The Citizen

Debt counselling industry in turmoil

SA'S DEBT-counselling industry, and the regulatory framework designed to oversee it, is in upheaval after the National Credit Regulator (NCR) announced that it intended to reject key industry codes of conduct.

03 December 2012 | Malcolm Rees

The move has come as a shock to key bodies in the industry, notably the National Debt Mediation Association (NDMA) and the Credit Ombud, which both appear to have been significantly undermined by the Regulator's decision.

The NDMA in particular was created by the credit industry
with the purpose of implementing the Credit Industry Code of Conduct to combat over-indebtedness through which credit providers made commitments to combat over-indebtedness.

Its very existence may thus be threatened by the decision.

Debt Mediation Association

Factions appear to have developed with insiders claiming that the Regulator has succumbed to lobbyist pressure exercised by a select group of debt counsellors which had their profitability threatened by the NDMA.

The codes had been signed by the previous management of the NCR following deliberations that took place under an NCR-headed task team early last year. CitiBusiness has also heard that there may have been "political interference" in the decision.

However, a number of debt counsellors have rallied in support of the announcement claiming that the codes biased credit providers and where designed to circumvent protections afforded to consumers under National Credit Act (NCA).

Proponents of the NCR decision have raised allegations of a conflict of interest. They claim that under the Codes, debt counsellors were dis-incentivised from routing-out instances of reckless credit as they are operating with the credit providers that appointed them to handle debt mediation.

Regulator's review

In a circular released to industry players in November the NCR stated that it had reviewed the Credit Industry Code of Conduct to Combat Over-Indebtedness, the Debt Counsellor's Code of Conduct for Debt Review and the Payment Distribution Agencies' Code of Conduct for Debt Review.

Citing a range of failures including contraventions of the NCA and the Constitution, the Regulator stated that it intends to "withdraw its approval of the codes" and "withdraw its recognition" of a number institutions regarding the "role they perform in terms of the codes".

These institutions include the NDMA, the Credit Ombud, the Debt Counselling Association of SA (DCASA) and the Payment Distributions Association of South Africa (PDASA).

“We have seen a sustained increase in the levels of indebtedness and the credit impairment of consumers and their accounts.

“We have also seen a significant growth in unsecured lending in a highly credit impaired environment and this is a serious cause for concern,” NCR company secretary Lesiba Mashapa told CitiBusiness.

“Our own investigations have uncovered evidence of significant reckless lending by credit providers contrary to their commitment to combat over indebtedness through the Credit Industry Code to Combat Over-indebtedness and obligations in terms of the NCA.

“In line with the rules of national justice and principles of administrative justice, the NCR has invited the industry to make written representations to it by 13 December 2012,” Mashapa said.

Ombud puzzled

Speaking with respect to the Credit Ombud, Mashapa said the Regulator has found that the Codes have conferred excessive jurisdiction on the Credit Ombud as this office now has jurisdiction through the Codes over matters falling outside of its jurisdiction in terms of the NCA. However, both the Credit Ombud and the NDMA have come out in strong opposition, even befuddlement, with respect to the announcement and intend filing objections to the Regulators intention. “What we are doing is fulfilling the mandate in terms of the codes which was approved by the Regulator; it was their code, which they drew up,” said the Office of the Consumer Ombud.
“The industry requested that they wanted us to extend our mandate and take up debt counselling complaints,” it said.

The office states further that “we are not breaching any section of the NCA as claimed by the Regulator”.

The Credit Ombud’s Office, known for its outspokenness on issues of consumer abuse, has also come out in fiery defence of the NDMA stating that it is a body headed by a committed CEO which has fought hard to provide cost-free relief to over-indebted consumers.

It has also hinted that the debt counsellors which had lobbied to have the codes withdrawn, which follows an August NCR decision to reject the Voluntary Debt Mediation Solution (VDMS), are acting out of a personal financial interest.

This is as the VDMS had provided free counselling to consumers while debt counsellors charge a fee in the region of R6 000.

“I cannot explain to you how upsetting it is, there were so many agreements in place … the NDMA was playing a huge role getting banks to sign concessions … the NDMA fights for the consumers,” said NDMA CEO, Magauta Mphahlele. “We obviously don’t agree with what they have put there.”

According to Mphahlele the NDMA has had a notable success in providing relief to over-indebted consumers and that the disbanding of the NDMA as well as the VDMS will leave a notable hole in the framework for debt relief.

She further argued that the reasons provided by the NCR for issuing the circular, notably that over-indebtedness and credit impairment has continued to worsen, is a matter which is out of the hands of the NDMA and is a result of adverse macro-economic conditions.

"The NCA is very clear that there should be dispute resolution that is an alternative to lodging a complaint with the regulator … those agents do not have to be recognised by the regulator … but what was good with this process is that you have a majority of credit providers that have agreed to act in a certain way … that is why our resolution rate is so high. "After you remove the VDMS, what alternative solution has been proposed," she asked.

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