

**NCR Task Team on Debt
Counselling**

Briefing Note

March 2010

UPDATE: TASK TEAM ON DEBT COUNSELLING

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1. Introduction

The National Credit Regulator (NCR) set up a Task Team to address the blockages in the debt review process and reduce the backlog of cases under debt review. The Task Team (TT) is chaired by former Banking Ombudsman, Advocate Neville Melville and comprises of Peter Setou, Paul Slot, Johan de Ridder and Rob Easton-Berry. The team is assisted by Marlene Heymans (NCR), Mareesa Kreuser (University of Pretoria Law Clinic) and Sue Hatton (independent consultant).

The members of the Task Team were selected on the strength of their knowledge of and experience in different aspects of the credit industry and debt counselling and do not represent the interests of any particular institution.

Over the course of the past five months the Task Team has had detailed engagements with a broad range of affected parties. This includes detailed discussions with payment agencies, debt counsellors, banks, retailers, magistrates and a range of industry specialists.

The purpose of this document is to give an update on progress of the Task Team.

2. Summary of observations

The Task Team recognises that debt counselling is playing an import role in assisting consumers in dealing with the negative impact of the financial crisis and the resulting job losses and negative impact on incomes. The Task Team further recognises that debt counselling may have played an important role in curtailing repossessions and in preventing a decline in the housing market, with all the negative consequences that this would have had for both consumers and the banking sector.

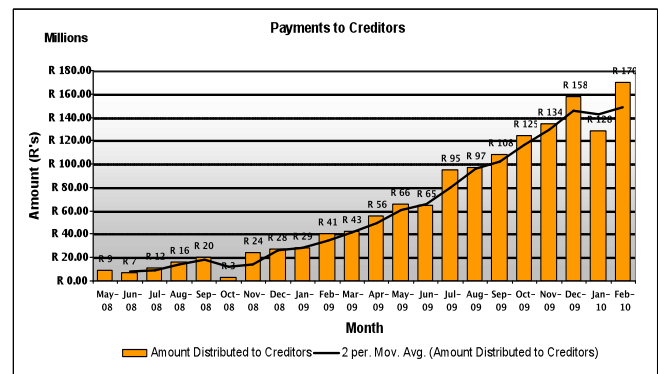
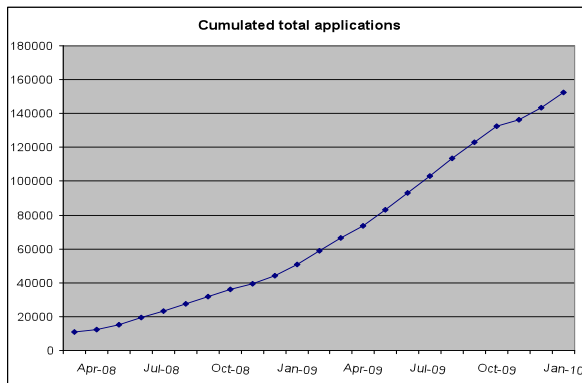
The Task Team is concerned by the financial implications which the backlogs have on both credit providers and consumers. The Task Team thus urges every role player to make a concerted effort to address the factors which cause these backlogs.

3. Statistical overview

Based upon the NCR's statistics, the current position in debt counselling is as follows:

- 1, 642 debt counsellors are registered with the NCR;
- 160,000 consumers have applied for debt counselling since the implementation of the NCA, with an average of 7,500 new applications being received per month;

- There has been a significant increase in the monthly payments by consumers under debt counselling over the last six months, from R11,05 million in June 2008 to R167.9 million for the month of March 2010.



4. Problems identified

The Task Team has, through its consultation with all the different stakeholders, identified a number of serious problems and obstacles. The Task Team also identified a number of areas where the operational policies and practices of the different stakeholders are contributing to the backlogs.

The problems revolve around four broad areas:

- a. A lack of capacity and delays in the Magistrate Courts, including uncertainty on the interpretation of the relevant sections of the NCA;
- b. Inefficiency and non-compliance by debt counsellors;
- c. Lack of capacity and administrative delays amongst credit providers; and
- d. Problems related to the receipt and distribution of payments by consumers.

The primary obstacles can briefly be summarised as follows:

- Although the volume of cases processed by the Magistrates Courts increased significantly since the High Court Declaratory Orders in August 2009, there is still a substantial difference between the volume of cases finalised by the Magistrates Courts and the number of new applications per month. This implies that the backlogs continue to increase.
- Many debt counsellors contribute to the backlogs by accepting applications from consumers who do not qualify for debt counselling, by developing debt restructuring proposals which are often inconsistent or unreasonable and by a lack of professionalism in their dealings with credit providers. These factors lead to credit providers rejecting debt restructuring proposals.
- The policies and business practices of credit providers also play a significant role in the backlogs. Many credit providers, including mainstream banks, are still not able to provide accurate certificates of balance to debt counsellors on time. This delays the debt counselling process and means that debt counsellors are not able to do an accurate assessment of the consumer's financial position. Unrealistic demands by different product houses within certain banks and unwillingness to accept write-offs

on unsecured debt often prevent settlements from being reached. Account number inaccuracies mean that consumer payments are often transferred into the wrong accounts, while opposition to cancelling existing debit orders means that the new debt counselling debit orders are often rejected. Opposition to Magistrates' Court hearings is a further contributor to the backlogs in the Magistrates' Courts.

- One of the biggest dangers is the extent to which consumers are using debt counselling as an excuse for not meeting their payment obligations. It is not the intention of the Act to protect such individuals, and this behaviour is creating significant risk to mortgage banks in particular. It is promoting a culture of non-payment, even amongst high income consumers.

5. Policy and behavioral changes

It is notable that nearly all credit providers recognise that debt counselling has a critical role to play, given the impact of the financial crisis. It is also encouraging to note that more than 90% of consumers regard debt counselling as having been beneficial.

In the context of these challenges, the following have been identified as high priorities:-

1. That debt counsellors make every effort to ensure that credible and realistic debt restructuring proposals are developed. Furthermore, that debt counsellors engage with credit providers in good faith in order to achieve consensual settlements in the greatest number of cases possible;
2. That debt counsellors should only accept consumers for debt counselling where debt rehabilitation is realistically feasible, always ensure that insurance premiums are maintained and ensure that the restructured payments are maintained. Debt counsellors should never encourage consumers to use debt counselling as a mechanism to delay or avoid their financial obligations;
3. That banks and other major credit providers establish a dedicated unit within each institution with a full mandate to deal with all debt counselling agreements;
4. That all major credit providers implement clear acceptance and termination policies, in order to:
 - Accommodate consumers who are making reasonable payments;
 - Terminate debt counselling and proceed with legal enforcement against consumers who do not meet their repayment obligations in respect of the debt restructuring proposals.
5. That banks and other major credit providers ensure that certificates of balance are issued speedily and accurately, to ensure that debt counsellors can complete the debt restructuring process in the shortest possible time;
6. That unsecured credit providers adopt a more realistic approach towards debt restructuring, so that unrealistic demands by unsecured creditors do not obstruct successful debt restructuring and aggravate the negative impact of the financial crisis on consumers and on the financial sector;
7. To create effective payment and collection arrangements, potentially including dedicated bank accounts for debt counselling payments, and to ensure that all pre-

existing debit orders are cancelled upon instruction in order to ensure that debt counselling related debit orders can be successfully processed;

8. That all the parties co-operate to ensure that an effective adjudication system is established, to adjudicate on individual cases and facilitate 'out-of-court resolution' of the greatest possible number of cases.

An overriding requirement for the successful implementation of debt counselling is for consumers to approach debt counselling in good faith and that the debt counselling provisions of the National Credit Act are not abused and promote a culture of non-payment. To this effect, we urge debt counsellors and consumers to act in good faith and ensure that realistic repayments are resumed at the soonest possible date.

We similarly encourage credit providers to accommodate consumers who are participating in good faith and are meeting the restructured payment obligations, but to terminate debt counselling and to pursue legal action for debt enforcement in respect of any consumers who are not meeting the statutory requirements for debt counselling and are not making the payments which were indicated in the debt restructuring proposal.

6. Way ahead and conclusion

The task team has consulted with all the major stakeholders on a set of detailed proposals. We are encouraged by the level of commitment that has been displayed by both debt counsellors and credit providers in assessing the problems and in developing proposals to deal with the challenges.

Once the detailed proposal have been finalised, this would be submitted to the NCR as recommendations for consideration and implementation.

In conclusion, the Task Team wants to urge all the affected parties to contribute to establishing an effective debt review process, in order to deal with the impact of the financial crisis in a responsible manner, while protecting consumers and minimising any negative impact on the financial sector.