



REGULATORY

NCR Throws a Lifeline to Consumers Required to Pay Premiums for Mandatory Credit Life Insurance

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In a much-needed victory for hard-pressed consumers, the National Credit Regulator ("NCR") has recently published a non-binding opinion ("NCR's Opinion"), throwing a lifeline to those consumers that are required to pay premiums for mandatory credit life insurance. The NCR's Opinion highlights the inconsistent industry practices in calculating mandatory credit life insurance premiums, and the real financial impact this has on consumers. The NCR has now given guidance: consumers should be paying progressively lower premiums for mandatory credit life insurance, as the debt owed to credit providers decreases.

South Africa's credit market depends on a careful balance: it needs to enable access to finance, whilst simultaneously protecting consumers from unfair or excessive costs. One area where that balance has been under strain is the pricing of mandatory credit life insurance – a product intended to safeguard both borrowers and lenders when unexpected events occur.

The problem: two interpretations, two very different outcomes

At the centre of the issue lies a technical but important ambiguity in the Final Credit Life Regulations 2017 ("**the Regulations**") issued under the National Credit Act ("**NCA**").

The NCA itself is clear. Section 106(1) provides that credit life insurance must, at any point in time, not exceed the consumer's outstanding obligations under a credit agreement. In simple terms, as a borrower pays down their debt, the mandatory credit life insurance cover (and therefore its cost) should reduce accordingly.

However, things become murkier when one looks at the Regulations, and in particular Regulation 3(1), which seeks to prescribe the maximum cost of mandatory credit life insurance that a credit provider may charge under section 106(1) of the NCA. Inexplicably, Regulation 3(1) provides two means of interpreting the manner of calculating the cost of mandatory credit life insurance –

1. The 'first interpretation' seemingly permits insurers to calculate the premium based on the deferred amount at the inception of the credit agreement, and to apply that premium for the entire duration of the agreement. In other words, premiums are calculated at the start of the credit agreement, when the outstanding debt is greatest, and do not decrease as the debt is paid down. As such, consumers are likely to continue paying higher premiums, even as their debt reduces (as a result of their monthly payments), effectively resulting in consumers paying for mandatory credit life insurance cover in excess of the maximum statutory tariff amounts.
2. The 'second interpretation' permits premiums to be calculated on the deferred amount from time to time under the credit agreement. In other words, the premium is calculated on what should be a gradually reducing balance that is owed by the consumer over time: as the overall debt decreases (due to the consumer's payments), so does the amount of the premium.

This seemingly technical distinction has significant consequences that affect consumers in the real world. Throughout the term of a credit agreement, the divergence between these two approaches can give rise to substantial additional costs for consumers, with particular detriment to lower-income consumers who rely most on credit. More concerning, inconsistent interpretations (and thus practices) across the industry mean that different credit providers are charging different premiums for the same insurance cover. This means that consumers may pay vastly different premiums for the same products, without knowing that they are doing so, or why.

The differing approach obviously has wider implications. Where regulatory clarity is absent, inconsistent industry practices tend to become entrenched. In this case, it has resulted in different credit providers earning different insurance premiums for the same mandatory credit life insurance products which should be subject to the same statutory maximum tariffs, giving them a competitive advantage from a practice that seems to clash directly with the provisions of s106(1) of the NCA. This has created uneven competition between market participants, and incentives for aggressive or opportunistic interpretations, leading to the inevitable erosion of trust in financial products.

This undermines one of the key objectives of the NCA, namely, the fair, consistent and transparent treatment of consumers.

The NCR steps in to provide much-needed clarity

The NCR has now provided the necessary guidance which, can play a crucial role in promoting consistency across the industry, providing clarity to credit providers and insurers, and protecting consumers from ongoing overcharging for mandatory credit life insurance under section 106(1).

The NCR's Opinion is premised on the long-accepted legal principles that determine how statutory ambiguities should be resolved: regulations must be interpreted in a way that is consistent with the empowering legislation (in this case, the NCA), and in light of their purpose and context, so as to avoid invalid or unlawful outcomes.

Applying these principles, the first interpretation, which fixes premiums to the original loan amount, is difficult to sustain. It conflicts with the s106(1) requirement that mandatory credit life insurance cover must track the consumer's actual, outstanding liability.

By contrast, the second interpretation's declining-balance approach aligns with s106(1)'s wording, the NCA's purpose of consumer protection provisions, and the principle that consumers should not pay for unnecessary or excessive cover or be charged for a level of risk that no longer exists.

The NCR's Opinion comes down firmly on the side of the second interpretation. It constitutes clear guidance that those credit providers that calculate premiums on the first interpretation (and thus charge and earn higher premiums), should alter their ways. The NCR has undertaken to closely monitor the market, to determine the level of compliance with its opinion, and will take whatever steps are necessary to ensure compliance. In the future, if practices (and charges) remain inconsistent, it might be that amendment to the NCA and/or the Regulations, or even judicial clarification, is required, in order to remove all ambiguity and to fully align the NCA's provisions under section 106(1) with those of the Regulations. Nevertheless, the NCR's guidance is a meaningful and constructive starting point.

In an economic environment that many believe looks set to worsen, the NCR's Opinion provides consumers with some much-needed respite from credit life insurance costs that are excessive. The NCR's Opinion seeks to restore coherence and fairness, and settle an ambiguity that prevailed, to the detriment of consumers and the credit life insurance industry as a whole. The NCR's Opinion is therefore a welcome clarification: both timely and consequential.



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