The **mission of the Black Sash** is to work towards a South Africa in which
- human rights are recognised in law and respected in practice;
- the government is accountable to all its people and attends to their basic needs;
- members of society (individuals and the private sector) also take responsibility for reducing inequality and extreme poverty;
- the constitution is upheld by all; and
- social and economic justice is recognised as fundamentally important.

Our belief is that through individual and collective non-violent action, people have the power to change their own situation and impact on society as a whole.

Our aim is to enable all, with the emphasis on women and children, to recognise and exercise their human rights, particularly their social and economic rights; and to create a society which has effective laws and delivery systems, including comprehensive social protection for the most vulnerable.

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DEBT AND CREDIT:
A REFERENCE GUIDE FOR PARALEGALS

BLACKSASH
MAKING HUMAN RIGHTS REAL
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What is the National Credit Act?

The National Credit Act, No. 34 of 2005, came into effect on 1 June 2007. It applies to all of a person’s debts, including those that started before this date. The Act recognises that there are times when people need to borrow money – that is, that they need to get credit from credit providers. The Act aims to create a fair non-discriminatory environment in which people borrow and lend money while at the same time guarding against people being leant money when they cannot afford to pay it back.

The National Credit Act refers to borrowers as consumers and says that they should be assisted and protected in the following ways. They should be
- provided with information in a language they understand so that they may make informed decisions about borrowing money,
- protected from getting into too much debt,
- assured that credit providers follow the law when providing services to them,
- assured that their personal information will remain private (confidential), and
- given help with their debt management.

(The National Credit Act repeals the Usury Act of 1968 and the Credit Agreements Act of 1980 and the Exemption Notice.)

Purposes of the Act

The purposes of the National Credit Act are:
- to promote and advance the social and economic welfare of South Africans, promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market and industry, and to protect consumers, by
  (a) promoting the development of a credit market that is accessible to all South Africans, and in particular to those who have historically been unable to access credit under sustainable market conditions;
  (b) ensuring consistent treatment of different credit products and different credit providers;
  (c) promoting responsibility in the credit market by
    (i) encouraging responsible borrowing, avoidance of over-indebtedness and fulfilment of financial obligations by consumers; and
    (ii) discouraging reckless credit granting by credit providers and contractual default by consumers;
  (d) promoting equity in the credit market by balancing the respective rights and responsibilities of credit providers and consumers;
  (e) addressing and correcting imbalances in negotiating power between consumers and credit providers by
    (i) providing consumers with education about credit and consumer rights;
    (ii) providing consumers with adequate disclosure of standardised information in order to make informed choices; and
    (iii) providing consumers with protection from deception, and from unfair or fraudulent conduct by credit providers and credit bureaux;
  (f) improving consumer credit information and reporting and regulation of credit bureaux;
  (g) addressing and preventing over-indebtedness of consumers, and providing mechanisms for resolving over-indebtedness based on the principle of satisfaction by the consumer of all responsible financial obligations;
(h) providing for a consistent and accessible system of consensual resolution of
disputes arising from credit agreements; and
(i) providing for a consistent and harmonised system of debt restructuring, enforcement
and judgment, which places priority on the eventual satisfaction of all responsible
consumer obligations under credit agreements.’

How you can use this guide

What this guide offers
This reference guide is part of a series of guides for paralegals and other people providing
advice in respect of socio-economic rights.

It will assist you to
• use the National Credit Act to better inform people about their rights
  and responsibilities when they borrow money
• advise people on debt and credit-related matters
• assess a person’s financial situation

It will also provide you with information on
• over-indebtedness
• court orders
• the role of debt counsellors
• credit agreements and the responsibilities of consumers and credit providers
• negative listings and the role of credit bureaux

It focuses on these issues as it assumes that these will be your clients’ main concerns.

What this guide does not offer

• This guide does not provide a comprehensive summary of the Act. However an
  overview of what is included in the Act is given in Appendix A and a glossary of
  definitions as used in the Act is given in Appendix B.
  (If you have access to the Internet, a copy of the Act can be found at
• This guide is not a training manual for debt counsellors. Debt counselling can only
  be conducted by trained and registered debt counsellors, whose training must have
  been authorised by the National Credit Regulator. While some paralegals may be
  registered debt counsellors, those who are not trained and registered in this way may
  not claim to be debt counsellors and may not charge for their services. If you are a
  skilled mediator or arbitrator, you could be an alternative dispute resolution agent,
  according to the Act. This guide indicates where this role can be played.
• This guide does not include lists of credit bureaux or of debt counsellors. These can
  be obtained from the National Credit Regulator. We encourage you to keep a list of
  reliable bureaux and counsellors operating in your area, so that you can refer your
  clients to those with a reputation for good service.

Case studies
Case studies and examples are used in a number of places in this guide to illustrate the kinds
of issues that may arise and how they could be handled. Examples of forms or letters are
also included. While they draw on the Black Sash’s experience, none of the case studies or
examples refers to real people.
1.1 The role of paralegals

In terms of working with debt and credit, we understand the roles of paralegals to include the following:

- to educate clients about their rights and responsibilities as consumers
- to educate clients about credit bureaux and the various consequences of being over-indebted
- to educate clients about planning and managing their finances
- to assist clients to budget and better manage their financial circumstances
- to advise clients to use services and resources that are accessible and affordable (and sometimes free) that would save them money
- to empower clients to act for themselves, on the basis of information and planning
- to assess the extent of client’s indebtedness and to outline options for resolving their problems – and to advise them where appropriate
- to negotiate with credit providers where appropriate before referring clients to debt counsellors
- to refer clients to debt counsellors
- to liaise – or support clients to liaise – with credit bureaux, and various bodies like the Credit Bureau Association and the National Credit Regulator
- to monitor the compliance of debt counsellors and the courts with the National Credit Act – with a view to protecting and promoting clients’ rights through
  - reminding clients of their rights; and/or
  - gathering evidence for advocacy work; and/or
  - reporting irregularities to the National Credit Regulator (see appendices C and D)

1.2 Steps to take

Before the client arrives

1. Before the meeting with your client, make a photocopy of all the client record sheets (on pages 45-50) that you will complete and that will go into the client’s file. Also copy the information sheets (at the end of chapters 5 and 7 on pages 29 and 41) so that you can send them home with your client.

Introducing yourself and your work

2. Start by telling your client what you can and cannot do to help them.
   - You can help them assess their budget and plan how to manage their money – and can work out how to sort out any debts they may have.
   - You can help them understand the different legal actions that may have been taken against them – and the bodies (like credit bureaux and the courts) that may be involved
   - You can advise them of their rights and responsibilities and support them to claim these rights and enact their own responsibilities.
   - Also tell them that while some credit providers may be happy to talk with you about your client’s debt, some will choose only to work with debt counsellors, and may not want to talk with you.
   - Explain the difference between the role of paralegals and of debt counsellors. Explain that while you may be able to help them with many aspects of their situation, you may not make a recommendation to the court to declare your client over-indebted so that their debt can be re-scheduled by court order, as you are not a registered debt counsellor.
   - You can refer your client to reputable debt counsellors as well as to the other
institutions that govern the National Credit Act.

3. Tell the client that the information you will be asking for and writing down is important for addressing their situation properly – and that some of it may be quite detailed. Explain that you will be filling in the record sheets so that you don’t forget anything.

4. Tell the client that if they want you to act on their behalf, that you will need them to sign a statement to give you permission to do this. If they want you to act for them, have them sign your authorisation letter or statement (an example of which is given in Appendix E).

5. Tell the client that they can arrange a second meeting to follow up their case. They can also phone you later to give you any missing information or can bring additional documents to the office.

**Keeping a client record**

5. The client record sheet 1: Debt and credit overview is where you will keep a summary of all the information about your client. You can attach your own extra notes, if this is necessary.

6. Start by completing the ‘client’s basic information’ section so that you have their full name and contact details.

7. Ask the client to tell you why they have come to the advice office. Allow the client to tell their story in their own words and make notes on a separate piece of paper.

**Getting all the details**

Now go through and complete the rest of the Debt and credit overview to check that you have all the information you need to assist your client.

8. Debt information: If the client has borrowed money, record all these details on the client record sheet 3: Debt information. Ask the client to give you copies of any accounts or documents they may have brought with them. If they have received any documents but not brought them with them, ask them to bring them to the next meeting, so you can be clear about the situation.

9. Budget information: It may be useful to draw up a budget to assess the client’s actual financial situation so that you know what resources there are for realistic solutions to the problem. Use the Budget record sheet 4 to draw up a monthly budget and the client record 5: Household expenses to assist in budgeting (on pages 49 and 50).

10. Assessment of the credit providers’ actions: Look at whether the correct processes were followed and record all these details in the section on Assessment of credit providers’ actions. Check the documents (letters/demands/summons etc) they have brought with them. Again if they have received documents but not brought them with them, ask your client to bring them to the next meeting, so you can be clear about the situation. You cannot act until you have seen what their situation is.

11. Find out whether the client has a recent credit report from a credit bureau. If not, advise the client how to get a copy – or assist them to do so (see Chapter 6). If necessary, check if the information they have on your client is correct – and if so if the credit bureaux are complying with the Act. Record all these details in the section on Assessment of credit bureaux actions. (See Checklist 4: Credit bureaux on page 39.)
Dealing with debt queries

12. If your client is having trouble paying back their debts, you will have to assess how serious their situation is. This must include assessing the payments they are still making, or should be making. (See Chapter 2: Owing money and being in debt.)

13. If you think that they are over-indebted or that a credit provider may have been reckless in granting credit then they will need to see a registered debt counsellor. If you are not registered as a debt counsellor, you must refer your client. (See Chapter 3: Debt counselling.)

14. If your client has received a written notice (letter of demand) from the credit provider, check if proper procedures have been followed (Checklist 1: Written notice on page 11). It is very important for your client to respond to a written notice. It is still not too late for them to negotiate with the credit provider or to see a debt counsellor.

15. If legal action has been taken against your client (see Chapter 4: Legal proceedings), check if legal procedures have been properly followed and advise your client how to respond. This could include your helping the client to respond to the allegations. (See Checklist 2: The consent to judgment and the summons as well as Checklist 3: Court orders – on pages 22 and 23.)

16. If your client has been treated unfairly or unlawfully in any way and they want you to act on their behalf, check that you have the client’s permission in writing (by having them sign your standard authorisation letter mentioned above – example in Appendix E) to pursue this with the suitable institutions. (Relevant institutions and their contact details are given in Appendix C.)

17. If there have been no faults in the process, start to work with the client on possible solutions to their situation. You need to find out what resources and ideas the client may have to solve their problem. Your advice will be important in helping them to exercise their rights and to think of constructive ways of finding solutions.

Dealing with credit queries

18. The client may have come to see you because they want to buy something on credit but first want to understand the contract. (See Chapter 5: Getting credit: Contracting with a credit provider.) Assist them with understanding how contracting works, as well as the implications for them of getting into debt.

19. The client may have come to see you because they are having difficulty getting credit. Your client has the right to know the reasons for being refused credit. (See Chapter 5: Getting credit: Contracting with a credit provider.) You may need to follow this up with the credit provider or credit bureaux. (See Checklist 4: Credit bureaux on page 39.)

20. Based on the budget you have drawn up and the debt your client has already, you may need to advise your client as to whether you believe they are eligible for credit, and whether it would be wise for them to borrow money. This would take into account all their expenses and debts and whether they would be able to pay their debts.
Finding a way forward
The client record sheet 2: Contact and action is where you will keep a summary of your plans and all actions taken.
21. Summarise what the main issues are and what your action plan is and fill these into the Contact and action sheet.
22. Be clear about what each of you will do. Take care to remember the limitations of what you can achieve - and remind the client of this.
23. Make sure you have written the contact details of the credit providers who you may need to contact on the Debt information sheet (client record 3).
24. Decide on whether you need to meet or speak to one another again and make arrangements for this.
   This may end the first meeting with the client.

Follow up
25. After the client has left, follow up the things you agreed to do and record each step and their outcomes on the Contact and action sheet.
26. You may see and/or speak to the client a number of times, either in a meeting or on the phone. Record the main messages of each contact on the Contact and action sheet.

Concluding the case
27. When you have given all the help you can and the issue has either been resolved or has been taken up somewhere else (e.g. with a debt counsellor) make a note at the end of the Contact and action sheet describing how the case ended.
2. Owing money and being in debt

2.1 Why clients get into debt
People borrow money for a variety of reasons. These include
- to pay for regular monthly expenses – like rent, transport etc.
- to manage emergencies – like illness or death
- to pay for occasional big expenses – like school fees and car maintenance
- to buy furniture or build onto one’s house
- to buy a car or other big, expensive item
- to start a small business
- to pay back existing debts
- to buy luxuries or pay for entertainment they cannot afford

When people borrow more than they can pay back, they can get into difficulties. This can also happen when people
- buy things after being tricked by enticing adverts which don’t tell the full story,
- take up offers of credit which is given without any questions being asked (but often have very high interest rates),
- borrow money from one credit provider to pay off all their other debts (‘debt consolidation’) but then use this money for other things and do not pay their debts,
- borrow money under false pretences (e.g. ‘proven emergency’) knowing they cannot pay it back.

2.2 Assessing your client’s financial position
A client may seek advice to help them understand their financial situation so that they can manage their debt. They may either already be in difficulty or are thinking about how they can avoid a problem.
It is useful to start by finding out about your clients’ debts. (Use the client record sheet 3: Debt information.) Then it is important to draw up a budget which lists all the client’s monthly expenses and all their monthly income. Use the client record sheet 4: Budget and 5: Household expenses to assist in budgeting.

From this information you can work out whether they earn more than they spend, or the other way around. If the client’s regular expenses are more than their income, they are not in a good financial position. You must now assess what plan can be made to pay off existing debt and to avoid their falling deeper and deeper into debt.

2.3 Your client may find it difficult to pay their debts
People get into difficulty paying back the money they have borrowed for all kinds of reasons – some of which are mentioned above. When someone does not make the monthly payment they agreed to when signing a contract, this is called defaulting. Your client may be having trouble paying back their debts. In this case, you will want to help your client to
- budget, plan and manage their finances better; and
- plan to pay off their debts.
If your client does not have many debts and no legal action has been started against them, it should be possible for your client to make a plan without the involvement of the courts.
You should advise and support your client to see their credit providers as soon as possible to arrange to pay their remaining instalments in an easier way. You could offer to approach the credit provider on their behalf (with their written consent). If, however, the credit provider prefers to deal with a debt counsellor (and you are not registered as one), you will have to refer your client to a debt counsellor. We encourage you to develop a list of registered debt counsellors operating in your area, so that you can refer your clients to those with a reputation for good service.

If your client is unable to pay the instalments on even one of their debts, they will need to see a registered debt counsellor. The debt counsellor will do a debt review and, if they find your client to be over-indebted, they may be able to get legal relief from the court so that your client can pay off the debt in a manageable way.

2.4 What happens to clients when they stop paying

1. Monthly statements are sent to the client, showing the amount they owe. When they have not paid, it also shows how overdue the payment is (e.g. 60 days). At this stage, more interest begins to be added to the amount owing.

2. Usually after 120 days, the consumer gets sent a letter of demand - or what is called a ‘written notice’ - in the post. This letter is a warning that the credit provider intends taking your client to court unless they agree with the credit provider’s demands. It says what the credit provider wants, and gives the consumer a certain number of days to do it. (See 2.5 below for more detail.) After this, if the consumer still does not pay, or does not make an arrangement with the credit provider to pay, a number of things could happen.

3. Firstly their account may be ‘handed over’ – which means that it is given to the company’s internal debt collection department or an external debt collection agency for ‘recovery’ – i.e. for them to get the money from your client. This department or agency will send a first letter to your client which warns them that there will be legal proceedings if they do not pay what they owe within 20 days. Both interest and a fee are likely to be added to the account at this stage. It is still possible for your client to talk with the debt collector and make an arrangement to pay the amount they owe, however – and you should encourage them to make a plan to do this, if they haven’t already done so. The plan should be realistic and they should intend to stick to it – otherwise they will end up in the same difficulty again. If the consumer ignores the debt collector’s letters, legal action will start.

Legal proceedings are addressed in detail in Chapter 4. The diagram below maps what they could entail, however. The credit provider may not begin any legal proceedings

• until 10 working days have passed since delivery of the written notice and your client has been in default for at least 20 working days, and
• while your client is working with a debt counsellor, an alternative dispute resolution agent or the court.

It goes without saying that trying to address the problem before it gets to the courts gives your client a better chance of the credit provider re-structuring their debt in a way that is manageable. It also means they avoid having an extremely negative credit record at the credit bureaux.
Your client may have received a written notice

When a consumer defaults on their payments, the first thing the credit provider will do is send a written notice or a letter of demand. If your client has received a written notice, use checklist 1 on page 11 to check that all processes were followed correctly. In the written notice, the credit provider must

- inform your client that s/he has defaulted on the payments, and
- ask that your client pays the money that is owing, and/or
- propose that your client consults a debt counsellor or another agency so that a plan can be made to bring the payments up to date.

You should advise your client never to ignore a written notice from their credit provider. Encourage them to talk with their credit providers to arrange to pay their unpaid instalments or to see if it is possible to make payments in a more manageable way. You can support your client to do this themselves, or you can do it for them, with their written consent. If you do contact the credit provider, state clearly in writing that you are acting on behalf of your client or could act as an alternative dispute resolution agent if they agree that you play this mediating role.

However, you should recommend that your client applies for a debt review from a registered debt counsellor if

- the credit provider prefers to deal with a registered debt counsellor (and you are not one), or
- the case is complicated – you suspect there may have been reckless lending or that your client may be over-indebted.
**2.6 Your client may be over-indebted**

Your client will be considered to be over-indebted in terms of Section 79 of the Act if, at the time that an assessment is made, they are unable to pay the instalments

- on all their debts,
- by the deadlines, and
- without borrowing more money.

Only the court can declare your client legally ‘over-indebted’. The court will usually do this on the recommendation of a registered debt counsellor. If the debt counsellor does not believe your client is over-indebted, s/he must reject your client’s application to have the debt rescheduled.

If the debt counsellor assesses that your client is over-indebted, s/he can reach an agreement with the credit providers to whom your client owes money. S/he can also propose to the court to

- declare that your client is over-indebted, and
- make an order to relieve their situation.

In addition, s/he can propose that the court assesses whether any of the credit agreements have been reckless.

**2.7 Your client’s credit agreements may have been granted recklessly**

Under the Act, credit providers have a responsibility to make sure that a consumer can afford to pay back the new debt. Credit may have been granted ‘recklessly’, if

1. the credit provider did not do all of the following before offering credit:
   - check the consumer’s personal income,
   - check the income of any financial partner(s) within the family or household,
   - check the expected future income of their business, and
   - assess whether they can make timely repayments according to their financial means - or

2. the credit provider did the assessment but nonetheless granted credit even though the outcome of the assessment was that the client could not afford to pay back the debt and would become over-indebted – or

3. it was clear that the consumer did not understand the costs involved in the agreement.

In order for the credit provider to make a complete assessment, the consumer is expected to give the credit provider the information they need so they can cross-check this with the credit bureaux or other sources.

Only the court can declare a situation of ‘reckless lending’ which is usually done on the assessment and recommendation of a registered debt counsellor. The court will only act in a case of reckless lending if the consumer has been declared over-indebted.

The court may suspend or re-arrange a credit agreement (whether recklessly granted or not). In addition, where the client is over-indebted and the credit has been granted recklessly, the court may choose to cancel the debt.
Ms Adams has just finished her studies to become a teacher and still has some student loans to pay. In order to get a good job she wants to make a favourable impression during her interviews, so she wants to buy some smart new clothes. She goes to the clothing store and asks them if she can open an account. The customer service department gives her a form to fill in which asks for her personal details as well as how much she earns. She explains that she does not have a job yet. However, the customer service department tells her not to worry as she will be sure to get a job within the month and then will be able to pay the monthly instalments.

Even though Ms Adams knows she will have no money if she does not get a job, she decides to take a small loan from the store and opens the account. She buys clothes for R1,000. After three months, Ms Adams still does not have a job. She now has her study loan, clothing account and a micro-loan to pay and she is very worried. She goes to the Black Sash advice office to see what she can do.

The Black Sash paralegal thinks that Ms Adams was granted credit recklessly because Ms Adams had clearly explained to the store that she did not yet have a job. He explains what this means and gives Ms Adams the name of a reputable debt counsellor.

According to the Act, certain loans cannot be grounds for reckless credit, however. In these cases a credit provider does not have to check the ability of the borrower to pay back debt when making these kinds of loans:
- student loans
- proven emergencies
- public interest
- a pawn transaction
- an incidental credit agreement
- temporary increase in credit limit under a credit facility

Checklist 1. Written Notice

When a consumer defaults on their payments, the first thing the credit provider will do is send a written notice, sometimes known as a letter of demand (under Section 129(1)).

What to do if the client has received a written notice (letter of demand)

1. Check if the ‘amount owing’ as stated on the letter is correct.
2. If there is a mistake, you or your client should immediately contact the credit provider in writing to correct the information. It will be important for the client to show all the receipts to prove what has been paid.
3. If there is not a mistake, advise the client to pay the amount owing, if this is possible.
4. If they cannot pay, they should speak to the credit provider and arrange to pay the money they owe in manageable instalments. If the credit provider and your client agree to this – and you feel able to - you may be able to assist with this process as an alternative dispute resolution agent. If the credit provider insists that your client sees a debt counsellor, they should do so. This is also advisable if your client may be over-indebted or if reckless lending may have taken place.
5. Warn your client not to ignore the written notice/letter of demand. If they do so, they are likely to receive a summons.
6. The credit provider may not begin any legal proceedings
   - until 10 working days have passed since delivery of the written notice and your client has been in default for at least 20 working days, and
   - while your client is working with a debt counsellor or alternative dispute resolution agent, consumer court or the ombudsperson with jurisdiction.
3. Debt counselling

3.1 What is debt counselling?
The idea of debt counselling is to give people an opportunity to pay back the money they owe through an agreed, legal process, rather than wait until there are more severe consequences - like being called to court or having their goods repossessed. Debt counselling can also assist a consumer if credit has been granted to them recklessly.

• Anyone may apply to a debt counsellor for a debt review.
• In some cases, the magistrate’s court may instruct someone to see a debt counsellor to assess if they are over-indebted before making a court order with respect to their case.

3.2 Who can be a debt counsellor?
Debt counsellors assist consumers who may have become over-indebted as a result of entering into credit agreements. They are independent agents who have been given the authority to help people sort out their debts, including representing them in court on certain matters like restructuring debt or cases of reckless lending.

Anyone can apply to be a debt counsellor - but they need to do two things before they are allowed to practise as one. They

• must have successfully completed accredited training; and
• must be registered as a debt counsellor with the National Credit Regulator (who will include them on their database).

As debt counselling may only be done by people who are formally trained and registered by the National Credit Regulator, you must not claim to be a debt counsellor, nor may you charge for your services if you are not properly registered, as it is illegal to do so.

The Regulator will act against a counsellor if they find they have behaved in a manner that is irregular or does not comply with the National Credit Act. For instance they must

• treat the consumer’s information as confidential; and
• act professionally and reasonably by providing debt counselling services in a manner which is fair, non-discriminatory and does not bring dispute between the Regulator and themselves.

3.3 How to refer someone to a debt counsellor

3.3.1 Process
You first need to ask the client to choose a debt counsellor. Ideally you should have an up-to-date list of the counsellors, or counselling companies, taken from the Regulator’s website (– choose ‘Register of Registrants’ and then ‘debt counsellors’). If you are in a city there may be a counsellor conveniently situated for your client – but in smaller towns finding a debt counsellor can be more difficult.

• Where there is no debt counsellor anywhere near where your client lives, ensure that your list of debt counsellors is up-to-date (by checking on the website of the National Credit Regulator www.ncr.org.za); and if there is no-one nearby, contact the Regulator for their advice.
Also contact the nearest Black Sash regional office (listed on the inside back cover of this guide) to let us know of the lack of a debt counsellor. We are assisting the National Credit Regulator by compiling lists of areas where there are no counsellors, so that they can recruit, train and register counsellors in these places.

As counsellors are paid for their services (see below), you should take care to offer your client a choice (where this is possible) so that you are not thought to have a financial relationship with any particular counsellor.

Secondly you should give your client a referral letter, as well as copies of any budgets or summaries you have made of the client’s situation, so that the client can give this to the debt counsellor who may choose to use this information instead of doing it again.

This is a sample of a referral letter:

[Organisation’s letterhead / name and address]

Dear (name of Debt Counsellor)

[Insert name of client] has consulted our offices about their current debt situation. We have advised them to consult you as we are not qualified as debt counsellors and cannot provide the kind of service they require to resolve their situation.

Please note that because their income is less than R2 500 per month, they may qualify for the subsidy granted by the National Credit Regulator for your consultation fees. We have referred them to you on the understanding that they will not incur further expense in having their matter addressed by you. If this is not applicable, please advise them before you work with them and make suitable arrangements.

Thank you.

3.3.2 Payment

Debt counsellors charge fees as they are not employed by the government or any company and earn their income by working independently.

However in order to make this service affordable to people who earn less than R2 500 a month, the debt counsellor’s fees are subsidised by the National Credit Regulator. In this case while it is possible that your client may have to pay only a small initial fee, they may not pay a fee at all if they cannot even afford this. In order to apply for a subsidy, your client must notify the debt counsellor of their monthly income – and the debt counsellor will apply on their behalf.

For people who earn more than R2 500 a month, the amount of the fee depends on the number of accounts they have and how much is owing.
3.4 What the debt counsellor will do

The debt counsellor will conduct a debt review – by looking at your client’s total income and expenses (including their debts repayments) to determine whether or how the client is able to repay their debts. They will charge a fee for the service. The debt counsellor will inform the credit providers and all registered credit bureaux (within five working days) that this review is taking place, and must

- determine within 30 days whether your client is officially over-indebted or not;
- assess if there has been reckless lending; and then
- make a proposal to the magistrate’s court (if they believe your client is over-indebted):
  - that the court declares your client over-indebted;
  - that the court declares that there has been reckless lending (if the debt counsellor believes this to be the case);
  - that the court orders some form of relief for your client by changing the way repayments are to be made (it restructures the debt).

The debt counsellor will take responsibility for managing your client’s payments if the debt is restructured by the court. This is referred to as ‘being under debt counselling’.

3.5 When your client is under debt counselling

When your client is under debt counselling, the following must happen:

- Your client must pay the debt counsellor an agreed monthly amount to pay towards their debts.
- The debt counsellor will pay the creditors each month according to the agreement made in court.
- Your client may not borrow any more money until all the debts are paid off.
- Your client’s situation will be listed at credit bureaux. This ensures that no-one lends your client money until their debts are fully paid.

3.6 When your client has paid all their debts

When your client has paid all their debts:

- the debt counsellor must give your client a debt clearance certificate; and
- your client should ensure that the debt counsellor sends the certificate to the credit bureaux; and
- the credit bureaux should remove the fact that your client has been in debt from your client’s credit record as well as take your client’s name and information off their lists of people who have been under debt counselling.

Your client should also check that their record at the credit bureau has been cleared by requesting that a copy of their record be sent to them (see Chapter 6 on how to do this). If it has not been cleared, they should ask the debt counsellor to intervene to put it right.

A copy of debt clearance certificate is in Appendix F.
CASE STUDY: Ms Siswe goes to a debt counsellor

Ms Siswe, a single parent, works as a domestic worker earning R900 a month. Every month she also gets R200 for maintenance from the father of her two children making her total income R1,100 per month. Ms Siswe’s expenses are R1,660 per month. She has come to the Black Sash advice office as she is unable to pay all her debts on time. She is particularly worried as she has just received a written notice from a clothing store to say she is behind with her payments.

After making a list of her debts and drawing up a budget with her, you can see why Ms Siswe is worried. She is behind with repaying the micro-lender, a furniture dealer and the clothing store where she has an account - and has no way to pay back the debts except to take out more loans. She is tired of all this debt and is very afraid that she will be taken to court by the clothing store.

You discuss her options together. She can go and see the people she owes money to and ask for a change in the repayment terms so that she can pay smaller amounts over a longer period - but she is not sure that they will listen to her. She does not want to go to court or be negatively listed at the credit bureaux, however.

You believe she may be over-indebted and so you advise Ms Siswe to apply to a registered debt counsellor to have her debt reviewed. You give her the details of a local reputable registered debt counsellor - and she makes an appointment to see her.

Ms Siswe explains her situation to the debt counsellor, Ms Abrahams. Ms Abrahams does a debt review by asking about all her debts and her income – which she then assesses. Ms Siswe is glad that she had thought about this at the Black Sash advice office and gives the counsellor a copy of her budget and list of debts.

Ms Abrahams agrees that Ms Siswe is over-indebted according to the Act, and makes calculations of new repayments that Ms Siswe can afford. They agree that Ms Abrahams should first approach the credit providers to try to reach informal debt rearrangement agreements with them. She does this, and while the micro-lender and the clothing store agree to new terms, the furniture dealer does not want to do this – so Ms Abrahams arranges to go to court.

The court declares Ms Sizwe over-indebted and orders that the debt be restructured. Ms Sizwe is told that she may not borrow any more money until this debt has been paid off. She understands that the credit bureaux will have a record of her financial situation on their records until she has paid off her debts.

Every month, she gives Ms Abrahams the agreed amount of money and the debt counsellor pays this money to her credit providers. After many months, Ms Siswe has paid all her debts and she receives a debt clearance certificate from the debt counsellor to prove that she has finished paying all her debts. As she doesn’t want her negative listing to remain on the record of the credit bureaux, she follows Ms Abrahams’ advice and applies to have this information removed from the credit bureaux’ records.

Although it is hard with so many expenses to take care of, Ms Siswe now uses her budget to plan her spending. She is saving a little every month so that she can afford to travel to see her mother at the end of the year and can pay for school uniforms and stationery in January. By saving, she hopes not to get into so much debt again.
Legal proceedings involving debt are always civil claims (rather than criminal ones). The two sides in a civil claim are called ‘parties’. The party making the claim is the plaintiff and the party who is being claimed from – that is, being ‘sued’ - is called the defendant. In a civil claim related to debt and credit, the party who has lent money to another party (a credit provider or plaintiff) claims what is owed to them from the person who borrowed the money and who has not paid it back as agreed (the consumer or defendant).

The aim in a civil claim is for the plaintiff to prove to the court that their case is ‘more likely’ than the case made by the defendant. They must prove this on a ‘balance of probabilities’. This is different from a criminal case where the case has to be proved ‘beyond reasonable doubt’.

Civil claims involving debt are first heard in a magistrate’s court – and both parties usually need a lawyer to draw up papers for them and to represent them. In the case of a dispute about a debt, a debt counsellor can appear on a consumer’s behalf on some matters – but a paralegal does not have this right.

The credit provider will lose the right to make a claim against your client if they wait too long. This limited period of time in which they must claim their money is called the prescription period. So before your client signs an acknowledgement of debt - i.e. a document saying that they agree they owe the money - it is important that they check the time period in which this money could be claimed from them. If the debt ‘has prescribed’, then they will not have to pay it – but by signing the acknowledgement of debt they make the debt ‘live’ again.

4. Legal proceedings

4.1 The start of legal proceedings
The credit provider may only begin legal proceedings against your client
• after 10 working days have passed since delivery of a written notice, and
• once your client has been in default for at least 20 working days.

The credit provider may not begin legal proceedings while your client is working with a debt counsellor, alternative dispute resolution agent, the court, or any of the institutions set up under the National Credit Act.

To begin legal proceedings, the credit provider can either
• ask the consumer to sign a consent to judgment, or
• issue a summons.

4.2 What preparation can be done
Before going to court, the consumer/defendant (your client) must decide if they agree with the claim being made against them. If they do, then they should try and make an arrangement with the credit provider to avoid going to court. But if they have left this too late then they must simply go to court.

But if your client disagrees with the claim being made against them – i.e. they do not think they owe anything at all or they think the amount being claimed is wrong – then they may want to defend their case. Help them decide if they have a reasonable defence with respect to the original debt (i.e. that the credit provider was wrong in some way and should not have started legal proceedings). If they think they have, advise your client to get a lawyer to represent them. While you should support their right to defend...
themselves, remind your client that lawyers are expensive and try to resolve the matter outside of court as far as possible.

If they do want to proceed in court, they can prepare for it by doing the following:
1. Collect evidence – which would include the original contract and any statements of payment, correspondence etc.
2. Draw up a statement which says what happened and what they think. This should include any facts that answer the accusation made against them and gives information (evidence) which shows why they disagree.
3. Get assistance – from a paralegal, debt counsellor or lawyer.
   • A paralegal can help a defendant with this preparation, and will do so for free, but can only assist in a limited way. For instance they can help to draw up the statement, but then it must be signed by a commissioner of oaths in order that it becomes a sworn statement – or ‘affidavit’ - and can be used in court. This is where your client must swear (promise) in front of the commissioner of oaths that what is in the statement is the truth. A paralegal cannot represent the client in court.
   • A debt counsellor can also help them with the preparation – but again the statement must be witnessed by a commissioner of oaths. The debt counsellor can represent the defendant in court on certain matters. There is a fee to be paid – but this can be subsidised if the consumer cannot afford to pay.
   • A lawyer – or ‘attorney’ – can make the statement into an affidavit and can represent the defendant in court – but they charge fees which can be expensive. (If your client needs legal assistance, give them contact details of a law clinic or of a lawyer who may work for reduced fees.)

(This guide does not address the process of defending a case in court any further than this. This is not because it is not important – but because there is a limited role that can be played by paralegals for whom this guide has been written.)

4.3 Consent to judgment

The first step in legal action is that your client will first be offered a ‘consent to judgment’. This is a legal document that they are asked to sign saying they accept that a judgment (court order) will be made against them to ensure that they will make payments of particular amounts by particular times. The advantage of accepting a consent to judgment is that expensive legal proceedings are avoided.

If your client has been asked to sign a consent to judgment, use Checklist 2: The consent to judgment and the summons on page 22 to check whether proper procedures were followed, and to advise your client how to respond.

If your client signs a consent to judgment it means that they admit that they have defaulted, and they either
   • agree to take responsibility to pay the amount they owe in instalments - and if they do not do this, they accept that a judgment (court order) will be made against them to ensure the payments (Section 57 of the Magistrate’s Court Act 1944), or
   • agree that a court order should be made against them to ensure payments in instalments (Section 58 of the Magistrate’s Court Act 1944).

An instalment is the amount of money that the consumer has agreed to pay back every month.
A consent to judgment must refer to a court near to where your client lives or works. There is no problem with your client signing a consent to judgment if they are definitely in default. In this case, it may be a cheaper option for them as it will avoid expensive legal processes. However, if your client believes they have not defaulted (for example if your client feels there has been a mistake on the account) they should not sign the consent to judgment.

Sometimes a consent to judgment will have been included in the original contract which your client signed when they agreed to the credit. In this case, your client will not have the advantage of being notified of the intention of taking legal action. Instead legal action will simply begin by their being summoned straight to court where their signed contract will be used by the credit provider to obtain a default judgment against them. This allows the credit provider to claim some of your client’s property – so they can sell it to get the money they are owed. This is done through the court’s issuing a Warrant of Execution. In addition, your client will have to pay interest on the money owing, as well as legal costs. This is particularly bad if your client believes that the credit provider has the wrong facts, as a default judgment does not give them a chance to say this. So they end up having their property taken even though they believe they do not owe the money or the amount of money that is being claimed.

### 4.4 Summons to court

If your client ignores the written notice/ letter of demand, a messenger of the court is likely to come to their address to serve a summons to appear in court. This is a document, stamped by the court, setting out the details of the credit provider’s claims. It also tells the consumer to tell the court within five days whether they will defend the case.

If your client has been served with a summons, use Checklist 2: The consent to judgment and the summons on page 22 to check whether proper procedures were followed and to advise your client how to respond.

You should advise your client never to ignore a summons and never to wait until after the return date has expired. It they do not respond to a summons in any way, the judgment will be automatically given in favour of the credit provider and a default judgment will be made.

If your client gets a summons, they have five working days to respond by
- making arrangements to pay the money they owe, or
- consulting an attorney, or
- informing the court that they intend to defend themselves. They start this process by completing the form called a Notice of Intention to Defend (which is at the back of the summons) and returning it to the court.

Once a summons has been issued, your client may no longer apply for a debt review with a debt counsellor.
By trying to address the problem before it goes through these processes, your client has a better chance of the credit provider re-structuring their debt in a way that is manageable and they avoid having an extremely negative credit record at the credit bureaux.

4.5 Court orders

If the court decides that your client does owe the money – either through default or because your client agrees that they do and does not defend the case – it will make an order against them. A court order is the general term for a legally binding instruction given by the court. It will say how the credit provider will get their money from your client. This could include repossession of goods, an emolument attachment order or a garnishee order - all of which are explained in this chapter.

If your client is given a court order, use Checklist 3: Court orders on page 22 to ensure that all processes were correctly followed and that the court order made against them is valid. If the officials did not follow any of the processes correctly, you should query this directly with the court or one of the institutions listed in Appendix C on page 53.

4.5.1 Default judgment

If the consumer ignores a summons to appear in court, then a default judgment will be made and your client will be ordered to pay the money owing. This can get very expensive as your client will now have to pay the money they owe plus the interest that has been added to it, plus the legal costs of the court order. These legal costs could include the sheriff’s and the attorney’s fees.

4.5.2 Being placed ‘under administration orders’

If your client is unable to pay the amount they are ordered to pay by a court, they may apply to the magistrate’s court to make an order - known in the Magistrate’s Court Act (1944) as an administration order. This is intended to deal with a debtor who has only a few assets, a low income and financial difficulties that they cannot manage.
The administration order will specify
• the financial obligations of your client,
• the amount of the payments (taking these obligations into account),
• how often the payments should be made, and which assets may and may not be sold by the administrator.

The administration order will appoint an administrator to collect your client’s money each month and to pay the debts as stated in the order. They will charge a fee for doing this. For as long as your client is ‘under administration orders’, no creditor may attempt to get money or property directly from your client and your client is not allowed to incur any other debts without telling the administrator. If they did they would be breaking the law.

4.5.3 Garnishee order
A garnishee order is a court order which is given to the consumer’s employer instructing them to deduct from their employee’s salary the money that they owe and give it straight to a credit provider. On top of this, the employer may deduct a 5% administrative fee. The consumer will see the deductions on their pay slip.

The court must not order deductions that are so large that your client is not able to look after themselves or their dependents. If you believe this is the case, you should advise your client to appeal to the court to amend the order.

4.5.4 Emolument attachment order
An emolument attachment order is when the court orders people who owe the consumer money, to pay it to the credit provider who is owed money, instead of to the consumer. An emolument attachment order also allows the credit provider to take money that the consumer expects to receive from, for example, an inheritance.

4.5.5 Warrant for repossession
If there is a default judgment against a consumer and they have no money to pay the debt (plus all the additional amounts), then the credit provider is allowed to get a court order to repossess goods. That is, they can get permission from the court – through a Warrant of Execution - to sell some of the consumer’s possessions to raise the money that is owed to them. They also add amounts for the plaintiff’s legal costs and the Sheriff of the Courts’ fees.

When the possessions are sold to pay the creditor, they are often sold at a lower price than they are worth - and the consumer is still responsible for paying any money that is still owing. If they do not have enough property to sell to pay the debt in full, the credit provider can ask the court to look at the consumer’s financial position and instruct them to pay a certain amount each month (including having this taken off their salary).

If the consumer refuses to do this, they can be arrested for contempt of court.

If there is money left over after all the debts and fees have been paid, this will be given back to the consumer.

A sheriff of the court brings the court order to the consumer’s home. Then s/he will visit for the first time to make a list of the consumer’s possessions. At this stage the consumer should identify possessions that are not yet fully paid for, or which do not belong to them, as these cannot be taken away.
The second time the sheriff comes, s/he will take possessions away. They will first take things that are easy to move (like furniture and appliances). But then they are allowed to take possession of the consumer’s house or even the land they own.

The sheriff
- must identify themselves officially
- must have a court order,
- may leave the court order in the postbox or under the door,
- must get the consumer’s permission to enter their premises and may not use force,
- should not come in the middle of the night or when the consumer is not at home,
- is the only one who may remove possessions.

If sheriffs behave incorrectly they can be reported to the Board of Sheriffs (see Appendix C on page 53 for contact details).

**CASE STUDY: Mr Mbuli’s goods are repossessed**

Mr Mbuli bought a set of pots for R3,000 from Kitchen Essentials. The agreement was that Mr Mbuli would make monthly payments of R600 (including 20% interest) over six months.

After two months of making the payments, Mr Mbuli was retrenched as a security guard where he had been working for three years. Mr Mbuli was now unable to make the monthly payments for the pots. Although he still owed R2,000, he did not report his retrenchment to Kitchen Essentials. After failing to make his payment, Mr Mbuli received a written notice/letter of demand from Nkosi Debt Collectors - but he ignored the letter.

The debt collectors came to Mr Mbuli’s house with a summons in the middle of the night – to make sure that he was home - and removed goods from his property. They also took goods belonging to Mr Mbuli’s tenant. Mr Mbuli comes to the advice office for assistance.

**What the advice office did**

After hearing Mr Mbuli’s story, the paralegal used Checklist 1: Written notice on page 11 and Checklist 3: Court orders on page 22 and worked through these with Mr Mbuli. He first checked with Mr Mbuli that he had received the letter of demand. Mr Mbuli confirmed that he had, but had ignored it.

The paralegal explained to Mr Mbuli that the court therefore had a right to issue a summons. However, the sheriff had acted improperly. He had
- come in the middle of the night;
- taken goods from the house at the same time as issuing the summons. (This meant that Mr Mbuli did not get the five days to respond after receiving the summons, before any court order was taken against him); and
- he had not listed the possessions that belonged to Mr Mbuli, and had taken goods that belonged to a tenant.

The paralegal advised Mr Mbuli to consult a lawyer and recommended someone who helps with this kind of case.
Checklist 2
The Consent to Judgment and the Summons

Use this to check that all processes were followed correctly.

What to do if your client is asked to sign a ‘consent to judgment’
- When your client signs a contract, they should make sure that a ‘consent to judgment’ is not included. If they sign this, they have agreed that the credit provider can take them to court if they do not pay their instalments. They will also have to pay all the credit provider’s legal costs.
- If your client has defaulted on a contract and ignored a written notice, they may be asked to sign a consent to judgment. In this case, if your client is definitely in default you may advise them to sign the consent to judgment as the alternative would be a summons to court.
- If, however, your client believes that they have not defaulted (for example if your client feels there has been a mistake on the account) they should not sign the consent to judgment. In this case, the account should be queried with the credit provider.
- Check that the consent to judgment refers to a court where your client lives or works.

What to do if the client has received a summons
1. Check that the summons was delivered in a way that complies with the law:
   - it must have been delivered by a messenger of the court, and
   - it must have ‘RM2’ at the top and a R20 revenue stamp attached to it.
2. Check that the credit provider has brought the matter to a court where your client lives or works.
3. In court, the credit provider will be represented by a debt collector or an attorney. Their fees will be added to the debt the consumer has to pay.
4. If the summons was issued correctly but the client does not think the amount to be paid is correct (taking into account that legal and other fees will have been added), advise your client to contact a lawyer who will lodge a notice of intention to defend the case. Try to recommend a lawyer who helps in these kinds of cases.
5. If the summons was issued correctly and the amount to be paid is correct, advise your client to try and settle the matter with the credit provider or their representative. If they do not do so, they run the risk of a default judgment.
6. Warn your client not to ignore the summons. They have five days to respond to the summons. If they do not do so, they may have a default judgment made against them.

Checklist 3
Court Orders

Use this to check that all processes were followed correctly.

What to do if the client receives a default judgment
1. Check whether they received a summons before the judgment was made – and that the summons was issued correctly. (See Checklist 2: The consent to judgment and the summons above). If the processes were followed correctly, advise the client to pay what is owed.
2. If they did receive a summons, check whether they responded properly to the summons. A default judgment is only permissible if the summons was ignored.
3. If you believe your client should not have had a default judgment made against him or her, you should contact a lawyer. Try to recommend a lawyer who helps with this kind of case.
4. If the client cannot pay the debt following a default judgment the following court orders can be made. Inform them of their rights and the correct procedures for each kind of order.
Administers 1. Your client may apply for an administration order with the clerk of the court.
2. They must take a copy of this application to each of their creditors at least three days before the hearing. The creditors are permitted to bring information to and attend the hearing.
3. The administration order will specify
   • the financial obligations of your client;
   • the amount of the payments (taking these obligations into account);
   • how often the payments should be made; and
   • which assets may and may not be sold by the administrator.
4. The administration order may authorise an emolument attachment order or a garnishee order.
5. The administration order will appoint an administrator. Note that
   • your client must keep to the agreed schedule in their payments to the administrator;
   • the administrator may take a fee of up to 12% of the money they administer; and
   • if your client does not pay as agreed, the administrator may institute legal proceedings against your client for contempt of court.
6. For as long as your client is under administration orders, no creditor may attempt to get money or property directly from your client and your client is not allowed to take on any other debts without telling the administrator. If they do this, they are breaking the law.

Warrant to repossess their possessions
1. The warrant should only be brought by the sheriff of the court.
2. The sheriff must always have your client’s permission to enter their home.
3. The first time they visit the client’s home, the sheriff may only make a list of all the things your client owns. Your client must point out if items belong to someone else or are not fully paid for, as they are not allowed to take these away.
4. The second time they visit the client’s home, the sheriff can remove their possessions. They may not remove possessions belonging to anyone else or which are not fully paid for.

Garnishee order
1. The court arranges for the consumer’s debt to be taken directly from their salary in instalments.
2. The instalments are likely to be larger than the one they paid before, as they will also be paying legal costs.

Emolument attachment order
1. Money that other people owe to the consumer will not be given to the consumer, but will be taken and used to pay the consumer’s debts.
5. Getting Credit: Contracting with a credit provider

5.1 Why people want credit
As mentioned earlier, people need to borrow money for a variety of reasons. These include:

- to pay for regular monthly expenses – like rent, transport etc.
- to manage emergencies – like illness or death,
- to pay for occasional big expenses – like school fees and car maintenance,
- to buy furniture or build onto one’s house,
- to buy a car or other big, expensive item,
- to start a small business,
- to pay back existing debts and
- to buy luxuries or pay for entertainment they cannot afford

When they borrow more than they can pay back, they can get into difficulties. This can also happen when people

- buy things after being tricked by enticing adverts which don’t tell the full story,
- take up offers of credit which is given without any questions being asked (but often have very high interest rates),
- borrow money from one credit provider to pay off all their other debts (‘debt consolidation’) but then use this money for other things and do not pay their debts,
- borrow money under false pretences (e.g. ‘proven emergency’) knowing they cannot pay it back.

They may come to the advice office to be sure that they are entering into a contract properly or to understand their rights as a consumer when they do so.

5.2 Credit providers have responsibilities
There are different places where consumers can go to borrow money (get credit) – for example banks, micro-lenders and shops. People and organisations are only allowed to lend money if they are registered with the National Credit Regulator. (The website lists all registered credit providers www.ncr.org.za.) This protects consumers from being abused by unscrupulous money lenders who, for example, charge very high interests rates, or who keep a consumer’s ID book or bank card as some surety for being paid. Another example are those moneylenders who prey on elderly people at the pension payout points.

When dealing with credit providers, your client should remember that credit providers are required to:

- give them a quotation which is binding for five days;
- explain the contract to your client in a language they understand;
- explain the costs and interest charges, and be clear what the full price is;
- display their registration certificate in a way that is clearly visible, tell your client clearly that they are registered and include their registration information in the contract;
- make sure that your client can afford to pay back the new debt by carefully assessing their financial situation so that they do not engage in reckless lending,
- give reasons written in plain language if they refuse a loan;
- give in writing the name and address of any credit bureaux to whom they have provided information about your client’s credit record; and
- notify your client before they send negative information to a credit bureau.

Consumers have the right to apply for credit.

A contract is another name for the legal agreement between two people – in this case the credit provider and the consumer.

National Credit Regulator (NCR) is a new institution introduced by the National Credit Act (NCA) to oversee that credit providers, debt counsellors and credit bureaus comply with the NCA. The NCR will also help consumers with understanding their contracts and will support consumers if they have problems with credit providers.

Credit providers are organisations or people that lend money - such as banks and micro-lenders-or that sell you goods on credit, such as shops.

The costs of credit includes the fees, costs and charges related to borrowing money, including interest.

Interest is the amount that credit providers charge for lending money and is usually a percentage of the amount borrowed.

Reckless lending or reckless credit granting is when a credit provider has not checked to make sure that a consumer can afford to make the payments for new debt, checked and made the loan, even though the consumer cannot afford it.
Credit providers may not:
• keep their bank cards or identity documents (although they may use them to confirm their identity or to make copies);
• ask them for for their PIN code for their bank account; or
• refuse to give them credit based on social prejudice – like because of their age, sexual preference, religion, ‘race’, gender etc.

You may want to make a copy of the information sheet - Getting credit: Know your rights on page 29 for your client to take home. This outlines what a credit provider must and may not do.

5.3 Understanding the contract or credit agreement
When consumers agree to repay money that they have borrowed, they enter into a credit agreement.

Entering into a credit agreement means that the consumer signs a contract that clearly states the conditions for borrowing that money - including administrative costs and interest. It is important therefore, that they carefully read through and thoroughly understand the document before accepting it by signing it.

You should caution your client never to accept credit from credit providers who offer them credit without checking their credit record – as the terms are often very unfavourable. This can be particularly attractive to people who are indebted and are desperate for money – but it only leads to their being further trapped by increased debt. In addition the credit provider is breaking the law by lending money recklessly.

When entering into a credit agreement, your client should remember
• never to sign a blank form, as they may find that they are responsible for payments and conditions that they did not agree to,
• never to sign a form with blank spaces that can be filled in after they have signed it, so they should put a line through blank spaces,
• to ensure that the contract does not include a consent to judgment,
• to take their time to read through the contract, even if the person tries to make them hurry,
• that they have the right to take the contract home and read it with a friend or family member before signing it,
• that they are entitled to one free copy of every document they sign,
• to keep a copy of the contract and all the forms that they have signed in a safe place, and
• that they have a right at any time to ask for a statement of their account which must show how much they have paid and how much they still owe.

The Information sheet - Getting credit: Know your rights may help them avoid some basic mistakes when signing a contract.
5.4 Types of loan and credit agreements

In addition to the standard loans (purchases on credit, mortgage agreements, pawn transactions etc), the National Credit Act also covers new types of credit agreements.

- **Developmental credit agreements** include loans for education, small businesses, fixing or buying low-income houses, and low-level loans by credit co-operatives (Section 10 of the Act).
- **Emergency loans** are student loans, school loans, and education, training and skills development loans.
- **Public interest loans** are credit agreements that, for example, are made to assist consumers to cope with natural disasters and are declared a public interest loan by the government (Section 11 of the Act).

Not all loan agreements are credit agreements. The National Credit Act says that the following are not ‘credit agreements’ and are therefore not covered by the Act:

- a lease between consumer and the landlord when renting accommodation;
- a monthly amount towards an insurance policy; and
- money borrowed from a stokvel of which a person is a member.

5.5 Some legal and financial terms used in contracts

Although contracts are meant to be written in plain English, they still include some legal and financial terms which may be difficult to understand. Here are the meanings of some that are used quite often:

- An **initiation fee** is an administrative fee which the credit provider charges for the paperwork involved in setting up the contract to lend the money.
- A **deposit** is an initial payment to be made at the beginning of a finance agreement.
- A **fixed interest rate** means that the monthly repayment will not be adjusted according to changes in the market rate.
- **Balloon instalments** are when a final lump sum payment is negotiated when the contract is being signed. Here the remaining cost, plus interest charges, are repayable in regular instalments over an agreed period. Only when the final payment is made, is the ownership of the goods transferred to the consumer.
- The **accounting balance** is a portion of the outstanding balance comprising finance charges (which excludes the original cost of the goods purchased).
- The **capital balance** is a portion of the outstanding balance comprising the original cost of the goods purchased.
- The **final payment** is a lump payment usually payable at the end of the agreement.

5.6 Buyer beware!

Some advertisements are extremely unclear about the full cost of what is being advertised – and give some of the most important information in very small print! In this way, some consumers get trapped into spending much more than they had intended to – and sign contracts without realising what the small print says.

Remember that advertisements are not contracts – but are only invitations to talk about buying something. Conscious consumers will ask a lot about what is really being offered and for what price – and will be careful before they sign a contract, even if the salesperson is impatient with them!
5.7 Paying back the debt
The repayments made by a consumer are first used to pay the costs of the credit (the administrative fees and the interest) that the credit provider charges for lending the consumer the money. Only after these have been paid do instalments begin to pay back the actual amount borrowed – known as the principal amount. As interest is added to the outstanding balance on a regular basis (for instance monthly), the consumer may take a long time to start paying back the principal amount, even if they are paying their instalments every month.

This information is important as people often do not include these amounts when they estimate what they can manage to pay back. When trying to solve a problem of debt, it is important to include the costs of credit.

5.8 Calculating interest
Interest can only be charged on the amount a consumer borrows, including the interest they have not yet paid. Interest cannot be charged on a deposit, nor can interest be charged when there is no debt – in other words when someone pays the whole amount straight away.

The National Credit Act wants to ensure that the amounts charged for lending money are fair and that the same is charged everywhere. It has therefore set strict guidelines for credit providers. These specify the formulae to be used and the maximum allowable interest rate for each kind of credit agreement. See Appendix G for this information.

5.9. When credit is refused
Sometimes people battle to borrow the money they need, as no-one will lend it to them. When they think they are being treated unfairly or do not understand why they are being refused a loan, they may come to an advice office for help.

Reasons for refusing credit
Credit providers are not compelled to provide credit to anyone. A credit provider has the right to refuse credit as long as the reasons are not based on discrimination. Your client has the right, on request, to be informed in writing of the reasons for credit being refused, and to be told whether negative credit bureau reports played a role. If the client does not know, contact the credit provider to find out.

Credit providers may refuse to lend money
- if this would mean that the loan would be reckless – that is on the basis of a fair assessment that the consumer is over-indebted and that they would be unable to pay the debt without taking a further loan;
- when the credit provider is unable to check the consumer’s credit record (and does not want to run the risk of reckless lending); or
- when the consumer is negatively listed and is prohibited from borrowing any more money.

If you think the credit provider has acted within their rights, and you believe your client can afford more credit, you may have to simply advise your client to apply elsewhere for credit.
5.10 Querying a decision not to grant credit

You should query the credit provider’s decision not to grant credit if your client believes the reasons to be incorrect or unfair. The following may be instances of this.

- **Your client has strong evidence that the refusal to give them credit was based on social prejudice (like age, sexual preference, religion, ‘race’, gender etc).**
  This can be difficult to prove, but can be important to confront in instances where there is a good case. If you think the credit provider discriminated on these grounds, report the credit provider to the National Credit Regulator or to an Equality Court.

- **Your client believes the decision was based on an incorrect assessment of their ability to pay.**
  In this case it might be helpful to the client for you to assess their financial situation with them. Use the client record sheets Debt Information, Household expenses to assist in budgeting and Budget (record sheets 3 - 5) as it is really important to have a complete record of both what they earn and what they spend.

  If the client’s regular expenses are more than their income, a credit provider would have been correct to assess your client as over-indebted, and was right not to give them any credit. If, however, it seems that your client could easily manage the debt, it would be worth approaching the credit provider to reconsider their decision.

- **Your client feels they have been incorrectly or unfairly listed at the credit bureaux.**
  In this case you should advise your client to apply to the credit bureaux to check and change their records. (See Chapter 6 for how to manage a dispute with a credit bureau.)

- **Your client has been refused credit as their record shows they have seen a debt counsellor before.**
  A consumer cannot be refused credit on the basis that they previously accessed help to sort out their financial position. In addition, once the debt clearance certificate had been submitted, their record should have be cleared of all related information – including that they had been under debt counselling.
Information sheet
Getting Credit: Know your Rights

1. Credit Providers
Credit providers are required to:
• give you a quotation which is binding for five days;
• explain the contract to you in a language you understand;
• explain the costs and interest charges;
• display their registration certificate in a way that is clearly visible, tell you clearly that they are registered and include their registration information in the contract;
• make sure that you can afford to pay back the new debt by carefully assessing your financial situation so that they do not engage in reckless lending;
• give reasons written in plain language if they refuse a loan;
• give in writing the name and address of any credit bureaux to whom they have have provided information about your credit record; and
• notify you before they send negative information to a credit bureau.

Credit providers may not:
• keep your bank cards or identity documents (although they may use them to confirm your identity or to make copies);
• ask you for your PIN code for your bank account; or
• refuse to give you credit based social prejudice – like because of your age, sexual preference, religion, ‘race’, gender etc.

2. Credit Agreements (Contracts)
When entering into a credit agreement, you should remember the following:
• never sign a blank form, as you may find that you are responsible for payments and conditions that you did not agree to,
• never sign a form with blank spaces that can be filled in after you have signed it, so you should put a line through blank spaces,
• ensure that the contract does not include a consent to judgment,
• take your time to read through the contract,
• if you want to you can take the contract home and read it with a friend or family member before signing it,
• you are entitled to one free copy of every document you sign,
• keep a copy of the contract and all the forms that you have signed in a safe place, and
• you have a right to ask for a statement of your account at any time which must show how much you have paid and how much you still owe.

While every attempt has been made to ensure that the information published in this guide is accurate, the authors and publishers of this material take no responsibility for any loss or damage that may arise out of the reliance by any person upon any of the information contained herein. The contents of this guide do not constitute legal advice.
6. Credit bureaus

6.1 What is a credit bureau?
A credit bureau is an organisation that keeps a record of consumers’ credit information indicating how they manage their debts.

The National Credit Act stipulates that each credit bureau must register with the National Credit Regulator in order to conduct business legally. It also sets out standards to ensure that their information is always accurate – and ensures that each consumer has the right to check his or her record, and is allowed to correct any mistakes.

The Act also sets out the purposes for which consumers’ credit information may be used, and the companies to which the credit bureau may provide the information.

6.2 Consumer credit information
When a consumer takes out their first loan with a credit provider, they have to complete a form that asks for their consumer credit information. This includes their credit history, financial history, education, employment and identity details. This information, and the details of the loan, are given to a credit bureau where they compile a credit report (see below).

A person’s credit information can be used:
• to assess whether or not they can afford credit; or
• to investigate fraud, corruption or theft; or
• to consider them for employment in a position that requires trust, honesty and entail the handling of cash or finances.

6.3 The role of credit bureaux
A registered credit bureau must
• note information on consumers’ records after the fee is paid by the credit provider
• make sure the information is correct and not maintain inaccurate information
• keep information for prescribed periods and to the prescribed standard
• provide a report of the information (credit report) when required by credit providers or anyone else who has the consumer’s permission
• not charge for corrections or challenges to information by the consumer
• not make a negative judgement about a consumer when they do not have any credit information.

6.4 Consumers’ rights
Consumers have the right
• to be informed that the credit provider intends to report negative information on them to a credit bureau 20 working days before the credit provider actually reports them;
• to receive a copy of their credit record from a credit bureau when they request it;
• to one free report per year, after which they may pay a small fee for any further records;
• to challenge information kept by the credit bureau if they are unhappy with the information; and
• for their information to be kept confidential, and for it to be used only for the purposes that are allowed.

Use Checklist 4: Credit bureaux on page 39 to help clients understand their rights as consumers and the roles and responsibilities of credit bureaux.
6.5 Credit reports

6.5.1 What is a credit report?
A credit report is a record of an individual’s credit behaviour. It contains a range of information about them which is obtained from their credit application form, as well as from credit providers and the courts. It should not contain any information which could be used to discriminate against them however, like race, sexuality, political affiliation, medical status, religion or membership of a trade union.

Prior to granting credit, a credit provider accesses a consumer’s credit report to assess the risk of lending them money.

6.5.2 Information included in a credit report
A credit report contains
- the consumer’s name and personal information (like their ID number, address and contact details)
- their employment details
- the accounts they have and how they have managed them (referred to as an ‘account history’)
- any enquiries that have been made about their credit-worthiness (referred to as an ‘enquiry history’)
- summary of information

It may also contain information about the negative consequences of their not paying their accounts: like judgments, administration orders or defaults. (Many of these are addressed in some detail in Chapter 4.)

6.5.3 Personal information
The first section of the credit report reflects personal details. Here is a fictional – or made-up - example of what is included in this section of a report:

<table>
<thead>
<tr>
<th>Client Number</th>
<th>522019097</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title</td>
<td>Mr.</td>
</tr>
<tr>
<td>Surname</td>
<td>MCINTOSH</td>
</tr>
<tr>
<td>Forename(s)</td>
<td>Raven</td>
</tr>
<tr>
<td>ID Number</td>
<td>800811194082</td>
</tr>
<tr>
<td>Date of birth</td>
<td>11/08/1980</td>
</tr>
<tr>
<td>Gender</td>
<td>Male</td>
</tr>
<tr>
<td>Marital Status</td>
<td>Single</td>
</tr>
<tr>
<td>Spouse Name</td>
<td>n/a</td>
</tr>
<tr>
<td>No. of Dependants</td>
<td>none</td>
</tr>
<tr>
<td>Telephone No.</td>
<td>(W) 011 8300001  (H) 011 353 2000</td>
</tr>
<tr>
<td>Cellular</td>
<td>083 415 1655</td>
</tr>
<tr>
<td>E-Mail Address</td>
<td><a href="mailto:csdonn@testing.co.za">csdonn@testing.co.za</a></td>
</tr>
</tbody>
</table>
Address Information
The address information will comprise the last three addresses at which the consumer lived and the periods they lived there.

<table>
<thead>
<tr>
<th>Date</th>
<th>Years</th>
<th>Address</th>
<th>Owner/Tenant</th>
</tr>
</thead>
<tbody>
<tr>
<td>current</td>
<td>2</td>
<td>1 Junction Ave, Parktown, 2193</td>
<td>Tenant</td>
</tr>
<tr>
<td>31/07/2006</td>
<td>2</td>
<td>52 Corlett Drive, Illovo</td>
<td>Owner</td>
</tr>
<tr>
<td>10/06/2004</td>
<td>5</td>
<td>41 Kruis Street, Johannesburg, 2001</td>
<td>Unknown</td>
</tr>
</tbody>
</table>

6.5.4 Employment details
Employment details comprise the consumer’s last three employers – and how long they worked for each.

<table>
<thead>
<tr>
<th>Date</th>
<th>Years</th>
<th>Employer</th>
<th>Occupation</th>
</tr>
</thead>
<tbody>
<tr>
<td>10/06/2004</td>
<td>2</td>
<td>A D Photographics</td>
<td>Manager</td>
</tr>
<tr>
<td>27/01/2004</td>
<td>5 months</td>
<td>Self-employed</td>
<td>Photographer</td>
</tr>
<tr>
<td>1/10/2000</td>
<td>4</td>
<td>Spur, Eastgate</td>
<td>Part-time waiter</td>
</tr>
</tbody>
</table>

6.5.5 Account History
A person’s account history spans up to 36 months and tracks how regularly they pay their accounts. It shows if they pay their accounts on time or if they do not pay them at all, thus reflecting both positive and negative payment trends.

Example of a credit record

<table>
<thead>
<tr>
<th>Date</th>
<th>Supplier Name</th>
<th>Account Number</th>
<th>Type</th>
<th>Open</th>
<th>Curr</th>
<th>Monthly</th>
<th>Account History</th>
</tr>
</thead>
<tbody>
<tr>
<td>05/05</td>
<td>Montunacc</td>
<td>TER 2899</td>
<td>1715</td>
<td>483</td>
<td></td>
<td></td>
<td>00000000000000000000</td>
</tr>
<tr>
<td>12/03</td>
<td>Imperial bank</td>
<td>INS 123073</td>
<td>108633</td>
<td>110</td>
<td></td>
<td></td>
<td>00000000000000000000</td>
</tr>
<tr>
<td>01/02</td>
<td>FNB cash dat</td>
<td>INS 10054</td>
<td>743</td>
<td>424</td>
<td></td>
<td></td>
<td>=100000000000010</td>
</tr>
<tr>
<td>04/02</td>
<td>Imperial bank</td>
<td>INS 103410</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>=00000000000000000000</td>
</tr>
<tr>
<td>02/02</td>
<td>Woolworths</td>
<td>PER 1870</td>
<td>960</td>
<td>76</td>
<td></td>
<td></td>
<td>=00000000000000000000</td>
</tr>
<tr>
<td>08/01</td>
<td>Direct axis</td>
<td>INS 3882</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>=00000000000000000000</td>
</tr>
<tr>
<td>05/85</td>
<td>Edgars</td>
<td>REV 5700</td>
<td>5197</td>
<td>1011</td>
<td></td>
<td></td>
<td>=00000000000000000000</td>
</tr>
<tr>
<td>03/98</td>
<td>BOE bank or card</td>
<td>CRE 18700</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td>=00000000000000000000</td>
</tr>
<tr>
<td>02/99</td>
<td>Woolworths</td>
<td>REV 2500</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>=00000000000000000000</td>
</tr>
<tr>
<td>01/97</td>
<td>Stuttafords</td>
<td>REV 750</td>
<td>682</td>
<td>130</td>
<td></td>
<td></td>
<td>=00000000000000000000</td>
</tr>
<tr>
<td>01/90</td>
<td>Truworths</td>
<td>REV 1816</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>=8887688W=88WWW=88876</td>
</tr>
</tbody>
</table>

Total | 117933 | 2234 |
**Keys**

**Type of Account**
- INS: Instalment account
- OPE: Open account without credit limit but where total owing, as reflected on monthly statement, is due and payable on a date as advised on the statement
- REV: Revolving credit account where purchases and payments are made within a given credit facility
- CRE: Credit card account
- PER: Personal cash loan
- HOM: Home loan
- SHO: Short term insurance
- LON: Long term insurance
- SIN: Short term loan, repayable in a single instalment
- TER: Long term loan, repayable in multiple instalments and is deducted from their salary
- REA: A re-advancement has been taken on their original loan
- UNK: Loan type not specified by credit provider

**Account history**

- O: Payment received: The credit provider has received payment for that specific month.
- 1-9: Months in arrears: This shows the number of consecutive months that the consumer has failed to make payment on their account.
- =: No data: The credit provider did not submit any information for that specific month.
- C: Account closed: The account has been paid in full, within terms and the account has been closed.
- D: Disputed: The consumer has challenged the credit provider on some aspect of their account and therefore a dispute has been lodged. No information will be reflected until the dispute has been resolved between the parties.
- E: Terms extended: The repayment period on the account has been extended by the credit provider.
- F: Lapsed policy: The consumer’s insurance policy has lapsed due to their not having made one or more payments.
- G: Cancelled by client: The consumer has cancelled their insurance policy/micro loan/instalment on their account.
- H: Cancelled by supplier: The consumer’s insurance policy has been cancelled by their insurer/their micro loan has been cancelled by the lender.
- I: Credit card revoked: The consumer’s credit card has been withdrawn by the bank from which it was issued.
- J: Repossession: Goods that the consumer had purchased have been taken by the credit provider due to their failing to make payment on their account.
- K: Paid out deceased claim: A death claim has been paid out to the beneficiary of a policy.
- L: Handed over: Due to non-payment, the consumer’s account has been handed over to an attorney or collection agency to recover the outstanding amount.
- M: Paid out disability: A disability claim has been paid out to the consumer, the policy holder.
- N: Loan against policy: The consumer has been granted a loan against the outstanding value of policy.
- P: Paid up: The consumer’s account has been paid up in full and is still active.
- R: Mail returned: Mail returned.
- S: Surrendered: As the policy holder, the consumer has surrendered and the insurance company has paid back their premiums.
- T: Early settlement 1: The consumer has paid their loan in full and did so early.
- V: Cooling Off Settlement: The consumer settled their loan within the 3 day cooling-off period.
- W: Written off: The credit provider has written the account off as bad debt due to the consumer not making payment.
- Z: Deceased: Notification received that the consumer is deceased.

**6.5.6 Default data**

Information that relates to late payments or non-payment on accounts is called default data. It is supplied to a credit bureau by the credit provider and remains on your client’s report for various lengths of time, depending on the nature of the default.

Once the consumer has paid their outstanding debt, the credit provider will update their records with the credit bureaux to reflect a “paid up” status. The evidence can be in the form of a statement of account showing that there is no money owing. Alternatively a debt clearance certificate can be sent by the debt counsellor. While the money is still owing, however, the negative listing remains on their record for the maximum time in the table below.
In the case of court judgments, however, the negative information remains on your client’s record for five years, even after they have paid off the amount unless they go to court to have it rescinded (i.e. reversed).

**Length of time information may be kept by credit bureaux**

<table>
<thead>
<tr>
<th>Length of Time</th>
<th>Information Kept</th>
</tr>
</thead>
<tbody>
<tr>
<td>Until a clearance certificate has been issued</td>
<td>Debt restructuring.</td>
</tr>
</tbody>
</table>
| One year | • Defaults - like absconding (i.e. disappearing without paying), having submitted RD cheques (i.e. cheques that have ‘bounced’ as there is not enough money in the account), being given a final notice or letters of demand (for payment),
• Adverse information – i.e subjective classification of consumer behaviour. This includes classifications such as ‘delinquent’, ‘default’ ‘slow paying’, absconded,’ or ‘not contactable’. (For example should they not paid their monthly instalments for four months something called a ‘default notation’ may be added to their report - in this case ‘slow payer’.) |
| 18 months | Details and results of disputes lodged by consumers. |
| Two years | Defaults - bad debt being written off, credit card being revoked, goods being repossessed, the account being ‘handed over’ to debt collectors, or legal action. Enquiries - the number of requests made on a consumer’s record, including the name of the company or the person who made the request for a consumers' record (and the contact person, if available). |
| Three years | Payment profile - factual information on the payment profile of the consumer. This includes the details of any credit provided. |
| Five years | Rehabilitation orders - an order granted by a civil court restoring the financial standing or reputation of a person who was insolvent (to restore to a former condition). |
| Five years – or until the judgment is withdrawn by a court or abandoned by the credit provider in terms of Section 86 of the Magistrate’s Courts Act 32 of 1944 | Civil court judgments - a judgment granted by a court in a civil dispute between individuals or companies (including default judgment). |
| Ten years – or until order is withdrawn by the court | Administration orders an order granted by a civil court in which the management and disposal of the assets of an insolvent person (someone who cannot pay their debt) is given to a legally appointed person to administer until that person has paid all their debts. |
| Ten years – or until rehabilitation order is granted | Sequestrations - to take legal possession of assets until debts have been paid or other claims have been met. |
| Unlimited period | Liquidations - to legally place the property of a bankrupt person in the hands of a third party (trustee) for division among creditors. |
Example of a default entry

Date of Submission | 10/12/2007
Default Type | Handed Over
Contact Person | Woolworths
Account Info | 600785011306336
Default Amount | R100.00
Subject Name | MACINTOSH, R
Subject ID Number | 8008111194082
Subject Date of Birth | 11/08/1980
Subject Address | 52 Corlett Dr, Illovo, Johannesburg

6.5.7 Judgments
A judgment is granted when a court has ordered the individual to make payment on the debt or outstanding account.

Example of a judgment entry

Date of Action | 25/08/2006
Type | Judgment
Nature of Debt | Goods
Defendant | MACINTOSH, RAVEN
Defendant Address | 52 Corlett Drive, Illovo, Johannesburg
ID Number | 8008111194082
Date of Birth | 19800811
Plaintiff | OM DISCOUNT STORE
Amount | 1,535.00
Attorney | Van Wyk/01/02 - 011 6534 80001
Case Number | 567891011/03
Court | Magistrate - Johannesburg

How can a judgment be removed from their credit report?
A judgment remains on their credit report for five years, after which it automatically falls away from the credit bureaux records. The only way it can be removed earlier is when the account had been fully paid and a lawyer goes to court to apply for a rescission (reversal).

6.5.8 Notices
A notice is a legal action that has been taken against a consumer after they failed to pay a debt/outstanding account. Notices include administration orders, provisional sequestration and rehabilitation orders. In this guide, we will only address administration orders.

Administration orders
Someone with a debt of over R50,000.00 who cannot meet their payment obligations can apply in court for an administration order. This means an administrator will manage the consumer’s finances, thus making sure that regular payments are made to their credit providers. But please note that an administration order is not a solution to over indebtedness.
Example of an administration order entry

Date of Action | 26/04/2008
Notice Type | Administration Order
Respondent | MACINTOSH, RAVEN
Respondent Address | 8 Junction Avenue, Parktown, Johannesburg
ID Number | 8008111194082
Plaintiff | JAY PILLAY
Case Number | 1502001007/02
Court | Magistrate – Johannesburg
Attorney | Rainbow Associates
Date of Birth | 800811
Amount | 600,000.00
Monthly Amount | 6,000.00
Start Date | 26/04/2008

How can an administration order be removed from their credit report?

An administration order remains on the consumer’s record at the credit bureau for ten years, after which it will be automatically removed. A consumer who can prove that they are in a suitable position to resume their financial matters can apply to the court for rescission – that is, that the judgment against them is rescinded (or reversed).

6.5.9 Enquiries

When a person applies for credit, they give consent to the credit provider to view their credit report. This is shown as an ‘enquiry’ on their credit report – and contains the enquiry date, the credit provider’s name and contact details.

Example of an enquiry history:

<table>
<thead>
<tr>
<th>Date</th>
<th>Enquirer</th>
<th>Type</th>
<th>Contact</th>
<th>Telephone</th>
</tr>
</thead>
<tbody>
<tr>
<td>20/10/2005</td>
<td>Woolworths</td>
<td>Normal</td>
<td>MFRC</td>
<td>011 200 2111</td>
</tr>
<tr>
<td>13/09/2004</td>
<td>Multichoice</td>
<td>Normal</td>
<td>Aisley Koeberg</td>
<td>021 596 0300</td>
</tr>
<tr>
<td>03/08/2004</td>
<td>Mercantile-Collect</td>
<td>Normal</td>
<td>Mercantile Bank</td>
<td>011 302 8300</td>
</tr>
<tr>
<td>05/07/2004</td>
<td>Mercantile-Collect</td>
<td>Normal</td>
<td>Mercantile Bank</td>
<td>011 302 0300</td>
</tr>
<tr>
<td>10/06/2004</td>
<td>ABSA CPU link</td>
<td>Normal</td>
<td>Credit Card (Caps) Dept</td>
<td>031 700 0000</td>
</tr>
<tr>
<td>10/05/2004</td>
<td>Std Bank Stannic</td>
<td>Normal</td>
<td>Standard Bank</td>
<td>011 999 9999</td>
</tr>
</tbody>
</table>

6.5.10 Summary of information

This final section of the credit report gives an overview of the content of the report.

<table>
<thead>
<tr>
<th>Sub-Records</th>
<th>Total No.</th>
<th>Total Value</th>
<th>Most Recent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judgment (s)</td>
<td>1</td>
<td>1,000,000.00</td>
<td>30/05/2005</td>
</tr>
<tr>
<td>Notice (s)</td>
<td>1</td>
<td>600 000.00</td>
<td>02/03/2005</td>
</tr>
<tr>
<td>Notarial Bond (s)</td>
<td>1</td>
<td>5,000,000.00</td>
<td>11/10/2004</td>
</tr>
<tr>
<td>Default Data</td>
<td>2</td>
<td>100.00</td>
<td>30/01/2004</td>
</tr>
<tr>
<td>Miscellaneous Data</td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Account History</td>
<td>10</td>
<td>116,218.00</td>
<td>05/02/2005</td>
</tr>
<tr>
<td>Enquiries</td>
<td>5</td>
<td></td>
<td>13/09/2004</td>
</tr>
</tbody>
</table>
6.6 Notification of negative information
A credit provider must give a consumer 20 business days’ notice before they send the following kinds of information to the credit bureau:
- classifications of consumer behaviour, such as ‘delinquent’, ‘default’, ‘slow paying’, ‘absconded’ or ‘not contactable’
- classifications related to enforcement action taken by the credit provider, such as handing the debt over for collection or recovery, taking legal action or ‘write-off’ (i.e. when a credit provider decides that the consumer is not going to pay and writes off what they owe as a bad debt)
This notice period allows the consumer to make the payment or alternative arrangements to pay – and thereby avoid being in default.

6.7 Clearing the record
Once your client has paid off their debts, the debt counsellor will give them a debt clearance certificate and should send a copy to the credit bureaux so that their record can be cleared. The credit provider will also update their records with the credit bureaux to reflect a “paid up” status.

After this the consumer should check that this has in fact happened by asking the bureau for a copy of their record.

6.8 How to apply for a credit record from credit bureaux
Each year a consumer can get one free copy of their credit report. If they have any queries they must send in corrections within 30 days, during which time they can get additional free copies to check that corrections have been done. After this, they must pay a small fee for a copy of their credit record.

As at November 2008, there were 11 credit bureaux registered with the National Credit Regulator. Their names and contact details can be found on the Regulator’s website at www.ncr.org.za (choose ‘Register of Registrants’ and then ‘credit bureaux’).

Transunion and Experian credit bureaux tend to deal with individual consumers and domestic-related debts (while the others largely deal with businesses and their credit worthiness.) So in order to check their record, your client should contact Transunion on 0861 482 482 and Experian credit bureaux on 0861 105 665.

6.8.1 Checking a record
It is possible for you as a paralegal to assist your client to get a copy of their credit report, and also to check and correct their information on their behalf. The letter of authority which your client has signed (see Appendix E) will show that you are legitimately acting on their behalf. Use Checklist 4: Credit Bureaux on page 39 for how to apply for a record.

6.8.2 Correcting the record
If there is any information on the record which does not seem accurate, the consumer should contact the bureau and ask them to explain it. Use Checklist 4: Credit Bureaux on page 39 for how to do this.
The bureau has 20 working days to investigate the information, during which time the information is flagged as disputed. After the investigation, the bureau will make a decision to keep or remove the disputed information. If credible evidence is found, the credit bureau will retain the listing. Your client will be given a copy of the evidence, after which they have 20 working days to refer the matter to

- the National Credit Regulator (NCR) for investigation by completing the required form; or
- the Credit Information Ombudsperson (CIO) for investigation. (See Appendix C for contact details.)

If no credible evidence is found, the credit bureau will remove the disputed information from your client’s records. They must inform your client as well as other credit bureaus and all parties that viewed the information in the previous 20 working days. They will also give your client a copy of their updated credit report. A consumer has the right to be compensated for the costs of correcting the information by any person who reported incorrect information to a credit bureau.

If your client is not satisfied with the results of these processes you could contact the institutions that deal with these kinds of issues. These are:

- **Credit Bureau Association (CBA)** - if the consumer is dissatisfied with the manner in which a credit bureau operates – especially regarding the records it keeps
- **Credit Information Ombudsperson** - if the consumer feels they have been incorrectly or unfairly negatively listed (they should include a reference number from the credit bureau)
- **Consumer Protector** - if a consumer feels their rights have been violated
- **National Credit Regulator (NCR)** - if the consumer wants to report a dispute between themselves and a credit provider
- **National Consumer Tribunal** - if the consumer is dissatisfied with the manner in which the dispute between the consumer and credit provider was resolved by the NCR

All contact details are listed in Appendix C.

### 6.8.3 Stolen identity

In some cases it becomes clear that someone has used the consumer’s identity to get credit under their name without their permission. In this case, the inaccurate listing at the credit bureaux may be a result of these debts, incurred under your client’s name. The use of someone else’s identity is called ‘identity theft’ or ‘identity fraud’ and is illegal. All credit bureaux support the fight against identity fraud. Each credit bureau has a monitoring mechanism to help people protect their identities and credit reports.

Where there has been ‘identity theft’, your client should do the following:

1. Report the matter to the police, and get an affidavit regarding the matter.
2. Contact the credit bureau and lodge a query - after which the credit bureau will send them a dispute form.
3. Complete the dispute form and send/fax it back to the bureau, together with the affidavit.
4. The credit bureaux will flag (mark) their credit report with a note and monitor enquiries to their report. This is a pro-active measure to ensure that credit providers are alerted if anyone uses your client’s ID number fraudulently to apply for credit.

Reporting stolen identity does not prevent criminals from continuing with their criminal activities but your client will be protected from liability resulting from contracts entered into under their name.
Checklist 4
Credit Bureaux

What to do if your client has been listed at a credit bureau

Check that:
1. the credit bureau is registered with the National Credit Regulator, either by checking this on the National Credit Regulator’s website (www.ncr.org.za) or by contacting the Regulator (contact details in Appendix C);
2. the credit information they are keeping about the consumer is correct;
3. they only keep the information they are legally allowed to keep and for the time period that they are allowed to (e.g. no records of expired negative listings may be kept);
4. the information about judgments is only kept for the prescribed time;
5. they provide accurate information on request; and
6. they act in ways that are free of prejudice when someone does not have a credit record.

How to apply for a credit record – and correct information that is wrong

Each year a consumer can get one free copy of their credit report – after which they may have to pay a small fee. If your client wants your assistance in getting or correcting their record, you will need the authorisation letter (in Appendix E) so that the credit bureaux knows you are authorised to act on their behalf.

Applying for a credit record

Contact the credit bureaux and request that they send you your client’s record. You should contact Transunion on 0861 482 482 and Experian on 0861 105 665. You will need your client’s personal information – such as ID number and address, and the authorisation letter.

Correcting a record

If your client disagrees with the record, they must send in corrections within 30 days. (During the 30 days of a query, they can get additional free copies of their record to check that the corrections have been done. After this, they must pay a small fee for a copy of their credit record.)

To correct a record, do the following:
1. Contact the credit bureaux and ask for a dispute form. They will send you the form and a reference number.
2. Complete the form and send it back to the bureau with a copy of the client’s ID - and authorisation letter from your client saying you may act on their behalf (see Appendix E). Include proof of the information you want changed, such as a debt clearance certificate or statement of account. If they have kept a negative listing longer than they should have, quote the relevant regulation (from the National Credit Regulator) and insist they remove the record from their system. They have 20 working days to investigate the matter.
3. Request another copy of the credit report to check that the changes have been made. If they have not, repeat the process until it is correct – and/or contact the credit bureau to ensure they correct it.
4. If they are unhelpful, contact the Credit Bureau Association or National Credit Regulator (see Appendix C for their contact details).
Part of a paralegal’s role is to educate and advise their clients on how to budget, plan and manage their money wisely. You can do this in the context of providing assistance with a financial problem, or simply when the client comes for financial-related advice – like checking a contract they are thinking of signing.

On the next page is a list of the kinds of things that may help them. You can either discuss these with them and/or give them a copy to take with them.

And on pages 49 and 50 at the back of this guide there are templates for budgets which you can either complete with them, or give them copies to take home to work on with other members of their household.

Remember that in most situations, someone’s money or income is used for a number of people within a household or family. So when talking about someone’s situation or doing their budget with them, it is important to think about the whole household’s income and how the money must be used for dependants and all the people who are supported by these incomes.

Similarly, not all people get into debt or difficult financial situations because they are careless with money or didn’t budget properly. In many people’s lives, there simply is not enough to pay for basics, and they land in debt. Where this is the case, there is no point in telling them to be more careful – so much as to help them manage to pay the debts as best they can and to help them access resources and services that provide for their needs at less cost.
Managing money wisely

Cash is king!
Save up and pay cash rather than buy on credit. When you pay cash, you pay less as there is no interest and no administration fee.
If you buy on lay-by, the item is kept for you until you have paid for it. No interest is charged, and so the price is the same as cash. You may not have the goods until you have finished paying for them however. If you cancel the sale and stop paying, the shop keeper (credit provider) is allowed to keep up to 10% of the amount you have already paid. But they must pay you back the rest.
Buying on credit means you can have the item straight away, but you must pay more for it as interest is added. While you are paying the amount you owe, you are in debt.

Taking out only the credit you need
Very few people can pay cash for big purchases like cars and houses or flats. You should expect to have to borrow money to pay for these – but managing the debt must become a priority. Houses/flats and cars can be taken back (repossessed) if you stop paying for too long – even if you have paid a lot of the debt back already.

When you choose a house/flat or car, first find out how much you can afford to pay a month and buy something you can afford. And remember that you will also need a deposit and some other money up-front for administration fees.

Once you have a loan, especially from a bank, do not be tempted to extend the loan and borrow more money to buy other items. The only time this may be a good idea is when you have decided that you can actually afford more credit and that borrowing more from the same loan is the most cost-effective way to borrow money – because it is at the lowest interest rate. But this takes discipline, as you must remember to pay regular amounts into your housing loan for the thing you bought as well as for your house/flat – just as if you were getting an account from a creditor provider.

If you find you have borrowed more than you need, return the unused amount to the credit provider. In this way you are paying off a portion of your debt and will not pay interest on money that you did not actually need. Do not keep it and spend it on something else!

So, generally, if you can pay off a debt more quickly, do so. It means you will pay less for it because you are paying less interest. (Make sure you check that this is the case when you sign the contract, as some contracts charge you a full administration fee and the interest, even if you pay early.)

And, of course, pay your accounts on time! When signing the contract to apply for credit, choose a date that is manageable for you. In other words don’t choose a date very close to the date you get your salary or wage, as if there is a delay in receiving your pay, you will not pay on time and it will look like you are defaulting. You will also have to pay interest for the days that your payment was late. So if you can, choose a date about a week after payday. And if you earn money in some other way, like through a small business, choose a date when you know your money is likely to be available – and then use it to pay your accounts!

Manage interest rates wisely
If possible, put all your debts together so that you only owe one or two companies. This is called ‘consolidating your debt’. The reason for this is to borrow money from the company with the lowest
interest rate. While a clothing company will not take on your debt from the furniture shop, a bank may lend you money to pay off the accounts and then you only pay them back. But make sure that their interest rate is lower!

So if you have three loans, pay off the one with the highest interest rate by borrowing money from the one with the lowest interest rate. BUT make sure you use the money you borrow to do this – and don’t spend it on something else!

Generally use the money you borrow for the purpose you borrowed it for – not for something else.

**Find the best interest rate**
Find out who lends money for particular purposes – to check if they have lower interest rates. For instance if you are starting a small business, find out which organisations support the development of small business. They may have advice on how to borrow money wisely and at lower interest rates. Similarly, if a young person wants to do post-school study, have them take out a student loan which has a lower interest rate than the normal rate at which banks lend money.

**Find out what subsidies, free services and resources there are**
If the young person who want to study achieved high marks or is excellent at something – like maths or a particular popular sport – find out if there are scholarships available to them as these are essentially gifts you do not have to pay back at all! What they do have to do is keep achieving! Universities and technikons usually give a few scholarships to people with particular talents or for particular kinds of people (e.g. people with disabilities, young women entering the sciences etc). In addition, bursaries – which are loans at low interest rates – are also available for education.

Remember also that more free or subsidized services exist than we may think. They may not be flashy or smart and sometimes they are not as convenient – but they can sometimes save a lot of money. These can range from using the services the state provides, to using the services offered at reduced rates by apprentices – e.g. hairdressers, optometrists etc.

Find out before paying money. It costs nothing and may save a lot!

**Beware of attractive offers**
Do not borrow money from companies who do not check if you can pay them back. This may be attractive when you are desperate – but they do not take this risk for nothing and are likely to have very high interest rates and/or ways of getting the money if you cannot pay. This situation could lead you to incur heavy debt that could be difficult to repay.

Do not fall for special offers, unless you are very sure that they are offering what they say! Often the full costs are not made clear. So before you buy ANYTHING, make sure you have asked all the questions about how much the total cost is (including interests and admin fees) – and when the money has to be paid and in what amounts.

**Do not get money fraudulently**
Although some people think it is clever to get as much money as possible out of any system, telling lies in order to do so is called fraud. It is wrong and you can be arrested for doing so. For example, people who pretend to be someone else to get a social grant, or say that they have a crisis and apply for ‘proven emergency’ loans repeatedly when they don’t have a crisis at all – are committing a crime. You could
Information Sheet (continued)

go to jail if caught and found guilty – or you could lose a large portion of your salary, your pension, or your property to repay the money you owe that you obtained fraudulently.

Shop wisely
- Try not to buy on impulse or in a hurry. We all know that there are better prices at some places than at others – and sometimes they are in unexpected places!
- Share information about where there are good bargains.
- Don’t buy something that is poorly made because it is cheap if it is something you need to use for a long time. But if you need something for a short time only, there is no harm in buying something that is not of high quality, as long as it does the job for the time you need it.
- Also if you need to use anything only once (like a tool or implement) borrow one from someone who has one – and offer to lend them your things when they need them.
- Buy things at the end of the season when they are on sale, ready for the next season.
- Buy things you will need when you see them at good prices. Don’t wait until you need them urgently and buy them expensively.
- Form buying co-operatives with friends, neighbours or family – so that you can buy more cheaply in bulk and each pay for a share. It is almost always cheaper to buy together and share the cost.
- Share transport costs – by arranging lift clubs or going to town together and sharing the cost.
- Break the habit of favours and having to appear generous. Start sharing responsibilities with those who will share this view – and show others that it works!

Try not to waste
Don’t buy something new when you have something that will do. Be creative if you can – and use things for a number of purposes instead of buying something specially.
Use up things – don’t let things go bad or open new containers before you have finished using up the old one.

Deal with problems quickly
Most of us like to avoid problems – but, as we know, this often makes them worse.
In the case of money, avoiding your problems definitely makes them worse – and the problem does not go away!

So if you have a problem paying a company or a person, go and see them and make an arrangement to pay back something - even if it is less than you had initially agreed and you have to pay back for more months than you had originally agreed. But keep on paying something. While they may be cross or seem strict, they would rather have you keep paying a little than not pay at all. A lot of people have financial difficulties – so you do not have to feel embarrassed. Facing up to the situation and discussing it is far more productive than avoiding it.

Plan – for immediate and later expenses – and stick within your means
Do a budget to see what you and your dependants need each month. Remember to include savings towards the less regular expenses - like travel to see your family, school fees etc.

While things can happen that you did not expect and you have to spend money that is not in your budget or plan, try not to buy regular things that you cannot afford. Encourage your family or household to also only buy what you can pay for – and to buy wisely.
Stick to what you agreed to spend in the budget – and try and keep a record of what you spend. Before the month-end, compare what you spent with what you said you would spend. If there have been some costs that were higher than you expected, decide how to manage this in the next month. While many households do have to live very simply, it is still not a good idea to borrow money for regular monthly expenses – as it is unlikely that you will be able to pay this back.

The exception is where someone has a secure offer of work or money that will be coming in – and you have to pay out more while you are waiting for that money to come in. This is called a ‘cash flow’ problem – that is the cash is coming, but you don’t have it yet. A short-term loan to get through these times while you are waiting is possible - but only if you are sure that the money will definitely come!

**Be brave - fight against unsuitable luxury**

There has been an increase in the pressure to have flashy and very expensive things – even when it is not necessary or suitable.

Funerals are a good example. Some people are organising funerals as if they are big society celebrations rather than an important ceremony to bury someone and support their family. While funerals do entail spending some money, they do not have to impoverish the family. Not only are families who are bereaved experiencing the loss of a family member, but they may also be left with additional people to care for in the form of children/parents of the person who died.

So be brave. Insist on doing only what you can afford and what is suitable. For example drive an older car that is paid off, rather than a newer one that you owe a lot of money on. And although it is important to buy something special sometimes, resist buying luxuries or paying for things – like entertainment - that you cannot afford.

Very few people can have everything they want. What we can do is choose what we can afford and what we cannot – and then we must stick to that.

**Saving, buying and benefit organisations**

Stokvels and buying clubs are a way of saving money collectively. It is a supportive way of being disciplined which forces you to put money aside every month. Either the money is shared out at the end of the year or each person has a chance to buy something for cash when their turn comes. Also saving collectively can mean that the bank gives you a higher interest rate so you make more money together. You can also share the bank charges.

Joining a benefit society means that for the money you pay every month, you could be helped when you are sick, when you retire or must stop working, when you need to pay for education or a new baby - or when you have funeral or medical expenses. Some benefit societies also lend money and give advice, for instance on how to buy a house. The most important thing with benefit societies is to know that your money will be safe with them. All benefit societies must be registered with the Registrar of Friendly Societies - so make sure that the one you want to join is registered. Also ask people what they have heard about it. You do not want to pay money and then find that the organisation has closed down.

*While every attempt has been made to ensure that the information published in this guide is accurate, the authors and publishers of this material take no responsibility for any loss or damage that may arise out of the reliance by any person upon any of the information contained herein. The contents of this guide do not constitute legal advice.*
Client Record 1

DEBT AND CREDIT OVERVIEW
(Copy, complete and file)

Client’s Basic Information

Surname
First name
ID No
Address

Telephone
Home
Cell
Other

Paralegal’s name
Start date

The client’s story
Use a blank page to record the main points of the client’s story.
Even if it is not very tidy, keep these notes as they can be very useful.

Debt information
Does your client owe any money? Yes ☐ No ☐
If yes, please complete the Debt information sheet with the client.

Budget information
If your client is prepared to do this, please complete the Budget
and Household Expenses sheets with the client. Do you think your client
may be over-indebted? Yes ☐ No ☐

Make as many copies of the next page as you need.
**Client Record 1**

### Assessment of credit providers’ actions

*(Info sheet: Getting Credit: know your rights)*

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Did the credit provider follow the correct processes in dealing with your client?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If no - give details (attach a separate page if necessary):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Do you think there may have been any reckless credit granting?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If yes - give details (attach a separate page if necessary):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Did the credit provider send your client a written notice (letter of demand)?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Did your client respond in any way?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If yes - give details (attach a separate page if necessary).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Have legal procedures been instituted against your client?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Give details (attach a separate page if necessary):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Were all legal processes followed correctly?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If no, give details (attach a separate page if necessary):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Was your client refused credit?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Give details (attach a separate page if necessary):</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Assessment of credit bureaux actions

*(Checklist 4: Credit bureaux)*

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is your client listed at a credit bureau?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If so, which one:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contact name and details:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is the bureau registered?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is the information correct?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are they holding information that they should not have?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Please give details:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Have they had any difficulty getting info from the bureau?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>It yes, please give details:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**CONTACT AND ACTION**

**(copy, complete and file)**

<table>
<thead>
<tr>
<th>Client’s Surname</th>
<th>Paralegal’s name</th>
<th>Date</th>
</tr>
</thead>
</table>

**Action plan** *(please add another page if this is not enough space)*

<table>
<thead>
<tr>
<th>Main Issues</th>
<th>Summary of actions planned</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
</tr>
</tbody>
</table>

**Record of contact between paralegal and client** *(please add another page if this is not enough space)*

<table>
<thead>
<tr>
<th>Date</th>
<th>meeting/ e-mail/ phone/ fax</th>
<th>Record of discussion and agreements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
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</tr>
</tbody>
</table>

**Record of action taken by paralegal** *(please add another page if this is not enough space)*

<table>
<thead>
<tr>
<th>Date</th>
<th>letter/ e-mail/ phone/ fax / meeting</th>
<th>Who was contacted (org. and person’s name)</th>
<th>Record of discussion and agreements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

**Conclusions**

<table>
<thead>
<tr>
<th>Credit provider</th>
<th>Outcome</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## DEBT INFORMATION

(copy as many times as you need, complete and file)

<table>
<thead>
<tr>
<th>Client’s Surname</th>
<th>Paralegal’s name</th>
<th>Date</th>
</tr>
</thead>
</table>

### Details of Debt 1

Name of credit provider (organisation/ person to be paid)

Amount of initial loan

Period of loan

Total amount still owing

Amount to be paid monthly

Number of payments still to be made

### Problems with Payment

Amount/ number of months in arrears

Actions taken by credit provider

### Contact Details

Department/ person to be contacted

Postal address

Phone

Fax

E-mail

<table>
<thead>
<tr>
<th>Client’s Surname</th>
<th>Paralegal’s name</th>
<th>Date</th>
</tr>
</thead>
</table>

### Details of Debt 2

Name of credit provider (organisation/ person to be paid)

Amount of initial loan

Period of loan

Total amount still owing

Amount to be paid monthly

Number of payments still to be made

### Problems with Payment

Amount/ number of months in arrears

Actions taken by credit provider

### Contact Details

Department/ person to be contacted

Postal address

Phone

Fax

E-mail
**Client Record 4**

**BUDGET Monthly income and expenditure**

*See the information sheet on the next page to help you remember possible expenses.*

*When you have completed the budget, make a copy for the client to take away.*

<table>
<thead>
<tr>
<th>Client’s Surname</th>
<th>Paralegal’s name</th>
<th>Date</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Received Each Month (income)</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>R</td>
<td></td>
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<tr>
<td></td>
<td>R</td>
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<td>R</td>
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</tbody>
</table>

**Total income =**

<table>
<thead>
<tr>
<th>R</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Must Pay Each Month (expenses)</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>R</td>
<td></td>
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<td>R</td>
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<td>R</td>
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<td></td>
<td>R</td>
<td></td>
</tr>
<tr>
<td></td>
<td>R</td>
<td></td>
</tr>
</tbody>
</table>

**Total expenses =**

| R |

**Income less expenses**

<table>
<thead>
<tr>
<th>Enough/</th>
<th>Too little</th>
</tr>
</thead>
<tbody>
<tr>
<td>R</td>
<td></td>
</tr>
</tbody>
</table>
### HOUSEHOLD EXPENSES TO ASSIST IN BUDGETING

<table>
<thead>
<tr>
<th>Regular expenses (daily, weekly, monthly)</th>
<th>Daily</th>
<th>Weekly</th>
<th>Sometimes</th>
<th>Monthly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rent</td>
<td>R</td>
<td>R</td>
<td>R</td>
<td>R</td>
</tr>
<tr>
<td>Electricity</td>
<td>R</td>
<td>R</td>
<td>R</td>
<td>R</td>
</tr>
<tr>
<td>Phone</td>
<td>R</td>
<td>R</td>
<td>R</td>
<td>R</td>
</tr>
<tr>
<td>Airtime</td>
<td>R</td>
<td>R</td>
<td>R</td>
<td>R</td>
</tr>
<tr>
<td>Transport</td>
<td>R</td>
<td>R</td>
<td>R</td>
<td>R</td>
</tr>
<tr>
<td>Groceries</td>
<td>R</td>
<td>R</td>
<td>R</td>
<td>R</td>
</tr>
<tr>
<td>Toiletries</td>
<td>R</td>
<td>R</td>
<td>R</td>
<td>R</td>
</tr>
<tr>
<td>Clothes and shoes</td>
<td>R</td>
<td>R</td>
<td>R</td>
<td>R</td>
</tr>
<tr>
<td>School expenses</td>
<td>R</td>
<td>R</td>
<td>R</td>
<td>R</td>
</tr>
<tr>
<td>Support of family members</td>
<td>R</td>
<td>R</td>
<td>R</td>
<td>R</td>
</tr>
<tr>
<td>Debt instalments</td>
<td>R</td>
<td>R</td>
<td>R</td>
<td>R</td>
</tr>
<tr>
<td>Donation to church, mosque or synagogue</td>
<td>R</td>
<td>R</td>
<td>R</td>
<td>R</td>
</tr>
<tr>
<td>Burial society or funeral policy</td>
<td>R</td>
<td>R</td>
<td>R</td>
<td>R</td>
</tr>
<tr>
<td>Insurance</td>
<td>R</td>
<td>R</td>
<td>R</td>
<td>R</td>
</tr>
<tr>
<td>Cigarettes</td>
<td>R</td>
<td>R</td>
<td>R</td>
<td>R</td>
</tr>
<tr>
<td>Alcohol</td>
<td>R</td>
<td>R</td>
<td>R</td>
<td>R</td>
</tr>
<tr>
<td>Sweets, cool drinks and other snacks</td>
<td>R</td>
<td>R</td>
<td>R</td>
<td>R</td>
</tr>
</tbody>
</table>

### Saving for annual and irregular expenses

<table>
<thead>
<tr>
<th>Amount each time</th>
<th>No. of times a year</th>
<th>Total annual</th>
<th>Therefore monthly</th>
</tr>
</thead>
<tbody>
<tr>
<td>School fees</td>
<td>R</td>
<td>x</td>
<td>=R</td>
</tr>
<tr>
<td>Religious festivals e.g. Christmas/Eid</td>
<td>R</td>
<td>x</td>
<td>=R</td>
</tr>
<tr>
<td>Birthdays</td>
<td>R</td>
<td>x</td>
<td>=R</td>
</tr>
<tr>
<td>Weddings</td>
<td>R</td>
<td>x</td>
<td>=R</td>
</tr>
<tr>
<td>Initiations</td>
<td>R</td>
<td>x</td>
<td>=R</td>
</tr>
<tr>
<td>Funerals</td>
<td>R</td>
<td>x</td>
<td>=R</td>
</tr>
<tr>
<td>Travel to visit family</td>
<td>R</td>
<td>x</td>
<td>=R</td>
</tr>
</tbody>
</table>
Appendix A

Overview of the National Credit Act, No. 34 of 2005

This Act came into full effect on 1 June 2007. It repeals (replaces) the Usury Act of 1968 and the Credit Agreements Act of 1980 and Exemption Notice.

Introduction  If you have access to the Internet, a copy of the Act can be found at www.info.gov.za/gazette/acts/2005/a34–05.pdf

Chapter 1  Interpretation, Purpose and Application: Definitions (section 1) of the terms used, the reason for the Act; types of credit agreements (sections 8–11) and how to use the Act.

Chapter 2  Consumer Credit Institutions: Operation of institutions such as the National Credit Regulator (Part A sections 12–25) and the National Consumer Tribunal (Part B sections 26 and 34).

Chapter 3  Consumer Credit Industry Regulation: Rules for registering credit providers (section 40), credit bureaux (section 43) and debt counsellors (section 44) as well as cancelling registration (Part B sections 54–59).

Chapter 4  Consumer Credit Policy: Rights of the consumer wanting to apply for credit (Part A sections 60 and 66), protecting the secrecy of personal information (Part B sections 67–73), credit marketing practices (Part C sections 74–77), over-indebtedness (sections 79 and 85), reckless credit (sections 80–84) and debt review (sections 86–88).

Chapter 5  Consumer Credit Agreements: Illegal credit agreements (Part A sections 89–91), protection of personal documents (Part B sections 92–99), fees that can be charged on debt (Part C sections 100–106), statement of accounts (Part D sections 107–115), changes to the credit agreements (Part E sections 116–120), ending a credit agreement (Part F sections 121–123).

Chapter 6  Collection, Repayment, Surrender and Debt Enforcement: Collecting goods and rules for paying back loans (Part A sections 124–126), surrendering goods to end debt (section 127), and rules for repossession (Part C sections 129–133).

Chapter 7  Dispute settlement other than debt enforcement: Resolving a disagreement between the consumer and the credit institution by the credit regulator or the tribunal (Part D sections 142–152).

Chapter 8  Enforcement of the Act: Rules for searches (Part A sections 153–155), offences under the Act and preparing for a legal case.

Chapter 9  General provisions: How previous laws will be affected by this Act.

(If you have access to the Internet, a copy of the Act can be found at www.info.gov.za/gazette/acts/2005/a34–05.pdf)
Consumers, in respect of a credit agreement to which this Act applies, means
- the party to whom goods or services are sold under a discount transaction, incidental credit agreement or instalment agreement;
- the party to whom money is being paid, or credit granted under a credit facility;
- the mortgagor under a mortgage agreement;
- the borrower under a secured loan;
- the lessee under a lease;
- the guarantor under a credit guarantee; or
- the party to whom or at whose direction money is advanced or credit granted under any other credit agreement.

Credit, when used as a noun, means
- the deferral of payment of money owed to a person, or a promise to defer such a payment; or
- a promise to advance or pay money to or at the direction of another person.

A credit agreement contract means an agreement that meets all the criteria set out in section 8.

A credit bureau refers to a person who is required to apply for registration as such in terms of section 43(1).

A credit provider in respect of a credit agreement to which this Act applies, means
- the party who supplies goods or services under a discount transaction, incidental credit agreement or instalment agreement;
- the party who advances money or credit under a pawn transaction;
- the party who extends credit under a credit facility;
- the mortgagee under a mortgage agreement;
- the lender under a secured loan;
- the lessor under a lease;
- the party to whom an assurance or promise is made under a credit guarantee;
- the party who advances money or credit to another under a credit agreement; or
- any other person who acquires the rights of a credit provider under a credit agreement after it has been entered into.

Over-indebtedness occurs when the preponderance of available information at the time a determination is made indicates that the particular consumer is or will be unable to satisfy in a timely manner all the obligations under the credit agreements to which the consumer is a party, having regard to that consumer’s
- financial means, prospects and obligations; and
- probable propensity to satisfy in a timely manner all the obligations under all the credit agreements to which the consumer is a party, as indicated by the consumer’s history of debt repayment (see section 79).

Reckless credit is the credit granted to a consumer under a credit agreement concluded in circumstances described in section 80.
Appendix C

Key institutions

These are the key institutions which protect stakeholders’ rights in relation to debt and credit.

Consumer Protector
If a consumer feels their rights have been violated they should contact the Office of the Consumer Protector.
Tel: 0800 007081 or 021 483 5735
Fax: 021 483 3484
E-mail: rwindvogel@pgwc.org.za

Council for Debt Collectors
If the consumer wants to check whether a debt collector is registered and whether the debt collector’s behaviour was appropriate.
Tel: 012 804 9808
Fax: 012 804 0744
Web: www.debtcol-council.co.za

Credit Bureau Association (CBA)
If the consumer is dissatisfied with the manner in which a credit bureau operates – especially regarding the records it keeps.
Tel: 011 447 7194
Fax: 011 447 6701
E-Mail: enquiries@cba.co.za
Web: www.cba.co.za

Credit Information Ombudsperson
If the consumer feels they have been incorrectly or unfairly negatively listed they should get a reference number from the credit bureau and contact the Credit Information Ombudsperson.
Tel: 0861 662 837
E-mail: ombud@creditombud.org.za
Web: www.creditombud.org.za

National Credit Regulator (NCR)
If the consumer needs help with: calculating interest rates on credit agreements; interpreting contracts; verifying registration of credit providers or debt counsellors; and/or wants to report a dispute with a credit provider.
Tel: 0860 627 627
E-mail: info@ncr.org.za or complaints@ncr.org.za
Web: www.ncr.org.za

National Consumer Tribunal
If the customer is dissatisfied with the manner in which the dispute between the customer and credit provider was resolved by the NCR.
Tel: 0860 627 627
E-mail: info@ncr.org.za or complaints@ncr.org.za
Web: www.ncr.org.za

South African Board of Sheriffs
If the consumer is dissatisfied with the manner in which a sheriff has behaved.
Tel: 021 461 6622
E-mail: contact@sheriffs.org.za
Web: www.sheriffs.org.za
Appendix D

How to lodge a complaint with the National Credit Regulator


1. Read the relevant regulations to check that your complaint is justified.

2. Contact the call centre of the National Credit Regulator (NCR) – at 0860 627 627 – or send an e-mail to emamabolo@ncr.org.za.

3. When the complaint is received, it is logged onto the Complaints database, and a complaint reference number is generated that is unique to that complaint. This reference number is given to the complainant, as well as information regarding the Complaint Officer who is dealing with the complaint.

4. The Complaint Officer will then contact the complainant to verify the complaint and to request any further information if necessary. The complaint will then be forwarded to the credit provider. The credit provider is required to respond to that specific complaint, and to provide the NCR with any supporting documentation that may be needed. The NCR normally gives the credit provider 10 business days to respond. This response time may be changed depending on the severity or nature of the complaint.

5. When a response has been received, the Complaint Officer will assess the situation and make an objective decision as to whether there has been any contravention by the credit provider. For a simple complaint this process should not take more than 21 business days. However, complaints that are complex may take longer to resolve.

6. Complaints that cannot be resolved by the Complaints Division, or that are of a serious nature, are investigated and could potentially be referred to the National Consumer Tribunal for a compliance notice.

Note: The greater the amount of information supplied to the Complaints Division by the consumer regarding the issue under investigation will determine the speediness of the resolution process.
Appendix E

Authorisation letter

[Organisation’s letterhead or name and address]

I, ____________________________

I.D. Number ____________________________

residing at ____________________________

telephone / cell number ____________________________

hereby authorise the (organisation’s name) to act on my behalf.

I grant the above organisation the right to access my records, including my financial details, and thereby act as my mediator/negotiator in these and related matters. I have signed this statement, in the presence of witnesses, as proof and validation of this authority.

The results of investigations and negotiations can be relayed to (organisation’s name) who will advise me accordingly. All related documents can be forwarded to (organisation’s name) for finalisation of my matters. Any information regarding the status of my query can be divulged to any member of (organisation’s name), in order for them to assist me.

Signed at ……………………… on this, the …………. day of ………………….. 20 ….

Signature  Date

__________________________  ____________________________

Witness (1)  Witness (2)

__________________________  ____________________________
Appendix F

Example of a debt clearance certificate

Form 19

(On the letterhead of the debt counselor)

CLEARANCE CERTIFICATE ISSUED
In terms of section 71(2)(b)(i) of the National Credit Act 34 of 2005

Name of Debt Counselor
NCR Registration No
Contact Telephone number
This is to certify that the following consumer:
Full names and surname of consumer
Identity Number
Court / Tribunal Number

Has discharged all his/her obligations in terms of the debt re-arrangement order granted by the Court / Tribunal on (insert date of order) in terms of Section 86(7) (c) of the National Credit Act 34 of 2005.

The debts set out hereunder have been settled in full:

<table>
<thead>
<tr>
<th>Name of credit provider</th>
<th>Date of last payment</th>
<th>Full amount settled</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

Signed at [place] on this [day] of [month] of [year]

Debt Counselor (Signature)
Appendix G

Interest rates and fees on loans

Formulae to calculate interest
The National Credit Act has specified the formulae to be used to calculate the interest for each kind of credit agreement. (See chapter 5 of the Regulations.)

Interest can be calculated daily and will probably be added to the consumer’s account on a monthly basis. The manner of calculation must be set out in the credit agreement.

For a short-term credit agreement (a loan of not more than R8,000) the interest is calculated as follows:
Deferred amount for the day \( \times \) the monthly interest rate \( \div \) by the number of days in a month.
For all other credit agreements, interest is calculated as follows:
Deferred amount for the day \( \times \) interest rate \( \div \) by the number of days in the year.

Interest rates
The National Credit Act has specified the maximum allowable interest rate for each kind of credit agreement (See Regulation 42).

<table>
<thead>
<tr>
<th>Sub-sector</th>
<th>Maximum prescribed interest rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mortgage agreements</td>
<td>([\text{RR} \times 2.2 + 5%]) per year</td>
</tr>
<tr>
<td>Credit facilities</td>
<td>([\text{RR} \times 2.2 + 10%]) per year</td>
</tr>
<tr>
<td>Unsecured credit transactions</td>
<td>([\text{RR} \times 2.2 + 20%]) per year</td>
</tr>
<tr>
<td>Developmental credit agreements:</td>
<td></td>
</tr>
<tr>
<td>For the development of a small business</td>
<td>([\text{RR} \times 2.2 + 20%]) per year</td>
</tr>
<tr>
<td>For low income housing (unsecured)</td>
<td>([\text{RR} \times 2.2 + 20%]) per year</td>
</tr>
<tr>
<td>Short term credit transactions</td>
<td>5% per month</td>
</tr>
<tr>
<td>Other credit agreements</td>
<td>([\text{RR} \times 2.2 + 10%]) per year</td>
</tr>
<tr>
<td>Incidental credit agreements</td>
<td>2% per month</td>
</tr>
</tbody>
</table>

\(‘\text{RR}’ = \text{the South African Reserve Bank’s Repurchase Rate}\)

Fees payable to the credit provider
The initiation fee may never exceed 15% of the principal debt (Sec 43.3 of Regulations, May 2006, of the National Credit Act).
The maximum monthly service fee is R50 (Sec 44 of Regulations, May 2006, of the National Credit Act).
Appendix H

Glossary of terms used in this guide

In an administration order, the court will appoint an administrator to collect a consumer’s money each month and to pay the debts as stated in the order.

An alternative dispute resolution agent is defined by the National Credit Act as any person who assists in the resolution of credit disputes through conciliation, mediation or arbitration. They must be approved by both the consumer and the credit provider.

A budget is a list of all of someone’s income (earnings) and expenditure (money paid out) each month. When drawing up a household budget, the total income must be the total that all members of the household get every month. The expenses must be all the money spent by the household.

A consent to judgment is a legal document that may be signed by the consumer if they accept that a judgment (court order) will be made against them to ensure payments.

Consumer credit information includes the consumer’s credit history, financial history, education, employment and identity details.

Consumers are people who buy goods or pay for services. Sometimes they pay cash and at other times they buy on credit.

A contract is another name for the legal agreement between two people – in this case the credit provider and the consumer.

The costs of credit include the fees, costs and charges related to borrowing money, including interest.

A court order/judgment is a legally binding instruction given by the court.

Credit is when you buy goods or services and do not pay cash for them, but rather buy on account or buy on credit where you pay over a period of time or at a later date. When doing this you make a debt for yourself.

A credit agreement is the legal agreement or contract between the credit provider and the consumer. It contains all the information about the debt and how it should be repaid as well as each of the party’s rights and obligations.

Credit bureaux are organisations that keep records of all consumers’ credit information indicating how they manage their debts. They give this information to credit providers on request, as this assists them in deciding whether or not to give a person credit. It is also used to detect fraud, corruption or theft.

Credit providers are organisations or people that lend money - such as banks and micro-lenders - or that sell you goods on credit, such as shops.

A debt is the money you owe someone – and comes from buying goods or services on credit or from borrowing money.
Appendix H

Glossary of terms used in this guide

A debt clearance certificate states that the consumer has paid off all their debts.

Debt counsellors are trained and registered by the National Credit Regulator to assist consumers who may have become over-indebted as a result of entering into credit agreements.

Debt management is when a consumer is able to control the amount of debt they make so that the monthly repayments are affordable.

A debt review is when a debt counsellor makes a note of a consumer’s income and expenses, and works out affordable repayments for their debts to see if they are over-indebted.

To declare is to announce or say publicly. A declaration is a public announcement.

Default data is information that relates to late payments or non-payment on accounts.

Defaulting is when the consumer does not make a payment on a loan that they have agreed to. It is also when they do not do something which they have agreed to in the credit agreement.

A default judgment is a judgment that is automatically made in favour of the credit provider, without hearing the consumer’s views. This can happen for a number of reasons, including that the consumer had signed a consent to judgment in their contract or they did not respond to a summons. This allows the credit provider to claim some of your client’s property – so they can sell them to get the money they are owed.

To defend a case in court is to argue that you are not guilty of the charge.

Defendant is the person or organisation from whom something is being claimed – in this case the money they have not paid.

Discrimination is when people are treated differently because of their ‘race’, gender, age etc.

A dispute is a disagreement.

An emolument attachment order instructs people who owe the consumer money to pay this directly to the consumer’s credit provider.

An enquiry is when a credit provider views a consumer’s credit record to decide whether or not to give them credit.

Expenses are monies that you will have to pay to get the services or goods you need.

Fees are a fixed amount that the credit provider charges to initiate the credit and/or as service fees.

A garnishee order is a court order which instructs the consumer’s employer to deduct the money that the consumer owes from their salary and give it straight to a credit provider.

Income is the total amount of money received by someone – for example from a salary or wages, or from sales of goods in their business.

An instalment is the amount of money that the consumer has agreed to pay back every month.

Interest is the amount that credit providers charge for lending money and is usually a percentage of the amount borrowed.

Legal proceedings are actions against the consumer involving the court.
The National Credit Regulator (NCR) is a new institution introduced by the National Credit Act to make sure that credit providers, debt counsellors and credit bureaux comply with the Act. The NCR will also help consumers with understanding their contracts and will support consumers if they have problems with credit providers.

A negative listing is information held at a credit bureau that shows that a consumer has defaulted on a credit agreement.

A consumer is over-indebted in terms of Section 79 of the Act if, at the time that an assessment is made, they are unable to pay the instalments on all their debts on time without borrowing more money.

To enter a plea is to admit guilt or explain the facts to be used for a defence in court.

Principal amount is the actual amount of money a consumer borrows – before interests and charges have been added.

A plaintiff is the person or organisation making a claim against someone – in this case to get the money owed to them.

The prescription period is the time period in which a claim must be made – after which the right to claim falls away, and the credit provider can no longer go to court to try to get their money back.

Reckless lending or reckless credit granting is when a credit provider has not checked to make sure that a consumer can afford to make the payments for new debt. It is also when they have checked and made the loan, even though the consumer cannot afford it.

Restructuring debt – this is an agreement to change the way payments are made – how much, how often and for how long.

A sheriff of the court brings to the consumer’s home the warrant for the repossession of goods and, over a number of visits, lists and then removes possessions to be sold to cover the debt.

A summons to court is an order that you should go to court.

In the written notice (sometimes known as a letter of demand) the credit provider informs the consumer that they have defaulted on their payments, asks them to pay the money that is owing and/or proposes that the consumer consult a debt counsellor or another agency so that a plan can be made to bring the payments up to date.
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Paralegal service offered by the Black Sash regional offices

The Black Sash provides a paralegal service to those who need help in a variety of matters, including accessing child support and other social grants, labour problems, debt and credit problems and citizenship applications. Our services are free.

**Cape Town Regional Office**
3rd Floor
Metador Centre
Corner Long & Strand Street
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Tel: 021 461-7804 (t)
Fax: 021 461 8004 (f)
E-mail: capetown@blacksash.org.za

**Knysna Regional Office**
9 Pitt Street
Knysna, 6570
P. O. Box 210
Knysna, 6570
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Fax: 044-382 3615
E-mail: knysna@blacksash.org.za

**Grahamstown Regional Office**
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The Black Sash participated actively in consultative processes while the National Credit Act was being developed, to advocate for the rights of poor people.

Drawing on this experience and on its case work in the first year of implementing the Act, the Black Sash has produced a second edition of this reference guide, which is part of a series for paralegals and other people providing advice.

**It will assist you to**

- use the National Credit Act to better inform people about their rights and responsibilities when they borrow money
- advise people on debt and credit-related matters
- assess a person’s financial situation

**It will also provide you with information on**

- over-indebtedness
- court orders
- the role of debt counsellors
- credit agreements and the responsibilities of consumers and credit providers
- negative listings and the role of credit bureaux

The reference guide offers up-to-date information and clear guidelines, useful client record sheets, checklists and a glossary - and is enriched by realistic case studies.

The Black Sash distributes this reference guide in the hope that it will assist people to avoid debt traps and will contribute to practices that support consumer rights.

This publication was made possible with support from the Foundation for Human Rights, the European Union and the South African Council of Churches.