DCASA Newsletter

36th Edition December2014

CIF Guidelines for withdrawal from Debt Review

Certainty on the withdrawal process has finally been obtained. The review of the process was necessary due to Judgements and abuse of the process. The 17.4 process is dead and a new process is ready for implementation.

This process is the result of many submissions, meetings and legal opinions obtained over the last 12 months.

This was not an easy task but the Credit Industry Forum (CIF), on the 28th November 2014 approved the new guidelines for withdrawal from Debt Review.

These guidelines will now be issued by the NCR and the proposed implementation date is 1 January 2015.

Can a Debt Counsellor terminate a Debt Review?

A Debt Counsellor has no statutory power to remove the Debt Review listing from the Credit Bureau, save for a Court Order, Rescission or the issuance of a Clearance Certificate.

Can a Credit Provider terminate a Debt Review?

A Credit Provider may terminate a Credit Agreement in terms of Section 86(10) of the NCA.

Can a Consumer withdraw or terminate the Debt Review prior to obtaining the Debt Review Court Order?

Consumers will be allowed to withdraw or terminate a Debt Review prior to the issuing of Form 17.2 (Prior to the Debt Counsellor declaring the Consumer over-indebted) subject to the Consumer paying all fees due to the Debt Counsellor for services rendered up to that point.

The Debt Counsellor who receives the request for withdrawal or termination prior to Form 17.2 and where the Consumer is up to date with Debt Counselling Fees due will terminate the Debt Review listing on the Credit Bureaus by selecting the Consumer Withdrawal option of NCR Debt Help.

Debt Counsellors also have to notify all Credit Providers, by means of a specific notice or form (Form 17.W).

Can a Consumer withdraw from Debt Review once a Debt Review Court Order has been obtained?

Once a Debt Review Court Order has been obtained a Consumer cannot terminate or withdraw from Debt Review. The Consumer has to approach the Court for an Order which should indicate that the Consumer is no longer over-indebted and no longer in Debt Review. All parties should be notified (Form 17.W).

Can a Debt Counsellor withdraw their services from the Consumer under Debt Review, where the Consumer is not co-operating once a determination is made in terms of Section 86(7)? This withdrawal is done on a basis that the entire Debt Review process is not terminated.

Where a Consumer is not co-operating with the process or fails to pay the prescribed fees the Debt Counsellor can withdraw its services.

The Debt Counsellor will notify the Consumer of the intended withdrawal of service, the consequences and options and allow the Consumer 10 business days to remedy the situation.

The following information to be included in the notice to the Consumer:

i. Notice of pending service suspension and the reasons;

ii. Option to remedy the situation within 10 working days;

iii. That the Consumer will remain under Debt Review and will not have access to new credit.

iv. The Debt Counsellor will not be able to issue a Clearance Certificate when debt has been repaid.

Where a Consumer has not remedied the situation, the Consumer should be notified of the service withdrawal. Credit Provider(s) to be notified (Form17.W).

Can a Consumer that is under Debt Review be transferred to another Debt Counsellor?

Consumers under Debt Review may be transferred to another Debt Counsellor subject to payment of all Debt Counselling fees (Form17.W).

Can a Consumer remain under Debt Review without a Debt Counsellor?

A Consumer cannot be under Debt Review without a Debt Counsellor.

The Consumers should be made aware of the consequences and options by the Debt Counsellor in writing:

The following information to be included in the notice to the Consumer:

i. A Consumer cannot be under Debt Review without a Debt Counsellor.

~ Continue on page 2

CIF Guidelines for withdrawal from Debt Review continued from page 1:

ii. Consumer has option to source a new Debt Counsellor and request a transfer.

iii. Due to the fact that the Debt Counsellor will not be able to issue a Clearance Certificate in terms of Section 71 when the debt has been repaid the Consumer will remain under Debt Review and the Consumer will not be able to source new Debt.

Consumer awareness of the withdrawal process.

Debt Counsellors are required to add the following clause to the **Form 16** signed by the Consumer when they apply for Debt Review:

A Consumer who has applied for Debt Review can withdraw from Debt Review only before the declaration of over-indebtedness (Form 17.2) has been issued by the Debt Counsellor. A Consumer who has been issued with a Clearance Certificate or where a Court Order has been obtained indicating that the Consumer is no longer over-indebted and no longer under Debt Review will also be removed from Debt Review.

The reason for the additional clause is to inform the Consumer of the consequences and implication of applying for Debt Review.

The NCR will now issue the abovementioned guidelines for implementation.

~By: Paul Slot

DCASA submits Debt Counselling Fee Review to NCR

DCASA, on 9 December 2014, submitted a detailed analysis of the Debt Counsellors fee structure to the NCR with a recommendation to review the Debt Counselling fee structure.

The first Debt Counselling fee structure was issued in 2007. This fee structure was then reviewed in 2010/2011 by the National Credit Regulator (NCR) and implemented on 1 August 2011. There has been no review since 2011.

DCASA completed a very detailed research project on the effectiveness and feasibility of the current Debt Counselling fee structure in 2014. The results of the research project indicated that the current fee structure falls well short of covering the cost of the service provided by Debt Counsellors.

The research project also indicated many Debt Counsellors have left the Industry simply because the Debt Counselling cost structure exceeds income.

Debt Counsellors fulfil a very important Statutory Service to assist Consumers who are over-indebted. Based on current repayment rate Debt Review has proven to be a very effective repayment method. In fact, many Credit Providers have confirmed, that Debt Review is the most effective repayment method for debt stressed Consumers.

Based on the current practice Debt Counselling fees are recovered from Consumers as part of the Debt Review process. The current Debt Counselling fees as a percentage of repayments amounts to 4.56%. Where legal fees are payable, the cost to Consumer increases to 7.42% of repayments.

Normal collection cost levied by Credit Providers to Consumers normally range from 17% to 23% of repayments which is the main reason why Credit Providers prefer Debt Counselling as a method of collection.

The cost of Debt Counselling for the Consumer is however reduced by the negotiated Industry concessions which is part of the Task Team Agreement. In terms of this agreement Credit Providers have agreed to reduce fees to zero and to reduce interest rates down to zero on unsecured and Repo + 2 on secured debt. This reduction is directly linked to the affordability of the Consumer and a full reduction would reduce repayments by 39%. In cases where interest rate is reduced (say from 31% to 28%) this interest rate reduction fully covers the Debt Counseling fees (3% reduction covers all cost).

There are currently **2 405** Debt Counsellors who are registered with the NCR. DCASA has contacted all Registered Debt Counsellors to verify if they are currently practicing as Debt Counsellors. The result was as follows:

- **234 or 9.73%** of Debt Counsellors with status of cancelled registration.
- **567 or 23.58%** of Debt Counsellors confirmed they are not active as Debt Counsellor.
- **691 or 28.73%** of Debt Counsellors are presumed inactive due to the fact that all efforts to contact them at their registered address and other search methods failed.
- **913 or 38%** of Debt Counsellors reported that they are currently practicing as Debt Counsellors.

Non-active Debt Counsellors provided two main reasons for their inactive status:

- Debt Counselling is not an economical viable business; and
- Debt Counselling is too complex.

DCASA submits Debt Counselling Fee Review to NCR continued from page 2

When the first Debt Counselling fee structure was introduced DCASA developed a comprehensive model to enumerate the Debt Review Process and time required for each task. In 2010 DCASA reviewed the model and the results were made available to the NCR. DCASA again reviewed and enhanced the model in 2013 and this model was used in the 2014 fee review.

A detailed questionnaire was submitted to all active Debt Counsellors. The questionnaire required input on the time spent on each Debt Counselling task as well as the cost structure of their Debt Counselling practice.

It is important to note that the questionnaire focused on the Debt Review Process only. No research was conducted into the Debt Review Court Application Process or the duties performed by Attorneys in this regard.

The survey results focus on the Debt Review Process only and exclude Management time and costs.

Summary of response received:

- **20.83%** of all Active Debt Counsellors completed the Survey.
- **40%** of Debt Counsellors who submitted the Survey are not DCASA Members.

The high participation rate achieved is considered to be statistically significant.

The results of the DCASA survey was shared at the DCASA Conference on 20 August 2014 and then circulated to all Debt Counsellors. All Debt Counsellors were requested to provide additional comment on the survey over the following six weeks.

DCASA conducted a follow up survey in November 2014 where all Debt Counsellors were requested to provide feedback on the proposed fee proposals.

The survey was submitted to all active Debt Counsellors and **50.29%** of all active Debt Counsellors participated in this survey.

The participation results achieved in this survey means that the results can be regarded as statistically significant and accurate.

74% of all active Debt Counsellors who participated in this survey indicated their full support for the recommendations fee recommendations.

In the following, principals were addressed in the Debt Counselling Fee recommendation to the NCR:

- Consumers who leave the Debt Review process or where a transfer is requested be required to pay for services rendered.
- The introduction of a minimum Professional and After Care fee with no increase in maximum fee payable.
- Introduction of a single After-Care fee.
- Increase on the Consent 0rder fee to allow for extensive legal preparation.
- Introduction of a Reckless Credit investigation fee.
- Introduction of a Clearance Certificate fee.

The NCR has acknowledged receipt of the Debt Counselling fee review and recommendations submitted by DCASA and will be in a position to respond once they have studied the report and recommendations.

Amendments to the NCA will be implemented …… we don't know when

Everybody expected an announcement that the NCA amendments would be effective on 1 December 2014 but unfortunately nothing happened.

On the 3rd of December the following message was received from DTI:

*"This serves to inform stakeholders that **the dti** is working on the final draft NCA Regulations and NCT Rules to achieve the best and desired legal document to be published upon the Minister's approval. A copy of the approved document will be distributed once gazette".*

No indication was provided why the expected due date was missed or when the NCA amendments will become effective.

DCASA 2015 NEC:

The DCASA Annual General Meeting took place on the 18th November and the following members have been elected to the National Executive Committee for 2015:
Paul Slot; Eugene Cilliers; Gerhard Stoltz; Sharin Grové; Mauritz van den Heever and Tony Richards.
The Branch Representatives will remain in their positions as voting takes place at a later stage at Branch level.
We would like to thank the NEC for their hard work and dedication.

Debt Counselling in a Box ~ Card 5 and 6 explained

Task Team Agreement

- TT deals with process enhancement such as standard forms, processes and repayment terms.
- Approved by all Industry participants at the CIF.
- NCR issued TT as guidelines.
- Implementation - compulsory by all.

Tip: TT does not change NCA, but improves process.

5

Task Team Agreement

TT is not law but binding guidelines to improve the processing of Debt Review applications.

TT includes standard forms, agreed processes and compliance issues.

Fee and interest rate concessions and agreed term extensions is an important part of the TT Agreement.

The DC and CP will benefit from standardised processes. The Consumer benefit is substantial if repayment proposal solves in DCRS. This means repayment in agreed term.

TT: Affordability Guidelines

- Industry agreed guidelines to determine DR Affordability.

Guidelines include:

- Financial Lifestyle Review for Consumer.
- Eligibility=Responsible RP.
- Income to be sustainable.
- Formula for overtime.
- Realistic budget for Consumers.

Tip: If DC's implement Affordability Guidelines, CP's will accept.

6

TT: Affordability Guidelines

The amount available for Debt Review should be enough to repay all debt within the agreed term extension period.

When this happened the approval of the repayment plan is compulsory in terms of the DCRS rules.

When approval is obtained the benefits include fee reduction to Zero and Interest rate reduction based on affordability. The agreed interest rate is fixed and the aim is to repay all unsecured debt in less than 60 months.

Home loan interest rate is only fixed up to point of rehabilitation which is normally 60 months.