

NEWSLETTER - NO.6

APPEARANCE BEFORE JUSTICE PORTFOLIO COMMITTEE

The Chairman, Adv JJ Noeth, S.C, Mr O de Meyer and Secretary Ms L Morgan, appeared before the Justice Portfolio Committee on 28 March 2007. Although they were given very short notice and it was shortly after the financial year end they were able to furnish members of the Committee with a comprehensive report on the Council's activities and achievements. They were well received and the Chairperson of the Committee complimented the Council on what had been achieved without Government funding and indicated that the Council could serve as an example to Government Departments. The Council's Chairman also made use of the opportunity to emphasize to the Portfolio Committee that there was a general perception which is somewhat justified, that the playing fields between debt collectors and others involved in debt collecting were not level. Whilst debt collectors are strictly controlled and have to comply with the Act, Regulations and Code of Conduct, others involved therewith need not do so.

AWARENESS CAMPAIGN

Last year the Council embarked on a very successful awareness campaign to inform the public of the Council's functions. Whilst the Council anticipated that the campaign would have resulted in an increase of complaints against debt collectors this did not in fact occur. This did, however, result in a sudden increase in the number of new applications for registration. The reason therefore, in all probability, was that the public was requested to ensure that when approached by a debt collector, that such person produce proof of registration. If he or she could not produce same, the public was advised to show the person the door and to report that person to the police.

REGISTRATION OF DEBT COLLECTORS

Since the inception of the Act, the Council has registered 19076 debt collectors. The registrations of 4353 thereof were withdrawn due to their failure to pay the prescribed annual subscription fee and 2137 were withdrawn at their own request. The present status of some 1541 debt collectors is unknown. These are cases in which the employers informed the Council that the debt collectors had left their employ. The employees, however, had neglected to inform the Council of their changed circumstances and present status. If it is assumed that these debt collectors are no longer involved with debt collecting then there are presently 11057 active debt collectors registered with the Council. A matter of great concern to the Council is the fact that investigations have revealed that some of the debt collectors (companies, close corporations and individuals) whose registrations had been withdrawn continued to be involved with debt collecting. These cases will forthwith be reported to the South African Police.

CHANGE OF PARTICULARS

A matter of concern is the fact that many debt collectors are not complying with the requirements of Regulation 2A in that the Council is not informed within 14 days of any change in the information which a debt collector furnished in his or her application for registration. Employers also do not always inform the Council in cases where a certificate of registration was issued to an agent or employee and that agent or employee ceased to be associated with, or in the employ of the debt collector concerned. Non-compliance with this provision may result in a debt collector being charged with improper conduct. An appeal is made to all debt collectors to immediately inform the Council of any change in the particulars furnished in their applications for registration. If they are no longer involved in debt collecting the Council should be requested to

cancel that person's registration and the certificate of registration should be returned to the Council.

PAYMENT OF THE PRESCRIBED ANNUAL SUBSCRIPTION

The certificate of registration issued to debt collectors is valid for one year. The date on which the certificate expires is reflected on the certificate. The onus is on the debt collector to pay the prescribed annual subscription fee on or before the expiry date. If that is not done the registration will be suspended and may ultimately be withdrawn. If the certificate is suspended, such person cannot do debt collecting until the suspension is lifted. Should a person whose registration is suspended continue to do debt collecting such person shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years. In the case where a person's registration is withdrawn and such person wishes to continue to do debt collecting, he or she will have to re-apply for registration. In such case, the person will not only have to pay the annual subscription fee but will also have to pay the registration fee again.

INVESTIGATION AND PROSECUTION OF COMPLAINTS

As can be seen from the following statistics the staff and Committees appointed to investigate complaints have been very active:

Number of investigations carried over from the 2005 / 2006 year	61
Complaints received during 2006 / 2007 which complied with the Regulations	416
Investigations finalized, and it was decided not to prosecute	311
Number of cases in which a decision has yet to be taken by the Executive Committee	2
Cases of misconduct still to be heard	54
Number of disciplinary hearings finalized	32
Cases part heard	2
Complaints still under investigation	76

The Council also received **67** complaints which did not comply with the Regulations. In these cases the complainants were requested to submit a complaint in the form of a written affidavit as required by the relevant Regulation. As a number of these complainants did not respond to these requests, it is assumed that they decided against the pursuit thereof.

Although there may be a perception among certain debt collectors that in the majority of cases where a complaint is received against a debt collector, the debt collector's, in fact, subsequently charged with improper conduct, the statistics actually paint an entirely different picture.

INFORMATION SESSIONS

The Council last year held information sessions in various centers around the Country. These information sessions were well attended. The Council is presently considering whether there is a need to repeat these sessions. If you are of the opinion that these information sessions should be repeated, please e-mail Mr O de Meyer at ronelle@debtcol-council.co.za or complete the enclosed form and return it to the Council. You are also welcome to indicate which topics you suggest should be dealt with at these sessions.

GUIDE TO DEBT COLLECTORS

The Committees appointed to investigate complaints of improper conduct during the past year had to deal with a number of issues. The most important findings made by the Committees are listed below to serve as guidelines to debt collectors:

Debt collectors are not allowed to use pseudonyms or nicknames when dealing with a debtor.

A debt collector who makes use of an agent is responsible to ensure that such agent is registered.

A debt collector may recover 10% (to the maximum of R300.00) on each installment paid in redemption of a debtor's debt, which includes the interest legally payable thereon.

A debt collector is not entitled to a 10% receipt fee on installments paid in redemption of the fees and expenses which a debt collector may in terms of Annexure B to the Regulations recover from a debtor for the debt collector's own account.

A debt collector is not allowed to recover any tracing fee from a debtor for the debt collector's own account. If it is necessary to have a debtor traced it is for the creditor's account. The cost of having had to trace the debtor may only be recovered on behalf of the creditor if the creditor has a legal claim against the debtor for the recovery of such costs. A tracing fee may in any event only be claimed on behalf of a creditor if the whereabouts of the debtor had subsequently become unknown and necessitated the tracing of the debtor.

Any attempt by the employee of a debt collector who is not registered, to recover a debt on behalf of the employer even if it is only a phone call, brings the activities of that person within the ambit of the definition of debt collection in terms of the Act, and if such employee is not registered the employer may be found guilty of improper conduct.

The cost allowed for a necessary letter, facsimile or e-mail does not include SMSs and the cost of an SMS can only be recovered from the debtor in terms of item 3 of Annexure B. The total amount which may be recovered in terms of item 3 for other necessary expenses not specifically provided for is R12.00 per account.

The recovery of more interest than that which is legally due and payable amounts to improper conduct.

The recovery or attempt to recover any fees other than the capital amount of the debt due, interest legally due and payable thereon and necessary expenses and fees as prescribed in Annexure B to the Regulations is not permissible and may result in a debt collector being found guilty of improper conduct.

Only where a debtor expressly requests a free settlement account and no free settlement account has already been delivered to the debtor in the preceding six month period is a debt collector compelled to deliver the settlement account free of charge. Where the debtor does not request to be furnished with a free settlement account the debt collector is entitled to charge the debtor for the settlement account.

All directors of a debt collecting company or members of a close corporation must register whether or not such director or member is him or herself involved in debt collecting. All new

directors or members appointed after registration of the company or close corporation must register immediately. A failure to do so may result in a company or close corporation and its directors or members being found guilty of improper conduct.

NATIONAL CREDIT ACT, 345 OF 2005

The above Act came into operation on 1 June 2007 and it is important that debt collectors should study the Act as they will be affected by some of the provisions thereof.

Although a newsletter is not the place to discuss the Act, it is, however, deemed necessary to draw the attention of debt collectors to the provisions of section 129 of the Act. In terms of the section the credit provider must notify the debtor in writing that he or she is in default and that the debtor has the right to refer the credit agreement to a debt counselor for debt review. This letter is a prerequisite before a credit provider may commence with further debt enforcement. This notification can only be sent to the debtor once the debtor has already been in default for 20 days. A period of 10 days after the letter has been sent must lapse before the credit provider may commence with proceedings to recover the debt, in other words handing over to an attorney or debt collector for recovery.

Section 86(2) of the Act also contains a very important provision, namely that in terms of this section the consumer (debtor) is prohibited from applying for a debt review in respect of a credit agreement (including incidental agreements) if the credit provider under such an agreement has already proceeded with enforcement of the agreement as a result of the debtor's default. In other words the credit provider must have sent a notice to the debtor in terms of section 129 of the Act and 10 days had transpired since the date the letter was sent and the debtor did not refer the credit agreement to a debt counsellor for a debt review. If the credit provider has sent a notice in terms of section 129 the credit provider may commence legal or collection procedures and the debtor will be prevented from applying to a debt counselor for a debt review.

In the light of these provisions debt collectors will be well advised, in accepting a mandate to collect a debt, to ascertain from the credit provider whether a letter as required by section 129 of the Act had been submitted by the credit provider to the debtor.

Attention is also drawn to the fact that the Council is of the opinion that the provisions of the Act apply equally to credit agreements, for example for monies loaned and advanced or goods purchased and "incidental" credit eg, for instance under certain circumstances, a medical bill which the medical aid did not pay.

Further information about the Act can be obtained from the NCR's website at www.ncr.org.za or **086 0627627**.

FOOD FOR THOUGHT

"It is one of the most beautiful compensations of life that no man can sincerely try to help another without helping himself."- Ralph Waldo Emerson