

GUIDELINES REGARDING APPLICATIONS IN TERMS OF SECTION 86 OF THE NATIONAL CREDIT ACT 34 of 2005 (DEBT REVIEWS)

These guidelines should be read in conjunction with the [guidelines regarding motion court](#) (hyperlink to motion court guidelines).

These guidelines come into operation on 6 July 2020.

1 COURT DAYS FOR DEBT REVIEW APPLICATIONS

1.1 A date need to be arranged with the clerk of the court before the matter can be set down. CHECKLIST FORM A (insert link) is to be completed and handed to the clerk of the court when applying for a date of hearing. Every debt review application must be accompanied by a fully completed FORM A (insert link) before it is accepted by the clerk of the court for enrolment.

1.2 Debt Review applications where the Form A (insert link) is improperly completed will be removed from the roll.

1.3 Only Mondays, Tuesdays and Wednesdays – which are not public holidays – are allocated.

2 COURT SITTINGS

2.1 Debt review matters are to be set down for hearing in Court 27 and no other court.

2.2 The PRACTICE NOTE (FORM B) (insert link) must be placed on the file at least by 15h00 the Thursday preceding the week prior to the hearing.

3 PRACTICE NOTE

3.1 Each application must be accompanied by a FORM B (insert link).

3.2 This practice is equally applicable to opposed and unopposed applications.

3.3 The practice note shall set out the name of the applicant as well as consumer and the case number. In addition it will contain a table making provision (as per the specimen below) for:

- (i) the name and relevant reference number of each credit provider;
- (ii) the page reference in respect of each credit provider regarding consent to service by email;

(iii) the page reference in respect of each credit provider regarding the certificate of balance (where provided);

(iv) whether the papers need to be read before the hearing and what parts are relevant for determination of the application;

(v) page references to new proposals and acceptance (those generated and obtained subsequent to the delivery of the application);

3.4 FORM B (insert link) must also be filed on each occasion that the application is enrolled.

3.5 Where the application is postponed or reinstated for hearing a new FORM B must be filed with the notice of set down.

4 NEW PROPOSAL AND ACCEPTANCES

4.1 Where the debt councillor wish to bring a new proposal and acceptance thereof (if any) to the attention of the court, such must be done by way of a substantive application for leave to supplement with notice to all parties.

4.2 The debt councillor shall apply to court with notice to all parties for leave to supplement its papers: see the decision in *Pat Hinde & Sons (Brakpan) (Pty) Ltd v Carrim* 1976(4) SA 58 (T) in this regard. The supplementary affidavit must explain what caused the debt councillor to draft a new proposal subsequent to the service of the application.

5 SERVICE AFFIDAVIT

In all instances where service is required, including a notice of set down, a service affidavit needs to be filed.

6 POSTPONEMENTS

6.1 A date needs to be arranged with the clerk of the court. FORM C (insert link) needs to be completed and handed to the clerk of the court. Once the clerk of the court has determined a suitable date FORM C (insert link) will be issued. The issued Form C must be handed-in to the court when the matter is considered.

7 HEARING

7.1 The debt counsellor is to be present at each hearing of the relevant application and must have in their possession the credit agreements that form

the basis of the debt review application (to facilitate the hearing). The court may in appropriate circumstances order otherwise.

7.2 In the event that the original proposal – as served on each credit provider - is amended; such amended proposal needs to be served upon all the credit providers.

7.3 The amended proposal is to be accompanied by an explanatory affidavit deposed to by the debt counsellor. The court may, in its discretion, direct otherwise.

7.4 A notice of set down must be served on all credit providers cited in the papers.

8 COURT ORDER

8.1 The debt review order should make provision that:

- (i) the consumer is declared over-indebted;
- (ii) the consumer's debt obligations in terms of the National Credit Act 34 of 2005 are re-arranged in accordance with the information/proposal/terms contained in the Table; and
- (iii) provision is made regarding costs.

8.2 The Table should make provision for either fixed payments or fluctuating payments that have a cascading effect.

8.3 Unnecessary information should not be included in the order.

8.4 Where a credit provider has accepted the proposal, such acceptance must be attached to the order. The order must contain a reference to each and every acceptance so attached and the acceptance must be numbered. Other unnecessary documents must not be attached to the order.

8.5 Draft orders must be filed in duplicate and space must be left for a magistrate to sign.

8.6 A pro forma order with options are attached hereto for the guidance of practitioners. The orders must be adapted to meet the exigencies of each case.

SPECIMEN DEBT REVIEW ORDER

**IN THE MAGISTRATE'S COURT DISTRICT OF JOHANNESBURG CENTRAL
HELD AT JOHANNESBURG**

CASENUMBER:

In the matter between:-

and

APPLICANT

RESPONDENT

DEBT REVIEW ORDER

HAVING read the documents filed of record, heard counsel and having considered the matter:-

1. The Consumer is declared over-indebted;
2. The Consumer's debts obligations are restructured and the Consumer is ordered to pay the credit providers below as follows:

(where the rescheduling is for **fixed** interest rates, amounts and terms)

Name of Credit Providers	Reference number of Credit Provider	Annual interest rate	Monthly instalment	Commencement date in terms of this order	Debt Councillors fee

OR

(where the rescheduling provides for a **cascading** effect)

Name of Credit Providers	Reference number of Credit Provider	Cascading rescheduling as per Annexure Number	Commencement date in terms of this order	Debt Councillors fee

3. (provision for costs)

BY THE COURT

Clerk of the Court