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General Notice

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GENERAL NOTICE

NOTICE 224 OF 2011

DEBT COUNSELLING FEE GUIDELINES

There are currently no regulations determining what Debt Counsellors may charge as part of rendering their service. The National Credit Regulator (NCR) has been approached by Debt Counselling Association of South Africa (DCASA), the industry body representing Debt Counsellors to endorse the attached guidelines in order to limit possible abuse to consumers. The NCR therefore publishes these DCASA guidelines for information and comment by the public and other interested stakeholders. Interested parties are required to submit their comments by **13 May 2011**. Written submissions can be directed to **Ismail Kharwa** at lkharwa@ncr.org.za



Proposed New Debt Counselling Fees

1. The Debt Counsellor may receive the following amounts in respect of consumers who have applied for debt counselling:
 - 1.1. An application fee, limited to the amount prescribed in terms of Schedule 2 (2) of the Act, recoverable directly from the consumer upon receiving an application for debt review;
 - 1.2. A rejection fee of R300.00 (excluding VAT) in respect of consumers whose applications have been rejected in terms of section 86(7)(a);
 - 1.3. A restructuring fee of the lesser of the first instalment of the debt re-arrangement plan or a maximum of R6000.00 (excluding VAT), in respect of a consumer whose applications have been accepted in terms of 86(7) (b) or 86(7) (c). (Should a joint application be required, the fee can be increased to a maximum of R6000.00 (excluding VAT).)
 - 1.3.1. 100% of the fee is payable at the first instalment.
 - 1.4. Should a Debt Counsellor fail to submit proposals to Credit Providers or refer the matter to a Tribunal or a Magistrate Court within 60 business days from date of the debt review application the Debt Counsellor has to refund 100% of the fee paid by the consumer (excluding the application fee).
 - 1.5. A monthly after-care fee of 5% (excluding VAT) of the monthly instalment of the debt re-arrangement plan up to a maximum of R400.00 (excluding Vat), for a period of 24 months, thereafter reducing to 3% (excluding VAT) of the monthly instalment, to a maximum of R400.00 (excluding VAT), for the remaining period of the debt re-arrangement plan.
 - 1.5.1. Payment of the monthly after-care fee is to commence in the 2nd month after the amount in 1.3.1 above has been paid.
 - 1.6. Should the consumer withdraw from the process after completing stages 1.3 above, a fee equal to 75% of the restructuring fee as per 1.3 above is payable by the consumer.
 - 1.7. A legal fee for a *consent* order of R750.00. The legal fee for the consent order may only be deducted in the 2nd month after the amount in 1.3.1 above has been paid. If the consumer's affairs cannot be resolved through a consent order, and there are additional costs for further legal processes, these need to be separately negotiated with the client. The Debt Counsellor should be able to produce proforma invoices issued to them by their lawyers for legal services, when so requested by the NCR.
 - 1.8. The applicable fees and related debt counselling services will be set out in an addendum to Form 16, which needs to be explained to the consumer and signed by him/her.
 - 1.9. The above fees will become effective from2011.
 - 1.10. These levels of fees will be reviewed after 18 months.

Information Sheet for New Debt Counselling Clients

	Value (Excluding VAT)	Frequency
1. Application fee	R 50.00	Once off (Month 1)
2. Professional Debt Counselling Assessment		Once off (Month 1)
3. Legal Fee for Consent Order*		Once-off (Month 2)
3. Legal Fee to refer debt review application to court		Once-off (Month 2)
4. Aftercare fee for 24 months		Monthly
5. Aftercare fee for remaining period		Monthly
6. Payment Distribution Agency (PDA) fee		Monthly
TOTAL for Debt Counselling process		
Note that the following will apply in the case of:		
Rejection	R 300.00	Once-off
Cancellation fee (75% of Professional assessment fee)		Once-off

**Should your Debt Counsellor be able to obtain 100 percent consent from all Credit Providers a Consent Order can be obtained and this will result in a reduced legal fee. All legal fees are subject to consumer's written consent.*

The following services will be offered for these fees:

The initial professional assessment involves:

Application process:

- Client interview and assessment
- Evaluation of affordability
- Discussion of debt review process
- Processing of debt review files
- Obtaining Certificates of Balance
- Sending Form 17.2 to all credit providers
- Arrange for PDA loadings to ensure correct timeous repayment

Proposal preparation and completion:

- Proposal preparation
- Dealing with proposal responses

Legal preparation:

- Produce documents as per specific court requirements

The initial professional assessment involves:

- Affidavits, commissioner of oaths
- Queries from credit providers and attorneys
- Court appearance
- Notify credit providers through Form 17.2C after granting of consent order
- Update NCR Debt Help System

The aftercare service involves:

- Updating PDA with revised payment plan and final payment plan once approved by Court
- Updating the NCR Debt Help on progress of debt review
- Follow up on non-payment to Credit Providers and Debt Counsellors for aftercare and legal fees
- Dealing with suspensions of accounts payable to Credit Providers including incorrect PDA data
- Dealing with letters of demand and termination received from Credit Providers
- Obtaining of settlement amounts if the client is in a position to settle a debt
- Monitoring and reminding the parties of progress on debt review application and Court date
- Appearance at Court when the application is heard if required by Magistrate
- Annual review for financial position of client as well as any dramatic change in financial circumstance that will impact the clients ability to repay as per accepted repayment plan and Court Order.
- Obtaining proof of final repayment from all Credit Providers and the issuing of a Clearance Certificate (Form 19)
- Updating Credit Bureaus that debt has been repaid via NCR Debt Help
- Withdrawal of client from debt review - notification of Credit Providers and updating of NCR Debt Help.

After Care does *not* include:

- Any legal action (Magistrate or High Court) or legal fees other than the debt review application
- Any rescission of Judgments and/or Garnishee Orders
- Any legal action by Credit Providers during the debt review resulting from non-payments by the client
- Any counselling outside of the financial counselling as part of the Debt Review

COMPARISON BETWEEN CURRENT DC FEES AND PROPOSED DC FEES

DEBT COUNSELLING FEE GUIDELINES	Current Fees	Proposed Fees
1. A Debt Counsellor may receive the following fees in respect of consumers who have applied for debt counselling:		
1.1. An application fee, limited to the amount prescribed in terms of Schedule 2 (2) of the Act, recoverable directly from the consumer upon receiving an application for debt review;	R 50	R 50
1.2. A rejection fee of R300.00 (excluding VAT) in respect of consumers whose applications have been rejected in terms of section 86(7)(a);	R300 (excl VAT)	R300 (excl VAT)
1.3. A restructuring fee of the lesser of the first instalment of the debt re-arrangement plan in respect of a consumer whose applications have been accepted in terms of 86(7) (b) or 86(7) (c).		
• Maximum allowable fee for a Single Application (Once off)	R3000 (excl VAT)	R6000 (excl VAT)
• Joint Application (Once off)	R4000 (excl VAT)	R6000 (excl VAT)
1.3.1. 100% of the fee is payable at the first instalment.	Yes	Yes (no change)
1.4. Should a Debt Counsellor fail to submit proposals to Credit Providers or refer the matter to a Tribunal or a Magistrate Court within 60 business days from date of the debt review application the Debt Counsellor has to refund 100% of the fee paid by the consumer (excluding the application fee).	100%	100%
1.5. A monthly after-care fee payable to the DC	5% up to a max of R300 (excl VAT) for the first 24 months, thereafter reducing to 3% to a max of R300 (excl VAT).	5% up to a max of R400 (excl VAT) for the first 24 months, thereafter reducing to 3% to a max of R400 (excl VAT).
1.5.1. Payment of the monthly after-care fee is to commence in the 2nd month after the amount in 1.3.1 above has been paid.	Yes	Yes (no change)
1.6. Should the consumer withdraw from the process after completing stages 1.3 above, a fee equal to 75% of the restructuring fee as per 1.3 above is payable by the consumer.	Yes	Yes (no change)
1.7. Legal Fees	To be disclosed upfront and recovered from the Consumer and agreed to in writing	A legal fee for a consent order of R750. Any additional legal fees to be negotiated separately with the consumer and the DC must be able to produce pro-forma invoices.