

1.0 EXECUTIVE SUMMARY

In line with its mandate, Client, the National Credit Regulator (NCR), commissioned research to understand the structure and dynamics of alternate dispute resolution (ADR) sector within the credit industry of South Africa. For purposes of this study an ADR was defined as an entity providing formal services to assist in the resolution of consumer credit disputes. The findings of the research would be used to inform policy development and to advise the role-players within the market of issues pertaining to their effectiveness and to the needs of consumers. The survey focused on both the supply and demand aspects of the ADR market utilizing both qualitative and quantitative research techniques. The geographical scope of the study included Gauteng, Limpopo and Northern Cape.

The profile of credit users showed that usage generally cuts across all respondents groups interviewed but showing a heavy skew towards the black population (94%). In terms of age the 31-40 year olds dominate credit usage whilst in terms of income the middle to low income are among the majority. Common types of credits used include clothing accounts (19%), personal loans (14%), furniture (13%), cellphone contracts (12%) and credit cards (9%). Generally, consumers' perception of credit is both negative and positive. Credit is, in the main, seen as an enabler to acquiring items that one would ordinarily not afford. However deficiencies in credit knowledge, consumer protection legislation as well as industry shortcomings tend to result in disputes of various forms between customers and other credit industry players. All respondents interviewed had experienced credit disputes they undertook to get resolved through use of ADR agents.

Common credit dispute categories identified included service provider related (50%), credit bureau related (30%) and debt counseling related (8%) elements. Within these, common dispute types singled out were overcharging, over-deduction or other mistakes on installments, excessive interest, unknown garnishee orders and general "harassment" by the service providers. Types of credit disputes however vary by social status whereby higher income people tend to have disputes related to mortgages and secured types of credits whilst the middle to low income customers have disputes in personal unsecured loans and credit facilities.

Although as noted above, most credit disputes arise from agreements with credit providers, credit dispute resolution agents (ADRs) consulted tend to be legal practitioners (31%) and legal insurance (Legal Wise, 21% and Scorpion, 15%) firms and credit providers themselves (22%). Credit Providers, Debt counselors and industry specialized bodies like the

National Credit Regulator (NCR), Credit Ombud, Banking Ombudsman, Provincial Consumer Affairs offices and the National Debt Mediation Association (NDMA) are used to relatively lower extents even though resolution services are free of charge.

The courts system is regarded the last resort when everything that could be done (e.g. consult friends, negotiate with service providers, switch banks etc) has been done and yet the dispute remains unresolved. Organisations interviewed for the supply side displayed better awareness and familiarity with the ADR terminology than the demand side respondents and ADRs were likened to ombudsman structures.

Credit providers dispute resolution mechanisms are not consulted to high extents. The findings revealed issues of effectiveness and impartiality of the process, manifested through staff suitability and proactive communication. A concern was raised that service providers tend to give standard responses to disputes due to obsession with risk management on their part.

Most respondents found out about ADR services through newspapers (48%), referrals (40%), radios (25%), magazines (15%), flyers (12%) and television (7%) these being part of channels for promotional strategies used by ADRs. However, consumers would initially contact ADRs through personal visits driven by the need to negotiate and get quick resolution of the dispute in their favour. On the contrary, ADRs discourage walk-ins and communicate telephonically or via emails, internet and letters. Many agents tend to have one operational base, typically in Gauteng for the same reason but then ensure that they are equipped with state of the art IT systems for efficient record keeping, dispute logging, case tracking and updates with consumers about the resolution process.

Most respondents (97%) had on average used ADR services for one dispute in the last two years. Choice of ADR agents is chiefly informed by capacity (49%), process correctness (45%), accessibility (42%), professionalism (38%) and fees (36%) perceptions. Need for quick fix is a key motive because by the time they look for ADR agents, the consumers' situation would, in most cases, be desperate. Apart from the need for speed and transparent fees structures consumers also scout for professionalism, defined as business-like approach to customer engagement. Consumers expect to pay reasonable fees ideally linked to the value of disputed cases and also paid in installments. Contracts with ADR agents are expected to be more 'lenient' than their disputed counterparts.

The supply side findings revealed that customer commitment and cooperation in providing all necessary information and supporting documentation actually play a cardinal role in ensuring successful dispute resolution.

In terms of the ADR process, consumers generally expect ADR agents to “take over” their disputes once they initiate contact and they expect ADRs to take their side. The ADR process was generally described by consumers as typically involving four critical steps i.e. contacting the ADR, lodge a query, submit required documentation and wait for investigation and response. During the resolution process, the ADR agent would liaise with the credit provider with little or no consumer involvement, seeking resolution on behalf of the consumer. Some ADR agents do provide the consumer with feedback or communicate when the consumer should expect feedback or the matter to be resolved. Upon finding resolution, depending on the type of ADR agency as well as the type of dispute, the ADR agent may or may not give formal or informal feedback about the resolution and close the case. Lack of consistent consumer involvement throughout the resolution process, tends to compromise effectiveness of the resolution process as reasons for time taken, seemingly lack of communication and fees charged become less understood.

Regarding costing structures, service fees constitute a larger part of what consumers pay for ADR services, particularly when the ADR is a legal practitioner. Not for profit organizations and industry expert bodies offer resolution services for free. Credit providers do not charge for their internal ADR services as this is deemed part of customer care. Overall, respondents showed preference to pay something for dispute resolution in exchange for an impression of commitment to get the disputes resolved in their favour within reasonable time. Various amounts for ADR services, mostly less than R1000, for the full process was considered acceptable varying by dispute type and complexity. Due to lack of customer knowledge about the law and what is possible and not possible, many customers fall prey to value propositions that create the perception that disputes can be resolved in their favour regardless of circumstances.

Chief among dispute resolution challenges identified are lack of education and knowledge about consumer protection

legislation and credit industry dynamics making engagements and understanding between the agent and the customer in largely one way and vulnerable to misunderstanding. Secondly consumers do not seem to appreciate the need to stay committed to the full resolution process. In some cases drop-outs are caused by fear of the unknown because of the perception that there could cost implications when one keeps following up on dispute resolution especially with lawyers. Thirdly, there are elements of irresponsible credit: either caused by credit agreements not properly explained by the credit provider or the consumers themselves not having read effectively the contents of the credit agreements. Another key barrier to resolution of credit disputes is inaccessibility of relevant service providers. Consumers tend to spend towards transport and communication in efforts to access services. An industry stakeholder conference could be considered to provide a platform for engagements and resolutions on prevailing industry challenges.

The dispute resolution process varies, in duration, from a few weeks to a couple of months. It was also clear that resolution period tends to be, in part, a function of legal stipulation, customer process preference, service provider and dispute type. Although there were many concerns associated with ADR agents, disposition towards ADR agents is generally high on the demand side mainly because they ultimately help solve the problem. A vast majority (85%) of respondents confirmed they would recommend ADR service providers they were served by. This means the ADR service is largely seen as effective. Likelihood of recommendation was highest for legal firms and lowest for credit providers’ type ADR agents as well as Debt counsellors. It appears that as a service ADR agencies are endorsed as having a job to do. The main issues revolve around the process duration and associated communication as well as seemingly lack of transparency (involvement of consumers and justification of fees).

The overall researcher impression was that the ADR market is indeed effective but requires adoption of an industry accredited process framework to facilitate consistency, transparency and ultimately consumer protection. This framework could be reviewed and adopted at a credit industry stakeholder conference mentioned above.