

Battered by debt? Get help!

If you're over-indebted and finding it impossible to pay the people you owe, you're not alone. But there is help available, and it's critical that you act rather than ignore the problem.

Using credit is a way of life for a lot of people. This is fine as long as the use of credit is under control. Unfortunately, the use of credit sometimes gets out of control and often results in over-indebtedness.

There is no clear-cut definition for over-indebtedness. In short, if you find you do not have the ability to meet all your financial commitments at the end of the month, then you are over-indebted.

It is not unusual to find people earning R5 000 per month with R60 000 in credit card, store card and personal loan debt! Monthly debt repayments in this instance are often as high as R3 000. On a R5 000 salary, this does not leave enough money after tax to pay for basic living expenses such as rent, electricity, water, groceries and transport. These over-indebted people often find themselves resorting to more credit to fund their basic expenses.

There are many reasons that cause people to become over-indebted. Some of them are unavoidable such as:

- Increase in the cost of credit (think of how the interest rate has gone from 10,5% in 2006 to 15,5% this year).
- Reckless lending (credit grantors don't check whether you can afford the repayments before they lend you the money)
- Emergencies (you have no alternative but to borrow money for funerals, medical bills, etc)
- Job loss

However, sometimes over-indebtedness can be avoided. In these cases, over-indebtedness is generally caused by failure to budget properly and lack of financial discipline.

About debt counselling

If you feel that you are over-indebted and you have creditors breathing down your neck, it is strongly recommended that you contact your creditors before they contact you. You will often find that if you take the initiative and offer the creditor an alternative payment plan, the creditor will be prepared to come to an arrangement in order to give you a bit of breathing space. If this doesn't work and the creditor threatens legal action then you have the option to apply for debt counselling with a registered debt counsellor.

The debt counselling industry was formalised in 2007 with the introduction of the National Credit Act. Debt counselling is available to anybody who can't meet their monthly debt obligations. Debt counsellors are strictly regulated by the National Credit Regulator.

A consumer will pay a nominal fee of R50 to the debt counsellor when applying for counselling services. If the counsellor finds that the borrower is not over-indebted, a letter of rejection will be given to the borrower and credit providers will be able to continue with legal action. This could be the case where the debt counsellor is of the opinion that the borrower could reduce unnecessary expenses (DSTV, eating out etc) to meet debt obligations.

If the counsellor declares the borrower over-indebted, then:

- The debt counsellor can make a proposal to all credit providers on how the debt can be restructured. Creditors agree to the proposal

and a payment plan is prepared. This is the preferred option to follow and is referred to as the informal or non-statutory route.

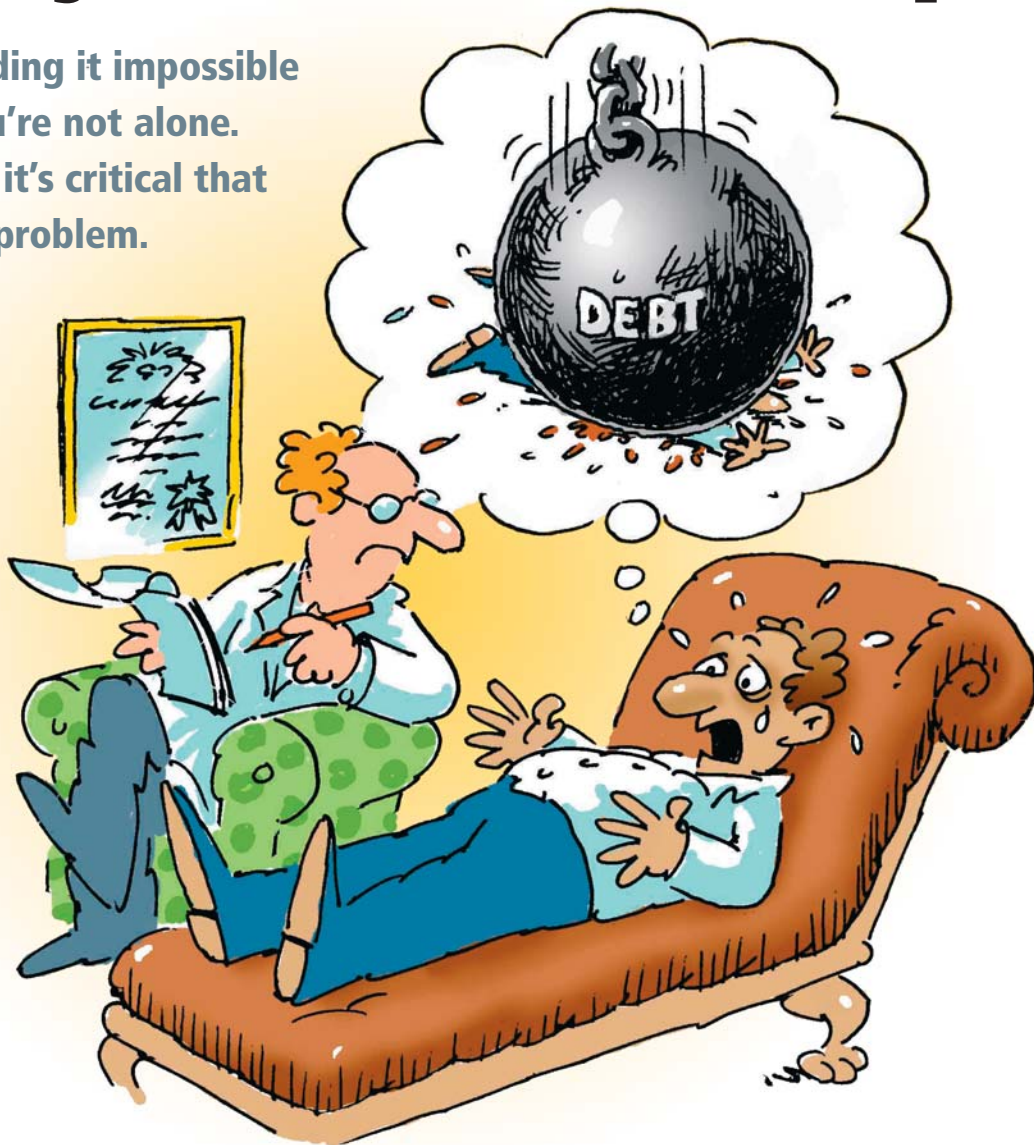
- In cases where credit providers are not prepared to agree to the debt counsellor's proposal on how the debt should be restructured, the formal/statutory route will be followed. In the formal route, the debt counsellor will inform all creditors and credit bureaus that the borrower is now under debt review. Legal action against the borrower is suspended and the borrower is not permitted to access any more credit. The debt counsellor will recommend a restructuring plan and seek approval from the creditors for this plan. Failing that, the counsellor will take the plan to the courts for their approval.
- If certain credit agreements are declared reckless, some obligations by the borrower may be terminated or suspended by the court. For example, if the credit provider did not perform an affordability check before granting credit, this could be declared reckless.

The debt counsellor must tell you upfront what fees will be charged. These fees are strictly regulated. They will normally charge you the first instalment of your repayment plan up to a maximum of R3 000. They can also charge 5% of each monthly repayment for the first two years, and 3% of each monthly repayment thereafter. Recovery of reasonable legal fees is also permitted.

Clearing your name

Once a borrower has agreed to a repayment plan, it is important that they stick to their new repayment terms. If they meet all the repayment terms, the debt counsellor will provide a clearance certificate. On receipt of a clearance certificate, the credit bureaus are obliged to remove all records of missed payments from the borrower's credit record, and the borrower starts off with a clean slate!

If the borrower does not meet the terms of



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the repayment plan, the credit providers can resort to legal action. The borrower now does not have the protection of the debt counsellor.

So, don't lose hope if you find yourself in an over-indebted position. Think of the following steps:

- Are you working according to a personal budget and not spending money on unnecessary expenses?
- Have you contacted the creditors, explained your predicament and tried to reschedule your commitments? Most credit providers would rather keep you on their books for a longer period than write you off as a bad debt.
- Have you considered consolidating high interest debt onto a low interest loan over a longer period?
- Have you approached a debt counsellor?

For a list of registered debt counsellors, or to find out more, phone the National Credit Regulator on 0860 627 627 or visit their website at www.ncr.org.za.

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Don't get ripped off when you seek help

An alternative to debt counselling is to place yourself under voluntary administration. You should seek proper legal advice before you do this. It may be in your interest to first get help from a debt counsellor, rather than a debt administrator (a person who manages your debt and pays it over to your creditors).

If you do approach a debt administrator, make sure you are dealing with a registered and reputable person, that you know what the charges will be, and that you get this in writing. M-Net's *Carte Blanche* recently ran a story on unscrupulous debt administrators who charge such excessive fees that the client's debt never gets cleared. The law says that a debt administrator can keep 12,5% (plus VAT) for admin costs. Any more than that is illegal.