sup>191</sup> Consequently, it is submitted that debt review cannot be considered to be a genuine debt *relief* measure and that the legislator should consider providing for the possibility that the court could enforce a discharge of a part of the consumer's debt obligations.

- *The issue of notification*

The Act and the Regulations do not specify how notification regarding the eventual hearing for debt-rearrangement should be effected.<sup>192</sup> As pointed out by Scholtz *et al*,<sup>193</sup> the documents pertaining to the hearing should be regarded as court processes and should, in accordance with the *audi alteram partem* principle, be served on the affected parties. Apparently some credit providers insist on service by a sheriff.<sup>194</sup> Scholtz *et al*<sup>195</sup> submit that section 168 applies and that documents which have been either delivered to a credit provider or sent by registered mail to the credit provider's last known address will be regarded as having been properly served. The NCR submits that section 168 is not prescriptive. Accordingly the NCR is of the view that especially in light of the object of the NCA, to protect consumers,<sup>196</sup> service by way of fax or email should also be allowed where the credit provider has consented to service in this manner in writing.<sup>197</sup>

During the work streams, credit providers agreed that service by fax or e-mail (accompanied by an acknowledgement of receipt) on their debt review departments would be acceptable.<sup>198</sup> Nonetheless, there have been instances where the Magistrates' Courts have refused to accept this form of service where credit providers have specifically consented thereto.<sup>199</sup>

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<sup>191</sup> Cf Boraine 211 and 212.

<sup>192</sup> Scholtz *et al* 14-18

<sup>193</sup> 14-19.

<sup>194</sup> Cf Scholtz *et al* 14-18.

<sup>195</sup> 14-19.

<sup>196</sup> Cf the *Myburgh* case par 43.

<sup>197</sup> NCR: Founding Affidavit par 52.1.5.

<sup>198</sup> *Principles and Guidelines* 53.

<sup>199</sup> NCR: Founding Affidavit par 52.1.5.

As pointed out by the NCR, service by a sheriff would be inappropriate as it is a time-consuming and expensive process if service has to be effected to each credit provider of the consumer. Moreover, it should be kept in mind that the already over-indebted consumer would probably not be able to afford this manner of service.<sup>200</sup>

#### **2.2.2.6 The debt counselling payment distribution system**

Regulation 11 provides that a debt counsellor who receives payments on behalf of a consumer and/or distributes such funds to credit providers in terms of debt restructuring, must comply with the required legislation and must advise the NCR of its receiving and/or distributing such funds. However, the collection and distribution of monthly payments following on debt restructuring are currently dealt with by so-called “Payment Distribution Agents” (PDA’s) which are at present not regulated in the Act or the Regulations. Although the effectiveness of this system obviously depends to a great extent on trust and effective communication between all stakeholders,<sup>201</sup> it is submitted that the legislator should regulate issues such as the nomination and appointment of PDA’s by the debt counsellor and court, as well as the registration and monitoring of PDA’s by the NCR.

#### **2.2.2.7 Termination of debt review**

Section 86(10) provides that

“if a consumer is in default under a credit agreement that is being reviewed in terms of this section, the credit provider in respect of that credit agreement may give notice to terminate the review in the prescribed manner<sup>202</sup> to

- (a) the consumer;
- (b) the debt counsellor; and

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<sup>200</sup> *Idem* par 52.1. Cf also Scholtz *et al* 14-18.

<sup>201</sup> Ie the consumer, debt counsellor, credit providers and the PDA – Presentation by Marlene Heymans entitled “Blockages in the debt counselling payment distribution system” on 12 March 2009 at the UP Law Clinic. Also see presentation by Hannatjie Pienaar at a conference entitled “Safari into Debt Enforcement” on 16 and 17 March 2009 in Midrand.

<sup>202</sup> Currently the Regulations do not prescribe anything with regard to the form of the notice – Boraine and Renke 2008 *De Jure* 4 n 19. Cf also Scholtz *et al* 14-16 for an example of what would in their view suffice as a notice to terminate. According to the work stream agreement notice must be sent to the consumer and debt counsellor by fax, e-mail or mail – *Principles and Guidelines* 56. It is submitted that s 65 of the NCA should apply and that the consumer may choose the manner of delivery from the options of either personal delivery, fax, e-mail or printable web page.



(c) the National Credit Regulator,  
at any time at least 60 business days after the date on which the consumer applied for  
the debt review.”

The effect of this provision is that the debt counsellor is given 60 business days to complete the debt review process in terms of section 86.<sup>203</sup> After 60 days the credit provider can proceed with the enforcement of the specific<sup>204</sup> credit agreement and a section 129(1)(a) notice need not precede litigation.<sup>205</sup> It should however be noted that the Magistrate’s Court hearing the matter may order that the debt review resume on any conditions that the court consider to be just in the circumstances.<sup>206</sup>

In the work streams, it was agreed that credit providers would first issue a notice that they will terminate within ten days.<sup>207</sup> It should however be noted that a credit provider may terminate a debt review even if the consumer has been making payments and a proposal has been submitted to credit providers. A debt counsellor must proceed to obtain a consent order or refer the matter to court if the matter cannot be resolved through negotiations.<sup>208</sup>

Termination of the debt review process can also take place after rejection of a debt review application by the debt counsellor in terms of section 86(7)(a).<sup>209</sup> The consumer or the debt counsellor may also withdraw from the process. The process for withdrawal is however not regulated by the Act or Regulations. In terms of the work stream agreement, if the consumer wishes to withdraw, written notice must be provided to the debt counsellor, including the consumer’s reasons for withdrawing. A debt counsellor may also withdraw from the debt review if a consumer is dishonest or is not co-operating. Thereby the consumer is for the time being dispossessed of his right to be afforded debt relief in terms

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<sup>203</sup> Boraine and Renke 2008 *De Jure* 4 n 21.

<sup>204</sup> Termination thus do not effect the other credit agreements in the review – *Principles and Guidelines* 56. Scholtz *et al* 14-16 points out however that the wording of s 86(10) is unclear as it is capable of being interpreted to mean that a single credit provider may terminate a debt review despite the fact that other credit providers want to continue with negotiations and finalise the matter.

<sup>205</sup> Scholtz *et al* 12-18.

<sup>206</sup> S 86(11).

<sup>207</sup> *Principles and Guidelines* 18.

<sup>208</sup> *Ibid.*

<sup>209</sup> *Principles and Guidelines* 18.

of the Act. In terms of the work stream agreement, the debt counsellor is in cases of voluntary withdrawal and withdrawal by the debt counsellor, obliged to inform the consumer that legal action may be taken in respect of credit agreements that are in default. The consumer must also be informed that his or her credit record will, for a period of six months show that he or she has voluntarily withdrawn from the debt review process or that his or her review has been terminated by the debt counsellor, as the case may be. The consumer must furthermore, be informed that he or she is still liable for the debt counselling fees to date and that he is entitled to re-apply for debt counselling. In terms of the work stream agreement credit providers must be notified of any voluntary withdrawal within five days on a Form 17.4.<sup>210</sup> In terms of the agreement, the debt counsellor may not refuse to withdraw because the consumer has not paid any of his fees.<sup>211</sup> In the case of withdrawal by the debt counsellor, the consumer must be given ten business days to respond to the debt counsellor, failing which, he may then withdraw.<sup>212</sup>

#### **2.2.2.8 After care and clearance certificate**

The debt counsellor must monitor payments by the consumer for the full period of the debt review.<sup>213</sup> It is suggested that a follow-up consultation should take place at least once a year. Credit providers should be notified of any changes to the consumer's circumstances on Form 17.3.<sup>214</sup>

When *all* the debt obligations under every credit agreement that was subject to the debt-rearrangement order or agreement has been repaid the debt counsellor<sup>215</sup> must issue a clearance certificate in Form 19.<sup>216</sup> This would mean that a consumer, who for example, has a home loan agreement with a repayment period of 30 years as one of his or her credit agreements under

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<sup>210</sup> Cf *Principles and Guidelines*: Annexure D.

<sup>211</sup> *Principles and Guidelines* 19.

<sup>212</sup> Obviously consumers may also change debt counsellors at any time or the debt counsellor may transfer a consumer to another debt counsellor. The party initiating the transfer should notify the other party – *Principles and Guidelines* 20.

<sup>213</sup> *Principles and Guidelines* 20.

<sup>214</sup> *Principles and Guidelines*: Annexure F.

<sup>215</sup> Not the court – Scholtz *et al* 14-14.

<sup>216</sup> Reg 27 and see s 71 which provides for the removal of a record of debt adjustment or judgment and Scholtz *et al* 11-27 *et seq.*

debt-re-arrangement, would only be able to be relieved from the consequences of debt review after a period of at least 30 years. In order to provide for a proper and genuine debt relief measure, it is submitted that the legislator should consider the introduction of a new provision in terms of which the court, on application by the consumer, may relieve the consumer of the disabilities resulting from debt re-arrangement at an earlier stage.

#### **2.2.2.9 Effect of debt review or debt re-arrangement**

Section 88 deals with the consequences of debt review or debt re-arrangement for the consumers and their credit providers. A consumer who has applied for debt review or who has alleged in court that he or she is over-indebted, may not incur any further charges under a credit facility or enter into any further credit agreement (other than a consolidation agreement) until one of the following events has occurred:<sup>217</sup>

- “(a) The debt counsellor rejects the application and the prescribed time period for direct filing in terms of section 86(9) has expired without the consumer having so applied;
- (b) the court has determined that the consumer is not over-indebted, or has rejected a debt counsellor’s proposal or the consumer’s application; or
- (c) a court having made an order or the consumer and credit providers having made an agreement re-arranging the consumer’s obligation, all the consumer’s obligations under the credit agreement as re-arranged are fulfilled, unless the consumer fulfilled the obligations by way of a consolidation agreement.”<sup>218</sup>

A credit provider who enters into a credit agreement in contravention of the prohibition in section 88(1), runs the risk of such an agreement being declared to be reckless credit, whether the circumstances set out in section 80 apply or not.<sup>219</sup> For the consumer, severe consequences also follow if he or she applies<sup>220</sup> for or enters into a credit agreement contrary to section 88. In such a

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<sup>217</sup> S 88(1).

<sup>218</sup> In case of a consolidation agreement the effect of s 88(1) continues to apply until the consumer fulfills all the obligations under the consolidation agreement, unless the consumer again fulfilled it by way of a consolidation agreement – s 88(2).

<sup>219</sup> S 88(4). A new category of reckless credit is thus created in addition to those mentioned in s 80 and the consequences of reckless credit would therefore apply – Scholtz *et al* 11-19.

<sup>220</sup> The sanction provided for in s 88(5) therefore not only applies to the situation where the consumer enters into a credit agreement – Scholtz *et al* 11-19.

case, section 88(5), in effect, divests the consumer of his right to be afforded debt relief under the Act as it provides that the provisions of the Act relating to over-indebtedness and reckless credit contained in Part D of Chapter 4 of the Act will never apply to such an agreement.<sup>221</sup>

Section 88(3) provides that a credit provider who receives notice of court proceedings in terms of section 83<sup>222</sup> or 85<sup>223</sup> or a notice<sup>224</sup> that a consumer has applied for debt review may not exercise or enforce, by litigation or other judicial process, any right or security under that credit agreement until the following events have taken place:

- “(a) the consumer is in default under the credit agreement; and
- (b) one of the following has occurred:
  - (i) An event contemplated in subsection (1)(a) through (c);<sup>225</sup> or
  - (ii) the consumer defaults on any obligation in terms of a re-arrangement agreed between the consumer and credit providers, or ordered by a court or the Tribunal.”

It is important to note that the effect of section 88(3) is explicitly made subject to section 86(10).<sup>226</sup> Consequently, it is submitted that a credit provider would be entitled to enforce a credit agreement where the consumer is in default, and the events contemplated in section 88(1) have not occurred, as long as the credit provider has proceeded to terminate the debt review process in terms of section 86(10). In the case of *First Rand Bank v Smith*<sup>227</sup> the court however interpreted and applied section 88(3) to the facts of the case, without taking cognisance of the possible application of section 86(10).

The facts of the *Smith* case were briefly as follows: The plaintiff applied for summary judgment against the defendant. This application was brought after the plaintiff had instituted action against the defendants, on 31 July 2008, for

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<sup>221</sup> Cf Scholtz *et al* 11-19.

<sup>222</sup> S 83 provides that the court may declare that a credit agreement is reckless and may suspend it as reckless credit.

<sup>223</sup> Ito s 85 the court may declare and relieve over-indebtedness.

<sup>224</sup> Ito s 86(4)(b)(i).

<sup>225</sup> Ie s 88(1)(a)-(c).

<sup>226</sup> And also s 86(9).

<sup>227</sup> Unreported case no 24205/08 (WLD).

payment of the amount of R940095.28. This debt was claimed pursuant to monies lent and advanced to the defendants, which loan was also secured by a mortgage bond. The court pointed out that the NCA therefore applied to the agreement between the plaintiff and defendants.<sup>228</sup> Approximately 11 months before institution of the action, on 3 September 2007, the defendants approached a debt counsellor to whom they submitted an application for debt review in terms of section 86(1) of the Act. More than two months later, on 12 November 2007, the debt counsellor notified *inter alia*, the plaintiff of the debt review application. This notification purported to be a notification in terms of section 86(4)(b)(i) of the Act. It should be noted, that this notification was not done as prescribed in terms of section 86(4)(b)(i), as this subsection read with regulation 24(2) requires the debt counsellor to deliver the notice<sup>229</sup> to all credit providers within *five* business days after receiving the application for debt review. From the facts of the case, it appears that this notice was also meant to serve as a notice of the debt counsellor's determination of the over-indebtedness of the defendants in terms of section 86(6) of the Act. Yet again, the debt counsellor did not comply with the prescribed time frames, as regulation 24(6) requires the debt counsellor to make such an determination within 30 business days after receiving the debt review application in terms of section 86(1) of the Act. The notice also contained settlement proposals and a recommendation by the debt counsellor as follows:<sup>230</sup>

"Should acceptance be obtained from all credit providers a consent order will be obtained, alternatively proceedings will be continued in terms of section 86(8) of the National Credit Act."

The court suggested that section 86(8) provides for the procedure to be followed by the debt counsellor once a recommendation in terms of section 86(7) has been made. According to the court, one of two possible courses of action<sup>231</sup> could be followed depending on whether the credit providers

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<sup>228</sup> The Act applies to all *credit agreements* – s 4(1). The agreement *in casu* constitutes a *credit transaction* ito s 8(4) as it is a *mortgage agreement* ito s 8(4)(c). A *mortgage agreement* is defined in s 2 as a "credit agreement that is secured by a pledge of immovable property".

<sup>229</sup> ie the required Form 17.1.

<sup>230</sup> *Smith* case par 6.

<sup>231</sup> Ie the filing of a consent order or referral of the matter to the Magistrate's Court.

consented to the proposal or not. No further steps were however taken by the debt counsellor or the defendants after the notice had been given.

Although the Act prescribes time periods in respect of certain actions that have to be taken by the debt counsellor, the court pointed out that the Act does not prescribe any time frames within which the debt counsellor has to proceed in terms of section 86(8). Moreover, it appears that there is no sanction for the failure of taking these steps.<sup>232</sup> The court pointed out that section 88(3) contains the prohibition on the plaintiff's right of institution of action until certain events have occurred.<sup>233</sup> According to the court the events contemplated in section 88(3) cannot however occur unless the next step, namely the filing of a consent order or referral of the matter to the Magistrate's Court, in terms of section 86(8) was taken.<sup>234</sup> The court explained as follows:<sup>235</sup>

"In the present matter no agreement has been concluded, neither has there been any order made. Accordingly the provisions of section 88(3)(a) and 88(3)(b)(ii) do not apply. The provisions of section 88(3)(a) and section 88(1)(a) through to 88(1)(c) are not relevant: (There is no agreement, the debt counsellor did not reject the application, there is no determination by a court either as to indebtedness or as to rearrangement.)"

The court therefore found that the debt counsellor by not having taken the next step in terms of section 86 have enabled the defendants:<sup>236</sup>

"to frustrate ... the fulfilment of the events set out in section 88(3) which otherwise would occur. This has resulted in the credit provider being unable to take steps to institute proceedings to recover the debt. The inactivity of the counsellor and/or consumer resulted in the creation of a moratorium."

With regard to the interpretation of section 88(3) and the stay it creates with regard to the institution of proceedings the court suggested that:<sup>237</sup>

"The true enquiry is whether or not the section should be read as meaning that the notice is to be seen in isolation or whether it should be seen that after commencement

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<sup>232</sup> Par 8.

<sup>233</sup> Par 9.

<sup>234</sup> Par 11.

<sup>235</sup> Par 12.

<sup>236</sup> Par 13.

<sup>237</sup> Par 14.

of the process by the publication of the notice and provided the process is pursued as required by the section the stay will operate.”

An interpretation that the notice should be seen in isolation would, according to the court, create a lacuna in the Act, as the consumer would then be able to prevent the consumer from ever instituting action against it. According to the court, such an interpretation would in fact enable the consumer to abuse the process provided for in the Act in terms of section 86. The court explained as follows:<sup>238</sup>

“A dishonest debtor could frustrate the rights of legitimate creditors by starting the process and then stopping mid-stride as happened in this matter. There would then be a permanent moratorium. The credit provider would never [be] able to obtain relief and is forever unable to exercise or enforce by litigation his rights to payment. This situation arises as a result of matters which are beyond the creditor’s control and in circumstances in which he plays no role. It is the debt counsellor who applies to court, it is the debt counsellor who rejects the application. It is the court which determines the consumer to be not over-indebted or which rejects the application made by the debtor or debt counsellor. It is the consumer who pays or does not pay all of his debts.”

Accordingly, the court found that the legislature could not have intended such an absurd result, and although the court must refrain from legislating, it should in interpreting the legislation have regard to the well known principle of avoiding absurdity.<sup>239</sup> The court therefore found that the notice would become ineffective to stay proceedings and that the process will lapse if it is not followed to its conclusion within a reasonable time.<sup>240</sup> A reasonable time for taking the steps under section 86(8) is, according to the court, no more than three months.<sup>241</sup> In this regard the court referred to the “right of termination on 60 days’ notice” provided for in the Act which in its view would translate to a period of three months.<sup>242</sup> It would appear that the court here had the provision of section 86(10) in mind. The court, however, did not refer to this section specifically,

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<sup>238</sup> Par 15.

<sup>239</sup> The court referred to *Bastian Financial Services (Pty) Ltd v General Hendrik Schoeman Primary School* 2008 (5) SA 1 (SCA).

<sup>240</sup> Par 19, 22, 23 and 27.

<sup>241</sup> Par 24.

<sup>242</sup> *Ibid.*

neither did it discuss or explain the application of this subsection in the present matter.

Finally, the court found, that if it was wrong in its interpretation, the provision is in any event in direct conflict with section 25(1) of the Constitution of the Republic of South Africa, as it enables the debtor to escape his payment obligations and thereby amounts to an arbitrary deprivation of property in terms of section 25(1).<sup>243</sup>

The defendants *in casu* relied on the provisions of section 130(3)(c)(i) to submit that the plaintiff was precluded from instituting action against them. Section 130(3)(c) precludes the court from determining a matter unless it is satisfied, *inter alia*, “that the credit provider has not approached the court during the time that the matter was before a debt counsellor...”. From this subsection it should be clear that the legislator has intended to prevent the credit provider from taking steps to enforce an agreement for as long as a “matter is before a debt counsellor”. It is submitted, that these words refer to the period which commences when the consumer approaches the debt counsellor, and ends when the actual debt review application is submitted to a debt counsellor. This, in our view, is apparent from section 130(4) which distinguishes between the powers of a court where it determines that the credit provider has approached the court in circumstances contemplated in section 130(3)(c),<sup>244</sup> and where the court determines that a credit agreement is subject to a pending debt review.<sup>245</sup>

*In casu*, the defendants argued that the credit provider was precluded from instituting action against them as it approached the court during the time that the matter was before a debt counsellor in terms of section 130(3)(c)(i). According to the court, the matter *in casu* was however not “before a debt

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<sup>243</sup> Par 25.

<sup>244</sup> See s 130(4)(b) which provides that the court *must* in such a case “(i) adjourn the matter before it; and (ii) make an appropriate order setting out the steps the credit provider must complete before the matter may be resumed”.

<sup>245</sup> See s 130(4)(c) which provides that the court *may* “(i) adjourn the matter, pending a final determination of the debt review proceedings; (ii) order the debt counsellor to report directly to court, and thereafter make an order contemplated in section 85(b); or (iii) if the credit agreement is the only credit agreement to which the consumer is a party, order the debt counsellor to discontinue the debt review proceedings, and make an order contemplated in section 85(b)”.



counsellor” as the matter in its view ceased to be before a debt counsellor as soon as the debt counsellor has considered the application and published the notice in terms of section 86(8).<sup>246</sup>

The court finally held that the plaintiff was entitled to institute action when it did so in July 2008 and that the notice in terms of section 86 no longer barred the process. Accordingly an order for summary judgment was granted.<sup>247</sup>

It is submitted that section 130(3)(c)(i) was not applicable *in casu*. It is submitted, that the real reason for the plaintiff not being able to institute action against the defendants was the fact that the relevant credit provider has not proceeded to terminate the debt review as provided for in section 86(10) of the Act. Although the Act does not expressly prescribe a time frame within which the debt counsellor has to proceed to apply for a consent order or to refer the matter to court in terms of section 86(8), it is submitted that a time period is indirectly prescribed by the provisions of section 86(10). If a debt counsellor fails to proceed in terms of section 86(8), the credit provider may proceed to terminate the debt review process in terms of section 86(10). The events set out in section 88(3) need not occur. It is therefore submitted that section 88(3) does not lead to an absurd result. There is no lacuna in the Act and the interpretation followed by the court, that the debt review should automatically lapse if the process was not followed to its conclusion, was therefore unnecessary. The credit providers’ interests are protected by the provisions of section 86(10) which enables them to terminate the debt review process and thereafter continue to enforce the agreement.

The effect of the court’s decision is that the onus is placed on the debt counsellor to proceed to either apply for a consent order or refer the matter to the court in terms of section 86(8) within a reasonable time. If he fails to do so the debt review will automatically be terminated after a reasonable time has expired, without any notice required. If this interpretation is correct, one would then wonder what the purpose of section 86(10) is.

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<sup>246</sup> Par 29.

<sup>247</sup> Par 30-31.

It is submitted that the court's interpretation is incorrect as it has the effect of rendering section 86(10) redundant. In our view, the provisions of section 86(10), 88(3), and 130(1)(a) and 130(3)(c) should be read together in order to determine the intention of the legislator regarding a credit provider's power to approach the court to enforce a credit agreement in cases where the consumer has consulted a debt counsellor.<sup>248</sup>

- In terms of section 130(3)(c)(i) the credit provider is precluded from taking steps to enforce an agreement during the time that a "matter is before the debt counsellor". It is submitted that these words refer to the period which precedes the actual debt review application. Additionally, in terms of section 130(3)(c)(ii), the credit provider is also prevented from approaching the court in respect of a credit agreement to which the Act applies where the consumer has taken and fulfilled any of the steps mentioned in section 129(1)(a).
- For as long as the debt review process is pending the credit provider would be able to enforce an agreement once the events set out in section 88(3) have occurred.
- Where the debt counsellor did not proceed in terms of section 86(8) the credit provider would be able to enforce the agreement after he has given notice to terminate the review in terms of section 86(10) and after complying with the requirements in section 130(1)(a).<sup>249</sup>

## 2.3

### CONCLUSION REGARDING PHASE 1 OF THE RESEARCH PROJECT

Ultimately, the effectiveness of the Act's provisions to provide relief to the over-indebted consumer depends on the co-operation of the different role players

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<sup>248</sup> Where the consumer has not consulted a debt counsellor the credit provider would be able to continue with enforcement after he has complied with the requirements in section 129(1) and the relevant requirements of s 130 of the Act – see the discussion in par 2.2.2.2 above.

<sup>249</sup> If the credit provider who has given notice of termination in terms of section 86(10) has proceeded to enforce the agreement, the court may in terms of section 86(11) order that the debt review resume on any conditions the court considers to be just in the circumstances.

and compliance with the spirit of the Act<sup>250</sup> elucidated in section 86(5)(b) as follows:

“[A] consumer who applies to a debt counsellor, and each credit provider ... must participate in good faith in the review and any negotiations designed to result in responsible debt re-arrangement.”

During these negotiations the purpose of the Act, namely to protect consumers should constantly be kept in mind. Credit providers will have to change their attitudes and appreciate the fact that they will have to take greater responsibility for the negative consequences of credit granting. In this regard the following statement of the court in the *Prochaska* case,<sup>251</sup> is important:

“It is abundantly clear, in my view, that the Act has introduced innovative mechanisms and concepts directed more for the protection and in the interests of credit consumers than that of credit providers.”

Although the NCA aims to resolve consumer indebtedness by providing for debt review and debt restructuring, it also aims to *prevent* over-indebtedness by *inter alia* incorporating consumer education in the mandate of the NCR.<sup>252</sup> Statistics<sup>253</sup> indicating that nearly half of credit active South African consumers have bad credit records and more than 42 000 consumers are currently undergoing debt counselling signify that still more should be done to prevent over-indebtedness and to reduce the need for consumers to resort to the debt relief mechanisms of the Act. It must therefore be clear that there is a definite need for consumer education at both the adult and school level.<sup>254</sup>

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<sup>250</sup> Cf presentations of Rob Eastonberry and Deon Van Wyk at a conference entitled “Safari into debt enforcement” on 16 and 17 March 2009 in Midrand.

<sup>251</sup> Par 21 and 56.

<sup>252</sup> Cf s 3(e)(i), (g) and (i) read together with s 16(1)(a); Roestoff and Renke “The Consumer Credit Bill – a solution to over-indebtedness?” 2005 *Journal of Contemporary Roman-Dutch Law* 115; Renke, Roestoff and Bekink “New legislative measures in South Africa aimed at combating over-indebtedness – are the new proposals sufficient under the constitution and law in general?” 2006 *International Insolvency Review* 91; Kelly-Louw 225.

<sup>253</sup> See par 2.1 above.

<sup>254</sup> It is interesting to note that already in 1995 the South African Consumer Credit Association recommended that financial education be included in the South African school curriculum – see “Debt Collecting” *South African Law Commission Project* 74 (1995) 118 and Roestoff and Renke “A fresh start for Individual Debtors: The role of South African insolvency and consumer protection legislation” 2005 *International Insolvency Review* 93 102 and “Solving the problem of over-indebtedness: International guidelines” 2003 *Obiter* 1 8. Also see Kelly-Louw 211 and presentations by Tony Richards and Christo Otto at a conference entitled “Safari into Debt Enforcement” on 16 and 17 March 2009 in Midrand.

As pointed out above,<sup>255</sup> legislative gaps also contribute to the ineffectiveness of the debt counselling system. Although the work stream guidelines are to be welcomed because they attempt to find a solution for these problems, the situation is still not desirable. Many credit providers and debt counsellors did not form part of the work stream processes and therefore cannot be bound by these agreements.<sup>256</sup> The NCR's application to the High Court for a declaratory order may shed some light on the problems currently experienced, however, it is submitted that the best solution is, for the legislator to address these shortcomings in order to bring about a proper and effective debt review process.<sup>257</sup> It is submitted that the following issues should be addressed by the legislator:<sup>258</sup>

- **A review of the requirements pertaining to the education, experience and competence of debt counsellors.**<sup>259</sup>

It is suggested that regulation 10 be amended as follows:<sup>260</sup>

- "10.** A person who applies for registration as a debt counsellor must meet the following further requirements–
- (a) Education:
    - (i) a Grade 12 certificate or equivalent Level 4 qualification issued by the South African Qualifications Authority; and
    - (ii) successful completion of a debt counselling course approved by the National Credit Regulator and provided by an institution approved by the National Credit Regulator.
  - (b) Experience and Competence:
    - (i) a minimum of five years working experience in any of the following fields–
      - (aa) consumer protection, complaints resolution or consumer advisory service;
      - (bb) legal or para-legal services;
      - (cc) accounting or financial services;

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<sup>255</sup> Par 2.1.

<sup>256</sup> Scholtz *et al* 14-19.

<sup>257</sup> *Ibid.*

<sup>258</sup> Proposed amendments to provisions of the NCA and regulations will be indicated by underlining the relevant insertions and substitutions.

<sup>259</sup> See the discussion in par 2.2.1.2 above.

<sup>260</sup> It is suggested that the current sub-regulation 10(b)(i)(ff) be deleted as its application is too wide and allows almost any working experience to be sufficient in this section.

- (dd) education or training of individuals;
- (ee) counselling of individuals provided that if a person who applies for registration in terms of this regulation does not comply with the criteria pertaining to experience as contemplated in sub-regulation (b)(i) of this regulation, such a person will still be able to apply for registration as a debt counsellor if he/she possesses a tertiary qualification in either the field of law or economic and management sciences.
- (ii) demonstrated ability to:
  - (aa) manage his/her own finances at the time of applying for registration; and
  - (bb) provide counselling or transfer skills.”

- **Clarity as to whether the High Court or the Magistrate’s Court has the powers in terms of section 85 if it is alleged in High Court that a consumer is over-indebted.**<sup>261</sup>

With reference to the *Panayiotts* case<sup>262</sup> it is suggested that section 85 be amended as follows:

“85. Despite any provision of law or agreement to the contrary, in any court proceedings in which a credit agreement is being considered, if it is alleged that the consumer under a credit agreement is over-indebted, the court in which the allegation of over-indebtedness has been made may–

- (a) refer the matter directly to a debt counsellor with a request that the debt counsellor evaluate the consumer’s circumstances and make a recommendation to the court in which the allegation of over-indebtedness has been made in terms of section 86(7); or
- (b) declare that the consumer is over-indebted, as determined in accordance with this Part, and make an order contemplated in section 87 to relieve the consumer’s over-indebtedness.”

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<sup>261</sup> See the discussion in par 2.2.2.1 above.

<sup>262</sup> Par 17-19 and 21 and see the discussion in par 2.2.2.1 above.

- **A new Form 16 which would assist debt counsellors to better inform their clients of the consequences of debt review.**<sup>263</sup>

- **The regulation of the fees that may be recovered by debt counsellors and the amendment of section 86(3) to provide for the possibility that credit providers could also bear some of the debt counselling costs.**<sup>264</sup>

In this regard it is suggested that the recommended cost and fee structure drafted by DCSA<sup>265</sup> should be incorporated in the regulations to the NCA. Additionally, it is suggested that credit providers be made responsible for the PDA fees. The current section 86(3) should be substituted with the following provision:

- “(3) (a) A debt counsellor may require the consumer to only pay the prescribed fees pertaining to the process of debt review.
- (b) A registered payment distribution agency may, in respect of services rendered by him in terms of a court order, recover from the credit provider a commission prescribed in the regulations of all the amounts paid to such a credit provider by deducting such commission from the amount paid to the judgment creditor.”

- **The amendment of section 86(2) by substituting the words “section 129” with “section 130”.**<sup>266</sup>

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<sup>263</sup> See the discussion in par 2.2.2.2 above and the proposed improved Form 16 below.

<sup>264</sup> *Ibid.*

<sup>265</sup> *Ibid.*

<sup>266</sup> *Ibid.*

- **The regulation of the type of information<sup>267</sup> a credit provider is required to provide to the debt counsellor pursuant to a request in terms of regulation 24(3) for verification of information provided by the consumer.<sup>268</sup>**
  - It is suggested that section 86(4) be amended by adding a new subsection (c):
    - “(c) verify the information provided in the application in terms of subsection (1), in the prescribed manner and form”
  - It is furthermore suggested that regulation 24(3) be substituted with the following provision:
    - “(3) In verifying the information provided in terms of sub-regulation (1) above, the debt counsellor—
      - (a) may use any method of verification; and
      - (b) must—
        - (i) request documentary proof from the consumer; and
        - (ii) contact the relevant credit provider by delivering Form 17.1 as contemplated in sub-regulation (2) who must then complete and submit Form 16.2<sup>269</sup> to the debt counsellor within five business days of such verification being requested.”

- **Amendment of section 86(8) to include the instance where a recommendation is made by the debt counsellor in terms of section 86(7)(c) and to specifically provide for the obtaining of a consent order when a debt restructuring proposal is accepted by all credit providers.<sup>270</sup>**

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<sup>267</sup> The “Certificate of Balance”.

<sup>268</sup> See the discussion in par 2.2.2.3 above.

<sup>269</sup> It is suggested that Form 16.2 should be in the form proposed in the work stream guidelines – *Principles and Guidelines*: Annexure E.

<sup>270</sup> See the discussion in par 2.2.2.5 above.

- **Clarity on the procedure to be followed in court when a matter is “referred” to the Magistrate’s Court because the consumer and credit providers could not reach consensus on a debt restructuring proposal. Related issues, such as the jurisdiction of the court to entertain debt review matters, the person who should approach the court and the issue of notification regarding the eventual hearing for debt re-arrangement, should also be addressed.**<sup>271</sup>

- **Amendment of sections 86(7)(c) and 87 to provide for the possibility that the court could enforce a discharge of a part of the consumer’s debt obligations.**<sup>272</sup>

The following amendments are suggested with regard to the above three issues:

- Amendment of section 86(7)(c):
  - “(c) the consumer is over-indebted, the debt counsellor must issue a proposal recommending that the Magistrate’s Court declares that the consumer is over-indebted and make one or all of the following orders—
    - (i) that one or more of the consumer’s credit agreements be declared to be reckless credit, if the debt counsellor has concluded that those agreements appear to be reckless; and
    - (ii) that one or more of the consumers’ obligations be re-arranged by—
      - (aa) extending the period of the agreement and reducing the amount of each payment due accordingly;
      - (bb) postponing during a specified period the dates on which payments are due under the agreement;
      - (cc) extending the period of the agreement and postponing during a specified period the dates on which payments are due under the agreement; or
      - (dd) recalculating the consumer’s obligations because of contraventions of Part A or B of Chapter 5, or Part A of Chapter 6.

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<sup>271</sup> *Ibid.*

<sup>272</sup> *Ibid.*



- (iii) that any part of one or more of the consumer's obligations be discharged and that such obligations, subject to section 88A, ceases to be binding on the consumer."

- **Amendment of section 86(8):**

"(8) If a debt counsellor makes a recommendation in terms of subsection (7)(b) or (7)(c) and—

- (a) the consumer and each credit provider concerned accept that proposal, the debt counsellor must record the proposal in the form of an order, and if it is consented to by the consumer and each credit provider concerned, the consumer, by notice to the credit provider, may apply in the form and manner as prescribed in the Magistrates' Courts Act, 1944 to the Magistrate's Court of the district in which the consumer resides or carries on business or is employed for the order to be made an order of court;
- (b) if paragraph (a) does not apply, the consumer, by notice to the credit provider, may apply in the form and manner as prescribed in the Magistrates' Courts Act, 1944 to the Magistrate's Court of the district in which the consumer resides or carries on business or is employed for an order contemplated in subsection 7(c) and section 87."

- **Amendment of section 87(1):**

**"87. (1)** If a consumer applies to the Magistrate's Court in terms of section 86(8)(b) or 86(9), the Magistrate's Court must conduct a hearing as prescribed in the Magistrates' Courts Act, 1944 and, having regard to the proposal and information before it and the consumer's financial means, prospects and obligations may—

- (a) reject the application; or
- (b) declare that the consumer is over-indebted and make—
  - (i) an order declaring any credit agreement to be reckless, and an order contemplated in section 83(2) or (3), if the Magistrate's Court concludes that the agreement is reckless;
  - (ii) an order re-arranging the consumer's obligations in any manner contemplated in section 86(7)(c)(ii); or
  - (iii) an order contemplated in section 86(7)(c)(iii); or
  - (iv) an order appointing a payment distribution agent, registered by the National Credit Regulator in terms of

section 44A, and which will be responsible for the collection and distribution of payments received from the consumer after a debt restructuring order or agreement; or

- (v) all the orders contemplated in subparagraph (i), (ii), (iii) and (iv) of subsection (1)(b)."

- With regard to the issue of notification, a new regulation 26(4) is suggested:

"Notification to the relevant credit providers of an application by the consumer in terms of section 86(8)(b) and 86(9) may be effected by one or more of the following mechanisms:

- (a) personal delivery;
- (b) registered mail to the last known address of the relevant credit provider;
- (c) fax or email, provided that the debt counsellor is able to provide satisfactory proof of successful transmission of such fax or email or an acknowledgement of receipt be obtained from the relevant credit provider."

- **With regard to the debt counselling payment distribution system, issues such as the appointment of PDA's by the court<sup>273</sup> as well as the registration and monitoring<sup>274</sup> of PDA's by the NCR, should be addressed.<sup>275</sup>**

- The amendment of section 14(a) is suggested:

"14. The National Credit Regulator is responsible to regulate the consumer credit industry by–

- (a) registering credit providers, credit bureaux, debt counsellors and payment distribution agents;<sup>276</sup>

- A new section 44A is suggested:

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<sup>273</sup> See the proposed s 87(1)(a)(iv) above.

<sup>274</sup> It is submitted that the monitoring of PDA's is covered by the existing section 15(c) of the NCA.

<sup>275</sup> See the discussion in par 2.2.2.6 above.

<sup>276</sup> Additionally, it is suggested that reg 4 should be amended to provide for the prescribed form of application.

**“Registration of payment distribution agents**

- 44A.** (1) The National Credit Regulator must establish and issue standards and conditions for registration of payment distribution agents.
- (2) The National Credit Regulator may not register a person as a payment distribution agent unless that person has, in the opinion of the National Credit Regulator–
- (a) sufficient human, financial and operational resources to enable it to function efficiently and to properly perform its functions in terms of the Act; and
  - (b) sufficient administrative measures and safeguards to enable it to function efficiently and to properly perform its functions in terms of the Act.”<sup>277</sup>

- **Regulation of the process to be followed when a consumer or the debt counsellor withdraws from the debt review process.**<sup>278</sup>

- A new section 86A is suggested:

**“Withdrawal from the debt review process**

- 86A.** (1) A consumer may voluntarily withdraw an application in terms of section 86 at any time before an order of court as contemplated in section 86(8) has been granted, by delivering a written notice to the debt counsellor that the consumer is withdrawing the application, including the reasons for such withdrawal.
- (2) Within five business days after receiving a notice as contemplated in subsection (1), the debt counsellor must notify all credit providers that are listed in the application in terms of section 86 and every registered credit bureau in the prescribed manner and form<sup>279</sup> that the consumer has voluntarily withdrawn the application in terms of section 86.
- (3) A debt counsellor may withdraw an application in terms of section 86 if the debt counsellor is of the opinion that the consumer is dishonest or is not co-operating with regard to the application in terms of section 86.

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<sup>277</sup> It is submitted that cancellation of registration of a PDA will be covered by the existing s 57 of the NCA.

<sup>278</sup> See the discussion in par 2.2.2.7 above.

<sup>279</sup> See Form 17.4 – *Principles and Guidelines*: Annexure D.

- (4) Within five business days after a withdrawal as contemplated in subsection (3), the debt counsellor must notify the consumer and all credit providers listed in the application in terms of section 86 as well as every registered credit bureau in the prescribed manner and form<sup>280</sup> of the withdrawal.
- (5) A notice of withdrawal contemplated in subsection (4) may only be delivered after at least 10 business days have elapsed since the debt counsellor delivered a written notice to the consumer of the debt counsellor's intention to withdraw the application, including the debt counsellor's reasons for such intended withdrawal, and the consumer has failed to respond to such a notice.
- (6) If a consumer or the debt counsellor withdraws an application for debt review as contemplated in terms of this section, the debt counsellor must inform the consumer that–
  - (a) any of the consumer's credit providers may approach the court for an order to enforce a credit agreement in respect of which the consumer is in default;
  - (b) the consumer's credit record will, for a period of six months, reflect that the consumer has voluntarily withdrawn the application or that the debt counsellor has withdrawn the application, as the case may be;
  - (c) the consumer is liable for all debt counselling fees prescribed in terms of the Act and which are due up to the date of withdrawal;
  - (d) the consumer is entitled to re-apply for debt review in terms of section 86."

- **The introduction of a new provision in terms of which the court, on application by the consumer, may relieve the consumer from the disabilities resulting from debt-rearrangement:**<sup>281</sup>
  - A new section 88A is suggested:  
**"Magistrate's Court may relieve consumer of disabilities resulting from debt re-arrangement"**

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<sup>280</sup> *Ibid.*

<sup>281</sup> See the discussion in par 2.2.2.8 above.

**88A.** A consumer whose debts have been re-arranged in terms of Part D of this Chapter may apply to the Magistrate's Court of the district in which the consumer resides or carries on business or is employed at any time for an order relieving the consumer of every disability resulting from debt re-arrangement, and the court may grant such an order if it is satisfied—

- (a) that the consumer has paid all arrear instalments of all credit agreements which are subject to the debt-re-arrangement order or agreement; and
- (b) that the consumer has reaffirmed any obligations that have been discharged as contemplated in section 86(7)(c)(iii), to be binding on the consumer again; and
- (c) that the consumer is able to resume repayment of all obligations in terms of the original credit agreements concluded between the consumer and relevant credit providers; and
- (d) that the court is of the opinion that the consumer can no longer be regarded to be over-indebted as contemplated in section 79.”

- It is suggested that regulation 27 should apply in instances where a consumer has fully satisfied all debt obligations in accordance with the re-arrangement agreement or order as contemplated in the proposed amended section 86(8) read together with the proposed amended section 87(1). If a consumer wishes to be relieved from the disabilities resulting from debt-re-arrangement at an earlier stage he or she needs to comply with the proposed section 88A.

- It is suggested that section 71(4) and (5) be amended to provide as follows:

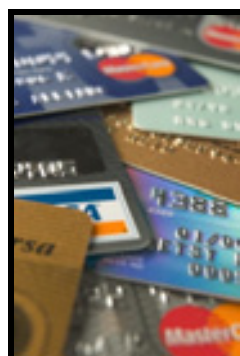
“(4) A consumer to whom a clearance certificate is issued in terms of this section or in whose favour an order contemplated in section 88A has been granted, may file a certified copy of that certificate or order with the national register established in terms of section 69 or any credit bureau.

(5) Upon receiving a copy of a clearance certificate or court order, a credit bureau, or the national credit register, must expunge from its records—

- (a) the fact that the consumer was subject to the relevant debt re-arrangement order or agreement;
- (b) any information relating to any default by the consumer that may have—
  - (i) precipitated the debt-re-arrangement; or

- (ii) been considered in making the debt-rearrangement order or agreement; and
- (c) any record that a particular credit agreement was subject to the relevant debt re-arrangement order or agreement.”

- Paragraph (d) should be added to section 88(1):  
“(d) a court have made an order as contemplated in section 88A.”
- Section 88(3)(b)(i) should be amended as follows:  
“(i) An event contemplated in subsection (1)(a) through (d); or”



Form 1: NCR Form 16: Part 1 - 8

## NCR Form 16

Application for debt review in terms of section 86 (1)

### NATIONAL CREDIT REGULATOR

APPLICATION BY CONSUMER FOR DEBT REVIEW IN TERMS OF  
[SECTION 86](#) OF THE NATIONAL CREDIT ACT [34 OF 2005](#)

#### Please note that:

- 1) On receipt of this application the Debt Counsellor will advise all credit providers and all registered credit bureaus that you have applied for debt review;
- 2) You will be listed with all registered credit bureaus that you have applied for debt review,
- 3) When your debt review has been listed under the credit bureaus you will not be able to obtain any further credit;
- 4) This form must be accompanied by a list of all credit providers as well as copies of all documents requested;
- 5) Should any documents not be submitted within 10 days of the Application being received by the Debt Counsellor, your application will not be accepted;
- 6) Until such time as this Application is accepted and all documents required is submitted, your credit providers may institute legal action against you.

#### **PART 1 – PERSONAL INFORMATION**

Joint Application: Yes ☐ No ☐

##### **Joint Application Applicant A**

Full names and Surname \_\_\_\_\_

Identity number

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Physical Address \_\_\_\_\_

Postal Code \_\_\_\_\_

Postal Address \_\_\_\_\_

Postal Code \_\_\_\_\_

Tel (w) \_\_\_\_\_ Tel (H) \_\_\_\_\_

Fax number: \_\_\_\_\_

Cell phone number \_\_\_\_\_

E-mail address \_\_\_\_\_

Name of employer \_\_\_\_\_

Address of employer \_\_\_\_\_

**Joint Application**  
**Applicant B**

Full names and Surname \_\_\_\_\_

Identity number

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Physical Address \_\_\_\_\_

Postal Code \_\_\_\_\_

Postal Address \_\_\_\_\_

Postal Code \_\_\_\_\_

Tel (w) \_\_\_\_\_ Tel (H) \_\_\_\_\_

Fax number: \_\_\_\_\_

Cell phone number \_\_\_\_\_

E-mail address \_\_\_\_\_

Name of employer \_\_\_\_\_

Address of employer \_\_\_\_\_



## **PART 2 – ESTATE ASSETS**

	<b>Description</b>	<b>Value</b>
<b>Fixed Property</b>		Value less Bond
<b>Fixed Investments</b>		<b>R</b>
<b>Savings</b>		<b>R</b>
<b>Motor Vehicles</b>		<b>R</b>
<b>Other Assets</b>	Eg: Furniture, jewelry, caravan	

### **PART 3 – HOUSEHOLD**

How many dependants do you have? \_\_\_\_\_

Are you married or living with someone? \_\_\_\_\_

If married, are you married in or out of community of property? \_\_\_\_\_

If you are married in community of property you and your spouse must make a joint application for debt review.

Is your spouse/partner employed? \_\_\_\_\_

How much does your spouse/partner earn? \_\_\_\_\_

What financial contribution does your spouse/partner make to the joint household living expenses?

\_\_\_\_\_

How many children do you have? \_\_\_\_\_

How old are the children? \_\_\_\_\_

Do your children stay with you? \_\_\_\_\_

Are your children employed? \_\_\_\_\_

How much do they earn? \_\_\_\_\_

What financial contribution do your children make to the joint household living expenses? \_\_\_\_\_

\_\_\_\_\_

Are there any other persons living with you in your home? \_\_\_\_\_

\_\_\_\_\_

Are they employed? \_\_\_\_\_

How much do they earn? \_\_\_\_\_

What financial contribution do they make to the joint household living expenses? \_\_\_\_\_

\_\_\_\_\_

Do you have any other source of income?

a. Rental income ☐ Amount \_\_\_\_\_

b. Maintenance ☐ Amount \_\_\_\_\_

c. Part time employment ☐ Amount \_\_\_\_\_

d. Interest ☐ Amount \_\_\_\_\_

e. Investments ☐ Amount \_\_\_\_\_

f. Bonuses ☐ Amount \_\_\_\_\_

g. Other (specify) ☐ Amount \_\_\_\_\_

Do you have any other family members or friends who you assist financially?

## **PART 4 – INCOME**

(Please attach a copy of your salary slip)

	<b>Applicant A</b>	<b>Applicant B</b>	<b>Total</b>
<b>Gross</b>			
o Overtime			
o Commission			
<b>Deduction</b>			
• Statutory Deduction			
o Tax			
o UIF			
o Other			
o Other			
• <b>Employment Conditions</b>			
o Medical Aid			
o Pension			
o Other			
o Other			
<b>Total Deduction</b>			
<b>Net pay</b>			
Other Income			
Other Income			
<b>Net Income</b>			

**Total Joint Net Income:** \_\_\_\_\_

**PART 5 – MONTHLY COMMITMENTS**

(Please list all monthly commitments other than outstanding debt, i.e. school fees, travelling costs, medical expenses, etc.)

**Commitment and Monthly expenses**

<b>Essential Living Expenses</b>	<b>Amount</b>	<b>Revised Amount</b>
Monthly Home Rental		
Groceries for entire household (includes toiletries and cleaning materials)		
Water and Lights		
Body Corporate levies / Rates and Taxes		
School fees (per month)		
Transport and petrol cost for entire household		
Cell Phone for entire household		
Landline		
Maintenance to dependants		
Maintenance of vehicle and home		
Clothes		
Medical (eg Doctor or medication)		
Banking Charges		
Financial Services		
Other		
<b>Non-Essential Living Expenses</b>		
Domestic Worker		
Gardening Services		
Alcohol / Cigarettes		
Entertainment		
Club Membership		
Children's' pocket money		
Tithe / Donations		
Cosmetics		
Other		
Other		
<b>Total</b>		

Income \_\_\_\_\_

Living Expenses - \_\_\_\_\_

**Balance** = \_\_\_\_\_

## **PART 6 – DEBT OBLIGATIONS**

(Please provide copies of all outstanding balances due)

<b>Credit Provider</b>		
Name:	Balance	Monthly Instalment
Ref:		
Tel:		
Fax:	Notes:	
Type of Account:		
Status:		
Name:	Balance	Monthly Instalment
Ref:		
Tel:		
Fax:	Notes:	
Type of Account:		
Status:		
Name:	Balance	Monthly Instalment
Ref:		
Tel:		
Fax:	Notes:	
Type of Account:		
Status:		
Name:	Balance	Monthly Instalment
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Fax:	Notes:	
Type of Account:		
Status:		
Name:	Balance	Monthly Instalment
Ref:		
Tel:		
Fax:	Notes:	
Type of Account:		
Status:		
Name:	Balance	Monthly Instalment
Ref:		
Tel:		
Fax:	Notes:	
Type of Account:		
Status:		

### **PART 7 – DEBT COUNSELLOR AND LEGAL FEES**

As part of the application for debt review certain fees are payable towards the debt counsellor as well as possible legal fees to an attorney.

1. The maximum fees payable to the debt counsellor are governed by Section 86(3) of the National Credit Act:
  - a. Application Fee \_\_\_\_\_ (payable on application)
  - b. Professional Fee \_\_\_\_\_ (payable at first instalment)
  - c. Monthly After Care Fee \_\_\_\_\_ (payable from the second instalment)
  - d. Monthly Payroll Deduction \_\_\_\_\_ (employer deduction)
  - e. Monthly Payment Distribution Cost \_\_\_\_\_ (PDA payment)
2. The legal fees payable to an attorney for the bringing of an application to court or tribunal are:
  - f. Consent Order obtained: \_\_\_\_\_
  - g. Court Order obtained: \_\_\_\_\_
3. Total Fees payable: \_\_\_\_\_

\_\_\_\_\_  
Consumer  
Applicant A

\_\_\_\_\_  
Consumer  
Applicant B

## **PART 8 – DECLARATION BY THE CONSUMER**

I declare as follows:

1. I understand that I have to comply with all requests from the debt counsellor to assist him/her to evaluate my state of indebtedness and the prospect for responsible debt restructuring;
2. I consent to the submission of my information to all registered credit bureaus by the debt counsellor;
3. I also consent that the debt counsellor may obtain my credit record from any/all registered credit bureaus and any other registers which may contain any of my credit information;
4. I undertake not to enter into any further credit agreements, other than a consolidated agreement, with any credit provider or any other person until one of the following events has occurred:
  - a. The debt counsellor rejects my application;
  - b. The court determines that I am not over-indebted; or
  - c. All my obligations under credit agreements as re-arranged are fulfilled;
  - d. The court has relieved me from all disabilities resulting from debt re-arrangement.
5. I agree not to utilise any available credit on any overdraft or credit facility and consent to all my credit cards being destroyed;
6. I agree to continue making payments towards all my credit providers as instructed by my debt counsellor and am aware that my debt review application may be withdraw should I fail to do so;
7. My debt counsellor has explained the cost of the application to me and I consent to and agree to pay any agreed upon fees applicable to this process;
8. I take note that should I fail to cooperate in this process or fail to provide true and honest information to my debt counsellor, my debt counsellor may withdraw my debt review application and thereby enables my credit provider to take legal action against me;
9. I confirm that the contents of this declaration have been explained to me and that I fully understand the contents thereof and consequences should I not comply;
10. I confirm that the information contained in this document is, to the best of my knowledge, true and correct.

Signed at [place] \_\_\_\_\_ on this [day] \_\_\_\_\_ of [month] \_\_\_\_\_ 20 \_\_\_\_

\_\_\_\_\_  
Signature Consumer  
Applicant A

\_\_\_\_\_  
Debt Counsellor

\_\_\_\_\_  
Signature Consumer  
Applicant B

**Receipt to Consumer of Application**

LETTER HEAD

To: \_\_\_\_\_

PER HAND

Our Ref: \_\_\_\_\_

Date: \_\_\_\_\_

---

**RECEIPT APPLICATION FOR DEBT REVIEW  
( SEC 86)**

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I \_\_\_\_\_, Debt Counsellor, registration number  
NCR DC \_\_\_\_\_ hereby declare that the consumer/s as stated bellow applied for debt review at our  
offices on \_\_\_\_/\_\_\_\_/20\_\_\_\_

**CONSUMER PARTICULARS**

Applicant A

**Surname:** \_\_\_\_\_

**Full Names:** \_\_\_\_\_

**ID:** \_\_\_\_\_

Applicant B

**Surname:** \_\_\_\_\_

**Full Names:** \_\_\_\_\_

**ID:** \_\_\_\_\_

**Signed at** \_\_\_\_\_ **on this** \_\_\_\_\_ **day of** \_\_\_\_\_ **20** \_\_\_\_\_

\_\_\_\_\_  
Signature Consumer  
Applicant A

\_\_\_\_\_  
Debt Counsellor

\_\_\_\_\_  
Signature Consumer  
Applicant B



## CHAPTER 3 : SELECTED CASE STUDIES

### 3.1 INTRODUCTION

Anecdotal evidence abounds of numerous cases of non-compliance with the National Credit Act, the regulations and industry agreements reached between the industry role players. A high degree of mistrust between the important stakeholders i.e. credit providers, debt counsellors and payment distribution agencies seems to exist. In the course of interviewing the representatives of these role players, the research team found the respective parties were all too willing to point out mistakes, lack of communication and cooperation from the other side. Likewise, role players were often not willing to reflect on their own possible contribution to the irregularities and obstacles associated with the debt counselling process.

The approach of the research team has been that it is unnecessary to record in detail large numbers of these cases if they merely illustrate the same type of non-compliance or mistake. On the other hand, a single isolated deviation from the norm, important as it might have been in the particular case, would in the view of the research team not warrant inclusion, as it could wrongly create generalisation and stereotyping.

Cases where allegations of irregularities, collusion or fraudulent behaviour could not be verified or have not been proved (despite strong suspicions) have for obvious reasons not been included. A number of apparent irregularities have also been encountered that still warrants further investigation and could therefore not be included in this report. These would include serious allegations made by credit providers and debt counsellors alike who were unwilling to be quoted or have their names published.

In the cases reported on the identity of and information regarding certain consumers were blocked out for reasons of confidentiality and privilege.

The research team has clustered a number of cases which will be reported on under the following topics:

- Reneging on the work stream agreement regarding court procedures
- Non-compliance with the regulations and work stream agreement regarding financial information
- Negligent mistakes
- Other findings
- Payments

### **3.2**

#### **RENEGING ON THE WORK STREAM AGREEMENT**

The single most important case or rather cases leading to the non-functioning of the debt counselling process to the detriment of the credit industry in general and the over indebted consumer in particular, flow from breach of the so-called work stream agreement reached between the major credit providers and a number of debt counsellors. These breaches might be either intentional or unintentional but with the same serious consequences.

The background to the so called work stream agreement is contained in a document titled “Debt Counselling – Principles and Guidelines”. This guide was commissioned by the Banking Association to be used for the training of the debt counsellors and bank officials in order to remove obstacles in the debt counselling process:

“The National Credit Act, Act 34 of 2005 (hereinafter called “the Act”) came into full force and effect on 1 June 2007 and with it came the inception of debt review and debt restructuring. Since its inception, debt review and debt restructuring have posed operational and procedural challenges for the credit providers, debt counsellors and consumers alike. In order to solve some of these challenges major credit providers, in consultation with established debt counsellors and the National Credit Regulator (hereinafter called “the NCR”), at various work stream sessions, arrived at a set of suggested rules and procedures which should be employed in order to streamline the debt review and restructuring process. In order to share the outcomes of the work streams with all debt counsellors and to address the operational difficulties of the Act,

the credit industry and the NCR have agreed to fund and facilitate this supplementary training to registered debt counsellors.

Drawing on the deliberations and/or outcomes of the work streams the course material was developed by a team consisting of: Franciscus Haupt, Hermie Coetzee, Mareesa Erasmus & Mel da Silva.”

The members of the work stream sub-committees were:

Ingrid Mulder-De Does, Absa

Natania Boshoff, Bret Morse & Johan de Ridder, African Bank

Greg Suddards & Bennie Wiid, FNB

Diane Lodewyks, Nedbank

Janet Hofman, Cheryl Jordaan, Mike Olsen, Tessa Verwoerd, Standard Bank

Luis da Cruz, Wesbank

Izak Badenhorst, MFC

Nico Naidoo, ITC

And the following debt counsellors:

Mel da Silva, Karen de Clerk, Mareesa Erasmus, Albert Elliot, Clark Gardiner, Ronelle Kleyn, Stephan Logan, Susan Macala, Mpho Mutshekwane, Sisinyana Pholo, Tony Richards, Madoda Siquisa, Paul Slot, Keyam Suliman, Anton Viljoen, Ange Walker, James Manamela, Karen de Clerck & Madoda Siquisa

Two study guides containing the principles and guidelines and a number of annexures were compiled and presented to the various parties at a workshop held at Midrand on 6 and 9 June 2008. After further debate the study material was finalised with all the parties reaching consensus. The Banking Association of South Africa and the National Credit Regulator then collaborated in providing funding. The guide was also duly published and incorporated into the NCR website as well as into the manual used by training providers on all NCR accredited courses for aspirant debt counsellors. It was hailed as a breakthrough in that industry itself reached consensus on a workable solution

until such time as the Act and/or Regulations were amended. The authors, accompanied by various representatives of the major banks then embarked on a series of supplementary training workshops for existing debt counsellors.

Training took place in the following centres:

Table 1: Supplementary training workshops for existing debt counsellors took place in the following centres

<b>Date presented</b>	<b>Town</b>	<b>Number of delegates</b>
6 & 9 June 2008	PILOT MIDRAND	-
11 & 12 June 2008	Cape Town	34
18 & 19 June 2008	Midrand	29
23 & 24 June 2008	Polokwane	9
1 & 2 June 2008	Durban	26
3 & 4 July 2008	Nelspruit	7
10 & 11 July 2008	Midrand	30
14 & 15 July 2008	Pretoria	35
16 & 17 July 2008	Bloemfontein	18
24 & 25 July 2008	Midrand	34
19 & 20 August 2008	Port Elizabeth	30
26 & 27 August 2008	Potchefstroom	13
4 & 5 September 2008	Midrand	25
<b>Totaal</b>		<b>290</b>

It was also foreseen that similar courses for staff of debt rehabilitation units at banks would be conducted. Nothing came of this, although some banks have indicated that they use the manual for in-house training purposes.

To best illustrate the non-compliance by some credit providers, the research team proceeded to quote from the guide and compared this with affidavits filed by duly authorised representatives of major banks in subsequent court proceedings. We restricted ourselves to affidavits deposited of by representatives of Absa, Standard Bank, First National Bank and WesBank. These are by no means the only banks that have apparently deliberately

reneged on the industry agreement and merely served as examples. Neither are these restricted to a few cases but has, as will be pointed out, in many instances become part of the “standard affidavit” filed by banks when opposing applications in court.

### **3.2.1 Geographic jurisdiction**

- Work stream agreement

“the work streams agreed to jurisdiction over the person of the applicant rather than the respondent. It is submitted, that even in the absence of such agreement section 28(1)(d) of the Magistrate’s Court Act clearly states that a Magistrate’s Court may entertain matters where the whole cause of action arose within its area of jurisdiction. As the application of the debt review in terms of section 86(1) of the Act is the reason why the courts are approached and not disputes arising out of the individual agreements, the Magistrate’s Court in whose jurisdiction the debt review took place will have jurisdiction to entertain the matter.”

- Standard Bank of South Africa Ltd per Anthony Lorcan Kennedy (hereafter Kennedy), the manager, Legal Personal and Business Banking Credit, a division of Standard Bank of South Africa Ltd  
- Magistrate’s Court Randburg, case nr 28042/2008: Ncube and DImani:

“Jurisdiction in terms of Section 28 of the Magistrate’s Court Act

I submit that the above Honourable court does not have jurisdiction in terms of the aforesaid Section, specifically Section 28(1)(a), as most, if not all, of the Credit Providers reside and / or carry on business and / or have their registered place of business outside the jurisdiction of the above Honourable court.

Further legal argument will be presented to Court at the hearing of the matter in this regard.”

- WesBank per Luis da Cruz (hereafter Da Cruz), manager WesBank Debt Review Centre  
- Magistrate’s Court Parys, case nr 1118/2008: Barry Kotzé and Keyser:

“I respectfully submit that the above Honourable Court does not have the jurisdiction to hear this application by virtue of the following:-

5.1 Jurisdiction in terms of Section 28 of the Magistrate's Court Act:

I respectfully submit that the above Honourable Court does not have jurisdiction in terms of the aforesaid Section, specifically Section 28(1)(a) of the Act, as the 1<sup>st</sup> Respondent's head office is situated in and the address of the 1<sup>st</sup> Respondent's Debt Review Department is likewise in Fairlands. The fax number which the applicant has used for the application is the fax number of the Debt Review department which is in Fairlands.

Further legal argument will be represented to the above Honourable Court at the hearing of this matter.”

- Absa Bank Ltd per Ingrid Mulder-De Does (hereafter Mulder-De Does), manager Debt Rehabilitation and Counselling Unit, Absa  
- Magistrate's Court Germiston, case nr 10992/2008: Erasmus and Brummer:

“I respectfully submit that the above Honourable Court does not have the jurisdiction to hear this application by virtue of the following:-

“5.1 Jurisdiction in terms of Section 28 of the Magistrate's Court Act:

I respectfully submit that the above Honourable Court does not have jurisdiction in terms of the aforesaid Section, specifically Section 28(1)(a) of the Act, as the 1<sup>st</sup> Respondent's head office is situated in and the address of the 1<sup>st</sup> Respondent's Debt Review Department is likewise in Fairlands. The fax number which the applicant has used for the application is the fax number of the Debt Review department which is in Fairlands.

Further legal argument will be represented to the above Honourable Court at the hearing of this matter.”

Comparing the above two affidavits filed by two individuals (Mulder-De Does and Da Cruz) employed at two different banks (Absa and WesBank), the similarity is striking. This is clearly a case of copy and paste and raises serious questions about the application of the deponent Mulder-De Does's mind to the

affidavit. Mulder-De Does here declares under oath that the Absa Debt Rehabilitation and Counselling Centre is in Fairlands, which it is not. She correctly states in paragraph 1 of the said affidavit that they are situated at 8<sup>th</sup> Floor, Marble Towers, Cnr Jeppe and Von Wielligh Street, Johannesburg. (Fairlands is the address of WesBank).

In the Kotzé and Keyser case in Parys mentioned above, the same copy and paste mistake was made.

More recently Absa has adopted a new approach. Whilst still denying that the Magistrate's Court where the applicant resides has jurisdiction (or accepting jurisdiction based on cause of action) and while still raising it, they seem to consent reluctantly to the jurisdiction of the said court:

- Absa Bank Ltd per Mulder-De Does  
- Magistrate's Court Pretoria, case nr 283/2009: Marina Damourantjis:

"I deny that the above Honourable Court has jurisdiction by virtue of the provisions of Section 28 of the Magistrate's Court Act 32 of 1944.

Not to be unnecessarily obstructive, the Fifth Respondent would not take issue with the question of jurisdiction if the Second Applicant resided within the above Honourable Courts jurisdiction as it is acknowledged that it would be convenient for this court to have jurisdiction based on the Second Applicant's place of residence."

### **3.2.2 Monetary jurisdiction**

- Work stream agreement

"During the work stream meetings the credit providers agreed not to oppose the monetary jurisdiction of the Magistrate's Courts. It is submitted that even in the absence of an agreement on the monetary jurisdiction the court would still have such jurisdiction. Section 86 of the Act clearly states that Magistrate's Courts should hear the matters. Further authority for this argument can be found in section 29(1)(e) of the Magistrate's Court Act stating that actions based on or arising from credit agreements as described in section 1 of the National Credit Act may be heard by Magistrate's Courts. No

monetary jurisdiction was placed on this matters what so ever. It is submitted that the legislature never intended any other court to entertain debt review applications.”

- Standard Bank of South Africa Ltd per Kennedy

- Case Ncube and DImani:

“I respectfully submit that the above Honourable Court does not have the requisite jurisdiction to hear this application as set out hereunder.

Jurisdiction in terms of Section 29 of the Magistrate's Court Act

Richard's recommendation provides that the total outstanding balance is R767 639.00, which amount is outside the monetary jurisdiction of the above Honourable Court. The above Honourable Court does not have jurisdiction in terms of the aforesaid Section, especially Section 29(1)(d) and (g). Even though the section in the MCA and MCR refers to actions, I respectfully submit that it is also applicable to applications.”

- WesBank per Da Cruz

- Case Kotzé and Keyser:

“5.2 Jurisdiction in terms of Section 29 of the Magistrate's Court Act:

In terms of Section 29 of the Magistrate's Court Act and in particular Section 29(1)(g), the above Honourable Court does not have jurisdiction in actions / applications where the value of the matter exceeds R100 000.00. In the current application, the total value of the relief sought far exceeds R100 000.00.

Further legal argument will be presented to the above Honourable Court at the hearing of this matter.”

- Absa Bank Ltd per Mulder-Da Does

- Case Erasmus and Brummer:

“5.2 Jurisdiction in terms of Section 29 of the Magistrate's Court Act:

In terms of Section 29 of the Magistrate's Court Act and in particular Section 29(1)(g), the above Honourable Court does not have jurisdiction in actions/applications where the value of the matter exceeds R100 000.00. In the current application, the total value of the relief sought far exceeds R100 000.00.

Further legal argument will be presented to the above Honourable Court at the hearing of the matter.”



### **3.2.3**

#### **Procedure for referring debt review matters to court**

Section 86 is silent on the procedure to be followed by the debt counsellor after he has “issued” a proposal recommending that the Magistrate’s Court make one of the orders as contemplated in section 86(7)(c)(i) and (ii). It should be noted that section 86(8) does not explicitly refer to the procedure to be followed where a recommendation in terms of section 86(7)(c) has been made. It merely refers to a recommendation in terms of subsection (7)(b) following on a finding by the debt counsellor that the consumer is not over-indebted, but is experiencing financial problems.

According to the work streams all debt review applications are destined to end in court. The court may either be approached for a hearing as contemplated in section 87 or to issue a consent order (section 128(1) read with section 86(8)(a)). The work streams pointed out that:

“[t]he Act does not provide for a detailed procedure in referring matters to court and therefore the Act needs to be read together with the Magistrate’s Court Act and the Rules of the Court to ensure that these applications are not unnecessarily opposed or bogged down by objections of technical nature and fancy legal footwork”.

The work streams therefore agreed that the debt counsellor may file a proposal as a consent order in the event that the consumer and all relevant credit providers have accepted a proposal in terms of section 86(7)(c) (see Annexure G) and have thus agreed that section 86(8)(a) be applied in such a case. If, however, consensus cannot be reached between the consumer and the credit providers, section 86(8)(b) (providing for a referral of the matter to the Magistrate’s Court in terms of section 87) should apply and the debt counsellor should refer the matter to an attorney to launch an application to court. This application will consist of a notice of motion, a founding affidavit with or without supporting affidavits and the debt counsellor’s recommendation:

- Standard Bank of South Africa Ltd per Kennedy

- Case Ncube and DImani:

“10.5 Furthermore, section 87(1) states that before making a finding the Magistrate’s Court “*must conduct a hearing*” of the matter. Again, the Magistrate’s Court is “*a creature of statute*” and the present application can therefore not be heard on the affidavits alone and a hearing must held. Therefore, I submit, oral evidence should be led, wherein the Applicants could be fully examined (by both the Respondents and the above Honourable Court) as to their full state of indebtedness. Further legal argument on this issue will be presented to Court at the hearing of the matter.”

“19.1 It is specifically denied that the Applicants are over-indebted in terms of section 86(8)(b) of the NCA, in that this provision specifically deals with the situation where the consumer is **not** over-indebted (**my emphasis**).

19.2 I further submit that Applicants cannot be found to be over-indebted in terms of section 86(8)(b) of the NCA, in that this provision specifically deals with the situation where the consumer is **not** over-indebted (**my emphasis**).

19.3 Standard further re-iterates what was stated in paragraph 7 above, and requests that same be read in as if specifically pleaded.”

“34.2 The Applicant has been brought in respect of the incorrect section of the NCA and thus, I submit, the order prayed for cannot be granted, as the Application is fatally defective *ab initio*.”

### 3.2.4 Interest

- Work stream agreement

“Interest may be reduced if:

- Home loans don’t solve within 240 months from date of proposal, with a maximum term of 360 months form original contract date.
- Vehicle loans do not solve within the original contract term x 1.5 or a maximum term of 84 months from the contract date.

- Short terms loans, loans repayable in less than 12 months, don't solve within the original contract terms x 3 from the contract date.
  - Other agreements do not solve within 60 months from the proposal date.
  - The interest rate reduction is done by taking the agreement with the highest rate and reducing it to the same rate as the next highest agreement.
  - If a solution is found then the reduction stops there, if not then both of those agreements are reduced to the next highest and so on.
  - If no resolution is reached at this point the debt counsellor may formulate the proposal in any way that is appropriate.”
- Standard Bank of South Africa Ltd per Kennedy
    - Case Ncube and DImani:

“As stated the application is made in terms of Section 86(8)(b) of the NCA. This must be read with Section 87 of the NCA which stipulates that with such a referral the Magistrate’s Court can make one of the following orders:

      - It may reject the application [Section 87(1)(a)]
      - It may make –
        - an order declaring any credit agreement to be reckless [Section 87(1)(b)(i)]
        - an order re-arranging the consumer’s obligations in any manner contemplated in Section 86(7)(c)(ii) (my emphasis) [Section 87(1)(b)(ii)]; or
        - both orders as contemplated above [Section 87(1)(b)(iii)]
      - In terms of Section 86(7)(c)(ii) the Magistrate’s Court can only make an order that one or more of the consumer’s obligations be re-arranged by –
        - Extending the period of the agreement and reducing the amount of each payment due accordingly [Section 86(7)(c)(ii)(aa)]
        - postponing during a specific period the dates on which payments are due under the agreement [Section 86(7)(c)(ii)(bb)]
        - extending the period of the agreement and postponing during a specified period the dates on which payments are due under the agreement [Section 86(7)(c)(ii)(cc)]
        - Recalculating the consumer’s obligations because of contravention of Part A or B of Chapter 5 or Part A of Chapter 6 [Section 86(7)(ii)(dd)].

In the application before Court the Applicants request the above Honourable Court to make a number of the aforementioned orders. In addition however, the

Applicants further request that the Court alter the interest rates in respect of the credit agreements to which the Applicants are a party. In fact, the Applicants' and Richards's proposal in this regard is a restructuring of all of their agreements with Standard (let alone the other Respondents), by way of an interest rate reduction to 7.00% from the original interest rate amounts which range between 16.69% and 20.00% across the range of credit agreements with Standard. It is my submission that, given what is set out above, such an order falls outside the scope of the above Honourable Court's powers and as the Magistrate's Court is "*a creature of statute*" it cannot make the proposed order."

- WesBank per Da Cruz
  - Case Kotzé and Keyser:
    - "In terms of Section 86(7)(c)(ii) the Magistrate's Court can only make an order that one or more of the consumer's obligations be rearranged by:-
    - Extending the period of the agreement and reducing the amount of each payment accordingly;
    - Postponing during a specific period the dates on which the repayments are due under the agreement;
    - Extending the period of the agreement and postponing during a specified period the dates on which payments are due under the agreement; or
    - Recalculating the consumer's obligations because of contraventions of Part A or B Chapter 5 or Part A of Chapter 8;
    - In the application before the above Honourable Court, the Applicant does not request the above Honourable Court to make any of the aforementioned orders. In fact, the Applicant's proposal is a restructuring of all the agreements she has by way of an interest rate reduction on all the agreements. It is my submission that, given what is set out above, such an order falls outside the scope of the above Honourable Court's powers and that the above Honourable Court cannot make the proposed order."
- Absa Bank Ltd per Mulder-Da Does
  - Case Kotzé and Keyser:
    - "6.2.21 I respectfully submit that the Debt Counsellor cannot unilaterally restructure the interest rates as originally agreed upon between the parties, as no such right has been created by either the provision of the Act or the Regulations promulgated there under. The First Applicant, I am advised, can only


recommend a rearrangement in accordance with the aforementioned sub-sections of the Act when he finds a consumer to be over indebted.

6.2.22 The proposed re-writing of the credit agreement is not permitted by the Act, the Constitution and nor the Laws of the Republic.”

Even in the case of proposals, it was often found that credit providers refuse to entertain the lowering of interest rates at all. They would rather extend the repayment period. Interestingly enough, credit providers were critical of proposals by debt counsellors containing suggestions for indefinite periods for repayment. However, the research team has come across various counter proposals from credit providers including terms such as “until debt settled”.

In terms of the work stream agreement a debt counsellor should first extend the repayment term of a credit card to 60 months. If the matter could still not be settled, the debt counsellor may reduce the consumer’s interest to prime +3. Despite this agreement, certain credit providers still refuse to reduce the interest rates on their accounts, but rather extend the term to ‘until debt is settled’. This is contrary to the work stream agreement. An increase in the interest rate of one account has a drastic effect on the other agreements due to the cascading effect. This behaviour also threatens the work streams’ aim to create good faith and a positive working relationship between debt counsellors and credit providers.

Example 1: Rearrangement proposal of Nedbank dated 19 February 2009



### Voluntary Re-Arrangement Proposal

**CLIENT :** MR FREDRICK [REDACTED]  
**ACCOUNT NO :** [REDACTED]  
**IDENTITY NO :** [REDACTED]

I, Shamaine Van Wyk in my capacity as Manager, hereby **accept the proposed repayment instalment amount** at the current applicable interest rate of 22.40%.


The term proposed has been altered from 95 months to until debt settled.

	Debt	Repayment	Rate	Term (months)
Proposed	R4, 499.00	R50.00	2.25	95
(Acceptable)	R4, 499.29	R50.00	22.40%	until debt settled

We hereby accept the following proposal on the following conditions:

- Acceptance of this restructure proposal is conditional upon all other affected credit providers also agreeing to restructure as per Section 86(8) of the National Credit Act
- The appointed Debt Counsellor will conduct an after care service including re-evaluating the restructuring proposal each year until final settlement of the proposal
- Should the consumer default upon the above arrangement, Nedbank will terminate the Debt Review as per Section 86(10) of the National Credit Act

Signed at, BRAAMFONTEIN – GAUTENG, on the 19 February 2009

  
 \_\_\_\_\_  
 Manager

**SHARMAINE VAN WYK**  
 OPERATIONAL MANAGER  
 Nedbank Card Recoveries  
 Reg. No. 1551/000008/06

### 3.2.5

#### Particularity of affidavits and availability of proof

- Work stream agreement

“The work stream agreed on certain minimum items/issues (relating to the merits of the matter) that should be addressed in the founding affidavit of the consumer:

- An allegation that the consumer is over-indebted, supported by:
  - Proof of income
  - Form 17.1

- Date delivered
  - Form 17.1 and the proof of receipt should be attached to the founding affidavit as an annexure, **alternatively it should be mentioned in the affidavit that it will be available at the hearing.** (research team emphasis)
- Certificate of balance
  - Which credit providers provided same
  - A summary of the content of certificates of balances received from credit providers (principal debt, interest rate etc.)
  - Listing of credit providers that did not provide certificates of balance and the amounts received from consumer on accounts with no certificate of balance
  - The certificate of balances should be attached to the founding affidavit as an annexure, **alternatively the affidavit should indicate that same will be available at the hearing.** (research team emphasis)
- Total exposure of consumer:
  - Breakdown of the total exposure must be attached to the application to ensure that the Court can establish reasonability of the “possible unreasonable” offer originally received. Explanation must be given of the process followed by the debt counsellor to establish that the consumer is over-indebted together with an explanation of the process, information and evidence (income, expenditures etc.)
- Restructuring Proposal:
  - Copy of the proposal as provided to the credit providers must be attached to the application to ensure transparency
  - Explanation must be provided of how the restructuring proposal was drawn up with specific reference to the breakdown and reapportionment of debt and instalments as from date of inception until date of final payment
- Response/Answers to Restructure proposals:

Which credit providers accepted the proposals with an indication of the outstanding balance, terms, interest rate and first payment date
- Specific circumstances of the consumer which would make the proposal reasonable in the circumstances”
- First National Bank and Direct Axis (Pty) Ltd per Johannes Salmon Strydom, head of Debt Review Centre, First National Bank, a Division of First Rand Bank Ltd
  - Magistrate’s Court Germiston, case number 6386/2008: Johannes Jacobus & Hannelie Pieters:

“8.1 There is no Form 16 that is attached to the application by the Consumer made to the Debt Counsellor, in terms of Section 86(1) of the National Credit Act.  
It is my respectful submission the application is therefore fatally defective as it does not comply with the National Credit Act.

8.3 Points 3 and 4 of Form 16 at the top of the page, specifically states that:  
“3) This form must be accompanied by a list of all creditors, credit providers as well as all documents requested,  
4) Should any document not be submitted within ten (10) days of the Application being received by the Debt Counsellor, your application will not be accepted.”

- Standard Bank of South Africa Ltd per Kennedy

- Case Ncube and DImani:

“Insofar it is alleged that the Debt Counsellor did an assessment, the Applicants fail to take the above Honourable Court into their confidence and attach all the relevant documents such as Forms 17.1 and 17.2”

“Further alternatively to paragraph 6,7 and 8 above, and if the contention in paragraph 6,7 and 8 are dismissed, then I respectfully submit that the Application is furthermore defective in that it does not comply with the requirements as set out in MCR Rule 55(2), in that *inter alia* it does not set out the evidence in support of the Application with enough particularity to enable the above Honourable Court to assess the Applicants’ financial position;

Paragraph 5, 8 and 10 of the Applicants’ affidavit deals with their own determination of whether they are capable of repaying all their debts. This averment, however, only contains a bald allegation that they are in no position “to satisfy in a timely manner all the obligations under the credit agreements”. No particularity is given as to what factors were taken into consideration in making this assessment, specifically with reference to Regulation 24 of the NCA. Furthermore certain information as to the Applicants’ income and expenditure is stated but very little or no documentary proof (especially in respect of the expenditures) in this regard is annexed to the affidavit. It would appear, and I respectfully submit, that the Applicants and Richards have in this manner, failed to take the above Honourable Court into their confidence in bringing this Application.

With respect, I submit that this lack of evidence is not sufficient to allow the above Honourable Court to assess the Applicants’ financial position as well as the referral



of the matter to the Court for a hearing or decision. It is my respectful submission that a full disclosure of the Applicants' financial position should be placed before the Court.

Further legal argument on this issue will be present to Court at the hearing of the matter”

- Absa Bank per Mulder-De Does

- Case Kotzé and Keyser:

- “5.5 Rule 55(2) – The evidence in support of the application

- 5.5.1 Since this application to the above Honourable Court is not a formal application as set out in Act 32 of 1944 but a substantive one, all necessary documentation needs to be attached to the affidavits used in support of the application.

- 5.5.2 It should be noted that it is not sufficient to aver that documentation will be made available at the hearing, as the documentation should have been attached, as the method being utilised by the Applicants to refer the Debt Review to the Magistrates' Court is that of an Application procedure and accordingly evidence is provided by way of affidavit.

- 5.5.3 Should the documentation not be annexed to the affidavits and accordingly not duly commissioned and deposed to then it cannot be relied upon as evidence before the above Honourable Court as it will not be under oath.

- 5.5.4 Should the documentation be referred to and marked as an annexure to either of the Applicants' affidavits, then the same should be annexed to the respective affidavit.

- 5.5.5 The consequence of omitting documentation of any of the above reasons whatsoever results in the *audi alteram partem* rule not being adhered to as the Third Respondent would not have had sight of the documentation prior to the hearing of the application. In the premises, the Applicants would be conducting a trail by ambush.

- 5.5.6 The Applicants have failed to comply with what I have stated above and accordingly this application falls foul of Act 32 of 1944.”

Scrutinising the affidavit filed by Mulder-De Does and analysing it, it would seem that Absa would require the following to be addressed in applicant's founding affidavit and that they would also require documentary proof to be attached to the affidavit. The research team has listed the “Absa requirements” and has made an estimate of the number of pages that would form part of the founding affidavit and its annexures.

This would be, based on the consumer having ten credit agreements as set out as follows:

Table 2: Estimated number of pages that would form part of the founding affidavit and its annexures, based on the consumer having ten credit agreements

Nr	Documentation	Pages
1	If alleged applicant is married, proof thereof (marriage certificate)	1
2	If alleged marriage out of community of property, proof thereof (ante-nuptial contract)	6
3	Proof of approaching a debt counsellor (Form 16?)	5
4	Proof that the Debt Counsellor is duly registered (registration certificate)	1
5	Proof of payment of initial R50 fee (receipt)	1
6	Form 17.1 (Form 17)	1
7	All documents (accounts, invoices, agreements) furnished by consumer to debt counsellor in terms of Regulation 24 and proof thereof (copies of all documents scrutinised by debt counsellor)	50
8	Proof of 17.1 sent (fax reports to all creditors)	10
9	Financial information received from all of the credit providers (copies of all COBs)	10
10	Form 17.2	1
11	Proof of 17.2 sent (fax reports to all creditors)	10
12	Proof of income of applicant (salary advice)	1
13	Proof of all expenses listed - transport costs (vehicle registration certificate showing engine capacity, model and make of vehicle); kilometres travelled (log book?) - groceries (proof of purchase/till slips?) - cell phone (contract and accounts) - water and lights (copies of city council accounts) - insurance policies (copies of policies as well as financial information)	3 20 5 2 50
14	Proposal (form plus annexures)	15-40
15	Proof of fax to all credit providers (fax reports to all credit providers)	10
16	Responses (copies of all responses received)	10
17	Counter proposals (copies of all counter proposals received)	10
18	Response to all counter proposals (copies)	5
19	Proof of response sent (fax reports)	10
20	Application plus affidavits	32
21	Proof of service	10
TOTAL AMOUNT OF PAGES		269-309

The original application and annexures would consist of between 269-309 pages if it had to conform to the Absa requirements. If this application had to be duplicated to make provision for copies for the court, ten credit providers as well as copies to be kept by the debt counsellor, consumer and attorney, it would boil down to at least 3 766 pages (269 pages x 14). Compared to section 74 proceedings (administration order proceedings) or even an application for voluntary surrender of an estate the Absa requirements as raised in their affidavits would appear to be ridiculous.

### **3.2.6 Service of application**

- Work stream agreement

“Generally all applications should be served by the sheriff. During the work stream, credit providers consented to service by fax (or e-mail accompanied by an acknowledgement of receipt) on their debt review departments. Please note that this is a courtesy arrangement and the applicant should make sure that they are in possession of a consent letter from the relevant credit providers to this effect for each case.”

- Standard Bank of South Africa Ltd per Kennedy

- Case Ncube and DImani:

“Alternatively to paragraph 6 and 7 above, and if the contentions in paragraphs 6 and 7 are dismissed, then I respectfully submit that as there is no specific Section or Rule dealing with referrals in terms of the NCA, it follows that an Application of this nature must conform with the requirements of MCR Rule 55;

In this particular instance, I submit that the application is defective in that it does not comply with Rule 55 (1) of the Rules in two ways, being:

The application was not delivered to all the Respondents, especially Standard, as envisaged in the said Rule, in that it was not served and filed on the credit providers, especially Standard. Consequently, there is no compliance with Rule 55(1) read with Rule 2(1)(b) of the Rules.

Further, no evidential proof has been provided to the above Honourable Court that this Application was ever dispatched either per hand, via fax or registered post, or in any other manner. I respectfully submit that the above Honourable Court requires proof of faxing in the same way that the above Honourable Court would require a Sheriff's Return of Service in a "normal" Application, which would at least constitute prima facie evidence that all Respondents had the Application delivered to them.

Further legal argument will be presented to Court at the hearing of the matter in this regard."

It is clear that credit providers are exploiting the lacunae in the Act and the Regulations to the full. It is further clear that the major banks have turned their back on the work stream agreements to which they were a party. At most they are paying lip service to this. Even more disturbing is the fact that managers that formed part of the work stream agreements and participated in the training sessions are part of the efforts to obstruct the debt counselling process. When confronted, their responses moved from denials to explanations that the technical objections were only raised in matters that were brought before the work stream agreement was reached. However, when shown specific affidavits deposed of after the work stream agreement, a number of responses were elicited:

- "I was not aware of this"
- "In the beginning I read through all of the affidavits but the numbers have grown to such an extent that I merely sign without reading it"
- "This is exactly the reason why our previous attorneys got fired. They raised all these points contrary to our instructions"
- "We only take these points in cases where we disagree with the merits"
- "These points *in limine* must be included according to our attorneys"
- "They assure us that they do not raise them in court. Sometimes however, the Magistrates raise these issues themselves"
- "Debt counsellors do not draft their applications in terms of the guidelines set out in the work stream documents"
- "I know but these are our instructions"

The research team has however also noted that some of the credit providers, including some of the banks, such as African Bank and more recently Nedbank,

have not raised these points *in limine*. In cases where they are not satisfied with the proposal they take issue with the merits of the case put forward by the debt counsellor and/or consumer. This is to be commended.

### **3.2.7**

#### **Non-compliance to Act, Regulations and work stream agreement by debt counsellors**

There is also evidence of non-compliance with the requirements of the Act and non-adherence to the work stream agreements by debt counsellors. These actions and omissions are apparently the result of a lack of knowledge and experience in some cases. In other instances it is a deliberate retaliation in response to what is perceived as a lack of good faith by credit providers.

##### **3.2.7.1 *Unacceptable proposals***

The debt counsellor sent a proposal to the credit provider indicating that the client's current living expenses exceeded his income. According to the proposal the consumer was -3.68% over-indebted, and had –R4 139.34 available to pay his accounts. The proposed instalment on his home loan of R3 700 000.00 was –R1 656.51. This proposal could clearly not be accepted by the credit provider and is frankly nonsensical. Debt counselling was not a suitable solution for this consumer and sequestration or other debt relief measures should have been considered.

Example 2.1: Unacceptable proposal; debt counselling was not a suitable solution for this consumer

19. Feb. 2009 13:47 Webb MORTGAGE BROKER & ASS No. 5604 P. 2/4

Webb Abrie Rhodie and Assoc. CLIENT DETAILS 2009/02/19 11:06 AM  
Page 1  
NCR Form 17.2

**PERSONAL INFORMATION**

Summe & Forname: [REDACTED]  
Maiden Name: ANTHONY  
Identity Number: [REDACTED]  
Spouse Full Name: RONELLE  
Spouse Employer: UNEMPLOYED  
Spouse Income: R 0,00  
Spouse Under Debt Review: YES  
Married ANC / COP: COP  
No. of Dependents: 3  
Physical Address: [REDACTED] Postal Code: [REDACTED]  
Owner / Tenant: [REDACTED]  
Period at Address: 4 YEARS  
Postal Address: [REDACTED] Postal Code: [REDACTED]  
Phone: [REDACTED] (W) [REDACTED] (H) [REDACTED] [REDACTED]  
Email Address (if any): [REDACTED]  
Occupation: PROGRAMMER  
Name of Employer: ABSA BANK  
Employment Period: 2 YEARS  
Address of Employer: 270 REPUBLIC RD

**INCOME & DEDUCTIONS**

Description	Income	Deduction	Net Income
GROSS INCOME	31 014.85		
ABSA GROUP LIFE		187.73	
CAR PAYMENTS		5 815.01	
CSLS 3D		115.56	
PF 82 CONTRIBUTION		1 883.10	
TAX		6 825.99	
LIF		124.78	
	31 014.85	14 754.19	R 16 260.66

**EXPENDITURES**

Description	Amount
CAR INSURANCE	1 200.00
CELLPHONE X2	200.00
COST OF LIVING	3 000.00
LEVY	500.00
LIFE INSURANCE	1 500.00
MEDICAL	4 000.00
PETROL	1 000.00
SCHOOLFEES	3 000.00
TSLKOM	100.00
UNIVERSITY	2 500.00
WATER & LIGHTS, RATES	1 500.00
0.00% Contingency	
<b>Total</b>	<b>20 400.00</b>

**DEBT OBLIGATIONS** R-4 139.34 is available to repay monthly debt (R 31 014.85 - R 35 154.19). Less 5.09%IDA (R-206.97) = -3.68% of current commitment

Name of Creditor	Account Number	Current Total Outstanding	Current Monthly Commitment	Interest Repaid	Principal Repaid
ABSA BANK - CREDIT	40 4264 8888	14 533.21	1 000.00	-35.81	
ABSA BANK LTD	72 888888	501 051.10	6 599.69	-382.04	
ABSA BANK LTD - VEHICLE	72 888888	318 000.00	3 815.01	-214.00	
ABSA BANK LTD - VIRGIN MONEY CREDIT CARD	52 8888888888	18 997.04	1 885.70	-49.43	
ALTECH AUTOMOBILE	31 888888	437.00	437.00	-14.09	
CELL C	31 420 888888	144.00	144.00	-5.30	
CELL C	11 42 888888	295.00	295.00	-10.68	
EDCON - EDGARS	7000 88888888	5 888.00	1 320.00	-55.93	
FIRSTRAND BANK - CREDIT CARD	4901 888888	163 431.00	7 177.00	-264.20	
FIRSTRAND BANK - PERSONAL LOAN	4 000 888888	340 000.00	6 000.00	-220.87	
MFC	8284V 888888	336 898.84	9 411.54	-346.45	
NEDBANK - AMERICAN EXPRESS CREDIT CARD	3768 888888	10 148.84	1 656.00	-61.70	
NEDBANK - HOME LOAN	31 42 888888	1 249 196.74	14 053.80	-517.44	
STANDARD BANK - BLUEBEAN CREDIT CARD	3130 88888888	30 848.74	3 889.14	-143.18	
STANDARD BANK - HOME LOAN	31 42 888888	1 700 000.00	45 000.00	-1 656.51	
TSLKOM	14 88888888	960.00	960.00	-35.34	
VIRGIN MOBILE	75 888888	396.00	396.00	-14.54	
VODACOM SERVICE PROVIDER	1 12 888888	548.00	548.00	-20.91	
5% PDA				-205.97	

[illegible]

The proposal sent by the debt counsellor provides the credit provider with certain information regarding the consumer's details and financial status. The consumer, currently staying on a golf estate in Honeydew, has a gross income of R80 000.00, however, no indication as to what the income consist of or any proof of income is provided. There are no deductions and therefore the net income is also R80 000.00.

A small column is provided to set out the living expenses of the consumer. Items such a groceries and telephone costs are not provided for. There is a lump sum of R25 000.00 included in the consumer living expenses titled 'loan agreement'. No indication is given as to what the 'loan agreement' entails. In total the consumer's living expenses amounts to R57 090.00. From this amount the PDA fees of R1 145.50 is deducted, leaving R21 764.50 to divide between the credit providers.

The consumer's total debt amounts to R25 633 577.68 and his total monthly debt obligations amount to R321 854.09. The consumer is 6.76% over indebted. He has 14 home loans, 9 credit cards, 3 vehicle loans and 13 other credit agreements. In terms of the payment proposal the consumer would have paid all his accounts by the year 2108. A monthly mortgage payment of R19 328.01 is substituted with a payment of R1 307.04.

There are no explanations regarding the proposal as to what the consumer will sacrifice in order to settle his account sooner, e.g. selling of the properties. A credit provider cannot be expected to accept a repayment proposal where the consumer will not live long enough to pay off his debts.



Example 2.3: Unacceptable proposal – excessive periods for repayments

27 Jan. 2009 11:09 WEBB ABRIE RHODES & ASSOCIATES No. 2722 P. 18/51-3

Webb Abrie Rhodes and Assoc. CLIENT DETAILS 2008/03/13 11:09 AM Page 1 NCR Form 17.2

**PERSONAL INFORMATION**

Surname & Forname: [REDACTED]  
 Maiden Name: [REDACTED]  
 Identity Number: [REDACTED]  
 Spouse Full Name: [REDACTED]  
 Spouse Employer: [REDACTED]  
 Spouse Income: R 0,00  
 Spouse Under Debt Review: [REDACTED]  
 Married ANC / COO: [REDACTED]  
 No. of Dependents: 0  
 Physical Address: [REDACTED] Postal Code: 0040  
 Owner / Tenant: OWNER  
 Period at Address: 1 YEAR  
 Postal Address: [REDACTED] Postal Code: 1715  
 Job: [REDACTED] (W) 01 [REDACTED] (H) 082 [REDACTED] (Cell)  
 Email Address (if any): [REDACTED]  
 Occupation: SELF EMPLOYED  
 Name of Employer: [REDACTED]  
 Employment Period: [REDACTED]  
 Address of Employer: [REDACTED]

**INCOME & DEDUCTIONS**

	Taxable	Deduction	Net Income
GROSS INCOME	80 000,00		
	80 000,00		R 62 000,00

**EXPENDITURES**

Description	Amount
COST OF LIVING	2 500,00
PRIV. CARE PARENTS	3 000,00
INSURANCE	3 500,00
LEVY	9 100,00
LIFE INSURANCE	2 700,00
LOAN AGREEMENT	25 000,00
MEDICAL	3 400,00
PETROL	2 500,00
WATER & LIGHTS	1 200,00
20,00% Contingency	5 100,00
<b>Total</b>	57 000,00

**DEBT OBLIGATIONS** R 23 910,00 is available to repay monthly debt (R 80 000,00 - R 57 000,00). Less 5,04% PDA (R 1 145,50) = 6,76% of current

Name of Creditor	Account Number	Current Total Outstanding	Current Monthly Commitment	Revised Monthly Payment	Status / Remarks
ABSA BANK LTD - HOME LOAN	[REDACTED]	1 407 145,75	19 378,31	1 387,64	
ABSA BANK LTD - HOME LOAN	[REDACTED]	1 893 718,38	23 533,71	1 863,89	
ABSA BANK LTD - HOME LOAN	[REDACTED]	3 308 792,48	42 300,00	3 266,49	
ABSA BANK LTD - HOME LOAN	[REDACTED]	309 982,82	5 800,00	293,22	
ABSA BANK LTD - HOME LOAN	[REDACTED]	1 423 943,98	34 000,00	1 389,94	
ABSA BANK LTD - HOME LOAN	[REDACTED]	1 841 319,96	28 000,00	1 813,24	
ABSA BANK LTD - HOME LOAN	[REDACTED]	1 000 000,00	10 000,00	970,24	
ABSA BANK LTD - VISION MORTG	[REDACTED]	72 570,84	3 000,00	230,87	
ABSA BANK LTD - VISION MORTG	[REDACTED]	15 858,75	719,80	20,07	
ABSA BANK LTD - VISION MORTG	[REDACTED]	392 713,19	4 741,57	380,05	
ABSA BANK LTD - VISION MORTG	[REDACTED]	374 015,09	8 435,94	343,42	
ABSA BANK LTD - HOME LOAN	[REDACTED]	2 430 448,80	34 000,00	2 396,58	
ABSA BANK LTD - HOME LOAN	[REDACTED]	2 445 248,73	34 000,00	2 411,68	
ABSA BANK LTD - HOME LOAN	[REDACTED]	30 732,18	1 000,00	100,41	
ABSA BANK LTD - HOME LOAN	[REDACTED]	30 764,37	1 000,00	100,41	
ABSA BANK LTD - HOME LOAN	[REDACTED]	488 620,42	17 000,00	471,64	
ABSA BANK LTD - HOME LOAN	[REDACTED]	11 871,82	1 000,00	100,41	
ABSA BANK LTD - HOME LOAN	[REDACTED]	2 283,00	810,00	81,10	
ABSA BANK LTD - HOME LOAN	[REDACTED]	15 796,00	1 000,00	100,41	
ABSA BANK LTD - HOME LOAN	[REDACTED]	11 833,02	1 000,00	100,41	
ABSA BANK LTD - HOME LOAN	[REDACTED]	31 999,00	1 000,00	100,41	
ABSA BANK LTD - HOME LOAN	[REDACTED]	94 817,72	3 000,00	286,11	

msw  
A

27. Jan. 2009 11:10		WEBB ABRIE RHODIE & ASSOCIATES		No. 2722 P. 39/51	
Webb Abrie Rhodie and Assoc.		CLIENT DETAILS		2008/12/12 11:39 AM	
				Page 2	
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NEDBANK - CREDIT CARD	5412	78 197.15	3 600.00	202.43	
PASTOR	840	7 308.16	800.00	54.10	
KENPRO7	107	66 411.47	2 500.00	169.00	
STANDARD BANK - BLUEBEAN CREDIT CARD	5120	78 238.67	3 711.93	251.00	
STANDARD BANK - BLUEBEAN CREDIT CARD	5120	78 248.00	3 750.99	251.60	
STANDARD BANK - BUSINESS CARD	5221	72 306.60	2 600.00	115.25	
STANDARD BANK - CHEQUE	00	202 864.42	3 000.00	202.87	
STANDARD BANK - CHEQUE	27	23 172.20	1 000.00	67.62	
STANDARD BANK - CREDIT CARD	5520	50 650.73	2 838.22	178.41	
STANDARD BANK - DINERS CLUB CREDIT CARD	3613	88 935.61	2 400.47	189.16	
STANDARD BANK - HOME LOAN	02	2 139 598.38	27 777.23	1 837.44	
STANDARD BANK - HOME LOAN	02	1 650 000.00	16 000.00	1 081.99	
STANDARD BANK - HOME LOAN	361	2 016 111.95	35 735.72	2 416.40	
STANDARD BANK - HOME LOAN 2	361	988 474.62	11 818.00	759.18	
STANDARD BANK - HOME LOAN 3	3	554 258.20	12 509.50	845.94	
TAUWORTS	101	14 818.38	1 481.83	100.21	
VENDOMIE PHARMACEUTICALS	800	11 918.00	800.00	54.10	
SHYDA				1 145.35	
		25 632 557.69	321 845.09	22 910.00	

139

### 3.2.7.2 Application to court and accompanying affidavits insufficient

Founding and supporting affidavits filed by debt counsellors and consumers often fall well short of the agreed minimum criteria as agreed to at the work streams. The particularity of these affidavits and the annexures required or at least required to be available at the hearing, have been dealt with above and are not repeated again.

Example 3: A set of insufficient filed affidavits

09-03-'09 12:40 FROM:kriek & van wyk 0568113532 T-781 P014/019 F-090

09-03-'09 09:02 FROM:DEBT LAW 0568113532 T-429 P001/002 F-007

15-12-'08 07:46 FROM:kriek & van wyk 0568113532 T-429 P001/002 F-007

CLERK OF THE CIVIL COURT

2008

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF PARTS  
HELD AT PARTS

Case No:

In the matter between:

BARRY KOTZE  
AND  
DAVID KEYSER

1st APPLICANT  
2nd APPLICANT

AND  
WEBBANK  
STANDARD BANK  
ASBA

FIRST RESPONDENT  
SECOND RESPONDENT  
THIRD RESPONDENT

APPLICATION BY CONSUMER TO COURT FOR DEBT REVIEW IN TERMS OF SECTION 85 OF THE NATIONAL  
CREDIT ACT 34 OF 2005

KINDLY TAKE NOTICE THAT application will be made on behalf of the Applicant in the above Honourable  
Court on the 15th day of NOVEMBER 2008 at 09H00 or as soon thereafter as Counsel for the  
Applicant may be heard for an order in the following terms:

1. That the Applicant is granted leave in terms of Section 85 to bring this application;
2. That the Applicant is over-indebted as set out in Section 79 of the National Credit Act 34 of 2005 and
3. That the Honourable Court make an order to restructure the 2nd Applicant's debt, as set out in the application.

TAKE FURTHER NOTICE that the founding affidavits of the Debt Counsellor, as well as affidavits of the 2nd  
Applicant attached hereto will be used in support of this application.

KINDLY TAKE FURTHER NOTICE that the Applicant nominates the below mentioned address for service  
upon receipt of any documents, notices and pleadings.

SIGNED and DATED at PARTS on this the 15th day of NOVEMBER 2008.

B. KOTZE  
ATTORNEY FOR THE APPLICANT  
BARRY KOTZE ATTORNEYS INC.  
C/O KRIEK & VAN WYK & KUMALO  
17 KERN STREET  
PARTS  
TEL: 011 3523  
TEL: 012 - 341 8234  
B.KOTZE@GPTHE045

09-23-'09 12:48 FROM-kriek & van wyk

0568113632

T-781 P015/019 F-090

21-JAN-2009 09:02 From:DEBT LAW

0123416004

To:WesBank FLR5581

P. 4

To: The Clerk of the Court  
PARTY'S

And to: WESBANK  
PER FAX: 011-049 5010

And to: STANDARD BANK  
PER FAX: 011-227 4521

And to: ABBA  
PER FAX: 011-221 7804

09-03-'09 12:48 FROM-kriek & van wyk 0568113632 T-781 P016/019 F-090

21-JAN-2009 09:03 From:DEBT LAM 8123416934 TorkiesBank FL00001 P.5

?

**IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF PARYS  
HELD AT PARYS**

In the matter between:

**BARRY KOTZE**  
**AND**  
**DAVID KEYSER**  
**AND**  
**WESBANK**  
**STANDARD BANK**  
**ASSA BANK LTD**

Case No:

1st APPLICANT  
2nd APPLICANT  
FIRST RESPONDENT  
SECOND RESPONDENT  
THIRD RESPONDENT

**FOUNDING AFFIDAVIT**

I, the undersigned,

**BARRY KOTZE**  
**IDENTITY NUMBER: 601026 5079 08 7**

Hereby declare under oath as follows:

1.

I am a major male and the 1st Applicant in this matter. The facts mentioned herein fall within my personal knowledge, unless stipulated otherwise and are to the best of my knowledge, true and correct.

2.


I am a registered Debt Counsellor with the National Credit Regulator (Registration Number NCRDC433) and do business under the name and style of Law Debt at Suite 103 Collage Galleries, 164 Mears Street, Sunnyside, Pretoria..

3.

The facts herein contained fall within my personal knowledge, unless stipulated otherwise and are to the best of my knowledge, true and correct.

4.

On the 15 September 2008, the second applicants approached myself for debt review. Attached hereto Annexure "FA 1".



09-03-'09 12:48 FROM:kriek & van wyk

0568113632

T-781 P017/019 F-090

21-JAN-2009 09:03 FROM:DEBT LAW

0123416934

TelkomBank FLR8801

P.G

5.

I confirm all the facts as contained in the second applicant's affidavit are to the best of my knowledge true and correct. I attach hereto the 2<sup>nd</sup> Applicant's affidavit. (Annexure "A 2").

B. J. Kriek  
DEPONENT

Thus signed and sworn before me at Parys on this 2<sup>nd</sup> day of December 2008, the Deponent having sworn that the contents of this affidavit are true and acknowledged that he knows and understands the contents of the this affidavit, that he has no objection to taking the prescribed oath, and that he considers the prescribed oath to be binding on his conscience.

COMMISSIONER OF OATHS

FULL NAME:

Certified a true copy of the original

DESIGNATION:

Capl. G.N. ABRAHAM

BUSINESS ADDRESS:

74255045 BT  
Commissioner of Oaths

AREA:

Date: 03/12/08

09-03-'09 12:48 FROM:kriek & van wyk 0568113632 T-781 P018/019 F-090

21-JUN-2009 09:08 From:DEBT LWA 0123416934 Tel:KraBank FLR0001 P.20

"FA2"

---

**SUPPORTING AFFIDAVIT**

---

I, the undersigned,

**DAVID KEYSER**  
**IDENTITY NUMBER: 650925 5051 082**

Hereby declare under oath as follows:

1.

I am the 2<sup>nd</sup> Applicant in this matter. I am a major male parolee and medically unfit to work. I reside at Plot 516, Koppieskraal, Parys. The facts mentioned herein fall within my personal knowledge, unless stipulated otherwise and are to the best of my knowledge, true and correct.

2.

The First Respondent is Standard Bank, a company with limited liability, incorporated in terms of the Companies Act 61 of 1973, with tax number 011 - 227 4821.

3.

The Second Respondent is Wesbank, a company with limited liability, incorporated in terms of the Companies Act 61 of 1973, with tax number 011 - 649 8010.

4.

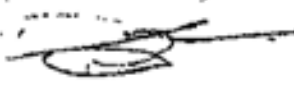
The Third Respondent is Absa Bank, a company with limited liability, incorporated in terms of the Companies Act 61 of 1973, with tax number 011 - 221 7864.

5.

The above Honourable court has jurisdiction to hear this application based on the provisions of Section 28, of the Magistrates Court Act of 32 of 1944.

6.

On 16 September 2008, I/we applied for debt review, since I/we are unable to satisfy in a timely manner all the obligations under all my/our credit agreements.





09-03-'09 12:41 FROM:kriek & van wyk

0568113632

T-781 P019/019 F-090

21-JAN-2009 09:00 From:DEBT LAW

0123416934

To:MrsBank FLR0001

P.21


7.

- 7.1 We do not have enough money at the end of the month to pay all my/our creditors and to pay my/our basic living expenses. We have attached my pension pay advice, marked annexure "B".
- 7.2 My/Our financial situation is more fully set out in the debt restructure proposal attached hereto, marked annexure "A". We have reduced my/our living expenses as far as possible.

8.

We are advised by our Debt Counsellor, that the 60 (sixty) day period mentioned in Section 95 is about / has expired and we are further advised that all our creditors have not responded positively to the proposed Debt Rehabilitation and that as a result thereof, our Debt Counsellor is obliged by law to lodge this application with the above honourable court.

We therefore humbly request the above Honourable Court to make an order restructuring my/our debt as proposed in annexure "A".

  
(DEPONENT)

Thus signed and sworn before me at PRESTON S.A.P.S. on this 16 day of JANUARY 2009, the Deponent having sworn that the contents of this affidavit are true and acknowledged that he knows and understands the contents of the this affidavit, that he has no objection to taking the prescribed oath, and that he considers the prescribed oath to be binding on his conscience.

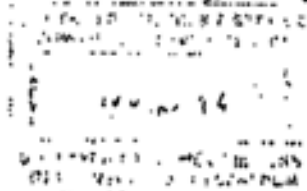
  
COMMISSIONER OF OATHS

FULL NAMES: TOOE WELZAR REMONINS

DESIGNATION: CONSTABLE

BUSINESS ADDRESS: 92 LENOX STREET PRESTON 7585

AREA: N.F.S.



In the particular application, the proposal relied on was also incorrect and unrealistic and rightly criticised by one of the credit providers (WesBank) in their opposing affidavit as follows:

“The proposal has the incorrect balance for the relevant product and it does not indicate an interest rate or the term of repayment.

Without taking interest into account the repayment proposal is over 139 years which is extremely excessive bearing in mind that the initial repayment terms in respect of the 1<sup>st</sup> Respondent’s products were over a substantially lesser period.

The proposed payment doesn’t even cover the interest accruing on the account and as such the 2<sup>nd</sup> Applicant will become further and further indebted to the 1<sup>st</sup> Respondent.


Account no. 85098716928 – the outstanding balance is R177 793.08 with the current instalment being R4 399.34 including the arrears on the account. The Applicant’s proposal is to repay the debt in monthly instalments of R108.85 per month, which leaves a shortfall of R4 290.49 on the instalment alone. It is extremely unlikely that the Applicant will ever repay her debt even over the excessive and unrealistic period of 139 years as proposed. When taking the proposed period of repayment one will see that same only covers the capital amount and no provision is made for interest at all.”

### **3.2.7.3 No proposal sent to credit providers**

In terms of the work stream agreements a debt counsellor should send a proposal to his client’s credit providers 25 business days after the application for debt review. This proposal can then either be accepted or rejected by the credit provider. Certain debt counsellors have however opted not to send proposals to credit providers at all, whilst others will not send a proposal if such proposal does not fall within the ‘automatic acceptance’ range as stipulated by the work stream agreements. The argument is that the sending of a proposal in such an instance is merely a waste of time. Consequently, the case is referred directly to the Magistrate’s Court and a notice informing the credit provider of the referral is subsequently sent to the credit provider, along with the proposal. A strict interpretation of section 86(7)(c) of The National Credit Act does not require the debt counsellor to send a proposal to the credit provider before referring the matter to court. However, this is required by the work stream guidelines. It is suggested that conduct of not sending proposals to credit providers is firstly

contrary to the *audi alteram partem* rule, and secondly, not in the spirit of the work stream agreement and NCA. Moreover, it also leads to credit providers adopting negative attitudes towards debt counsellors and the debt counselling process. Debt counsellors have adopted this attitude as a direct result of the credit providers not entertaining proposals falling outside the automatic acceptance terms or in retaliation to the obstructive behaviour of the banks.

Example 4: Notification of no proposal

		<b>Gert Cloete Kruger</b>		PROGRESS NOTIFICATION - Form 17.5
		Registered Debt Counsellor. Registration number NCRDC363		
To the Credit Department:	<b>ABSA BANK (CC)</b>			
	8th Floor, Marble Towers, Cnr Jeppe & Von Wielligh Streets, Johannesburg,			
From:	<b>By Facsimile to: 011 221 7864</b>			
	Gert Cloete Kruger Registered Debt Counsellor, Registration number NCRDC363 Unit 7, Ground floor Coldstream Office Park Corner of Hendrik Potgieter & Duai Road Little Falls 1735 Telephone: 086-111-3967 Facsimile Number: 086-508-2186			
Date:	<b>02 February 2009</b>			

<b>NOTIFICATION TO CREDIT PROVIDER</b>	
Name & Surname of Consumer:	[REDACTED]
Account Number:	[REDACTED]
Identity Number of Consumer:	[REDACTED]

This notice serves to advise you that:

**We advise that we will not be submitting proposals on this client and in terms of section 86(7)(c) of the National Credit Act we will refer the matter to the Magistrates Court. You will be advised by our attorney of the court date in due course.**

Compliant to the Industry Agreement, this consumer has been provided a with payment schedule in line with the proposals submitted and monthly payments will be made by the consumer.

**Gert Cloete Kruger**

Z:\CR\Westrand Branch\Current Clients\PI\Potgieter, YZ\Credit Review Plan\Potgieter, YZ - Current.xls)Form 17 (5) - 1
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#### **3.2.7.4 Non-standardised software packages used by debt counsellors**

As pointed out by Ms Marlene Heymans in a presentation to the research team:

“It would appear that most debt counsellors generate proposals from software supplied by the major PDAs. This means that DCs use the likes of the CARE software from NPDA and Debtpro from CPE. Some debt counsellors including groups like Octogen, DC Partners and Steven Logan have software designed for their own purposes. There are probably upwards of 8 different software packages that generate proposals.

Functionality of each package determines the outcome of proposals. Some of the challenges are highlighted below:-

- The correct calculation for distribution amounts to different creditors is critical. Current packages seem to apply different rules and algorithms. Creditors receive proposals based on these rules and have raised concerns about non-uniform application of rules and guidelines.
- Rules applied for interest rates. Some packages sets interest at 0% or 5% (which creditors, not surprisingly, do not like), whilst other packages works on a prime plus a certain margin basis.
- Some packages provide a lot of leeway to DCs to change a suggested outcome, thus for instances allowing that one creditor receives a much higher interest rate than other creditors as per the SA Home Loans example above.
- A bank said that the CARE system from NPDA does not enable a DC to rework counter proposals or apply the *in duplum* rule.

When creditors do not understand and trust the proposal they are likely to reject it. All banks interviewed, raised some doubts about the integrity of proposals, indicating that they may not trust the information if it is not clear to them what fees were deducted for the DC, PDA and other legal costs before the amounts for distribution were derived.

One bank expressed a view that there should only be one software system that is used by all DCs. Now they deal with situations where the outcome of different packages for the same case varies significantly. Some proposals generated by certain packages result in an decline, where as if it was done on another software system they may have accepted the proposal.

### Recommendations

- a) A review of available software should be conducted to understand where it lacks core functionality for effective debt counselling application. Functionality related to interest calculations, fees, and how it captures information sourced from creditors is critical.
- b) A range of debt counselling cases should be tested on different software. The aim is to assess the proposal outcomes of each. Proposals should be transparent and fair to all parties concerned. For example, DC should not get too much fees, one creditor should not be favoured above another, and the way interest is used and different debts prioritised should result in the shortest time to rehabilitate the consumer.
- c) Industry rules and standards on the “rules” for distribution should be established. The NDMA processes in this regard will add a lot of value.
- d) The review should verify whether different software packages take cognisance of reckless loans and apply the *in duplum* rule as per Section 102 of the NCA. Further it should reflect allowed fees under NCA like the monthly service fee. It would appear that current packages do not cater for this.
- e) Software that adhere to industry rules (like that of the NDMA) could obtain certification from a body like the NDMA and display that on the proposal. This way the credit provider can have more faith in the proposals.”

Following on the averments and suggestions of Ms Heymans the research team drafted a set of facts showing *inter alia* income, expenditure, credit agreements etc. A number of debt counsellors, using different software packages were then requested to draft a proposal based on the given set of facts. The set of facts follows hereunder, followed by summaries of the different proposals. The full proposals, as received are added as an addendum to this report.

Set of facts 1: System test case study

**Client Name : Sara Jones**

Gross Income			35 000
Deductions	Medical Aid	1 500	
	Union Fees	50	
	Group Life	500	
	PAYE	3 800	
	UIF	150	
			6 000
Net			29 000
Living Expenses			
	Groceries	2 500	
	Petrol	3 500	
	Parking	50	
	Rates and Taxes	1 000	
	Body Corporate Levies	780	
	Water and electricity	1 806	
	School Fees	600	
	Bank Charges	250	
	Short Term Insurance	650	
	Car Insurance	850	
	Domestic Worker	300	
	Garden Service	200	
	Telephone	125	
	Cell phone	670	
	Internet	230	
	Security	450	
	Maintenance	300	
	Clothing	150	
			14 411
<b>Distributable income</b>			<b>14 589</b>

## **Credit Agreements**

Credit Provider	Account Ref	Type of Credit	Balance	Interest Rate	Monthly Instalment
Standard Bank	5120-1234-5678-1234	Credit Card	22,541	22	2,340
FNB	5221-8787-6565-3434	Credit Card	38,256	22	3,544
Standard Bank	5274-1212-3232-4343	Credit Card	19,872	22	1,570
RCS	5005-777821	Loan	5,000	37	418
RCS	64547-4564	Retail	9,472	32	1,057
Nedbank	3768-4548-4564-2100	Credit Card	16,145	22	1,654
Foschini	4164-4567-0014-0215	Credit Card	4,650	24	570
Woolworths	6007-4564-4202-2124	Retail	33,044	27	4,545
Woolworths	6007-8504-5246-4460	Retail	16,862	27	1,486
ABSA	4550-2467-7000-0021	Credit Card	22,987	20	1,300
ABSA	5471-2000-6457-5454	Home Loan	395,450	12	4,500
ABSA	3017-214-444	Personal Loan	10,040	20	394
Nedbank	8148-4654-0548	Credit Card	15,991	19	1,190
FNB	4000-1548-66465	Personal Loan	6,854	18	507
Edcon	7000-15456-456456-156	Retail	4,690	25	1,365
MFC	BAUJ456456	VAF	67,489	15	2,250
Total			689,343		28,690

Proposal 1: Software package - Care (Counselling and Rehabilitation Empowerment)

Summary Installment Offer From Period 2009-05

Client View

Madoda enterprises  
Reg No: 2452452  
VAT No: wertwert  
South Street  
Tel: 2452452424 Fax: 2345234523

ID Number 6401165083085  
Surname Jones  
Full Names Sara

Flag	Creditor/Deduction No	Starting Period	Final Payment Period	Remaining Period(s)	Total Repayable	Minimum Installment	Balance	Principal Debt Amount	Interest Rate	Interest Repayable	
D	Credit Card - ABSA	Current	2011-02	22	28,184.27	1,300.00	23,848.35	22,987.00	20.00	5,197.27	
	4550246770000021	2009-05	Suggested	2014-09	65	51,065.38	425.80	23,848.35	22,987.00	20.00	25,324.84
D	Credit Card - FNB Bank	Current	2010-05	13	44,162.53	3,544.00	39,832.05	38,256.00	22.00	5,906.53	
	5221878765653434	2009-05	Suggested	2014-02	58	83,113.92	781.68	39,832.05	38,256.00	22.00	40,376.24
D	Credit Card - Nedbank	Current	2010-04	12	18,420.30	1,654.00	16,810.13	16,145.00	22.00	2,275.30	
	3788454845642100	2009-05	Suggested	2012-06	38	29,127.29	329.89	16,810.13	16,145.00	22.00	11,411.95
D	Credit Card - Nedbank	Current	2010-08	16	18,541.48	1,190.00	16,558.40	15,991.00	19.00	2,550.48	
	814846540548	2009-05	Suggested	2014-11	67	35,576.36	281.01	16,558.40	15,991.00	19.00	17,667.18
C	Credit Card - STD Bank	Current	2010-03	11	25,679.09	2,340.00	23,469.63	22,541.00	22.00	3,138.09	
	5120123456781234	2009-05	Suggested	2013-05	49	44,752.41	500.00	23,469.63	22,541.00	22.00	19,798.30
D	Credit Card - STD Bank	Current	2010-07	15	23,438.91	1,570.00	20,690.67	19,872.00	22.00	3,566.91	
	5274121232324343	2009-05	Suggested	2012-12	44	38,102.48	406.04	20,690.67	19,872.00	22.00	16,175.70
D	Overdraft - ABSA	Current	2008-01	225	1,009,401.15	4,500.00	404,255.91	395,450.00	12.00	613,961.15	
	Home loan	2009-05	Suggested	2018-04	84	641,212.32	7,398.99	404,255.91	395,450.00	12.00	211,186.74
D	Personal Loan - ABSA	Current	2012-03	35	13,580.63	394.00	10,415.34	10,040.00	20.00	3,540.63	
	3017214444	2009-05	Suggested	2014-04	60	21,704.37	185.98	10,415.34	10,040.00	20.00	10,493.94
D	Personal loan - Direct Axis	Current	2010-08	16	7,884.90	507.00	7,084.19	6,854.00	18.00	1,030.90	
	4000154866465	2009-05	Suggested	2015-01	69	15,039.19	113.95	7,084.19	6,854.00	18.00	7,374.53
D	Personal Loan - RCS	Current	2010-08	16	6,673.77	418.00	5,351.20	5,000.00	37.00	1,673.77	
	5005777821	2009-05	Suggested	2009-05	1	5,696.20	175.46	5,351.20	5,000.00	37.00	351.20



ID Number		6401165083085								
Surname		Jones								
Full Names		Sara								

Flag	Creditor/Deduction No	Starting Period	Final Payment Period	Remaining Period(s)	Total Repayable	Minimum Instalment	Balance	Principal Debt Amount	Interest Rate	Interest Repayable
D	Personal Loan - RCS	Current	2010-03	11	11,412.42	1,057.00	10,044.79	9,472.00	32.00	1,940.42
	645474564	2009-05	Suggested	6	11,082.92	285.48	10,044.79	9,472.00	32.00	1,013.30
D	Store Card - Jet - (Edcon)	Current	2009-06	4	5,052.18	1,365.00	4,910.16	4,690.00	25.00	362.18
	700015456456456156	2009-05	Suggested	31	8,410.13	109.36	4,910.16	4,690.00	25.00	3,266.84
D	Store Card - Woolworths	Current	2010-02	10	5,272.38	570.00	4,859.37	4,650.00	24.00	622.38
	4164456700140215	2009-05	Suggested	33	8,367.65	103.95	4,859.37	4,650.00	24.00	3,266.32
C	Store Card - Woolworths	Current	2010-01	9	37,654.62	4,545.00	34,722.34	33,044.00	27.00	4,610.62
	6007456442022124	2009-05	Suggested	30	54,892.95	834.45	34,722.34	33,044.00	27.00	18,888.86
D	Store Card - Woolworths	Current	2010-06	14	20,366.28	1,486.00	17,718.44	16,862.00	27.00	3,504.28
	6007850452464460	2009-05	Suggested	15	22,805.22	425.81	17,718.44	16,862.00	27.00	4,713.50
D	Vehicle Finance - MFC (Motor Finance Corporation)	Current	2012-07	39	86,935.01	2,250.00	69,372.68	67,489.00	15.00	19,446.01
	BAU456456	2009-05	Suggested	79	140,407.16	931.07	69,372.68	67,489.00	15.00	65,346.79

<b>Summary</b>	<b>Current</b>	<b>Variance</b>	<b>Suggested</b>
Balance	709,941.65	0.00	709,941.65
Remaining Period(s)	225	141	84
Final Period	2028-01	141	2016-04
Interest Amount Repayable	673,316.92	216,660.69	456,656.23
Total Amount Repayable	1,362,659.92	151,343.97	1,211,315.95
Rehabilitation Contribution	28,690.00	14,101.00	14,589.00

**Flag Legend**

A - Amount in Arrear

C - Cash

D - Debit Order

E - EFT


P - Payroll Deduction

**Accepted by** \_\_\_\_\_

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

Proposal 2: Software package - CPR (Consumer Protection Excellence)



**CPE**  
Consumer Protection Excellence

Debt Counsellor  
Greenfern Debt Counseling  
PO BOX  
STRAND

Email: jo@cpepda.co.za

---

**Form 16 A** **DEBT RESTRUCTURING PROPOSAL**

Consumer: Jones, Sara  
ID: 8504125063084

---

Please take note: Sec 88(3) determines that litigation by the credit provider is suspended while a debt review is pending.  
Within reference to abovementioned consumer(s) evaluation in terms of Section 86 read with Regulation 24(3) on (4), over indebtedness was determined.

Credit Provider	Reference	Current				Proposed			
		Payment Period	Annual Interest	Instalment	Outstanding	Final Pay Date	Payment Period	Annual Interest	Instalment
1 Standard Bank All (Debt counseling unit)	5120123456781234	10.00	22.00%	R2,340.00	R22,541.00	31/10/2010	19.00	0.00%	R1,130.41
2 FIRST NATIONAL BANK	5221878765432109	12.00	22.00%	R3,544.00	R38,256.00	31/12/2010	21.00	0.00%	R1,712.03
3 Standard Bank All (Debt counseling unit)	5274121232324343	14.00	22.00%	R1,570.00	R19,872.00	28/02/2011	23.00	0.00%	R758.43
4 RCS***	5005777821	15.00	37.00%	R418.00	R5,000.00	28/02/2011	23.00	0.00%	R201.93
5 RCS***	645474564	10.00	32.00%	R1,057.00	R9,472.00	31/10/2010	19.00	0.00%	R510.62
6 Nedbank All (Debt counseling unit)	3768454845642100	10.00	22.00%	R1,664.00	R16,145.00	30/11/2010	20.00	0.00%	R799.01
7 Foschini Group- Due South, Markhams	4164458700140215	0.00	24.00%	R570.00	R4,650.00	30/09/2010	18.00	0.00%	R275.36
8 Woolworths	6007458442022124	8.00	27.00%	R4,545.00	R33,044.00	30/06/2010	15.00	0.00%	R2,195.60
9 Woolworths	6007850452464480	13.00	27.00%	R1,486.00	R16,862.00	31/01/2011	22.00	0.00%	R717.86
10 ABSA All (Debt Counseling unit)	4550246770000021	21.00	20.00%	R1,309.00	R22,987.00	31/05/2011	26.00	0.00%	R628.00
11 ABSA All (Debt Counseling unit)	5471200064575454	212.00	12.00%	R4,500.00	R396,450.00	30/06/2013	51.00	0.00%	R2,173.86
12 ABSA All (Debt Counseling unit)	3017214444	33.00	20.00%	R394.00	R10,040.00	31/10/2011	31.00	0.00%	R190.33
13 Nedbank All (Debt counseling unit)	814846540548	15.00	19.00%	R1,190.00	R15,991.00	28/02/2011	23.00	0.00%	R574.86
14 Fnb - Debt Review Dept	4000154866465	15.00	18.00%	R507.00	R6,854.00	31/03/2011	24.00	0.00%	R244.92
15 EDCON - EDGARS	700015456456456155	3.00	25.00%	R1,365.00	R4,690.00	30/11/2009	8.00	0.00%	R659.40
16 MFC - Motor Finance Corporation	BAUJ456456	0.00	15.00%	R2,250.00	R67,489.00	30/11/2011	32.00	0.00%	R1,085.93
<b>Client Monthly Payment</b>	<b>R14,589.00</b>	<b>Debt Counsellor Costs:</b>	<b>R729.45</b>	<b>Totals</b>	<b>R28,690.00</b>	<b>R589,343.00</b>	<b>Totals</b>	<b>R13,859.55</b>	

\*\*\*.00 Instalment less than interest - can not be solved

Income			Deductions			Living Expenses		
Description	Amount		Description	Amount		Description	Amount	
Total income	R35,000.00	Self	Union Fees	R50.00	Self	Petrol	R3,500.00	
			Medical Aid	R1,500.00	Self	Parking	R50.00	
			UIF	R150.00	Self	Maintenance	R300.00	
			Group Life	R500.00	Self	School Fees	R600.00	
			PAYE	R3,800.00	Self	Rates & Taxes	R1,000.00	
						Bank Charges	R250.00	
						Telephone	R125.00	
						Internet	R230.00	
						Body Corporate Levies	R780.00	
						Water and Lights	R1,806.00	
						Cell Phone	R670.00	

						Car insurance	R850.00
						Security	R450.00
						Short term insurance	R650.00
						Garden service	R200.00
						Clothing	R150.00
						Domestic Worker	R300.00
						Groceries	R2,500.00
Total		R35,000.00	Total		R6,000.00	Total	R14,411.00

Please note that payment values will change during the duration of the loan period, due to the fact that some creditors will be fully paid at an earlier stage, which will mean that more money will be available for payment to the remaining creditors. The new repayment period was calculated by taking in consideration Sec 103(5) and balances according to data received. Find attached consent document to be signed by the Credit Provider, Consumer and Debt Counsellor according to Sec 85(8)a.

Written confirmation from the Credit Provider regarding consent or no consent is required before \_\_\_\_\_  
in order to prevent upsplitting of the Debt Review process according to Sec 86(10).

### **Installment Offer Acceptance**

I, \_\_\_\_\_ (ID \_\_\_\_\_)

in my capacity as \_\_\_\_\_ and duly authorised by \_\_\_\_\_

accept the proposed Debt Rearrangement plan as set in this Installment Offer for Sara Jones

The acceptance constitutes an addendum to the credit agreement between the Consumer and the Credit Provider  
for as long as the Consumer Honours the debt rearrangement plan as proposed herein.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ Signature \_\_\_\_\_

### **Counter Installment Offer**

Monthly Installment: \_\_\_\_\_ Principal Debt: \_\_\_\_\_

Interest Rate: \_\_\_\_\_ Telephone Number: \_\_\_\_\_


Comments \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Proposal 3: Software package – Self designed programme

No.	Creditor & Account/Ref number	Outstanding Balance	Instalment	Date Opened	Original Term	Interest Rate	Proposed	Proposed Instalment	Term	Interest on Outstanding Balance
1	Standard Bank Credit Card - Ref: 5120-1234-5678-1234	22,541	2,340	-	11	22.000%	22%	1,040.33	26	413.25
2	FNB Credit Card - Ref: 5221-8787-6565-3434	38,256	3,544	-	12	22.000%	22%	1,575.60	29	701.36
3	Standard Bank Credit Card - Ref:5274-1212-3232-4343	19,872	1,570	-	15	22.000%	22%	698.00	33	364.32
4	RCS Loan- Ref: 5005-777821	5,000	418	-	15	37.000%	37%	185.84	35	154.17
5	RCS Retail - Ref: 64547-4564	9,472	1,057	-	10	32.000%	32%	469.92	26	252.59
6	Nedbank Credit Card- Ref: 3768-4548-4564-2100	16,145	1,654	-	11	22.000%	22%	735.34	26	295.99
7	Foschini Credit Card - Ref: 4164-4567-0014-0215	4,650	570	-	9	24.000%	24%	253.41	22	93.00
8	Woolworths Retail - Ref: 6007-4564-4202-2124	33,044	4,545	-	8	27.000%	27%	2,020.63	20	743.49
9	Woolworths Retail - Ref: 6007-8504-5246-4460	16,862	1,486	-	13	27.000%	27%	660.65	31	379.40
10	ABSA Credit Card - Ref: 4550-2467-7000-0021	22,987	1,300	-	21	20.000%	20%	577.96	39	383.12
11	ABSA Home Loan - Ref: 5471-2000-6457-5454	395,450	4,500	-	212	12.000%	12%	2,000.63	84	3,954.50
12	ABSA Personal Loan - Ref: 3017-214-444	10,040	394	-	33	20.000%	20%	175.17	47	167.33
13	Nedbank Credit Card - Ref: 8148-4654-0548	15,991	1,190	-	15	19.000%	19%	529.05	33	253.19
14	FNB Personal Loan- Ref: 4000-1548-66465	6,854	507	-	15	18.000%	18%	225.40	33	102.81
15	Edcon Retail - Ref: 7000-15456-456456-156	4,690	1,365	-	4	25.000%	25%	606.86	9	97.71
16	MFC VAF - Ref: BAUJ456456	67,489	2,250	-	38	15.000%	15%	1,000.31	49	843.61
		689,342.66	28,690.00				12,755.10		2,181.68	

Creditor	Month												
	0 - 9	10 - 20	21 - 22	23 - 26	27 - 29	30 - 31	32 - 33	34 - 35	36 - 39	40 - 47	48 - 49	50 - 84	85 - 84
Edcon Retail - Ref: 7000-15456-456456-156	606.86												
Woolworths Retail - Ref: 6007-4564-4202-2124	2,020.63	2,025.68											
Foschini Credit Card - Ref: 4164-4567-0014-0215	253.41	262.01	262.01										
Standard Bank Credit Card - Ref: 5120-1234-5678-1234	1,040.33	1,046.49	1,211.01	1,211.01									
Nedbank Credit Card - Ref: 8148-4654-0548	529.05	545.30	634.20	634.20	781.59	970.01	970.01						
RCS Retail - Ref: 64547-4564	469.92	482.18	556.23	556.23									
FNB Credit Card - Ref: 5221-8787-6565-3434	1,575.60	1,599.41	1,923.59	1,923.59	1,923.59								
Woolworths Retail - Ref: 6007-8504-5246-4460	660.65	683.11	829.86	829.86	986.14	986.14							
FNB Personal Loan- Ref: 4000-1548-66465	225.40	236.54	278.25	278.25	352.94	352.94	352.94						
Standard Bank Credit Card - Ref: 5274-1212-3232-4343	698.00	715.96	839.01	839.01	1,061.39	1,061.39	1,061.39						
RCS Loan- Ref: 5005-777821	185.84	194.42	229.06	239.62	300.08	345.65	345.65	345.65					
Nedbank Credit Card- Ref: 3768-4548-4564-2100	735.34	755.66	874.45	874.45									
ABSA Credit Card - Ref: 4550-2467-7000-0021	577.96	599.04	713.00	733.28	936.41	1,145.03	1,262.65	1,462.36	1,462.36				
ABSA Personal Loan - Ref: 3017-214-444	175.17	183.52	222.57	232.98	299.64	371.86	427.11	549.17	549.17	613.24			
MFC VAF - Ref: BAU456456	1,000.31	1,048.70	1,272.99	1,335.24	1,742.99	2,201.18	2,511.86	3,160.84	3,160.84	3,457.15	3,457.15		
ABSA Home Loan - Ref: 5471-2000-6457-5454	2,000.63	2,100.57	2,563.20	2,691.42	3,525.50	4,500.64	5,235.75	6,806.82	7,220.87	8,386.70	8,941.67	12,691.15	

Proposal 4: Software package - Summit



Reference: SUM000007

### Payment Proposal Summary:

**Sara Jones [ 7901253012081 ]**

**Debt Counsellor / Mediator**  
 Clark Gardner NCRDC44  
 Block K Central Park  
 16th Road  
 Midrand  
 Fax: 0865359698  
 clark@summitfin.co.za

#### Summary of Client Obligations

Creditor	Type	Capital	Rate	Instalment	Term	Gross Loan
Standard Bank	Credit Card	22 541.00	22.00	2 340.00	11	25 740.00
FNB	Credit Card	38 256.00	22.00	3 544.00	12	42 528.00
Standard Bank	Credit Card	19 872.00	22.00	1 570.00	15	23 550.00
RCS	Personal Loan	5 000.00	37.00	418.00	15	6 270.00
RCS	Retail Account	9 472.00	32.00	1 057.00	11	11 627.00
Nedbank	Credit Card	16 145.00	22.00	1 654.00	11	18 194.00
Foschini	Credit Card	4 650.00	24.00	570.00	9	5 130.00
Woolworths	Retail Account	33 044.00	27.00	4 545.00	8	36 360.00
Woolworths	Retail Account	16 862.00	27.00	1 486.00	13	19 318.00
ABSA	Credit Card	22 987.00	20.00	1 300.00	21	27 300.00
ABSA Home Loan	Mortgage	395 450.00	12.00	4 500.00	206	927 000.00
ABSA	Personal Loan	10 040.00	20.00	394.00	33	13 002.00
Nedbank	Credit Card	15 991.00	19.00	1 190.00	15	17 850.00
FNB	Personal Loan	6 854.00	18.00	507.00	15	7 405.00
Edcon	Retail Account	4 690.00	25.00	1 365.00	4	5 460.00
MFC	Vehicle finance	67 489.00	15.00	2 250.00	38	85 500.00
		<b>689 343.00</b>		<b>28 690.00</b>		<b>1 272 434.00</b>

#### Proposed Restructured Obligations

Creditor	Type	Capital	Rate	Instalment	Term	Gross Loan
Standard Bank	Credit Card	22 541.00	22.00	954.37	32	31 894.24
FNB	Credit Card	38 256.00	22.00	1 511.74	35	55 521.64
Standard Bank	Credit Card	19 872.00	22.00	696.21	41	30 366.42
RCS	Personal Loan	5 000.00	37.00	197.60	54	11 659.12
RCS	Retail Account	9 472.00	32.00	454.85	33	15 701.74
Nedbank	Credit Card	16 145.00	22.00	683.57	32	22 844.21
Foschini	Credit Card	4 650.00	24.00	225.14	28	6 530.81
Woolworths	Retail Account	33 044.00	27.00	1 764.84	26	47 305.96
Woolworths	Retail Account	16 862.00	27.00	656.64	40	27 890.28
ABSA	Credit Card	22 987.00	20.00	604.32	58	38 600.58
ABSA Home Loan	Mortgage	395 450.00	12.00	3 889.42	240	1 108 844.41
ABSA	Personal Loan	10 040.00	20.00	258.10	60	17 111.63
Nedbank	Credit Card	15 991.00	19.00	520.59	42	23 309.15
FNB	Personal Loan	6 854.00	18.00	218.99	42	9 804.59
Edcon	Retail Account	4 690.00	25.00	387.72	15	5 873.67
MFC	Vehicle finance	67 489.00	15.00	1 215.44	84	116 048.12
		<b>689 343.00</b>		<b>14 239.54</b>		<b>1 569 296.57</b>

**Consumer Declaration and Signature:**  
 I Sara Jones [ 7901253012081 ], declare that the information contained in this Debt Rearrangement plan is true and correct, and I undertake to commit to the restructured payments as set out in this debt rearrangement plan. I understand that any payment default, or failure to adhere to the terms of Debt Review, could result in my Debt Review application being terminated by any of my Credit Providers or by the Debt Counsellor.

Signed: \_\_\_\_\_ (Consumer)

Date: \_\_\_\_\_

This Debt Rearrangement plan is an agreement between the Consumer and his/her Credit Providers only. Summit is not a party to this agreement, and is not liable for any payment default or any other breach of this repayment proposal, or the rules of Debt Mediation, by the Consumer. Summit will not directly handle any party's money, nor will Summit make any payments on behalf of the Consumer. The Consumer will appoint a FPA to make payments as set out in this Debt Rearrangement agreement, subject to any reasonable and necessary additional instructions from Summit. Summit accepts no liability for any distribution irregularities by the FPA, or for any payment defaults by the consumer. Account information reflected is as per the Certificate of Balance provided by the Credit Provider or, if no Certificate of Balance was provided, as per the information provided to Summit by the Consumer (in accordance with NCA 34 of 2005 regulation 24 (2)). Summit accepts no liability for the consequences of any inaccurate information provided by either the consumer or the credit provider.

Summit

<b>Client Budget:</b>		<b>Reference: SUM000007</b>
<b>Sara Jones [ 7901253012081 ]</b>		
<b>INCOME</b>		
Gross pay	35 000.00	35 000.00
<b>OTHER INCOME</b>		
<b>Total Income</b>	<b>35 000.00</b>	<b>35 000.00</b>
<b>STATUTORY DEDUCTIONS</b>		
PAYE SITE	3 800.00	3 800.00
<b>EMPLOYER DEDUCTIONS</b>		
Medical Aid	1 500.00	1 500.00
Union Fees	50.00	50.00
Group life	500.00	500.00
UIF	150.00	150.00
<b>Total Deductions</b>	<b>6 000.00</b>	<b>6 000.00</b>
<b>NET INCOME</b>	<b>29 000.00</b>	<b>29 000.00</b>
<b>ESSENTIAL EXPENSES</b>		
Groceries	2 500.00	2 500.00
Petrol/Diesel	3 500.00	3 500.00
Parking	50.00	50.00
Rates and taxes	1 000.00	1 000.00
Body corporate levies	780.00	780.00
Water and Lights	1 806.00	1 806.00
School fees	600.00	600.00
Bank charges	250.00	250.00
Short term insurance	650.00	650.00
Car insurance	850.00	850.00
Domestic Worker	300.00	300.00
Telephone	125.00	125.00
Security	450.00	450.00
Maintenance	300.00	300.00
Clothing	150.00	150.00
<b>NON ESSENTIAL EXPENSES</b>		
Cellphone	670.00	670.00
<b>LUXURY ITEMS</b>		
Garden service	200.00	200.00
Internet	230.00	230.00
 <b>TOTAL EXPENSES</b>	 <b>14 411.00</b>	 <b>14 411.00</b>
 <b>NET AVAILABLE TO REPAY DEBT</b>	 <b>14 589.00</b>	 <b>14 589.00</b>
Signed: _____ (Consumer)	Date: _____	
Signed: _____ (Spouse)	Date: _____	

Reference: SUM000007

**PDA Payment Plan:**  
**Sara Jones [ 7901253012081 ]**

Instal	Date	Installment	DC Fees	Linked Ins.	Distribution
1	31/07/09	14 581.54	342.00	-	14 239.54
2	31/08/09	14 581.29	341.75	-	14 239.54
3	30/09/09	14 581.29	341.75	-	14 239.54
4	31/10/09	14 581.29	341.75	-	14 239.54
5	30/11/09	14 581.29	341.75	-	14 239.54
6	31/12/09	14 581.29	341.75	-	14 239.54
7	31/01/10	14 581.29	341.75	-	14 239.54
8	28/02/10	14 581.29	341.75	-	14 239.54
9	31/03/10	14 581.29	341.75	-	14 239.54
10	30/04/10	14 581.29	341.75	-	14 239.54
11	31/05/10	14 581.29	341.75	-	14 239.54
12	30/06/10	14 581.29	341.75	-	14 239.54
13	31/07/10	15 310.36	358.84	-	14 951.52
14	31/08/10	15 310.36	358.84	-	14 951.52
15	30/09/10	15 310.05	358.83	-	14 951.22
16	31/10/10	14 893.48	349.07	-	14 544.41
17	30/11/10	14 903.66	359.25	-	14 544.41
18	31/12/10	14 903.66	359.25	-	14 544.41
19	31/01/11	14 903.66	359.25	-	14 544.41
20	28/02/11	14 903.66	359.25	-	14 544.41
21	31/03/11	14 903.66	359.25	-	14 544.41
22	30/04/11	14 903.66	359.25	-	14 544.41
23	31/05/11	14 903.66	359.25	-	14 544.41
24	30/06/11	14 903.66	359.25	-	14 544.41
25	31/07/11	15 648.85	377.21	-	15 271.64
26	31/08/11	15 648.28	377.20	-	15 271.08
27	30/09/11	13 655.05	329.15	-	13 325.90
28	31/10/11	13 702.46	377.11	-	13 325.35
29	30/11/11	13 447.78	370.10	-	13 077.68
30	31/12/11	13 454.32	376.64	-	13 077.68
31	31/01/12	13 454.32	376.64	-	13 077.68
32	29/02/12	13 452.72	376.59	-	13 076.13
33	31/03/12	11 595.69	324.61	-	11 271.08
34	30/04/12	11 131.19	360.81	-	10 770.38
35	31/05/12	11 146.53	376.94	-	10 769.59
36	30/06/12	9 422.32	318.63	-	9 103.69
37	31/07/12	9 954.61	395.74	-	9 558.87
38	31/08/12	9 954.61	395.74	-	9 558.87
39	30/09/12	9 954.61	395.74	-	9 558.87
40	31/10/12	9 953.57	395.70	-	9 557.87
41	30/11/12	9 162.03	364.23	-	8 797.80
42	31/12/12	8 350.80	359.60	-	7 991.20
43	31/01/13	7 489.88	353.26	-	7 136.62
44	28/02/13	7 532.70	396.08	-	7 136.62
45	31/03/13	7 532.70	396.08	-	7 136.62
46	30/04/13	7 532.70	396.08	-	7 136.62
47	31/05/13	7 532.70	396.08	-	7 136.62
48	30/06/13	7 532.70	396.08	-	7 136.62
49	31/07/13	7 909.32	415.89	-	7 493.43
50	31/08/13	7 909.32	415.89	-	7 493.43
51	30/09/13	7 909.32	415.89	-	7 493.43
52	31/10/13	7 909.32	415.89	-	7 493.43
53	30/11/13	7 909.32	415.89	-	7 493.43
54	31/12/13	7 907.08	415.77	-	7 491.31
55	31/01/14	7 655.81	402.56	-	7 253.25
56	28/02/14	7 668.86	415.61	-	7 253.25
57	31/03/14	7 668.86	415.61	-	7 253.25
58	30/04/14	7 667.47	415.54	-	7 251.93
59	31/05/14	6 892.22	373.52	-	6 518.70
60	30/06/14	6 932.16	415.75	-	6 516.41
61	31/07/14	6 600.86	395.88	-	6 204.98
62	31/08/14	6 620.71	415.73	-	6 204.98
63	30/09/14	6 620.71	415.73	-	6 204.98



Reference: SUM000007

**PDA Payment Plan:****Sara Jones [ 7901253012081 ]**

Instal	Date	Installment	DC Fees	Linked Ins.	Distribution
64	31/10/14	6 620.71	415.73	-	6 204.98
65	30/11/14	6 620.71	415.73	-	6 204.98
66	31/12/14	6 620.71	415.73	-	6 204.98
67	31/01/15	6 620.71	415.73	-	6 204.98
68	28/02/15	6 620.71	415.73	-	6 204.98
69	31/03/15	6 620.71	415.73	-	6 204.98
70	30/04/15	6 620.71	415.73	-	6 204.98
71	31/05/15	6 620.71	415.73	-	6 204.98
72	30/06/15	6 620.71	415.73	-	6 204.98
73	31/07/15	6 620.71	415.73	-	6 204.98
74	31/08/15	6 620.71	415.73	-	6 204.98
75	30/09/15	6 620.71	415.73	-	6 204.98
76	31/10/15	6 620.71	415.73	-	6 204.98
77	30/11/15	6 620.71	415.73	-	6 204.98
78	31/12/15	6 620.71	415.73	-	6 204.98
79	31/01/16	6 620.71	415.73	-	6 204.98
80	29/02/16	6 620.71	415.73	-	6 204.98
81	31/03/16	6 620.71	415.73	-	6 204.98
82	30/04/16	6 620.71	415.73	-	6 204.98
83	31/05/16	6 620.71	415.73	-	6 204.98
84	30/06/16	6 619.13	415.63	-	6 203.50
85	31/07/16	5 044.36	316.75	-	4 727.61
86	31/08/16	5 143.17	415.56	-	4 727.61
87	30/09/16	5 143.17	415.56	-	4 727.61
88	31/10/16	5 143.17	415.56	-	4 727.61
89	30/11/16	5 143.17	415.56	-	4 727.61
90	31/12/16	5 143.17	415.56	-	4 727.61
91	31/01/17	5 143.17	415.56	-	4 727.61
92	28/02/17	5 143.17	415.56	-	4 727.61
93	31/03/17	5 143.17	415.56	-	4 727.61
94	30/04/17	5 143.17	415.56	-	4 727.61
95	31/05/17	5 143.17	415.56	-	4 727.61
96	30/06/17	5 143.17	415.56	-	4 727.61
97	31/07/17	5 143.17	415.56	-	4 727.61
98	31/08/17	5 143.17	415.56	-	4 727.61
99	30/09/17	5 143.17	415.56	-	4 727.61
100	31/10/17	5 143.17	415.56	-	4 727.61
101	30/11/17	5 143.17	415.56	-	4 727.61
102	31/12/17	5 143.17	415.56	-	4 727.61
103	31/01/18	5 143.17	415.56	-	4 727.61
104	28/02/18	5 143.17	415.56	-	4 727.61
105	31/03/18	5 143.17	415.56	-	4 727.61
106	30/04/18	5 143.17	415.56	-	4 727.61
107	31/05/18	5 143.17	415.56	-	4 727.61
108	30/06/18	5 143.17	415.56	-	4 727.61
109	31/07/18	5 143.17	415.56	-	4 727.61
110	31/08/18	5 143.17	415.56	-	4 727.61
111	30/09/18	5 143.17	415.56	-	4 727.61
112	31/10/18	5 143.17	415.56	-	4 727.61
113	30/11/18	5 143.17	415.56	-	4 727.61
114	31/12/18	5 143.17	415.56	-	4 727.61
115	31/01/19	5 143.17	415.56	-	4 727.61
116	28/02/19	5 143.17	415.56	-	4 727.61
117	31/03/19	5 143.17	415.56	-	4 727.61
118	30/04/19	5 143.17	415.56	-	4 727.61
119	31/05/19	5 143.17	415.56	-	4 727.61
120	30/06/19	5 143.17	415.56	-	4 727.61
121	31/07/19	5 143.17	415.56	-	4 727.61
122	31/08/19	5 143.17	415.56	-	4 727.61
123	30/09/19	5 143.17	415.56	-	4 727.61
124	31/10/19	5 143.17	415.56	-	4 727.61
125	30/11/19	5 143.17	415.56	-	4 727.61
126	31/12/19	5 143.17	415.56	-	4 727.61

Reference: SUM000007

**Payment Proposal:**  
**Sara Jones [ 7901253012081 ]**

**Absa Home Loan - Mortgage Account No. 5471-2000-6457-5454**

Instal	Date	Days	Installment	Interest	Rate	Balance
	30/03/09	0	-	-	12.00	395 450.00
	31/03/09	1	-	130.01	12.00	395 580.01
	30/04/09	30	-	3 901.61	12.00	399 481.62
	31/05/09	31	-	4 071.43	12.00	403 553.05
	30/06/09	30	-	3 980.25	12.00	407 533.30
1	31/07/09	31	3 889.42	4 153.49	12.00	407 797.37
2	31/08/09	31	3 889.42	4 156.18	12.00	408 064.13
3	30/09/09	30	3 889.42	4 024.74	12.00	408 199.45
4	31/10/09	31	3 889.42	4 160.28	12.00	408 470.31
5	30/11/09	30	3 889.42	4 028.75	12.00	408 609.64
6	31/12/09	31	3 889.42	4 164.46	12.00	408 884.68
7	31/01/10	31	3 889.42	4 167.26	12.00	409 162.52
8	28/02/10	28	3 889.42	3 766.54	12.00	409 039.64
9	31/03/10	31	3 889.42	4 168.84	12.00	409 319.06
10	30/04/10	30	3 889.42	4 037.12	12.00	409 466.76
11	31/05/10	31	3 889.42	4 173.20	12.00	409 750.54
12	30/06/10	30	3 889.42	4 041.38	12.00	409 902.50
13	31/07/10	31	4 083.89	4 177.64	12.00	409 996.25
14	31/08/10	31	4 083.89	4 178.59	12.00	410 090.95
15	30/09/10	30	4 083.89	4 044.73	12.00	410 051.79
16	31/10/10	31	4 083.89	4 179.16	12.00	410 147.06
17	30/11/10	30	4 083.89	4 045.29	12.00	410 108.46
18	31/12/10	31	4 083.89	4 179.74	12.00	410 204.31
19	31/01/11	31	4 083.89	4 180.71	12.00	410 301.13
20	28/02/11	28	4 083.89	3 777.02	12.00	409 994.26
21	31/03/11	31	4 083.89	4 178.57	12.00	410 088.94
22	30/04/11	30	4 083.89	4 044.71	12.00	410 049.76
23	31/05/11	31	4 083.89	4 179.14	12.00	410 145.01
24	30/06/11	30	4 083.89	4 045.27	12.00	410 106.39
25	31/07/11	31	4 288.09	4 179.71	12.00	409 998.01
26	31/08/11	31	4 288.09	4 178.61	12.00	409 888.53
27	30/09/11	30	4 288.09	4 042.74	12.00	409 643.18
28	31/10/11	31	4 288.09	4 174.99	12.00	409 530.08
29	30/11/11	30	4 288.09	4 039.20	12.00	409 281.19
30	31/12/11	31	4 288.09	4 171.30	12.00	409 164.40
31	31/01/12	31	4 288.09	4 170.11	12.00	409 046.42
32	29/02/12	29	4 288.09	3 899.95	12.00	408 658.28
33	31/03/12	31	4 288.09	4 164.96	12.00	408 535.15
34	30/04/12	30	4 288.09	4 029.39	12.00	408 276.45
35	31/05/12	31	4 288.09	4 161.06	12.00	408 149.42
36	30/06/12	30	4 288.09	4 025.58	12.00	407 886.91
37	31/07/12	31	4 502.49	4 157.09	12.00	407 541.51
38	31/08/12	31	4 502.49	4 153.57	12.00	407 192.59
39	30/09/12	30	4 502.49	4 016.15	12.00	406 706.25
40	31/10/12	31	4 502.49	4 145.06	12.00	406 348.82
41	30/11/12	30	4 502.49	4 007.82	12.00	405 854.15
42	31/12/12	31	4 502.49	4 136.38	12.00	405 488.04
43	31/01/13	31	4 502.49	4 132.65	12.00	405 118.20
44	28/02/13	28	4 502.49	3 729.31	12.00	404 345.02
45	31/03/13	31	4 502.49	4 121.00	12.00	403 963.53
46	30/04/13	30	4 502.49	3 984.30	12.00	403 445.34
47	31/05/13	31	4 502.49	4 111.83	12.00	403 054.68
48	30/06/13	30	4 502.49	3 975.33	12.00	402 527.52
49	31/07/13	31	4 727.61	4 102.47	12.00	401 902.38
50	31/08/13	31	4 727.61	4 096.10	12.00	401 270.87
51	30/09/13	30	4 727.61	3 957.74	12.00	400 501.00
52	31/10/13	31	4 727.61	4 081.82	12.00	399 855.21
53	30/11/13	30	4 727.61	3 943.78	12.00	399 071.38
54	31/12/13	31	4 727.61	4 067.25	12.00	398 411.02
55	31/01/14	31	4 727.61	4 060.52	12.00	397 743.93
56	28/02/14	28	4 727.61	3 661.42	12.00	396 677.74
57	31/03/14	31	4 727.61	4 042.85	12.00	395 992.98
58	30/04/14	30	4 727.61	3 905.68	12.00	395 171.05
59	31/05/14	31	4 727.61	4 027.50	12.00	394 470.94
60	30/06/14	30	4 727.61	3 890.67	12.00	393 634.00
61	31/07/14	31	4 727.61	4 011.83	12.00	392 918.22
62	31/08/14	31	4 727.61	4 004.54	12.00	392 195.15
63	30/09/14	30	4 727.61	3 868.23	12.00	391 335.77
64	31/10/14	31	4 727.61	3 988.41	12.00	390 596.57

Reference: SUM000007

**Payment Proposal:**  
**Sara Jones [ 7901253012081 ]**

**Absa Home Loan - Mortgage Account No. 5471-2000-6457-5454**

Instal	Date	Days	Installment	Interest	Rate	Balance
65	30/11/14	30	4 727.61	3 852.46	12.00	389 721.42
66	31/12/14	31	4 727.61	3 971.96	12.00	388 965.77
67	31/01/15	31	4 727.61	3 964.25	12.00	388 202.41
68	28/02/15	28	4 727.61	3 573.59	12.00	387 048.39
69	31/03/15	31	4 727.61	3 944.71	12.00	386 265.49
70	30/04/15	30	4 727.61	3 809.74	12.00	385 347.62
71	31/05/15	31	4 727.61	3 927.38	12.00	384 547.39
72	30/06/15	30	4 727.61	3 792.80	12.00	383 612.58
73	31/07/15	31	4 727.61	3 909.70	12.00	382 794.67
74	31/08/15	31	4 727.61	3 901.36	12.00	381 968.42
75	30/09/15	30	4 727.61	3 767.36	12.00	381 008.17
76	31/10/15	31	4 727.61	3 883.15	12.00	380 163.71
77	30/11/15	30	4 727.61	3 749.56	12.00	379 185.66
78	31/12/15	31	4 727.61	3 864.58	12.00	378 322.63
79	31/01/16	31	4 727.61	3 855.78	12.00	377 450.80
80	29/02/16	29	4 727.61	3 598.71	12.00	376 321.90
81	31/03/16	31	4 727.61	3 835.39	12.00	375 429.68
82	30/04/16	30	4 727.61	3 702.87	12.00	374 404.94
83	31/05/16	31	4 727.61	3 815.85	12.00	373 493.18
84	30/06/16	30	4 727.61	3 683.77	12.00	372 449.34
85	31/07/16	31	4 727.61	3 795.92	12.00	371 517.65
86	31/08/16	31	4 727.61	3 786.43	12.00	370 576.47
87	30/09/16	30	4 727.61	3 655.00	12.00	369 503.86
88	31/10/16	31	4 727.61	3 765.90	12.00	368 542.15
89	30/11/16	30	4 727.61	3 634.94	12.00	367 449.48
90	31/12/16	31	4 727.61	3 744.96	12.00	366 466.83
91	31/01/17	31	4 727.61	3 734.95	12.00	365 474.17
92	28/02/17	28	4 727.61	3 364.36	12.00	364 110.92
93	31/03/17	31	4 727.61	3 710.94	12.00	363 094.25
94	30/04/17	30	4 727.61	3 581.20	12.00	361 947.84
95	31/05/17	31	4 727.61	3 688.89	12.00	360 909.12
96	30/06/17	30	4 727.61	3 559.65	12.00	359 741.16
97	31/07/17	31	4 727.61	3 666.40	12.00	358 679.95
98	31/08/17	31	4 727.61	3 655.59	12.00	357 607.93
99	30/09/17	30	4 727.61	3 527.09	12.00	356 407.41
100	31/10/17	31	4 727.61	3 632.43	12.00	355 312.23
101	30/11/17	30	4 727.61	3 504.45	12.00	354 089.07
102	31/12/17	31	4 727.61	3 608.80	12.00	352 970.26
103	31/01/18	31	4 727.61	3 597.40	12.00	351 840.05
104	28/02/18	28	4 727.61	3 238.86	12.00	350 351.30
105	31/03/18	31	4 727.61	3 570.70	12.00	349 194.39
106	30/04/18	30	4 727.61	3 444.11	12.00	347 910.89
107	31/05/18	31	4 727.61	3 545.83	12.00	346 729.11
108	30/06/18	30	4 727.61	3 419.79	12.00	345 421.29
109	31/07/18	31	4 727.61	3 520.46	12.00	344 214.14
110	31/08/18	31	4 727.61	3 508.16	12.00	342 994.69
111	30/09/18	30	4 727.61	3 382.96	12.00	341 650.04
112	31/10/18	31	4 727.61	3 482.02	12.00	340 404.45
113	30/11/18	30	4 727.61	3 357.41	12.00	339 034.25
114	31/12/18	31	4 727.61	3 455.36	12.00	337 762.00
115	31/01/19	31	4 727.61	3 442.40	12.00	336 476.79
116	28/02/19	28	4 727.61	3 097.43	12.00	334 846.61
117	31/03/19	31	4 727.61	3 412.68	12.00	333 531.68
118	30/04/19	30	4 727.61	3 289.63	12.00	332 093.70
119	31/05/19	31	4 727.61	3 384.63	12.00	330 750.72
120	30/06/19	30	4 727.61	3 262.20	12.00	329 285.31
121	31/07/19	31	4 727.61	3 356.00	12.00	327 913.70
122	31/08/19	31	4 727.61	3 342.02	12.00	326 528.11
123	30/09/19	30	4 727.61	3 220.55	12.00	325 021.05
124	31/10/19	31	4 727.61	3 312.54	12.00	323 605.98
125	30/11/19	30	4 727.61	3 191.73	12.00	322 070.10
126	31/12/19	31	4 727.61	3 282.47	12.00	320 624.96
127	31/01/20	31	4 727.61	3 267.74	12.00	319 165.09
128	29/02/20	29	4 727.61	3 043.00	12.00	317 480.48
129	31/03/20	31	4 727.61	3 235.69	12.00	315 988.56
130	30/04/20	30	4 727.61	3 116.60	12.00	314 377.55
131	31/05/20	31	4 727.61	3 204.07	12.00	312 854.01
132	30/06/20	30	4 727.61	3 085.68	12.00	311 212.08
133	31/07/20	31	4 727.61	3 171.81	12.00	309 656.28

Reference: SUM000007

**Payment Proposal:**  
**Sara Jones [ 7901253012081 ]**

**Absa Home Loan - Mortgage Account No. 5471-2000-6457-5454**

Instal	Date	Days	Installment	Interest	Rate	Balance
134	31/08/20	31	4 727.61	3 155.95	12.00	308 084.62
135	30/09/20	30	4 727.61	3 038.64	12.00	306 395.65
136	31/10/20	31	4 727.61	3 122.72	12.00	304 790.76
137	30/11/20	30	4 727.61	3 006.16	12.00	303 069.31
138	31/12/20	31	4 727.61	3 088.82	12.00	301 430.52
139	31/01/21	31	4 727.61	3 072.11	12.00	299 775.02
140	28/02/21	28	4 727.61	2 759.57	12.00	297 806.98
141	31/03/21	31	4 727.61	3 035.18	12.00	296 114.55
142	30/04/21	30	4 727.61	2 920.58	12.00	294 307.52
143	31/05/21	31	4 727.61	2 999.52	12.00	292 579.43
144	30/06/21	30	4 727.61	2 885.71	12.00	290 737.53
145	31/07/21	31	4 727.61	2 963.13	12.00	288 973.05
146	31/08/21	31	4 727.61	2 945.15	12.00	287 190.59
147	30/09/21	30	4 727.61	2 832.56	12.00	285 295.54
148	31/10/21	31	4 727.61	2 907.67	12.00	283 475.60
149	30/11/21	30	4 727.61	2 795.92	12.00	281 543.91
150	31/12/21	31	4 727.61	2 869.43	12.00	279 685.73
151	31/01/22	31	4 727.61	2 850.50	12.00	277 808.62
152	28/02/22	28	4 727.61	2 557.36	12.00	275 638.37
153	31/03/22	31	4 727.61	2 809.25	12.00	273 720.01
154	30/04/22	30	4 727.61	2 699.70	12.00	271 692.10
155	31/05/22	31	4 727.61	2 769.03	12.00	269 733.52
156	30/06/22	30	4 727.61	2 660.39	12.00	267 666.30
157	31/07/22	31	4 727.61	2 728.00	12.00	265 666.69
158	31/08/22	31	4 727.61	2 707.62	12.00	263 646.70
159	30/09/22	30	4 727.61	2 600.35	12.00	261 519.44
160	31/10/22	31	4 727.61	2 665.35	12.00	259 457.18
161	30/11/22	30	4 727.61	2 559.03	12.00	257 288.60
162	31/12/22	31	4 727.61	2 622.23	12.00	255 183.22
163	31/01/23	31	4 727.61	2 600.77	12.00	253 056.38
164	28/02/23	28	4 727.61	2 329.51	12.00	250 658.28
165	31/03/23	31	4 727.61	2 554.65	12.00	248 485.32
166	30/04/23	30	4 727.61	2 450.81	12.00	246 208.52
167	31/05/23	31	4 727.61	2 509.30	12.00	243 990.21
168	30/06/23	30	4 727.61	2 406.48	12.00	241 669.08
169	31/07/23	31	4 727.61	2 463.04	12.00	239 404.51
170	31/08/23	31	4 727.61	2 439.96	12.00	237 116.86
171	30/09/23	30	4 727.61	2 338.69	12.00	234 727.94
172	31/10/23	31	4 727.61	2 392.30	12.00	232 392.63
173	30/11/23	30	4 727.61	2 292.09	12.00	229 957.11
174	31/12/23	31	4 727.61	2 343.67	12.00	227 573.17
175	31/01/24	31	4 727.61	2 319.38	12.00	225 164.94
176	29/02/24	29	4 727.61	2 146.78	12.00	222 584.11
177	31/03/24	31	4 727.61	2 268.53	12.00	220 125.03
178	30/04/24	30	4 727.61	2 171.10	12.00	217 568.52
179	31/05/24	31	4 727.61	2 217.41	12.00	215 058.32
180	30/06/24	30	4 727.61	2 121.12	12.00	212 451.83
181	31/07/24	31	4 727.61	2 165.26	12.00	209 889.48
182	31/08/24	31	4 727.61	2 139.15	12.00	207 301.02
183	30/09/24	30	4 727.61	2 044.61	12.00	204 618.02
184	31/10/24	31	4 727.61	2 085.42	12.00	201 975.83
185	30/11/24	30	4 727.61	1 992.09	12.00	199 240.31
186	31/12/24	31	4 727.61	2 030.61	12.00	196 543.31
187	31/01/25	31	4 727.61	2 003.13	12.00	193 818.83
188	28/02/25	28	4 727.61	1 784.20	12.00	190 875.42
189	31/03/25	31	4 727.61	1 945.36	12.00	188 093.17
190	30/04/25	30	4 727.61	1 855.17	12.00	185 220.73
191	31/05/25	31	4 727.61	1 887.73	12.00	182 380.85
192	30/06/25	30	4 727.61	1 798.82	12.00	179 452.06
193	31/07/25	31	4 727.61	1 828.94	12.00	176 553.39
194	31/08/25	31	4 727.61	1 799.39	12.00	173 625.17
195	30/09/25	30	4 727.61	1 712.47	12.00	170 610.03
196	31/10/25	31	4 727.61	1 738.82	12.00	167 621.24
197	30/11/25	30	4 727.61	1 653.25	12.00	164 546.88
198	31/12/25	31	4 727.61	1 677.03	12.00	161 496.30
199	31/01/26	31	4 727.61	1 645.93	12.00	158 414.62
200	28/02/26	28	4 727.61	1 458.28	12.00	155 145.29
201	31/03/26	31	4 727.61	1 581.21	12.00	151 998.89
202	30/04/26	30	4 727.61	1 499.17	12.00	148 770.45

Reference: SUM000007

**Payment Proposal:**  
**Sara Jones [ 7901253012081 ]**

**Absa Home Loan - Mortgage Account No. 5471-2000-6457-5454**

Instal	Date	Days	Instalment	Interest	Rate	Balance
203	31/05/26	31	4 727.61	1 516.24	12.00	145 559.08
204	30/06/26	30	4 727.61	1 435.65	12.00	142 267.12
205	31/07/26	31	4 727.61	1 449.96	12.00	138 989.47
206	31/08/26	31	4 727.61	1 416.55	12.00	135 678.41
207	30/09/26	30	4 727.61	1 338.20	12.00	132 289.00
208	31/10/26	31	4 727.61	1 348.26	12.00	128 909.65
209	30/11/26	30	4 727.61	1 271.44	12.00	125 453.48
210	31/12/26	31	4 727.61	1 278.59	12.00	122 004.46
211	31/01/27	31	4 727.61	1 243.44	12.00	118 520.29
212	28/02/27	28	4 727.61	1 091.04	12.00	114 883.72
213	31/03/27	31	4 727.61	1 170.87	12.00	111 326.98
214	30/04/27	30	4 727.61	1 098.02	12.00	107 697.39
215	31/05/27	31	4 727.61	1 097.63	12.00	104 067.41
216	30/06/27	30	4 727.61	1 026.42	12.00	100 366.22
217	31/07/27	31	4 727.61	1 022.91	12.00	96 661.52
218	31/08/27	31	4 727.61	985.15	12.00	92 919.06
219	30/09/27	30	4 727.61	916.46	12.00	89 107.91
220	31/10/27	31	4 727.61	908.17	12.00	85 288.47
221	30/11/27	30	4 727.61	841.20	12.00	81 402.06
222	31/12/27	31	4 727.61	829.63	12.00	77 504.08
223	31/01/28	31	4 727.61	789.90	12.00	73 566.37
224	29/02/28	29	4 727.61	701.40	12.00	69 540.16
225	31/03/28	31	4 727.61	708.74	12.00	65 521.29
226	30/04/28	30	4 727.61	646.24	12.00	61 439.92
227	31/05/28	31	4 727.61	626.18	12.00	57 338.49
228	30/06/28	30	4 727.61	565.53	12.00	53 176.41
229	31/07/28	31	4 727.61	541.96	12.00	48 990.76
230	31/08/28	31	4 727.61	499.30	12.00	44 762.45
231	30/09/28	30	4 727.61	441.49	12.00	40 476.33
232	31/10/28	31	4 727.61	412.53	12.00	36 161.25
233	30/11/28	30	4 727.61	356.66	12.00	31 790.30
234	31/12/28	31	4 727.61	324.00	12.00	27 386.69
235	31/01/29	31	4 727.61	279.12	12.00	22 938.20
236	28/02/29	28	4 727.61	211.16	12.00	18 421.75
237	31/03/29	31	4 727.61	187.75	12.00	13 881.89
238	30/04/29	30	4 727.61	136.92	12.00	9 291.20
239	31/05/29	31	4 727.61	94.69	12.00	4 658.28
240	30/06/29	30	4 704.22	45.94	12.00	-

Signed: \_\_\_\_\_ (Consumer) Date: \_\_\_\_\_

Signed: \_\_\_\_\_ (Spouse) Date: \_\_\_\_\_

**Credit Provider declaration, signature and bank account**

I, \_\_\_\_\_, in my capacity as \_\_\_\_\_

and duly authorised by \_\_\_\_\_ (Credit Provider), hereby accept the proposed Debt Rearrangement plan, as set out herein. This acceptance constitutes an addendum to the credit agreement between the Consumer and the Credit Provider, for as long as the Consumer honours the Debt Rearrangement plan as proposed herein.

The monthly repayment set out above can be made into the following bank account:

Account Holder \_\_\_\_\_  
 Payment Reference \_\_\_\_\_  
 Bank Name \_\_\_\_\_  
 Bank Account # \_\_\_\_\_  
 Branch Name \_\_\_\_\_  
 Branch Code \_\_\_\_\_

Signed: \_\_\_\_\_ (Credit Provider)

Date: \_\_\_\_\_

Proposal 5: Software package - Octogen

**NB - THIS IS AN NDMA APPLICATION!!!**

**Form 16a**

**Octogen** **Nicola Brigitte da Silva**

**PROPOSAL TO CREDIT PROVIDER IN RESPECT OF DEBT REVIEW IN TERMS OF SECTION 86 OF THE NATIONAL CREDIT ACT (34 OF 2005)**

**This proposal is formulated in terms of the National Debt Mediation Association Rules**

credit Department: **ABSA Home Loan (A)**

8th Floor, Marble Towers, Cnr Jeppe & Von Wielligh Streets, Johannesburg.

**By Facsimile to: 011 221 7864**

From: **Nicola Brigitte da Silva, Registered Debt Counsellor, Registration number NCRDC58**

1st floor, Sencor House, Cr 3rd st & 8th Ave, Edenvale, 1610  
Telephone: 0114542222

**Return To: 086-524-9304**

Names of Consumer (s): **Sara Jones**

Account Number: **5471200064575454**

ID Number (s) of Consumer (s): **7706055098084**

**FINANCIAL POSITION OF CONSUMER**

INCOME		EXPENDITURE		SUMMARY	
Gross Salary:	35,000	Domestic Workers:	500	Income:	29,000
<b>Deductions</b>		Groceries:	2,499	Expenditure:	-14,410
Tax:	3,800	Water & Electricity:	1,806	Available:	<b>14,590</b>
Medical Aid:	1,500	Telecommunications:	1,025	Contingency:	-1,425
Pension:	-	Security:	450	Available to Disburse:	<b>13,165</b>
Union subscription:	50	Sports & Entertainment:	-	Total Monthly PDA Costs:	-317
Insurance:	-	Cigarettes & Liquor:	-	EAO Monthly Costs:	-
UIF:	150	Transport Costs:	3,550	DC Monthly Fee:	-340
Group Life:	500	Home Ownership Costs:	2,080	Available for Debt repayments:	<b>12,508</b>
RA's / Endowment:	-	Education Costs:	600	Current Debt Payments:	-28,753
Garnishees / Admin Order:	-	Alimony:	-	Total Outstanding Debt:	689,316
Funeral Policy:	-	Health Costs:	-	Number of debts:	16
Other:	-	Rent / Board:	-	Over indebtedness:	14,163.34
<b>Total Deductions:</b>	<b>6,000</b>	Clothing:	150		50.44%
Net Income:	29,000	Bank Charges:	250	DC Professional Fee:	3,420
Other Income:	-	Assurance:	-		
<b>Total Income:</b>	<b>29,000</b>	Insurance:	1,500		
<b>Assets:</b>		Pension & Risk Benefits:	-		
		Other Financial Services:	-		
		Other Costs:	-		
		<b>Total Expenses:</b>	<b>14,410</b>		

**NOTIFICATION**

The Consumer(s) made application for Debt Review on: **00 January 1900**

I have examined the Consumer's income, expenditure and debt.

The minimum living expenses are based on the budget provided by the Consumer (s) and adjusted by me in terms of Regulation 24 (7) (c).

I consider the above stated position to be appropriate to this Consumer's needs and circumstance.

Proposal is hereby made to you for rearrangement of the above mentioned debt. NB - THIS IS AN NDMA APPLICATION!!!

**You are requested to accept or reject, by return facsimile, this application within Ten (10) working days of receipt.**

Kindly provide reasons should you reject this proposal.

Should acceptance be obtained from all Credit Providers a Consent Order will be obtained, alternatively proceedings will be continued in terms of section 86 (8) or section 86 (7) (c) of the National Credit Act.

**04 May 2009**

Nicola Brigitte da Silva  
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for:	<b>Sara Jones</b>	Account number:	5471200064575454
		ID No	7706055098084
<b>Specific Circumstances:</b>			
<b>NB - THIS IS AN NDMA APPLICATION!!!!</b>			
Marital Status:	Single	Number of Children / Dependents:	Ages of dependants:
0			

**Assessment Overview**

Name of Creditor	Outstanding Capital	Current Rate	Current Payment	Current Costs	Proposed Capital	Proposed Rate	Proposed Payment	Proposed Costs	Proposed Term	NDMA Acceptable
Standard Bank Credit Card	22,514	22.00%	2,340	-	22,514	22.00%	850	-	38	Yes
FNB Credit Card	38,256	22.00%	3,544	-	38,256	22.00%	1,051	-	53	Yes
Standard Bank Credit Card	19,872	22.00%	1,570	-	19,872	22.00%	532	-	53	Yes
RCS Personal Loan	5,000	37.00%	481	-	5,000	37.00%	180	-	52	Yes
RCS Store Cards	9,472	32.00%	1,057	-	9,472	32.00%	308	-	53	Yes
Nedbank Credit Card	16,145	22.00%	1,654	-	16,145	22.00%	439	-	53	Yes
Foshini Credit Card	4,650	24.00%	570	-	4,650	24.00%	129	-	53	Yes
Woolworths Store Card	33,044	27.00%	4,545	-	33,044	27.00%	1,003	-	53	Yes
Woolworths Store Card	16,862	22.00%	1,486	-	16,862	22.00%	459	-	53	Yes
ABSA Credit Card	22,987	20.00%	1,300	-	22,987	20.00%	594	-	53	Yes
ABSA Home Loan	395,450	12.00%	4,500	-	395,450	12.00%	4,422	-	76	Yes
ABSA Personal Loan	10,040	20.00%	394	-	10,040	20.00%	255	-	53	Yes
Nedbank Credit Card	15,991	19.00%	1,190	-	15,991	19.00%	407	-	53	Yes
FNB Personal Loan	6,854	18.00%	507	-	6,854	18.00%	170	-	53	Yes
Edgars Store Card	4,690	25.00%	1,365	-	4,690	25.00%	133	-	53	Yes
MFC VAF	67,489	15.00%	2,250	-	67,489	15.00%	1,577	-	53	Yes

**Living Expense Index**

Money Scene Index of expenditure to income for consumers with the same income, family situation and age as main applicant:

Expenditure:	
Household :	41.38%
Financial Services:	11.22%
Difference:	
Household :	38.82%
Financial Services:	28.19%
Household :	2.56%
Financial Services:	-16.97%

**Plan Methodology drawn by NDMA Rules**

Rule 0	Assessments done
Rule 1	Extended to 60% of maximum allowed term
Rule 2	Base Rate reduced to 37%
Rule 3	Bond moratorium for months
Rule 4	Further reduction to 37% for Months
Rule 5	100% of capital applied
Rehabilitation in month 3	

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for: **Sara Jones** Account number: **5471200064575454**  
 ID No **7706055098084**

**PROPOSAL FOR REARRANGEMENT** **NB - THIS IS AN NQMA APPLICATION!!!**

Current:	Debt:	395,450	Payment:	4,500	Rate:	12.00%	Term:	212	Costs:	-
Proposed:		395,450	(including all costs)	see below		12.00%		76		-

Monthly PDA costs of R: **28.50** Has been provided for in the distribution

1	12.00%	3,235.08	#N/A							
2	12.00%	3,386.02	#VALUE!							
3	12.00%	4,421.82								
4	12.00%	4,405.16	23	4,504.79	43	5,217.62	63	16,367.86	83	103
5	12.00%	4,405.55	24	4,508.62	44	5,307.53	64	16,367.86	84	104
6	12.00%	4,405.95	25	4,512.81	45	5,419.55	65	16,367.86	85	105
7	12.00%	4,406.38	26	4,591.16	46	5,562.33	66	16,367.86	86	106
8	12.00%	4,406.83	27	4,599.23	47	5,749.47	67	16,367.86	87	107
9	12.00%	4,407.31	28	4,608.21	48	6,003.49	68	16,367.86	88	108
10	12.00%	4,407.81	29	4,618.27	49	6,341.17	69	16,367.86	89	109
11	12.00%	4,408.35	30	4,629.59	50	7,118.31	70	16,367.86	90	110
12	12.00%	4,408.93	31	4,642.42	51	8,172.79	71	16,367.86	91	111
13	12.00%	4,409.32	32	4,657.09	52	10,127.56	72	16,367.86	92	112
14	12.00%	4,483.14	33	4,674.02	53	13,795.18	73	16,367.86	93	113
15	Then	4,485.20	34	4,693.77	54	15,588.43	74	17,186.25	94	114
16	12.00%	4,487.40	35	4,717.14	55	15,588.43	75	17,186.25	95	115
17		4,489.77	36	4,745.26	56	15,588.43	76	17,186.25	96	116
18		4,492.32	37	4,779.86	57	15,588.43	77	-	97	117
19		4,495.07	38	4,915.89	58	15,588.43	78	-	98	118
20		4,498.05	39	4,987.77	59	15,588.43	79	-	99	119
21		4,501.28	40	5,031.58	60	15,588.43	80	-	100	120
22		4,504.79	41	5,063.01	61	15,588.43	81	-	101	121
			42	5,144.10	62	16,367.86	82	-	102	122

The above payments includes costs / additional debits of R: **635,142.45** per month. Total: **635,142.45**

I, \_\_\_\_\_ in my capacity as \_\_\_\_\_, and duly authorised by  
 BSA Home Loan (A) accept the proposed Debt Rearrangement plan as set out above:  
 his acceptance constitutes an addendum to the credit agreement between the Consumer (s) and the Credit Provider for as long as the Consumer (s) honours  
 the debt rearrangement plan as proposed herein.  
 to be remitted to the following bank account:

Account Holder Name: \_\_\_\_\_

Bank Name: \_\_\_\_\_

Branch Name: \_\_\_\_\_ ACB Code: \_\_\_\_\_

Bank Account Number: \_\_\_\_\_

Reference to appear on Deposit: \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

BSA Home Loan (A) \_\_\_\_\_

Date \_\_\_\_\_

icola Brigitte da Silva  
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Date \_\_\_\_\_



There are substantial differences between the proposals calculated by different software packages.

It is to be noted that the research team did not attempt to do any sort of formal analysis. Indeed it would be impossible on the given information, considering that the feedback received from the debt counsellors ranged from ½ page to 51 pages on the same set of facts. This, however, brings us to the heart of the problem – there is no standardization in the way proposals are submitted, and the different programs present sometimes very different solutions – differences that could easily make the difference between proposals being accepted or being rejected. The result is that, for an over-indebted person, the choice of debt counsellor and that debt counsellor's choice of software, could determine the outcome of the debt counselling process.

To point out of few dramatic differences:

- While most of the solutions keep the interest rates intact – solving the facts by lowering the monthly instalments but paying the debts off over a longer period – one of the programs adjusted the interest rates on all debts to 0% and one of the programs reduced interest rate on some of the loans, but increased it on others.
- On their summaries, the one program has the debtor make the last payment after 51 months (home loan). It accomplishes this, in part, by proposing that no interest be charged on any of the accounts. The second fastest solution, keeping the interest rates intact, has the debtor making the last payment after 76 months (also home loan). The slowest solution, also keeping the interest rates intact, has the debtor making the last payment in 240 months (again, home loan).
- According to their summaries, the lowest monthly instalment on the ABSA Home loan is R2 006.63. The highest is R4 422.00. Here it must be pointed out that these are the numbers used on the summaries, but that the actual payments, as reflected in the payment schedules, are constantly changing as other debts get paid off and the monies

previously used to pay those debts cascades into the monthly payment of remaining debts. In the proposal that indicates the monthly instalment as R4 422.00 on the summary, monthly instalment ranges between R3 245.08 and R17 186.25 on the repayment schedule. As repayment schedules are not included in all the proposals, it is impossible to truly compare the different proposals in detail. It is probable that this would, by itself, also present a problem to the credit providers in determining whether or not to accept a proposal.

- While the size of the monthly instalments do not differ greatly with regard to the MFC Motor Vehicle Financing loan, there are huge differences in the time it takes for the loan to be paid off. The solution that is quickest for this specific debt has it paid off in 32 months. The solution that is slowest for this specific debt has it paid off in 84 months. Unfortunately, the feedback received does not in all cases contain sufficient information to determine what the differences are in the total monies paid on the loan under the different solutions. It seems clear that the “slower” solutions focus on paying off other debts first (and should therefore be “quicker” on other debts), and as a result the total payment on the ‘slower’ debt would be higher due to the accrual of interest.
- There seems to be substantial differences between the different software packages in the manner that they prioritize the repayment of loans. Some seem to prioritize according to interest rate, but it is not always clear what the criteria of other packages are.
- The different solutions even suggest slight differences in the amount an over-indebted person can afford to repay per month.

While it's impossible to say, on the information, which package calculated the “best” or “most accurate” solution, it is clear that some solutions might be more acceptable to certain creditors than others. Without comprehensive reports, however, one cannot see what the impact is overall. Where one creditor might be better off under package A versus package B, a different creditor could be much worse off in the same proposal, even though the consumer could be in exactly the same position. This means that the criteria and software used by the creditors becomes an important factor.

In short, it is clear that the differences between the proposals created by different software packages could substantially impact on the outcome of the process. Further study would, however, be needed to fully analyse and understand the impact. Such a study would necessarily include a much larger sample and actuarial analysis of the software and algorithms used by both debt counsellors and credit providers.

### **3.3 FINANCIAL INFORMATION**

#### **3.3.1 Introduction**

In terms of regulation 24(2) and (3) a debt counsellor must, within five days of receiving an application for debt review, deliver a completed form 17.1 to all credit providers that are listed in the application as well as every registered credit bureau.

The debt counsellor must verify the information provided by requesting documentary proof from the consumer, contacting the credit provider or employer or any other method of verification. This request for financial information can be sent as a separate document or form part of the form 17.1 notification.

Regulation 24(4) states that in the event of a credit provider failing to provide a debt counsellor with correct information within five business days of such verification requested, the debt counsellor may accept the information provided by the consumer as correct.

The Regulation 17.1 notice must be sent by fax, registered mail or email and the debt counsellor must keep record of date, time and manner of delivery. The financial information requested is called a certificate of balance or COB. The financial information so requested and supplied is of vital importance.

Heymans correctly describes this as “an important source of information” and as “a key tool on the debt counselling system”.<sup>282</sup>

The determination of over-indebtedness which must follow and be done within 30 days of the consumer applying for the debt review is dependant on this. The content of the proposal and the determination of restructured amounts to be paid is equally dependant on the COB.

As the nature and detail of financial information is not stipulated and as various problems arise as a result thereof the debt counsellor and major credit providers at the work streams agreed on the information that the so called certificate of balance should include.

The work streams further agreed that in the event of a credit provider failing to supply the information a grace period of a further five days should be allowed.

The credit providers undertook to provide the financial information as per pro-forma certificate of balance that was adapted at the work streams and subsequently included in the study guide.

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<sup>282</sup> Marlene Heymans “Blockages in payment distribution – an investigation into the matters that influence the effectiveness of payment distribution in the debt counseling system”. Unpublished report 75 (copy in the possession of the research team).

Example 5: Sample of a COB

## CERTIFICATE OF BALANCE

Customer Name:			Identity Number:			Date:								
All Other Products														
No	Account Number	Account Type	Opening Date	Expiry Date	Credit Limit	Outstanding Balance (Incl Arrears)	Arrear amount	Monthly Instalment Incl charges & insurance	Monthly charges (costs/ insurance)	Insurance/ Assurance Premiums	Meth od of Pay men t	Interest Rate	Type of Rate	Status of Account
1														
2														
Vehicle & Asset Finance Agreements														
No	Account Number	Account Type	Opening Date	Expiry Date	Goods Description	Outstanding Balance (Incl Arrears)	Arrear amount	Monthly Instalment Incl charges & insurance	Monthly charges (costs/ insurance)	Insurance/ Assurance Premiums	Meth od of Pay men t	Interest Rate	Type of Rate	Status of Account
1														
2														
Mortgage Home Loan Agreements														
No	Account Number	Account Type	Opening Date	Expiry Date	Registered Bond amount	Outstanding Balance (Incl Arrears)	Arrear amount	Monthly Instalment (Incl charges & insurance)	Monthly charges (costs/ insurance)	Insurance/ Assurance Premiums	Meth od of Pay men t	Interest Rate	Type of Rate	Status of Account
1														
2														

Official's Name & Surname:

Mandate Holder's Name & Surname:

Official's Contact Number:

Please note: The amount(s) owed and payable by the customer will change from month to month, due to interest and reasonable cost(s) incurred. The variation in the outstanding balance

The work stream study material explained the importance of the required information on the COB as follows:

- **Account number**

The account number for each of the consumer's credit agreements must be provided by the credit provider on the form as well as in all correspondence to the debt counsellor. In turn debt counsellors must quote this account number on all correspondence relating to that particular credit agreement.

- **Account type**

This information is important to debt counsellors as it is required for the statistical returns.

Table 3: Product types as per Form 42

Type	Code
Microlender	ML
Bank – Credit Card	BC
Bank - Bond	BB
Bank - Vehicle	BV
Bank - Overdraft	BO
Retailer - Clothing	RC
Retailer - Furniture	RF
Retailer - Other	RO
Legal Firm / Collections	L
Other	O

- **Opening date**

The opening date is the date on which the loan or finance was granted or, in the case of a facility, the date on which the facility was last reviewed upwards.

This information is important for two reasons:

- If the agreement or facility increase pre-dates 1 June 2007 then the debt counsellor need not look for reckless lending
- In the case of mortgages, vehicle and other asset finance, the start date is used as part of the proposal structuring.

- **Expiry date**

This is the date on which the credit agreement should be paid off by, or, in the event of certain facilities such as overdrafts, the date by which the review should take place.

- **Registered bond amount**

In the instance of a home loan, the registered bond amount is shown. This helps the debt counsellor to recommend to the consumer that his obligations may be restructured without a debt review in certain circumstances.

- **Goods description**

In instances where an asset has been financed, the description of the goods is included. This helps the debt counsellor to make recommendations to the consumer based on the suitability of the goods.

- **Credit limit**

A credit limit is the amount available to a consumer under a credit facility. It is useful for the debt counsellor to know what the credit limit on a credit facility is so that he can establish if the consumer is abusing his credit facilities.

- **Outstanding balance (including arrears)**

The balance as on the date that the certificate of balance was issued includes the capital amount, interest up to a specific date and charges, but excludes future interest and / or charges.

- **Arrears amount**

This amount will include arrear interest and payments that are overdue.

- **Monthly instalment**

The amount that the customer is liable to pay each month towards the repayment of the amount loaned in terms of the credit agreement, excluding fees and charges. Where there is no contractual instalment (e.g. an overdraft) then the instalment will be deemed to be the outstanding amount, at the agreed upon interest rate over 12 months.

- **Monthly charges**

These are monthly fees that may be charged in terms of Section 101 of the Act.

- **Insurance / assurance premiums**

These are third party contracts that the credit provider collects in conjunction with the monthly instalment.

- **Method of payment**

This refers to the method in which the monthly instalment is being paid by the consumer. A debt counsellor must take note of the method of payment in order to make arrangements for a reduced instalment, especially if the instalment is paid by way of stop order or debit order.

- **Interest rate**

The rate at which the money is been lent, quoted as a percentage per annum on a net annual compounded monthly basis. When formulating a proposal the debt counsellor will include interest on the agreement as part of the proposal.

- **Type of interest rate**

The interest rate can either be fixed or variable as stated in the credit agreement. The debt counsellor needs this information to verify whether the interest rate in terms of the agreement rate complies with regulation 42 (1) TABLE A of the Regulations promulgated in terms of the National Credit Act.

- **Status of account**

The status of the account is important. If summons based on the agreement has been issued and served then the debt counsellor must exclude the agreement from the debt review (section 86 (2)). The debt counsellor may, however include a "Legal" agreement with the consent of the credit provider concerned. These accounts are referred to in banking terminology as 'in legal'. The only statuses that will be provided by credit providers are UP TO DATE, ARREARS and LEGAL.






As can be seen from above, the arrears amount of R2 570.73 is indicated whilst the status of the account is stated as up to date. The full monthly instalment is not supplied (merely states 54 months).

Example 6.2: Insufficient information on COB received from Easton-Berry

10/02/2009 14:48 Easton-Berry Inc NCA Department (FAX)0312514252 F001001

3, The Crescent East  
Westway Office Park, Westville, 3630  
P.O.Box 1026, Durban, 4000  
Dooex 301 Durban  
Tel: (031) 251 4150  
Fax: (031) 251 4252  
Email: proposal@ebinc.co.za

  
**EASTON-BERRY INC.**  
INCORPORATING STEWARTS ATTORNEYS

YOUR CLIENT: M B [REDACTED]  
ID NUMBER: [REDACTED] 10 February 2009

YOUR REP: [REDACTED]  
OUR REF: [REDACTED]

**UNIVERSITY OF PRETORIA**  
At: Anneke Smit

Dear Sirs / Madam

**PROPOSAL OUTSTANDING FOR ACCOUNT: [REDACTED]**

We act for R C S (debt Counsel).

We acknowledge receipt of your proposal; however please provide us with the terms/ payment period for each of these accounts.

For your ease of reference, we attach below the certificate of balance and request that you forward the proposal as a matter of urgency on dedicated mail: proposal@ebinc.co.za or fax: (031) 2514252 (Att: Charlene Ramsamy)

Balance Outstanding(Including Arrears)	R 1,032.13
Arrears	R 0.00
Monthly Instalment	R 123.50
Annual Interest Rate	32.40 %

Should you have any further queries, please contact our office.


Yours faithfully  
Miss T Pillay

**EASTON-BERRY INC.**

ATTORNEYS & CONVEYANCERS  
INCORPORATED IN THE REPUBLIC OF SOUTH AFRICA  
REGISTERED IN THE DEEDS OFFICE OF THE DEPARTMENT OF AGRICULTURE, FISHERIES AND FORESTRY  
PROFESSIONAL BODY: EASTON-BERRY INCORPORATED  
REGISTRATION NO. 2008/005656/01



Example 7.2: Improved COB received from Nedbank



## Financial Information Certificate

Customer Name: <b>Mr. M. M. M.</b>	Identity Number: <b>801507501000000000</b>	Date: <b>19 March 2009</b>
------------------------------------	--	----------------------------

### All Other Products

No	Account Number	Account Type	Opening Date	Expiry Date	Credit Limit	Outstanding Balance (incl Arrears)	Arrear Amount	Monthly Instalment (incl charges & insurance)	Monthly Charges (Costs & Insurance)	Insurance/ Assurance Premiums	Method of Payment	Interest Rate	Type of Rate	Status of Account
1	1207003840	Bank Overdraft	2003/06/26	2009/03/16	18000.00	17918.47	17918.47	1493.20	85.00	0.00	Other	16.50	Variable	Arrears
2	2093077825	Bank Overdraft	2001/02/15	2009/03/16	0.00	124.37	124.37	0.00	0.00	0.00	Other	0.00	Variable	Arrears
3	815000353801	Microloan	2008/06/02	2011/07/01	21140.00	18072.76	0.00	1021.06	0.00	98.45	Debit Order	23.30	Variable	Up to Date
4	5898460737410811	Bank - Credit Card	2006/10/20	2008/10/31	10500.00	11319.50	1540.00	2362.00	187.98	43.97	Cash Payment	22.40	Variable	Arrears

**No Vehicle and Asset Finance Agreements**

[illegible]

This was brought to the attention of Standard Bank by way of a letter, dated 21 April 2008. No response was received. Thereafter telephone calls on 5 May, 6 May and 15 May 2008 followed. All of these elicited promises to resend the COB, but to no avail.

Unusable or ineligible COBs delay the process or could lead to wrong account numbers supplied to payment distribution agencies with the subsequent consequences.

### **3.3.2.3**

#### ***Wrong account / COB allocated to client***

A 17.1 form with a request for a COB was sent to Standard Bank on 22 January 2008.

A COB was received on 1 February 2008. It however included particulars of an account 107 719 731 for a mortgage agreement of R280 856.00 with an outstanding balance of R266 419. 39. The debt counsellor queried this and the bank subsequently responded that this account did not belong to the consumer and supplied a correct COB.

Had this “mistake” been with regard to a smaller non secured loan or facility it could very easily have been included in the debt repayment instructions.

plumtree CR

STANDARD BANK

Correcte CR



### 3.3.2.4

#### ***Credit provider wrongly indicated that consumer had no credit agreements with bank***

The debt counsellor submitted a Form 17.1 to Nedbank on 4 October 2007. On 9 October 2007, Nedbank provided the debt counsellor with a notice of receipt together with a list of the consumer's credit agreements with Nedbank. However, on 16 October 2007, Nedbank erroneously sent an e-mail to the debt counsellor informing her that the client does not have any credit agreements with Nedbank. This was followed by another letter on 24 October 2007 in which Nedbank, once again, confirmed that the client had no Nedbank accounts. Further correspondence was sent to the debt counsellor on 15 November 2007 and on 6 February 2008 confirming that the client had no Nedbank credit agreements.

Example 10.1: Nedbank wrongly indicated that consumer had no credit agreements with the bank



Example 10.2: Nedbank wrongly indicated that consumer had credit agreements with the bank

09:58 From: To: 00123625277 P. 1/2

✓

(N)

**NEDBANK LIMITED,**  
**Debt Rehabilitation and Recovery Services Division**

**Tel: 0860 109 279**  
**Fax: 011 630 6420**

---

Our Ref: 6509035100084/TM/DL

Your Ref: D/Lodewyks – T/Motsaathebe

Date: 09/10/07

To: **Hermie Coetzee** Fax no: 012 921 362 5277

And to:

Compuscan Information Technologies	Fax no: 021 883 2336
Consumer Profile Technologies	Fax no: 011 412 4030
Employers Mutual Protection Services	Fax no: 086 614 9703
Experian Bureau	Fax no: 011 463 3988
Kreditinform	Fax no: 011 886 3837
Lexis Nexis Risk Management	Fax no: 021 555 9711
Micro Lenders Credit Bureau	Fax no: 011 412 4030
Tenant Profile Network	Fax no: 011 234 7803
Transunion Credit Bureau	Fax no: 011 214 6222
Xpert Decision Systems	Fax no: 011 484 6588

---

Dear Sir,

Re./ Application for Debt Review in terms of Section 86 of the National Credit Act, No 34 of 2005

Customer: **Mr Gabriel Stefanus Viljoen**

Identity Number: **650903510084**

Our Account Number: **5898460749916193 – Credit card**  
**5898460749916375 – Credit card**  
**5412815000087371 – Credit card**  
**5412820000124315 – Credit card**

3

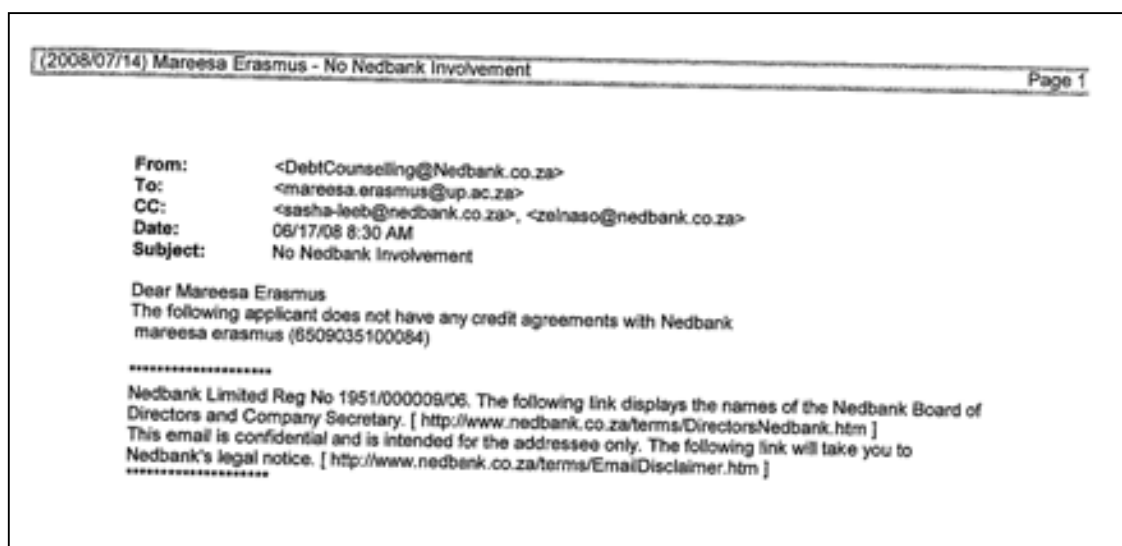
1. We are in receipt of your clients notification dated 04/10/07 and received on the 09/10/07 of his/ her intention to apply for debt review in terms of section 86 of the National Credit Act No 34 of 2005 ( 'the Act' )
2. Kindly furnish us, within 10 (TEN) business days from date hereof, with:
  - a. A copy of the Form 16 application submitted by the consumer to you, together with all supporting documents and annexures in respect thereof; alternatively, provide the date on which the Form 16 was signed.

What can only be described as a comedy of errors continued. On 14 July 2008, Mareesa Erasmus, the debt counsellor concerned, out of the blue received confirmation of receipt of a debt counselling application of Mareesa Erasmus, ID Nr 6509035100084 (being the consumer's ID number) as well as confirmation that the said Erasmus had no credit agreements with Nedbank.

Example 10.3: Nedbank wrongly indicated that consumer had no credit agreements with the bank



Example 10.4: Nedbank wrongly indicated that consumer had no credit agreements with the Bank



Incorrect information provided by credit providers causes unnecessary delay in the debt review process. Credit providers should apply due diligence when supplying COBs. The debt counsellor must likewise apply due diligence when assessing COBs provided by credit providers. COBs must be compared with the information provided by the client. When information received from the credit provider does not correspond with information received from the consumer, the client must be notified. In the meantime, the proposal cannot be finalised as the debt counsellor does not know whether the account should be included or not.

If the debt counsellor did not investigate this matter, the client would have been burdened with additional interest. This, in turn, would have affected the cascading affordability, extending the repayment periods of the other credit providers.

#### **3.3.2.5**

##### ***Credit provider omitted a credit agreement from COB***

The first example hereunder is a letter from Absa to a consumer confirming the existence of the account and credit facility. The second example is the COB from which clearly can be seen that the credit facility is not included.

Example 11.1: Absa confirming the existence of the account and thus credit facility

**ABSA** Member of the FNB Group **BARCLAYS** Group

**MISS MASHILO**  
MABOPANE  
0190

Our Ref : Susan Mokweto  
Tel : 0861 2273 53  
Fax : 0123173992  
Your Ref :

Write to:  
Volkskas Centre Strijdom Square  
PO Box 3915  
Pretoria  
0001

Dear MISS MASHILO

CREDIT CARD ACCOUNT NUMBER : 54711963  
LEGAL ACCOUNT NUMBER : 99999992

Issued on : 20090112

We refer to your recent negotiations with this office.

We hereby offer you a final opportunity to settle your Absa credit card account with an outstanding capital of R 9142.12 in monthly instalments of R 400.00, commencing from 20090131.

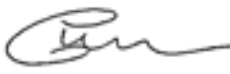
The above balance represents only the capital amount outstanding. Interest at a rate of 27.00% per annum will be added, payable monthly.

Your payments will be applied first to the capital amount, then to costs and lastly to the interest amount.

Please take note that if payments are not met, your account will be handed over to our attorneys to proceed with legal action.

In terms of the National Credit Act of 2005, you may refer this credit card agreement to a Debt Counsellor, Alternative Dispute Resolution Agent, Consumer Court or Ombud with jurisdiction in order to resolve a dispute, if any, under this agreement or to develop and agree on a plan to bring requirements up to date.

You are welcome to contact us at the above telephone number should you have any enquiries on the account.

Yours faithfully  
  
Manager  
Legal Recoveries

Directors : G Marcus (Chairperson), DC Brink (Deputy Chairperson), \*SF Bonyen (Group Chief Executive), LN Angel, DC Arnold, B Connellan, YZ Cuba, S A Fakie, G Griffin, M W Hahla, RA Jenkins (British), LN Jonker, R Le Blanc (British), \*N P Mageza, E C Mondlar (Jr) (Mozambican), TS Munday, \*JH Schindehütte, F F Seegers (Dutch), FA Sonn, PEI Swartz, \*LL von Zeuner, B J Willemse.

Page 1 of 1  
Issued on : 20090112

Absa Card  
Registration number 1986/00479406

ARRANG

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Some of the other problems encountered in respect of COBs:

- COBs that are not sent timeously (see chapter 4 below)
- COBs that are not sent at all
- COBs where account numbers changed (FNB once it is in Legal / Collections)
- COBs which add numeric or alpha numeric digits
- COBs reflecting incorrect amounts

### **3.4 NEGLIGENT MISTAKES**


In addition to the mistakes found on COBs, examples of mistakes in the procedure and process were often encountered. These included:

#### **3.4.1 Addressing notices to the wrong debt counsellor**

On 25 March 2009 correspondence was received from the Standard Bank Debt Review Department referring to a letter informing a client of the termination of his debt review. This letter was addressed to the client and forwarded to the debt counsellor, Ms Mareesa Erasmus. A note at the bottom of the letter, confirmed that it was forwarded to the NCR and to the debt counsellor, Ms Mareesa Erasmus. However, it was later discovered that the consumer was never a client of debt counsellor Mareesa Erasmus.

Example 12.1: Standard Bank sending the consumer's details to the wrong debt counsellor

2009-03-25 14:14      \*      >> +27 12 3625277 P 1/3

 **Standard Bank**

**Facsimile Header**      **Debt Review Department**

**Date:** 25 March 2009

<b>To:</b> Mareesa Antoinette Erasmus	<b>From:</b> Standard Bank Debt Review Dept
<b>Department:</b>	<b>Fax Number:</b> 088 622 2291
<b>Fax Number:</b> 012 362 5277	<b>Contact Person:</b> Tebogo Raleru
<b>Attention:</b> MA ERASMUS	<b>Telephone Number:</b> 011 227 4674
<b>Number of pages sent including this page:</b> 3	

Good day

Kindly find attached termination letter's for your clients

Kindly confirm receipt of this letter.

Best regards

Tebogo Raleru  
Debt Review Department  
Customer Debt Management

Standard Bank Centre Ground Floor 5 Simmonds Street Johannesburg 2001  
PO Box 91911 Marshalltown 2107 South Africa www.standardbank.co.za  
Tel: +27 (0)11 636-6854 Fax: +27 (0)11 631-8147 Call Centre: 0861 008 429

The Standard Bank of South Africa Limited (Reg. No. 1963/000756/06) Authorized financial services provider. Registered credit provider (NCRDP15).

The information contained in this fax is confidential and is intended for the exclusive use of the individual(s) or organisation specified above. Any unauthorised dissemination or copying of this fax, and any mis-use or wrongful disclosure of information contained in it, is strictly prohibited and may be illegal. Please notify the sender by telephone immediately should you have received this fax in error.

The Standard Bank of South Africa Limited (Reg. No. 1963/000756/06) Authorized Financial Services Provider

received Time 25. Mar. 2009 14:13 No. 0192




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In a similar case, a termination letter was received from Standard Bank on 27 March 2009. The letter was addressed to a consumer and the debt counsellor, Mr Karel Stephanus Erasmus. However, the termination notice was faxed to debt counsellor, Ms Mareesa Erasmus who has no relationship with Karel Stephanus Erasmus.

Example 12.3: Standard Bank sending the consumer's details to the wrong debt counsellor

2009-04-02 10:50 >> +27 12 3625277 P 2/2

 **Standard Bank**

Life Centre 45 Commissioner Street  
Floor 16 Johannesburg 2001  
PO Box 4335 Johannesburg 2001 South Africa  
Tel: 0561 111 402

MR [REDACTED] VAN NIEWENHUYZEN  
[REDACTED]  
[REDACTED]  
0470

Date: 23 March 2009  
Dear Client  
**Personal and Business Banking**

**APPLICATION FOR DEBT REVIEW**  
**IDENTITY NUMBER: [REDACTED] 047086**

We were advised of your application for debt review in terms of the National Credit Act (the "Act") by your debt counsellor on or before the 17.10.2008


You have been in default of your credit agreements for a period of more than 60 (sixty) days from date of application for debt review.

We may therefore give you notice of termination of the debt review in terms of section 88(10) of the Act, as we hereby do, terminating the debt review with immediate effect.

Should you wish to make arrangements with us or should you wish to raise a dispute with regard to this termination, kindly contact 0561 111 402 by no later than 03 April 2009, failing which we will be entitled to proceed with legal action against you for the recovery of your debt.

Your urgent attention to this matter would be appreciated

Regards

  
.....  
Manager  
Debt Review Department

CC: NCR  
Karel Stephanus K S Erasmus  
Suzanne Moolenaar

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Received Time 2. Apr. 2009 11:27 No. 0500

These negligent mistakes create serious problems for the consumer and the actual debt counsellor. The consumer will probably not appreciate what termination entails, while the actual debt counsellor, will not be aware of the termination and will consequently not be able to query the said termination or answer questions that the consumer may have. In the meantime the credit provider, having sent the required termination notice, would be entitled to commence with enforcement proceedings against the consumer.

### **3.4.2**

#### **Alleged non-receipt of faxed Form 17.1 (mislaide)**

On 10 March 2008 the debt counsellor sent a Form 17.1 notice to Nedbank. According to the fax receipt the fax was sent successfully. A Form 17.2 was sent on 28 March 2008 and once again the fax receipt indicated that it was sent successfully. A proposal was sent to Nedbank on 12 May 2008.

On 15 May 2008 Nedbank replied. Three letters were sent to the debt counsellor, the first being a confirmation of receipt of the consumer's application, the second a COB and the third a letter informing the debt counsellor that the proposal was sent 'prematurely and invalidly' as no Form 17.1 was received. According to Nedbank, the proposal was therefore 'invalid and of no force and effect'.

Tot Nicola da Silva P.1/2

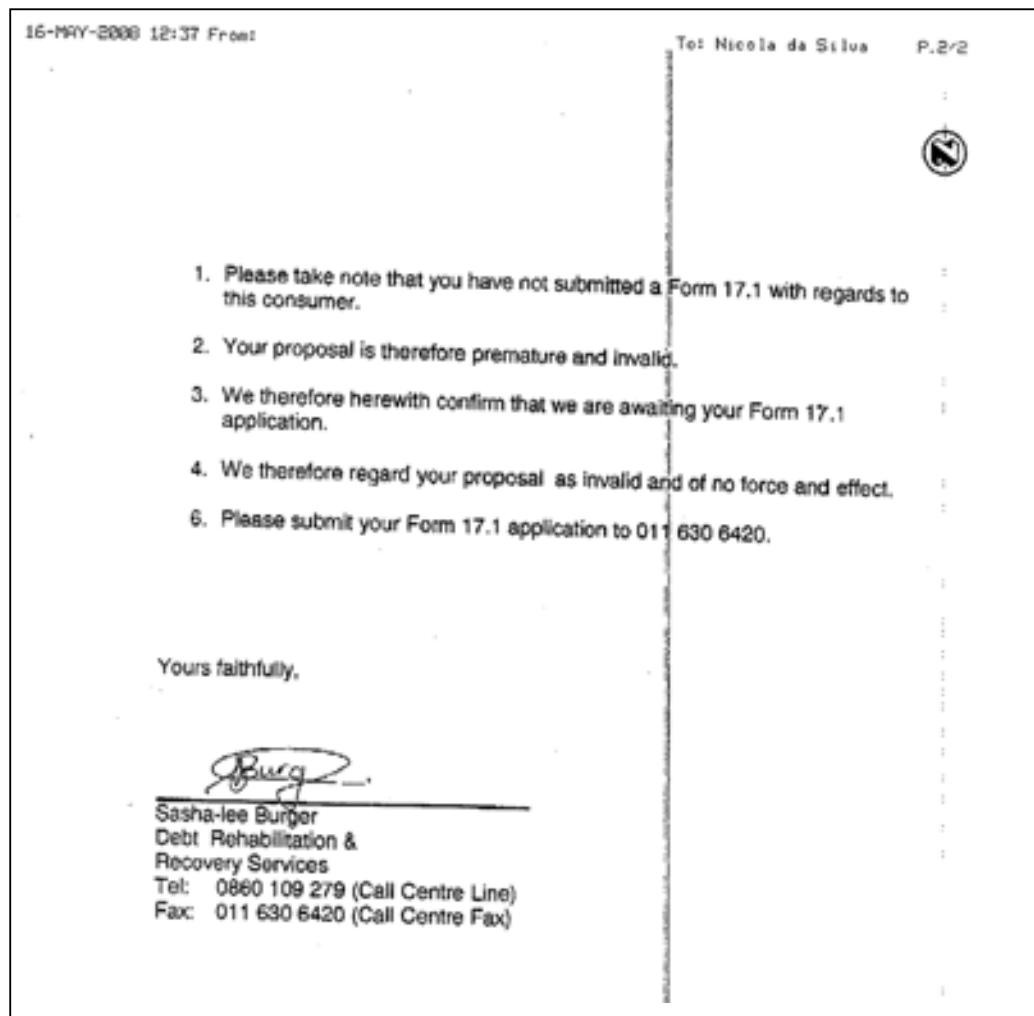
HEAD OFFICE.

20 MAY 2008

Fax no: 011 484 6588

© 2004 Blackwell Publishing Ltd *Journal of Internal Medicine* 255: 105–112

**PROUDLY  
SOUTH AFRICAN** 



Example 13.2: Nedbank alleged non-receipt of faxed Form 17.1 (mislaid)

CR

**Nicola Brigitte da Silva**

Registered Debt Counsellor, Registration number NCRDCM

To the Credit Department: **American Express**

200 Main Street Johannesburg 2001

By Facsimile to: 011 630 6420

From: Nicola Brigitte da Silva  
Registered Debt Counsellor, Registration number NCRDCM  
Block 3 Pitsoa Business Park  
C/o Fourways West & Willem Nicol Dr  
Fourways  
2001  
Telephone: 011 799837

FACSIMILE NUMBER: 086-024-0004

Date: 28/05/10 13:06

NOTIFICATION TO ALL CREDIT PROVIDERS AND ALL REGISTERED CREDIT BUREAUS IN TERMS OF SECTION 36(1)(b) OF THE NATIONAL CREDIT ACT 34 OF 2005

Full Name and Surname of Consumer: [REDACTED] Msa  
Account Number: 3768000002841753  
Identity Number of Consumer: [REDACTED] 80170066

This notice serves to advise you that the above-mentioned consumer has applied for debt review in terms of section 36 of the National Credit Act 34 of 2005.

All Credit Providers are required to file the above-mentioned documents, within 5 days of receipt of this notice, as having applied for debt review.

Signed at JOHANNESBURG on this 28 Day of May of 2010

Debt Counsellor: [Signature]

To: American Express

In terms of Chapter 5, Part 0 Section 36(1)(b) of the Regulations to National Credit Act 34 of 2005, you are requested to provide, by return fax/email, to the number above, and by no later than five (5) working days from today, the following information:

American Express Account number: 3768000002841753

Accounting Balance / Settlement Amount		Monthly Costs	
Amount outstanding at today		Credit Life Premium	
Current Annual interest rate		Admin / Service Fee	
Type of interest rate (Fixed or Linked)		Other	
Status of Account (Up to date / Pre-Legal etc.)		Description of other	
Note: if account is in a "legal" state, please provide details for the lawyers concerned.			
Monthly instalment:		Date that Credit was granted:	
Day instalment is due:		Signature of payment (Debit Order / Cash / Salary)	

Please note that should this information not be provided within the 5 working days allowed then we

**TX RESULT REPORT**

OCTOGEN  
3714542222  
MAR. 10. 2008 16:18

SN	FUNCTION	NO.	DESTINATION STATION	DATE	TIME	PAGE	DURATION	MODE	RESUL
	TX	001	NEDBANK	MAR. 10	16:17	001	00h00m1n46s	ECM	OK

Example 13.3: Nedbank alleged non-receipt of faxed Form 17.1 (mislaidd)

The question arises as to what extent it could be expected from a debt counsellor to ensure that all credit providers has indeed received the Form 17.1. Would a credit provider be able to disregard a proposal in cases where the fax receipt indicated that the documents were sent successfully? In terms of regulation 24, a debt counsellor may send a Form 17.1 by fax, e-mail or registered mail provided that the debt counsellor keeps a record of the date, time and manner of delivery of the notice. Thus, it is submitted that if the debt counsellor has complied with these requirements, effective delivery has taken place and no further inquiry as to receipt of the notice is necessary. The alleged non receipt of a Form 17.1 should not affect the validity of the proposal sent. However, if no proof of delivering of a Form 17.1 can be provided, the process should be regarded as being informal until such time as a From 17.1 is indeed submitted.


### 3.4.3

#### Acceptance contradictory to proposed payment

A restructuring proposal sent to Sanlam reflected an amount of R32.85 at an interest rate of 20% per annum. A non-sensical reply apparently accepting the terms of the proposal was received, but at the same time quoting a different repayment schedule.

Example 14: Sanlam's acceptance contradictory to proposed payment

Fax Server 2008/04/02 10:28:34 AM PAGE 1/001 Fax Server

 **Sanlam**

PO Box / Postbus 44319, Claremont 7715  
Customer Care Line / Klantensorglyn: 021 670 3506  
Fax / Faks: 021 682 2172  
E-mail / E-pos: sanlam@directaxis.co.za

3<sup>rd</sup> February 2008

o Law Clinic  
University of Pretoria  
Pretoria  
002

xx Number: 012 3625277

Dear Sir/Madam

**Debt review proposal – MISS P [REDACTED]**

Refer to your debt review proposal for Mr P Hayes in respect of account [REDACTED]

I would like to accept your proposal based on the suggested monthly instalment of R32.85, at an interest rate of 20% per annum, and as set out in the following payment schedule:

3 Payments of R88.00 commencing on the 1 March 2008,  
Payment of R10.42 on 01<sup>st</sup> Jan 2013.

Please note that the monthly payments as detailed above do not include the monthly, optional payment protection plan, which we assume your client no longer requires.

Yours faithfully

  
Innes  
Director

or and on behalf of Sanlam Personal Loans (Pty) Ltd

Sanlam Personal Loans (Pty) Ltd is a company in South Africa, incorporated in South Africa.  
Registered Credit Provider (NCRCP273)

Sanlam Personal Loans (Pty) Ltd (Edms) Bpk. Ing. die 2004/04/02 op die 2004/04/02 tussen Sanlam, die hantelaar van die Wet op die 1997  
Registered Credit Provider (NCRCP273)  
Directors: A. Gideon, J.M. Conradie, P. Georges, Mr. Götter, R.S. Innes, Af. Mants, G.J. Mout, G.L. van Heerde





### 3.4.5

#### Counter proposal with a higher interest rate than the COB

The credit provider provided the debt counsellor with a COB indicating that the interest on the consumer's account was 18.45% on 27 March 2008. At that stage however, the prime lending rate was 14.5%. The debt counsellor submitted a proposal to the credit provider which was declined. A counter proposal made on 21 May 2008 proposed an interest rate of 19.95%. At that stage the prime lending rate was 15%. The credit provider thus proposed an interest rate that was 1% more than what they were actually entitled to. It was also 1% more than the contractual interest rate in terms of the COB. This again affects cascading affordability and causes an already over-extended consumer to place more pressure on himself. This behaviour also violates the equality rule in terms of which one credit provider cannot be favoured above others.

Example 16.1: MFC's counter proposal with a higher interest rate than the COB

**MFC The Motor Finance Corporation**

27<sup>th</sup> of March 2008

University of Pretoria  
Attn: MAREESA  
Fax: 012 362 5277

Debt Review  
Our Ref: Happy Serumula  
Tel: (012) 482-5814  
Fax: (011) 997-1324  
E-mail: hserumula@mfc.co.za

CONSUMER : MS [REDACTED] VILJOEN  
ACCOUNT : [REDACTED] 121439  
VEHICLE : 2002 HYUNDAI ATOZ  
NUMBER : 7206010029086

Your letter, **received 27.03.2008** requesting information as per Sect 86 (4) b (i) (ii) of the National Credit Act 34 of 2005 refers.

Please find information as requested by you.

14.57pme

1	Type of Agreement (Installment Sale / Rental / Lease)	INSTALLMENT
2	Amount Outstanding, including arrears	R 44,253.85
3	Arrears amount outstanding	R 319.74
4	Current annual interest rate	18.45%
5	Type of interest rate (fixed / linked)	LINKED
6	Status of account (up to date / pre legal / legal)	Pre -Legal
7	Monthly Installment	R 1,506.45
8	Next Installment due date	05 APRIL '08
9	Nature of payment (cash / debit order)	Cash
10	Number of installment in arrears	0
11	Periods remaining	39


Please assist us in obtaining proof of comprehensive insurance as the Bank is at risk should the vehicle not be comprehensively insured, attached please find to be completed and returned to us. PLEASE ADVISE THE CLIENT TO MAKE MONTHLY PAYMENTS.

Yours sincerely  
Per: [Signature]

Example 16.2: MFC's counter proposal with a higher interest rate than the COB

012	MFC	Imperial Bank	10:24:43	21-05-2008	1 / 2
-----	-----	---------------	----------	------------	-------

**The Motor Finance Corporation**

**Fax**

<b>To:</b>	<b>JEANMARIE</b>	<b>Happy Serumula</b>
<b>Fax:</b>	<b>012 362 5277</b>	<b>Pages: 1</b>
<b>Phone:</b>	<b>012 420 4155</b>	<b>Date: 21.05.2008</b> <i>51. prime</i>
<b>Re:</b>	<b>[REDACTED] 121439</b>	<b>EMAIL</b> hserumula@mfc.co.za

**URGENT**

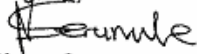
Proposal for re-arrangement: [REDACTED] 121439

The abovementioned matter refers.

We regret to inform you that the repayment offer of R 695.33.10 has been declined.

We suggest a counter offer of R 920.00 at 19.95 %

Trust you will find the above in order.

Regards,  
  
**Happy Serumula**  
Specialised Collections  
Tel - 012 482 5814  
Fax - 011 997 1324  
hserumula@mfc.co.za


The Motor Finance Corporation (Pty) Ltd. v/a MFC Reg. No 2001/012691/07 Directors: D. M van der Linde, R. Van Wyk, P Hibbet, D. G. Leadley, C. Otto. Company Secretary: P. Hassim  
MFC is an authorised Financial Services Provider

### 3.4.6

#### Termination of debt review before 60 days

The consumer applied for debt review on 17 January 2008. A Form 17.1 was submitted to the credit provider on 23 January 2008. On 24 January 2008 the credit provider confirmed receipt of the consumer's application. On 11 March 2008, 38 business days after the application for debt review, a termination notice was received from the credit provider. This termination was clearly delivered prematurely. In order to prevent the credit provider from instituting action the debt counsellor had to make various urgent phone calls and send various e-mails and letters. This not only wasted valuable time and money, but also caused unnecessary stress for the consumer.

Example 17.1: Nedbank's termination of debt review before 60 days

<b>NEDBANK</b> Fax: 011-630-6420		<b>UNIVERSITEIT VAN PRETORIA</b> <b>UNIVERSITY OF PRETORIA</b> <b>YUNIBESITHI YA PRETORIA</b> Faculty of Law
<b>ATTENTION: DEBT REVIEW DEPARTMENT</b>		<b>UP LAW CLINIC</b>
Your Ref: 5898-4607-4509-0902		Ring Road, University of Pretoria, Pretoria 0002
<b>OLD MUTUAL</b>		Tel: 012 420 4155 Fax: 012 362 5277
Our Ref: MA ERASMUS /TIME002		E-mail: <a href="mailto:marcoesa.erasmus@up.ac.za">marcoesa.erasmus@up.ac.za</a>
22 January 2008		<a href="http://www.up.ac.za">http://www.up.ac.za</a>
		DIRECTOR: PS HAUPT BA(Pvt), BA(Hons)(Pvt), LLB(UNISA)
		Debt Counsellor: Mareesa Erasmus Reg No: NCR DC 152


Name of Debt Counsellor: Mareesa Erasmus

NCR Registration number: NCRDC152

**NOTIFICATION TO ALL CREDIT PROVIDERS AND ALL REGISTERED CREDIT BUREAUS IN TERMS OF SECTION 86 (4) (b) (i) (ii) OF THE NATIONAL CREDIT ACT 34 OF 2005**

1. Full names and surname of Consumer: **BLIGNAUT**
2. Identity number of Consumer: **105 084**
3. This notice serves to advise you that the abovementioned consumer has applied for debt review in terms of Section 86 of the National Credit Act, 34 of 2005.
4. All credit bureaus are advised to list the abovementioned consumer, within 5 days of receipt of this notice, as having applied for debt review.
5. Kindly provide us with a statement of the consumer's account indicating the outstanding balance, interest charged, the monthly instalments and the date on which the account was opened within five business days after receipt of this notice, as in terms of Regulation 24(4) of the National Credit Act.

Signed at Pretoria on this 22<sup>nd</sup> day of January of 2008.

  
Debt Counsellor

Example 17.2: Nedbank's termination of debt review before 60 days

Confirmation of receipt of debt counselling application

Page 1

From: <NedbankDebtCounsellor@Nedbank.co.za>  
To: <mareesa.erasmus@up.ac.za>  
Date: 2008/01/24 01:36 PM  
Subject: Confirmation of receipt of debt counselling application

CC: <zelnaso@nedbank.co.za>  
Dear Mareesa Erasmus,  
This serves as a notification of receipt for the debt counselling application of consumer Mr. [REDACTED] Bignaut ID Number 6[REDACTED]05084

Nedbank Limited Reg No 1951/000009/06. The following link displays the names of the Nedbank Board of Directors and Company Secretary. [ <http://www.nedbank.co.za/terms/DirectorsNedbank.htm> ]  
This email is confidential and is intended for the addressee only. The following link will take you to Nedbank's legal notice. [ <http://www.nedbank.co.za/terms/EmailDisclaimer.htm> ]

Example 17.3: Nedbank's termination of debt review before 60 days

Tel: 0800 109 279 Fax: 011 630 6420

P. 1 of 1

**NEDBANK LIMITED,**  
Debt Rehabilitation and Recovery Services Division

Our Ref: Raylene Thumen  
Your Ref: Mareesa  
Date: 11-Mar-08  
To: Mareesa Fax no: (012) 382 - 5277


Dear,

Re: Application for Debt Review in terms of Section 86(10) of the National Credit Act, No 34 of 2005  
Customer: [REDACTED] Bignaut  
Identity Number: [REDACTED]05084  
Our Account Number: 589846074145538 0 ; 5482018209 ; 5898460745090902

The above mentioned matter refers.

Please note that your application have lapsed in terms of section 86(10) of the National Credit Act and we herewith confirm notice to terminate same in terms of Part D of the said Act.

Yours faithfully,

  
Raylene Thumen  
Debt Rehabilitation & Recovery Services  
Tel: 0800 109 279 (Call Centre Line)  
Fax: 011 630 6420 (Call Centre Fax)

**NEDBANK**

PERSONAL LOANS - JOHANNESBURG  
100 Water Street, Johannesburg 2000  
PO Box 1111, Johannesburg 2000, South Africa  
Tel: 011 630 7111 Fax: 011 630 6151 Email: [personal.loans@nedbank.co.za](mailto:personal.loans@nedbank.co.za) Web: [www.nedbank.co.za](http://www.nedbank.co.za)

Product 100 Personal Loans


### **3.4.7**

#### **Termination after notice of court application has been given**

The debt counsellor sent a notice to the credit provider on 21 July 2008 to inform the credit provider that the consumer's debt review application will be heard in court. Also attached were the court documents and notice of the place and date of application. On 26 March 2009 the credit provider sent a notice of termination to the debt counsellor

Debt counsellors would like to see more proposals being confirmed by the court. In light of the problems currently experienced with court procedures, the behaviour of the credit provider in this case was totally unacceptable. In this instance a court date was already been set and a court order could have been granted. The credit provider probably terminated because he wanted to proceed with enforcement proceedings in the hope of obtaining a higher instalment. Alternatively he terminated because the 60 day period in terms of section 86(10) expired. It is submitted that credit providers should appreciate the fact that debt counsellors often struggle to get responses from all credit providers within a reasonable time. Without consent of all credit providers, debt counsellors cannot obtain consent orders. If the credit provider in this instance showed more understanding for the situation, a consent order could still have been obtained. Termination in this case also affected the debt review as the debt counsellor could no longer include the agreement in the debt review and the credit provider could proceed with legal action.

Example 18.1: Standard Bank's termination after court order was granted

	NCR Form 17.2
<b>Anthony James Richards</b> Registered Debt Counsellor. Registration number NCRDC06	
To the Credit Department:	<b>STD Bank (Edgars CC)</b> #N/A
	<b>By Facsimile to: 011 227 4821</b>
From:	Anthony James Richards Registered Debt Counsellor. Registration number NCRDC06 Suite 7, Ground floor, Coldstream Office Park One Hendrik Potgieter Road and Duxi Road Little Falls 1735 Telephone: 086-111-3947 Facsimile Number: 086-508-6114
Date:	2008/05/04 10:36

---

NOTIFICATION TO ALL CREDIT PROVIDERS AND ALL REGISTERED CREDIT BUREAUS

Name & Surname of Consumer:	██████████
Account Number:	██████████0
Identity Number of Consumer:	██████████

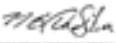
This notice serves to advise you that:

The abovementioned consumer's debt obligations have been restructured and a court / tribunal order has been issued, the details are as follows:

Case Number:	3936/2008
Magistrates Court district:	Krugmdorp

All Credit bureaus are advised to list the abovementioned consumer, within 5 days of receipt of this notice, as set out above.

Signed at Little Falls on this 4 Day of May of 2008

Debt Counsellor: 

Z:\CR\Head Office Branch\Current Clients\Little Falls\MA\Credit Review Plan\Form 17.2.xls\Form Print - 6
--

Example 18.2: Standard Bank's termination after notice of court application has been given

JUL.16.2008 14:44 0116622815  
086 508 2174  
STADLER ATTORNEYS  
086 508 6114  
#0651 P.001 /005  
TJP

IN THE MAGISTRATES' COURT FOR THE DISTRICT OF KRUGERSDORP HELD AT  
KRUGERSDORP

In the matter of:

<del>XXXXXXXXXXXXXXXXXXXX</del>	Applicant
and	
ABSA BANK LIMITED	1 <sup>st</sup> Credit Provider
NEDBANK LIMITED	2 <sup>nd</sup> Credit Provider
STANDARD BANK OF SOUTH AFRICA LIMITED	3 <sup>rd</sup> Credit Provider
WOOLWORTHS FINANCIAL SERVICES (PTY) LIMITED	4 <sup>th</sup> Credit Provider

CONSENT ORDER IN TERMS OF SECTION 86(8) READ WITH SECTION 138 OF  
THE NATIONAL CREDIT ACT

WHEREAS:

- The Consumer Applied for debt review in terms of the National Credit Act 34 of 2005 on 10 March 2008;
- The debt counsellor found that the consumer is experiencing difficulty satisfying all her obligations under the credit agreements in a timely manner;
- The debt counsellor made recommendations to all respective credit providers in respect of the credit agreements as is set out in Annexure A hereto;
- All the respective credit providers and the consumer/applicant agreed on the payment plan as is set out in Annexure A hereto;
- An Affidavit of the relevant debt counsellor is attached hereto confirming the above allegations;

NOW THEREFORE it is ordered that:

- That the Consumer/Applicant make the payments as is set in Annexure A on a monthly basis with the instalments to be paid on/before the 7<sup>th</sup> of each month following this order;

1



2. That payment in respect of all debt be made directly into the accounts of the credit providers alternatively by way of debit order from the Applicant's account to each credit provider alternatively to the Payment Distribution Agent accepting the payments in favour of the credit providers and that the Payment Distribution Agent distribute the funds according to the agreed re-arrangement plan;

3. That none of the existing respective rights and obligations of the original credit/loan agreements are waived or amended except as stated by this court order;

DATED AT KRUGERSDORP THIS 16 DAY OF 7 2008

CLERK OF THE CIVIL COURT

RECEIVED  
CLERK OF THE CIVIL COURT  
CASE NO: 3434/2008

Example 18.3: Standard Bank's termination after notice of court application has been given

2009-03-26 10:12      Termination after court application      >>      P 3/4

 **Standard Bank**

Life Centre 45 Commissioner Street  
Floor 16 Johannesburg 2001

PO BOX 1526  
HIGHLANDS NORTH  
2037

Date: 10 March 2009

Dear Client

Personal and Business  
Banking

**APPLICATION FOR DEBT REVIEW**  
**IDENTITY NUMBER:** [REDACTED]

We were advised of your application for debt review in terms of the National Credit Act (the "Act") by your debt counsellor on or before the 17 August 2007.  
You have been in default of your credit agreements for a period of more than 60 (sixty) days from date of application for debt review.

We may therefore give you notice of termination of the debt review in terms of section 86(10) of the Act, as we hereby do, terminating the debt review with immediate effect.

Should you wish to make arrangements with us or should you wish to raise a dispute with regard to this termination, kindly contact 0861 111 402 by no later than 23 March 2009, failing which we will be entitled to proceed with legal action against you for the recovery of your debt.

Your urgent attention to this matter would be appreciated

Regards

  
.....  
Manager  
Debt Review Department

CC: NCR

CC: Debt Counsellor  
Anthony James AJ Richards

## **3.5 OTHER FINDINGS**

### **3.5.1 Inordinate long time for replying to proposal**

The client applied for debt counselling on 23 July 2007. On 16 November 2007 the first proposal was sent to her credit providers. A final proposal was then sent on 5 December 2007. The consumer was instructed to make payments in accordance with the proposal.



On 4 February 2008 a reminder was sent to those credit providers who did not respond to the proposals. Easton-Berry Inc was one of them. On 19 March 2008 a termination notice was sent to the debt counsellor by Easton-Berry Inc, which had final effect.

On 27 March 2008 the debt counsellor phoned Easton-Berry Inc informing them that a proposal was sent to their offices the previous year and that no response was received from them regarding that proposal. A letter was also sent to Easton-Berry on the same day as confirmation.

On 13 August 2008 Easton-Berry sent an e-mail to the debt counsellor informing the debt counsellor that a proposal was received for only two of the accounts currently with them, even though all the accounts' information was on the same proposal.

On 1 December 2008 Easton-Berry granted consent to the proposal that was sent to them on 5 December 2007.

Example 19.1: Easton-Berry's inordinate long time for replying to proposal

<b>EASTONBERRY INC</b> Fax: 031-251-4250  <b>ATTENTION: LEE-ANNE NAIDOO</b>  Your Ref: WOOLWORTHS 6007-8511-0302-4960 6007-8501-1438-6897 4164-5401-0132-0017 Our Ref: MA ERASMUS/XC0040	 <b>UNIVERSITEIT VAN PRETORIA</b> <b>UNIVERSITY OF PRETORIA</b> <b>YUNIBESITHI YA PRETORIA</b> Faculty of Law <b>UP LAW CLINIC</b> Ring Road, University of Pretoria, Pretoria 0002 Tel: 012 420 4155 Fax: 012 362 5277 E-mail: mareesa.erasmus@up.ac.za <a href="http://www.up.ac.za">http://www.up.ac.za</a>  DIRECTOR: FS HALPIT BA(Pret), BA(Hons)(Pret), LLB(UNISA)  Debt Counsellor: Mareesa Erasmus Reg No: NCR DC 152
5 December 2007	
<b>RE: [REDACTED]</b>	
<ol style="list-style-type: none"><li>1. We refer to the above mentioned matter.</li><li>2. Please find attached hereto the debt restructure proposal together with a copy of the client's salary advice.</li><li>3. Please confirm in writing whether or not you accept or reject the proposal and if rejected the reasons for rejection as well as a viable alternative, taking into consideration the client's living expense as well as all her creditors.</li><li>4. Furthermore, please note that Hermie Coetzee (NCR DC 34) has been substituted with Mareesa Erasmus (NCR DC 152) as the debt counsellor.</li><li>5. We thank you in anticipation and look forward to hear from you within 7 business days.</li></ol>	
Yours faithfully	
 DEBT COUNSELLOR MAREESA ERASMUS	


Example 19.2: Easton-Berry's inordinate long time for replying to proposal

**EASTONBERRY INC**  
Fax: 031-251-4250/2

ATTENTION: LEE-ANNE NAIDOO

Your Ref: WOOLWORTHS  
TRUWORTHS  
Our Ref: MA ERASMUS/XC0040

4 February 2008



UNIVERSITEIT VAN PRETORIA  
UNIVERSITY OF PRETORIA  
YUNIBESITHI YA PRETORIA  
Faculty of Law

**UP LAW CLINIC**  
Ring Road,  
University of Pretoria, Pretoria 0002  
Tel: 012 420 4155 Fax: 012 362 5277  
E-mail: [mareesa.erasmus@up.ac.za](mailto:mareesa.erasmus@up.ac.za)  
<http://www.up.ac.za>


DIRECTOR: FS HAUPT  
BA(Pret), BA(Hons)(Pret), LLB(UNISA)

Debt Counsellor: Mareesa Erasmus  
Reg No: NCR DC 152

**RE: [REDACTED]**

1. We refer to the above mentioned matter and to the debt restructuring proposal send to you on the 5<sup>th</sup> of December 2007.
2. Please note that we have not yet received your response as to whether the proposal is accepted or rejected.
3. Kindly confirm in writing whether or not you accept or reject the proposal and if rejected the reasons for rejection as well as a viable alternative, taking into consideration the client's living expense as well as all her creditors.
4. If we do not receive a response from you in due course we will be forced to approach the court in order to settle this matter, which will lead to extra legal costs for our client and yourselves.
5. We thank you in anticipation and look forward to hear from you within 7 business days.

Yours faithfully

  
DEBT COUNSELLOR  
MAREESA ERASMUS

Example 19.3: Easton-Berry's inordinate long time for replying to proposal

3, The Crescent East  
Westway Office Park, Westville, 3630  
P.O.Box 1026, Durban, 4000  
Drex 301 Durban  
Tel: (031) 251 4150  
Fax: (031) 251 4252  
Email: [ecb@ebinc.co.za](mailto:ecb@ebinc.co.za)

  
**EASTON-BERRY INC.**  
INCORPORATING STEWARTS ATTORNEYS

CONSUMER NAME : [REDACTED]  
CONSUMER ID : [REDACTED]  
YOUR REF : [REDACTED]  
OUR REF : 189605, 197850 01 December 2008

To: UNIVERSITY OF PRETORIA  
Dear Sirs

Conditional Consents

We attach herewith are signed consents.

Our instructions are to place on record that these consents are signed subject to the proviso that the payments of the agreed instalments commence within THIRTY (30) DAYS hereof.

Should payment not be forthcoming within this prescribed time, our client reserves the right to withdraw these consents.

Our client acknowledges that it may take some time before the Emoluments Attachment is issued but in the interim, they require distributions of the agreed instalments from either yourselves, the consumer or the P.D.A.

Our client's rights are reserved.

Yours faithfully

**ROB EASTON-BERRY**  
**EASTON-BERRY INCORPORATED**

ATTORNEYS & QUAY VANDERS  
CORPORATE & E. Easton-Berry, 11 Feb 09, 10:04 AM  
ASSOCIATED: S P Gerts, J P Van Der Linde  
Registra: Easton Berry Incorporated - Registration No. 2006/0142101

### **3.5.2**



#### **Reply to proposals after termination by debt counsellor**

On 8 May 2008 the debt counsellor informed Standard Bank that they are withdrawing the consumer's debt review as the consumer's income was insufficient to make payments towards his credit providers. Together with the withdrawal notice the debt counsellor attached a proposal for reference purpose. Eight months later, on 16 January 2009, Standard Bank sent notice that the "proposal" sent for this consumer is not accepted as the term was not indicated. This notice was sent after the debt counsellor indicated that the debt review has been withdrawn.

In light of the above, it appears that Standard Bank never read the cover letter and further took excessively long to respond to the "proposal".


Several debt counsellors have indicated that it causes great frustration when credit providers fail to read the cover letter to the proposal which contains important information regarding a consumer's financial status. In the case above it is evident that Standard Bank did not consider the correspondence that was sent to them and puts to question whether additional information provided by debt counsellors is ever considered by the credit providers.

Example 20.1: Debt counsellor's termination letter to Standard Bank

<b>STANDARD BANK</b> FAX: 011-227-4821  <b>ATTENTION: DEBT REVIEW DEPARTMENT</b>  Your Ref: 5120-5503- Our Ref: YME014/MA ERASMUS  8 May 2008	 <b>UNIVERSITEIT VAN PRETORIA</b> <b>UNIVERSITY OF PRETORIA</b> <b>YUNIBESITHI YA PRETORIA</b> Faculty of Law  <b>UP LAW CLINIC</b> Ring Road, University of Pretoria, Pretoria 0002 Tel: 012 420 4155 Fax: 012 362 5277 E-mail: <a href="mailto:mareesa.erasmus@up.ac.za">mareesa.erasmus@up.ac.za</a> <a href="http://www.up.ac.za">http://www.up.ac.za</a>  DIRECTOR: PS HAUPT BA(Pret), BA(Hons)(Pret), LLB(UNISA)  Debt Counsellor: Mareesa Erasmus Registration Number: NCR DC 152
<b>NOTIFICATION TO ALL CREDIT PROVIDERS AND ALL REGISTERED CREDIT BUREAUS IN TERMS OF SECTION 84 (4) (b) (i) (ii) OF THE NATIONAL CREDIT ACT 34 OF 2005</b>	
Name of Debt Counsellor: Mareesa Erasmus	
NCR Registration number: NCR DC 152	
Full names and surname of Consumer: COETZEE	
Identity number of Consumer:	
<ol style="list-style-type: none"><li>1. Kindly note that this debt review has been terminated.</li><li>2. All credit bureaus are advised to update the abovementioned consumer's record, within 5 days of receipt of this notice, as set out above.</li><li>3. We advise that we have reached a deadlock as the consumer is unable to make a suitable debt repayment proposal to his credit providers. Our client has reduced his living expenses as far as possible, yet is unable to cover the interest on his accounts.</li><li>4. We attached hereto a copy of the repayment proposal and have instructed our client to continue to make payments in terms thereof.</li><li>5. Please note that our client will contact us as soon as his financial position has improved and we will then make informal arrangements with all his credit providers.</li><li>6. We request that you do not proceed with legal action against the consumer.</li></ol>	
Yours faithfully  MAREESA ERASMUS DEBT COUNSELLOR	



Example 20:2: Standard Bank's response to debt counsellor's termination letter

 **Standard Bank**

"WITHOUT PREJUDICE"

Debt Counsellors  
Ring Road  
University Of Pretoria  
0002

Personal and Business  
Banking

Date: 16 January 2009

Dear : M Erasmus

Proposal in respect of Debt Review in terms of Section 86 of the National Credit Act (34 of 2005)

Customer: L Coetzee  
ID Number: [REDACTED]

I Rakesh Singh, in my capacity as Counselling Officer and duly authorized by the Standard Bank of South Africa, confirm that I do not accept the proposed Debt Re-arrangement as set out in your proposal.

- Proposal incomplete, no proposed term.

Please note that we reserve all our rights in terms of this agreement and in law to proceed with any legal action deemed necessary, should the customer default under the credit agreement being reviewed, until such time that an order has been granted.

Yours faithfully

Rakesh Trishan Singh  
Debt Review Department  
Counselling Officer  
Tel : (011)227 4845  
Fax : (011)227 4821  
Email : [Trishan.singh@standardbank.co.za](mailto:Trishan.singh@standardbank.co.za)

---

Life Centre 9th Floor 45 Commissioner Street Johannesburg 2001  
PO Box 4365 Johannesburg 2000 South Africa [www.standardbank.co.za](http://www.standardbank.co.za)  
Internal & Customer Queries Support: 0861 111 402 Email: [Debt.Review@standardbank.co.za](mailto:Debt.Review@standardbank.co.za)  
External (Debt Counsellors & Third Party Support): 0861 111 525 Email: [Debt.Counselling@standardbank.co.za](mailto:Debt.Counselling@standardbank.co.za)  
Fax: +27 (0)11 227-4821

The Standard Bank of South Africa Limited (Reg. No. 196200572606) Authorized financial services provider. Registered credit provider (NCRCP15).

### 3.5.3

#### **Proposal declined by credit provider even though the counter proposal repayment term is longer than the proposed term**

The proposal sent by the debt counsellor indicated that the client would pay off the vehicle within 58 months when cascading affordability applies. For the first 22 months the instalment would be 40% less than the original instalment, but would gradually increase to 91% over and above the original instalment. The credit provider, however, rejected the proposal because according to their system the payment did not solve. In this instance, the credit provider should have considered cascading affordability. Credit providers often peruse a proposal and then immediately conclude that the account will not solve. However, if they were to take the cascading affordability into account, they will notice that the account will solve within the term stipulated in the proposal, as their instalments will increase as soon as other accounts have been paid off. Instead, credit providers often disregard this fact and send counter proposals that provide them with a lower instalment and longer repayment period than initially proposed by the debt counsellor.

The counter proposal by the credit provider in this case, provided for an instalment of 9% less than the original instalment, and a term of 72 months. This term was 14 months longer than that which the debt counsellor proposed. The credit provider also included the following counter offer in bold:


“Should this payment proposal not be acceptable, then we submit that the only other alternative for Miss Botha is to return the vehicle / goods to the Bank. The Bank will then follow the procedure as set out in section 127 of the National Credit Act, and dispose of the vehicle/goods accordingly.”

Clearly the credit provider in this instance did not wish to negotiate with the debt counsellor any further and thus left the debt counsellor with no other option than to refer the matter to court. Although the proposed repayment fell within the acceptable range of repayment periods in terms of the work stream guidelines and furthermore did not propose to reduce the interest on the account, it was declined. Cases like these demonstrate why debt counsellors opt to no longer

send repayment proposals to credit providers, but to rather refer the matters directly to the Magistrate's Court.

Example 21.1: WesBank's proposal declined by credit provider even though the counter ~ proposal repayment term is longer than the proposed term

1



## Gert Cloete Kruger

PROPOSAL TO CREDIT PROVIDER IN RESPECT OF DEBT REVIEW IN TERMS OF SECTION 86 OF THE NATIONAL CREDIT ACT (94 OF 2005)

Form 16a

Credit Department: **Wesbank (VAF)**  
 1st Floor, 2 First Place, Off Jeppe & Simmonds Street, Johannesburg, 2001

By Facsimile to: **011 352 7398**

From: **Gert Cloete Kruger**  
 Registered Debt Counsellor, Registration number NCRDC363  
 Unit 7, Ground floor Coldstream Office Park, Off Hendrik Potgieter & Duai Rd, Little Falls, 1735  
 Telephone: 0861113967

FACSIMILE NUMBER: 086-506-2186

Name & Surname of Consumer: [REDACTED]  
 Account Number: [REDACTED]  
 Identity Number of Consumer: [REDACTED]

FINANCIAL POSITION OF CONSUMER		EXPENDITURE		SUMMARY	
INCOME					
Gross Salary	25,892	Domestic Workers:	450	Income	18,931
Deductions	5,104	Groceries:	1,600	Expenditure	-9,052
Medical Aid:	1,352	Water & Electricity:	-	Available:	9,879
Pension:	-	Telecommunications:	879	Contingency:	-883
Union subscription:	140	Security:	-	Available to Disburse:	8,996
Insurance:	-	Sports & Entertainment:	200		
UDF:	125	Cigarettes & Liquor:	300	Total Monthly PCA Costs:	-202
Group Life:	-	Transport Costs:	1,800	EAO Monthly Costs:	-563
RA/S / Endowment:	-	Home Ownership Costs:	-	DC Monthly Fee:	-342
Gamishoes / Admin Order:	-	Education Costs:	-	Available for Debt repayments:	7,891
Funeral Policy:	-	Alimony:	-		
Other:	-	Health Costs:	500	Current Debt Payments:	-13,116
<b>Total Deductions:</b>	<b>6,456</b>	Rent / Board:	2,200	Total Outstanding Debt:	288,234
Net Income:	18,931	Clothing:	300	Number of debts:	9
Other Income:	-	Bank Charges:	120		
<b>Total Income:</b>	<b>18,931</b>	Assurance:	-	Over indebtedness:	3,236.47
		Insurance:	896		32.83%
		Pension & Risk Benefits:	555		
		Other Financial Services:	53		
		Other Costs:	-	DC Professional Fee:	3,425
		<b>Total Expenses</b>	<b>9,052</b>		

**NOTES:**

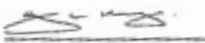
The Consumer(s) made application for Debt Review on: **08 September 2008**

I have examined the Consumer's income, expenditure and debt.  
 The minimum living expenses are based on the budget provided by the Consumer and adjusted by me in terms of Regulation 24 (7) c.  
 I consider the above stated position to be appropriate to this Consumer's needs and circumstance.  
 Proposal is hereby made to you for rearrangement of the above mentioned debt.

**You are requested to accept or reject, by return facsimile, this application within Ten (10) working days of receipt.**

☐ Kindly provide reasons should you reject this proposal.  
☐ Counter proposals can only be considered if the counter proposal encompasses a structure for all of the debt shown here with.

**Should acceptance be obtained from all Credit Providers a Consent Order will be obtained, alternatively proceedings will be continued in terms of section 85 (B) or section 85 (7) (c) of the National Credit Act.**

  
 Gert Cloete Kruger  
 R/Westrand Branch/Current Client/Booth, E-Credit Review Plan/Booth, E - Current.xls/Form Print - 1

**24 September 2008**

Page 1

for: <span style="background-color: black; color: black;">[REDACTED]</span>		Account number: 85099- <span style="background-color: black; color: black;">[REDACTED]</span>		Date: <span style="background-color: black; color: black;">[REDACTED]</span>	
		ID No <span style="background-color: black; color: black;">[REDACTED]</span>			
<b>PROPOSAL FOR REARRANGEMENT</b>					
Current:	Debt:	165,446	Payment:	3,919	Rate:
Proposed:	165,446		2,340		15.77%
					15.77%
				Term:	62
				Costs:	58
Monthly PDA costs of R 1,318.61 have been deducted from these proposed payments					
First Payment of R 1,318.61 to be made in November of 2008. Thereafter					
Second Payment of R 1,763.38 to be made in December of 2008. Thereafter monthly payments as detailed below.					
3	2,340.40	23	2,589.43	43	6,509.17
4	2,340.40	24	2,859.98	44	6,509.17
5	2,340.40	25	2,859.98	45	6,509.17
6	2,340.40	26	3,246.99	46	7,422.77
7	2,340.40	27	3,246.99	47	7,422.77
8	2,340.40	28	3,246.99	48	7,422.77
9	2,340.40	29	3,246.99	49	7,422.77
10	2,340.40	30	3,246.99	50	7,422.77
11	2,340.40	31	3,246.99	51	7,422.77
12	2,340.40	32	6,509.17	52	7,422.77
13	2,340.40	33	6,509.17	53	7,422.77
14	2,340.40	34	6,509.17	54	7,422.77
15	2,340.40	35	6,509.17	55	7,727.05
16	2,437.17	36	6,509.17	56	7,727.05
17	2,437.17	37	6,509.17	57	7,727.05
18	2,437.17	38	6,509.17	58	7,727.05
19	2,437.17	39	6,509.17	59	-
20	2,589.43	40	6,509.17	60	-
21	2,589.43	41	6,509.17	61	-
22	2,589.43	42	6,509.17	62	-
				63	-
				64	-
				65	-
				66	-
				67	-
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				113	-
				114	-
				115	-
				116	-
				117	-
				118	-
				119	-
				120	-
				121	-
				Total: 264,575.10	

\*First payment will be remitted in November 2008, assuming all Creditors agree to the proposals.

The above payments exclude costs / additional debits of R: [REDACTED] per month, which will be added to the monthly payment set out above.

I, [REDACTED] in my capacity as [REDACTED] and duly authorised by

Wesbank (VAF) accept the proposed Debt Rearrangement plan as set out above:

This acceptance constitutes an addendum to the credit agreement between the Consumer and the Credit Provider for as long as the Consumer honours the debt rearrangement plan as proposed herein.

It is to be remitted to the following bank account:

Account Holder Name: [REDACTED]

Bank Name: [REDACTED]

Branch Name: [REDACTED] ACB Code: [REDACTED]

Bank Account Number: [REDACTED]

Reference to appear on Deposit: [REDACTED]

Signature: [REDACTED]

Date: [REDACTED]

Marie Botha: [REDACTED]

Date: [REDACTED]

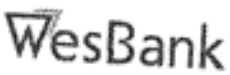
Clote Kruger: [REDACTED]

Date: [REDACTED]

R:\Westrand Branch\Current Clients\B\Botha, E\Credit Review Plan\Botha, E - Current.xls Form Print - 1 page 2



Example 21.2: WesBank's proposal declined by credit provider even though the counter ~ proposal repayment term is longer than the proposed term



**Head Office**  
WesBank House  
Enterprise Road  
Fairland  
PO Box 1066  
Johannesburg 2000  
Republic of South Africa  
Telephone (011) 632 6000  
(011) 649 6000  
http://www.wesbank.co.za

**Hoof Kantoor**  
WesBank House  
Enterprise Road  
Fairland  
Postbus 1066  
Johannesburg 2000  
Republiek van Suid-Afrika  
Telefoon (011) 632 6000  
(011) 649 6000  
http://www.wesbank.co.za

20 October 2008

Your reference : [REDACTED]  
Our reference : [REDACTED]  
Attention : Gert Kruger

Dear Sir/Madam,

**RE: [REDACTED]**

We refer to your repayment proposal in respect of the abovementioned Client.

We are unable to accept your proposal due to the following reasons:

- The vehicle under finance is a 2006 VOLKSWAGEN JETTA 1.9 TDI COMFORTLINE and depreciates in value on a monthly basis.
- Your proposed re-payment instalment does not solve.

However, in an effort to assist Miss. E. Botha, we hereby submit the following repayment proposal:

- We agree to 72 payments of R 3,581.19 per month at 15.77% interest which includes the client's current arrears of R 2,326.64 and the balloon payment of R 75,764.90.

Should this payment proposal not be acceptable, then we submit that the only other alternative for [REDACTED] is to return the vehicle/goods to the Bank. The Bank will then follow the procedures as set out in section 127 of the National Credit Act, and dispose of the vehicle/goods accordingly.

Should you have any further queries in this regard, kindly contact the writer at (011) 649 5592.

All future notices and correspondence must be sent to the Wesbank Debt Review Centre, 2nd Floor, Wesbank House, Fairland, Enterprise Rd, Johannesburg, 1066.

Yours Sincerely,

Wayne Cloete

Banking Details FNB	Account	[REDACTED]
Wesbank and Direct Axis	Branch	255005
Reference:	Client Reference:	[REDACTED]

A division of FirstRand Bank Limited. Registered Bank Reg. No. 142946/12/2005. NCR Reg. No. NCR0020. An Authorised Financial Services Provider and Registered Credit Provider.  
Directors: G.T. Fendley (Chairman), S.E. Mxasane (Chief Executive Officer), V.W. Bhebe, J.H. Bester, J.P. Burger, L. Groux, L.L. Oppenheimer, D.M. Fick, P.B. Goss, P.K. Horne, W.R. Jordani, B.G. Maseko-Sobesko, R.C. Sim, B.L. van der Riet, Company Secretary: B.W. Under

### 3.5.4

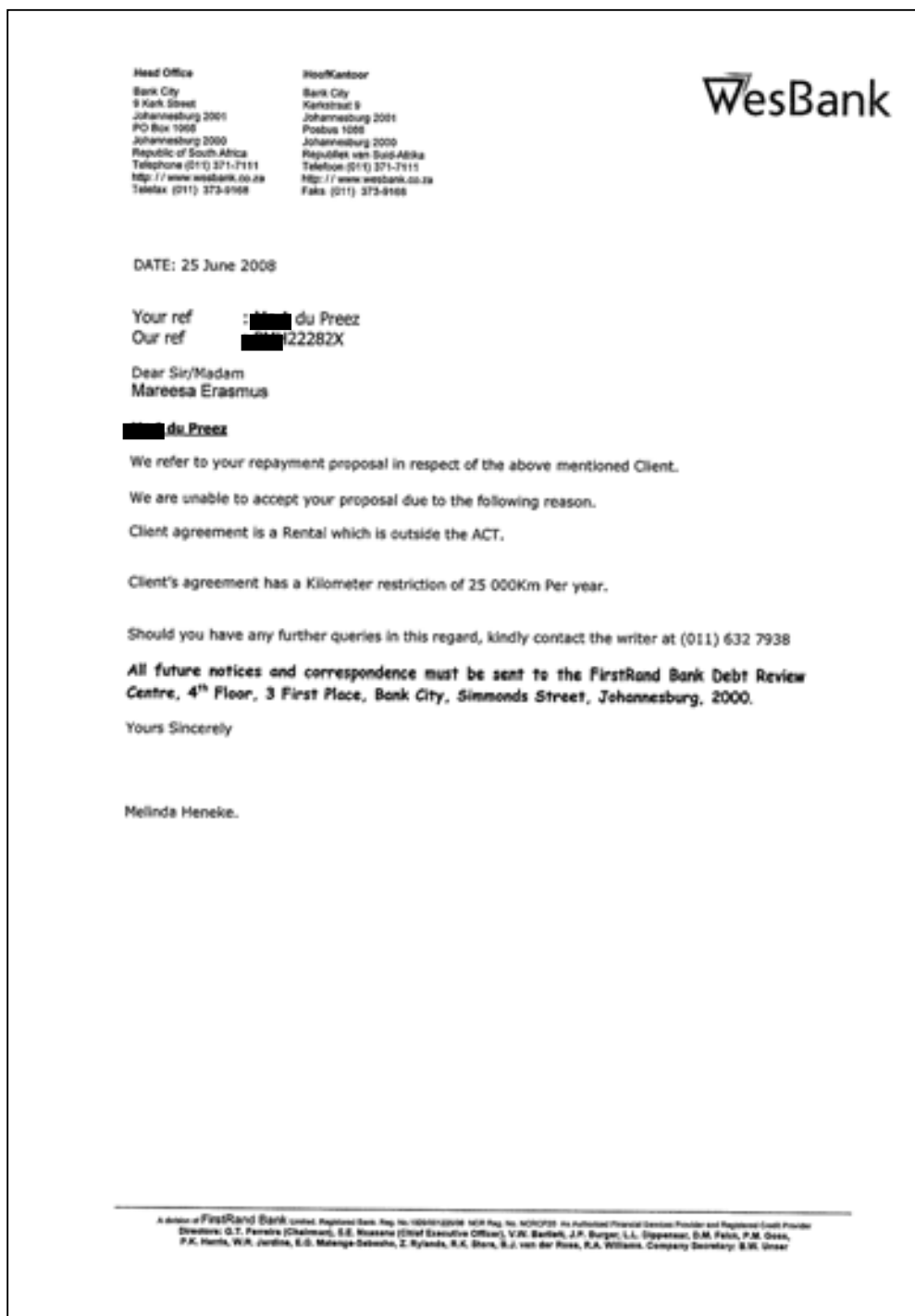
#### Vehicle financing agreements alleged to be excluded from debt review as defined “rental agreements”

On the 25<sup>th</sup> of October 2007 the debt counsellor received notice from WesBank that the proposal for their client has been accepted. Eight months later WesBank informs the debt counsellor that the same consumer's whose proposal was previous accepted is not subject to the debt review as it is a “rental agreement”.

Example 22.1: WesBank's vehicle financing agreements alleged to be excluded from debt review as defined “rental agreements”

<b>Head Office</b> Bank City 9 Kerk Street Johannesburg 2001 PO Box 1066 Johannesburg 2000 Republic of South Africa Telephone (011) 371-7111 <a href="http://www.wesbank.co.za">http://www.wesbank.co.za</a> Telefax (011) 373-9166	<b>HeadKantoor</b> Bank City Kerkstraat 9 Johannesburg 2001 Postbus 1066 Johannesburg 2000 Republiek van Suid-Afrika Telefoon (011) 371-7111 <a href="http://www.wesbank.co.za">http://www.wesbank.co.za</a> Faks (011) 373-9166	
<b>DATE: 2007-10-25</b>		
<b>Your ref Number : XCO036/MA ERASMUS</b> <b>Our ref : Mrs Galante</b>		
<b>Dear Sir/Madam</b>		
<b>■■■■■ DU PREEZ - WesBank Account Number ■■■■■ 22282X</b>		
We refer to your letter dated 22 October 2007, containing your repayment proposal in respect of Miss Du Preez, account number ■■■■■ 22282X.		
We hereby advise that we accept your proposal on the basis that the proposed re-payment plan will be concluded at the same interest rate as the original contract rate.		
We await your written confirmation that the above proposal has been made an order of court.		
Should you have any further queries in this regard, kindly contact the writer at 012 427-9110.		
<b>Yours Sincerely</b> <b>WesBank</b>		
<b>Mrs VA Galante</b> <b>Manager: Customer Accounts</b>		

Example 22.2: WesBank's vehicle financing agreements alleged to be excluded from debt review as defined "rental agreements"





## **3.6 PAYMENTS**

### **3.6.1 Payment distribution agencies**

Serious but not insurmountable problems exist regarding the collection, distribution, payment and acceptance of monthly payments. The research team came across numerous examples of these problems. However, it was decided not to elaborate on these. A report titled “Blockages in the debt counselling payment distribution system”, authored by Marlene Heymans discusses these and makes a number of appropriate recommendations. This report should be read in conjunction with the present report.

### **3.6.2 Non-payments by consumers under debt counselling**

Apart from the challenges posed by the payment distribution system, the non-payment by consumers entering the debt counselling process seems to be a major problem.

The tables supplied by Gizelle Nortjé, head of Absa’s Third Party Management and Credit Operations and Delivery Division, illustrate the incidence of payment *versus* non-payment prior to and during the first few months of debt review.

Example 23: Illustration of the incidence of payment *versus* non-payment prior to and during the first few months of debt review

## Debt Review – (4) what are the numbers telling us

Number of payments before DRAC	0	1	2	3	4	5	Grand Total
Card	2,097	1,873	1,832	1,840	1,601	1,478	10,721
CHQ	399	140	125	160	243	1,966	3,033
MLN	205	206	286	572	659	763	2,691
PLN	669	757	723	912	1,165	2,042	6,478
Grand Total	3,610	2,976	2,966	3,484	3,668	6,219	22,923

Number of payments after DRAC	0	1	2	3	4	5	Grand Total
Card	7,319	1,518	900	611	273	100	10,721
CHQ	1,221	443	348	280	212	163	3,033
MLN	1,221	559	313	260	175	163	2,691
PLN	9,060	993	693	459	274	178	6,478
Grand Total	13,708	3,513	2,254	1,610	934	904	22,923

% change	0	1	2	3	4	5
Card	249%	-19%	-51%	-67%	-83%	-93%
CHQ	223%	216%	178%	75%	-13%	-77%
MLN	496%	171%	9%	-55%	-73%	-79%
PLN	327%	31%	-4%	-50%	-76%	-91%
Grand Total	280%	18%	-24%	-54%	-76%	-85%

The tables to the left are a sample of accounts in Debt counselling with Absa and not necessarily a representative sample.

Example:

- 763 mortgages accounts made all 5 payments prior to entering DRAC
- Only 163 mortgage accounts made all 5 payments after entering DRAC
- This is a reduction of 80%
- 205 mortgage accounts made 0 payments prior to entering DRAC
- 1,221 mortgage accounts made no payments after entering DRAC

This so-called "payment holiday" was raised as a major concern by all credit providers interviewed. Various possible reasons for this state of affairs can be mentioned. As far as mortgage agreements are concerned, it is generally accepted that consumers will go to great lengths to safeguard the roof over their heads and will therefore exhaust all other options to comply with these agreements. When the consumer subsequently applies for debt review, he or she perceives the risk of losing his or her home to decrease and is therefore more likely to default. Under debt review no further credit is granted and the consumer can therefore not borrow money to continue to pay the mortgage. Another reason why these agreements are generally paid prior to debt review, but not thereafter is the fact that they are generally paid by way of a debit order that will only be cancelled once the consumer has applied for debt review.

Debt counsellors fail to inform their clients that payments should be continued and that at least the amount offered in the proposal should be paid. In fact, some debt counsellors go so far as to promise consumers a payment holiday of at least two months. Websites of debt counsellors perused use terminology such as "debts are frozen for two months" which creates the impression that these debts need not be paid and that interest and charges will not accrue during the time that an agreement is under debt review. A poster directing at consumers with debt problems, creates the impression that consumers would be able to "skip" payment of instalments for two months.

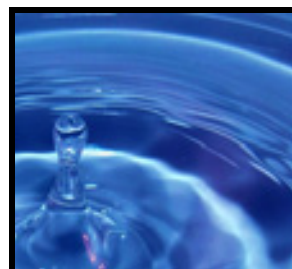
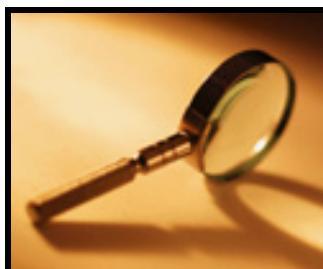
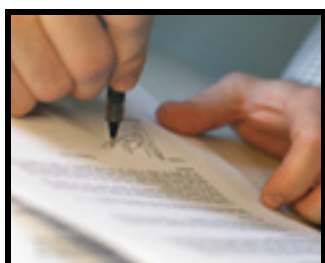
Example 24: A poster creates the impression that consumers would be able to skip payment of instalments for two months.



Credit providers are however also to be blamed insofar as they often refuse to cancel debit orders and thereby make it impossible for the consumer to pay according to the proposal. Consequently one creditor is preferred above other creditors. Moreover, consumers further report that some retailers refuse to accept payment of less than the originally agreed instalment when the consumer attempts to pay over the counter. Credit providers applying the legal principle of set-off also aggravates the situation.

Debt counsellors have indicated that some consumers are not *bona fide* and abuse the debt review process. Cases were also reported where consumers move from one debt counsellor to another in an attempt to prolong the “payment holiday”.

Even if none of the above possibilities occurs, the normal course of events is non-payment and/or late payment due to debt counselling fees and provision for legal costs during the first two months of debt review. Thereafter payment is made to the PDA which in turn may take up to thirty days to distribute payments to the consumer’s various credit providers. Should payment by the PDA be made to a suspense account, the allocation may take up to a further thirty days.



## CHAPTER 4 : QUANTITATIVE AND QUALITATIVE SURVEYS

### 4.1 INTRODUCTION

Two data sets are analysed and reported on. Data Set A comprises of 300 applications for debt counselling, representing 3 288 credit agreements. It addresses the following:

- Average time from date of request for COB to date of response.
- Incidence of no reply to requests for COBs.
- Average time from Form 16 (application for debt review) to COB request.
- Average time from date of proposal to date of response.
- Average time from date of application for debt counselling to date of receipt of response to proposal received.
- Average time from application for debt counselling to date proposal sent.

Data Set B comprises of the responses of 64 randomly selected debt counsellors to questions put to them during non-scheduled structured telephonic interviews and addresses the following:

- Perceptions of and experiences with credit providers regarding compliance with the NCA, workstream agreement and service levels.
- Levels of trust of debt counsellors regarding credit providers and consumers.
- Perspectives on the debt counselling process itself.
- Information on debt counsellors' practices, procedures and success rate.

In this chapter, the concept “days” refers to business days, unless otherwise indicated.

## **4.2**

### **DATA SET A:**

#### **Perceptions of and experiences with credit providers regarding their compliance with NCA, industry agreements and service levels**

### **4.2.1**

#### **Methodology**

In order to obtain a statistical analysis of the average turnaround time on COBs and response time to proposals, data had to be physically captured by referring to a consumer's file and noting the date on which documents were sent and received. Seven debt counsellors were identified nationally and approached to obtain access to consumers' file information. A consumer's file was then perused and all credit providers, credit type and relevant dates were recorded. This data was then later captured electronically and finally processed by statisticians. The deductions made are those of the research team.

In total, 3 288 credit agreements were considered. The specific data that was captured was the date on which the Form 16 was signed, the date on which Form 17.1 was sent to each credit provider, the date on which a COB was received from the credit provider, the date on which the proposal was sent, the date on which a response was received from the credit provider with regard to the proposal sent, and lastly the date on which the data was captured. This data was then transferred into readable data by statisticians.

In capturing the data, a credit agreement was classified under the following categories: per industry, per credit provider and per credit type. The data could then be analysed according to the various categories and comparisons and distinctions could be drawn.

#### 4.2.2

##### Industry demographics

The table below indicates the industry demographics of the 3 288 credit agreements recorded.

Table 4: Industry demographics on total data recorded

Industry	Frequency	Percent	Cumulative Frequency	Cumulative Percent
Bank	1724	52.43	1 724	52.43
Credit Provider	476	14.48	2 200	66.91
Micro Lender	230	7.00	2 430	73.91
Other	47	1.43	2 477	75.33
Retail	670	20.38	3 147	95.71
Services	141	4.29	3 288	100.00

The majority of the credit agreements fall within the banking industry. Thereafter retail and the category “other credit providers” follows, which includes Motor Finance Corporate, SA Home Loans, Sanlam and other various credit providers. “Others” would include private loans and other debts.

In Table 5 each credit provider is listed together with the number of accounts recorded for that specific credit provider. Although these figures give a demographic of each credit provider’s representation in our research this does not represent the broader national composition regarding agreements under debt review.



Table 5: The demographics of each credit provider that was recorded

CPN				
CPN	Frequency	Percent	Cumulative Frequency	Cumulative Percent
Absa	452	13.75	452	13.75
African Bank	112	3.41	564	17.15
Balboa	1	0.03	565	17.18
Capitec Bank	26	0.79	591	17.97
Cell Phone	43	1.31	634	19.28
Direct Axis	89	2.71	723	21.99
Doctor	59	1.79	782	23.78
Easton-Berry	436	13.26	1 218	37.04
Edcon	154	4.68	1 372	41.73
Education	29	0.88	1 401	42.61
Ellerines	33	1.00	1 434	43.61
FNB	311	9.46	1 745	53.07
Home Choice	3	0.09	1 748	53.16
JDG Trading	28	0.85	1 776	54.01
Kagisano	9	0.27	1 785	54.29
MFC	50	1.52	1 835	55.81
Mr Price	27	0.82	1 862	56.63
Nedbank	241	7.33	2 103	63.96
Other	486	14.78	2 589	78.74
Rainbow Finance	6	0.18	2 595	78.92
Real People	7	0.21	2 602	79.14
SA Home Loans	20	0.61	2 622	79.74
SABC TV	6	0.18	2 628	79.93
Std Bank	503	15.30	3 131	95.23
Sanlam	40	1.22	3 171	96.44
Telkom	9	0.27	3 180	96.72
Wesbank	108	3.28	3 288	100.00

Standard Bank has the largest representation in our data analysis by holding 15.3% of all the agreements recorded. They are followed by “other credit providers” and Absa.

All the credit agreements were then divided into types of credit, such as credit card, personal loan, home loan or vehicle financing. Table 6 below shows the demographic of each credit type that was recorded.

Table 6: The demographics of each credit type that were recorded

Credit Type				
Credit Type	Frequency	Percent	Cumulative Frequency	Cumulative Percent
Credit Card	675	20.53	675	20.53
Home Loan	167	5.08	842	25.61
Micro Loan	230	7.00	1072	32.60
Other	179	5.44	1251	38.05
Over Draft	201	6.11	1452	44.16
Personal Loan	562	17.09	2014	61.25
Retail	886	26.95	2900	88.20
Service	141	4.29	3041	92.49
TV License	6	0.18	3047	92.67
Vehicle Financing	241	7.33	3288	100.00

The retail industry holds the largest portion (26.95%) of credit types recorded. They are followed by “credit cards” (20.53%). Save for “TV license”, the credit type with the smallest representation is the type classified as “service”. These are agreements which are not credit agreements as such but that have been included in the debt review process for convenience or when they have become incidental credit agreements in terms of the Act. They include, amongst others, outstanding doctors’ accounts, cell phone accounts and outstanding school fees.

### 4.2.3

#### Turnaround time date of Form 17.1

In order to determine the average turnaround time for a COB, the date on which the Form 17.1 was sent is compared with the date on which the COB was received from the credit provider. In the analysis, any data that was unusable was taken out of calculation. An example of unusable data would be where no answer on Form 17.1 was received from the credit provider or where the date of COB received was before the date Form 17.1 was sent. The latter occurs where the consumer has already obtained a COB from the credit provider prior to approaching the debt counsellor.

#### 4.2.3.1 Credit industry

Table 7: Credit industry turnaround time for Form 17.1 sent to date COB received

Analysis Variable: Form 17.1 sent to date COB received – Credit industry								
Industry	Total Acct	Used Data	Average	Std Dev	Minimum	Maximum	Lower 95% CL for Mean	Upper 95% CL for Mean
Bank	1724	1136	14.1575704	16.2793563	1.0000000	234.0000000	13.2098952	15.1052456
Credit Provider	476	217	15.3824885	22.1657533	1.0000000	160.0000000	12.4166951	18.3482819
Micro Lender	230	137	18.5547445	27.8284978	1.0000000	223.0000000	13.8529968	23.2564922
Other	47	14	14.1428571	7.7940524	3.0000000	27.0000000	9.6427053	18.6430090
Retail	670	433	18.6327945	20.9013675	1.0000000	175.0000000	16.6585666	20.6070224
Services	141	36	25.3888889	45.2322753	1.0000000	197.0000000	10.0844888	40.6932890

Table 7 represents the average turnaround time on response to a Form 17.1 for specific credit industries. The last two columns indicate the confidence level in the turnaround time provided; this is the range in which the average falls. For example, it can be said with 95% certainty that the banking industry response time on Form 17.1 is between approximately thirteen and fifteen days. Thus, the variable is fairly small and the fourteen days average fairly certain. The variation of the confidence levels for “services” is a lot wider, ranging from ten to 41 days,

thus indicating that the average of 25 days is less certain. The more data that is available for each specific credit industry, credit provider or credit type the more accurate the average response time can be determined. This principle is applied throughout with regard to the data collected and will appear in some of the tables shown hereunder.

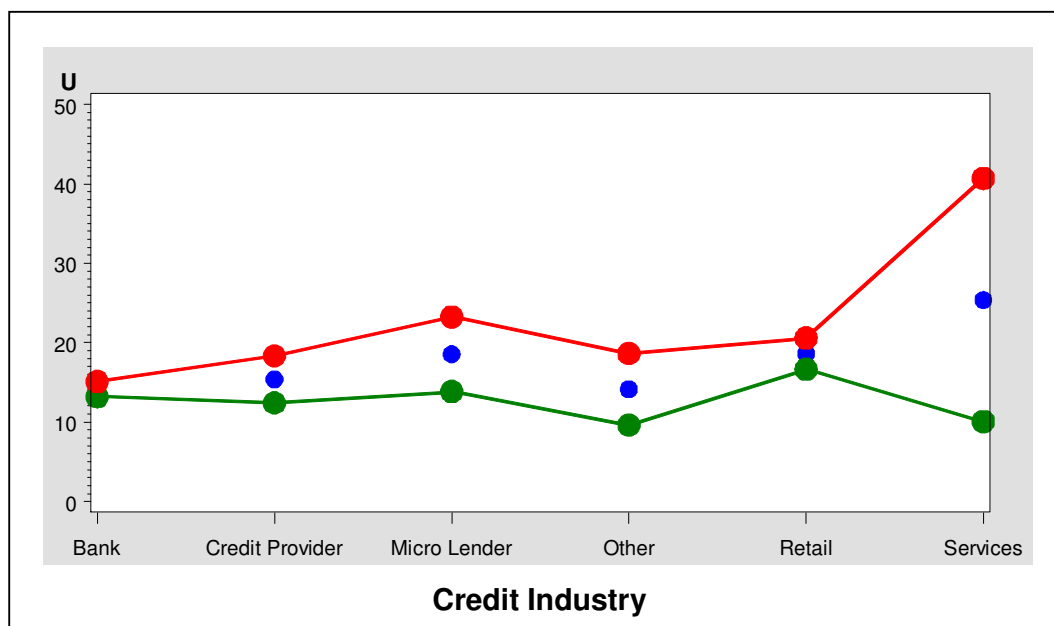


Figure 1: Industry turnaround time from Form 17.1 sent to date COB received

With reference to Figure 1, the bottom line represents the lower confidence level, the top line represents the upper confidence level and the dots in the middle represent the average. The closer the top and bottom line are to each other, the smaller the variant which gives a more certain average.

#### **4.2.3.2 COBs**

According to regulation 24(4) in terms of the NCA, a debt counsellor may rely on the information provided by the consumer if the credit provider fails to provide the debt counsellor with a COB within five business days after request.

The workstreams revisited this regulation, and agreed that an additional five business days grace be granted to the credit provider to furnish the debt counsellor with a COB. In effect the work streams thus granted the credit provider ten business days to respond to a Form 17.1.

What is evident in Figure 1 is that, in the great majority of cases, the credit providers do not furnish the debt counsellor with a COB within ten business days. On average, the banking industry's response time is fourteen business days, while the retail market's average is eighteen business days. Neither of the two is near the regulated five nor the ten business days as agreed upon at the work streams.

Although regulation 24 provides that the debt counsellor may rely on the information provided by the consumer, should a credit provider fail to respond within five business days, it is not always practical to do so. A credit provider is then more likely to reject a proposal on grounds of an incorrect balance given. The debt counsellor will then either have to amend the proposal and send a new proposal to all the consumer's credit providers, or refer the matter to the court. If the debt counsellor chooses to wait for the outstanding COBs he runs the risk of the other credit providers terminating the consumer's debt review.

#### 4.2.3.3 Banking industry

With reference to Table 7, the average response time on Form 17.1 does not differ significantly between the various credit industries. The only one for which the response time can be disregarded is that of “services” due to the wide range between the data points. This could be due to the small amount of data collected on services as well as the vast scope of various service providers.

According to the data, the banking industry’s response time is somewhat faster than that of retail, but still falls outside the five to ten business days range. The credit industry’s overall average for response time on Form 17.1 is 18 business days.

Table 8: Banking industry turnaround time from Form 17.1 sent to date COB received

Analysis Variable : Form 17.1 to date COB received - Banking industry								
Banking Industry	Total Acct	Used Data	Average	Std Dev	Min	Max	Lower 95% CL for Mean	Upper 95% CL for Mean
Absa	452	338	11.7130178	13.2869677	1.00	105.00	10.2914154	13.1346201
Direct Axis	89	62	14.5645161	17.0165021	1.00	77.00	10.2431337	18.8858985
FNB	311	167	16.7784431	19.7784114	1.00	116.00	13.7566897	19.8001965
Nedbank	241	145	14.7655172	15.9613308	1.00	132.00	12.1455346	17.3854999
SA Home Loans	20	11	6.6363636	5.0650316	2.00	19.00	3.2336291	10.0390982
Standard Bank	503	341	16.0117302	17.8196812	1.00	234.00	14.1136283	17.9098322
Wesbank	108	72	10.3472222	10.4290490	1.00	47.00	7.8965159	12.7979286

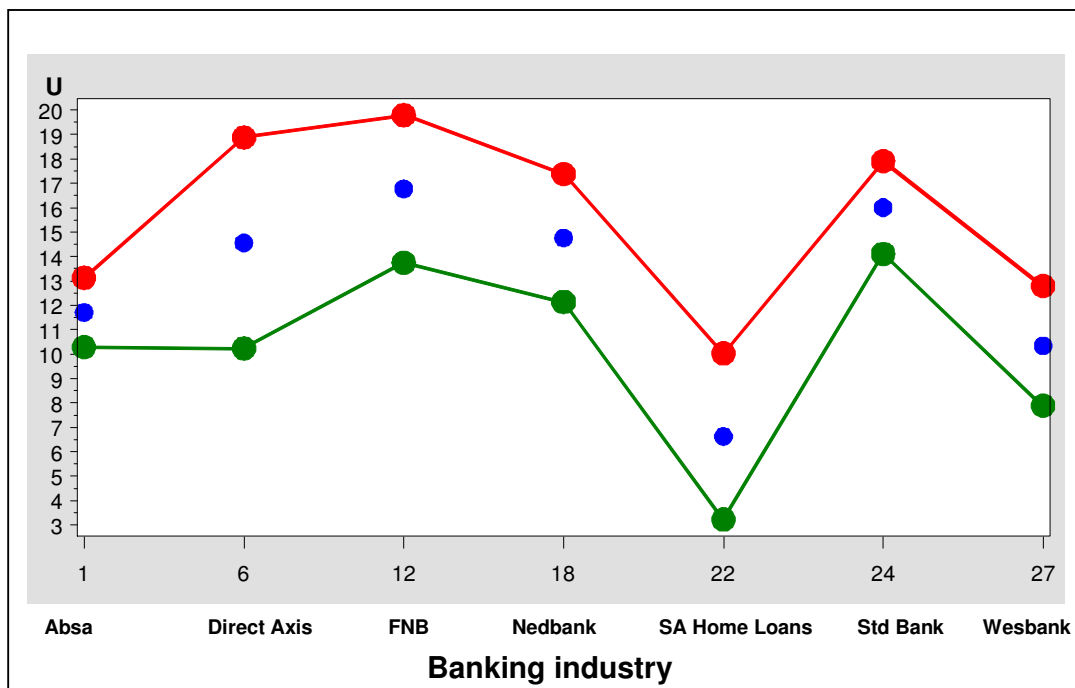


Figure 2: Banking industry turnaround time from Form 17.1 sent to date COB received

As indicated by Table 8, the banking industry's average response time on a Form 17.1 ranges from six to twenty business days. SA Home Loans has the fastest average response time of six business days, but they also have the least amount of data recorded.

The data indicates that all the banks fail to adhere to the five business days provided by the Regulations and the majority of them even fail to adhere to the ten business days required by the work stream agreement. Only SA Home Loans and WesBank, on average, provide a COB within ten business days.

Out of all the data recorded, the banks dispose of the greater part of the credit agreements. Their failure to comply with the required ten business days response time might be attributed to the large number of Form 17.1 received daily. One of the banks indicated in an interview that they receive approximately 185 new Form 17.1 per day. This is over and above the proposals and other correspondence received by them. It appears that the workload is often

excessive, that there is a big turnover of staff, and that systems had to be developed or adapted. This, of course, does not excuse their failure to comply with the requirements of the regulations and/or the work stream agreements.

When the banking industry's response time is compared to that of the retailers and micro lenders a very similar picture emerges.

#### 4.2.3.4 Retail industry

Table 9: Retail industry turnaround time from Form 17.1 sent to date COB received

Analysis Variable : Form 17.1 to date COB received- Retail industry								
Retailer	Total Acct	Used Data	Average	Std Dev	Minimum	Maximum	Lower 95% CL for Mean	Upper 95% CL for Mean
Easton-Berry	415	293	18.2286689	16.9898922	1.0000000	145.0000000	16.2751902	20.1821477
Edcon	154	84	25.7500000	28.0373567	2.0000000	142.0000000	19.6655206	31.8344794
Ellerines	33	20	7.5500000	5.5769733	3.0000000	22.0000000	4.9398961	10.1601039
JDG Trading	28	5	13.6000000	10.4307238	6.0000000	30.0000000	0.6485457	26.5514543
Mr Price	27	23	13.7826087	36.2365417	1.0000000	175.0000000	-1.8872470	29.4524644
Other	7	6	3.1666667	1.6020820	2.0000000	6.0000000	1.4853847	4.8479486
Rainbow Finance	6	2	4.5000000	2.1213203	3.0000000	6.0000000	-14.5593071	23.5593071

The data for JDG Trading, other and Rainbow Finance is far too little to obtain a reliable average and can be disregarded for this analysis.



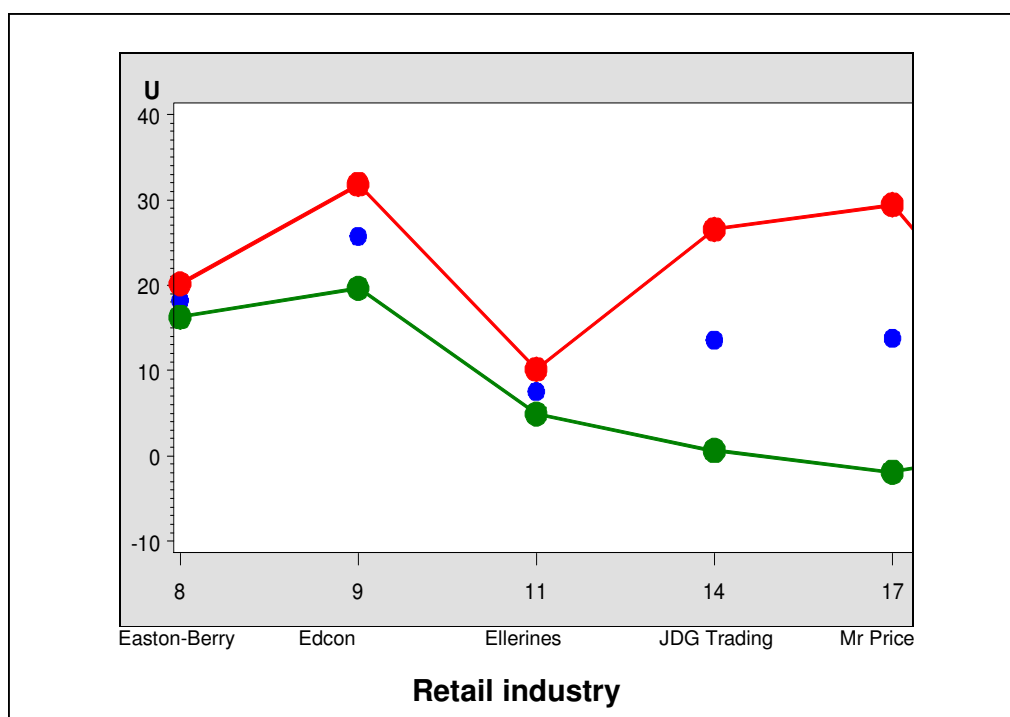


Figure 3: Retail industry turnaround time from Form 17.1 sent to date COB received

The range between the upper and lower confidence level of JDG Trading and Mr Price is quite substantial and thus the average is not as certain as with that of Easton-Berry and Ellerines. Factors that caused such a large disparity between the upper and lower confidence levels are when a small number of data was collected for a specific credit provider, or where there is a vast difference between the response times. Out of the 27 agreements recorded for Mr Price only 23 agreements had a COB on file. Out of those 23 agreements the minimum response time is one day and the maximum is 175 days and the confidence level thus ranges from minus two to 29 days. The minus two indicates that the response time is very close to one and thus that the maximum response time of 175 is rather an exception than the general rule.

According to Figure 3, the retailer with the fastest response time is Ellerines with an average response time of eight business days. The retailer with the longest response time is Edcon, with an average of 25 business days.

With reference to Table 4 and Figure 1, the average response time for the retail industry is longer than that of the banking industry. Overall, the banking industry has far more credit agreements than the retail industry. Consequently the difference in response time cannot be contributed to the difference in work load. It seems that the banking industry is currently better equipped in managing the debt review process than the retail industry, although both industries are still failing to adhere to the response time provided by the regulations and work streams.

#### 4.2.3.5 Micro lending industry

Table 10: Micro lending industry turnaround time from Form 17.1 sent to date COB received

Analysis variable : Form 17.1 to date COB received – Micro lenders								
Micro Lender	Total Acct	Used Data	Average	Std Dev	Min	Max	Lower 95% CL for Mean	Upper 95% CL for Mean
African Bank	112	78	17.3717949	24.3727061	1.0000	89.000	11.8765987	22.8669910
Balboa	1	1	2.0000000	.	2.0000	2.0000	.	.
Capitec Bank	26	20	30.7000000	52.2011292	4.0000	223.00	6.2691195	55.1308805
Easton-Berry RCS	21	14	16.7857143	8.3313917	7.0000	40.000	11.9753119	21.5961166
Home Choice	3	1	16.0000000	.	16.000	16.000	.	.
Kagisano	9	4	17.5000000	10.3762549	8.0000	30.000	0.9890629	34.0109371
Other	51	16	13.6875000	13.0676126	2.0000	49.000	6.7242607	20.6507393
Real People	7	3	10.3333333	5.0332230	5.0000	15.000	-2.1698856	22.8365523

The data captured for Balboa, Home Choice, Kagisano and Real People is too little to obtain a reliable average and can be disregarded for purposes of this analysis.

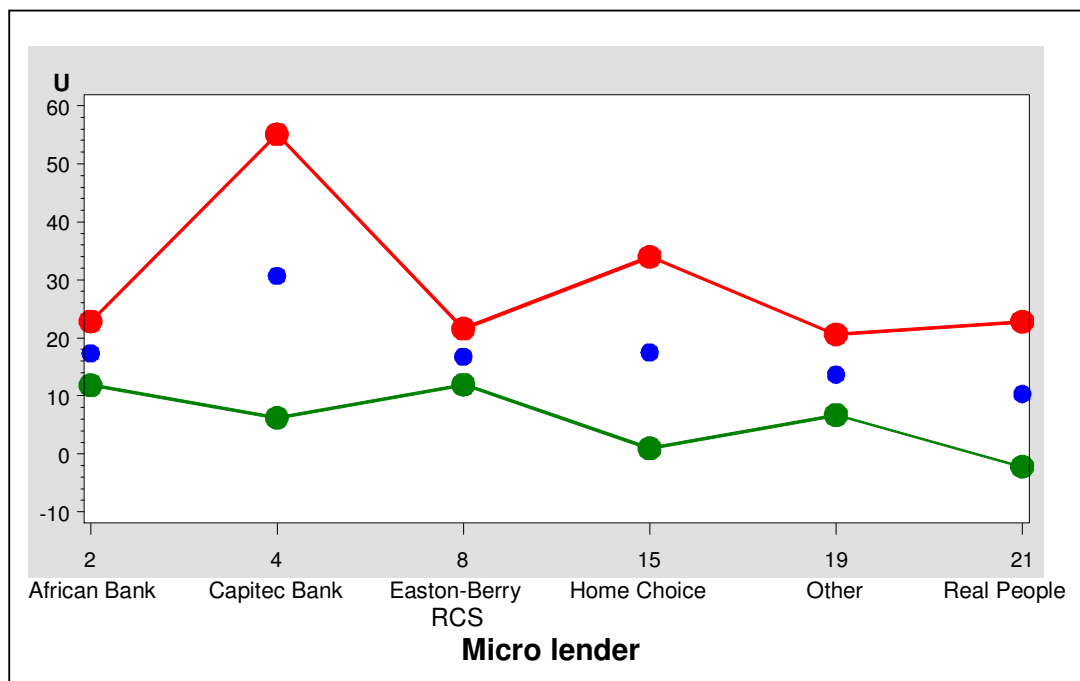


Figure 4: Micro lending industry turnaround time from Form 17.1 sent to date COB received

The term “micro lender” is not defined in the NCA. These “micro” loans are those agreements that fall within the scope of the micro lending industry. They were short term agreements with smaller loan amounts, shorter repayment terms and higher interest rates and fell within the regulations of the then Micro Finance Regulatory Council, the predecessor of the NCR.

As seen in Table 3, only 7% of the agreements recorded, fall within the micro lending industry. In the past the micro lenders were targeted as the major cause of South Africa’s over-indebtedness problem due to the high interest charged on their loans. However, it seems that the majority of consumers under debt review in terms of the NCA are more burdened with bank loans than micro loans.

Debt counsellors interviewed, maintained that the majority of consumers under debt review are middle to higher income earners. This corresponds with the income demographics in a sample of 57 consumers presented by Tony Richards, chairman of the Debt Counsellors Association of South Africa, in a presentation at the Safari into Debt Enforcement conference held on 16 and 17 March 2009 in Midrand.

Table 11: Summary of income demographics of consumers under debt review (Tony Richards)

Income per month	Number	Percentage
0 – 3500	2	3.51%
3501 – 7500	8	14.03%
7501 – 15000	16	28.07%
15 000>	31	54.39%
Total	57	100%

There seems to be a link between the consumer income group and the type of credit agreements. It appears that the middle to higher income earners are more inclined to take a bank loan than the low income earners, or perhaps even that middle to high income earners are targeted more by the banking industry than the lower income earners. Be it as it may, it appears that the micro lenders are, from the credit providers' side, not the biggest role players in South Africa's over-indebtedness problem.

Table 9, together with Figure 4 indicates that the micro lenders in general have a poor response time to Form 17.1, (an average of nineteen business days). This period by far exceeds the ten business days provided for in the work stream agreements.

When comparing the data of the turnaround time for the banking industry, the retail industry and the micro lending industry it can be estimated that, in the majority of cases, a debt counsellor will not have received any COBs from his consumer's credit providers within ten business days and that he would as a result have to rely only on the information provided to him by the consumer. As mentioned above, this does not provide a viable solution as the credit provider in most cases rejects the proposals where incorrect balance was used.

Undoubtedly, more attention must be given to improve the response time on Form 17.1. To assist with the workload, additional staff members must be appointed, systems should be upgraded to automate returns on a Form 17.1, and the debt review departments must be given access to consumer account detail to avoid the middle-man scenario.

#### 4.2.3.6 Quarterly analysis: Banking industry

In order to determine whether there has been any improvement on the turnaround time for COBs, the data has been divided into quarters.

Table 12: Quarterly analysis banking industry turnaround time from Form 17.1 sent to date COB received

Analysis variable: Form 17.1 to date COB Received – Banking Industry Quarterly Analysis			
Quarter	Total Acc	Used Data	Mean
2007	45	34	14.4294872
2008-q1	256	201	20.1019487
2008-q2	334	255	16.4659565
2008-q3	109	85	14.7121773
2008-q4	559	334	11.3722621
2009-q1	395	206	7.842099567

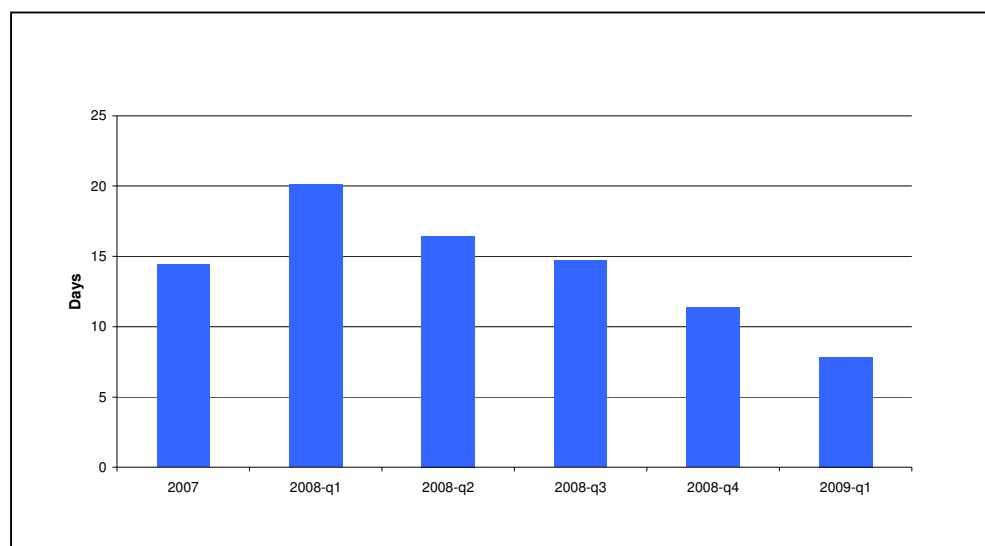


Figure 5: Quarterly analysis banking industry turnaround time from Form 17.1 to date COB

Table 13: 2007 Banking industry turnaround time from Form 17.1 sent to date COB received

Analysis variable : Form 17.1 to date COB received – Banking industry - 2007									
Quarter	Bank	Total	Used Data	Average	Std Dev	Min	Max	Lower 95% CL for Mean	Upper 95% CL for Mean
2007	Absa	8	8	9.2500000	6.9230464	3.00	25.00	3.4621884	15.0378116
	Direct Axis	1	1	11.0000000	.	11.0	11.00	.	.
	FNB	8	4	15.7500000	10.2102889	7.00	30.00	-0.4968481	31.9968481
	Nedbank	4	4	13.7500000	4.5000000	7.00	16.00	6.5894958	20.9105042
	Std Bank	20	13	17.0769231	23.7222172	9.00	96.00	2.7417307	31.4121155
	Wesbank	4	4	19.7500000	3.5000000	18.0	25.00	14.1807190	25.3192810

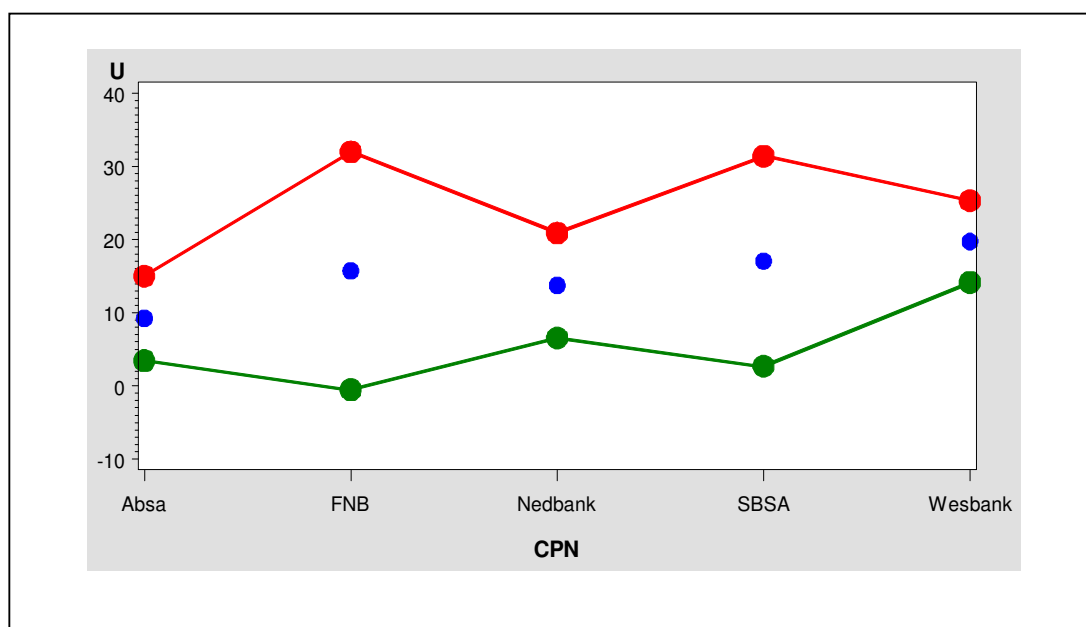


Figure 6: 2007 Banking industry turnaround time from Form 17.1 sent to date COB received

The first data, as set out in Table 13 and Figure 6, represents those agreements for which a Form 17.1 was sent in 2007. The research team focused mainly on 2008 files and thus the data for 2007 is fairly little.

The following five tables and graphs indicate the response time for the four quarters in 2008 as well as the 1<sup>st</sup> quarter in 2009.

Table 14: First quarter 2008 - Banking industry turnaround time from Form 17.1 sent to date COB received

Analysis variable : Form 17.1 to date COB received – 1 <sup>st</sup> Quarter : Banking industry									
Quarter	Banks	Total Acct	Used Data	Mean	Std Dev	Min	Max	Lower 95% CL for Mean	Upper 95% CL for Mean
2008-q1	Absa	64	60	8.0500000	17.6322365	1.00	105.00	3.4951103	12.6048897
	Direct Axis	15	11	31.9090909	23.4027970	10.0	77.000	16.1868779	47.6313039
	FNB	44	28	24.6071429	20.1463889	2.00	73.00	16.7951888	32.4190969
	Nedbank	42	30	22.9333333	24.2471944	3.00	132.00	13.8792821	31.9873845
	Std Bank	72	59	16.8813559	33.3244679	1.00	234.00	8.1969523	25.5657596
	Wesbank	19	13	16.2307692	15.2760916	1.00	47.000	6.9995195	25.4620190

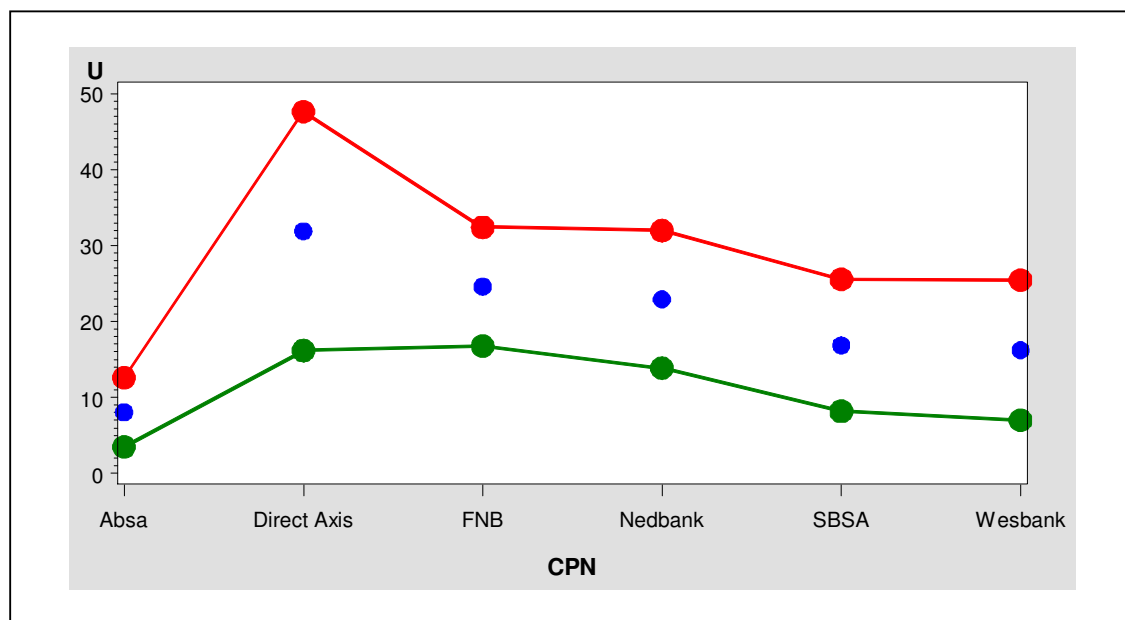


Figure 7: First quarter 2008 - Banking industry turnaround time from Form 17.1 sent to date COB received

Table 15: Second quarter 2008 - Banking industry turnaround time from Form 17.1 sent to date COB received

AnalysisVariable : Form 17.1 to date COB received – 2 <sup>nd</sup> Quarter : Banking industry									
Quarter	Bank	Total Acc	Used Data	Mean	Std Dev	Min	Max	Lower 95% CL for Mean	Upper 95% CL for Mean
2008-q2	Absa	90	69	11.1159420	14.6584008	1.00	61.000	7.5946097	14.6372744
	Direct Axis	32	22	16.6818182	16.2286823	2.00	72.000	9.4864235	23.8772128
	FNB	58	40	27.4500000	27.7728423	2.00	116.00	18.5678141	36.3321859
	Nedbank	46	41	13.1219512	15.3951212	1.00	80.000	8.2626514	17.9812511
	Std Bank	89	73	19.7260274	13.0440070	5.00	59.000	16.6826354	22.7694194
	Wesbank	19	10	10.7000000	6.0009259	2.00	22.000	6.4071962	14.9928038

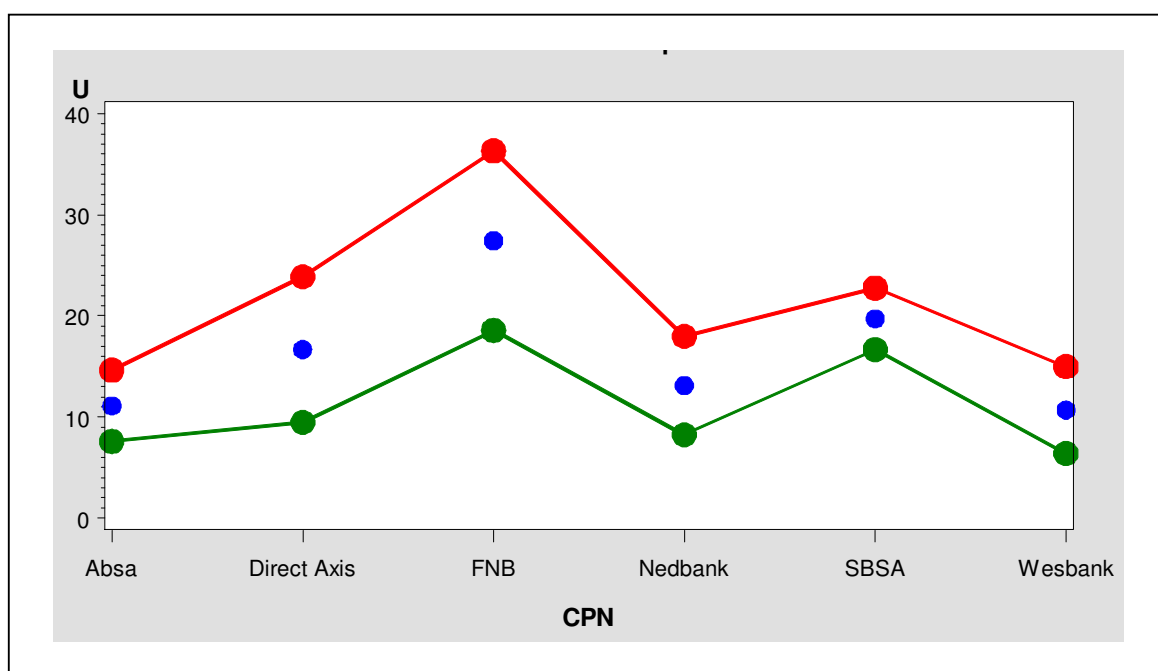


Figure 8: Second quarter 2008 - Banking industry turnaround time from Form 17.1 sent to date COB received



Table 16: Third quarter 2008 - Banking industry turnaround time from Form 17.1 sent to date COB received

Analysis variable : Form 17.1 to date COB received – 3 <sup>rd</sup> quarter : Banking industry									
Quarter	Bank	Total Acc	Used Data	Mean	Std Dev	Min	Max	Lower 95% CL for Mean	Upper 95% CL for Mean
2008-q3	Absa	28	27	8.33333333	16.7882743	2.00	92.000	1.6921132	14.9745535
	Direct Axis	7	6	6.83333333	4.8339080	2.00	15.000	1.7604580	11.9062087
	FNB	17	11	19.4545455	20.5492756	2.00	73.000	5.6493543	33.2597366
	Nedbank	13	9	14.7777778	8.4079988	3.00	29.000	8.3148177	21.2407378
	Std Bank	39	27	24.0740741	10.1751051	9.00	44.000	20.0489366	28.0992116
	Wesbank	5	5	14.8000000	7.4966659	3.00	23.000	5.4916598	24.1083402

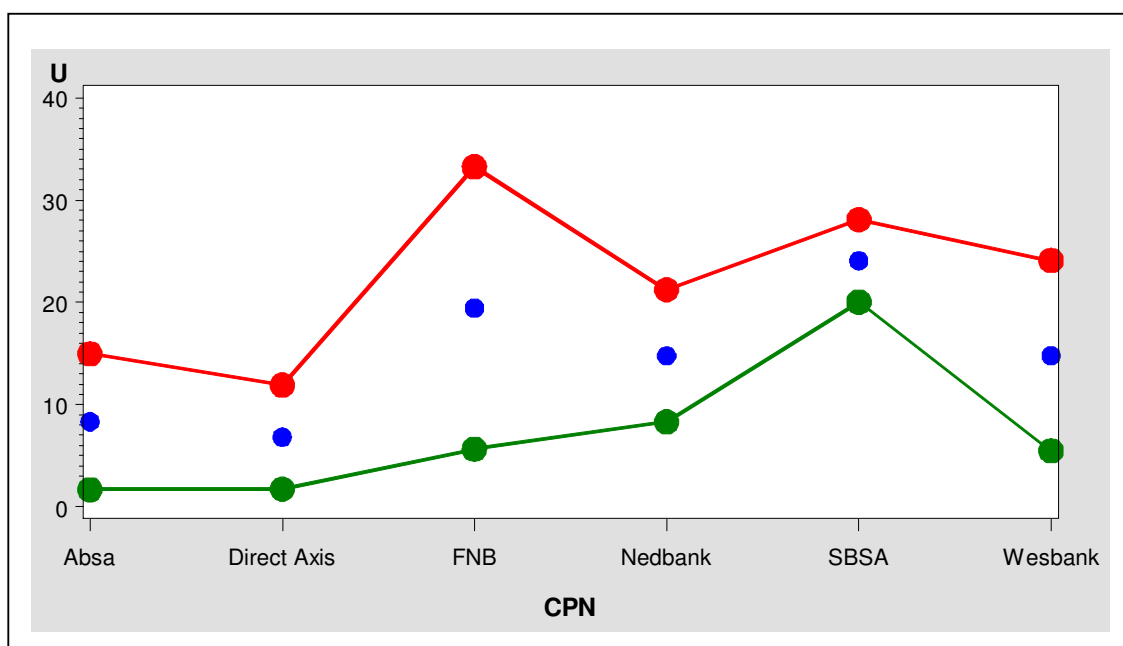


Figure 9: Third quarter 2008 - Banking industry turnaround time from Form 17.1 sent to date COB received

Table 17: Fourth quarter 2008 - Banking industry turnaround time from Form 17.1 sent to date COB received

Analysis variable : Form 17.1 to date COB received – 4 <sup>th</sup> quarter : Banking industry									
Quarter	Bank	Total Acc	Used Data	Mean	Std Dev	Min	Max	Lower 95% CL for Mean	Upper 95% CL for Mean
2008-q4	Absa	158	114	13.2105263	9.7422297	1.00	50.000	11.4028114	15.0182413
	Direct Axis	18	13	6.7692308	9.1937827	2.00	36.000	1.2134835	12.3249781
	FNB	119	52	10.9615385	10.8609059	1.00	51.000	7.9378430	13.9852340
	Nedbank	80	40	14.0500000	12.2200969	2.00	61.000	10.1418234	17.9581766
	Std Bank	151	103	16.3786408	9.1481451	2.00	55.000	14.5907310	18.1665506
	Wesbank	33	22	6.8636364	7.7845724	1.00	30.000	3.4121503	10.3151224

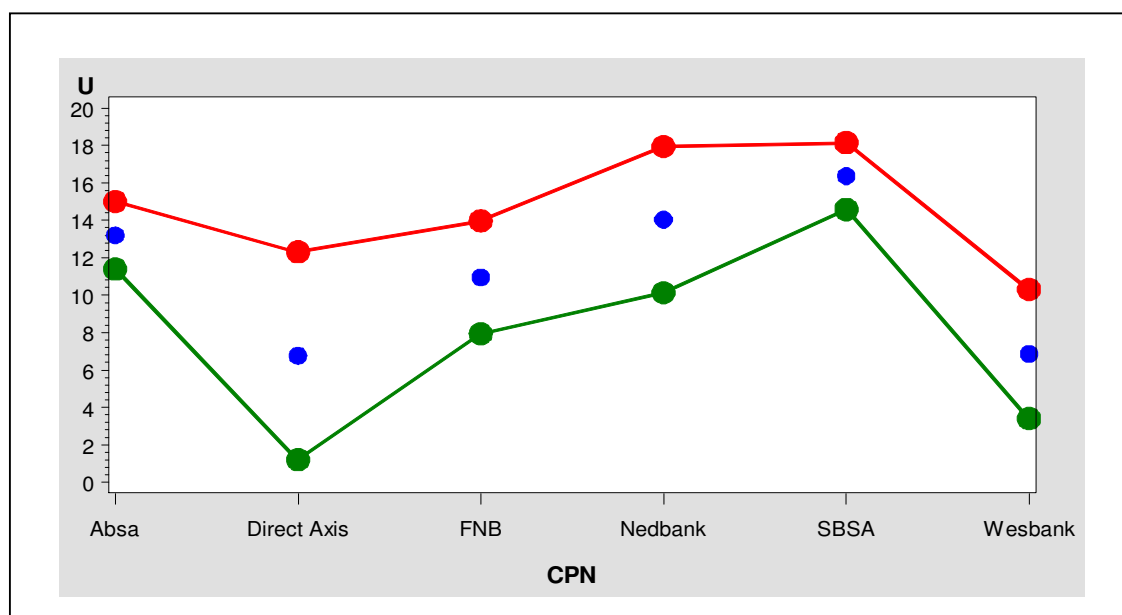


Figure 10: Fourth quarter 2008 - Banking industry turnaround time from Form 17.1 sent to date COB received

Table 18: First quarter 2009 - Banking industry turnaround time from Form 17.1 sent to date  
COB received

Analysis variable : Form 17.1 to date COB received – 1 <sup>st</sup> quarter 2009 : Banking industry									
Quarter	Bank	Total Acc	Used Data	Mean	Std Dev	Min	Max	Lower 95% CL for Mean	Upper 95% CL for Mean
2009-q1	Absa	103	60	15.0666667	10.1143742	3.00	50.000	12.4538468	17.6794866
	Direct Axis	16	9	5.0000000	4.0620192	1.00	10.000	1.8776556	8.1223444
	FNB	63	32	5.2500000	5.6167951	2.00	24.000	3.2249294	7.2750706
	Nedbank	56	21	7.8571429	5.3224592	2.00	30.000	5.4343885	10.2798972
	Std Bank	129	66	7.0454545	8.9277990	2.00	45.000	4.8507276	9.2401815
	Wesbank	28	18	6.8333333	9.9128556	1.00	45.000	1.9037862	11.7628804

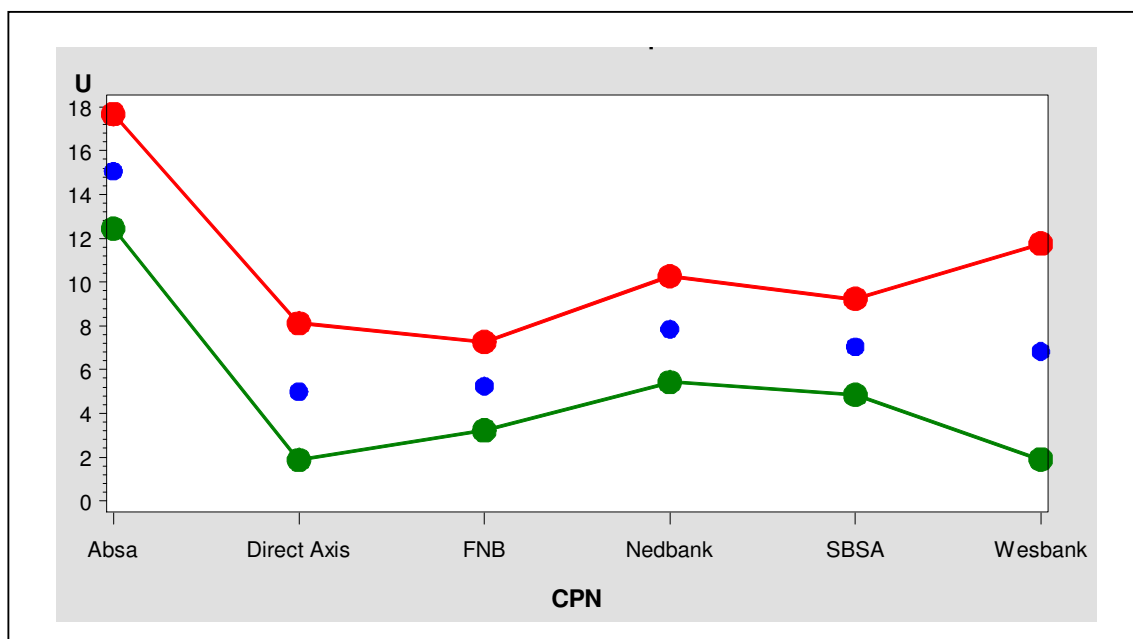


Figure 11: First quarter 2009 - Banking industry turnaround time from Form 17.1 sent to date  
COB received

For some of the banks a drastic improvement in response time can be seen between the first quarter in 2008 and the first quarter in 2009. With reference to Tables 14 and 18, First National Bank's average response time on a Form 17.1 went from 24 business days in the first quarter of 2008 to five business days in the first quarter of 2009. Similarly, Nedbank's response time fell from 22 business days, in the first quarter in 2008, to eight business days in the first quarter in 2009

#### 4.2.3.7 Quarterly analysis: Individual banks

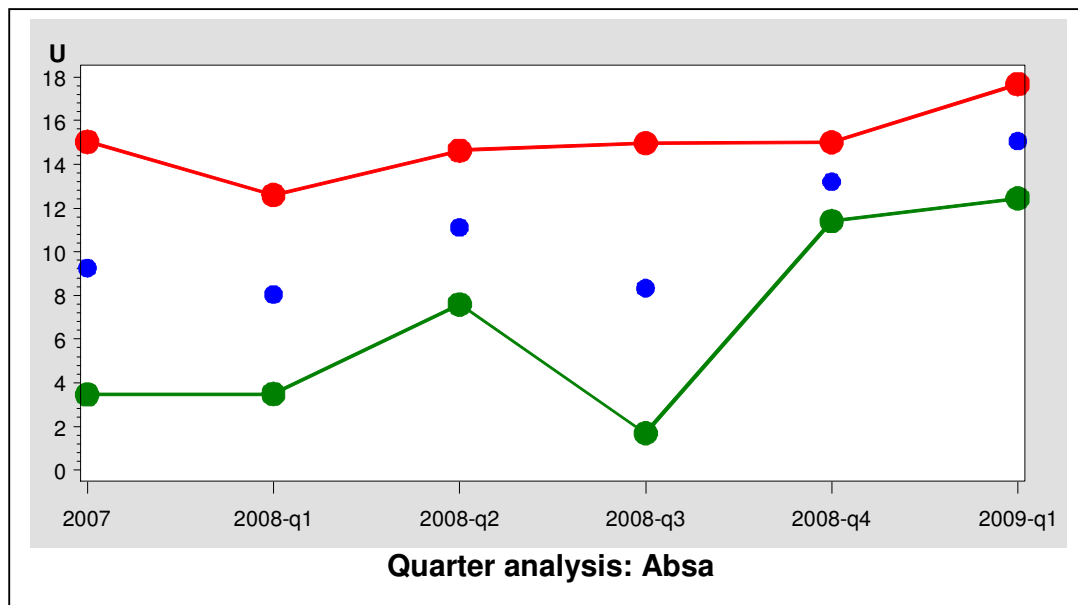


Figure 12: Absa – quarterly analysis on turnaround time from Form 17.1 sent to date COB received

As shown in Figure 12 above, the confidence level for 2007 to the third quarter in 2008 is fairly wide, indicating that their response time was inconsistent for that period, ranging from one to 105 days. Regarding the fourth quarter in 2008, and the first quarter in 2009, the difference between the confidence levels is smaller and thus the average is more certain. Absa is the only bank that shows an increase in response time, with an average of eight business days in the first quarter of 2008 to fifteen business days in the first quarter of 2009. The reasons for this is unclear, however, as the above tables indicate, it does seem that the number of Form 17.1's received has increased somewhat from the first quarter of 2008 to the first quarter of 2009.

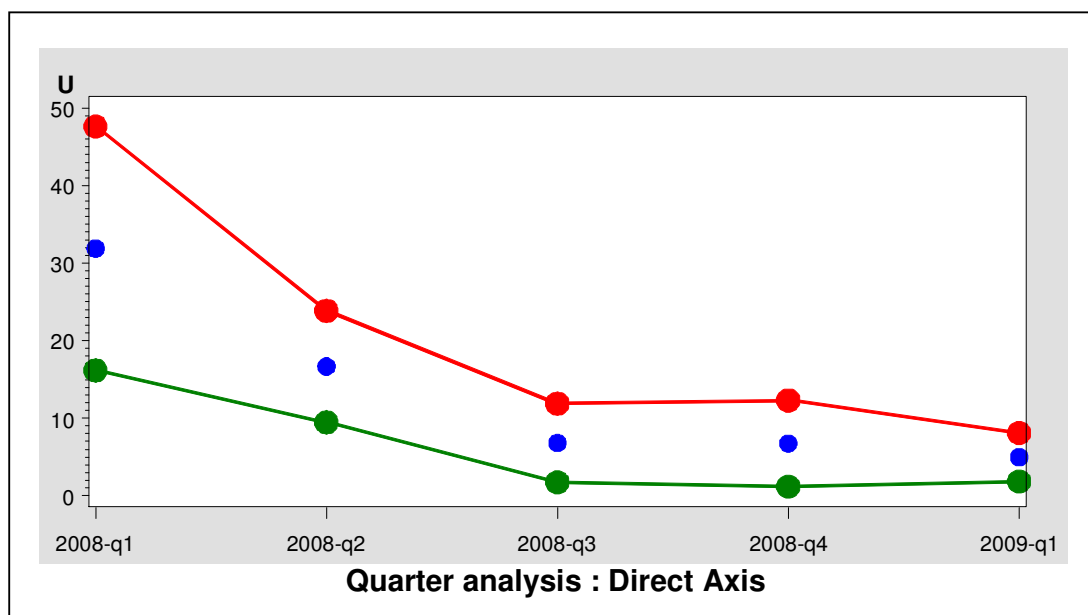


Figure 13: Direct Axis – quarterly analysis on turnaround time from Form 17.1 sent to date COB received

As indicated by Figure 13, Direct Axis's response time has improved over time. In the first quarter of 2008, Direct Axis's response time ranged from ten to 77 business days. Previously, Direct Axis's debt review accounts were administrated by First National Bank's debt review department. In October 2008, Direct Axis started administering their own debt review accounts. Although there is no drastic improvement from the third quarter to the fourth quarter, Direct Axis managed to bring their response time down to an average of five business days for the last quarter of 2009.

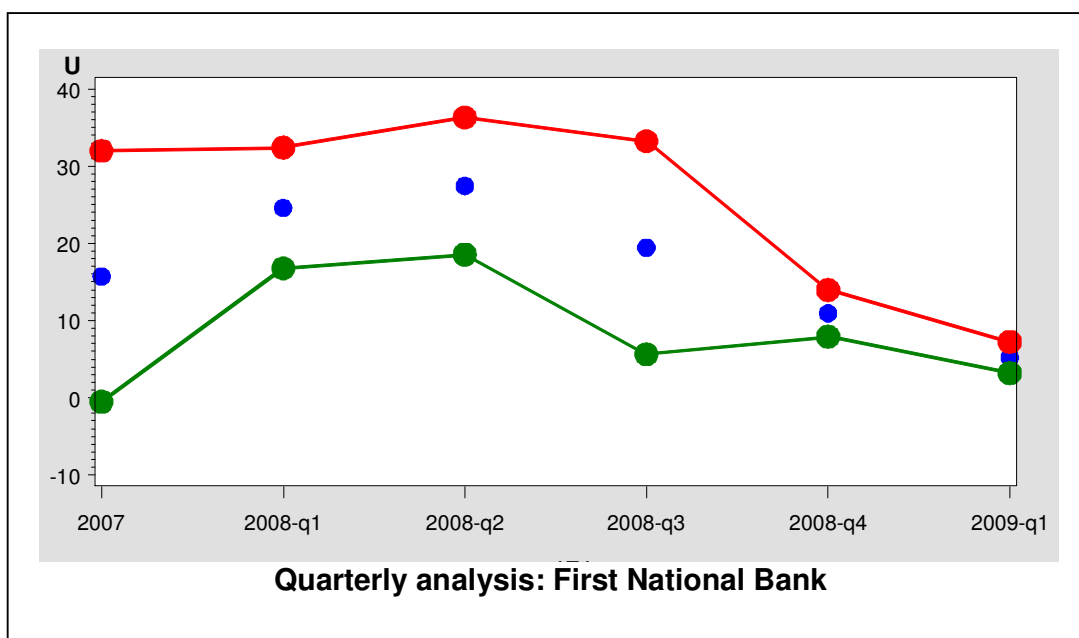


Figure 14: First National Bank – quarterly analysis on turnaround time from Form 17.1 sent to date COB received

At the work stream meetings, it was repeatedly stated by debt counsellors that First National Bank had the longest response time on a Form 17.1. The research shows that First National Bank moved from having the longest response time in the second quarter of 2008 with an average of 27 business days, and a maximum response time of 116 business days, to five business days in the first quarter of 2009. The confidence level also improved in 2009 ranging from a response time between three and seven business days.

When First National Bank was questioned on their response time history, they informed us that originally the debt review department had to send notices of a consumer's debt review application to all their various First National Bank product houses. The various product houses would then reply by sending detail on the consumer's accounts to the debt review department. Once a response has been received from all the product houses for the specific consumer, the debt review department would then compile all the information and send it though to the debt counsellor. This process is clearly time consuming and impractical. First National Bank has now overhauled their system in the debt review department which enables them to automate COBs from their offices

and send it to the debt counsellor and thereby significantly improving their response time.

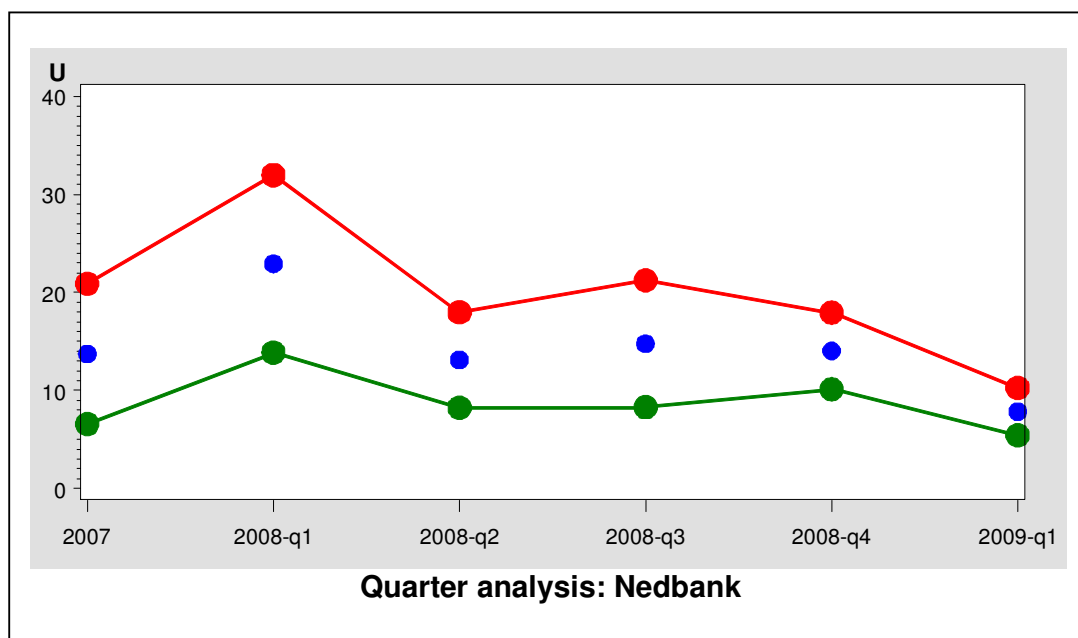


Figure 15: Nedbank – quarterly analysis on turnaround time from Form 17.1 sent to date COB received

Nedbank has also shown an improvement on their response time on Form 17.1. Nedbank's debt review department first has to give notice to each of the Nedbank product houses. Each individual product house must then supply the debt review department with the consumer's account details which is then sent to the debt counsellor. Only when all the product houses have responded, the COB is sent to the debt counsellor. Although this is a relatively cumbersome process, Nedbank has managed to improve their response time in the first quarter of 2009 with an average of eight business days.

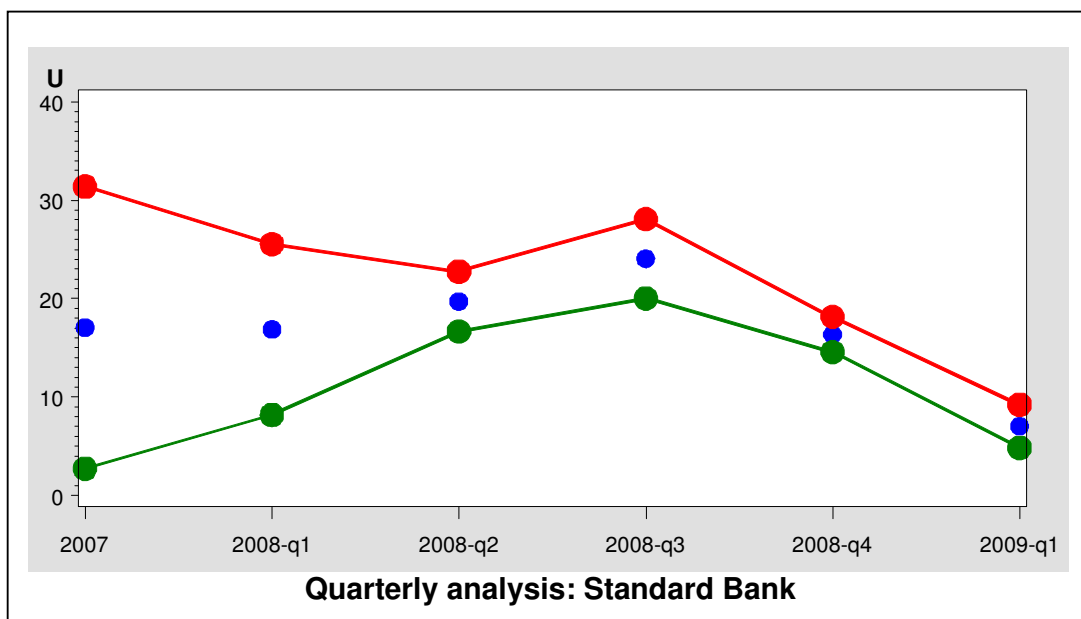


Figure 16: Standard Bank – quarterly analysis on turnaround time from Form 17.1 sent to date COB received

As indicated by Figure 16, Standard Bank has shown a great improvement in response time in the first quarter of 2009. Currently, their response time averages between five and nine business days, which is a vast improvement on their previous quarter's fifteen to eighteen business days. However, in the first quarter of 2009, Standard Bank only has a 51% response to Form 17.1. In other words, not calculated in the average for the first quarter of 2009, are those agreements on which no response was received, or on which response will only be received long after the Form 17.1 was sent (see paragraph 4.2.4 below for a further discussion in this regard).



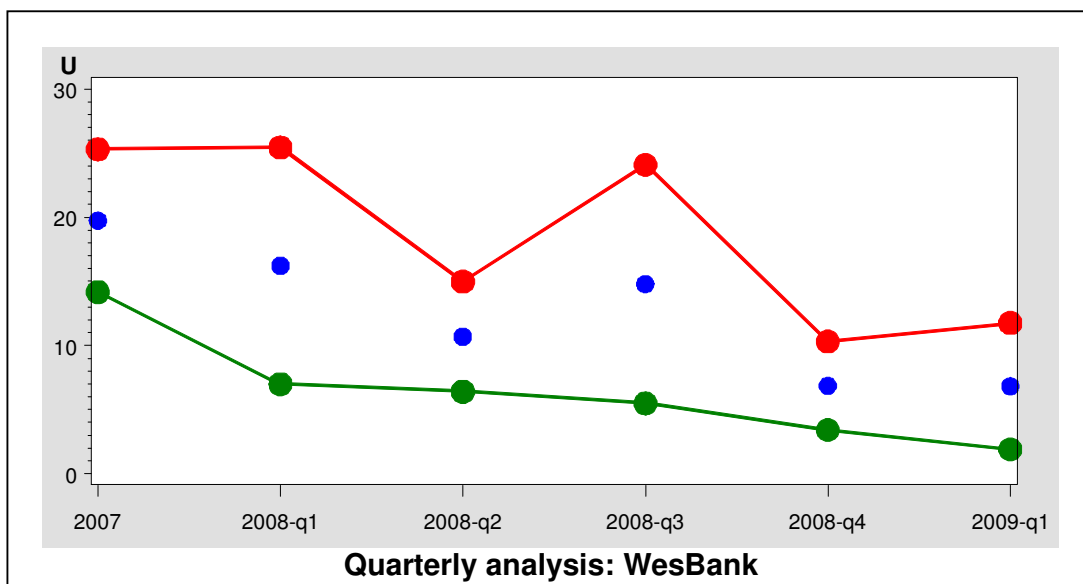


Figure 17: Wesbank – quarterly analysis on turnaround time from Form 17.1 sent to date COB received

As with Direct Axis, WesBank's debt review accounts were administered by First National Bank. Since November 2008, WesBank has been administering its own accounts. As Figure 17 indicates, their response time has improved from the third quarter of 2008 to the fourth quarter in 2008. Currently Wesbank's average response time is seven business days.

Overall, the banking industry's response time on Form 17.1 has improved through time. Should the trend continue, it is possible that the five business days grace provided by the work streams will indeed be a grace provided and that a debt counsellor will receive the necessary balance certificates within five business days from sending the Form 17.1.

#### 4.2.4

#### Credit type turnaround time

In order to obtain a more in-depth analysis of the data the research team have also calculated the response time between the various credit types such as credit card, personal loan and vehicle financing.

The following data is a representation of the banking industry's response time for the various credit types.

##### 4.2.4.1 Credit card

Table 19: Credit card turnaround time from Form 17.1 sent to date COB received

Analysis variable : Credit Card								
Bank	Total Acc	Data Used	Mean	Std Dev	Minimum	Maximum	Lower 95% CL for Mean	Upper 95% CL for Mean
Absa Credit Card	223	163	11.5644172	13.5537507	1.0000000	92.000	9.4680358	13.6607985
FNB Credit Card	151	80	17.3250000	20.4832596	1.0000000	94.000	12.7666739	21.8833261
Nedbank Credit Card	80	49	16.1632653	14.8693574	2.0000000	80.000	11.8922872	20.4342434
Std Bank Credit Card	219	146	15.8424658	21.5283897	2.0000000	234.000	12.3210034	19.3639281

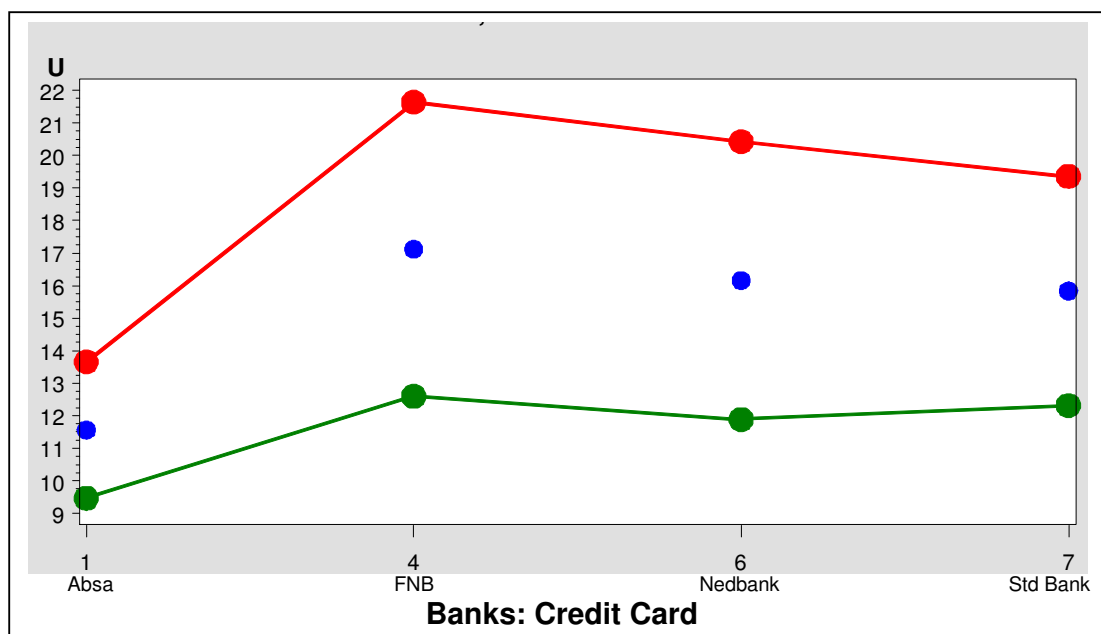


Figure 18: Credit card turnaround time from Form 17.1 sent to date COB received

On average, Absa credit card's response time is faster than that of the other banks. The data range for the other banks is fairly wide and thus the average is less certain. Table 3 indicates that, from all the data recorded, credit cards have the second most agreements recorded. The overall response time for a credit card COB is fairly similar to the overall average response time on a Form 17.1

#### 4.2.4.2 Personal loan

Table 20: Personal loan turnaround time from Form 17.1 sent to date COB received

Analysis variable : Personal loan								
Credit Provider	Total Acc	Data Used	Mean	Std Dev	Min	Max	Lower 95% CL for Mean	Upper 95% CL for Mean
Absa Personal Loan	88	70	10.8285714	12.1738273	1.00	50.00	7.9258248	13.7313181
Direct Axis Personal Loan	89	62	14.5645161	17.0165021	1.00	77.00	10.2431337	18.8858985
Easton-Berry RCS Personal Loan	22	17	17.6470588	6.3829967	5.00	26.00	14.3652247	20.9288929
Easton-Berry Woolworths Personal Loan	39	25	14.8400000	7.5811169	6.00	43.00	11.7106688	17.9693312
Edcon Personal Loan	15	11	31.8181818	39.9269788	2.00	142.00	4.9948725	58.6414912
FNB Personal Loan	71	36	13.0833333	10.5759160	2.00	36.00	9.5049582	16.6617085
Nedbank Personal Loan	67	46	15.9347826	21.1180830	2.00	132.00	9.6634861	22.2060791
Other Personal Loan	65	31	14.6129032	17.2697759	1.00	76.00	8.2782983	20.9475082
Standard Bank Personal Loan	31	24	13.3333333	10.4243305	2.00	55.00	8.9315246	17.7351421
Sanlam Personal Loan	40	30	10.3666667	14.5091727	2.00	66.00	4.9488525	15.7844808
Wesbank Personal Loan	35	21	9.8571429	10.3744191	1.00	36.00	5.1347639	14.5795218

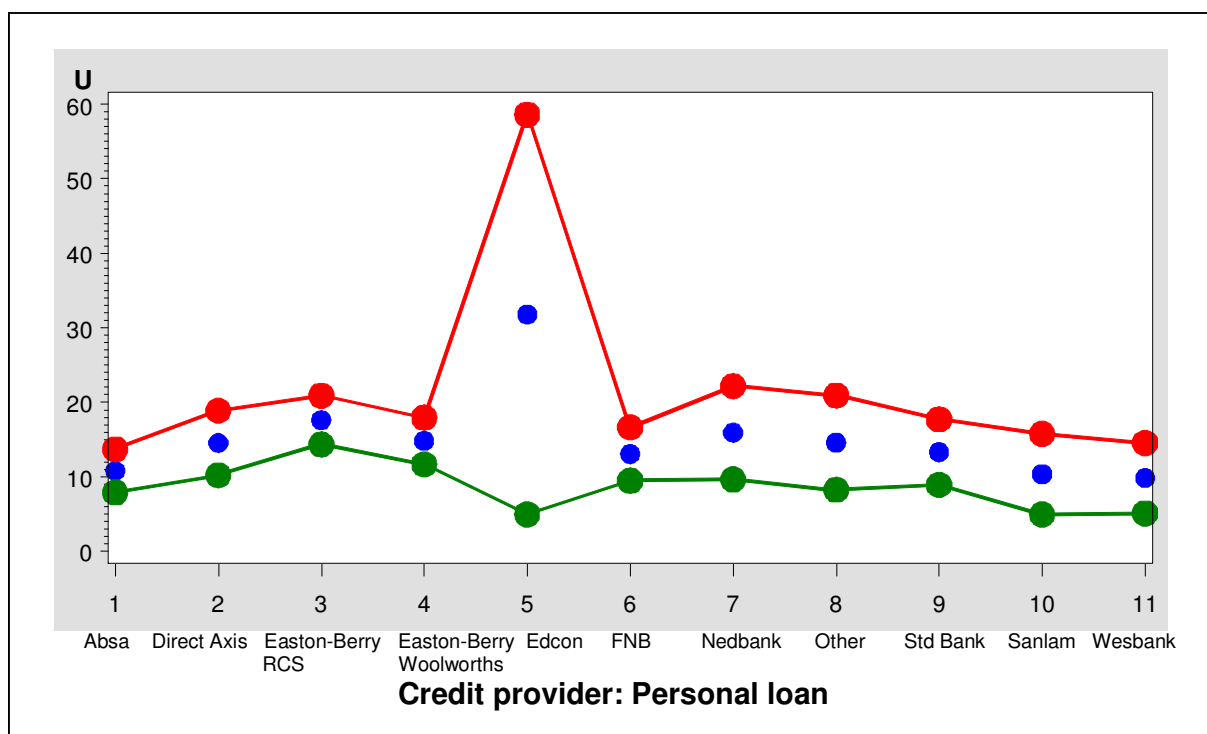


Figure 19: Personal loan turnaround time from Form 17.1 sent to date COB received

Wesbank has, on average, the fastest response time, and Edcon, on average the longest response time.

As clearly indicated by Figure 19, Edcon's confidence level range is fairly wide and thus the average is less certain. This can be contributed to the small amount of data captured for Edcon personal loans.

Overall, the response times on personal loans are comparatively similar for all the credit providers, ranging from ten to eighteen business days.

#### 4.2.4.3 Vehicle financing

Table 21: Vehicle financing turnaround time from Form 17.1 sent to date COB received

Analysis variable : Vehicle financing								
Credit Provider	Total Acc	Used data	Mean	Std Dev	Min	Max	Lower 95% CL for Mean	Upper 95% CL for Mean
Absa Vehicle Financing	44	31	12.2903226	12.2152734	1.00	58.00	7.8097241	16.7709210
MFC Vehicle Financing	50	33	14.3939394	15.9038898	1.00	71.00	8.7546653	20.0332135
Nedbank Vehicle Financing	14	6	10.0000000	5.5136195	5.00	19.00	4.2138112	15.7861888
Other Vehicle Financing	25	18	27.8333333	44.3903143	2.00	160.00	5.7585494	49.9081173
Std Bank Vehicle Financing	35	21	21.1428571	22.9745200	2.00	84.00	10.6849810	31.6007333
Wesbank Vehicle Financing	73	51	10.5490196	10.5476324	1.00	47.00	7.5824502	13.5155890

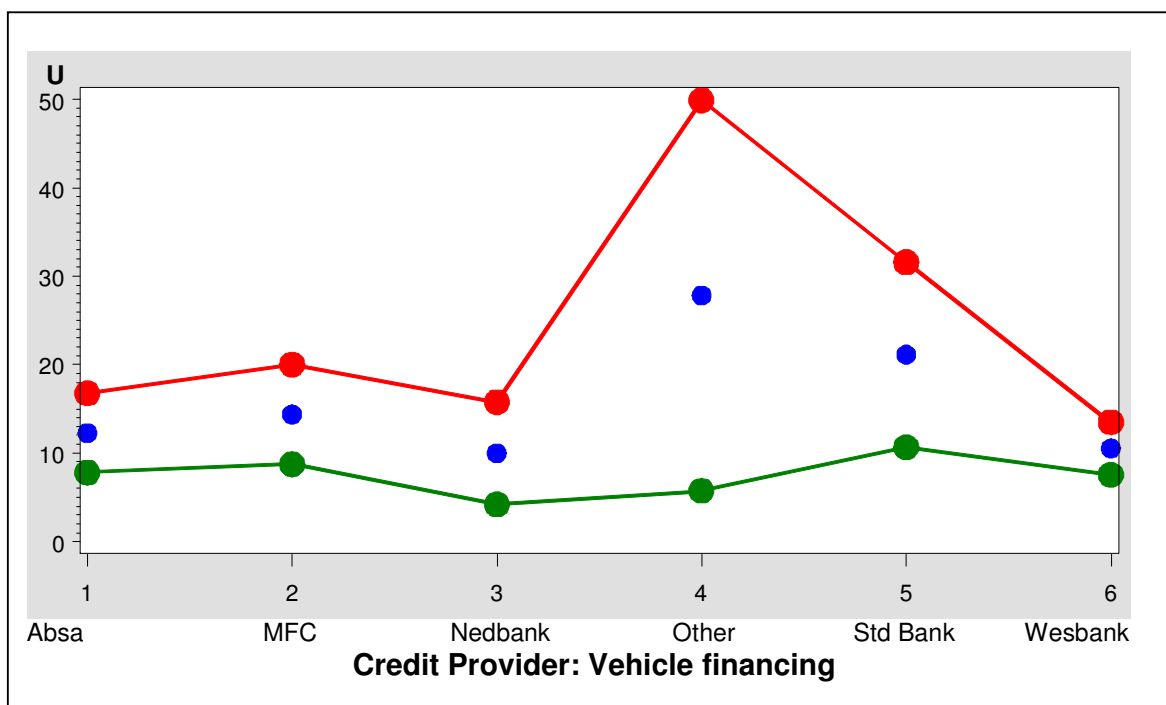


Figure 20: Vehicle financing turnaround time from Form 17.1 sent to date COB received

For Vehicle financing, the credit provider with the fastest average response time is Nedbank, followed by WesBank. However, Nedbank also had the smallest

number of vehicle financing agreements in the sample. With reference to the highest number of vehicle financing agreements, WesBank is the major role player in this analysis, followed by MFC.

#### **4.2.5**

##### **Incidence of no reply to request for COBs**

Out of the 3288 Form 17.1's recorded, only 60% had a COB for the account. The remaining 40% can be divided into three categories. Firstly, those agreements for which less than ten business days have lapsed between the date when the Form 17.1 was sent to the date the data was captured (column A); secondly those agreements where between ten and 30 have lapsed from the date the Form 17.1 was sent and the date the data was captured (column B); and finally those agreements where more than 30 days have lapsed from the date the Form 17.1 was sent to the date the data was recorded (Column C).

The reason why this distinction is made, is to identify those agreements for which a Form 17.1 has been sent less than ten business days before the research team perused the file and to indicate in which time frame those agreements, for which no COB has been received, fall into.

Although the research team focused mainly on those accounts which were at least older than two months, there are a few cases where the Form 17.1 was sent within ten business days before the data was captured. Those agreements which fall within this time frame have thus not yet exceeded the ten business days period provided for by the workstreams.

#### 4.2.5.1 Banking industry

Table 22: Banking industry – No COB received – classified in accordance to time lapsed since Form 17.1 sent

Form 17.1 sent – no COB received					
Credit Provider		Time Lapsed			
Frequency Percent Row Pct Col Pct	Total 17.1 sent Percentage	A < 10 days	B 10-30 days	C >30 days	Total
<b>Absa</b>	452 24.78%	0 0.00% 0.00% 0.00%	17 3.02% 15.18% 34.00%	95 16.87% 84.82% 18.81%	112 19.89%
<b>Direct Axis</b>	89 30.34%	0 0.00% 0.00% 0.00%	1 0.18% 3.70% 2.00%	26 4.62% 96.30% 5.15%	27 4.80%
<b>FNB</b>	311 42.77%	1 0.18% 0.75% 12.50%	6 1.07% 4.51% 12.00%	126 22.38% 94.74% 24.95%	133 23.62%
<b>Nedbank</b>	241 38.59%	3 0.53% 3.23% 37.50%	5 0.89% 5.38% 10.00%	85 15.10% 91.40% 16.83%	93 16.52%
<b>SA Home Loans</b>	20 45%	0 0.00% 0.00% 0.00%	1 0.18% 11.11% 2.00%	8 1.42% 88.89% 1.58%	9 1.60%
<b>Standard Bank</b>	503 31.21	3 0.53% 1.91% 37.50%	18 3.20% 11.46% 36.00%	136 24.16% 86.62% 26.93%	157 27.89%
<b>Wesbank</b>	108 29.63%	1 0.18% 3.13% 12.50%	2 0.36% 6.25% 4.00%	29 5.15% 90.63% 5.74%	32 5.68%
<b>Total</b>	1 724	8 1.42%	50 8.88%	505 89.70%	563 100.00%

Out of the 1 724 agreements falling within the banking industry, 563 agreements do not have a COB on file. The first percentage rate is the individual credit provider's contribution to the total of the agreements for which no COB was received within the banking industry. For example,

Absa is responsible for 19.89% of the 563 agreements for which no COB was received of which 3.02% fall within 10 to 30 days no response (Column B) and 16.87% thereof fall into more than 30 days no response (Column C).

The second percentage indicates in which time frame the individual credit provider's total of no response to Form 17.1 falls. For example, Nedbank has 93 agreements where no COB was received. (3.23% thereof falls below the ten days period, 5.38% thereof fall within the ten to thirty day no response period and 91.4% thereof falls within the more than thirty days with no response).

The third percentage indicates the total of each credit provider in the specific time frame. For example, out of the eight agreements falling in the ten days no COB received, Standard Bank and Nedbank respectively each hold 37.5% of these agreements.

By referring to Table 22, it is evident that Standard Bank has the highest percentage of no response to Form 17.1 of all the banks. Within the banking industry, out of the 563 agreements for which no reply to a COB request is on file, Standard Bank is responsible for 28% of those agreements.

The response time for those agreements falling within column "A" may still fall within the 10 business day period provided by the workstreams and can thus be regarded as compliant. However, only 1.42% of the agreements for which no COB was received fall within this category. The majority of the agreements for which no response to Form 17.1 was received, falls within column C, which are those agreements for which no response was received after 30 days from the date when Form 17.1 was sent.

With regard to the data recorded in a number of cases the Form 17.1 was sent in the first quarter of 2009. As was indicated in paragraph 4.2.2 the response time on proposals for that quarter had somewhat improved compared to the previous quarter's data. What was not taken in account when calculating these averages, are those accounts on which no response on Form 17.1 was received by the time the data was captured.



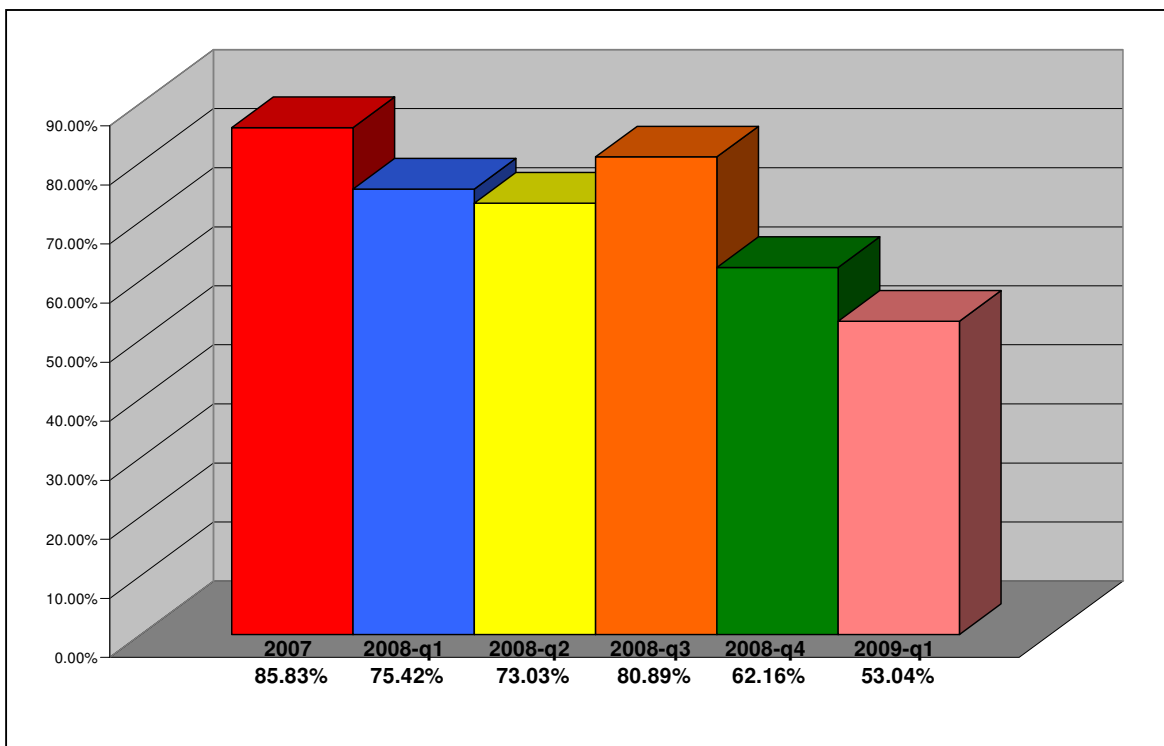


Figure 21: Banking industry; percentage of COBs received - quarterly analysis

As indicated by Figure 21 above, the total COBs received in the first quarter of 2009 is significantly less than that of the previous quarters. This may be due to the fact that the data was recorded before the COB was received, and thus that the response percentage would have been higher had the data been recorded later. The account on which no COB was received in the first quarter of 2009 will also have an effect on the average turnaround time on the COBs for the quarter. Those accounts on which a COB is only received a number of days after the data was recorded, will not be able to be brought into calculation and thus the current average response time for the first quarter of 2009 is affected positively, i.e. looking better than it is.

#### 4.2.5.2 Retail industry

#### The Retail Industry

Table 23: Retail industry – No COB received – classified accordance to time lapsed since Form 17.1 sent

Form 17.1 sent and no COB received – Retail Industry					
Credit Provider		Time Lapsed			
Frequency Percent Row Pct Col Pct	Total 17.1 sent Percentage	A < 10 days	B 10-30 days	C >30 days	Total
Easton-Berry	415 27.71%	0 0.00% 0.00% 0.00%	3 1.31% 2.61% 21.43%	112 48.91% 97.39% 52.34%	115 50.22%
Edcon	154 45.45%	0 0.00% 0.00% 0.00%	5 2.18% 7.14% 35.71%	65 28.38% 92.86% 30.37%	70 30.57%
Ellerines	33 39.39%	0 0.00% 0.00% 0.00%	3 1.31% 23.08% 21.43%	10 4.37% 76.92% 4.67%	13 5.68%
JDG Trading	28 82.14%	0 0.00% 0.00% 0.00%	2 0.87% 8.70% 14.29%	21 9.17% 91.30% 9.81%	23 10.04%
Mr Price	27 14.81%	1 0.44% 25.00% 100.00% %	0 0.00% 0.00% 0.00%	3 1.31% 75.00% 1.40%	4 1.75%
Rainbow Finance	6 66.67%	0 0.00% 0.00% 0.00%	1 0.44% 25.00% 7.14%	3 1.31% 75.00% 1.40%	4 1.75%
Total	670	1 0.44%	14 6.11%	214 93.45%	229 100.00%

As Table 23 indicates, Rainbow Finance has very few agreements recorded and thus no deduction can be made from the data provided.

Although JDG Trading has a staggering 82% no response to Form 17.1, only 28 agreements were recorded, thus making any conclusion from this figure unreliable. However, Mr Price only has 27 agreements recorded and only has a

15% no response on Form 17.1. A question that comes to mind is why, although these two retailers have relatively the same amount of agreements recorded, does the one have such a high percentage of no response to Form 17.1 and the other such a low percentage? That being said, further data should be obtained to be able to make any reliable conclusions on this matter.

#### 4.2.5.3 Micro lending industry

Table 24: Micro lending industry– no COB received – classified according to time lapsed since Form 17.1 sent

Form 17.1 sent and no COB received					
Credit Provider	Time Lapsed				
Frequency Percent Row Pct Col Pct	Total 17.1 sent Percentage	A < 10 days	B 10-30 days	C >30 days	Total
African Bank	112 24.11%	3 3.61% 11.11% 75.00%	0 0.00% 0.00% 0.00%	24 28.92% 88.89% 31.58%	27 32.53%
Capitec Bank	26 23.08%	0 0.00% 0.00% 0.00%	0 0.00% 0.00% 0.00%	6 7.23% 100.00% 7.89%	6 7.23%
Easton-Berry RCS	21 33.33%	0 0.00% 0.00% 0.00%	1 1.20% 14.29% 33.33%	6 7.23% 85.71% 7.89%	7 8.43%
Home Choice	3 66.67%	0 0.00% 0.00% 0.00%	0 0.00% 0.00% 0.00%	2 2.41% 100.00% 2.63%	2 2.41%
Kagisano	9 55.56%	0 0.00% 0.00% 0.00%	0 0.00% 0.00% 0.00%	5 6.02% 100.00% 6.58%	5 6.02%
Other	51 64.71%	1 1.20% 3.03% 25.00%	1 1.20% 3.03% 33.33%	31 37.35% 93.94% 40.79%	33 39.76%
Real People	7 42.86%	0 0.00% 0.00% 0.00%	1 1.20% 33.33% 33.33%	2 2.41% 66.67% 2.63%	3 3.61%
Total	229	4 4.82%	3 3.61%	76 91.57	83 100.00

The data for Home Choice, Kagisano and Real People is too little to draw any logical conclusion from and can thus be disregarded for this analysis.

Those micro lenders that fall under “other” jointly have a relatively high percentage of no response to Form 17.1. These micro lenders are often small credit providers and are not always major role players in the debt review process. A problem that arises when these micro lenders fail to provide a COB is that the consumers often do not have statements of these accounts either. For a debt counsellor then to obtain the outstanding balance is often very difficult and sometimes impossible.

What often happens in these cases is that the debt counsellor, together with the consumer, will in the calculate a balance on the basis of the amount borrowed, payments made and possible interest charged. Experience has indicated that these micro lenders rarely oppose the debt review application in court and thus the point of the correct balances is never argued.

The percentages on no response received of Capitec Bank and African Bank are fairly similar to that of Easton-Berry under retailer and Absa under the banking industry. Although an average of 25% on no COB received is comparatively little, it is still far too high considering the process. For a debt counsellor to receive a response on only 75% of the Form 17.1's sent, is unacceptable.

What must, however, be considered is that these figures do not indicate the total COBs sent by the credit providers but rather the total COBs received by the debt counsellor. It does not make provision for those circumstances where a COB was mistakenly sent to the wrong debt counsellor or where the credit provider sent the COB but, due to technical errors was never received by the debt counsellor. Although the research team made sure that all filing was up to date, documents misfiled by the debt counsellor, or instances where the Form 17.1 was never received by the credit provider, could also influence the results.

A possible further study would be to record the COB turnaround time from within the various credit providers' debt review departments.

## 4.2.6

### Conclusion on response time on Form 17.1

Although there has in general been an improvement on the response time on Form 17.1, it is on average still far above the five business days provided by the regulations and the ten business days provided by the work streams.

Another important aspect where improvement is needed is those cases for which no COB is received. Greater emphasis should be placed on the importance of ensuring that all Form 17.1's are sent successfully and on time and that all COB's are provided timeously and correctly. In order to achieve this successfully, improved communication between the debt counsellor and the credit provider is vital. It is important for the credit provider to ensure that any change of fax number or e-mail address is sent to all debt counsellors and that these systems are operational at all times. Similarly, it is important that the debt counsellor ensures that Form 17.1 is sent correctly and that filing of the COBs is done accurately and diligently.

#### 4.2.6.1 Response to proposals

Table 25: Industry date proposal sent to date response received

Analysis variable : Date proposal send to date response received									
Industry	Total Acc	Proposals Sent	Responses Received	Mean	Std Dev	Min	Max	Lower 95% CL for Mean	Upper 95% CL for Mean
Bank	1724	764	197	30.6243655	35.3490036	2.00	243.00	25.6575037	35.5912273
Credit Provider	476	240	66	28.5909091	35.9358305	2.00	226.00	19.7567793	37.4250388
Micro Lender	230	114	19	17.3684211	12.2166122	2.00	57.00	11.4802024	23.2566397
Other	47	1	1	3.0000000	.	3.00	3.00	.	.
Retail	670	311	57	37.2982456	25.4705467	1.00	102.00	30.5399999	44.0564913
Services	141	63	10	24.6000000	31.1312633	2.00	108.000	2.3300358	46.8699642
			3288	1493	350				

As the data captured for "other" is too little it can be disregarded for this analysis.

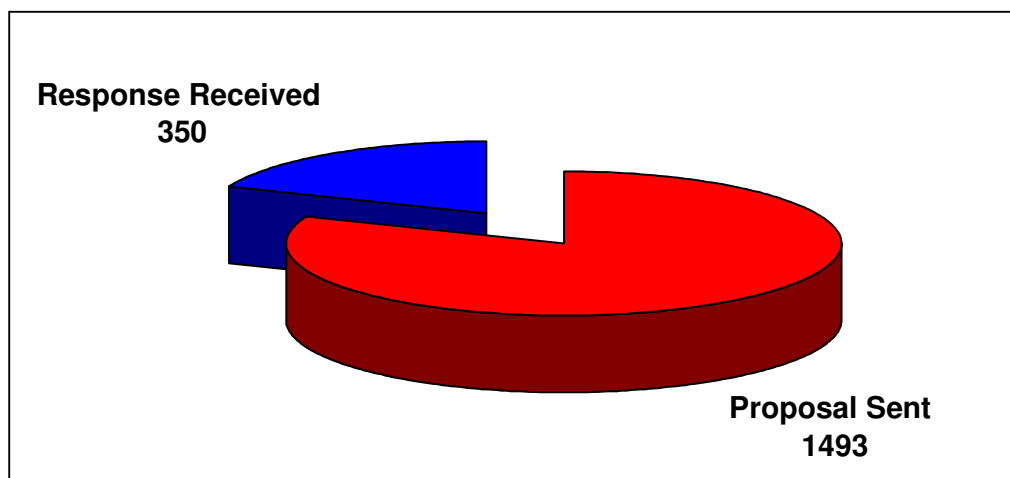


Figure 22: Total accounts recorded: total proposals sent and total responses received

The same files that were perused for obtaining the average response time on Form 17.1's were also used to capture the response time to proposals sent. With reference to Table 25 above, it became clear that in a lot of cases the debt counsellor does not send proposals. This could be due to various reasons: The debt counsellor has decided not to proceed with the case, there are still COBs outstanding, the proposal was never filed or the debt counsellor has decided to refer the matter directly to the Magistrate's Court without first sending a proposal to the credit provider.

Out of the 3 288 accounts reviewed only 1 493 proposals were sent and on those, only 350 responses were received. Thus, of the credit agreements recorded, a proposal was sent for only 45% and the response was received by the debt counsellor on only 23% of those sent.

A number of debt counsellors have indicated that they no longer send proposals to the credit provider as they perceive it to be a waste of time. This is due to the fact that no response is received, or a response is received long after the proposal was sent and after 60 business days have lapsed or, where a response is indeed received, the proposal is declined. It is not clear what the percentage of acceptance is on those responses received. Hypothetically, if half of the proposals are accepted, it would mean that only 12% of all debt review cases would be able to obtain consent orders. The remaining 88% cases will have to be placed on the opposed court roll.

There is no maximum time period set by the Act or Regulations for the response to a proposal. In terms of the workstream agreements, the credit provider must respond to a proposal within ten business days after the proposal has been sent. The debt counsellor should then provide a further ten business days' grace. In effect, the credit provider therefore has 20 business days to respond to a proposal. As indicated by Table 25, the only industry which, on average, succeeds in responding within 20 business days is the micro lending industry. The retail industry's average response time is 37 business days and the banking industry, which has the most agreements, has an average response time of 31 business days.

This data was further divided between the various credit providers. The sample size is very small making it difficult to obtain reliable averages on response time on proposals.

Table 26 and 27 below give the average response time on proposals for the banking and retail industry respectively. The data for micro lenders is far too little to make any deduction from, and is therefore not included.

#### 4.2.6.2 Banking industry

Table 26: Banking industry - date proposal sent to date response received

Analysis Variable : Proposal Sent to date Response received – Banking Industry								
Bank	Proposal Sent	Responses Received	Mean	Std Dev	Min	Max	Lower 95% CL for Mean	Upper 95% CL for Mean
Absa	215	51	28.0196078	25.5244904	2.00	103.00	20.8407292	35.1984864
Direct Axis	35	8	16.5000000	26.6993847	2.00	82.00	-5.8212442	38.8212442
FNB	143	39	36.0769231	43.3798308	2.00	226.00	22.0148087	50.1390375
Nedbank	106	21	19.8571429	17.5905819	2.00	77.00	11.8500060	27.8642797
SA Home Loans	2	1	26.0000000	.	26.0	26.00	.	.
Std Bank	219	65	29.7846154	30.1446991	2.00	138.00	22.3151247	37.2541061
Wesbank	41	12	57.1666667	72.2594232	2.00	243.00	11.2552195	103.0781138

The data obtained for Direct Axis, SA Home Loans and WesBank are fairly small and can thus be disregarded from this analysis.

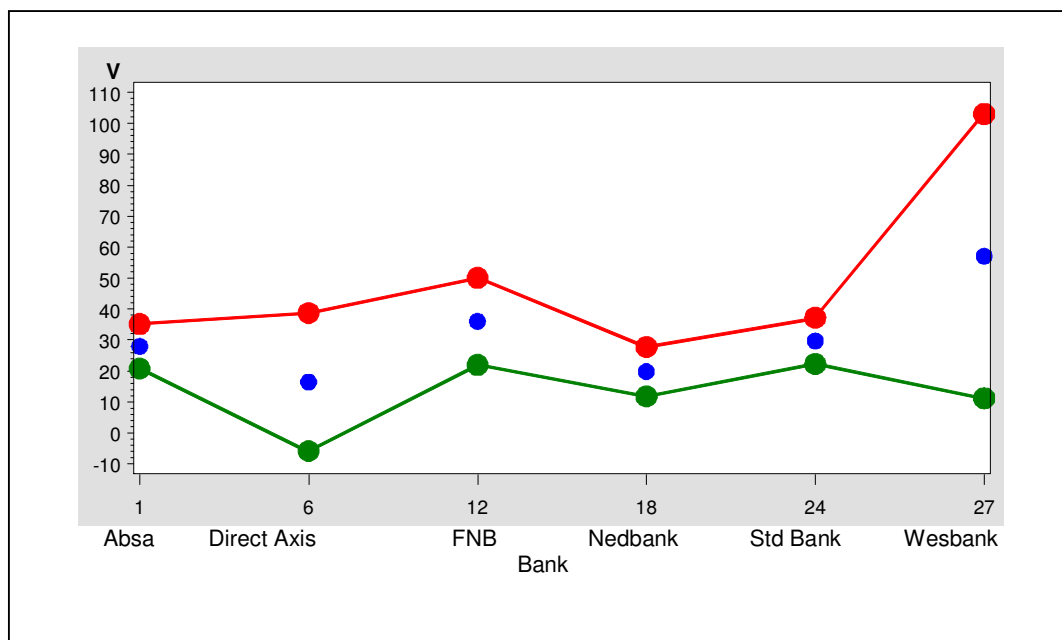


Figure 23: Banking industry - date proposal sent to date response received

According to Table 23, Nedbank, on average, responds to a proposal within 20 business days. This stands in sharp contrast to First National Bank's average response time of 36 business days.

More significant is the difference between the total proposals sent and the total responses received. The majority of the banks have responded to less than 30% of the proposals that were sent. The only credit provider with a 50% response rate is SA Home Loans, which only received two proposals and responded to one.



### 4.2.6.3 Retail industry

Table 27: Retail industry - date proposal sent to date response received

Analysis Variable : V V								
CPN	Proposals Sent	Responses Received	Mean	Std Dev	Min	Max	Lower 95% CL for Mean	Upper 95% CL for Mean
Easton-Berry	201	35	42.6857143	23.4568082	2.000	102.000	34.6280188	50.7434098
Edcon	70	15	28.2000000	21.9649071	5.000	94.0000	16.0362399	40.3637601
Ellerines	11	2	40.5000000	44.5477272	9.000	72.0000	-359.7454492	440.7454492
JDG Trading	11	1	33.0000000	.	33.00	33.0000	.	.
Mr Price	14	4	23.7500000	44.1691823	1.000	90.0000	-46.5330255	94.0330255
Other	1	0	.	.	.	.	.	.
Rainbow Finance	0	0	.	.	.	.	.	.

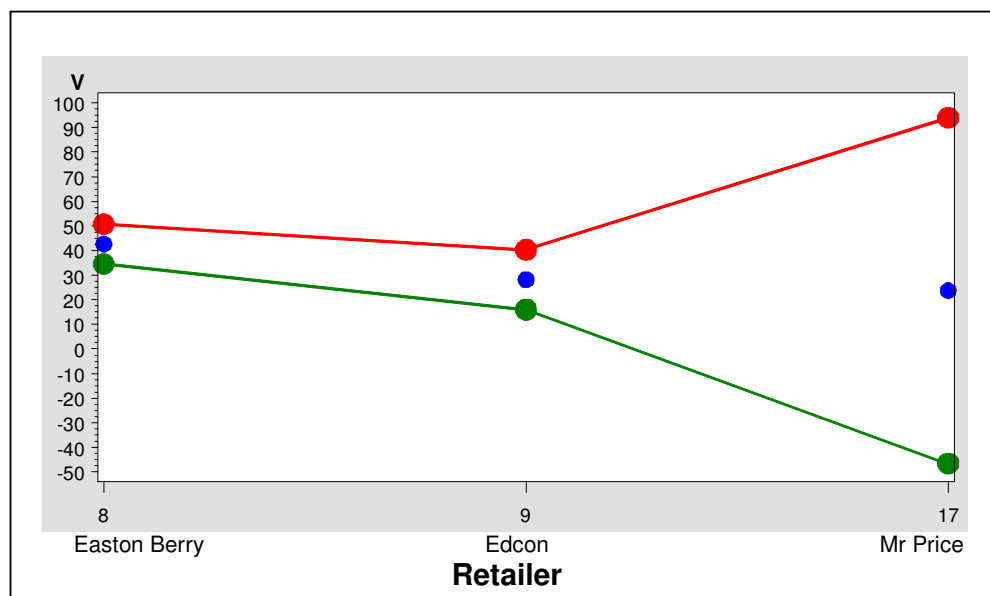


Figure 24: Retail industry - date proposal sent to date response received

Although Table 24 gives an indication of what the average response time is on proposals, the data sample is too small to draw any logical conclusion from. The confidence levels for Easton-Berry range from between 35 to 51 business days to respond on a proposal, and according to the data, their average response time is 43 days.

## 4.2.7

### Turnaround time from date of Form 16

#### 4.2.7.1 Date of Form 16 signed to date COB requested

Table 28: Turnaround time on Form 16 to date COB requested

Analysis Variable : From 16 signed to date Form 17.1 sent								
Debt Counsellor	Total Acc	Used Data	Mean	Std Dev	Minimum	Maximum	Lower 95% CL for Mean	Upper 95% CL for Mean
Counsellor A	343	89	8.2134831	21.5957024	1.0000000	116.0000000	3.6642987	12.7626676
Counsellor B	153	147	3.0544218	4.2212481	1.0000000	20.0000000	2.3663320	3.7425116
Counsellor C	61	57	1.8070175	1.9220394	1.0000000	14.0000000	1.2970318	2.3170033
Counsellor D	1446	1426	3.3387097	7.1665599	1.0000000	142.0000000	2.9664311	3.7109883
Counsellor E	558	155	11.5677419	11.3806736	1.0000000	79.0000000	9.7619133	13.3735705
Counsellor F	224	223	4.7533632	3.0085726	1.0000000	18.0000000	4.3563269	5.1503995
Counsellor G	503	467	20.8672377	17.3893663	1.0000000	99.0000000	19.2859793	22.4484961

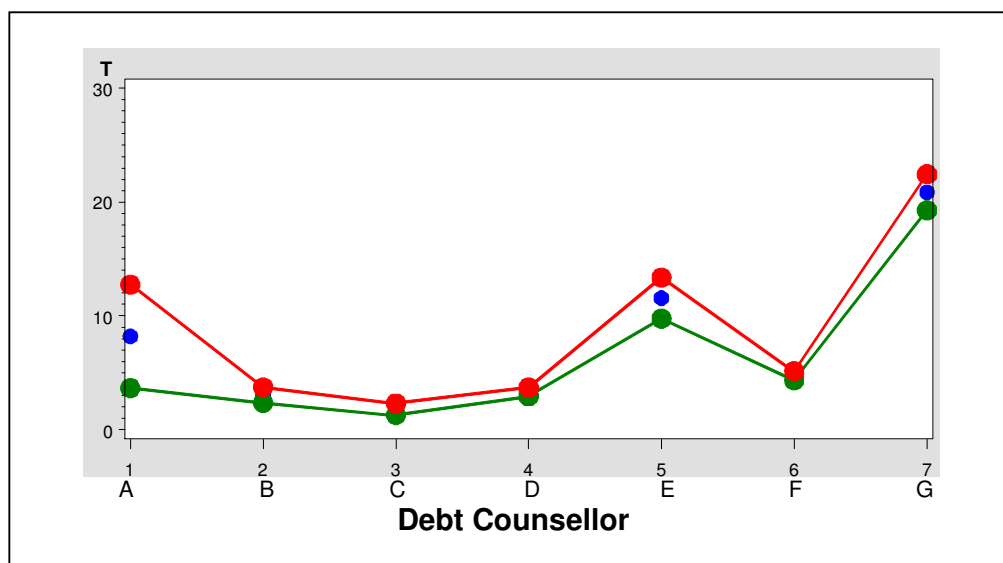


Figure 25: Turnaround time from Form 16 to date Form 17.1 sent

In terms of Regulation 24(2) a debt counsellor must send a Form 17.1 to the consumer's various credit providers within five business days after application

was received. With reference to Table 22 above, the average time between the signing of the Form 16 and sending of Form 17.1 is eight business days. The majority of the debt counsellors the research team approached, send the Form 17.1 within the five business days period prescribed. Counsellor G on average sends Form 17.1 only 20 business days after Form 16 was signed. We were informed by the debt counsellor that a number of their files were transferred to them from a third party who first tries to assist a consumer informally. If the consumer cannot be assisted informally the matter is transferred to the debt counsellor for formal debt review. The Form 17.1 is then sent to the consumer's credit providers. This can often happen three to four weeks after the consumer originally signed the Form 16.

A number of debt counsellors do not proceed with a consumer's application before all the relevant documentation has been obtained and the application fee has been paid. In order to avoid these long periods between Form 16 being signed and Form 17.1 being sent, it is suggested by some that a debt counsellor first obtain all the documentation and payment before the consumer signs the Form 16.

In order to ensure that their clients' interests are always protected, debt counsellors must ensure that they comply with all the provisions of the Act, including sending all relevant notices on time.

As part of the study the research team also measured the average time it takes for a debt counsellor to send a proposal from the date on which Form 16 was signed.

#### 4.2.7.2 Date Form 16 signed to date proposal sent

Table 29: Turnaround time from date Form 16 signed to date proposal sent

Analysis Variable : Date Form 16 signed to Date Proposal Sent									
Debt Counsellor	Total Acc	Proposals Sent	Used data	Mean	Std Dev	Min	Max	Lower 95% CL for Mean	Upper 95% CL for Mean
Counsellor A	343	309	90	112.6222222	43.5403927	49.00	209.00	103.5028635	121.7415809
Counsellor B	153	96	96	34.0000000	18.4721697	10.00	63.00	30.2571906	37.7428094
Counsellor C	61	61	61	38.5573770	16.0919489	24.00	93.00	34.4360376	42.6787165
Counsellor D	1446	492	483	24.1884058	9.4970901	4.00	96.00	23.3393094	25.0375022
Counsellor E	558	Data not obtained	0	.	.	.	.	.	.
Counsellor F	224	161	163	58.6564417	27.4060416	25.00	154.00	54.4175033	62.8953801
Counsellor G	503	381	361	81.3324100	28.7550049	45.00	167.00	78.3561528	84.3086672

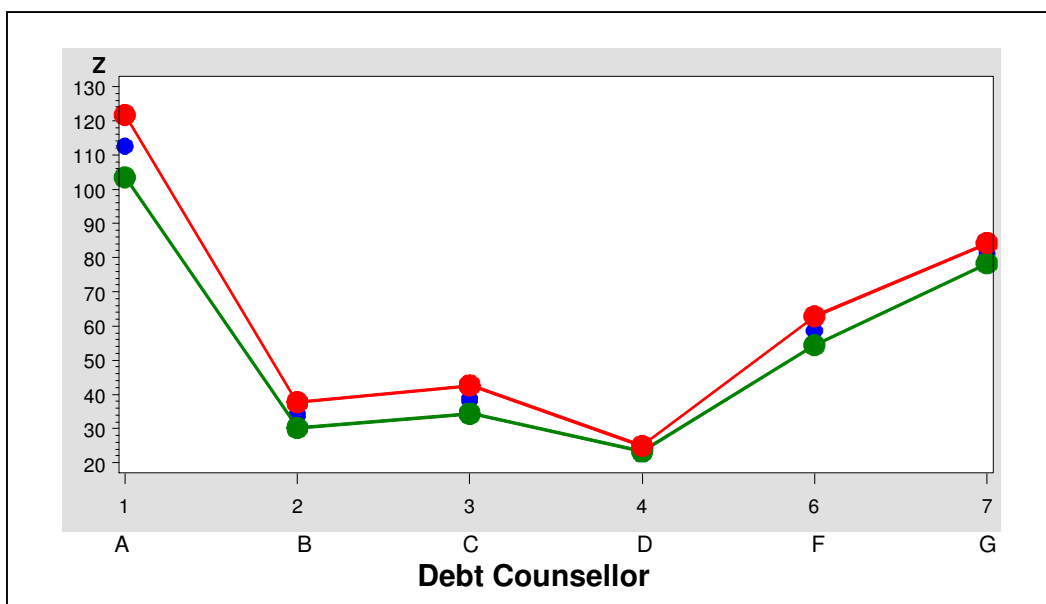


Figure 26: Turnaround time from date Form 16 signed to date proposal sent

On average debt counsellors sent their proposals 58 business days after Form 16 was signed. Only Counsellors B, C and D sent their proposals (on average) within 40 business days from the date on which Form 16 was signed.

In terms of the work stream agreements, a debt counsellor should send a proposal within 25 business days after Form 16 was signed. That is ten business days after a COB is received. From day 25, a debt counsellor has a ten business days' grace period which, in effect, gives a debt counsellor 35 business days from the date of the signing of Form 16 to send a proposal.

#### 4.2.7.3 Date Form 16 to date of receipt of response to proposal

Table 30: Turnaround time from date Form 16 signed to date response received on proposal

Analysis variable : From 16 to date of receipt of proposal received								
Debt Counsellor	Total Acc	Used Data	Mean	Std Dev	Minimum	Maximum	Lower 95% CL for Mean	Upper 95% CL for Mean
Counsellor A	343	8	120.7500000	39.7375317	106.0000000	219.0000000	87.5285921	153.9714079
Counsellor B	153	12	42.4166667	30.4047195	18.0000000	109.0000000	23.0984295	61.7349038
Counsellor C	61	49	75.2857143	41.1481065	32.0000000	287.0000000	63.4665981	87.1048304
Counsellor D	1446	169	48.8994083	28.1810991	14.0000000	171.0000000	44.6198153	53.1790012
Counsellor E	558	Data not obtained	.	.	.	.	.	.
Counsellor F	224	64	98.5781250	46.4620701	31.0000000	236.0000000	86.9722452	110.1840048
Counsellor G	503	46	92.3260870	39.0709067	8.0000000	159.0000000	80.7234599	103.9287140

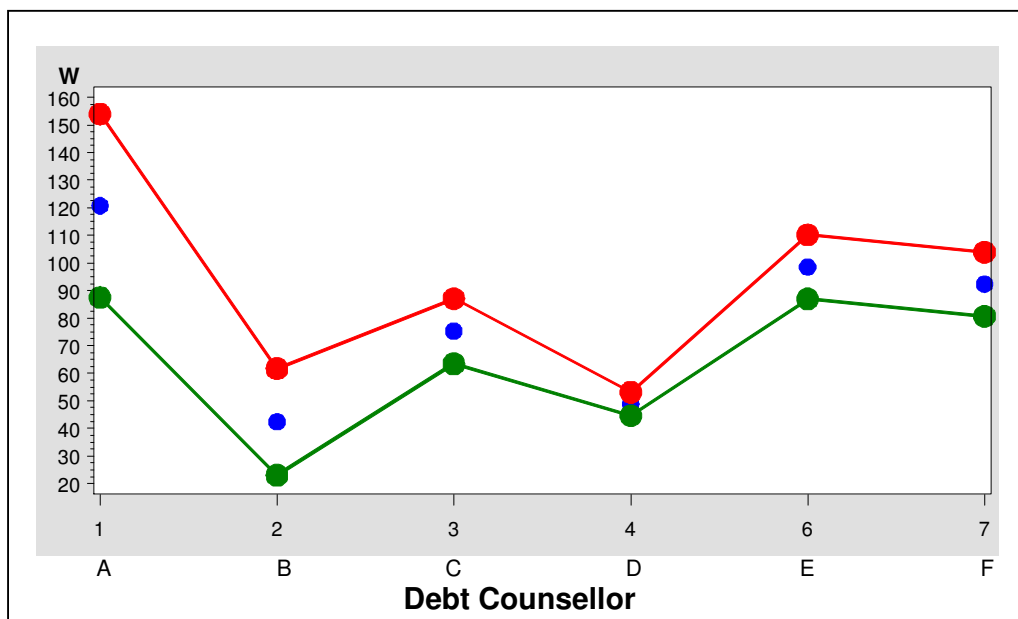


Figure 27: Turnaround time from date Form 16 signed to date response received on proposal

The average period between the date on which the Form 16 was signed to the date on which a response is received on the proposal is 80 business days. This exceeds the 60 business days, as provided by section 86(10) of the NCA, by 20 business days. Thus, in most cases, a credit provider could have terminated a consumer's debt review before a response to a proposal has been sent.

With reference to the data provided above, a debt counsellor sends out a Form 17.1, on average, within 8 business days after the Form 16 was signed. On average, and with reference to Table 4, a COB will be received 18 days after the Form 17.1 has been sent. The average debt counsellor sends out a proposal on day 58 of the process, which is 32 business days after the COB was received. As indicated by Table 23, the average response time to a proposal is 24 business days. When these time frames are combined the average period it would take to receive a response on a proposal would be 82 business days. By this time, one or more of the credit providers may have terminated the debt review, thus enabling that credit providers to take legal action against the consumer.

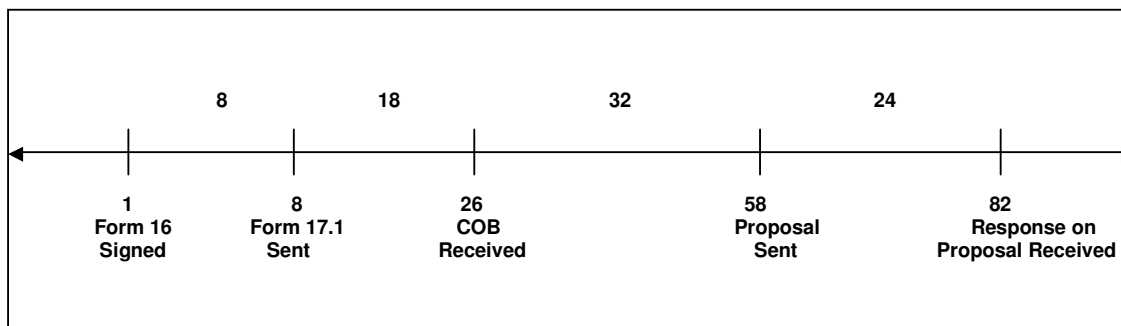


Figure 28: Timeline illustrating average days in debt review process

#### 4.2.8 Conclusion

One of the questions the research team asked the debt counsellors was whether they are of the opinion that the 60 business days are sufficient time to

complete the debt review process. The majority of the debt counsellors answered in the negative. Considering the information provided above, it is evident that the 60 business days, given the current response time, is not sufficient. If all parties co-operate fully with the process, and provided all relevant notices and documents are sent and responded to on time, this could be a relatively speedy process, and should not take more than 40 business days. A further 20 business days can then be added as a grace period to make provision for the unforeseen. However, in light of the current findings, it seems that this is not an achievable goal in the near future.

Both the debt counsellor and the credit provider will have to ensure that they are properly equipped to handle the workload, that their staff is sufficiently trained, that their systems are operational and that the office management is efficient.

#### **4.3**

##### **DATA SET B:**

##### **Debt counsellors' perspectives of and experiences with credit providers, consumers and the debt counselling process**

#### **4.3.1**

##### **Methodology**

The website of the NCR contains the names of all registered debt counsellors (612 at date of commencement of the research). They are listed alphabetically according to their first name. Anthony Hopkins would thus be listed under A and not H.

The research team took a random sample of 64 debt counsellors from this list, representing 10.46% of all registered debt counsellors. It was found that the list still contained the names of many debt counsellors registered but no longer active. It is therefore submitted that the 64 interviewed debt counsellors in all probability represents more than 10% of all the registered debt counsellors.

The methodology employed was telephonic interviews. These interviews can be typified as non-scheduled, structured interviews during which a set of specific

questions were asked. These questions were presented to every interviewee in exactly the same format and were designed to obtain some impression of what debt counsellors experience in their dealings with credit providers, consumers and colleagues and what their perceptions are on a wide array of issues.

None of the interviewers knew any of the interviewees and vice versa.

The questions were grouped to assess the perceptions and experiences of debt counsellors regarding credit providers, the debt counselling process and levels of trust pertaining to credit providers and consumers. The following questions were asked:

**Perceptions of and experiences with credit providers regarding their compliance with the NCA, industry agreements and service levels**

1. In your experience, how do you rate the credit providers for supplying financial information (COBs) in terms of industry average?  
Indicate: slower, faster or average.
2. Have you ever requested copies of a credit agreement from a credit provider?
3. If so, in your experience, how long does it take a credit provider to provide you with a copy of the consumer's credit agreement upon request?
4. In your experience, do credit providers stop debit orders upon request?
5. Have you experienced problems with set-off ("money grabbing")?
6. If so, with which banking institution or institutions?
7. Have you taken any debt counselling cases to court?
8. If not, why not?
9. If you have taken matters to court, on which grounds, if any, were your application opposed?
10. From which credit provider do you receive the best service? Rate 3 credit providers: Top 3 (Number 1-3; 1 being the best)
11. From which credit provider do you receive the worst service? Rate 3 credit providers: Bottom 3 (Number 1-3; 1 being the worst)



**Trust levels of debt counsellors regarding credit providers and consumers**

12. Are you of the opinion that credit providers are acting in good faith in the debt review process? You need not restrict yourself to a yes or no answer but may, if you so wish, indicate a percentage acting in good/bad faith.
13. Are you of the opinion that consumers are acting in good faith in the debt review process? Again, you may choose to indicate a percentage acting in good/bad faith.

**Experience of the debt counselling process**

14. Do you think the debt review process is an effective debt relief measure for over-indebted consumers?
15. Indicate which of the following problems you have experienced in the debt review process. A list of problems experienced was presented to debt counsellors who were then given an opportunity to mention other problems.
16. What, in your opinion is/are the main obstacle(s) in the debt review process.
17. Is 60 business days sufficient time to complete the debt review process?
18. If not, why not?

**Information on debt counsellors practice, procedures and success rate**

19. Do you send reminders upon non-receipt of the COB?
20. Do you use a computer system to draft a consumer's proposal?
21. If yes, which system do you use?
22. What is the average acceptance rate on your proposals?
23. Do you use a PDA?
24. If not, why not?
25. Have you obtained any consent orders?

26. If you have not obtained any consent orders, in circumstances where you have the consent of all credit providers, why not?

#### **4.3.2 Limitations**

The telephonic interview has none of the disadvantages of the personal interview (which by necessity must often be pre-scheduled, involves extensive travelling and is thus expensive and time consuming).

The taking of a random sample of debt counsellors, however, prevents the research team from selecting a truly representative sample, manipulated to reflect geographic spread, urban and rural, gender, race, experience etc. However, looking at the list of debt counsellors interviewed, one notices representatives from all of the above categories. It is submitted that some of the factors normally impacting on samples, e.g. urban versus rural, are not important as debt counsellors all communicate by way of fax or email with credit providers.

#### **4.3.3 Findings**

##### **Question 1:**

**In your experience, how do you rate the credit providers for supplying financial information (COBs) in terms of industry average? Indicate: slower, faster or average.**

A number of credit providers (which collectively grants the bulk of credit in number and amount) were listed and the debt counsellor had to indicate whom they experienced as fast, average or slow in supplying financial information. Fast would simply mean quicker than the average in the industry; and slow that it takes longer to get the COB than is the industry norm.

Table 31: Debt counsellor's rating the credit providers for supplying financial information (COBs) in terms of industry average: slow, fast or average

<b>Credit Provider</b>	<b>Slow</b>	<b>Aver</b>	<b>Fast</b>	<b>% Slow</b>	<b>% average</b>	<b>% fast</b>
Absa	16	36	12	25.00%	56.25%	18.75%
African Bank	22	30	9	36.07%	49.18%	14.75%
Capitec Bank	22	22	7	43.14%	43.14%	13.73%
Direct Axis	16	23	10	32.65%	46.94%	20.41%
Easton-Berry	13	26	20	22.03%	44.07%	33.90%
Edcon	25	28	8	40.98%	45.90%	13.11%
Ellerines	25	15	7	53.19%	31.91%	14.89%
FNB	24	23	16	38.10%	36.51%	25.40%
JDG Trading	21	27	2	42.00%	54.00%	4.00%
Kagisano	13	20	5	34.21%	52.63%	13.16%
MFC	12	20	29	19.67%	32.79%	47.54%
Mr Price	6	18	30	11.11%	33.33%	55.56%
Nedbank	17	19	25	27.87%	31.15%	40.98%
SA Home Loans	14	25	14	26.42%	47.17%	26.42%
Standard Bank	28	23	13	43.75%	35.94%	20.31%
WesBank	10	34	16	16.67%	56.67%	26.67%
Other	4	7	2	30.77%	53.85%	15.38%

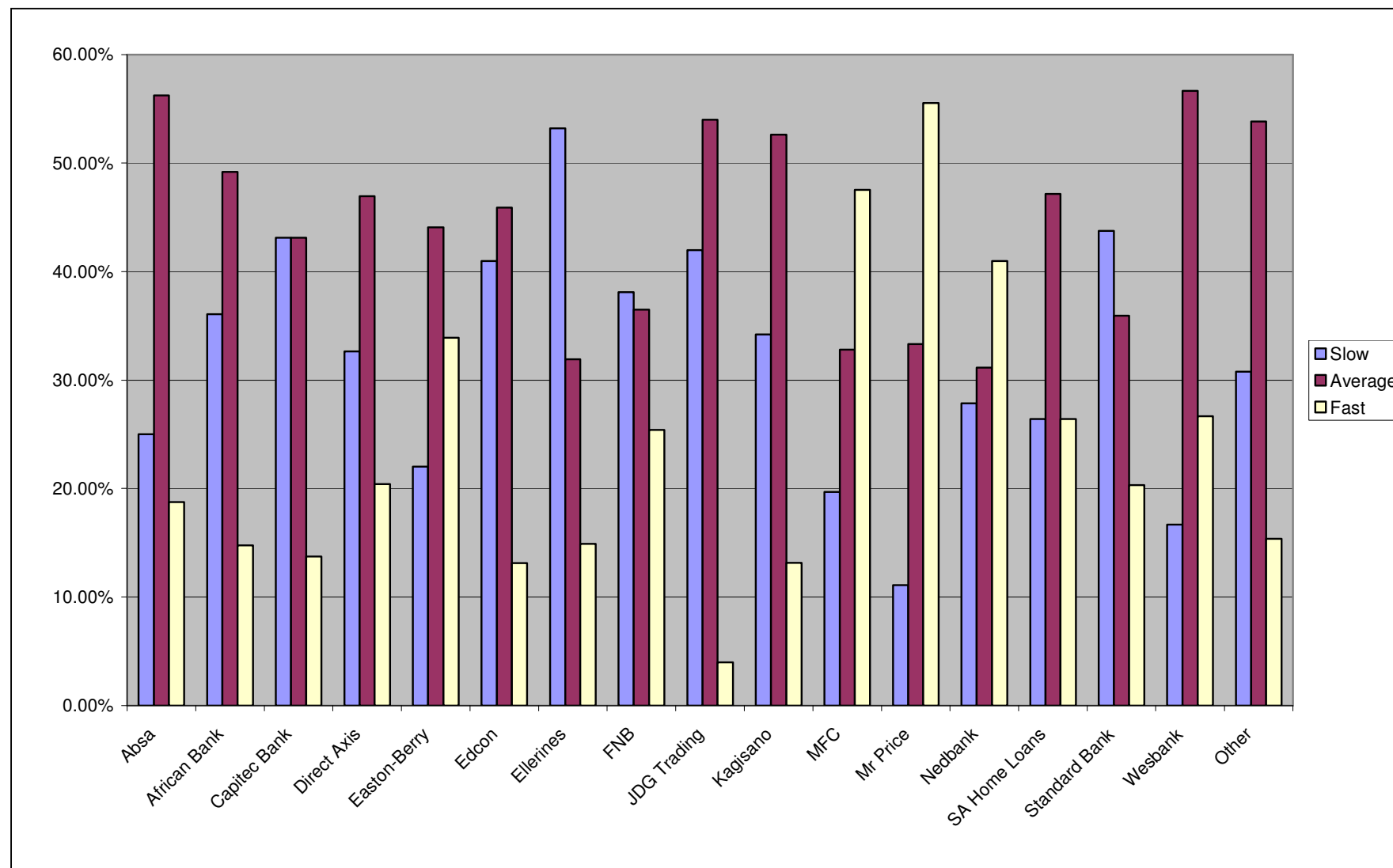


Figure 29: Debt counsellors rating the credit providers for supplying financial information (COBs) in terms of industry average: slower, faster or average

From the above, it is clear that debt counsellors differ in their perceptions of specific credit providers. Every individual credit provider was rated by some debt counsellors as fast, by others as slow and by others as average. For example, whilst 26.42% of the respondents indicated that they experience SA Home Loans as slow compared to industry average, a further 26.42% indicated that they experience SA Home Loans to respond quicker than the industry average and the remaining 47.16% regarded them as on par with the industry average.

In the rating of credit providers by debt counsellors regarding the supply of financial information (COBs) in terms of faster or slower than industry average, it was clear that perceptions differ.

Only three credit providers, namely MFC, Mr Price and Nedbank were rated faster than average by the majority of debt counsellors. Standard Bank and Ellerines were rated slower by most debt counsellors whilst other credit providers were rated average by most debt counsellors.

**Question 2:**

**Have you ever requested copies of credit agreements from a credit provider?**

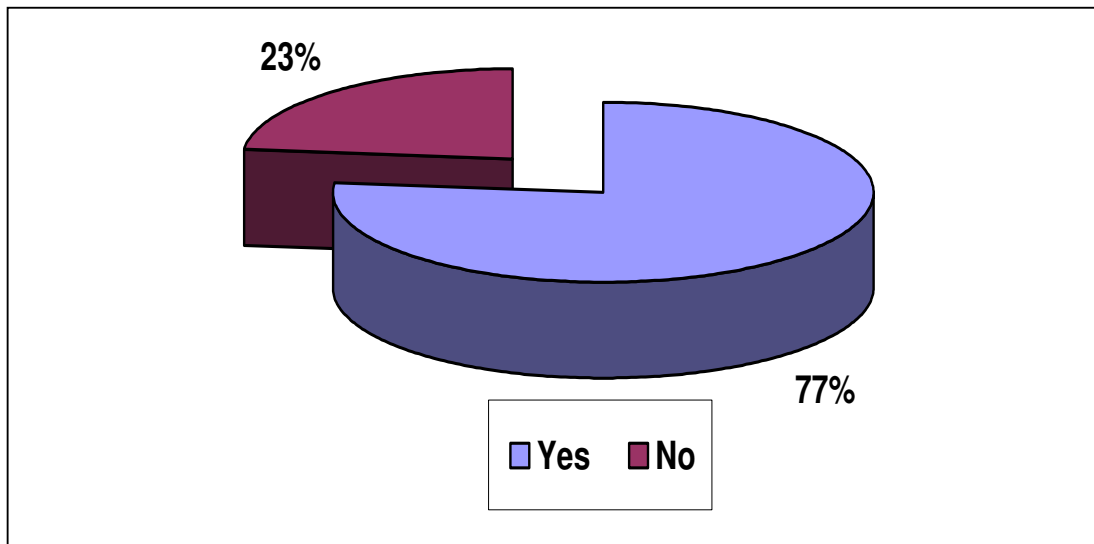


Figure 30: Illustrating percentage of debt counsellors who has requested copies of credit agreements from credit providers

Debt counsellors are entitled to ask for copies of any credit agreement. When asked whether they have done this, 76.56% indicated yes and 23.44% indicated no. The 76.56% who had requested copies were then asked question 3.

### **Question 3**

**In your experience how long does it take a credit provider to provide you with a copy of the consumer's credit agreement?**

Table 32: Debt counsellor's perspective on turnaround time on request for copies of credit agreements

<b>Period of time</b>	<b>Number of DCs indicating period of time it takes credit providers to provide copies of credit agreements</b>	<b>Percentage illustrating period of time it takes credit providers to provide copies of credit agreements</b>
Within 5 business days	2	4.08%
Within two weeks	12	24.49%
Within one month	12	24.49%
Within two months	5	10.21%
Longer than two months	6	12.24%
Never	12	24.49%

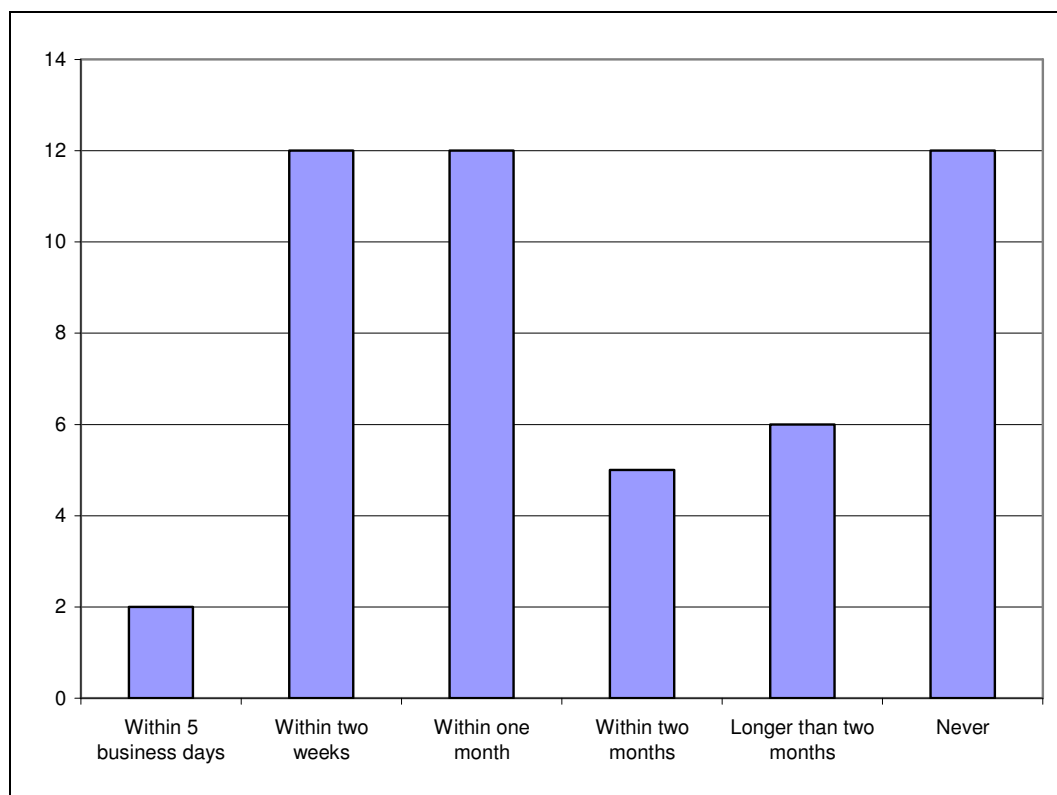


Figure 31: Illustrating time period for credit providers to supply a copy of the consumer's credit agreements according to debt counsellors

Nearly 1 out of 4 (24,49%) debt counsellors indicated that credit providers refuse or neglect or find it impossible to provide copies of credit agreements. A further 22.44% indicated that it took on average longer than a month to obtain copies. This makes it virtually impossible to compare information contained in the credit agreement with financial information supplied and to test for reckless credit, unlawful provisions or unlawful agreements in the case of the majority of credit agreements.

This information correlates with the findings of the research team when scrutinising the files of a debt counsellor. The research team came across 28 requests for copies of agreements, sent between 17 June 2008 and 18 February 2009. On the date of capturing of the data (25 March 2009) only 9 responses were received. The table hereunder indicates the credit providers who had failed to respond and the number of days from the date of request to the date of capturing of the data.

Table 33: Turnaround time from date of copy of credit agreement requested to date credit agreement received

Credit providers who had failed to respond	Date when the agreement was requested	Number of business days lapsed from date of request to date of capturing the data
Standard Bank	30 July 2008	166
Foschini	14 August 2008	155
Furniture City	14 August 2008	155
African Bank	15 August 2008	154
Atlas Finance	2 September 2008	142
African Bank	4 September 2008	140
Capitec	4 September 2008	140
Webmail	4 September 2008	140
Call Direct	9 September 2008	137
WesBank	9 September 2008	137
BMW Finance	12 September 2008	134
Bayport	3 October 2008	120
Standard Bank	13 October 2008	114
FNB	13 October 2008	114
Edgars Personal Loan	18 November 2008	88
RSC Home Loans	18 November 2008	88
Braamfin	14 December 2008	69
Direct Axis	18 December 2008	67
Sanlam	18 February 2009	26

Some of the explanations given by credit providers were as follows:

- “Some of these agreements were entered into by our predecessors in title and when we took over their books the original agreements were not supplied to us. It may be at the liquidators or somewhere in archives.”
- “These agreements are kept all over the show and are often difficult to find.”
- “These agreements are simply called for to embarrass us. A consumer in any case should have a copy.”

One debt counsellor responded:

- “We don’t ask for copies anymore, we have just given up on that.”

Some credit providers apparently have a policy of not supplying copies of agreements where those agreements were entered into prior to the 1 June 2007.



Their rationale for this is that the provisions regarding reckless credit do not apply to agreements entered into before 1 June 2007. However, it is submitted that this is unacceptable as the debt counsellor may need the agreement to verify many other matters besides reckless lending in terms of the Act. The emails between a debt counsellor and First Rand Bank as well as the emails between staff members of First Rand Bank serve as an example:

Example 24: Illustrating First National Bank policy of only supplying documentation if the account was open after 1 June 2007

Page 1 of 2

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**Mareesa Erasmus - Re: FW: MARTHA CRONJE ID6709290089085**

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**From:** Mareesa Erasmus  
**To:** Lesego Makgatihe  
**Date:** 2008/08/21 02:48 PM  
**Subject:** Re: FW: [REDACTED] ID [REDACTED] 089085

---

Dear Lesego,

Please note that we need the copies of the credit agreement in order to make a reasonable assessment regarding the terms of the agreement as well as to verify the date on which the agreement was concluded. Please note that in terms of Regulation 24(3) a debt counsellor may request such information from a credit provider in order to verify the information provided.

Kindly provide us with a copy of the credit agreements for account number:

- 4000-1000-[REDACTED]
- 4303-4100-[REDACTED]
- 4901-3801-[REDACTED]
- DEA85 [REDACTED]

Kind regards,

Mareesa Erasmus  
Regskliniek / Law Clinic  
Universiteit van Pretoria / University of Pretoria  
Tel: (012) 420 3977  
Fax: (012) 362 5277  
mareesa.erasmus@up.ac.za  
<http://www.up.ac.za/law>

>>> "Makgatihe, Lesego" <LMakgatihe@fnb.co.za> 2008/08/19 09:20 AM >>>  
*Good day*

*Kindly receive replay concerning the above client query.*

*Thanks*

*Lesego.*  
*FRB Debt Review Centre*  
*0860362002*

---

**From:** Graham, Evelyn  
**Sent:** 19 August 2008 08:36 AM  
**To:** Makgatihe, Lesego  
**Subject:** RE: [REDACTED] ID [REDACTED] 089085

Hi Lesego

→ Please see my notes below; we will only supply documentation if the account was open after 01/06/2007

file:///C:/Documents%20and%20Settings/p4209842/Local%20Settings/Temp/XPgrpw... 2008/08/21

Page 2 of 2

Thanks

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**From:** Makgatlhe, Lesego  
**Sent:** 19 August 2008 08:22 AM  
**To:** Card Collections NCA Debt Counseling  
**Cc:** Graham, Evelyn  
**Subject:** FW: [REDACTED] ID: [REDACTED] 089085

*Good morning*

*The dc just send me the copy that is attached, please have a look and come back to me and inform me if you want me to request the reasons from her.*

*Thanks*

*Lesego.*

---

**From:** Graham, Evelyn  
**Sent:** 18 August 2008 11:24 AM  
**To:** Makgatlhe, Lesego  
**Subject:** FW: [REDACTED] ID: [REDACTED] 089085

Hi Lesego

Accounts 4303 410 [REDACTED] and 4901 380 [REDACTED] open prior 01062007. Please supply reason why debt counsellor needs copies of agreements

Thanks

---

**From:** Makgatlhe, Lesego  
**Sent:** 15 August 2008 11:34 AM  
**To:** George, Sylvan; Letsatsi, Johanna  
**Subject:** [REDACTED] ID: [REDACTED] 089085

*Good day*

*Kindly assist. i received this letter from the debt counsellor requestring the contract the client signed.*

*Letter attached.*

*Thanks*

*Lesego.*

To read FirstRand Bank's Disclaimer for this email click on the following address or copy into your internet browser:  
<https://www.fnb.co.za/disclaimer.html>

If you are unable to access the Disclaimer, send a blank e-mail to [firstrandbankdisclaimer@fnb.co.za](mailto:firstrandbankdisclaimer@fnb.co.za) and we will send you a copy of the Disclaimer.

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**Question 4:**

**In your experience, do credit providers stop debit orders upon request?**

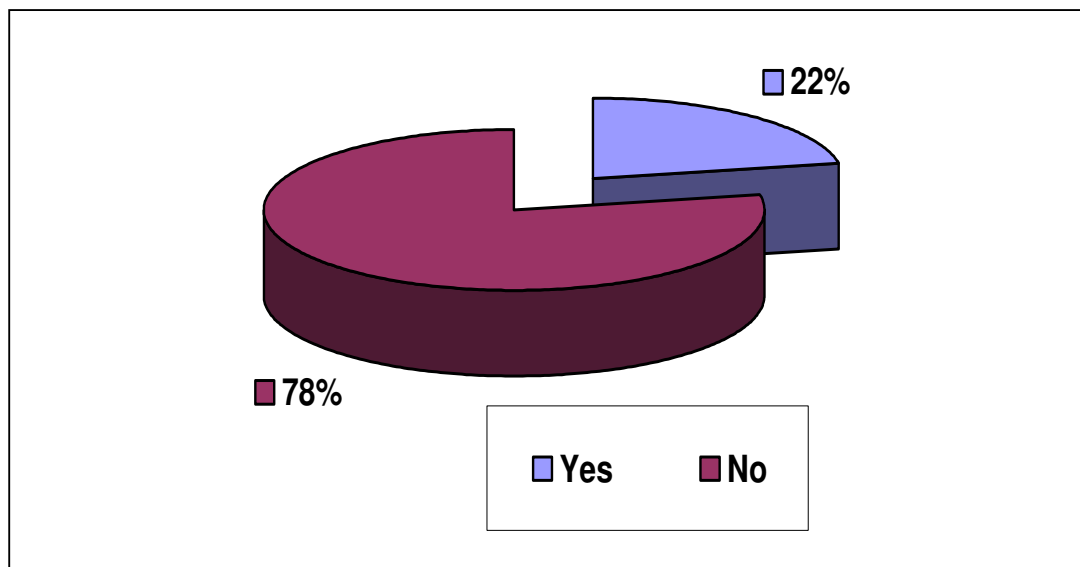


Figure 32: Illustrating how many debt counsellors experience credit providers stopping debit orders upon request

The staggering figure of 78% undoubtedly indicates that debt counsellors experience banks to not stop debit orders upon request. The responses of the remaining 22% varied from, "some banks do, and others don't" to, "sometimes, sometimes not".

The head of a debt rehabilitation / debt counselling section of a major bank told the research team:

"Off the record, the banks can't / don't stop debit orders – it's the only way of ensuring we get payment in the interim."

This seems to be short sighted. Not only does it obstruct the debt counselling process but it also results in an undue preference provided to some credit providers and to cause unnecessary hardship to consumers. A few debt counsellors indicated that the position seemed to have improved over the past few months.

**Question 5:**

**Have you experienced problems with “money grabbing” / set-off**

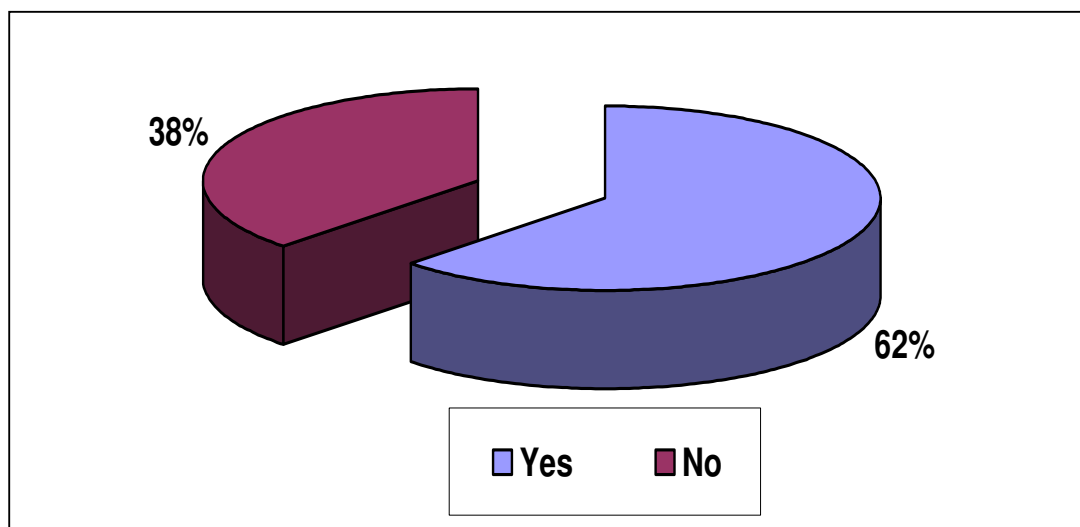


Figure 33: Illustrating how many debt counsellors experience problems with “money grabbing”

Respondents were asked if they or their clients have experienced problems with set-off between accounts (popularly known as “money grabbing”): 62% indicated yes; 38% indicated no.

This confirms the wide spread occurrence of set-off which prompted the banking ombudsman to criticise the banks (in a press release dated 8 October 2008), for what he described as a “heartless practice”.

### **“Banking Ombudsman slams 'heartless' practice**

08 October, 2008

The Banking Ombudsman says that it has come to the attention of his office that certain banks have been applying the legal principle of set-off in a morally repugnant manner causing severe hardship to individual customers.

We have received complaints of banks appropriating customers' entire salaries in some instances. This effectively leaves the customer penniless and unable to meet his/her basic needs for the rest of the month. In addition, this practice of attaching an entire salary, has a "snowball" effect in the sense that the bank customer is then unable to make payments on other debts and incurs severe penalties, for example for returned debit orders.

The cumulative effect of all of this is simply to cause the customer to sink deeper into the financial quagmire. We have recommended to the banks that they refund the amounts deducted and limit themselves to deducting a reasonable amount. We have recommended to the banks concerned not to attach entire salaries but to evaluate each case on its particular set of circumstances to determine what a fair and reasonable amount to be deducted, would be.

The legal principle of set-off allows a bank to appropriate funds in a customer's cheque or savings account to extinguish in full or in part the debt owed by that customer on his credit card or personal loan.

Whilst this practice is permissible, it is the manner in which it is being applied that has raised the hackles of the Ombudsman. The National Credit Act explicitly prohibits banks from inserting a clause permitting them to apply set-off in their agreements with their clients, save in very specific circumstances. The Act applies to all accounts opened / agreements entered into, after the 1st June 2007.

Whilst the banks have complied with this restriction by not including a "set-off" clause in their contracts entered into with clients after the 1st June 2007, they still continuing to apply set-off.

The banks argue that the National Credit Act does not prohibit the common law principle of Set-Off from being applied. The Banking Ombudsman is critical of this approach as it clearly violates the spirit and the letter of the National Credit Act, questions of whether the credit was granted prudently in the first place, aside. The Banking Ombudsman also strongly advises bank clients to negotiate a re-payment plan with their banks in respect of outstanding debt so as to prevent the bank from applying set-off.

The Ombudsman for Banking Services is a free dispute resolving service to all bank customers, and we encourage customers that have lodged complaints with their banks and are not happy with the outcome to approach the office.”

This practice wreaks havoc in the debt counselling process. Whilst it can be argued that in some instances this is a contravention of the National Credit Act, it is clear that this approach goes against the spirit and intent of the Act in all respects.

What is particularly alarming is the fact that these set-offs were applied whilst consumers had already applied for debt counselling.

**Question 6:**

**If you have experienced problems with “money grabbing”, with which banking institution?**

The 40 debt counsellors that indicated that they or their clients had experienced problems with set-off were asked to indicate which banking institutions were employing this method.

The information obtained showed that some debt counsellors and their clients had experienced problems with more than one bank. The following table indicates the percentage of debt counsellors who had experienced “money grabbing” problems with the specific bank.

The percentages given are in respect of the 64 debt counsellors interviewed. The data indicate that out of these debt counsellors interviewed, 40.63% experienced money grabbing from FNB, 39.06% from Absa, 26.56% from Nedbank, 23.44% from Standard bank and 9.38% from others.

Table 34: Illustrating with which banking institutions debt counsellors are experiencing problems with “money grabbing”

Credit provider	Number of DCs	Percentage
First National Bank	26	40.63%
Absa	25	39.06%
Nedbank	17	26.56%
Standard Bank	15	23.44%
Others	6	9.38%

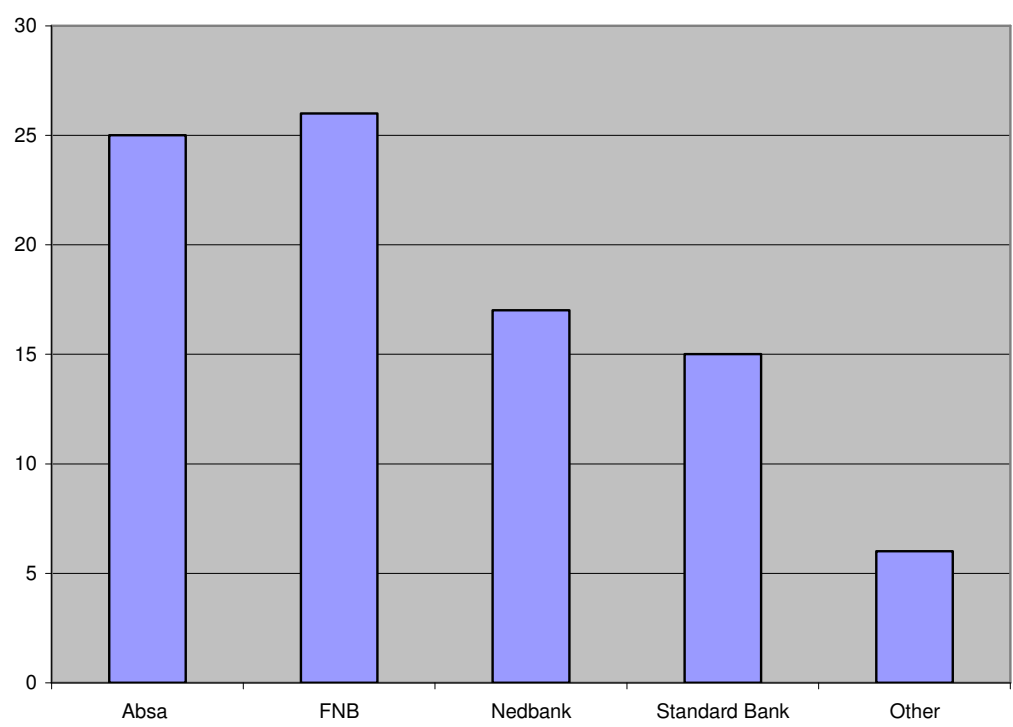


Figure 34: Illustrating with which banking institutions debt counsellors are experiencing problems with “money grabbing”



**Question 7:**

**Have you taken any cases, where your proposal was not accepted, to court?**

The research team wanted to ascertain which percentage of debt counsellors interviewed had caused applications to be brought to court. This was then followed by a question to ascertain reasons for debt counsellors not enrolling matters.

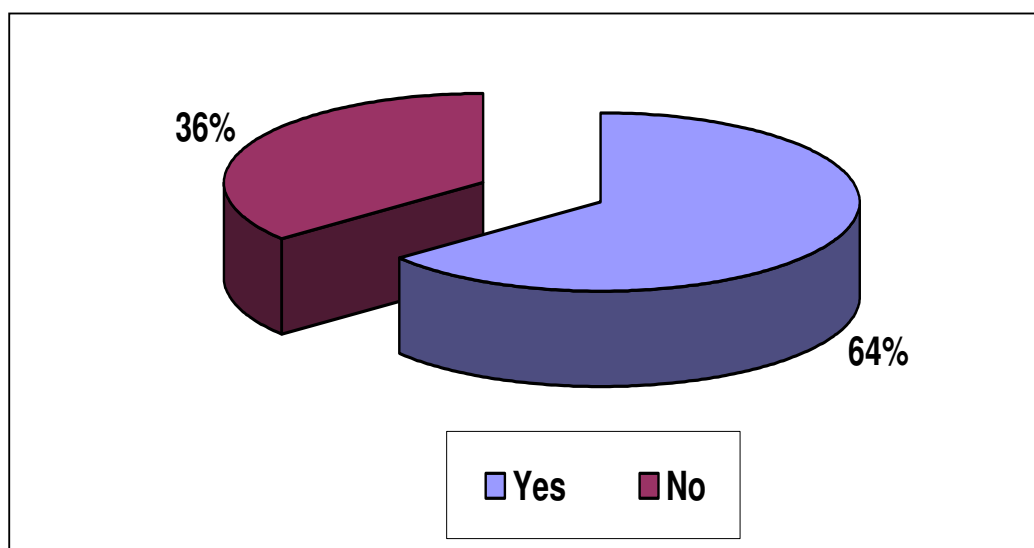


Figure 35: Illustrating the percentage of debt counsellors who has brought applications to court versus those who have not done so

64% of debt counsellors indicated that they had brought applications to court, whilst 36% indicated that they had refrained from doing so.

### Question 8:

#### If not, why have you not taken any cases to court?

Of the 23 debt counsellors (36%) who indicated that they have not taken a disputed restructuring proposal to court for decision, 13% indicated that they regarded it as too costly (they would have to engage the services of an attorney). A further 13% indicated that the process was unclear and one debt counsellor (4.35%) indicated he/she feared the prospect of being opposed in court. The relatively high 69.57% of debt counsellors who chose “other” as option, were mostly debt counsellors who had just started practising and as a result did not have cases ready to be heard.

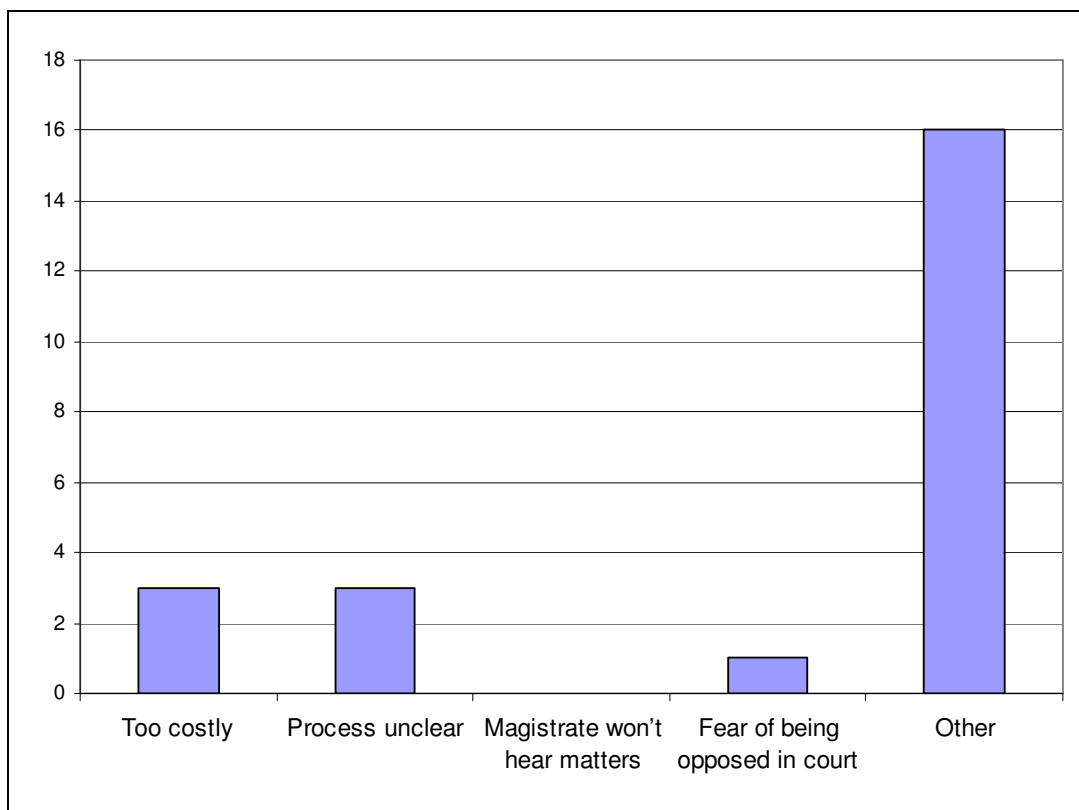


Figure 36: Reasons put forward for not taking cases to court

**Question 9:**

**If you have taken matters to court, on which grounds were your application opposed?**

Those who had been involved in applications to court indicated that their proposals were opposed on one or more of the following grounds:

Table 35: Debt counsellors indicated that their application were opposed on one or more of the following grounds

Grounds for applications opposed	Number of debt counsellors	Percentage
Jurisdiction – area	19	46%
Jurisdiction – monetary	11	27%
Service by fax	7	17%
Service by registered mail	3	7%
Reduction on interest	12	29%
Application to be brought in name of debt counsellor	3	7%
Repayment period excessive	9	22%
Insufficiency of affidavit	3	7%
None	5	12%
Other	8	20%

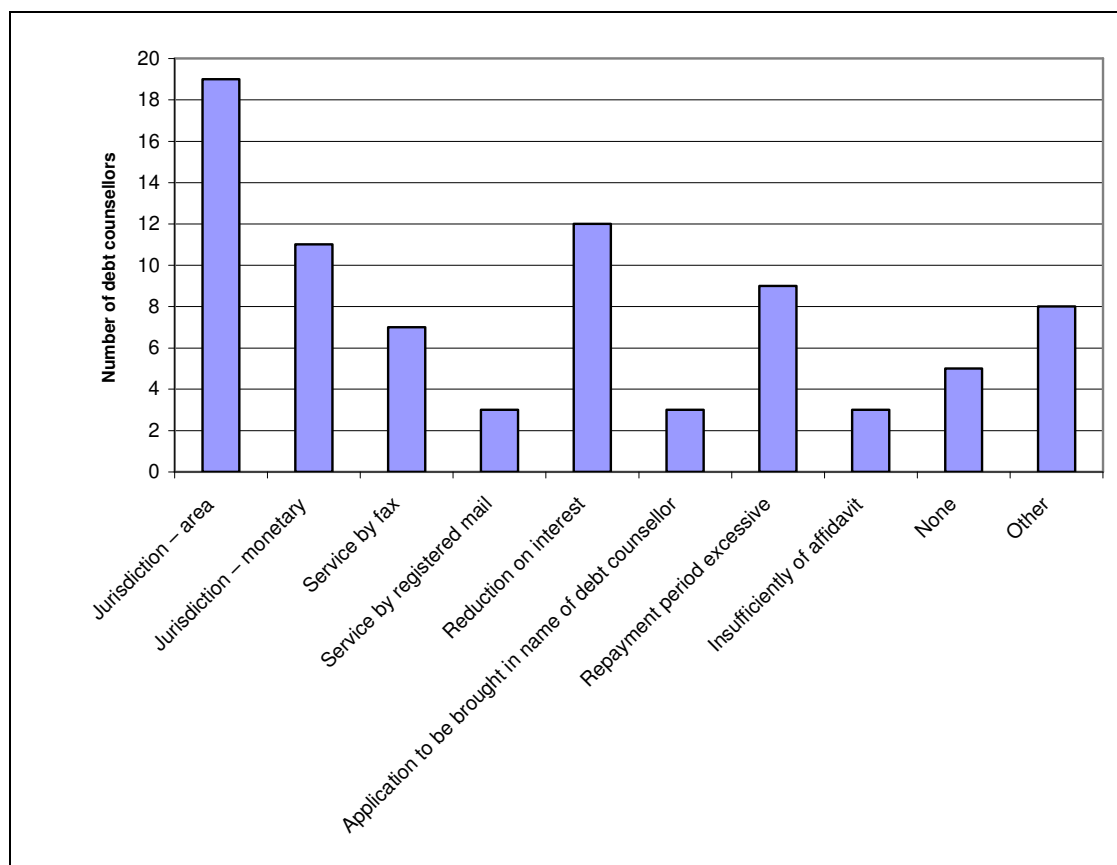


Figure 37: Reasons advanced by credit providers in opposing applications to court

12% of debt counsellors indicated that their applications were not opposed or that there were no grounds raised against their proposals. These could erroneously include consent orders. It is clear from the above table that in only 22% of cases excessive repay periods, i.e. merits of a case, were mentioned. In all other cases procedural points *in limine* formed the basis of opposition. Taking into account that the research team found that some banks raised these objections in every application opposed, this does not come as a surprise. As pointed out previously (see the first case study in Chapter 3 above), many of these credit providers agreed not to rely on points *in limine* with regard to issues created by uncertainty in the statute.

**Question 10:****From which credit provider do you receive the best service?****Rate 3 credit providers: Top 3 (number 1-3; 1 being the best)**

Debt counsellors were asked to rate credit providers according to best and worst service respectively. The respondents then ranked credit providers from 1 to 3 for best service and from 1 to 3 for worst service. The research team then awarded 3 points for a 1<sup>st</sup> place, 2 points for a 2<sup>nd</sup> and 1 point for a 3<sup>rd</sup> place and added these marks. Awarding -3 for worst service, -2 for 2<sup>nd</sup> worst and -1 for 3<sup>rd</sup> worst credit providers were then again ranked. Once again, debt counsellors were sharply divided regarding the service levels from some credit providers, whilst in respect of others they were quite unanimous. It should however be noticed that not all of them had dealings with all of the credit providers listed. After combining and merging the “best” and “worst” lists, an aggregate score was obtained to determine the rankings from best to worst.

Table 36: Overall best to worst ranking

Position	Credit provider	Aggregate score
1	Mr Price	35
2	Easton-Berry	32
3	WesBank	13
4	Direct Axis	11
5	MFC	9
6	Ellerine's	4
7	FNB	3
8	Nedbank	2
9	Capitec Bank	-2
9	Absa	-2
11	African Bank	-3
12	Kagisano	-7
13	Edcon	-9
14	JD Group	-11
15	SA Home Loans	-13
16	Other (smaller micro lenders)	-21
17	Standard Bank	-52

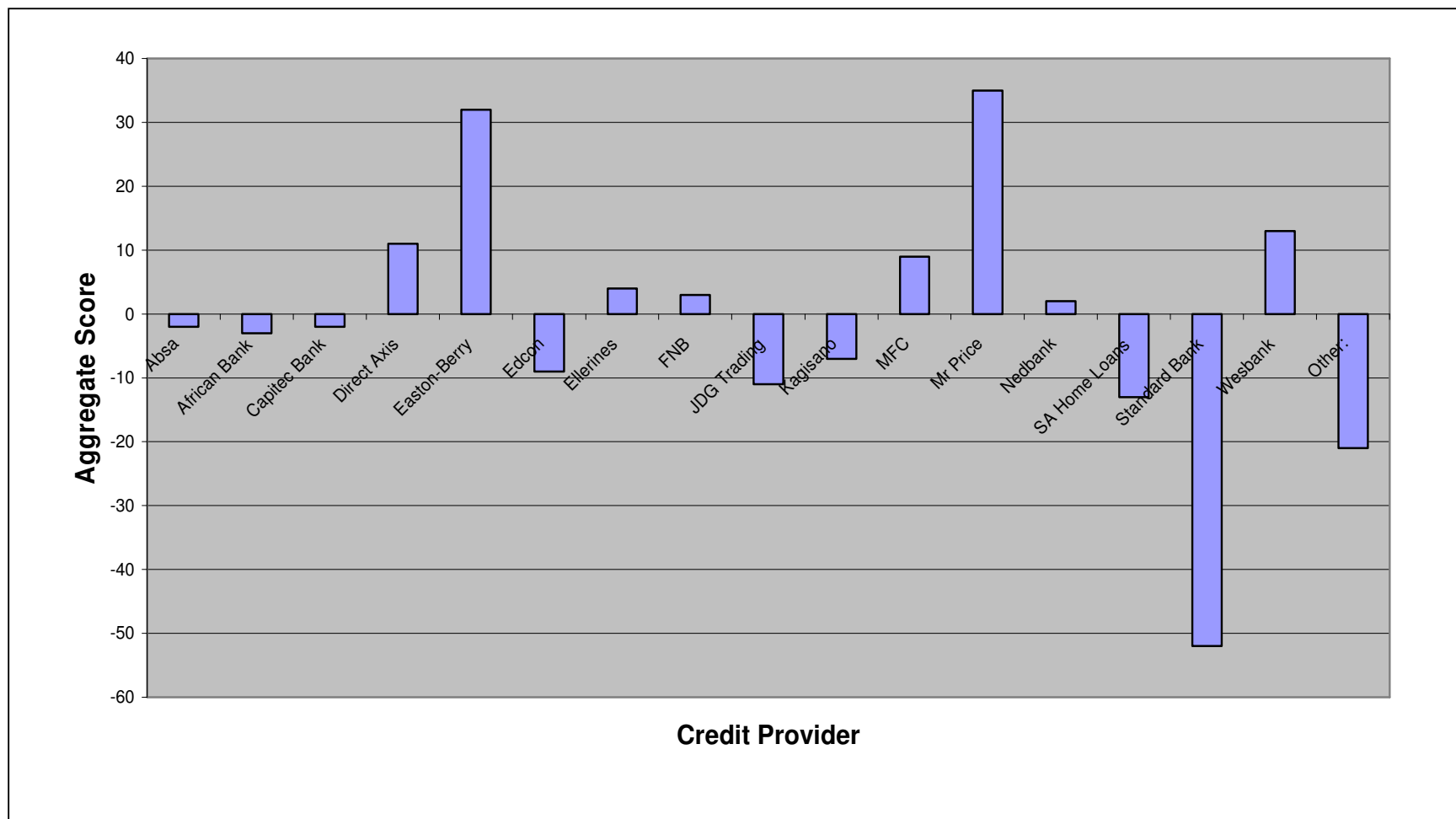


Figure 38: Aggregate rating of credit providers by debt counsellors for services

These rankings are open to criticism, because, *inter alia*, the size of the sample, the relatively low or high exposure of certain credit providers, the fact that institutions are often judged based on bad or good service from a specific office or member of staff, may all skew the result. However, it is submitted that many of these variables are equally applicable to all credit providers and some credit providers should indeed be concerned about the evaluation of their performance.

Table 37: Credit providers received a positive rating (in order of preference)

Mr Price	35
Easton-Berry	32
WesBank	13
Direct Axis	11
MFC	9
Ellerine's	4
FNB	3
Nedbank	2

Table 38: Credit providers received a negative rating

Capitec Bank	-2
Absa	-2
African Bank	-3
Kagisano	-7
Edcon	-9
JD Group	-11
SA Home Loans	-13
Other (smaller micro lenders)	-21
Standard Bank	-52

The difference overall between the best and worst performers is significant, with Mr Price scoring 35, Easton-Berry 32, WesBank 13 compared to Standard Bank scoring -52 and smaller micro lenders -21.

Incidentally, the research team's experience in failing to secure a appointment with Standard Bank's Debt Counselling Unit corresponds with the low rating for service delivery. Numerous telephonic messages were not returned and no response to emails was received (despite promises to return calls and arrange an appointment). This was in stark contrast to the accommodating attitude and co-operation received from Absa, FNB, African Bank, Nedbank and Easton-Berry. An explanation offered by an employee of Standard Bank who wished to remain anonymous:

- "We have different managers every now and then, nobody knows what is going on."

### **Question 12**

**Are you of the opinion that credit providers are acting in good faith in the debt review process?**

The National Credit Act requires in section 86(5)(d) of all consumers and each credit provider to "participate in good faith in the review and in any negotiations designed to result in responsible debt re-arrangement". Debt counsellors were asked whether credit providers in their experience were acting in good faith in the debt review process. Rather than just elicit a simple "yes" or "no", they were informed that they could indicate a percentage of credit providers acting in good faith or not. An answer that 60% of credit providers are acting in good faith would lead to a 0.6 added to the "yes" column and a 0.4 added to the "no" column. The lack of trust by debt counsellors of credit providers is clearly illustrated in the graph hereunder.

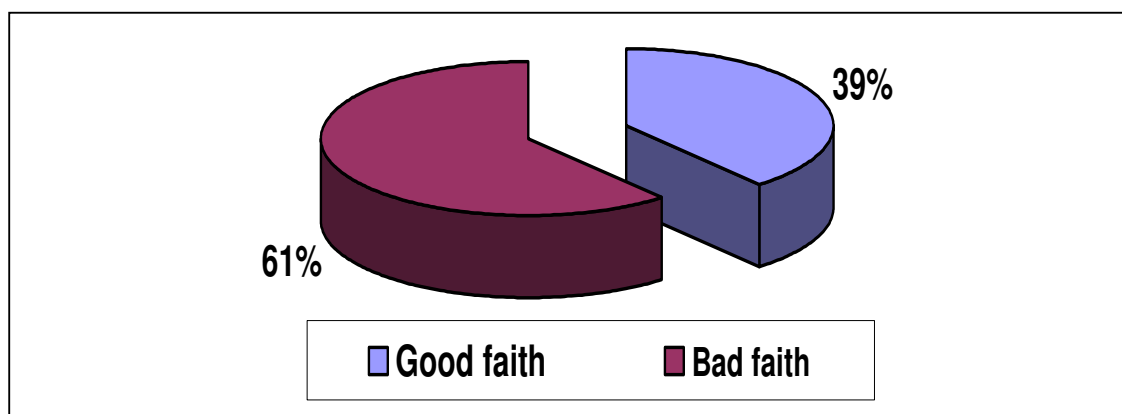


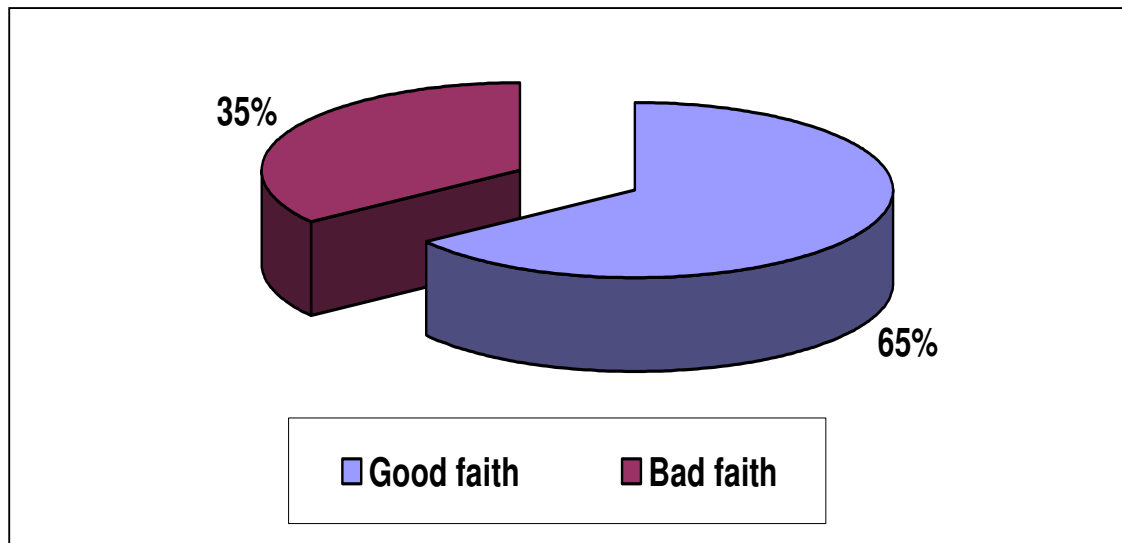
Figure 39: Percentage of credit providers acting in good / bad faith according to debt counsellors



### **Question 13**

**Are you of the opinion that consumers are acting in good faith in the debt review process?**

As was the case in the previous question, a percentage of consumers acting in good or bad faith as opposed to a mere yes or no, could be chosen by debt counsellors.



**Figure 40: Percentage of consumers acting in good / bad faith**

Whilst debt counsellors indeed experience problems with consumers not acting in good faith (35%), the percentage is substantially lower than that which is recorded with regard to the previous question.

**Question 14:**

**Do you think the debt review process is an effective debt relief measure for over-indebted consumers?**

Debt counsellors had to indicate whether they think that the debt review process is an effective debt relief measure for over-indebted consumers. In spite of many negative experiences the overwhelming majority of debt counsellors interviewed were of the opinion that the debt review process is an effective debt relief measure.

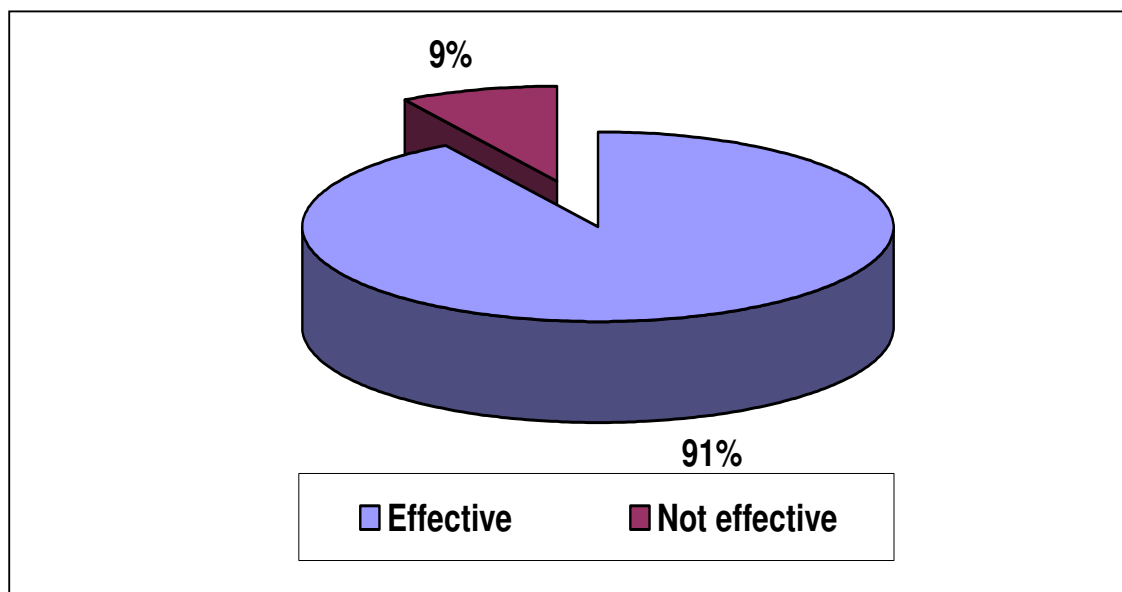


Figure 41: Percentage of debt counsellors indicating whether debt review process an effective debt relief measure

**Question 15:**

**Indicate which of the following problems you have experienced in the debt review process**

A number of major issues affecting the debt counselling process were put to debt counsellors. Respondents could indicate any one or more of the issues. Debt counsellors also had the opportunity to choose “other” and to expand.

Out of the 64 debt counsellors interviewed, 36% indicated that they had experienced problems with consumers not co-operating. This correlates with the opinions expressed in question 13 where 35% indicated that they were of the opinion that consumers are not acting in good faith. 72% of the debt counsellors experienced problems with credit providers not co-operating which again correlates with the 61% attained in question 12. It is also interesting and significant to note that 27% of debt counsellors interviewed attributed problems in the debt counselling process to incompetent debt counsellors. 53% of those interviewed mentioned the vagueness and inefficiency of the Act and Regulations as a major problem. Those who chose “other” as a major issue (23%) mentioned PDAs not performing and magistrates’ lack of experience and knowledge of the Act as main problems

**Question 16:**

**What in your opinion are the main obstacles in the debt review process?**

This was an open ended question and in a sense served as a control to question 15. Debt counsellors had to point out what they see as the main obstacles in the debt review process. Many of the interviewees indicated more than one obstacle. The vagueness / insufficiency of the Act and Regulations were mentioned by 53% of the respondents, followed closely by consumers not co-operating (36%), whilst incompetent debt counsellors were mentioned by 27%. Of the debt counsellor's "other reasons" (23%) were equally divided between non-payment by PDAs, non-enforcement by the NCR and magistrates postponing matters *sine die* awaiting the outcome of the declaratory order. However, the one single reason mentioned by 72% of all interviewees was once again non-cooperation by credit providers.

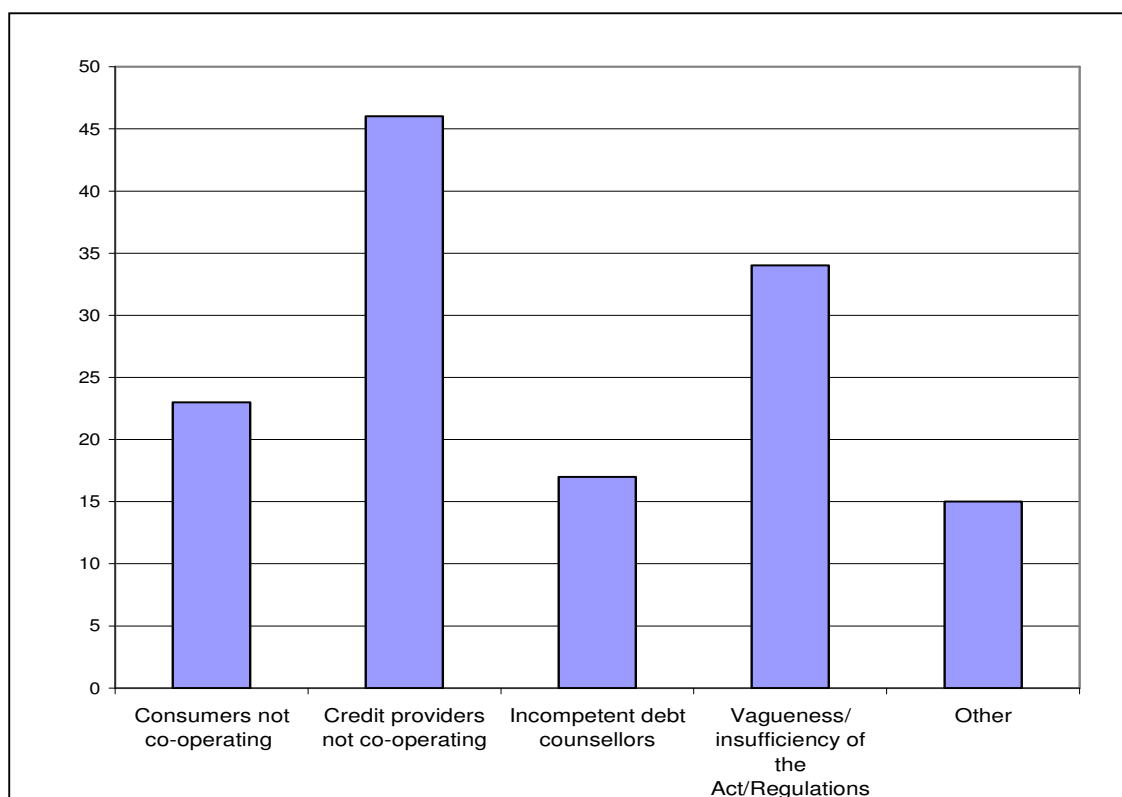


Figure 42: The main obstacles in the debt review process according to debt counsellors

**Question 17:**

**Is the time limit of 60 business days sufficient?**

Asked whether they regarded 60 business days as sufficient time to complete the debt review process, 41% of the interviewees answered in the affirmative, while 59% felt it was not sufficient.

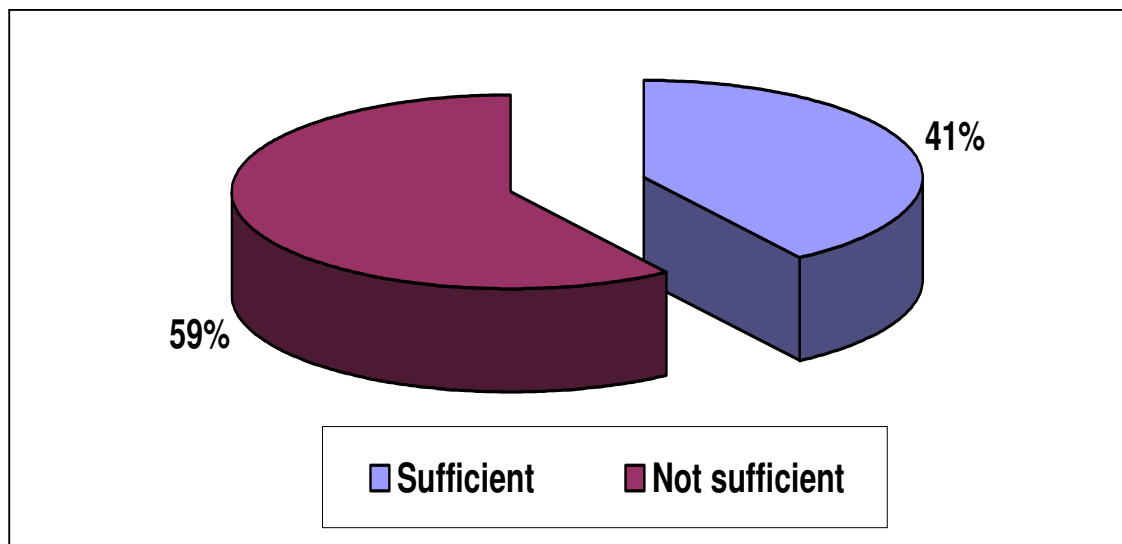


Figure 43: Is the time limit of 60 business days for completion of debt review process is sufficient or not sufficient

As stated above, it would appear that the 60 day period should be sufficient providing all parties adhere to the time limits set out in the Act or Regulations. However, as pointed out above this is unfortunately not the case at present.

**Question 18:**

**If the time limit of 60 days is not sufficient, why not?**

Of those who indicated 60 days were not sufficient time 46,67% indicated that the process itself generally requires a longer period whilst the remainder (36,67%) indicated that the failure of credit providers to provide required information, timeously or at all, made the 60-day period not viable. 16,67% indicated that the lack of cooperation from clients / consumers made the finalising of the process in 60 days difficult to achieve.

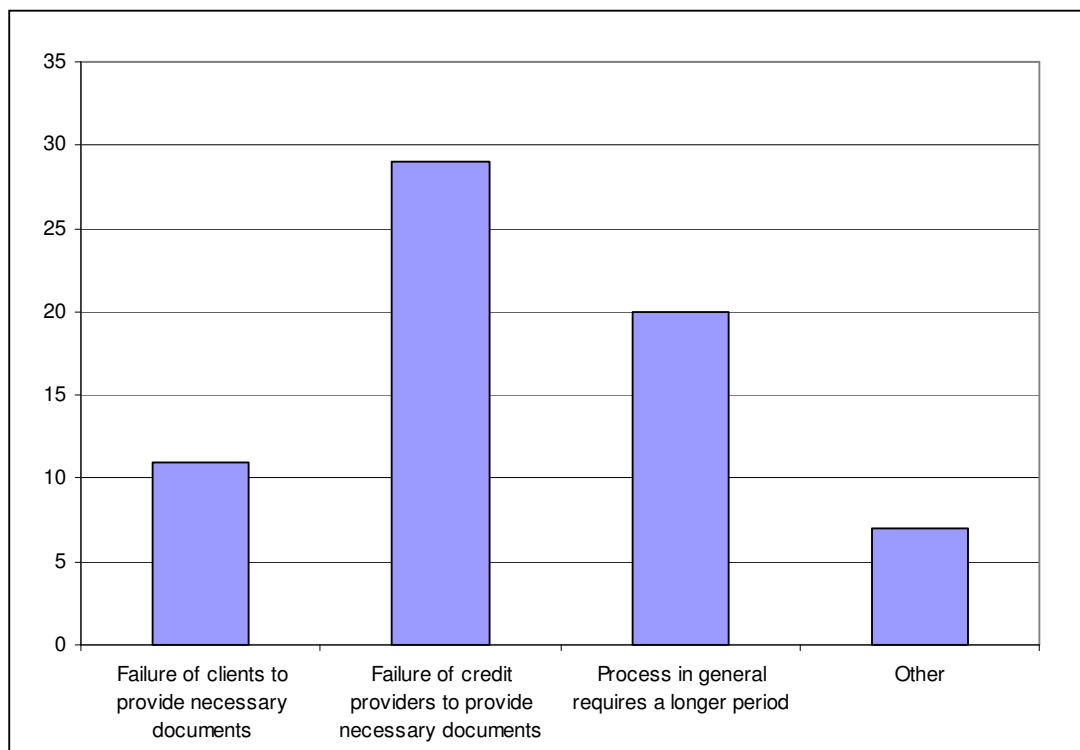


Figure 44: Reasons advanced for 60 day period being insufficient

**Question 19:**

**Do you send reminders upon non-receipt of the COB?**

In terms of the work stream agreement and industry guidelines debt counsellors were asked to send a reminder to credit providers where they do not receive the COB within the 5 day period. At the time it was argued that this could prevent requests for COBs getting lost, not reaching its addressee etc.

As shown by the following graph hereunder, 77% of debt counsellors maintain that they do send out these reminders (often automated). Nearly 1 out of 4 debt counsellors does not send reminders. When prompted on why they do not, answers ranged from:

- “The banks do not keep to the agreement, why should I?”
- “Credit providers actually asked me not to as the reminders clog their system”
- “Do I have to?”
- “I used to, but no longer do. It is a waste of time and paper – the good ones respond in any case; the bad ones not, no matter how many reminders you send them”

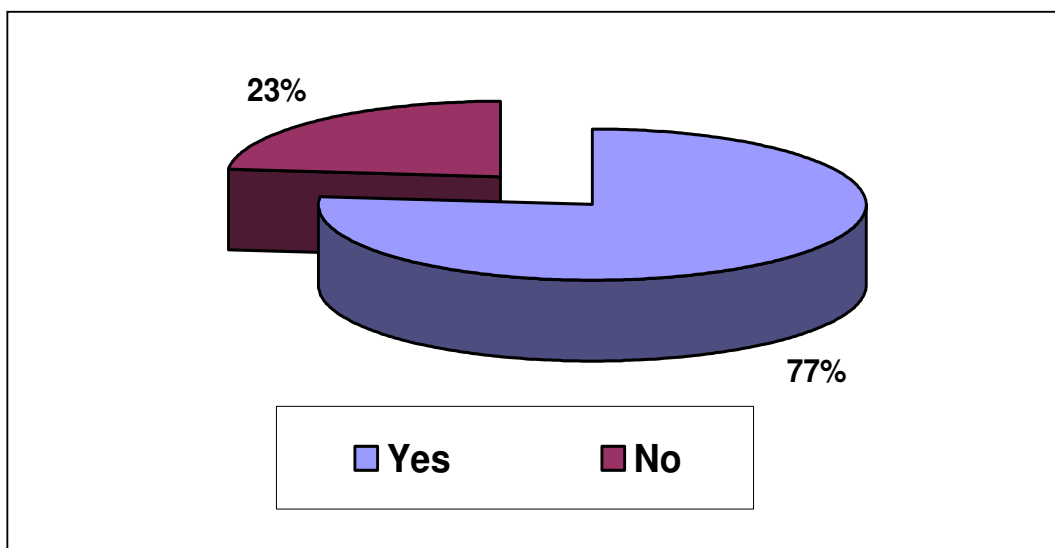


Figure 45: Debt counsellors sending reminders upon non-receipt of COB in prescribed period

**Question 20:**

**Do you use a computer system to draft a consumer's proposal?**

This question related to the use of a computer system for drafting a consumer's proposal. 100% of the debt counsellors indicated that they make use of such a system.

**Question 21:**

**If you are using a computer system to draft a consumer's proposal, which software package do you use?**

As mentioned above, all of the debt counsellors indicated that they make use of a computer system to draft a consumer's proposal. The chart below shows that 27 used the Care-system, 18 the DebtPro-system, 7 the system developed by Octogen, 5 used Debtwise and the remaining 7 used self made systems.

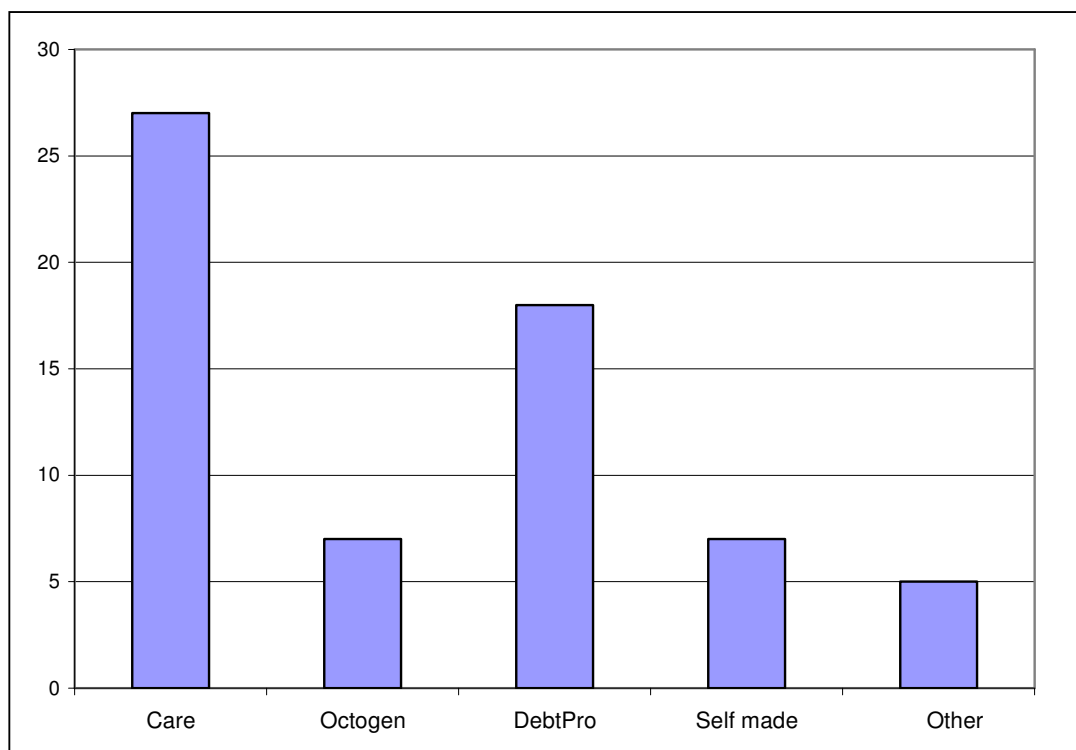


Figure 46: Different computer systems used



Following on the suggestion by Marlene Heymans as mentioned above, the research team drafted a case study showing *inter alia* income, expenditure, credit agreements etc. This was then sent to four major debt counselling firms using different computer systems. These firms were requested to draft a proposal on the given set of facts. The set of facts and the proposals received was included in Chapter 3 as a case study.

**Question 22**

**What is your average acceptance rate on your proposals?**

As it became clear that the phrasing of this question was open to different interpretations, the results were found to be non-reliable and excluded from this report.

**Question 23:**

**Do you use a PDA?**

78% of the debt counsellors interviewed, indicated that they make use of one or more of the official payment distribution agencies.

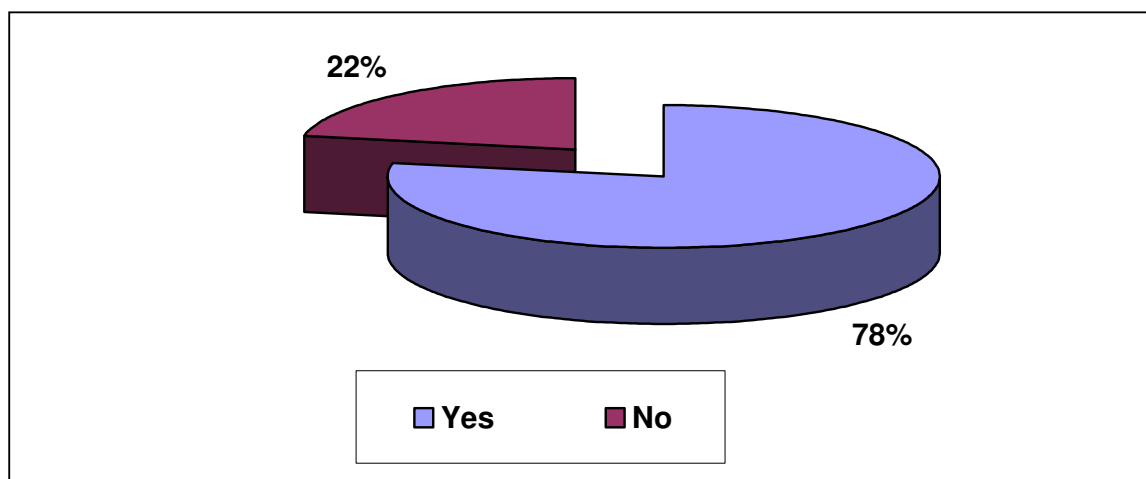


Figure 47: Whether use is made of a PDA for payment purposes

**Question 24:**

**If you do not make use of a PDA, why not?**

Those debt counsellors who did not use PDAs (22%) were asked the reason for not using a PDA and were presented with possible options. These were “too costly”, “unsure of procedure”, “bad service experienced in the past”, clients pay themselves”. In addition thereto an option to provide for “other” possible reasons was given. 53% of the debt counsellors indicated that they prefer their clients to pay themselves. 40% gave “bad experiences with PDAs on previous occasions” as a reason, whilst 7% indicated “other”. When prompted on this it was indicated that they pay creditors themselves (via an attorney’s trust account). However, while this may be effective, it should be noted that this is a contravention of the conditions of registration.

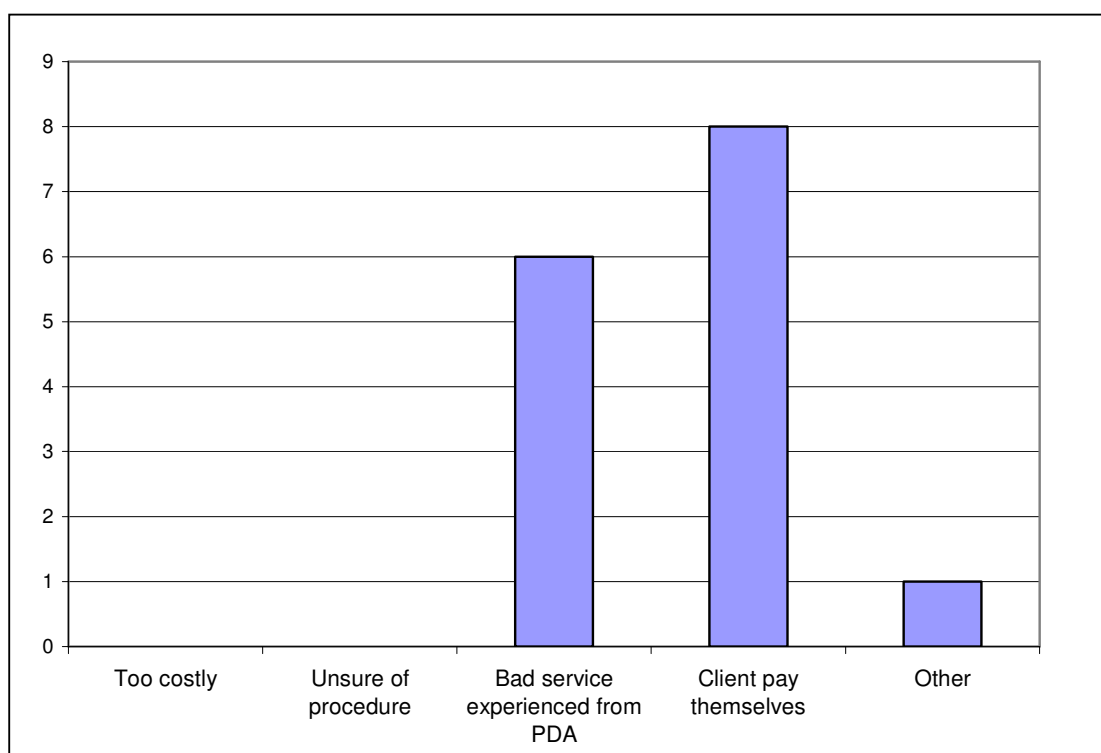


Figure 48: Reasons for not making use of PDAs

**Question 25:**

**Have you obtained any consent orders?**

This question is self explanatory. 50% of debt counsellors interviewed had in fact obtained one or more consent orders.

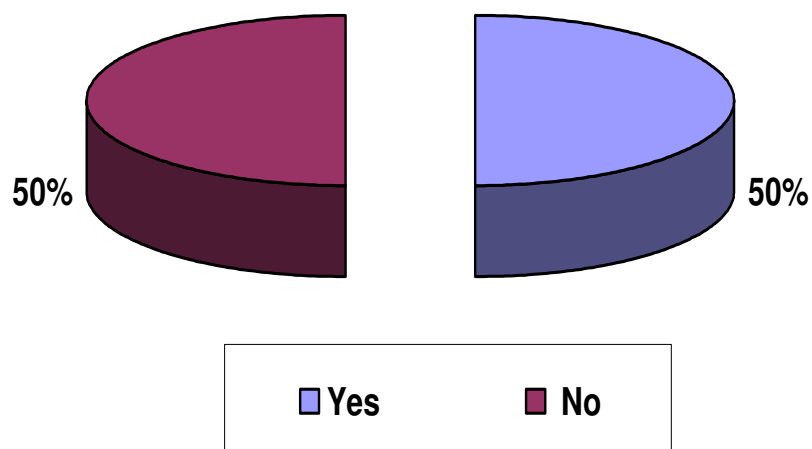
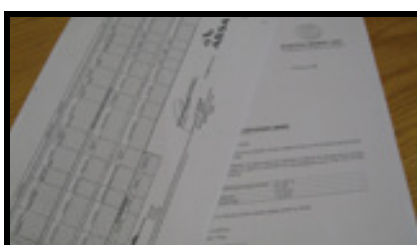
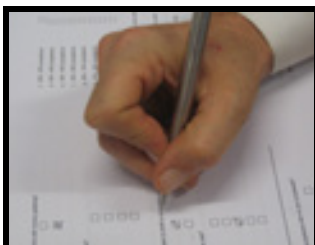


Figure 49: Percentage of debt counsellors obtaining / not obtaining consent orders

**Question 26:**

**If you have not obtained any consent orders, in circumstances where you have the consent of all credit providers, why not?**

Of the 32 debt counsellors who indicated that they have not obtained consent orders yet, eight indicated that in spite of having obtained consent from credit provider they have not obtained a court order. Four of them indicated that the process to obtain a consent order was not clear to them. The remaining four indicated that the magistrates were not willing to hear the matter. As for the four who were unsure of the process this should be rectified via training.



## CHAPTER 5 : RECOMMENDATIONS

### 5.1 GENERAL

#### 5.1.1 **Training of debt counsellors and credit provider staff**

Additional and ongoing training of debt counsellors is very important, considering the complexity of the functions they perform. A number of debt counsellors have professional degrees for instance in accounting or law. However, a great number of debt counsellors do not have a sound financial background. For this reason it is suggested that the teaching of debt counsellors be supplemented by two months practical training with established registered debt counsellors, thereby providing a firm introduction to the debt review practice.

Similarly, it is vital that credit provider staff members receive training on the debt review process and other relevant matters. These staff members are often placed in a position to approve or reject applications and need to be able to interpret and evaluate proposals. In many instances they have to make a mind shift having been transferred from debt collecting divisions of credit providers. Furthermore, in order to improve the co-operation between debt counsellors and credit providers it is necessary for the credit provider staff members to be able to provide informed and professional assistance.

It is suggested that the training material for debt counsellors and credit providers should be standardised and compatible.

#### 5.1.2 **Communication between debt counsellor and credit provider must be improved**

A number of the negligent mistakes made by credit providers and debt counsellors can be resolved by simple communication. In order to achieve proper communication it is important that both the debt counsellors and the credit providers supply correct

contact details, *inter alia* telephone and fax numbers as well as e-mail addresses. Furthermore, it is of vital importance that all role-players keep their systems operational at all times to allow for effective communication. In addition parties should ensure that all communication forwarded by fax are legible. Regular meetings between representatives of the debt counsellor community and credit providers should be encouraged. Initially, at least, this can be facilitated by the NCR.

### **5.1.3**

#### **Any industry agreements must be deduced into writing and signed by the CEO's**

It is suggested that in future all industry agreements be reduced to writing and signed by relevant role players to prevent any uncertainty. It must be ascertained prior to future negotiations with credit providers that their representatives have the necessary authority or mandate to bind the credit provider.

### **5.1.4**

#### **COBs standardised**

Although the workstream provided a standardised format for the COB, it is not regulated and thus not compulsory to use for those credit providers who do not form part of the workstream agreements. In light thereof it is suggested that the COB be standardised and that it be included in the regulations.

### **5.1.5**

#### **Formulas and format of proposals to be standardised**

As evident from the results obtained from the study as reported on in Chapter 3, it is clear that the differences between the proposals created by different software packages could substantially impact on the outcome of the process. Further study would, however, be needed to fully analyse and understand the impact. Such a study would necessarily include a much larger sample and actuarial analysis of the software and algorithms used by both debt counsellors and credit providers.

### **5.1.6**

#### **Ombuds office for debt review**

Although the NCR is currently responsible for all complaints lodged against credit providers and debt counsellors it is suggested that a special ombuds office be created to specially cater for debt review related matters. The establishment of these offices are necessary to streamline complaints and offer specialised dispute resolution.

### **5.1.7**

#### **List of contact persons**

It is suggested that the NCR should make an online database available containing updated contact details of all relevant role players especially debt review departments.

## **5.2**

### **LEGISLATIVE AND REGULATORY AMENDMENTS**

It is submitted that the following issues be addressed by the legislator.

- **A review of the requirements pertaining to the education, experience and competence of debt counsellors.**

It is suggested that the current sub-regulation 10(b)(i)(ff) be deleted as its application is too wide and allows almost any working experience to be sufficient in terms of this section. It is suggested that regulation 10 be amended as follows:

- “10. A person who applies for registration as a debt counsellor must meet the following further requirements–
- (a) Education:
    - (i) a Grade 12 certificate or equivalent Level 4 qualification issued by the South African Qualifications Authority; and
    - (ii) successful completion of a debt counselling course approved by the National Credit Regulator and provided by an institution approved by the National Credit Regulator.

- (b) Experience and Competence:
  - (i) a minimum of five years working experience in any of the following fields–
    - (aa) consumer protection, complaints resolution or consumer advisory service;
    - (bb) legal or para-legal services;
    - (cc) accounting or financial services;
    - (dd) education or training of individuals;
    - (ff) counselling of individuals provided that if a person who applies for registration in terms of this regulation does not comply with the criteria pertaining to experience as contemplated in sub-regulation (b)(i) of this regulation, such a person will still be able to apply for registration as a debt counsellor if he/she possesses a tertiary qualification in either the field of law or economic and management sciences.
  - (ii) demonstrated ability to:
    - (aa) manage his/her own finances at the time of applying for registration; and
    - (bb) provide counselling or transfer skills.”

- **Clarity as to whether the High Court or the Magistrate’s Court has the powers in terms of section 85 if it is alleged in High Court that a consumer is over-indebted.**

With reference to the *Panayiotts* (discussed in Chapter 2 above) case it is suggested that section 85 be amended as follows:

- “85. Despite any provision of law or agreement to the contrary, in any court proceedings in which a credit agreement is being considered, if it is alleged that the consumer under a credit agreement is over-indebted, the court in which the allegation of over-indebtedness has been made may–
- (a) refer the matter directly to a debt counsellor with a request that the debt counsellor evaluate the consumer’s circumstances and make a recommendation to the court in which the allegation of over-indebtedness has been made in terms of section 86(7); or

- (b) declare that the consumer is over-indebted, as determined in accordance with this Part, and make an order contemplated in section 87 to relieve the consumer's over-indebtedness."

- **A new Form 16 which would assist debt counsellors to better inform their clients of the consequences of debt review (see the proposed improved Form 16 in Chapter 2 above).**

- **The regulation of the fees that may be recovered by debt counsellors and the amendment of section 86(3) to provide for the possibility that credit providers could also bear some of the debt counselling costs.**

In this regard it is suggested that the recommended cost and fee structure drafted by DCSA should be incorporated in the regulations to the NCA. Additionally, it is suggested that credit providers be made responsible for the PDA fees. The current section 86(3) should be substituted with the following provision:

- "(3) (a) A debt counsellor may require the consumer to only pay the prescribed fees pertaining to the process of debt review.
- (b) A registered payment distribution agency may, in respect of services rendered by him in terms of a court order, recover from the credit provider a commission prescribed in the regulations of all the amounts paid to such a credit provider by deducting such commission from the amount paid to the judgment creditor."

- **The amendment of section 86(2) by substituting the words "section 129" with "section 130".**



- **The regulation of the type of information (the COB) a credit provider is required to provide to the debt counsellor pursuant to a request in terms of regulation 24(3) for verification of information provided by the consumer.**
  - It is suggested that section 86(4) be amended by adding a new subsection (c):

“(c) verify the information provided in the application in terms of subsection (1), in the prescribed manner and form”
  - It is furthermore suggested that regulation 24(3) be substituted with the following provision:

“(3) In verifying the information provided in terms of sub-regulation (1) above, the debt counsellor—

    - (a) may use any method of verification; and
    - (b) must—
      - (i) request documentary proof from the consumer; and
      - (ii) contact the relevant credit provider by delivering Form 17.1 as contemplated in sub-regulation (2) who must then complete and submit Form 16.2 to the debt counsellor within five business days of such verification being requested.”
- **Amendment of section 86(8) to include the instance where a recommendation is made by the debt counsellor in terms of section 86(7)(c) and to specifically provide for the obtaining of a consent order when a debt restructuring proposal is accepted by all credit providers.**

- **Clarity on the procedure to be followed in court when a matter is “referred” to the Magistrate’s Court because the consumer and credit providers could not reach consensus on a debt restructuring proposal. Related issues, such as the jurisdiction of the court to entertain debt review matters, the person who should approach the court and the issue of notification regarding the eventual hearing for debt re-arrangement, should also be addressed.**
- **Amendment of sections 86(7)(c) and 87 to provide for the possibility that the court could enforce a discharge of a part of the consumer’s debt obligations.**

The following amendments are suggested with regard to the above three issues:

- Amendment of section 86(7)(c):
  - “(c) the consumer is over-indebted, the debt counsellor must issue a proposal recommending that the Magistrate’s Court declares that the consumer is over-indebted and make one or all of the following orders–
    - (i) that one or more of the consumer’s credit agreements be declared to be reckless credit, if the debt counsellor has concluded that those agreements appear to be reckless; and
    - (ii) that one or more of the consumers’ obligations be re-arranged by–
      - (aa) extending the period of the agreement and reducing the amount of each payment due accordingly;
      - (bb) postponing during a specified period the dates on which payments are due under the agreement;
      - (cc) extending the period of the agreement and postponing during a specified period the dates on which payments are due under the agreement; or
      - (dd) recalculating the consumer’s obligations because of contraventions of Part A or B of Chapter 5, or Part A of Chapter 6

- (iii) that any part of one or more of the consumer's obligations be discharged and that such obligations, subject to section 88A, ceases to be binding on the consumer."

- **Amendment of section 86(8):**

- "(8) If a debt counsellor makes a recommendation in terms of subsection (7)(b) or (7)(c) and–
  - (a) the consumer and each credit provider concerned accept that proposal, the debt counsellor must record the proposal in the form of an order, and if it is consented to by the consumer and each credit provider concerned, the consumer, by notice to the credit provider, may apply in the form and manner as prescribed in the Magistrates' Courts Act, 1944 to the Magistrate's Court of the district in which the consumer resides or carries on business or is employed for the order to be made an order of court;
  - (b) if paragraph (a) does not apply, the consumer, by notice to the credit provider, may apply in the form and manner as prescribed in the Magistrates' Courts Act, 1944 to the Magistrate's Court of the district in which the consumer resides or carries on business or is employed for an order contemplated in subsection 7(c) and section 87."

- **Amendment of section 87(1):**

- "**87. (1)** If a consumer applies to the Magistrate's Court in terms of section 86(8)(b) or 86(9), the Magistrate's Court must conduct a hearing as prescribed in the Magistrates' Courts Act, 1944 and, having regard to the proposal and information before it and the consumer's financial means, prospects and obligations may–
  - (a) reject the application; or
  - (b) declare that the consumer is over-indebted and make–
    - (i) an order declaring any credit agreement to be reckless, and an order contemplated in section 83(2) or (3), if the Magistrate's Court concludes that the agreement is reckless;
    - (ii) an order re-arranging the consumer's obligations in any manner contemplated in section 86(7)(c)(ii); or
    - (iii) an order contemplated in section 86(7)(c)(iii); or
    - (iv) an order appointing a payment distribution agent, registered by the National Credit Regulator in terms of section 44A, and which will be responsible for the collection and distribution of

- payments received from the consumer after a debt restructuring order or agreement; or
- (v) all the orders contemplated in subparagraph (i), (ii), (iii) and (iv) of subsection (1)(b)."

- With regard to the issue of notification, a new regulation 26(4) is suggested:

"Notification to the relevant credit providers of an application by the consumer in terms of section 86(8)(b) and 86(9) may be effected by one or more of the following mechanisms:

- (a) personal delivery;
- (b) registered mail to the last known address of the relevant credit provider;
- (c) fax or email, provided that the debt counsellor is able to provide satisfactory proof of successful transmission of such fax or email or an acknowledgement of receipt be obtained from the relevant credit provider."

- **With regard to the debt counselling payment distribution system, issues such as the appointment of PDA's by the court (see the proposed s 87(1)(a)(iv) above) as well as the registration and monitoring of PDA's by the NCR, should be addressed.**

- The amendment of section 14(a) is suggested:

"14. The National Credit Regulator is responsible to regulate the consumer credit industry by–

- (a) registering credit providers, credit bureaux, debt counsellors and payment distribution agents;"

- A new section 44A is suggested:

**"Registration of payment distribution agents**

- 44A.** (1) The National Credit Regulator must establish and issue standards and conditions for registration of payment distribution agents.
- (2) The National Credit Regulator may not register a person as a payment distribution agent unless that person has, in the opinion of the National Credit Regulator–

- (a) sufficient human, financial and operational resources to enable it to function efficiently and to properly perform its functions in terms of the Act; and
- (b) sufficient administrative measures and safeguards to enable it to function efficiently and to properly perform its functions in terms of the Act."

- **Regulation of the process to be followed when a consumer or the debt counsellor withdraws from the debt review process.**

- A new section 86A is suggested:

**"Withdrawal from the debt review process**

- 86A.** (1) A consumer may voluntarily withdraw an application in terms of section 86 at any time before an order of court as contemplated in section 86(8) has been granted, by delivering a written notice to the debt counsellor that the consumer is withdrawing the application, including the reasons for such withdrawal.
- (2) Within five business days after receiving a notice as contemplated in subsection (1), the debt counsellor must notify all credit providers that are listed in the application in terms of section 86 and every registered credit bureau in the prescribed manner and form that the consumer has voluntarily withdrawn the application in terms of section 86.
- (3) A debt counsellor may withdraw an application in terms of section 86 if the debt counsellor is of the opinion that the consumer is dishonest or is not co-operating with regard to the application in terms of section 86.
- (4) Within five business days after a withdrawal as contemplated in subsection (3), the debt counsellor must notify the consumer and all credit providers listed in the application in terms of section 86 as well as every registered credit bureau in the prescribed manner and form of the withdrawal.
- (5) A notice of withdrawal contemplated in subsection (4) may only be delivered after at least 10 business days have elapsed since the debt counsellor delivered a written notice to the consumer of the debt counsellor's intention to withdraw the application, including the debt counsellor's reasons for such intended withdrawal, and the consumer has failed to respond to such a notice.

- (6) If a consumer or the debt counsellor withdraws an application for debt review as contemplated in terms of this section, the debt counsellor must inform the consumer that–
  - (a) any of the consumer's credit providers may approach the court for an order to enforce a credit agreement in respect of which the consumer is in default;
  - (b) the consumer's credit record will, for a period of six months, reflect that the consumer has voluntarily withdrawn the application or that the debt counsellor has withdrawn the application, as the case may be;
  - (c) the consumer is liable for all debt counselling fees prescribed in terms of the Act and which are due up to the date of withdrawal;
  - (d) the consumer is entitled to re-apply for debt review in terms of section 86."

- **The introduction of a new provision in terms of which the court, on application by the consumer, may relieve the consumer from the disabilities resulting from debt-rearrangement:**

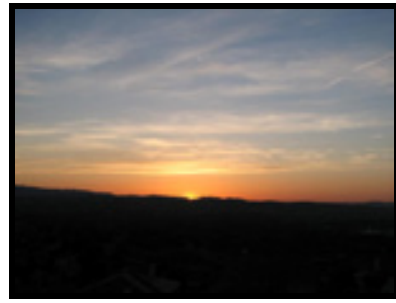
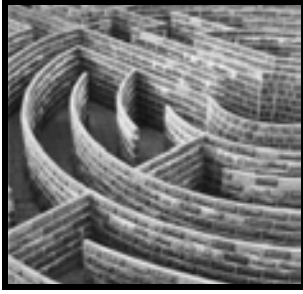
- A new section 88A is suggested:

**"Magistrate's Court may relieve consumer of disabilities resulting from debt re-arrangement**

**88A.** A consumer whose debts have been re-arranged in terms of Part D of this Chapter may apply to the Magistrate's Court of the district in which the consumer resides or carries on business or is employed at any time for an order relieving the consumer of every disability resulting from debt re-arrangement, and the court may grant such an order if it is satisfied–

- (a) that the consumer has paid all arrear instalments of all credit agreements which are subject to the debt-re-arrangement order or agreement; and
- (b) that the consumer has reaffirmed any obligations that have been discharged as contemplated in section 86(7)(c)(iii), to be binding on the consumer again; and
- (c) that the consumer is able to resume repayment of all obligations in terms of the original credit agreements concluded between the consumer and relevant credit providers; and
- (d) that the court is of the opinion that the consumer can no longer be regarded to be over-indebted as contemplated in section 79."

- It is suggested that regulation 27 should apply in instances where a consumer has fully satisfied all debt obligations in accordance with the re-arrangement agreement or order as contemplated in the proposed amended section 86(8) read together with the proposed amended section 87(1). If a consumer wishes to be relieved from the disabilities resulting from debt-re-arrangement at an earlier stage he or she needs to comply with the proposed section 88A.
- It is suggested that section 71(4) and (5) be amended to provide as follows:
  - “(4) A consumer to whom a clearance certificate is issued in terms of this section or in whose favour an order contemplated in section 88A has been granted, may file a certified copy of that certificate or order with the national register established in terms of section 69 or any credit bureau.
  - (5) Upon receiving a copy of a clearance certificate or court order, a credit bureau, or the national credit register, must expunge from its records—
    - (a) the fact that the consumer was subject to the relevant debt re-arrangement order or agreement;
    - (b) any information relating to any default by the consumer that may have—
      - (i) precipitated the debt-re-arrangement; or
      - (ii) been considered in making the debt-rearrangement order or agreement; and
    - (c) any record that a particular credit agreement was subject to the relevant debt re-arrangement order or agreement.”
- Paragraph (d) should be added to section 88(1):
  - “(d) a court have made an order as contemplated in section 88A.”
- Section 88(3)(b)(i) should be amended as follows:
  - “(i) An event contemplated in subsection (1)(a) through (d); or”





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<u>Consumer</u>	<u>Court</u>	<u>Case no</u>
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Gert Nel Blignaut & Liza Blignaut	Pretoria	128631/2008
Sophia Wilhelmina Calitz	Pretoria	128626/2008
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Frederick Ncube & Jestina Dlamini	Randburg	28042/2008
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All affidavits filed in *National Credit Regulator v Nedbank and Others* (TPD) case number 18638/2008

