

ALERT TO THE CREDIT INDUSTRY:

MISLEADING PRACTICES BY DEBT COUNSELLORS WHO PLACE CONSUMERS UNDER DEBT REVIEW WITHOUT THEIR KNOWLEDGE OR CONSENT

CIRCULAR 03 OF 2024

1. INTRODUCTION

The National Credit Regulator (“NCR”) has observed a worrying trend from complaints received, about debt counsellors engaging in deceptive and misleading practice of placing consumers under debt review without full understanding of the process they are entering into or consenting to. This conduct misrepresents the spirit and objectives of the National Credit Act 34 of 2005 (“NCA”) regarding the provisions of debt counselling as a debt relief measure. This conduct is prohibited and is inconsistent with the purpose and requirements of the NCA. Debt Counsellors are required to conduct debt counselling services in line with Section 86 read with Regulation 24 of the NCA and to conduct these services in a manner that does not bring the debt counselling industry and the NCR into disrepute.

2. PURPOSE OF THE CIRCULAR

The purpose of this circular is to warn the industry about the prohibited conduct of debt counsellors who mislead unsuspecting consumers into debt review or place them under debt review without their knowledge or consent, and further to warn debt counsellors engaging in this prohibited conduct, of the serious consequences that they may be faced with.

3. TRENDS OBSERVED BY THE NCR

The following are the misleading trends which have been observed leading to consumers signing up for debt review without their knowledge or consent:

- Consumers are contacted telephonically where they are offered assistance on debt consolidation or reduction of interest or instalments on their accounts. In other instances, the caller claims to be calling from the NCR or working together with the NCR and/or the South African Government to assist consumers with their debts.

- In most instances, the callers already have consumers' information in respect of their obligations, thus deceiving consumers into believing that they are genuinely working with the NCR and/or Government.
- Consumers are deceived into providing and/or confirming personal information telephonically with the understanding of providing same for something other than debt review (debt consolidation or reduced interests or installment on accounts).
- Debt review application forms are sent to consumers via a link to their phone to sign electronically, and all information obtained telephonically is later transferred to the Form 16 or debt review application. It must be noted that the link does not reflect as a Form 16 or debt review application form prior to the signing thereof (i.e. signature is usually required on one page despite the length of the Form 16).
- Some consumers only become aware of the debt review flag when they apply for credit or when they attempt to use their existing credit facilities.

4. NOTE THE FOLLOWING

4.1. A consumer under debt review can no longer enter into further credit until the application is rejected by the debt counsellor or by the Magistrate's Court, or until all debt obligations are fully settled.

4.2. Debt review is a formal process that was introduced by the NCA as a voluntary debt relief measure to assist over-indebted consumers.

4.3. A consumer is over-indebted if his/her income is not sufficient to cover all his/her living expenses and debt repayments.

4.4. Consumers have a right to fully understand and consent to any financial decision and to not be pressured to sign any document without reading it and fully understanding its implications.

4.5. Consumers must be the ones approaching a debt counsellor for assistance and voluntarily apply for debt review.

4.6. It is prohibited conduct and in contravention of the NCA for a debt counsellor to mislead consumers into debt review or place consumers under debt review without their knowledge and full understanding or consent.

5. OBLIGATIONS OF DEBT COUNSELLORS IN TERMS OF THE NCA

5.1. Debt counsellors have a statutory obligation to comply with the NCA and their conditions of registration and to conduct the debt counselling process in a manner that is consistent with the purpose and requirements of the NCA and in a manner that promotes the interests of consumers.

5.2. When processing debt review applications, debt counsellors have a duty to:

- Explain the debt review process to consumers to ensure that they understand the implications of the process and make an informed decision;
- Provide consumers with proof of receipt of the application;
- Conduct a proper assessment of a consumer's financial position before placing a consumer under debt review; and
- Keep record of all activities relating to a consumer's debt review application process.

6. FINAL NOTE

6.1. Debt counsellors who are involved in these misleading practices referred to herein are hereby instructed to desist from engaging in this prohibited conduct.

6.2. The NCR encourages consumers to always read and understand all documents before they sign them on their phones or on paper.

6.3. The NCR encourages debt counsellors to refrain from repeatedly contacting consumers telephonically in attempts to persuade them to sign documents they have not read, understood and appreciated.

6.4. Debt counsellors must allow consumers to voluntarily approach them if they are in need of their services.

6.5. The NCR will continue to monitor these trends and ensure that appropriate enforcement action is taken against debt counsellors who are found to be engaging in the above prohibited conduct.

FOR MORE INFORMATION / TO REPORT THIS PROHIBITED CONDUCT

Please send an email to rsingh@ncr.org.za to obtain more information on the above.

Should you wish to lodge a formal complaint, please contact the NCR's Complaints Department on **0860 627 627** or send an email to Complaints@ncr.org.za