National Credit Regulator

GUIDELINE 003/2015

GUIDELINES ON THE PROCESS FOR INSURANCE UNDER DEBT REVIEW

MAY 2015

INTRODUCTION

During 2008 a Task Team comprising of a number of debt Counsellor/credit provider workgroups began to work on various operational issues that affected the debt review process. One of these workgroups developed a process on how debt counsellors should deal with the monthly premiums of insurance related products when preparing and submitting debt review proposals to credit providers. These insurance related products included vehicle/asset insurance, credit life and disability insurance, top-up vehicle insurance, motor warranties, life assurance, etc., that form part of the relevant credit agreements with credit providers (credit provider insurance).

The above process was agreed to by the Task Team and was subsequently incorporated into the Task Team rules. In addition, it also formed part of the training document for debt counsellors at the time.

Upon implementation of this process, various parties did not adhere to the process stipulated by Task Team Rules in so far as it relates to the provision required for payment of such insurance premiums in the debt review process. Some of the rules not complied with are as follows:

- Credit Providers' not completing the certificate of balance(COB) and reflecting the credit life premiums;
- Debt Counsellors' not capturing and reflecting the insurance premium reflected on the COB on the proposals;
- Credit Providers not submitting the COB within the regulated time frames resulting in the debt counsellor submitting proposals that do not make provision for the credit provider insurance;
- Debt review system providers using various methodologies to cater for the calculation of credit provider insurance premiums;
- Sourcing of "cheaper" credit provider insurance premiums by the consumer/debt counsellor without securing adequate cover and without the credit provider approval;
- Some credit providers instructing/authorising the debt counsellor to exclude/cancel the credit provider insurance without obtaining the client's written consent;
- Some magistrates instructing consumers to cancel Insurance cover.

Consequently, many proposals are being rejected; debt review court orders rescinded or varied and insurance policies are lapsing thereby prejudicing both the consumers and credit providers.

GUIDELINES

These guidelines are applicable as follows:

- Where the insurance/assurance premium is included in the monthly instalment that is paid to or collected by the credit provider which for the purpose of this document is referred to as **"Credit Provider Insurance"** and is dealt with below under Section A;
- Where the consumer arranges his/her own insurance/assurance and the premium is excluded from the monthly credit provider instalment and/or where the consumer pays such premium directly to the insurance company that provides such cover. For the purpose of this document, this is referred as **"Own Insurance"** and is dealt with under Section B.

Section A-Credit Provider Insurance

1. **Credit providers** must clearly state all the monthly credit provider insurance premiums (per product/account) payable with the instalment on the Certificates of Balance (COBs). If no COB is submitted as required, then the normal debt review rules will apply and the debt counsellor will have to use the information provided by the consumer. The debt counsellor should within reason, at least try to ascertain from the consumer whether there is any insurance linked to the credit agreement (monthly statements usually reflect such insurance premiums). The consequences of the above could be that the non-cooperative credit provider will have the risk of trying to negotiate with the consumer for the separate payment of the affected insurance premium, which will be difficult to obtain as the consumer will in all likelihood not have the funds available. This would further result in the credit provider not receiving the correct instalment, which will affect the consumer's rehabilitation period and/or lead to disputes with respect to default. Any credit provider who terminates a debt review application as a result of the insurance not being serviced without legitimate evidence that the insurance obligation was brought to the attention of the debt counsellor and/or consumer will be deemed to be acting in bad faith. In such instances, the debt counsellor/consumer will be within their right to bring this to the attention of the appropriate regulatory bodies and/or the courts.

2. **Debt Counsellors** when assessing the consumer's financial situation and preparing proposals, must take note of all the credit provider insurance products specified on the relevant COB and capture this on the debt restructuring system. Some debt counsellors have the appropriate FAIS (Financial Advisory and Intermediary Services) accreditation that will allow them to advise a consumer whether to cancel or replace a credit insurance policy.

Regardless of such accreditation, debt counsellors must at least note and share the following information with the consumer:-

i. Vehicle/asset insurance is compulsory and the consumer cannot cancel such insurance, unless he/she is able to provide the credit provider with proof of alternative and suitable vehicle/asset insurance cover.

ii. Credit life cover could be compulsory in terms of the credit agreement between relevant credit provider and the consumer. Therefore cancellation by the consumer could result in a breach of such credit agreement.

iii. Home Owners' Cover (HOC) in respect of a home loan account is usually debited as an annual premium, but should be re-calculated and reflected as monthly premiums on the COB. However, it must be noted that such cover increases annually and provision must be made for such increases. Due to the fact that there is currently no process in place for debt counsellors to conduct annual reviews of their clients' accounts, such annual increases can therefore not be accommodated during such reviews. The respective credit provider must therefore make the necessary arrangements with each consumer to cater for payment of such increased amounts from their respective monthly expenses.

iv. The consumer may be able to cancel certain insurance products such as top-up vehicle cover, deposit protector or motor warranties, but he/she should first check with the relevant credit provider whether such option to cancel is available.

v. Credit providers can only cancel credit insurance policies if the consumer provides written and signed instruction. The cancellation of a credit insurance policy may be a breach of the relevant credit agreement, which could result in the credit provider cancelling such agreement and instituting the appropriate enforcement action.

vi. FAIS accredited debt counsellors can only replace a credit insurance policy with another if the consumer provides written and signed instructions thereto and if the replacement policy provided meets the requirements of the credit provider concerned. In such instances, the new, properly signed, policy must be submitted to the credit provider, who will then decide, based on its own internal policies, whether to permit the replacement/substitution of a credit insurance policy. Credit providers, should however, provide reasons for refusing to accept a replacement policy.

vii. If a consumer does not make payment of the credit insurance policy premium, such policy may lapse and the consumer may be in breach of the credit agreement, which could lead to the termination of that specific credit agreement from the debt review process and institution of enforcement action.

3. When the Consumer applies for debt review, he/she could already be in arrears with his credit provider insurance premiums or will go into such arrears whilst the debt review and legal fees are being paid by the consumer at the start of the debt review process. At the time of submitting the COB, the credit provider should not reflect any insurance premium amount where the policy has already been cancelled or lapsed due to arrears. Where the credit provider insurance has not yet been cancelled or lapsed at the time of the debt review application, the credit provider must reflect the insurance premium amount/s on the COB.

In principle, there is a common agreement in the industry that credit providers will normally begin to receive their first debt review payments as soon as the legal fees have been paid in terms of the existing debt review process. (i.e. A proportionate payment by month 3 and a full proposed instalment by month 4)

In applying this agreement to the payment of the credit provider Insurance premiums, one has to consider the following two different scenarios:-

- **Scenario One** - Where the credit provider has paid the entire term or annual premium upfront on behalf of the consumer and is now debiting the account on a monthly basis. In this scenario, it does not pose a problem if the insurance premiums are not paid during the initial debt review period when no payments are received. Such non-payment of premiums does not affect the cover as the annual or term premium has already been paid in full by the credit provider. The credit provider will then recover the annual or term premiums by accounting for these premiums on the COB and as per the process outlined in this document.

- **Scenario Two** - Where the credit provider merely acts as the paying agent of the consumer in paying the monthly premiums over to the insurer when it receives such payment from the consumer.(i.e. The insurance premium in this case is payable on a monthly basis by the consumer to the credit provider, which then passes such payment onto the insurer.) In this scenario, such cover may lapse if any of the monthly premiums are not paid by the consumer to the credit provider as the insurer will also not be paid.

  In this scenario, the majority of the credit providers involved have indicated that they will, as a matter of principle, continue to make those monthly premiums on behalf of the consumer even if they did not receive these payments during the initial months of debt review where payments are made towards the debt review and legal fees. They will therefore treat the matter in the same way as for scenario one and will recover the premiums in the same way. However, a few credit providers have indicated that they will not cover such unpaid premiums on behalf of the consumer and will therefore allow the cover to lapse. They will, however, clearly advise the consumer/debt Counsellor that such cover has lapsed.

4. The next step in the process is that the debt counsellor must then provide for the full credit provider insurance premium amount of the remaining policies in addition to the consumer's monthly expenses before calculating the repayment proposals. Most debt restructuring systems calculate this when the debt counsellor captures the credit provider insurance premium into a specific field. The insurance premiums must therefore be subtracted from the distribution amount that is available to pay creditors.

5. Debt counsellors must then calculate the proposals to credit providers based on the balance that is left for distribution and thereafter add back the full credit provider insurance premium amount to the relevant credit agreement set out in the proposal.

FOR EXAMPLE

Bank A submits a COB in respect of a vehicle account as follows:-

The normal monthly instalment, excluding credit provider Insurance	R 2 000.00
Vehicle comprehensive insurance premium	R 300.00
Life cover (not cancelled)	R 100.00
Motorrite Warranty (not cancelled)	R 100.00

The debt counsellor must incorporate the credit provider insurance premium totalling R500.00 as an expense:

As follows:-

Total income	R 25 000.00
Less Total monthly expenses	R 9 500.00
Income available	R 15 500.00
Less Credit Provider Insurance	R 500.00
Income available for distribution	R 15 000.00
Total monthly debt repayments due (including the R2 000.00)	R 20 000.00

The debt counsellor therefore has 75% of the total debt amount available from the remaining income for distribution to consumers.

Proposal to Bank A must therefore be as follows:-

Reduced instalment proposed in terms of defined rules	R 1 500.00
Plus the full monthly premiums to be added back from the monthly expenditure	R 500.00
Total proposal amount to be presented to Bank A	R 2 000.00

Considering the above example, if the debt counsellor does not follow the process and handle the credit provider insurance premiums separately as a monthly expenditure but submits a proposal for R1 500.00, which includes the insurance premiums of R500.00, this effectively means that the credit provider will receive a proposed amount of only R1 000.00 (after making provision for the insurance premiums) towards the vehicle instalment, which often does not solve.

Section B-Own Insurance:

The debt counsellor must establish from the consumer all the insurance/assurance premiums and make provision for such payments in the monthly expense budget of the consumer. These are normally insurance premiums that are collected by the insurance company via debit order from the consumer's bank account or where the consumer pays the premium directly to the insurance company.

1. Some debt counsellors have the appropriate FAIS accreditation that allows them to advise a consumer whether to cancel or replace own insurance policy.

However, in this respect, debt counsellors must at least note and share the following information with the consumer:-

i. Vehicle/asset insurance is compulsory and the consumer cannot cancel such insurance, unless he/she is able to provide the credit provider with proof of alternative and suitable vehicle/asset insurance cover.

ii. Home Owners' Cover (HOC) in respect of a home loan account is usually debited as an annual premium, but should be re-calculated and reflected as monthly premiums on the COB. However, it must be noted that such cover increases annually and provision must be made for such increases. Due to the fact that there is currently no process in place for debt counsellors to conduct annual reviews of their clients' accounts, such annual increases can therefore not be accommodated during such reviews. The respective credit provider must therefore make the necessary arrangements with each consumer to cater for payment of such increased amounts from their respective monthly expenses.

iii. The consumer may be able to cancel certain insurance products such as top-up vehicle cover, deposit protector or motor warranties, but he/she should first check with the relevant credit provider/insurance company whether such option to cancel is available.

iv. Insurance companies can only cancel own insurance policies if the consumer provides written and signed instructions. The cancellation of own insurance policy may be a breach of the relevant credit agreement, which could result in the credit provider cancelling such agreement and instituting the appropriate enforcement action.

v. The replacement policy provided must meet the requirements of the credit provider. A credit provider will decide, based on its own internal policies, whether to permit the replacement/substitution of own insurance policy. Credit providers should however, provide reasons for refusing to accept a replacement policy.

vi. If a consumer does not make payment of the own insurance policy premium, such policy may lapse and the consumer may be in breach of the credit agreement, which could lead to the termination of that specific credit agreement from the debt review process and enforcement action.