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Debt Review – A lifeline for over-indebted consumers

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by Naledi Motsiri - Director and Nothando Nyoni – Candidate Attorney

As a result of slow economic growth, high interest rates and the soaring cost of living, many South African households have had to rely on credit to make ends meet. The unfortunate result is that a large number of consumers are currently struggling to meet their spiralling debt obligations.

What is debt review (or debt counselling)?

Debt review, also known as debt counselling, can serve as a lifeline for over-indebted consumers. Debt review is a financial relief programme established under the National Credit Act 34 of 2005 ("the NCA"). It aims to assist individuals who are struggling with overwhelming debt. During debt review, a professional known as a debt counsellor assists an over-indebted consumer with debt restructuring, which includes negotiating reduced payments or better interest rates with the consumer's creditors and offering strategies to ease the financial strain on the consumer.

What is Over-indebtedness?

A consumer is considered to be over-indebted when they are unable to meet their debt obligations as outlined in their credit agreements with multiple creditors. Several warning signs may indicate that a consumer is struggling with over-indebtedness. One common indicator is relying on credit from one source to pay off another, often referred to as "borrowing from Peter to pay Paul." Consumers may also use credit cards or overdraft facilities to cover essential expenses like groceries, signalling financial distress. Other red flags include missing payments on certain accounts to prioritise others, and receiving payment demands or summonses from creditors. In severe cases, court orders may be granted against the consumer for unpaid debts, further exacerbating their financial difficulties.

Who qualifies for debt counselling?

Any individual with an income, who finds it challenging to keep up with their debt repayment obligations may seek help through debt counselling. Debt counselling is provided by professionals called debt counsellors, who are registered with the National Credit Regulator ("NCR").

However, it is important to understand that while debt review aims to ease financial strain, there are important considerations to weigh before committing to the programme, including the following:

- Debt review does not reduce the total amount of a consumer's debt; but it may extend the repayment period to make the debt more manageable.
- Debt review does not guarantee immunity from legal action by creditors, despite recommendations otherwise.
- Debt review does not guarantee lower interest rates or debt consolidation.
- Participating in debt review restricts consumers from obtaining additional credit.
- Debt review entails a long-term commitment that requires dedication and discipline to complete.
- A consumer's debt review status remains on their credit record until the programme's completion or full repayment of all debts included in the review.
- Not all debts may qualify for inclusion in the debt review programme.

Exiting the Debt Review Programme

Consumers have the right to exit the debt counselling programme once they obtain a clearance certificate from their debt counsellor. The process for withdrawing from debt review depends on whether a court order has been issued.

If there is no court order mandating the consumer's participation in debt review, they can inform the debt counsellor in writing of their desire to cancel. However, this can only be done before a formal notice is sent to creditors stating that the consumer has been found to be over-indebted. Additionally, the consumer must settle any outstanding administration fees owed to the debt counsellor before the cancellation takes effect.

If a court order has been issued placing the consumer under debt review, the consumer must apply to the court to cancel the proceedings. The court will assess the application and determine whether to declare the consumer no longer over-indebted. If the court grants this request, the debt counsellor is responsible for notifying the consumer's creditors about the cancellation.

A consumer will receive a clearance certificate when they have paid off all the debts included in their debt counselling programme. Alternatively, they may also qualify for a clearance certificate if they can demonstrate that they are financially stable and capable of repaying the remaining debt from their long-term credit agreements in the future. Even if they have not fully paid off their long-term credit agreements, they could still qualify for a clearance certificate if they can prove that these payments are up to date and all other debts from the debt counselling programme are settled.

If a consumer is unhappy with the services of a debt counsellor, they may report the matter to the NCR for investigation.

Conclusion

Debt counselling can play a transformative role in reshaping one's financial wellbeing. Any person with an income, struggling to meet their monthly debt repayments may seek help through debt counselling. However, before committing to this programme, it is important to consider all the financial consequences, as well as the commitment and discipline required to successfully complete the process.



Naledi Motsiri

Director

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