Debt Counselling: What is it good for?

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Stanley Miller
Chief Executive Officer – Spectrifin Capital (Pty) Limited

Debt counselling was introduced by the National Credit Act in 2007. It was designed as an alternative to administration and sequestration as a remedy for over-committed consumers.

There are some counter-intuitive aspects to this piece of legislation. Firstly, there are costs attached to this process. There is an application fee, the debt counsellor's fee, legal costs and after-care fees. So an over-indebted consumer is now confronted with more financial stress!

In addition, the first month's instalment is paid to the debt counsellor (limited to a maximum of R6, 000); the second instalment is for legal fees; Creditors only get paid from month 3; and the debt counsellor still enjoys a fee calculated at 5% of the monthly instalment (limited to a maximum of R400) which is payable until all debts have been paid off by the consumer.

Classic story of the poor getting poorer!

If the consumer defaults on the payment arrangement then the credit provider may give notice to terminate the debt review process (at any time after 60 days since the date of application).

Further reasons for termination include the credit provider's non-acceptance of the debt restructuring proposal or in the event of any short payments.

When repayments fall into arrear the consumer is then faced with interest and collection costs.

The idea is to restore the financial stability of the consumer but in reality this is not happening. Debt counsellors appear happy to prolong the process as long as possible to derive the annuity income.

There is a chasm between the various debt counsellors in terms of skill and competence. Some deliver a quality professional service whereas others are not qualified and provide a sub-standard service.

Consumers are duped into believing that their debts will "go away". This is definitely not the case. The consumer remains responsible for the debt and the consumer must make sure that the debt counsellor is doing what he is supposed to be doing.

Counselling does not provide a "payment holiday". The consumer must keep payments up to date and intact or face potential legal action.

Some useful extracts from the National Credit Act and Regulations:

1. **What is debt counselling (Section 86)**

- It is a process that is intended to help restructure the debt obligations of consumers who cannot pay their debts.
- A consumer will have to involve a debt counsellor who will negotiate this restructuring with the various credit providers.

2. **How can a consumer access debt counselling services**

- Voluntarily: A consumer may approach a debt counsellor if he feels that that he can no longer afford to pay his debts.
- Referred by a Credit Provider (Section 129): The Credit Provider must provide the consumer with written notice that he is in default. This letter will also inform the consumer that he has the right to approach a Debt Counsellor for assistance.
- Referred by a Court (Section 85): If a court finds that a consumer is over-indebted it can refer him to a Debt Counsellor.

3. **What is over-indebtedness (Section 79)**

- When a consumer does not have the means to meet all his debt obligations at the end of a month.

4. **How does the Debt Counsellor perform this assessment**

- Obtains copies of all loan agreements.
- Checks for over-indebtedness.
- If the assessment concludes that the consumer is over-indebted then a debt restructuring process begins.
- The Debt Counsellor also assists the consumer with basic financial planning skills such as drawing up a budget.

5. **What is debt restructuring (Section 86)**

- A process where a Debt Counsellor reviews a consumer's credit agreement and re-schedules the payments.
- The Debt Counsellor will make a proposal to all credit providers.

- The Debt Counsellor will attempt to get all the parties involved to agree on the proposal.

6. The effects of debt restructuring

- Once a consumer is placed under debt review, credit providers may not take any legal action against the consumer.
- The consumer is not allowed to apply for or receive more credit.
- A consumer MAY apply for a consolidation loan.
- If the consumer fails to make payments in terms of a restructuring agreement he will then be removed from the debt review process and credit providers may immediately take legal action.

7. Clearance Certificate (Section 71)

- A consumer who has settled all his debt in terms of a restructuring arrangement must receive a clearance certificate from the Debt Counsellor.
- The certificate will allow the consumer's credit record held by a credit bureau to be cleared.

In short, rather approach your credit providers directly to make repayment arrangements. Explain the cash flow difficulties you're having and make a plan with them. They will be receptive to your dilemma and willing to assist.