



Debtfree

South Africa's debt counselling magazine

February 2015
www.debtfreedigi.co.za

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Payment Distr

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- the
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Let's talk

Chris van der Straaten
Head: PDA
082 557 0437


Malcolm Povey
Head: Operations PDA
082 445 5604

H  N

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things happen when
they are supposed to!



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WHAT IS DEBT REVIEW?

Debtfree asked Debt Counsellor Reinhard Pettenburger-Perwald to explain the debt review process.

The idea of debt review came about as a result of the government realising that there was a desperate need to help the millions of over indebted consumers in South Africa with an alternative solution to resolving their problems as opposed to what was available at the time. A task team was set up by the NCR to overhaul the entire credit industry to ensure all South Africans would be able to benefit. Debt counselling itself was one of the elements that they incorporated to help combat reckless and unscrupulous lending and collection practices in South Africa. The idea was to allow individuals to seek help via debt review as the cheapest and most effective way in solving their over indebtedness whilst allowing them to re-enter the credit market once the debt has been paid in full.

In order to make use of debt counselling it is as simple as 1, 2, 3, 4

1. Complete and sign an application form (form16).
2. Your Debt Counsellor will discuss your budget and inform all your creditors that you are under debt review giving you immediate legal protection for the next 60 working days.
3. After ensuring that you have enough money for your monthly living expenses (rent, water, electricity, food, transport, schooling etc.). The

remainder will be used to negotiate new payment plans with your creditors (lower interest rates, reduced monthly fees etc.)

4. Once all negotiations are agreed, a court order is put in place and you continue to pay your new reduced monthly instalment.

So what are the benefits?

1. More cash available for household needs
2. Your house and car are protected as long as you pay
3. We negotiate with all your creditors.
4. Access to financial experts
5. One reduced monthly instalment for all your debt
6. The quickest way to regain financial freedom without destroying your credit record
7. You regain financial control giving you back your pride and dignity.

Finally it is of the utmost importance to stick to your new agreed monthly plan as this is your ticket to financial freedom.

So what are you waiting for? Go to www.debt-therapy.co.za or call 086 11 11 863 we are waiting for your call. Debt Therapy (Pty) Ltd. 'Integrity Guaranteed'



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challenges associated with the debt counselling process.

Testimonials from our **satisfied** clients:

Hi ADCAP

Thank you for the reply. The service is excellent, wonderful teamwork!
Through your services I am able to focus on growing my business.

I believe you have the expertise in your field. I am looking
forward to your guidance.

Kindest Regards,

Dave

It is good to hear from you, here everything is
going great thanks and I can say that it is partially thanks to you.

The admin side of debt counselling is a absolute nightmare, so it
is a great comfort to know that there is someone like you to
handle that side professionally.

I think you do outstanding work, which means that I can
concentrate on getting to the people that really needs help,
without having to worry about hours of admin and red tape.
Thanks for your support, and I hope to break all records this year
with your assistance.

Warm Regards,

Gretli

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“It always seems impossible until it is done” – *Nelson Mandela*

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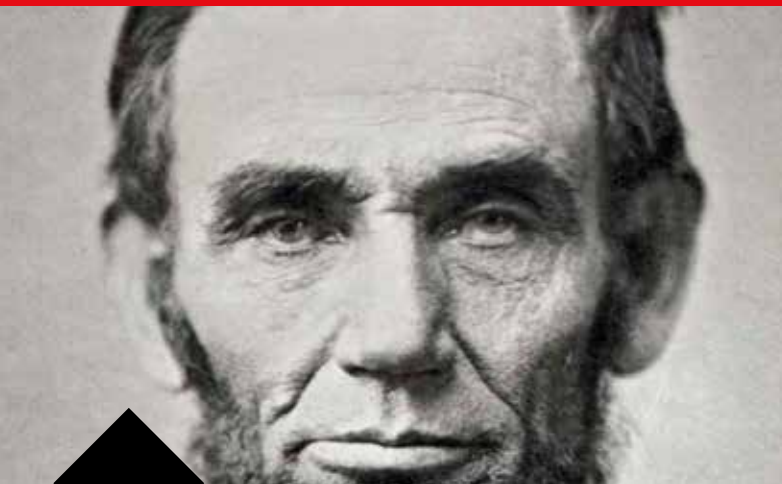
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PHYSICAL ADDRESS 7 Chenin Blanc Street, Oude Westhof POSTAL ADDRESS PO Box 3407, tygervally, 7536

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NCR
GUIDELINES

ADVERTISING
DO'S & DON'TS

SERVICE
DIRECTORY



Switch
to easy

- Individual, dedicated business bank account per Debt Counsellor
- National Representation - regular office visits by skilled, trained agents
- 24 hour access to system, including distributions data - from any PC, cell phone or tablet with internet access
- Dedicated account managers for EACH Debt Counsellor



Gerhard Dyzel gerhard@dcpartner.co.za
082 828 7595 / 044 873 4532 (ext 110)

Yolandi Meyer pda25@dcpartner.co.za
082 338 2680 / 012 348 7624

www.dcpartner.co.za

EDITOR'S NOTE

February has turned out to be another exciting month in South Africa, with all the fun of the State of the Nation disarray and continued power outages across the country.

If you are reading this between rolling power cuts then you may know that February is normally a busy month for Debt Counsellors. Consumers who have faced the added expenses of January- with kids going back to school and paying off the December shopping spree bills- often realise that they need to finally take some proactive steps to deal with their debts. With recent consumer application figures reflecting that this is, once again, the case in 2015, it seems that Debt Counsellors are going to be very busy over the next few months. Economists continue to warn of tough times ahead. SA's debts continue to grow as the world economic situation remains dire.

Government debt has doubled in recent years and spending is up. Any Debt Counsellor can tell you that when your debt is continually increasing and your spending is growing then you need to start making some changes swiftly. If you are experiencing something similar on a personal basis then follow the example of thousands of other consumers each month and get professional help. You can consult the back of the magazine for our Service Directory Section to find someone close to you who can help or read our interview with a well known

Debt Counsellor. This month we consider some of the Do's and Don'ts of advertising debt review services. The NCR are concerned over what some people are promising in their ads.

We also look at the NCR's recently released guideline about the 2010 NCR Task Team Report on debt review and a Debt Counsellor writes to us regarding these (and other) guidelines. These new NCR guidelines are now in effect and now have a huge impact on how the entire debt review process works. Will they help creditors, debt counsellors and consumers? It is hoped so. All we can say is that, if your financial state is in disarray and you owe your creditors lots of money then don't hide from it rather use debt review to pay it back and get debt free.

Zak King





STEYN
COETZEE

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NEWS FLASH

For daily debt counselling news in 3 minutes or less visit www.debtfreedigi.co.za

NCR ANNOUNCE NEW WORKSHOP DATES

The National Credit Regulator has announced that they will now be hosting a new round of Workshops for Debt Counsellors this year. The first will be in the Western Cape, where the second largest concentration of Debt Counsellors in SA are active. As anticipated the now published guidelines in regard to the 2010 NCR Task Team Report has been added to the days line up. The first workshop of the year will be held in Cape Town on the 20th of March. Registrants are encouraged to RSVP to smokwena@ncr.org.za.

NCR TALK TO MAGISTRATES

The National Credit Regulator recently called for submissions from Debt Counsellors country wide in regard to dealing with debt review matters at courts in Mpumalanga, KZN and the Eastern Cape. They received numerous submissions which will be taken into consideration in meetings with Magistrates in these regions. While the NCR have no authority over Magistrates they may well be able to advise them in regard to the matters raised and it is hoped these meetings will see debt review matters move with greater ease through these courts.

APPLICATIONS REMAIN HIGH

The amount of consumers applying for debt review remained high during the transition from 2014 to 2015 began, with numbers remaining well over the 10 000 applications mark. This reflects the increased debt stress on consumers as well as the growing reputation of debt review. In fact, reports have been made that as many as 14 000 people applied for debt review in a recent month. This remains high especially when compared to 2 years ago when the numbers were hovering around 7000 people applying each month. On average it seems as if the figures are recently sitting at about 12 500 consumers monthly. With a tough financial year ahead these numbers look set to continue to grow.

DEBT REVIEW AWARDS 2015

It has been announced that the Annual Debt Review Awards will be held in Gauteng this year. The Debt Review Awards is an annual awards program and Gala evening where companies, organisations and individuals have their hard work in the field of debt review recognised by their peers. Last year's big winners included FNB, Wesbank, DCM, Credit Matters and DebtBusters. The Debtfree team will once again play a part in the organisational side of the event which is scheduled for mid year.



CREDIT PROTECTION – DEBT REVIEW

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Why not insure all your accounts on the One Credit Protection?

We will contribute towards your accounts in the event of the following:

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Permanent Disability – we settle the account

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Retrenchment – we pay the Debt Review payment for up to 9 months

At a rate of R 2.95 per R1000, our rates are among the best and our benefit structure is the best in the market.

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Portfolio Manager, Gauteng, KZN & Free State

Mobile 082 729 3833 **Email** marijke.w@one.za.com

Sam Haasbroek

Portfolio Manager, Western, Eastern Cape & Northern Cape

Mobile 082 550 7294 **Email** sam.h@one.za.com

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CAPFIN FACE DEREGISTRATION OVER RECKLESS LENDING

The NCR announced that they have made an application to the NCT to cancel the registration of Southern View Finance /trading as Capfin. The application to the NCT follows an investigation last year into Capfin's lending practices, after a series of adverts promoting credit from Capfin stated that consumer need only bring their ID to apply for a loan. The NCR then investigated and issued Capfin with a notice to comply with the NCA and rectify the situation. Capfin's Legal team are quoted to have said: "Capfin is confident that its processes" and their "procedures comply fully with the provisions of the NCA,". It seems, however that the NCR are unsatisfied with Capfin's response to the compliance notice and are now asking the NCT to take drastic action. The main point of concern is the granting of reckless credit following poor evaluation practices. Reckless credit is where a creditor gives consumers credit they cant afford or do not understand the terms and conditions thereof. In many cases the NCR say that Capfin did not require any proof of income from consumers when making applications, does not keep any record of their affordability assessments and have expressed concern that Capfin's advertising is misleading. In the past when faced with similar charges African Bank were able to reach a settlement agreement with the NCR and saw the application to the NCT withdrawn. The NCR are pushing hard to make an example of creditors who are not applying the standards as set out in the NCA. Despite their slogan perhaps Capfin were too fast to offer credit and made it a bit too easy?

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NEXT

**NCR GUIDELINES
THE INDUSTRY
GAME CHANGER**

NCR GUIDELINES THE INDUSTRY GAME CHANGER

Years ago the NCR organised for a report on the state of debt review to be done. They called on various parties to help identify problem areas and the resultant task team made various suggestions on how to deal with matters not directly covered by the National Credit Act but faced daily by the industry. The result was the 2010 NCR Task Team Report. The report helped to bring about standardisation in regard to many matters in the industry. At the time of it's release most large credit providers quickly agreed to abide by the suggestions made in the report. Admittedly there have been some issues in regard to actually meeting all the requirements set out in the document by some parties but many of the provisions have already become the industry norm over the last 5 years.

**READ OUR SUMMARY
OF THE NCR GUIDELINES**

This year the NCR have issued their very first guideline based on the 2010 NCR Task team Report. It is a hefty document. You can download the document on our website or obtain it from the NCR directly.

Reading any 86 page document full of industry jargon can be tiring even if it does effect your day to day livelihood. The size of the report is testimony to the amount of sweat and tears that went into it's creation. We endeavour to break down some of the highlights for you in the various sections.

TITLE

The title of the Guideline is interesting in that it refers to the 2010 NCR task Team Report as "Debt Review Task Team Agreements" leading to the acronym TTA in the rest of the document. Of course, since most former NDMA credit providers member did agree to the processes this makes some sense even though Debt Counsellors and PDA's did not do so back in 2010. It is stated in the introduction that all DC associations with representatives on the CIF (but not non associated DCs) agree to the reports suggestions. The CIF can only make proposals to the NCR with full consent from all parties. The stated objective of the TTA and NCR Guideline is to promote a consistent and uniform approach to debt review.

The NCR Guideline starts with a note to say that all the measures in the guideline are "voluntary non statutory measures" and then in a seeming contradiction goes on to say that "non compliance with these guidelines should be reported to the NCR".

It is also stated that there was an intensive review of the process as it stands today and the guideline aligns them with the current debt review process.

INTRODUCTION

Mention is made of the fact that it is not realistic to expect the courts to deal with all debt review cases. Interestingly the NCR recently issued a circular warning DCs to refer all matters to court as per the Declaratory Order.

A discussion of process weaknesses, such as payment interruptions by consumers paying DC and Legal fees being seen as defaults, is followed by serious advocating for industry codes of conduct. In the past Codes of Conduct were published but later pulled by the NCR as being in conflict with the NCA.

ANNEXURE A

This section discusses proposed debt review processes and the establishing of rules in regard to debt review.

The provision of COBs within the time frames as set out as required in the NCA is mentioned and DCs are told to use affordability assessment guidelines.

Here things get interesting. It now mentions that a proposal in regard to the consumers situation must be sent to the credit providers along with information on the consumers financial situation. (This was Pre POPI). This has become the industry standard for 99% of all parties but is not a requirement of the NCA itself which is more focused on taking the matter to court. Proposals before the court action is said to speed up the process. DCs are told in this section to take steps to maintain the continuous payment as per the proposal.

Proposals are required to include cascading payments. Though most proposal software includes these cascades automatically this is something that many credit providers computers don't like as it confuses the living daylights out of them and are difficult to capture manually. Immediately after calling for cascades to be included the next paragraph says that proposals must be dealt with excluding the effect of cascading and escalation. Cascades are to only be allowed for where creditors agreed to the proposals. Those that fight the process should not receive such.

Annual increases in payments are to be included and mentioned in the court applications.

Credit Providers are required to cancel debit orders on consumers accounts and not take funds from one account to pay another (set off).

Credit Providers are not to make counter proposals but are to give notice to oppose at court if they do not accept the debt counsellors proposal. This is not the norm at present where often a creditor will rather make a counter proposal with a different suggestion for settling their account/s.

Creditors are to approach the PDA (first) and DC (second) to take reasonable steps to check if payments are being made before "terminating" their participation in the debt review.

Debt Counsellors must set matters before the court within 60 days of the consumers application. In the past the Declaratory Order only required that the matter must go to court at some undefined point.

Credit Providers must give a mandate to all legal representatives in terms of the NCR Task Team Report/ Agreement

Debt Counsellors are to provide all their prospective clients with a brochure about debt review explaining the entire process and conditions of eligibility and things they can do other than debt review to deal with their debt.

Credit Providers must have a central point of contact for debt review consumers.

PDAs must have a code of conduct.

ANNEXURE B

Proposed Debt Review Assessment Guidelines

Provision must be made for “an emergency amount” in every consumers budget.

Debt Counsellors must check for reckless lending. In terms of the NCA this was previously only done at the explicit request of the consumer.

Debt Counsellors should not accept applications from the unemployed.

Debt Counsellors to check for retrenchment cover (presumably where the consumer is now unemployed).

A section on temporary loss of income follows these points and refers to NCA Section 86(7)(b) applications. This includes inclusion of a review date of the proposal in the court documentation and it is suggested that this be within 3 or 4 months.

Those luxury assets which can be sold should be and the shortfall to be included in the debt review as unsecured debt. (presumably this has to be done before the application to court within 60 days).

Credit Providers view new loans to get a cheaper replacement car or more affordable house to be reckless lending.

Payment of insurance on vehicles and assets to be included in the budget section of the application. Proof of insurance to be sent to creditors during proposal stage and payments to be monitored monthly and an annual review conducted.

3.4 RECKLESS LENDING

This is a incredibly important and game changing section which is about to create a mountain of work for all credit providers. It is very difficult to imagine that CPs will actually be able to comply with the requirements of this section as the cost implications are huge.

Whereas before under the NCA investigations were only initiated by a court or the consumer now Debt Counsellors are “obliged” to investigate reckless lending when doing the financial

assessment (for all consumers even those not accepted). They are to make a written request for this information.

Credit Providers are to supply a Copy of the application form and assessment form; and copy of the credit agreement within 20 business days of the 17.1

Only after this information is available can the DC conduct a proper assessment. If CPs don't supply the information which they "should" then the DC must just refer their best guess on the matter to court.

5. MINIMUM AMOUNT... AVAILABLE FOR DEBT REPAYMENTS

Here we find mention of realistic and unrealistic repayment amounts and "Rules for Repayment".

Those earning R2000 should pay up to R900 toward their debt.

Those earning R10 000 should pay up to R4900 toward their debt.

Those earning over R60 000 should pay up to 58% towards their debt.

REVIEW OF SPENDING PATTERNS

Debt Counsellors (not staff or computer program) must review consumers financial situation and do assessments.

Insurance on credit to be separated into the budget section of proposals and applications.

The guideline for consumer spending on household needs is that of 35% of income otherwise consumers should look at reducing spending.

Insurance policies etc to be below 25% of income

An annual review to be conducted of the consumers situation.

ANNEXURE C

Deals with Debt Restructuring Software such as that provided by the various system providers aligned with PDAs. It now places further requirements on the NCR and PDAs.

The NCR must do an official public audit of each debt counselling software package and the findings must be published for the industry to consider.

Each system needs to generate a detailed summary of the rules used in making the proposal to

be included in every single proposal.

Each system must help identify potential reckless credit.

Systems must not allow one creditor to be treated different to another. This seems to be in contradiction to the earlier provision that credit providers that do not agree to proposals must not receive cascading payments when some accounts are paid up.

CIF to now be empowered to review existing software and any new software providers entering the market.

ANNEXURE D

Consensual Debt Restructuring Rules and Codes of Conduct

This section establishes the need for industry codes of conduct which were previously shot down by the NCR.

The Rules do not allow for more than one property where consumers live.

Fees and Interest to be fixed for the duration of the debt review plan.

Pre NCA accounts can be included and all fees and interest penalties to be waived by Creditors

Monthly service fees to be reduced to 0

Secured loans to be lowered down to Repo plus 2%

Unsecured debts to be reduced down to 0% to solve in 18 - 60 months.

This makes allowance for reduction in interest rates under debt review which some courts have a problem with. Now parties can point to this guideline.

ANNEXURE E

This section deals with standardization of documentation used in debt review.

COBs are now to contain the date of default. This is an important facet of working out Section 103(5) induplum limits. In the past creditors have avoided doing this basically saying that it was too much work or too difficult to figure out. This is now part of the standard documentation as per the guideline that has to be produced or it needs to be reported to the NCR.

Debt Restructuring Proposals are now to contain an annual fixed interest rate (not a variable rate).

There is, as stated previously, no provision for credit providers to make counter proposals but there is a standard form for declining proposals made by debt counsellors.

THINGS ARE GOING TO CHANGE

The lack of Credit Providers making counter proposals and their having to provide date of default and reckless lending investigation information is a huge change to the way that business is done at present.

Debt Counsellors obliged to always investigate reckless credit in order to perform a proper assessment of the consumers situation is also a big change. DCASA recently said that a reckless credit matter (for which the Debt Counsellor cannot charge any fee) takes well over 20 work hours. Debt Counsellors now also have to perform annual reviews and only the Debt Counsellor and not a staff member can review the consumers financial situation.

The NCR having to do a public audit of all computer calculation systems and publish the results will also soon have to take place. The NCR will also now have to review their previous stand on industry Codes of Conduct.

OTHER GUIDELINES COMING SOON

The NCR also recently released a circular about a pending new guideline for when credit providers statements and Payment Distribution Agents statements show different figures. The underlying idea is that since when consumers begin debt review, all or part of their debt payments go to the DC in month 1 and to their Attorneys in month 2 that, where there is a 3 month difference (where the creditor says the consumer must still pay another for 3 months even though the PDA says the debt is paid up) the consumer must just pay.

Where the creditor asks for more than 3 more payments then the guideline says that the figures need to be compared and investigated.

Some Debt Counsellors are concerned that this could create the situation where credit providers are slow to update their systems to try manipulate things to always get 2 or 3 more payments from consumers. The various PDAs are working with credit providers to try automate a system which can check for and try resolve such differences in consumers statements and payment plans.

South Africa's leading Debt Counsellors

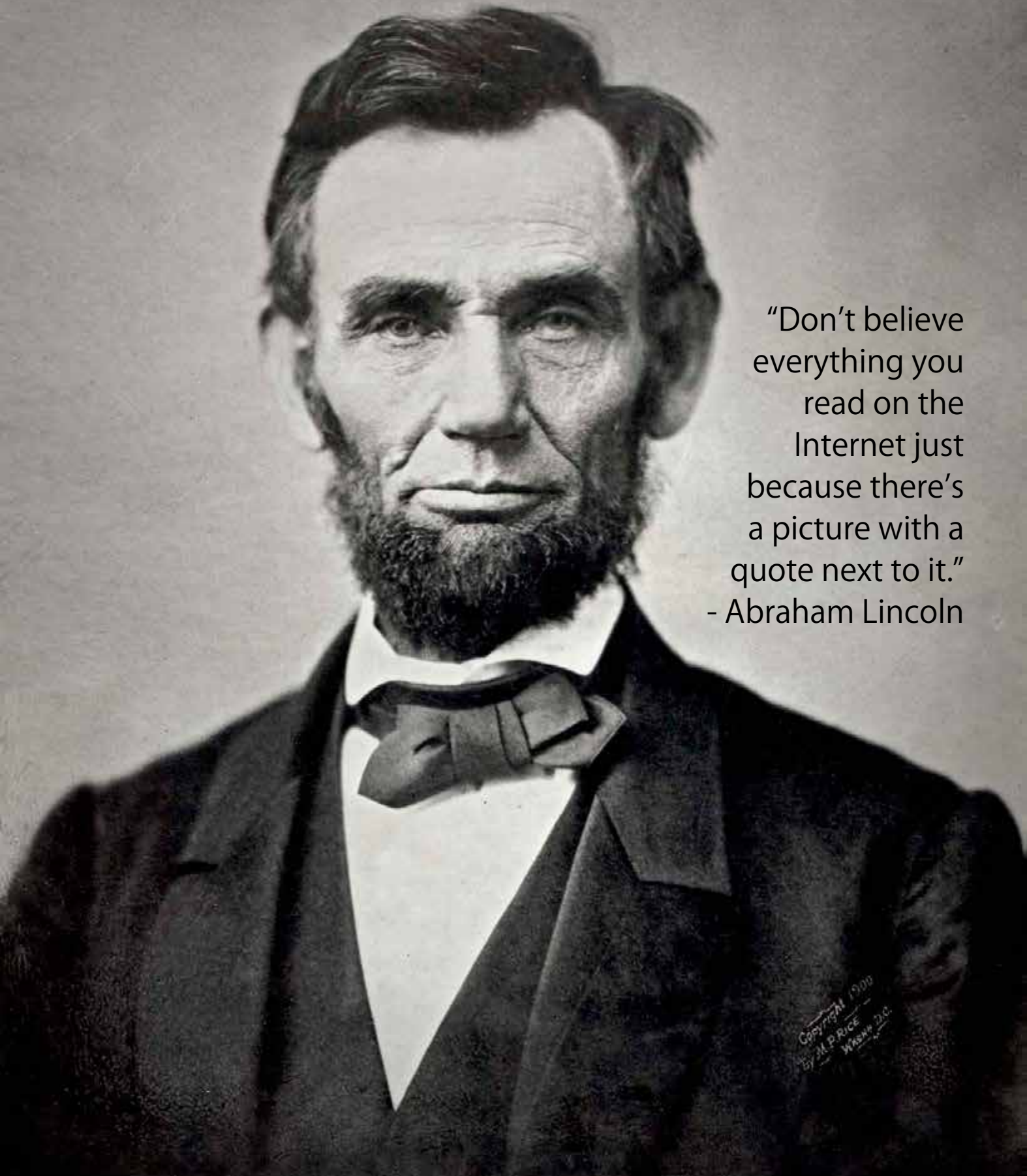
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everything you
read on the
Internet just
because there's
a picture with a
quote next to it."
- Abraham Lincoln

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DEBT REVIEW ADVERTISING DO'S & DON'TS

Living in an age of advertisement, we are perpetually disillusioned. The perfect life is spread before us every day, but it changes and withers at a touch. - Joseph Priestley

We are bombarded by advertising on a daily basis. From messages in please call me's to phone calls from companies, claiming to be part of large corporations, offering you a great deal on an additional cell phone contract. We listen to them on our radios and watch them on our computers and tv sets. We even sit around and reminisce about old adverts we found funny when growing up and some of the phrases we use each day are a reference to them.

It is no surprise then that creditors make use of advertising to entice consumers to make use of credit facilities. Naturally too Debt Counsellors later advertise their services to assist consumers deal with that same credit burden.

Each month out of the over 10 million people who are reportedly about 3 months behind on some of their payments only a tiny amount of around 12 000 people decide to make use of debt review to deal with their debt. That is 0.0012% embracing the process each month. At present only roughly 2 % of these 10 million troubled consumers are successfully making use of the process each month.

It is also true that of these tiny numbers a very high percentage, of those applying each month, go to those large companies who advertise their services the most. Do they advertise because they are large or are they large because they advertise? Advertising is a fundamental of business in our time. If consumers are to be convinced to use a service or the service of one particular company over that of another then it is marketing and advertising that will help accomplish this.

The question is then one of what can be promised to the consumer? After all as Samuel Johnson

Fishy's Dodgy Debt Review



Pay Now, Worry Later

We Guarentee Everything - just give us money up front.

We have to be legit:

Look we have the NCR's Logo in our Advertising

Contact

0800NEVERGETYOURMONEYBACK

* The NCR have not given any entity by the name Fishy's Dodgy Debt Review permission to use their logo not only because they don't exist but also because this fake advert is just silly

said: "Promise, large promise, is the soul of an advertisement". The NCR have expressed concern over the large promises made by some Debt Counsellors in their advertising. They feel that these messages are misleading consumers.

HERE ARE SOME PUBLISHED EXAMPLES OF ADVERTS THAT THE NCR SAY ARE MISLEADING:

Save money and
pay less to
your creditors.
Need more money in
your pocket? Apply for
Debt Counselling.

BREAKING IT DOWN:

The Promise: Save, more money in your pocket.

'Save money and pay less to your creditors.'

The first part is technically true on a monthly basis (if the consumer was actually paying what they should have been paying all creditors each month (which they probably were not at the point when they realise they need debt review) compared to what they will probably end up paying monthly.

'Need more money in your pocket?'

Who doesn't need more money in one's pocket?

'Apply for Debt Counselling.'


Applying for debt counselling is great advice

As a whole the advert seems to say that if you go into debt review you can pay your creditors less and get to keep some of the money.

We reduce your debt
repayments with up to
50% and a guaranteed
reduction in interest

BREAKING IT DOWN:

The Promise: pay less each month guaranteed



HAVE YOU TAKEN THE PLUNGE?



DEBT COUNSELLING COMMUNITY SUPPORT

Join us for our first Western Cape Fundraiser on the 10th of April 2015
Mail: adri@dccsupport.co.za to book a spot

A Special Thanks to HYPHEN PDA for their support of the event and
also DebtSOS for their continued support.

www.dccsupport.co.za

'We'

Debt Counsellors do not actually restructure debt. A court does. The DC plays a role in this process but it is not actually "we" that do it.

'reduce your debt repayments with up to 50%'

This can be true on a monthly basis (not on the debt over all). The use of "up to" is a common sales phrase that has run the gauntlet of criticism in the past and survived. Every retailer is able to use this phrase nowadays.

Debtfree spoke to one large debt counselling firm which tracks their results and they say that they are, on average, seeing consumers reduce their monthly debt repayment obligations by 58% through the courts. Would this enable them to say that they help consumers reduce their monthly debt repayments by up to 60%? This is well within the results they are seeing regularly. They often make use of the recently NCR endorsed DCRS system and help many consumers who have only unsecured debts and are massively over indebted.

'a guaranteed reduction in interest'

Since the wording of the National Credit Act does not actually allow for debt review to change interest rates (though this is an industry norm to avoid section 103(5) induplum) it is impossible to guarantee this. A court may feel that they cannot allow for a rate reduction as they are not empowered to even if all parties wish to do so.

We can save you
between 30-35% on
your monthly
repayments giving you
back between R3 000 –
R3 500 per month on a
current repayment plan

BREAKING IT DOWN:

The Promise: Save, get money back somehow

'We'

Once again DCs need to be careful of saying they restructure debt. A court does this. A DC can help in the process but...

'can save you between 30-35% on your monthly repayments'

It might be wiser to fall back on the old "up to" than make specific percentage amounts.



Winner of the 2014 Debt Review Award "Payments"

For excellence with regard to our core function.

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Contact us for Fast, Accurate and Effective payments:

Agent: Petro de Beer

e-mail: petro@dcpartner.co.za

Cell: 083 6139 826

Website: www.dcpartner.co.za



‘giving you back between R3 000 – R3 500 per month on a current repayment plan’

What is a current repayment plan? Who’s current repayment plan? What if I earn less than R2000 how can I get that money back? Back from who? Back from the bank or the debt counsellor

This advert is confusing no doubt. It is a massive failure in so many ways. No wonder the NCR say it is misleading. Confusing more like it.

WHY?

Are these adverts simply misleading because the company are trying to distil the good points of the debt review process and their expertise into a few short sentences or phrases? We know that the cost of advertising increases the more words and space you take. Given another two sentences would they be able to expand on some of the thoughts and thus avoid any confusion. If these companies were to add an asterix* to their advert with tiny terms and conditions would they be allowable?

With the benefits of debt review being so obvious and the positive change it makes to consumers day to day lives it is totally unnecessary to try “trick” consumers into using the process. The process is a legislated one and while it will not remove all challenges from the consumers life in regard to their debts it will make an immediate impact on their financial and emotional wellbeing.

USE OF THE NCR LOGO

In their recent circular to the debt counselling industry the NCR came out swinging against use of their Logo in connection with advertising for debt review services.

It is a well known fact that if a debt counsellor wishes to use the NCR’s logo on their website or promotional material they need to have express permission from the NCR to do so. The NCR usually give written permission, for such, for a period of only 12 months at a time.

Some Debt Counsellors feel that since they are in an industry regulated by the NCR and have been registered by the NCR they can make use of the logo without such permission. This is incorrect. In fact the NCR say that this is “prohibited conduct” and “contravenes the intellectual property legislation”. Failure by Debt Counsellors to stop using the Logo will lead to the NCR taking action against them.

Note that this does not apply to the stickers/decals sent to every debt counsellor with their NCR registration number (and NCR Logo) on it. That needs to be displayed at their place of operation otherwise it can be seen as a breach of their terms of registration.

ULTRA VIRES

LATIN MEANING: 'BEYOND THE POWERS'

A Concerned Debt Counsellor writes to Debtfree in regard to recent developments in the industry.

I admit to not having heard this term until the Rougier judgement where the court found that a Debt Counsellor had acted ultra vires or beyond the authority invested by the National Credit Act (NCA) by terminating a consumer's entire debt review due to non-payment.

This judgement has caused quite a stir in the debt counselling space as thousands of cases have been "terminated" in this manner. Surprisingly, the actual crux of the judgement seems to have been lost on the industry. The consumer was, in fact, appealing a judgement in favour of Nedbank on the basis that she was still under debt review. The court upheld her appeal meaning that a credit provider cannot pursue legal enforcement without first complying with the requirements of section 86(10) or 88(3) of the Act. The question that pops into my mind is – how many judgements have been granted in this fashion; how many vehicles and houses have been repossessed over the past 7 years based on credit providers obtaining judgement where they did not follow the required procedure?

Getting back to the debt counsellor acting beyond authority – why might a Debt Counsellor do this? The simple answer is that the Debt Counsellor in this case was following an industry standard that was endorsed by the National Credit Regulator. The NCA comes under regular criticism for its lack of clear directives. It simply does not address all variations and intricacies encountered in debt review cases and the NCR, with the input of various stakeholders, has been trying to develop processes to manage the glaring gaps in the Act. One of the processes to come out of this forum has been the form 17.4, a form used by DCs to advise credit providers of the termination of a debt review application. The Act, however, does not address the termination of a debt review application other than if a DC rejects the application (which is only allowed if the consumer is found not to be over-indebted), a court determines that the consumer is not over-indebted, or the consumer settles all debt included in the application. So, if the DC was acting 'ultra vires' by following instructions emanating from the NCR does that imply that the NCR was acting ultra vires too? Does the NCR, as the industry regulator, have the authority to develop procedure where the Act does not give clear direction?

NCR GUIDELINES & INDUSTRY NORMS

Section 16(1) of the NCA states that the NCR can provide guidance to the industry by issuing

explanatory notices to outline its procedures or issue a non-binding opinion on the interpretation of any provision of the Act or by applying for a declaratory order on the interpretation or application of any part of the Act. Interesting. So if the NCR issues an interpretation of any part of the NCA, it's a non-binding opinion. Can a non-binding opinion be enforced? If a non-binding opinion is issued in the form of a guideline does that make the guideline non-binding too?

Let's take this a step further. If the termination of debt review by a DC is considered beyond our authority by the courts, what else do we accept as standard procedure that a court could consider ultra vires? For instance, is a DC entitled to refuse a consumer's application for debt review? 86(1) says a consumer may apply for debt review. 86(3)(a) says a debt counsellor may require the consumer to pay an application fee before accepting an application. 86(4) says on receipt of an application, a debt counsellor must issue the consumer with proof of receipt of the application and must issue a form 17.1. By the same token, can a DC reject an application for any other reason than that the consumer is not considered over-indebted?

LEGAL ACTION OBLIGATORY IF CREDITORS "TERMINATE"?

Then consider debt review matters where a court order has already been granted. If the credit provider feels the consumer has not paid in accordance with that court order they simply inform the consumer that that particular account is no longer under debt review. Surely that too is acting ultra vires? Section 88(3) permits a credit provider, where the consumer has defaulted on the re-arrangement, to "exercise or enforce by litigation or other judicial process". Does that not require the credit provider to refer the matter to court and not simply remove the account from debt review?

END BALANCE DIFFERENCES

How about end term balances? Can anyone but the court that issued the restructure order decide what can and cannot be disregarded in that court order? Is the recently published process not disregarding the relief contained in regulation 24(4) which allows a debt review application to proceed where a credit provider has failed to provide a COB. And, if a consent order is only a possibility if all parties to the credit agreements can reach agreement, can adjustments to balances and repayment terms be made without the specific consent of the consumer?

CALL FOR CAUTION

As an industry we need to be extremely cautious about simply creating processes that have no actual legal foundation. As in the Rougier judgement, we could find a procedure that has been in place over an extended period, which is then challenged at court, simply fall away, leaving potentially huge financial backlash. Consider this – if a consumer had a house or car repossessed on the strength of a form 17.4 and the credit provider did not first issue a form 86(10), on the strength of the Rougier judgement that consumer may have legal recourse. If successful, who would the consumer have recourse against – the DC, credit provider or the NCR?



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Since Inception: July 2007

What did you do before becoming a DC?

Debt Management and prior to that I worked for Citi Bank in the UK covering the Channel Islands and Southern Ireland.

Why did you become a DC?

I felt the need to protect consumers who had nowhere to go.

What area (of SA) do you practice in?

Throughout SA, with our main office in Cape Town.

What makes your business a success?

We are dedicated to ensuring we help people and follow the principals of our company Motto: "Integrity Guaranteed".

Where do you find new business? Via the internet, radio advertising and word of mouth.

Who are your most co-operative and least co-operative credit provider at the moment?

This is constantly changing. However, there is clear evidence that credit providers have made many concessions over the years with FNB leading the pack.

What is the biggest challenge facing Debt Counsellors at the moment?

The constant struggle to implement and enforce new rules agreed by various task teams, as there are still many credit providers not co-operating with the National Credit Act itself with very little come back.

What is the biggest challenge facing your consumers at the moment?

Consumers must face up to their mistakes and admit they need help! It's not about finding the "cheapest" deal around. All Debt Counsellors are obliged to help the consumer in finding a solution to get the consumer "Debt Free" in the most cost effective way. Sometimes if there is not enough money available for a consumer credit providers they will not accept any offer made by the Debt Counsellor possibly resulting in the debt review being terminated.

What advice do you have for consumers under debt review?

Once a debt arrangement has been put in place it is vital to continue paying as per your agreement. Failure in doing this may result in the credit providers terminating your debt review. This is why it is so important to establish a budget at the inception of debt review that you will be able to stick to no matter what.



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A young woman with blonde hair, smiling, wearing a dark blue school blazer with yellow piping, a white shirt, and a striped tie. The background is a blurred school hallway.

LIVING ON LESS

DID YOU KNOW?

You have the right to apply to your School Governing Body for a reduction of school fees or even exemption. This needs to be done before the 28th of February annually. Schools then apply a published formula to figure out if you qualify and how much of a discount may apply.



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TIPS TO HELP FIGHT THE OVER-INDEBTEDNESS EPIDEMIC

Ebola has made headlines around the world with the devastation it has wrecked on individuals and their families. According to a recent Reuters report, Ebola had killed 8,810 people as of January 25, 2015.

The National Credit Regulator's (NCR) Credit Bureau Monitor for the third quarter ended September 2014, states that of the total 22.5 million credit-active consumers, 10.05 million people have impaired credit records. In other words, close to half of credit-active South Africans are struggling to pay off their debt obligations. Over-indebtedness, like Ebola, has reached epidemic proportions and can create enormous devastation, harming people, marriages, families, friendships, self-worth, and sometimes careers.

The good news is that unlike Ebola, consumers can regain control, by making wise financial decisions. Debt Counsellors are at the forefront of turning people's lives around. Here are a few consumer tips, which can be printed and added to Debt Counsellors' consumer packs.

BUDGETING AND AVOIDING THE TEMPTATION

- Draw up a family budget at the beginning of the year and involve your wife and children. The process helps them to understand, buy-in, and is a great learning opportunity for all.
- Cut-up, your old credit cards as this, is the most effective way to reduce the temptation.
- Every time you are tempted to purchase something that is not on your budget ask yourself two questions:

1. Do I really need it?
2. If I don't buy this, what is the 'worst thing' that can happen?

For example, your child wants the latest designer jeans, but already has a pair in a different style.

Is it really necessary? Probably not. What is the worst thing that can happen? You may need to wash the existing pair more frequently. If you can live with the answers, don't buy the jeans.

- Take a 'timeout' when under pressure to buy something. Walk away and wait a few days to think about it. Taking a 'timeout' means you can stop yourself from purchasing things when you are in a 'hot' state.

SCHOOLING

- Negotiate, negotiate, negotiate – approach your children's schools and ask them to consider reducing their fees. Alternatively you may want to consider changing schools.
- Buy school clothing second-hand and buy a bigger size if possible.
- Label school clothing clearly and lower the risk of replacing lost items.
- Recycle stationery from the previous year.
- Sign-up for extra-murals at school and save on extra costs outside of school.
- Send packed lunches and give your kids a small allowance each week that they can save up towards tuck-shop or other treats.

Reduce and or forego certain expenses

Avoid the temptations of an idealistic lifestyle, aim for practicality as opposed to being unable to pay your current debt obligations and possibly getting into more debt.

- Reduce the consumption of alcohol and cigarettes or swap out for cheaper brands.
- Cancel club memberships, holiday clubs, M-Net, DSTV or opt for cheaper options.
- Entertainment – reduce the temptation to eat out. Home cooked meals can be cheaper and healthier. Have movie nights at home instead of at the cinema.
- Consider downgrading to a less expensive car.
- If your home loan has become unaffordable, consider selling your home and moving to more affordable premises.
- Unless your domestic worker is looking after your young children, consider reducing the amount of working days.
- Make use of lift clubs or public transport if possible.
- Plan ahead regarding how much you will be spending on birthdays, Valentine's Day and other special occasions. Avoid expensive hampers and gimmicky products that are likely to sit in a cupboard afterwards. Make your own gifts or pamper someone with your time and attention. A little personal effort can sometimes be more appreciated than a pricey gift.

SHOP WISELY

- Compare grocery prices across stores and buy where prices are most affordable.
- Buy the essentials and be on the lookout for specials.
- Opt for no-name brand products, which are often cheaper.
- Fresh vegetables are often cheaper than frozen or pre-prepared ones.

WHO CAN YOU REACH FOR HELP?

- If you are feeling hopeless, and your debt obligations are completely out of control, speak to an NCR accredited debt counsellor.
- If you've applied for debt review, make sure you keep your debt counsellor in the loop when circumstances change. Your debt counsellor will inform your credit providers and help to protect you.
- Make sure that your payments are collected and distributed by a payment distribution agency, such as the National Payment Distribution Agency. Payment Distribution Agencies protect consumer payments and ensure correct distribution.

The debt epidemic can be beaten, but it is dependent on individuals and families making wise decisions and regaining control of their lives. Consumers must consciously avoid yielding to emotional purchasing, and marketing gimmicks. As popularised by the free-market economist Milton Friedman, "There's no such thing as a free lunch." If an offer appears too good to be true, it often is.

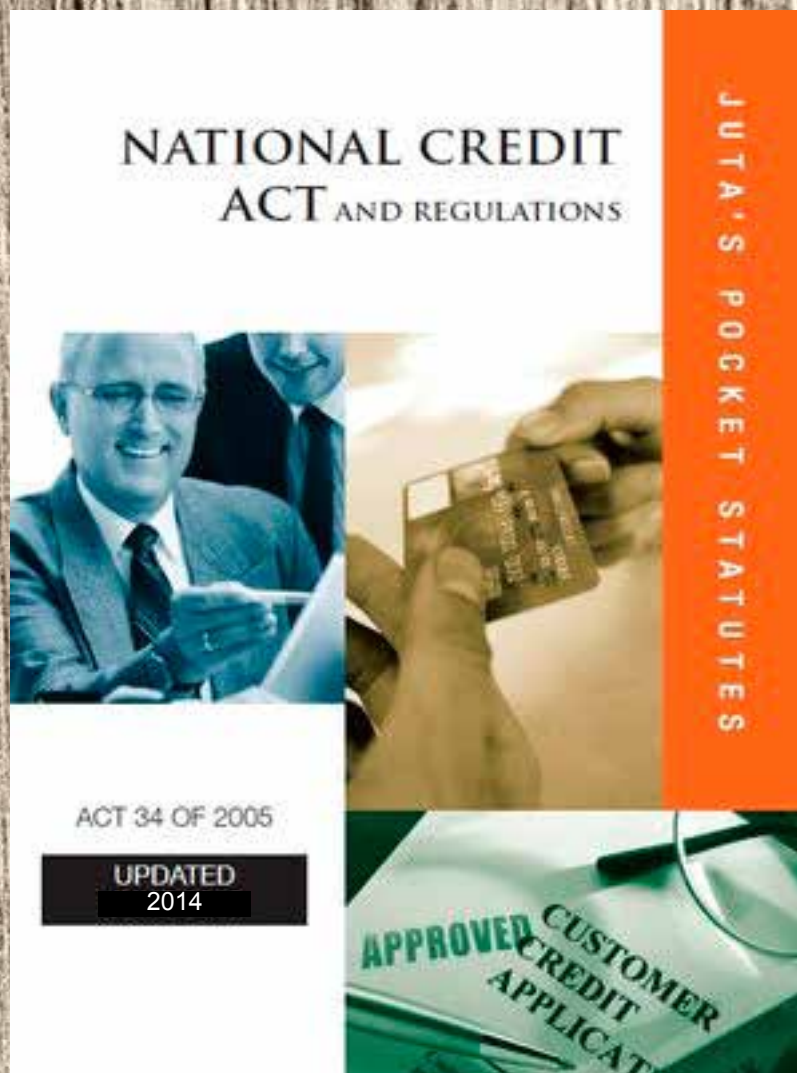
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DEBT COUNSELLORS ASSOCIATIONS ANNOUNCEMENT BOARD



DEBT COUNSELLORS
ASSOCIATION OF SOUTH AFRICA

The DCASA meeting dates are as follows:

- 25 Feb:** Gauteng Branch meeting at Kempton Park Golf Club from 11:00.
- 4 March:** KZN Branch meeting at Health Haven, Westville from 10:00.
- 5 March:** Eastern Cape Branch meeting at Blue Water Guest House, Port Elizabeth from 11:00.
- 27 March:** Western Cape Branch meeting at Parow Golf Club from 10:30.

All Debt Counsellors are welcome at the Branch meetings. For more information on meetings and membership, contact DCASA at 086 143 2272 or dcasa@dcasa.co.za



Debt Counselling Union
a division of the New Economic Rights Alliance

Please sit back for just 12 minutes and watch this video:

<https://www.youtube.com/watch?v=jyA2BmFo89M>

It was made by a South African and it explains, very simply, how the banking and money system works. It is vital that you watch this and show your teenage kids too!

www.newera.org.za



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We once again met this month with African Bank to discuss debt review matters.

Feedback to members will be placed on our Facebook page.

AllProDC has sent the NCR a formal letter of rejection of DCRS and will attend the Feb CIF meeting in this regard.

www.allprodc.org

FEBRUARY

• ALLIANCE OF •
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NEWSLETTER

ENGAGEMENT WITH AFRICAN BANK

In our ongoing effort to improve the debt review process for members and consumers the AllProDC team had a meeting with African Bank this month regarding helping their over-indebted consumers and their debt review processes. We will provide feedback to members via our Facebook page.

DCRS & CIF

We wish to thank our members for their feedback on this matter. We were able to compile all the submitted comments into a document and letter to the NCR (You will have received a copy of this letter. If not please contact the secretary). We have now sent the formal letter of rejection in regard to DCRS to the NCR. They have received and acknowledged it. We have raised concerns over POPI violations, NCA Section 103(5), breach of NCA Section 157 as well as issues surrounding reckless credit investigation and implementation. We hope to discuss the reasons for our rejection and concerns in depth at this month's CIF meeting.

CIVIL COURT CASE FLOW MANAGEMENT MEETING

Mr Mayeza, the Acting Head of Court chaired the CIVIL COURT CASE FLOW MANAGEMENT meeting. As per the agreement and permission by the Chairperson all stakeholders introduced themselves including AllProDC. The Acting Head of Court then explained on how Civil Case Flow Management Meeting was established. The meeting is held in terms of the norms and standards for the performance of Judicial functions (which were agreed upon by Cluster Heads on the 13 February 2014, adopted by Head of the magistrate court on the 14 of February 2014 and gazetted on 28 February 2014). It is therefore compulsory that every court must hold a case management forum chaired by the Head of that particular court to oversee the implementation of Case Flow Management. With this in mind all member DC's must please try contact their local court and find out if that court has the same system (as the this one) and offer their services to advise on the case flow for debt review matters. The next meeting is held this month and we will give feedback as soon as we have it.

CONTACT DETAILS

FORUM: www.debtconcern.webs.com / WEBSITE: www.allprodc.org /
FACEBOOK: www.facebook.com/AllProDC / TWITTER: www.twitter.com/AllProDC

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Contact Person: Yolande
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caledon@triangletrust.co.za
Tel: 028 212 2537

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andre@triangletrust.co.za
Tel: 023 312 1292
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Worcester - Western Cape

71 Porter Street 6850
Longitude: 19.44305
Latitude: -33.64942
worcester@triangletrust.co.za
Tel: 0233420576
Fax: 086656801

Bloemfontein - Free State

94 Zastron, 9301 Bloemfontein
Contact Person: Yolande
bloemfontein@triangletrust.co.za
Tel: +27 51 448 2828
Fax: +27 51 447 9481

Viljoenskroon - Free State

35 Denysen Street, 7230
Contact Person: Johann Olivier
viljoenskroon@triangletrust.co.za
Phone: +27 56 343 0352
Fax: +27 56 343 035

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329 Stateway, 9460 Welkom
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Debt Counsellor - NCRDC1977
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Email: cathy@pennywise.co.za
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sandipauw@mweb.co.za
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Cell : 082 460 7800
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Aliwal North, Burgersdorp, Bethulie,
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croos@global.co.za

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24 van der Stel Street, Dan Pienaar
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Tel: 051-4364515
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Email: zunecoetzer1@gmail.com



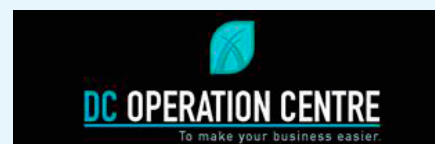
SMS Salary Management Services

Annerien de Jager
Registered Debt Counsellor
NCRDC0075
015 307 2772
info@smslimpopo.co.za

SUPPORT SERVICES



Information resources & services
www.thedci.co.za



Iana Van Herwaarde,
DC Operation Centre (PTY)
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0861 662837

Experian

011 799-3400
debtcounsel@experian.co.za

Eric Streso

Financial Planner
B Juris LL B CFP MBA
Tel: 0833273358
Fax: 086 612 7912

Fair Debt

0829019788 or 012-3772558
ray@fairdebt.co.za

PACFIN Financial Solutions

Head Office
Tel: +27 11 9757445

Fax: 0865368783
36 Van Riebeeck road
Kempton Park 1619
pieter@pacfin.co.za
Monte Carlo Building
No 8 Voortrekkerstreet
Kempton Park 1619

Kempton Park
Contact: Reyno Coetzee
Tel: +27 11 3945363
Fax: 0866048002
Cell: +27 73 3690884
kemptonpark@pacfin.co.za
Boksburg / Germiston
Contact: Armand Posthumus
Tel: +27 11 8921911
Fax: 0865620378

Nelspruit
Contact: Ann Baker
Tel: +27 13 7415559
Fax: 0880 1374 15559
Cell: +27 82 9024236
jeleroux@telkomsa.net
Springs
Contact: Wynand Mclachlan
Tel: +27 11 8113728
Fax: +27 11 8113728
Cell: +27 83 2754014/5
wynmc@telkomsa.net

Gooseberry Business Advisory

Tel: 012 644 0589

Nedbank

Debt Rehabilitation & Recoveries
Services
0860 109 279

STD Bank

Debt review Helpline
Telephone: 0861 111 402

TransUnion

0861 482 482

Thinkmoney

Financial comparison website
Contact: Gareth Mountain
Tel: 079 0996 798
www.thinkmoney.co.za

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LEGAL



Liddles & Associates

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Tel: 021 913 2514
Fax: 0866070940
Email: info@liddles.co.za
PO Box 3407, tygervally, 7536
7 Chenin Blanc Street, Oude Westhof

LUCID Attorneys

Tel: 011 880 1100
Fax: 011 880 1101
Email: info@lucidsa.com
www.lucidliving.co.za/attorney

CTORY



O'Connell & Associates

Attorneys at Law
Keegan O'Connell
k.oconnell@oalaw.co.za
Tel 021 462 1663
Fax 0866 504 550
303 Millborough, 70A Upper Mill
Street, Vreedehoek, Cape Town,
8000

Prinsloo & Associates

Attorneys and conveyancers
Nanika Prinsloo
Farm Bergamot, Paarl 7620
P O Box 6199, Paarl 7620
14 Laing Street, Barrydale 6750
Cell: 072-8558-106
Fax: 086-623-5986
nanika@vodamail.co.za
www.empowerlaw.co.za

RM Brown and Associates

16th Floor, The Pinnacle
Cnr Strand & Burg St
Cape Town
Tel: 021 431 9127, f: 021 425 0875
Email: oliver@rmbrown.co.za

Scheepers Attorneys

Gerhard Scheepers
schlaw@iburst.co.za



Steyn Coetzee Attorneys / Prokureurs

Adri de Bruyn
11 Market Street / Markstraat 11,
Paarl, 7646
Tel: 021 872 1968
Fax: 021 872 2678
adri@steyncoetzee.co.za



Thinus Dreyer
Candidate Attorney
Office: 011 326 0347
Office Cell: 071 658 9438
Cell: 082 471 3625
Fax: 086 509 3548
thinus@stokesattorneys.co.za

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Agiliti CC

Colleen Van Wyk(BCom, LLB)
Tel: 083 290 0848
Tel: 011 740 7374
Fax: 086 716 9694
Website: <http://agiliti.co.za>

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