

Department of Trade, Industry and Competition

Briefing by the dtic, NCR and NCT on the
implementation of the existing debt review system and
challenges in this regard

Presentation to the Portfolio Committee on Trade,
Industry and Competition

30 May 2023



the dtic

Department:
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

the dtic - together, **growing the economy**

the dti Customer Contact Centre: 0861 843 384

the dti Website: www.thedti.gov.za

PRESENTATION OVERVIEW

- ❑ Presenters
- ❑ Purpose
- ❑ NCR
- ❑ NCT

PRESENTERS

NCR Executive Committee

Chief Executive Officer – Ms Nomsa Motshegare

Executive Senior Legal Advisor – Ms Nthupang Magolego

Acting Company Secretary & Debt Counselling Manager – Adv. Kedilatile Legodi

NCT Executives

Mr Trevor Bailey-Chairperson of the Tribunal

Ms Hazel Alwar- Full-Time Tribunal Member

Mr Zac Malumedzha- Acting Chief Information Officer

Mr Ahmed Moolla- Chief Financial Officer

The dtic Executive

Ms Zandile Brown-Chief Director: M&E and SEIA, **the dtic**

Ms Verushka Gilbert-Director: Credit Law and Policy, **the dtic**

PURPOSE

To brief the Portfolio Committee on Trade, Industry and Competition on the existing debt review system and challenges in this regard.

**Presentation on the existing debt review system
and challenges in this regard.**

OUTLINE OF THE PRESENTATION

- ❑ DEBT COUNSELLOR & PAYMENT DISTRIBUTION AGENT
- ❑ DEBT COUNSELLING PROCESS FLOW
- ❑ DEBT COUNSELLING: IMPLICATIONS FOR CONSUMER AND CREDIT PROVIDER
- ❑ DEBT COUNSELLING AND PAYMENT DISTRIBUTION AGENT (PDA) STATISTICS
- ❑ NCR EDUCATION AND AWARENESS CAMPAIGNING
- ❑ DEBT COUNSELLING AND PDA CHALLENGES
- ❑ CONCLUSION

WHAT IS A DEBT COUNSELLOR AND A PDA?

DEBT COUNSELLOR

- A debt counsellor is a natural person registered in terms of section 44 and regulation 10 of the National Credit Act(NCA). Regulation 10 states the criteria to be met for an applicant to qualify as debt counsellor;
- A debt counsellor's role is to assist over indebted consumers by negotiating and re-arranging their repayment obligations to their credit providers in terms of section 86 of the NCA and regulation 24. Furthermore a debt counsellor has to ensure that there is a court order in place and monitor the consumer's payments until debts have been paid up and a clearance certificate issued.

PAYMENT DISTRIBUTION AGENT

- A payment distribution agent (PDA) is a juristic entity registered in terms of section 44A and regulation 10A of the NCA. Regulation 10A states the criteria to be met for an applicant to qualify as debt counsellor;
- PDA has the mandate to collect and distribute payments of consumers under debt counselling to the creditor providers, in strict accordance with the restructuring proposal developed by a debt counsellor.

DEBT COUNSELLING PROCESS FLOW

STEP 1- Consumer applies for debt review with a debt counsellor (DC)

STEP 2- DC notifies Credit Providers (CPs) and Credit Bureaus (CBs)

- Requests CPs for up to date financial information and CBs to place a flag / indicator on the consumer credit profile

STEP 3- DC receives financial information, to assess whether consumer is over-indebted & notifies CPs and CBs of assessment outcome

CONSUMER OVER-INDEBTED

DC prepares restructuring proposal and starts negotiation process by offering reduced payment terms to credit providers.

-All CPs accept restructuring proposal,
-Agreement must be confirmed in a consent court order by the National Consumer Tribunal or Magistrate Court.

-Any one of the CPs declines restructuring proposal, such proposal is referred to Magistrate Court for adjudication and confirmed as a court order.

CONSUMER NOT OVER-INDEBTED

DC issues a rejection letter and notifies the consumer, CPs and CBs of the outcome.

Consumer has a right to approach the court should he / she not be satisfied with the DC's finding within a period of 20 business days after the rejection notification.

DEBT COUNSELLING PROCESS FLOW (continued)

STEP 4 - Once a court or consent order has been granted, the consumer must pay his / her debt in compliance with that order, either through the Payment Distribution Agent (PDA) or directly to his / her credit providers.

STEP 5 - Once all the consumer's debts have been paid up to all the credit providers, the DC issues a clearance certificate and notifies the CBs to remove the debt review flag and expunge all records which were subject to debt review.

DEBT COUNSELLING: IMPLICATIONS FOR CONSUMER AND CREDIT PROVIDER

IMPLICATIONS FOR CONSUMERS

- Cannot incur further debt until a clearance certificate is issued;
- Credit Bureaus will place a flag/indicator on the consumer's credit bureau profile to indicate that the consumer is under debt counselling;
- Protection against legal debt enforcement actions by credit providers(e.g. repossession of assets);
- Must make payments in terms of the debt counselling court order. Should the consumer default, this may lead to termination from debt counselling and enforcement of legal debt collection methods by credit providers.
- Repayment term of debt will be extended.

IMPLICATIONS FOR CREDIT PROVIDERS

- Cannot lend any monies to persons under debt counselling;
- Cannot take legal debt enforcement actions against the consumer under debt counselling.



DEBT COUNSELLING STATISTICS

- Number of registered debt counsellors (DCs) as at March 2023 : **1554**
- Number of applications since inception (from the Debt Help System (DHS) - a system used by DCs to load debt counselling applications) : **1 868 292** (2022.23: **159 832** vs 2021.22: **134 690**)
- 2022.23 Average number of monthly applications: **13 319** (2021.22: **11 224**)
- Active applications (records of consumers who are actively under debt review): **1 232 219**
- 2022.23 Clearance certificates issued **41 645** (2021.22: **36 892**) Cumulative number of certificates issued: **213 086**

PAYMENT DISTRIBUTION AGENTS (PDAs) STATISTICS

Total number of registered PDAs

4

April 2022 to March 2023

Monthly average distributions	R1.1 billion
Cumulative distributions	R106 billion
Monthly average number of consumers paying through the PDAs	217 479
Monthly average payment per consumer	R6 148.78

NCR EDUCATIONAL AND AWARENESS CAMPAIGNS

GAUTENG(430)	EASTERN CAPE(232)	NORTH WEST(275)	WESTERN CAPE(99)
Sedibeng District	Alfred Nzo District	Dr Kenneth Kaunda District	Overberg District
West Rand District	Amathole District	Bojanala Platinum District	West Coast District
City of Ekurhuleni Metropolitan	Chris Hani District	Ngaka Modiri Molema District	City of Cape Town Metropolitan
City of Johannesburg Metropolitan	Nelson Mandela Bay Metropolitan	Dr Ruth Segomotsi Mompati Distric	Cape Winelands District
City of Tshwane Metropolitan	Buffalo City Metropolitan		Central Karoo District
	Sarah Baartman District		
	OR Tambo District		
	Joe Gqabi District		

NCR EDUCATIONAL AND AWARENESS CAMPAIGNS(continued)

LIMPOPO(259)	MPUMALANGA(165)	FREE STATE(148)	NORTHERN CAPE(102)
Capricorn District	Ehlanzeni District	Fezile Dabi District	Frances Baard District
Mopani District	Gert Sibande District	Lejweleputswa District	John Taolo Gaetsewe District
Vhembe District	Nkangala District	Thabo Mofutsanyana District	Namakwa District
Waterberg District		Xhariep District	Pixley Ka Seme District
Sekhukhune District		Mangaung Metropolitan	ZF Mgcawu District

NCR EDUCATIONAL AND AWARENESS CAMPAIGNS(continued)

KWAZULU NATAL(278)

Amajuba District

Harry Gwala District

iLembe District

King Cetshwayo District

Ugu District

uMgungundlovu District

uMkhanyakude District

uMzinyathi District

uThukela District

Zululand District

eThekweni Metropolitan

DC CHALLENGES

1. CURRENT REGISTRATION REQUIREMENTS

- The requirements are not stringent and do ***not commensurate*** with the level of work, knowledge and experience required to offer the debt counselling services.
- Due to ***lack of capital*** to establish the DC practice, some register and sell their registration credentials to unregistered/registered entities/individuals with a financial capability for a salary. Often times, these entities implement processes that are not aligned with the prescripts of the NCA.

PROPOSED SOLUTION: Amend regulation 10 that sets out the criteria for registration of a DC with strict registration requirements to specifically address these identified operational challenges.

DC CHALLENGES (continued)

2. MISLEADING ADVERTISEMENTS AND MARKETING PRACTICES

- Words such as “payment holiday”, “up to 50% reductions on instalments”, “save money”, “consolidate your debt”, “reduce your debts” are used to mislead consumers & misrepresent debt counselling.
- There are various companies selling leads to the debt counselling industry and the source of these leads remains unknown (The NCR has engaged the Information Regulator to collectively find a solution to this growing challenge and investigations are underway).
- DCs who buy these leads, conduct cold calling using call centre agents given targets to get consumers to sign up for debt counselling and being paid on commission. This practice perpetuates these misleading marketing practices.

DC CHALLENGES (continued)

MISLEADING ADVERTISEMENTS AND MARKETING PRACTICES (CONTINUED)



- To protect consumers, the NCR carries out regular education & awareness campaigns and issues media releases to bring these practices to the attention of consumers and advise on how to avoid falling into the trap.
- **PROPOSED SOLUTION:** Since there is no provision in the NCA that deals with the debt counselling related marketing practices, it is proposed that a new regulation be inserted with specifics and limitations to address this challenge and with the objective of making selling of leads for debt counselling purposes prohibited because of the voluntary nature of the debt review process.

DC CHALLENGES (continued)

3. **CONSUMERS' LACK OF UNDERSTANDING OF THE DC PROCESS**

- Based on the assessment of complaints received by the NCR, it was found that some consumers do not understand the debt counselling process and its implications as they would usually request to exit/cancel the process when they realise the consequences of being under debt counselling and the NCA does not provide for an exit process other than when the consumer is not found over-indebted or when all debts the consumer had at the time of signing up for debt review, have been paid up.
- This challenge may also be exacerbated by the misleading advertisements and marketing practices that misrepresents debt counselling.

PROPOSED SOLUTION: Provide for an option of a cooling-off period in the NCA for the consumer to make an informed decision. Application form to be amended to include all important relevant information and to be signed by both the consumer and debt counsellor.

DC CHALLENGES (continued)

4. REFERRAL OF CONSENTED RESTRUCTURING PROPOSALS TO THE MAGISTRATE COURT OR THE NATIONAL CONSUMER TRIBUNAL

- Although it is not unlawful for Magistrate Courts to adjudicate on applications where all parties have consented to the restructuring proposal, it has been noted that some debt counsellors use this provision to exploit consumers. They collaborate with attorneys for exorbitant legal fees to refer matters to court when a reasonable option is available through the National Consumer Tribunal (NCT).
- Others who make use of the NCT charge exorbitant fees (e.g. R6000 on average) whereas the NCT fees for such applications are in the range of R600.00 (as confirmed by the NCT)

PROPOSED SOLUTION: Amend section 86(8), to clearly indicate that all consented restructuring proposals must be referred to the NCT, at a prescribed fee and using a prescribed process to be facilitated by debt counsellors only. This provision will save financial distressed consumers legal costs currently incurred to refer matters to the Magistrate Court and position debt counselling as a viable debt relief measure.

DC CHALLENGES (continued)

5. LACK OF DEBT COUNSELLING FEE REGULATIONS

- Current debt counselling (DC) fees charged are provided for in a form of guidelines which are often challenged by the registrants due to the NCR not having powers to prescribe DC fees.
- Although the guidelines are recognised in some courts, consumers are being exploited by debt counsellors charging own fees and not applying the NCR DC fee guidelines because the NCR lacks the authority to regulate the DC fees.

PROPOSED SOLUTION: To strengthen consumer protection and enforcement powers of the NCR, amend/revise the current NCR DC fee structure and publish as regulations. Furthermore, grant the NCR the authority in the NCA to prescribe revised fees after a pre-determined period and following due process (feasibility, consultation, etc).



DC CHALLENGES (continued)

6. SECTION 58 AND 58A DEALING WITH VOLUNTARY CANCELLATION OF REGISTRATION

- The provisions are severely inadequate and create a gap for many consumers to remain under debt review without an active debt counsellor because they provide for a process where debt counsellors (DCs) can voluntarily cancel their registration, without moving consumers to another debt counsellor first.

PROPOSED SOLUTION: Amend sections 58 & 58A to provide for a condition for consumers to be transferred to a new debt counsellor prior to finalisation of the voluntary cancellation process and include the provision of a prescribed transfer form currently used in the industry as Form 17.7. In addition, prior to voluntary cancellation, consideration must be given to DCs whose matters are pending finalisation at the NCT.



DC CHALLENGES (continued)

7. INABILITY FOR CONSUMERS TO EXIT DEBT REVIEW UPON CHANGE IN FINANCIAL CIRCUMSTANCES

- No provision to exit the debt review process currently exists for consumers whose financial circumstance since applying for debt review, improved to such a degree that they are on a factual basis, able and willing to continue payments in terms of the original contractual agreements.
- Currently, there is abuse noted by attorneys who become involved in the process of applying for rejection of debt review court orders on behalf of consumers, whereas the NCA only obligates debt counsellors to make recommendations to a court, on behalf of a consumer, regarding his debt review status.
- As a result, consumers who can tap back into the economy are often trapped under debt review.

PROPOSED SOLUTION: Insert sub-sections under section 71 of the NCA dealing with removal of record of debt adjustment or judgment to address various scenarios for exiting debt review over and above through the clearance certificate route.

PDA CHALLENGES

- Due to the provision for a consumer to either make payments using the PDA or directly to credit providers, it is currently a challenge to determine the number of consumers making direct payments. However, the process to enhance the current Debt Help System used to load applications for debt review is underway to enable capturing of this information.
- Debit order disputes/reversals by consumers when the PDA has already made payments to credit providers, leaves PDA out of pocket as many credit providers refuse to refund these payments back to the PDA.
- The current tiered pricing structure poses challenges when a consumer pays off a specific debt, necessitating application of the cascading calculation method. Given the fact that the PDA distribution fee is dependent on the distribution amount, this usually distorts the payment plan of the consumer.
- Current PDA fees have not been reviewed for over 7 years.

PROPOSED SOLUTION: A feasibility study was conducted in 2018 with recommendations on the proposed detailed regulations to address the current challenges. It is recommended that PDA regulations be urgently issued to address all identified challenges.

CONCLUSION

- To identify and address operational difficulties that come with implementation of the NCA, as it is not always possible to amend legislation on a regular basis, the NCR established a Credit Industry Forum (CIF) comprising all credit industry associations inclusive of consumer representative bodies.
- This forum facilitates negotiations, industry agreements and co-operation on credit industry related aspects and makes advisory recommendations to the NCR which, upon acceptance are issued as guidelines to the credit industry. This intervention has brought uniformity in the credit industry.
- For example, given the silence in the NCA regarding the provision to exit debt review when the financial circumstance of the consumer changes, through CIF and consideration of case law, the NCR issued guidelines which are being used in the industry and closing this gap in certain scenarios.

CONCLUSION (continued)

- Debt counselling is a great debt relief measure that has provided rehabilitation to consumers, however given some of the current challenges experienced with implementation, gaps and silence on some key areas in of the NCA, the full benefits are not being realised.
- Furthermore, the compliance monitoring and enforcement functions of the NCR are hampered and/or challenged in courts and this delays finalisation of matters where consumers are prejudiced.
- Urgent consideration to amend the NCA and its regulations is significant to realise the intended objectives and purpose of debt counselling and to make it a viable debt relief option for financially distressed consumers.
- The NCR will continue to engage the **dtic** on these issues.

Thank You

National Consumer Tribunal

Our passion and drive...



- The passion and drive of this Tribunal and the people working for this public entity have always been to protect consumers and the vulnerable and provide speedy redress.
- The development of the logo at inception and its significance has continued overtime at the Tribunal.
- The Tribunal is a beacon of light guiding and helping consumers and giving them hope through the orders that the Tribunal is empowered to make (the beam at the logo's centre).
- The bigger and smaller triangles represent the parties before the Tribunal, and justice and fairness will prevail.

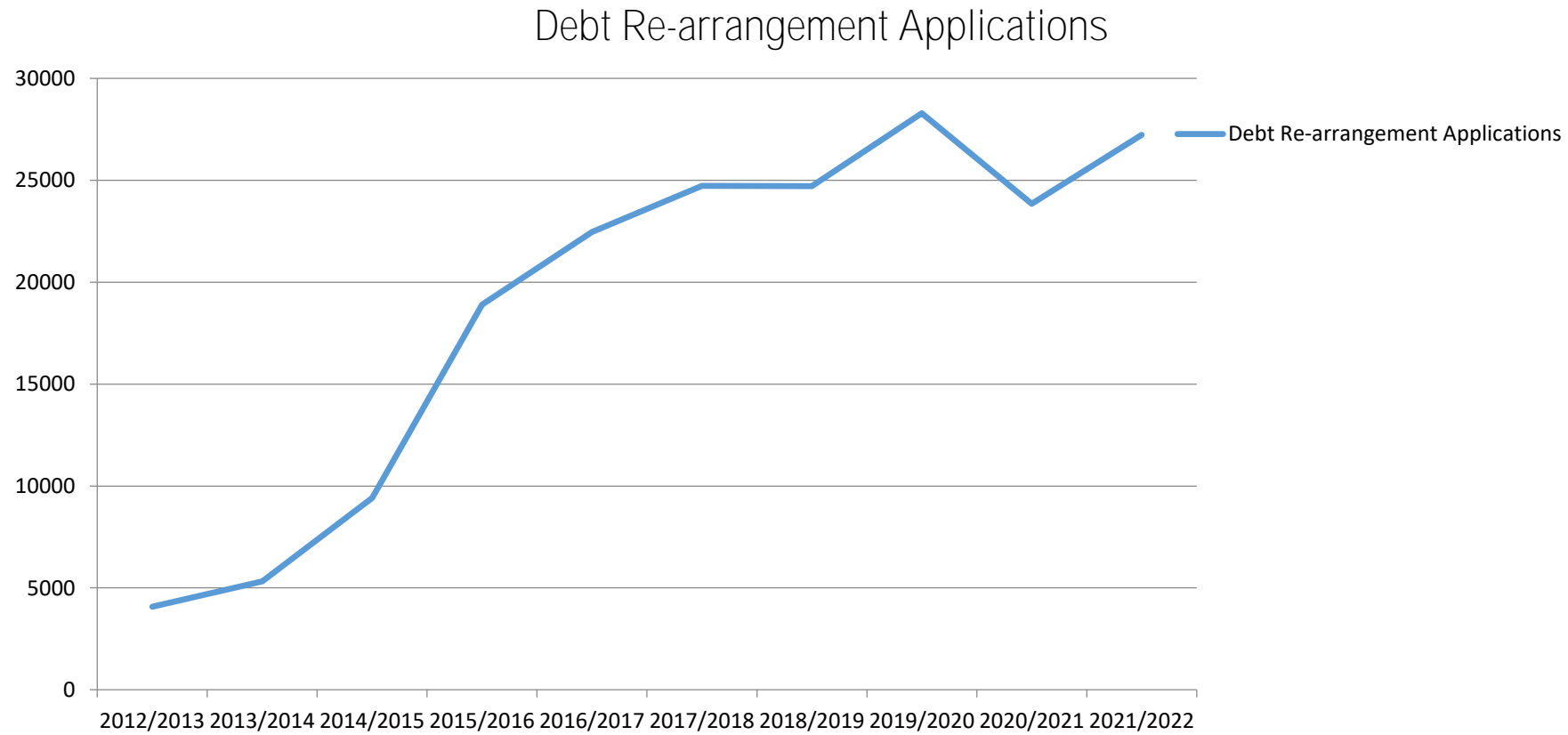
Debt re-arrangement agreements (DRA's)

- Currently, the Tribunal receives 30 000 DRA's per year. On average it adjudicates on 7087 Debt re-arrangement agreements per quarter with an average turnaround time of 29 days.
- The NCT has enhanced and developed a process on the Case Management System that allows Tribunal Members to adjudicate on 80 cases per day. The system has resulted in an exponential increase in efficiencies and cost savings.

Debt re-arrangement agreements (DRA's)

- A Debt Counsellor assesses the consumer's financial obligations. If the Debt Counsellor makes an assessment that a consumer is over-indebted, then the matter is referred to a Magistrate's Court with a recommendation.
- However, if the consumer is not over-indebted but is experiencing difficulties meeting their debt obligations, the Debt Counsellor sends a proposal to all the credit providers.
- If all the credit providers accept the proposal, then the Debt Counsellor files a debt-rearrangement agreement to be confirmed by the Tribunal. The Debt Counsellor negotiates a longer repayment plan and better interest rates for consumers.

Exponential increase in debt re-arrangements over the past 10 years



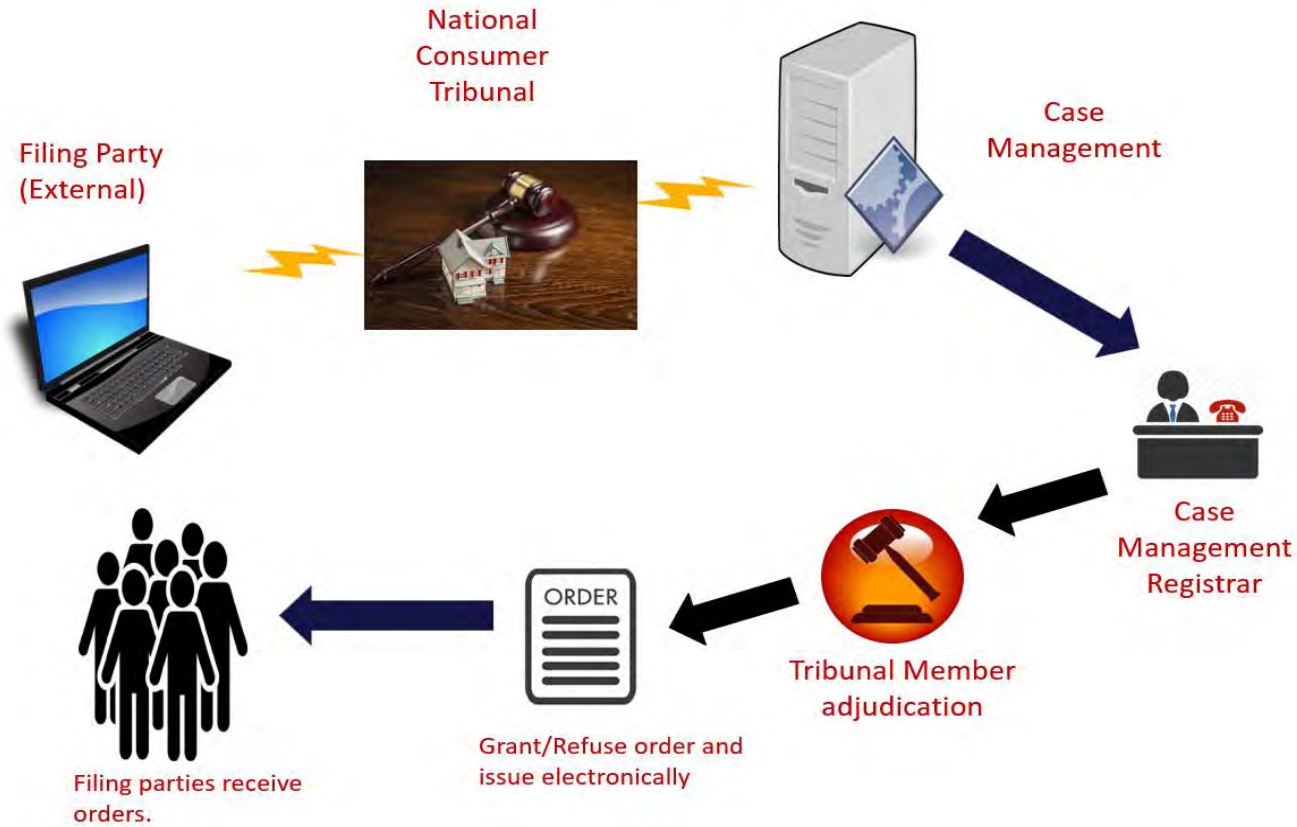
Constantly moving forward to provide greater efficiency and service delivery to consumers

- In 2008, the Tribunal held a hearing and finalised one debt re-arrangement agreement a day. Through research and interpretation of section 138 of the NCA, the Tribunal realised that these matters could be heard in chambers, and members considered 8 cases daily.
- From 2014 to 2016, there was a significant increase in the number of debt re-arrangement agreements filed with the Tribunal. This resulted in a backlog of over 20 000 cases. The Tribunal introduced motion courts in the various provinces to alleviate the backlog. The Debt Counsellors came to the motion courts with their cases and obtained their orders. In motion court, each member could adjudicate on 32 to 40 cases daily.
- During 2019/2020, the Case Management System (An IT system developed in-house) was enhanced to adjudicate the debt re-arrangement agreements differently. A change management process and training were offered to the Debt Counsellors and Tribunal Members using the system. The Tribunal Members finalised 80 cases per day as opposed to 40. Efficiency was doubled.

Efficiencies and cost savings on debt-rearrangement agreements

- In 2015/2016, the turnaround time on adjudicating debt re-arrangement agreements was 71 days. Currently, the turnaround time is 29 days. The turnaround time has therefore improved by 144%.
- The NCT has enhanced and developed a process on the Case Management System that allows Tribunal Members to adjudicate on 80 cases per day. The system has resulted in an exponential increase in efficiencies and cost savings.
- From motion courts to the Case Management system, the Tribunal is always looking for innovative ways to provide redress and to finalise cases as expeditiously as possible. Our strength is in our innovative thinking and digital capabilities. Motion courts worked but it was costly and moving onto the Case Management system meant that we can adjudicate on cases from wherever the Tribunal members are situated.

NCT Case Management/Adjudication business Electronic process



Debt –rearrangement agreements finalised



Debt- rearrangement agreements finalised

- From the graphs, it is evident that the Tribunal is passionate about its work and finalising as many of the debt-rearrangement agreements as possible in any financial year.
- In some years, the number of cases finalised is higher than the number of cases received. This is due to the carryover of cases from one financial year to the next. It also depends on the timing and when the cases were filed in the financial year. As per the Rules of the Tribunal, the Tribunal still has to wait for a period of 15 days from the date that a debt rearrangement agreement was filed to ensure that there is no opposition before the debt rearrangement can be adjudicated on.
- The Tribunal prides itself in ensuring that it does not have any backlog in its cases. We are here to serve and fulfil our mandate.

Our impact on the lives of consumers- *The success stories of debt review*



- Consumers have saved their homes and vehicles from being repossessed.
- Financial stress is reduced in families.
- Credit providers reduced interest rates significantly - often to 0% interest.
- Some trends are that very young consumers are entering into debt review. There may be a need for greater financial literacy.
- During COVID the NCT, due to its on-line Case Management System and ICT Infrastructure was able to immediately continue with its adjudication on debt-rearrangement agreements- not a day was lost- we never stopped working. Even during the hard lockdown, consumers were not prejudiced as their cases were being finalised.

Statistics relating to cases filed by the National Credit Regulator against Debt Counsellors and Credit Providers



Challenges in the debt review process

- Consumers apply under Section 165 of the NCA to have their consent orders that were granted by the Tribunal to be rescinded.
- The consumers' financial circumstances have changed, and they can now pay their debts. However, Section 165 does not apply under these circumstances, and the order cannot be rescinded. The Tribunal, through its judgments, has advised consumers that under these circumstances, nothing prevents them from paying off their debt earlier so that they can obtain a clearance certificate. The advantage is that in most cases it would be to their advantage as the revised interest rate would be much lower. Regulation 27 states that a Debt Counsellor must issue a clearance certificate. If a Debt Counsellor fails to do so, then the consumer can lodge a complaint with the NCR.
- Consumers do not fully understand the implications of going under debt review. They indicate that the process was not properly explained and that they want to get out of debt review. Before a matter is adjudicated on and an order issued, the consumer can still inform the Debt Counsellor that they do not wish to continue with the debt rearrangement agreement and the Debt counsellor must then file a withdrawal of the matter with the Tribunal.
- On issues pertaining to contracts that may not be understood by consumers, Section 64 of the NCA provides for a right to provide information in plain and understandable language. Section 150(i) of the NCA empowers the Tribunal to make an order to give effect to the rights of a consumer.

Challenges in the debt review process

- Out of approximately 1500 registered Debt Counsellors, the Tribunal only receives applications from about 198. The Tribunal is a more cost-effective route to follow as the application fee is R577. In the Intuitive PDA (Pty) Ltd v NCR matter the Tribunal noted that the NCA does not provide clear wording allowing the NCR to issue binding guidelines in relation to the Debt Counsellor Fees. It would appear that the Debt Counselling fees are the only fees not confirmed by Ministerial regulation.
- In Quarter 4 of 2022/2023- there was a total of 8017 debt re-arrangement agreements filed. The geographical breakdown of the Debt Counsellors that filed the applications are as follows:-
 - * Eastern Cape- 16
 - * Free State- 83
 - * Gauteng- 216
 - * Kwa-Zulu Natal- 5
 - * North West- 45
 - * Western Cape- 4900
 - * No province indicated 2752
- The Tribunal has put together an extensive outreach and education programme for the 2023/2034 financial year to reach out to the remaining 1302 debt counsellors to utilise our services. (through campaigns, advertising our services, meetings with Debt Counsellors and the DCASA, and providing training on the case management system)

Challenges in the debt review process

- The Tribunals powers are limited in that the Debt Counsellor can only file a debt re-arrangement agreement in instances whereby all the credit providers have agreed and only in circumstances whereby the consumer is not over-indebted.
- The appointment of additional Tribunal members will enhance and take our level of efficiencies to greater heights. The Tribunal is dedicated and committed to adjudicating on its cases as expeditiously as possible.

Thank You