



COLLABORATIONS TO CURB INDEBTEDNESS

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LIST OF ABBREVIATIONS

ATM	Automated Teller Machine
DSD	Department of Social Development
DTIC	Department of Trade, Industry and Competition
DoJ&CD	Department of Justice and Constitutional Development
DOS	Dullah Omar School for Paralegalism
CBO	Community-Based Organisation
CPS	Cash Paymaster Services
LSE	London School of Economics
NCR	National Credit Regulator
NCA	National Credit Act 34 of 2005
NFOSA	National Financial Ombud Scheme South Africa
SAPO	South African Post Office
SAPS	South African Police Service
SASSA	South African Social Security Agency
SDA	Special Disbursement Account
SULC	Stellenbosch University Law Clinic



INTRODUCTION

Executive Summary

About the project: It involved a partnership between the London School of Economics (LSE), human rights NGO Black Sash, Stellenbosch University Law Clinic (SULC), and the National Finance Ombud Scheme South Africa (NFOSA - formerly the Office of the Credit Ombud). Building on previous research that produced a [research report](#) (2020), and later resulted in a [handbook for paralegals](#) (2023), we aimed to work towards tackling and curbing involuntary indebtedness, especially among welfare grant recipients. We did this (1) by offering training to community advisers and paralegals (2) by using evaluative workshops to build knowledge collaboratively and discover practical solutions, some already existing on the ground, some informed by our training.

The problem

We learned that social grant beneficiaries were being targeted by unregistered lenders who use state social grants as security for high-interest loans. This was happening more frequently than was documented in our earlier research report. The loans from 'formal' lenders are automatically repaid through direct debit orders while those from 'informal,' unregistered lenders are withdrawn from the ATM on payday using borrowers' bank cards, SASSA cards, and IDs. Post-Covid, welfare payments are even more widely distributed than previously. The decommissioning of pay points impedes access to grants, especially in remote rural areas where formal legal advice is scarce.

Our response and findings

We adopted a collaborative approach, seeking to build insights through mutual dialogue, and noting our findings. Our training workshops and subsequent evaluations involved paralegals, and community-based advisers.¹ Evaluations showed that the training had value in some areas, but less so in others:

1

Disseminating essential knowledge. Trainees/participants giving advice to people who deal with, and are in debt to, formal businesses (such as payday lenders, retailers, furniture salespersons, mobile phone companies, and the like) affirmed the usefulness of the practical information offered. They also appreciated learning more about consumer rights and how to deal with unfair demands from creditors or illegal confiscation of furniture and other household goods.

2

Empowering people through co-production of knowledge. Trainees/participants were empowered by learning how to use the information in the handbook, and from sharing their own knowledge and practice with the trainers.

3

Real-world effects in relation to formal/legal lending. We noted many of these, which are outlined in detail in the full report.

4

Fewer real-world effects in relation to illegal lending, differing between regions and types of beneficiaries

5

Practical solutions produced collaboratively to address illegal lending.

A core part of Black Sash's work is to monitor grant payment cycle's to ensure Social Grant Beneficiaries are getting the full value of their grant. Photograph; Armand Hough

¹ In South Africa, a paralegal is defined as a person assisting a qualified legal practitioner; a community-based paralegal/adviser operates outside formal legal settings and offers informal advice. We use 'adviser' and 'paralegal' interchangeably in this report.

The intensified practice of illegal lending, often to elderly people or single mothers who are grant recipients and do not qualify for formal loans, is one of the key findings of this report. It is covered by points (4), (5) and (6). We identified problem areas where knowledge of formal credit practices has limited use:

1. Informal lenders (commonly called loan sharks, *mashonisas* or skoppers)² keep borrowers' identity document (ID), bank, and SASSA cards for extended periods, even in perpetuity. This is especially the case for the most vulnerable: recipients of Child Support Grants, Older Persons Grants, and Disability Grants. In extreme cases, informal lenders reduce borrowers to effective captivity, keeping them at a level of basic subsistence by providing them with minimal foodstuffs and paying some debts. In one instance, we had reports of *mashonisas* taking out life insurance - naming themselves as beneficiaries - on behalf of borrowers but without informing them.
2. There is no legal regulation of these *mashonisas* by DSD, NCR, and other government agencies. Many people do not know about - or are afraid to reach out to - the ombud or regulators.
3. However, despite the absence of formal regulation, paralegals, and advisers in various sites across the country, having a gradually developing sense of what is just and legal, have found ways to mediate between borrowers and lenders.

The context and our recommendations

Our project aims to give substance to the 'human dignity,' 'the achievement of equality and the advancement of human rights and freedoms' that are foregrounded in the Constitution. Institutions such as Finmark Trust and the World Bank have advocated that this can - in part - be achieved through inclusion (especially financial inclusion in the form of an electronic grant-issuing system that would make credit accessible to recipients). The National Credit Act (2005) was intended to enable such inclusion, by making legal borrowing attainable to all, and putting an end to credit apartheid. Since then, many ground-breaking court cases have established fairer grounds for borrowers, especially those who are in employment. However, through this project, we have established that government grant recipients, often in dire need of access to credit, are unable to borrow money on a fair basis. Since they do not qualify for loans from formal lenders, they often have no alternative other than to borrow from informal lenders or *mashonisas* who lend money at illegal interest rates (between 30 and 100 per cent per month) and use forms of loan collateral or security such as withholding borrowers' SASSA or bank cards and ID books.



Black Sash continues to engage with the Department of Social Development on avenues to protect grant recipients. Photograph; Armand Hough

² Siyongwana, Pakama Q. 2004. Informal moneylenders in the Limpopo, Gauteng and Eastern Cape provinces of South Africa, *Development Southern Africa*, 21:5, 851-866.

Considering these aims and the collaborative findings generated through the project, we make the following recommendations:



More collaboration

between the National Treasury, the Department of Trade, Industry and Competition (DTIC), the Department of Social Development (DSD), and the Department of Home Affairs.



Accelerated education/ knowledge transfer

about consumers' and grant recipients' rights, using radio and other media to share examples of advisor/ paralegal experiences with the most vulnerable.



Increased funding

to ensure that government departments fulfil their mandate; for example, creating offices in each province; and doing community outreach through regular roadshows.



Flexible and innovative solutions which are accessible and cost- effective

to build on existing practices of mediation and enable community paralegals to use their skills from the training, and to encourage informal lenders to operate within the perimeters of the law and/or register with NCA



CHAPTER 1

Detailed Report

“ If you want to be treated with decency in front of the law, you need a language, you need to say who you are and what your rights are. ”

(Zadie Smith, novelist)³



Debt, Credit and Consumer Rights Training at the 2022 Dullah Omar School

Community Based Paralegal during the training. on debt, credit and consumer rights. Photographs from Dullah Omar School 2023

Existing research

An earlier project involving the London School of Economics and Black Sash resulted in a report titled *Social Grants: Challenging Reckless Lending in South Africa*. Conducted in 2018-22 across 9 rural and urban sites in 6 provinces, the research revealed the prevalence of grantees' indebtedness. It noted the various reasons why low-income and/or welfare-dependent people borrow money. These included poverty and unemployment (including job loss); smoothing consumption and coping with unexpected shocks; investment in the future; and failure of state systems.

The report showed that grantees were borrowing from both 'formal' lenders and 'informal' ones. But it highlighted the necessity to move beyond this often-unhelpful binary, because interest rates vary widely, with *mashonisas* charging between 30% and 100% per month. Many formal businesses engage in practices usually associated with their informal counterparts, and various apparent *mashonisas* rely on the banking infrastructure and debit orders. Likewise, NCR registration had little bearing on practices. As there is so little oversight, registration does not appear to shape whether those businesses follow the NCA (ibid).

We thus provided a new 'typology of lenders' to distinguish between diverse ways in which money is transferred to the grant recipient/borrower and then repaid by her.

³ <https://www.nytimes.com/2023/09/22/books/review/zadie-smith-drops-in-drew-barrymore-is-eased-out.html>

	1	2		3		
Transfer to Borrower/Lender	EFT/debit order	Cash/debit order		Cash/cash		
Lender Examples	EPE/Moneyline (facilitated by CPS/Nett), Finbond	ABC, Top-up, Mashabalala	Payday/Chinese lenders (e.g. Wen, Zhang)	<i>Mashonisa</i> kin, neighbours	<i>Mashonisa stokvels</i> , slightly larger, more distant from borrower	<i>Mashonisa</i> largest, most socially distant
Numbers	9% - about 1m	29% - about 3m		Unknown		
System	hi-tech, biometric, printed contracts	hybrid, merges hi-tech bank system with cash delivery, handwritten or verbal contracts		personalized, relies on ATM banking/cards to claim repayment, sometimes or often retains the grant recipients bank card to draw funds at ATMs, informal handwritten or verbal contracts or ATM statements		
Terms	3-6 month loans, about 5% interest per month	3-6 month loans; about 30-60% interest per month	1 month loans, given in cash; about 30-60% interest per month	30% interest per month, doesn't retain card, negotiable terms and timeframe	30-50% interest per month, may retain card but not PIN. less negotiable terms and timeframe	50-100% interest per month, retains card and PIN, little negotiation
Risk to Borrower	money disappears, stop debit order, black-listed	money disappears, fraud, stop debit order, black-listed, contracting discrepancies, little proof or paper trail		violence, retain card/PIN, withdraw all money, repossess belongings and sell them		

Fig 1: Typology of lenders

(1) EasyPay, via its subsidiary Moneyline, was using EFT and debit orders. (2) Other lenders - notably the 'Chinese lenders' offering payday loans, and other 'one-time' lenders - were lending money in cash but recouping it through debit orders. (3) *Mashonisas* or loan sharks were lending and recovering money in cash (often withholding borrowers' bank or SASSA cards for payment withdrawals from the ATM, as well as identity cards to prevent card cancellation and replacement by borrowers). We found that many lenders in the first two categories, although often registered with the NCR, were operating illegally. For example, they charged illicit interest rates, would furtively debit more than one repayment in a single month, or continued to deduct repayments after the end of the loan agreement period. Our report was critical of these results of financial inclusion. Its findings, demonstrated through 25 illustrative case studies, built on earlier activism by Black Sash's 'Hands off our Grants' campaign, and on research by Torkelson, Vally, and various newspaper reporters.⁴ We found that it was easier for grant recipients who had transferred from the 'gold' (SASSA) to the 'green' (EasyPay) card to borrow from EasyPay's subsidiary Moneyline, which was using the regular payment of the government grant as loan security. Lending types (2) and (3), used by one-time or cash lenders and *mashonisas* respectively, depended on the hi-tech and biometrically facilitated banking platform of lending type (1). That is, the entire system of easy or 'reckless' credit was enabled through EasyPay and Grindrod Bank. This had originally been implemented by Net1/Cash Paymaster Services (CPS) - a government-awarded contract meant for the delivery of grants. Grant recipients who engaged with it often found themselves in over their heads and without recourse mechanisms, helplines, or advice - since the Grindrod Bank account provided by EasyPay had no physical footprint in any city or town in South Africa.

4 Torkelson, Erin.
 2017a. Deductions from social grants: how it all works. <https://www.groundup.org.za/article/deductions-social-grants-how-it-works/>
 2017b. Sophias Choice: Farm worker has to decide which of her children to feed <https://www.groundup.org.za/article/sophias-choice-farm-worker-has-decide-which-her-children-feed/>
 2020. Collateral damages: Cash transfer and debt transfer in South Africa. World Development.
 Vally, Natasha.
 2016. South African Social Assistance and the 2012 Privatised National Payment System; An examination of insecurities and technopolitics in social grant administration and payment. D.Phil. diss., University of the Witwatersrand, Johannesburg.

All were directed towards enabling a fairer credit landscape in the context of what is purported as financial inclusion. That is, given that grant recipients borrow for varied reasons, we recognised a need for a form of protection against the excessive ‘plundering’ of their government grants through disproportionate interest rates. We also identified a need for the enforcement of existing law through various government departments: including DSD, DTIC and its NCR; the Department of Justice and Constitutional Development (DoJ&CD) and the South African Police Service (SAPS). Finally, we noted a need for knowledge transfer: through the production of educational materials, and building the capacity of CBOs, advice offices and paralegals.



Debt, Credit and Consumer Rights Training at the 2022 Dullah Omar School

What happened next? What has changed?

Given that the legislation and its enforcement and implementation fall within the ambit of different government departments that work independently from each other, civil society, in the interim, will need recourse from other channels. Education and knowledge transfer seemed the most promising route. To this end, Stellenbosch University Law Clinic worked on revising the existing handbook for paralegals, producing the new [Debt, Credit and Consumer Rights](#) handbook. Following an initial set of successful training workshops, funding from LSE was secured to provide further training and then to evaluate its effectiveness. This was done by a team that consisted of SULC’s Odwa Nwebi, NFOSA’s Kabelo Teme, LSE’s Deborah James and Black Sash’s Amanda Rinquest.

From this research, we made recommendations in 3 major areas:

- 1** Legislation
- 2** Enforcement and Implementation
- 3** Education

We had to contend with a change in context on the ground. In our original report, we noted, with some optimism, that the transition from the CPS system (a private service provider) to the South African Post Office (SAPO)/SDA account (a state-led model) might provide an opportunity for grant recipients to exercise urgency and get out of debt. The hope offered by this small glimmer of possibility proved to be shortlived since SAPO's administration and payment of grants was fraught with administrative challenges, technical glitches, limited capacity and confined expertise. By March 2024 SASSA closed all cash pay points. There is evidence that, in the absence of other viable options, some grant beneficiaries are switching back to EasyPay/Grindrod Bank. More evidence reveals that many grant recipients often turn to cash lenders, *mashonisas* and others charging high interest rates, sometimes borrowing from them to pay back their EasyPay debts. These *mashonisas* are using even harsher methods to recoup repayments. In the broader context, the easy credit enabled by EasyPay might even prove less problematic than the higher-interest loans from *mashonisas* who use threats and repossessions. All these questions needed to be investigated, as part of – and alongside – our intention to offer training (and do evaluations to assess the effectiveness thereof).

Details of training

Through four workshops, over a six-month period (2023-4), we have trained just under 100 community-based paralegals and lay advisers across the country for this report.

In the longer term, we have trained over 240 community-based paralegals and lay advisers over the past three years (2021-4). We partnered with more than two dozen community-based organisations to implement these trainings, most of whom are existing or previous Black Sash partners who are familiar with debt and social grant issues. Likely giving us the widest reach across the country, we also followed up with those who had been trained at the DOS as noted below.

Our trainings were:



Kwa-Zulu-Natal: 22 community leaders and lay advisers in the Limehill area.

Mpumalanga: 29 community-based paralegals working in community advice offices from across the province⁵.

Eastern Cape: 26 candidate attorneys, paralegals, ward counsellors and community-based workers from Nelson Mandela Bay and rural parts of the province.⁶

South Africa overall: 21 paralegals based in advice across the country, trained at the Dullah Omar School for Paralegalism, including Limpopo, Free State, North-West and the Western Cape⁷.

We conducted in-person evaluations (1) with groups trained during earlier periods (at our original pilot held in the Northern Cape in 2022; at the Dullah Omar School; and in Mpumalanga), and (2) about 6-9 months after training sessions conducted as part of this project: in the Eastern Cape, KwaZulu Natal and Mpumalanga. Around 100 evaluation surveys were completed. These evaluations have assessed the usefulness of the training manual's contents, the training methods used, and the impacts of the training on the participants' work and on their organisations.

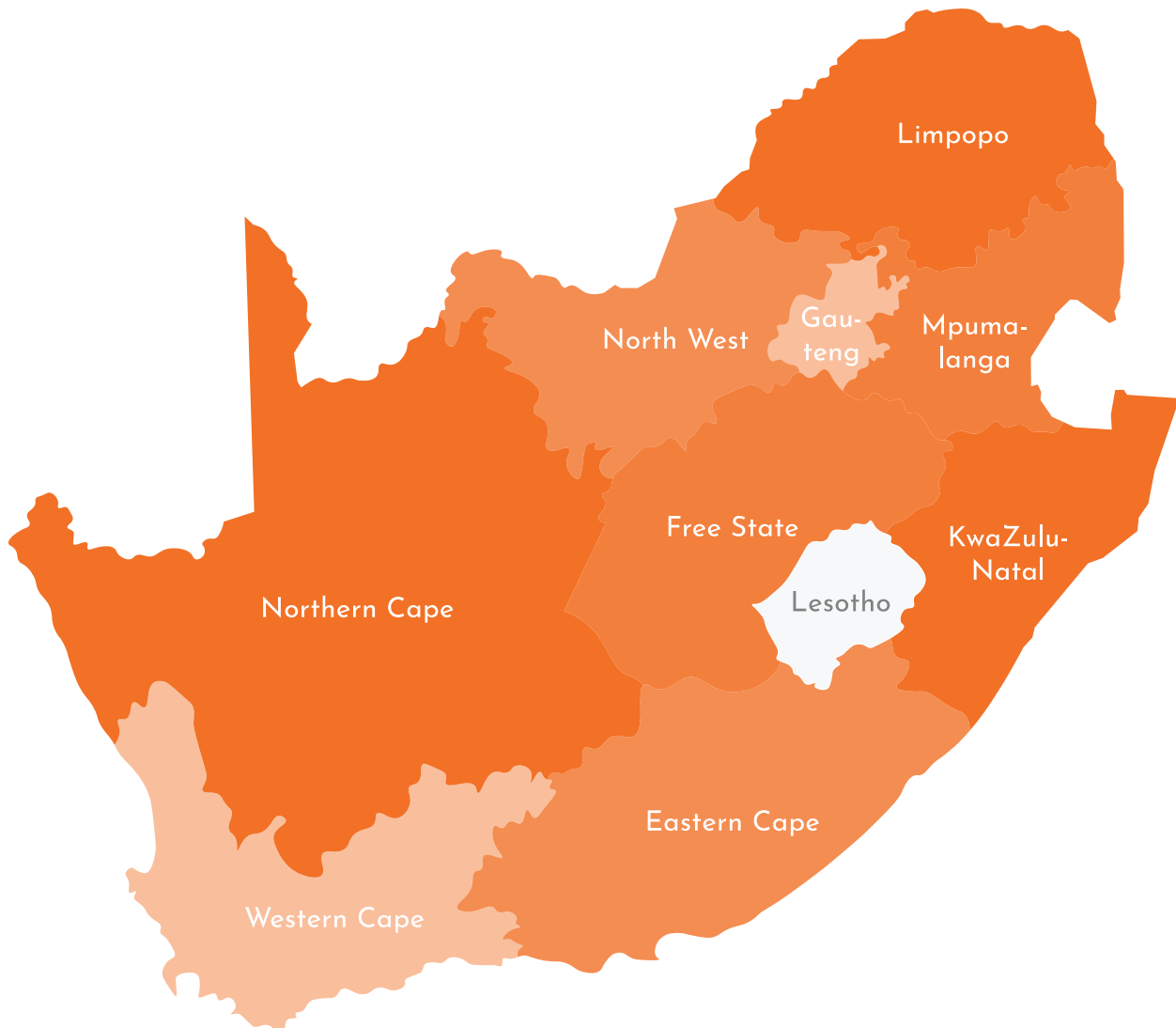
5 Albert Luthuli Human Rights Advice Centre; Chwemi Advice Office; Entokozweni Advice Office; Ingomuso Lethu Centre; Intsika; Voice of the Voiceless; Masisukumeni Trust; Mzabonga Foundation.

National Institute for Crime Prevention and Rehabilitation of Offenders (NICRO)(Mpumalanga)

6 Inter-Church Local Development Agency (ILDA); Siyazidla Ngekhaya Lethu; South African Non-Governmental Organisations Coalition (SANGOCO); Legal Aid SA Gqeberha Office; Legal Aid SA Kirkwood Office; Legal Aid SA Uitenhage Office; Nelson Mandela University Law Clinic.

7 Age in Action (Gauteng); Bokamoso CBO (North West); A Spring of Hope (Mpumalanga and Limpopo); Ficksburg Advice Office (Free State); Iketsetseng Advice Centre (Free State); Iwundlu Community Development Centre (KwaZulu Natal); Kempton Ithembisa Advice Centre (Gauteng); Opret Advice Office (Limpopo); Pampierstad CHC (Northern Cape); Resego Old Age Centre (Northern Cape); Scelukhanya HBC (KwaZulu Natal); Thuso Advice Centre (Northern Cape); Thuso ya Sechaba (Northern Cape); Tlhoafalo Advice Centre (North West); Ubuntu Legal Advice and Development Centre (Free State); Woza Moya (KwaZulu Natal); Lethabong Drop-in Advice Centre (North West).

Fig 2: Map showing South Africa's provinces



The training used methods such as PowerPoint presentations, quizzes, question-and-answer sessions, focus group work, and roleplay.⁸ Topics covered included: contracting with a creditor; 3-year prescription of debts; balloon payments; cancellation of credit agreements once fully paid; debt removal from one's credit record; debt relief mechanisms; regulators who oversee good practice breaches; and the role of *stokvels* or rotating credit associations in saving and borrowing.

The evaluations used several modes. Paper surveys were utilised to gather feedback. Paralegals filled in 'case study' forms to document specific examples from those of their clients/advisees who had been experiencing problems. Alongside these, we used group discussions to build collaboratively generated knowledge about existing practices. (Such practical solutions had, in many cases, been informed by our original training sessions).

8 See Appendix for the four roleplay scenarios.

Outcomes

- 1 Disseminating essential knowledge
- 2 Empowering people through co-production of knowledge
- 3 Real-world effects in relation to formal/legal lending
- 4 Fewer real-world effects in relation to illegal lending
- 5 Practical solutions produced collaboratively to address illegal lending

1 Disseminating essential knowledge

During the training sessions, we noted a lack of knowledge about certain issues pertaining to debt and consumer rights among both advisees and advisers. One positive outcome of our training sessions has been the dissemination and sharing of such knowledge. Receiving the information meant that 'One is not lost but on a par with others,' one trainee claimed. 'We ourselves were not aware of some of the rights we have,' said another. The knowledge gained at the workshops was spread through one-on-one encounters between paralegals and those they advise. It was also disseminated through workshops held by paralegals back in their regions. (For details, see (3) below)

2 Empowering people and co-production of knowledge.



Photographs from DOS 2023


Feedback received indicated that this has been achieved through giving paralegals more knowledge of the law and a deeper understanding of their rights. The training instilled a greater sense of confidence, and an ability to face up to issues with calm instead of panic and seek out practical solutions. This was evident on two levels: among both the clients and among the paralegals themselves. Community paralegals also brought examples of their own innovative practices to share at the workshops.

3 Real-world effects in relation to formal/legal lending.


We found evidence of community paralegals' ability to give advice on how to move forward and remedy problems. Much of the training related to formal credit and consumer agreements; an area of knowledge they found useful in handling cases. Judging from the feedback surveys, this was evident in several ways. People found the information helpful in a general sense and were able to use the training in specific instances. The first was clear from what one respondent said:

Advice with consumer rights, issues with damaged goods, etc. were resolved. (Nelspruit, Mpumalanga)


The second - usefulness in specific cases - was clear from the various evaluation sessions. In some cases, advisers gave examples of situations they had solved with the help of their earlier training.

CASE STUDY
(NELSPRUIT, MPUMALANGA) 

One client purchased a television set from a retailer but was retrenched before he could repay the set in full. He then wrote to the shop's management to explain his situation to negotiate repayment terms, but the retailer shunned negotiation attempts and intimidated the customer instead. Members from our organisation assisted him by way of mediation. He was later informed that insurance would take over the instalment repayments on his behalf.

CASE STUDY
(NELSPRUIT, MPUMALANGA) 

Mr Miya entered into a contract agreement with Cell C phone company under the impression that his monthly instalments would be R300 but was billed R800 instead. Upon our intervention, we discovered that Cell C had not clearly explained the terms of the contract to Mr Miya. We empowered Mr Miya with this information and advised him to return to the shop to articulate the salesperson's failure to clearly explain the terms of the contract, leading to the misunderstanding. Because the contract had already been signed, Mr Miya had to wait for another 6 months for a review of his circumstances, only then was his contract cancelled.

CASE STUDY
(KWAMHLANGA, MPUMALANGA) 

Another client bought a coffee table from a retailer and was pressured to sign the delivery note without first being allowed to assess the status of the goods. It was difficult to intervene on behalf of the client because the delivery note had already been signed, however, [the paralegal] explained to the retailer that the client had no prior knowledge of his right to assess the goods before signing the delivery note.

In other cases, advisers who had received earlier training found it valuable to check back with the trainers during evaluation workshops, to clarify complex points of law.

CASE STUDY

(GQEBERHA,
EASTERN CAPE)



Sindiswa shared her experience with consolidating loans through a debt collector. She refused to sign the agreement, made direct arrangements with her creditors, and paid off her debts. Despite this, the debt collector 'blacklisted' her, forcing her to pay substantial fees to clear her name. In response, trainers pointed out that 'blacklisting' has been replaced by the credit score system. They explained that if a debt is paid off but still listed as unpaid, the individual can contact the credit bureau to have the listing removed. If the bureau does not comply, the individual can report it to the NCR.

CASE STUDY

(GQEBERHA,
EASTERN CAPE)



Nobuzwe expressed concerns about debt counselling practices that ignore the in-duplum rule, adding excessive fees. Trainers explained the rule and discussed recent litigation on excessive collection fees charged by attorneys. In this, the NCR issued Circular 6 of 2023 urging debt counsellors, debt collectors, and attorneys to cease overcharging. Participants were encouraged to report such cases to the NCR and were reminded that debt counselling is only advisable for those with substantial debt.

In some cases, these queries covered issues such as the repossession of property. Teaching by introducing specific cases and asking questions about them proved a useful tool.



Debt and Credit training with community leaders and paralegals, including candidate attorneys in Gqeberha, Eastern Cape.

CASE STUDY

(KWAMHLANGA,
MPUMALANGA)



Odwa painted a scenario in which a customer misses several payments due to being away and returns home to find a 'For Sale' board. The property is repossessed by a bank and sold at a lesser value to recoup the debt. He explained that this should not be the case and shared details of a judgement in relation to Nedbank, who was owed money on a mortgage bond. Nedbank placed the house on auction for R1. In several other instances, the bank took a customer's property and sold it to recover the debt without considering the actual value of the house. Odwa explained that banks are prohibited from selling anyone's property. After 3 months of nonpayment, they have the responsibility to (1) contact a customer, inform them of the accumulated debt, and afford them the right to reply. Should the customer fail to reply, (2) banks are required to issue a written notice. If there is failure to comply (3) legal proceedings can be instituted and a summons issued. The summons must be served at the customer's residential address - nowhere else. If ignored (4) a default judgement in the bank's favour is then issued. It is important to note that banks cannot, however, request the sheriff to attach the property. They must (5) serve these papers to the person, in person, who must come to court and explain why the house cannot just be sold. This is an essential aspect, in which the customer must explain that they would have no place to live if the property were to be sold. Unless the court is satisfied, no agreement would be reached and other means to recover the outstanding balance would have to be made.

People also brought queries about the complexities of debt collection:

'Why is it that when I go to Mr Price to open a clothing store account, and fall behind on my repayments, I receive an SMS from DSB collectors?' Trainers explained that Mr Price has sold the debt in that case and that 'you must always ask for the statement of account, the credit agreement and the debt collector's proof of debt handover from Mr Price to them. That way, your detailed credit history and the terms of agreement will be shown to you.'
(KwaMhlanga, Mpumalanga)

Overall, comments at the evaluation workshops provided insights into the value of the training sessions for community paralegals seeking to benefit their clients.



Photographs from Dullah Omar School 2023

The survey forms also included suggestions and proactive requests about ways to improve the training. This showed that participants had engaged with and benefited from the training. People made requests for more days' worth of training (especially for those who found some of the training difficult to follow); more training sessions; a translation of key documents (or the whole handbook); regular online updates and more training videos. Another key area was the advisers' wish for some sort of recognition or accreditation that would put them at an advantage when facing government officers like those of the DSD. 'Some say that since you don't appear to be qualified, people are hesitant to disclose information,' said one paralegal.

Several statements evidenced this:



This training needs to add more facilitators.

The training was up to standard, an extra day should be added to accommodate slow learners who often need more time to better understand the training that is offered.

More sessions are needed to fill some of the gaps by way of reiteration. There are also requests for monthly updates.

More focus should be put on paralegal capacity building because some assist community members in fields that should only be handled by professional legal practitioners.

Community Based Paralegals who received training were encouraged and given the resources to conduct the training in their community

In a few cases, we found that misinformation still prevailed, and that greater attention needed to be paid to specific details. This suggested a need for a slower and easier-to-understand delivery method. People in the DOS evaluation still spoke of referring clients to debt counsellors, although we had advised against it in the training.

We explained that debt counsellor referrals should be the last resort or reserved for bigger earners threatened with house or car repossession. Additionally, one or two people still mentioned 'blacklisting' even though we had explained that this no longer happens.



Community members received training on stokvels and their relationship with the National Credit Regulator

To end this section, it is important to report on one area of significance, which lies partly within but also partly beyond the legal terrain. Several people we encountered belong to savings clubs (*stokvels* or *umgalelo*). With the help of our new booklet, we were able to clarify that club members are responsible for the conceptualisation of their own constitutions, committee elections and financial record-keeping, since there is neither government interference in their affairs nor reporting regulations (practice varies depending on the rules of the *stokvel*). However, we explained, misappropriation of funds or fraud involving a *stokvel* is a crime that may be reported to (1) the SAPS and (2) the National Stokvel Association of South Africa, which may help in resolving the issue. We further explained that these are separate entities from the world of formal finance, but subject to regulation when informal lending takes place, as explained below.



Debt, Credit and Consumer Rights Evaluations with community leaders from Limehill, Kwa-Zulu Natal

4 Fewer real-world effects in relation to illegal lending

In the case of informal practices, our legally framed advice proved less useful.⁹ Illegal microlending, which entails the use of SASSA grants as security for illegal loans, is the biggest area of concern highlighted in this report. The law does not provide recourse where grants are utilised as security for *mashonisa* loans, there is also little advice in the Debt, Credit and Consumer Rights Handbook. Nevertheless, as a result of our earlier training by the DOS, we found that community paralegals across the board had devised some ingenious solutions.

Our findings reveal many problems caused by *mashonisas* throughout South Africa, but some are specific to certain areas and/or types of beneficiaries. Some of the variables here are (1) the level of existing knowledge and the duration of time spent by organisations dealing with matters of debt and credit. (2) whether it is an urban area with higher levels of education, or a rural one where people work on farms (3) whether the beneficiary is a vulnerable person due to gender or age.

For example, in the Eastern Cape, there was talk of people's fear of illegal lenders. In the quote below, the fear is such that they think that hospital staff may be complicit in plotting a borrower's death; illustrating the extent of *mashonisas'* influence, especially in rural communities.

⁹ With the closure of all cash pay points as a method of payment for social grants at the end of March 2024 by SASSA, use of EPE/Moneyline will likely intensify. <https://www.sassa.gov.za/newsroom/Documents/SASSA-Postbank%20Announce%20Phaseout%20of%20CPPs%20and%20Post%20Offices%20branch%20payments%2011%20December%202023.pdf>



“

If you get another Special Disbursement card from SASSA, citing loss or theft, the *mashonisa* will know because cash deposits to the card would cease. Nobody is willing to report these incidents as they are terrified of *mashonisas*. You endanger your life by exposing such corruption and running into hiding puts your loved ones' lives at risk. The fear of *mashonisas* is so real that if your family member is hospitalised, severe security measures must be put in place to protect the ailing relative.

(Uitenhage, Eastern Cape)

”

In the case below, the *mashonisa* who kept the borrower's card seemed to have a conscience or a semblance of shame resulting from the knowledge that he would be judged harshly by the community, so he provided his client with a few basic needs. Seen more cynically, such a case is an indication of people (often vulnerable, disabled, mentally unsound, or old) being kept in virtual captivity - or reduced to dependency - by lenders.

CASE STUDY

(QUEENSTOWN, EASTERN CAPE)



A senior citizen's cards were confiscated by credit providers/ *mashonisas*, while everyone is aware of the injustice, they hide behind freedom of choice - suggesting that 'he made his bed; therefore, he must lie in it.' The *mashonisa* buys him cigarettes and hands him leftover food. Around the 15th day after the issuing of grants, the *mashonisa* halts the cigarette purchase for the remainder of the month, and the man must wait until the following month for his next supply. *Mashonisas* treat their debtors like children. Grant recipients must beg *mashonisas* to buy them food.

CASE STUDY

(EASTERN CAPE)



An elderly couple with no children shared a house. The man died from Covid-19 and left behind his wife who owed a *mashonisa*, as per the norm, her bank card and ID were in the possession of the *mashonisa*. Soon after the elderly man's passing and burial, his widowed wife was told her house had been sold. None of us even know how much the house was sold for, neither did she receive any money from the sale. The *mashonisa* confiscated her documents and has since bought a block of flats to let. The woman is currently sheltered by neighbours who sometimes chase her away, telling her to go reclaim her house from the *mashonisa*. When we reach out to her family, they are either slow to act or do nothing at all due to intimidation by this guy. We're also afraid of him.

The Eastern Cape was a primary location for insurance fraud and severe forms of criminality. We heard stories of *mashonisas* taking out insurance policies on behalf of debtors whose cards and IDs they were keeping, but naming themselves as beneficiaries, even killing grant recipients to collect the payout.

Below are some distressing examples, directly transcribed from feedback sessions at the workshops:

There *mashonisas* run a syndicate group in which they insure whole families in certain instances – in Uitenhage, two sisters killed another sibling so they could claim from the insurer. In one month, you hear of 19 people being shot dead. It was on TV; people have been arrested. It's a most profitable business. As a result, insurance companies have now become stricter.

(Uitenhage, Eastern Cape)

In the case below, the paralegal gives an example of someone described as a wage or salary 'earner,' however, the likely scenario is that of multiple grants being the primary source. The statement gives a hard-hitting analysis of how grant recipients are, in effect, borrowing from their 'own money.'

CASE STUDY

(GQEBERHA,
EASTERN CAPE)



They take your belongings (ID and bank cards) and can illegally take out life insurance on your behalf without your consent or knowledge. They might kill you to claim insurance on your behalf. The monthly insurance premium fee is paid from your SASSA grant card in their possession, and you're given whatever small change remains. Your children are removed from your policies and replaced by the *mashonisas*, who elect themselves as sole beneficiaries. If I earn R2K and borrow R1K, for example, I ought to pay R1.5K due to the exorbitant interest rates they charge, which ranges between 50 and 100%. This means they're practically lending me my own money and I will be trapped in a cycle of borrowing. That's the danger – being trapped in debt means you will never get your card back, unless you 'jump' them, make another card, or a temporary ID. But even then, you will remain in danger because they will be after you. So, we must encourage our clients to avoid these people and go to registered lenders instead.

Succinctly summarising the situation, a community paralegal at the DOS feedback session said:

“

The grant recipients are a 'bridge' between the government and the *mashonisa*. The government must stand up. That the government gives out grants to the elderly, only for them to be exploited is unacceptable.

”



Debt, Credit and Consumer Rights Training with over 50 community leaders from Pampierstad, Northern Cape

Another source of difference is the level of access to education, literacy, knowledge, expertise and advice that come from relative closeness to (or distance from) urban areas. For example, we heard from paralegals in the North-West Province:

CASE STUDY (ZEERUST, NORTH-WEST)



There is a section in my village with illiterate people who come from the farms. They are vulnerable to *mashonisas*. Most of their cards are with another woman – a *mashonisa*. There is a family of 3 – a grandmother, grandfather, and son. The *mashonisa* has been holding the card for about 2 years. When the grant money comes in, she just buys 10kg of mealie-meal and beef bones and gives it to them. She does not buy toiletries or anything else. We have tried reporting the situation to social workers and the police, but they are slow to come or don't come at all.

Such a case indicates that people with the least knowledge of their rights are unable to exercise those rights. During the workshops, we also established that EPE/Moneyline continues to play a key role, in the decommissioning of pay points and the collapse of the Post Office, as the following quotes demonstrate.

- Grindrod is the only bank in Uitenhage. Most people have the green card, which suggests that Grindrod offers loans. Our office only deals with issues pertaining to the inexplicable deduction of funds from grant recipients' bank accounts. Any other issues outside of that ought to be resolved with Grindrod – however, that is not possible because Grindrod has no physical structures where their customers can seek help. In that way, most pensioners are prisoners of Grindrod Bank. No one is aware of the relevant offices from which to get help. They can only receive help in PE. (Uitenhage, Eastern Cape)
- There have been several instances where organisations such as EasyPay Loans enter into unofficial agreements with state officials and set up stalls where unsuspecting pensioners and grant beneficiaries are lured into taking out loans, even though the law prohibits such practices, particularly with child grants. One such incident occurred through the help of the local chief, EasyPay was given a platform to recruit community members to get EasyPay cards. (Verena, Mpumalanga)



Debt, Credit and Consumer Rights Evaluations with 30 paralegals from in and around Mbombela, Mpumalanga

5 Practical solutions produced collaboratively

In some notable cases, paralegals have offered useful advice and enabled clients to find a solution to problems of illegal lending. We encourage regulators, ombuds and government officials to pursue and build on these solutions. These also differ by region, to some extent. Much of the information presented below came from written case studies submitted by paralegals as part of the feedback, but some of these lacked detail about how the cases were resolved. Nevertheless, they give a useful picture of some innovative solutions devised at a local level.

Some indicate a minimalist approach – for example, referring people to the police and/or DSD, whose only response is to advise them to cancel their SASSA card and apply for a new one. For example:

A *mashonisa* in Mokopane was threatening to kill a woman's children. She owed R2,500. She was advised to approach the police, who took no action, but on hearing about the case, DSD advised her to block the old card and apply for a new one. (Limpopo)

Paralegals advise that police often respond by stating this is an agreement between two adults and they cannot get involved. Another case from Mokopane showed evidence of the police responding more proactively:

CASE STUDY (LIMPOPO)



A woman borrowed R3,000 to pay her daughter's school fees, but when she couldn't pay on time, the *mashonisa* broke his way into her house and took the fridge and the microwave. She later repaid the loan but the *mashonisa* did not return the appliances or fix the damage caused by forced entry. She was advised to go to the police, who opened a case.

Other advisers are more proactive, undertaking to negotiate with the *mashonisa*.

CASE STUDY (LIMPOPO)



A woman in receipt of several loans was struggling to pay her debts. She was employed and also received a Child Support Grant. In September 2023, she borrowed R7500, and with the interest of 50%, her debt amounted to R10950 in total, because she had gone 9 months without repaying her loan to the *mashonisa*. She visited the advice office to seek help, whereupon her lender was also invited to extend some grace and cancel the interest. A debt-settling arrangement was made between herself and her employer; her employer would take half of her salary and pay off her debt to the *mashonisa*.

CASE STUDY (MPUMALANGA)



A single mother from the same area, who was in receipt of Child Support Grants, had lost her job. In January 2024, she borrowed R1200 from a *mashonisa*, and owed the principal plus interest of 50%, totalling R1800. She had gone 3 months without paying. The *mashonisa* paid her a surprise visit one evening, confiscated the children's schoolbooks, harassed her and the children, and opened the fridge and kitchen cupboards; threatened to take all her groceries. The advice office mediated with the *mashonisa* and succeeded in cancelling the interest and arranged debt settlement on her behalf. She was also advised to approach the Department of Justice for the application of a protection order against the *mashonisa*. The school principal instructed the *mashonisa* to return the children's schoolbooks.

Similar efforts at mediation were evident in the Eastern Cape, where there have been longstanding engagements regarding debt and credit by paralegals. Here, various officers have taken to solve most issues locally, without escalating them to the various regulators, ombudsmen, and consumer organisations. In one case, the paralegal mediated between the lender and borrower. Paralegals counselled client to commit to a single lender and avoid borrowing from multiple ones.

In another Eastern Cape village, a woman who had been borrowing from one *mashonisa* to pay others was reluctant to seek help, she was apprehensive about all organisations. An Older Person's Grant recipient similarly owed money to a *mashonisa*, but her family members intervened by reporting the situation to DSD and the police. The police advised the lender to decline her future requests for debt, and to return her bank card and the ID after the settlement of the debt.

Many paralegals advise their clients to pay their debt to the *mashonisa* to avoid consequences with them. (Nelspruit, Mpumalanga) Advice officers also intervened by buying groceries for grant recipients to prevent repetitive borrowing. (Gqeberha, Eastern Cape)

However, debtors sometimes ignore advice:

I have a blind client who would borrow behind my back after mediation. In a separate case, A skopper disrupted funeral proceedings by arriving the night before the burial to demand money owed to him. He nearly stopped the funeral. (Eastern Cape)

A grant recipient in Uitenhage had borrowed from a wide variety of lenders, registered and otherwise. The paralegal had gone to each of these, arranging payouts and declaring the person free of debt from each. But soon after, the grant recipient approached the various lenders again - the lenders even contacted the paralegals to report this.



Training on the legal obligations of *stokvels* in Gqeberha.

From this and other cases mentioned in this section, it appears that however demonised they may be in the popular imagination, *mashonisas* are neither completely ‘culpable,’ nor averse to repayment arrangements. They are often drawn into the lending business by the pleas from their fellow community members. We have encountered examples of *stokvel* members being flexible and accommodating in this way. (We were asked, and provided feedback, about the legalities of *stokvels* acting as moneylenders. We explained, with the help of our booklet on *stokvels*, that they are exempt from registering with the NCA, if they lend money only to members. If they lend money at interest to non-members without registering, their moneylending practices are included under those of *mashonisas*. Nevertheless, lending money with interest continues to be a widespread practice of *stokvels*).

When approached, *mashonisas* may assess their borrowers’ trustworthiness by estimating their neighbourliness. Sometimes a borrower is unable to pay back a loan due unforeseen circumstances such as loss of employment. Other times, a lender has their own cashflow problems (such as other borrowers’ failure to repay). One woman said, ‘I usually borrow from street *stokvels* or *mashonisas* – depending on which group has money at that moment.’ (However, *mashonisas* also weaponise their cashflow problems, manipulating prospective borrowers. In one case a *mashonisa* told her neighbour – who had made a loan enquiry – to decide quickly whether she wanted the money, as someone else might take it first.)



Training has taken place in four provinces and with participants from across all nine provinces. Photograph; Picture Poetry

The examples provided here, of practical solutions produced collaboratively, lead us to propose an important solution. The fourth recommendation listed below – flexible and innovative solutions – stems from our finding that, as long as vulnerable welfare dependants are unable to ‘jump through the hoops’ required to access formal loans at reasonable rates of interest, they will resort to borrowing from neighbourhood lenders. While some of these employ violent and unacceptable practices, others, as noted above, are open to mediation and negotiation with lenders, facilitated by paralegals. Some of these are *stokvel* members, and neighbourhood savings clubs might well play a key role in bringing informal lending into the zone of more acceptable practice. It is important to take note of these practices and, instead of stamping them out, try to bring them closer to acceptable and non-predatory practices.



An inclusive financial system

Before listing our recommendations, let us take a step back to explore the wider backdrop. Our project aims to give substance to ‘human dignity’ and ‘the achievement of equality and the advancement of human rights and freedoms’ that are foregrounded in the Constitution. Institutions such as Finmark Trust and the World Bank have advocated that this can - in part - be achieved through inclusion (especially financial inclusion in the form of an electronic grant-issuing system that would make credit accessible to recipients). The National Credit Act (2005) was intended to enable such inclusion, by making legal borrowing attainable to all, and putting an end to credit apartheid. Since then, many ground-breaking court cases have established fairer grounds for borrowers, especially those who are in employment. However, our project has highlighted that those in receipt of government grants, who have the most need of credit, are unable to borrow money on a fair basis. Since they do not qualify for loans from formal lenders, they often have no alternative—as noted above—other than to borrow from mashonisas, who lend money at illegal rates of interest and use forms of loan security such as taking borrowers’ SASSA or bank cards and ID books.

Such a practice contradicts the constitutional value of dignity. Social grant recipients must be treated equally, by being granted fair access: systems must be found to make this possible. Vulnerable people, especially pensioners and single mothers, deserve protection from harm and risks incurred through the only form of borrowing currently open to them. Should such harms threaten them, they need to have access to justice. In part, this needs to be enforced by responsive and proactive regulators. These key principles, which underpin the primarily education-focused proposals listed below, must be kept in view in the longer term.



Debt, Credit and Consumer Rights Training focused on both urban and rural community in Kwa-Zulu Natal, Eastern Cape, Mpumalanga and Northern Cape

Recommendations

Following on from our findings, we make recommendations to address communities' challenges with indebtedness. In combination, these will make for some achievable gains and bring benefits. We still advocate, in the longer term, for legislative change or regulation.



More collaboration

Government departments must implement an integrated approach, rather than operate 'in silos;' in particular, National Treasury, the Department of Trade, Industry and Competition (DTIC), and the Department of Social Development (DSD). Given the practice of confiscating identity documents and that proof of identity is often required in daily life, it is also important for the Department of Home Affairs to be brought into the conversation.



More education/knowledge transfer

about consumers' and grant recipients' rights. This could involve, for example:

- 1 A committed capacity-building programme by government departments.
- 2 Government partnerships with civil society to ensure that information sessions and educational materials reach the most vulnerable, especially in rural communities.
- 3 Government collaboration with existing civil society initiatives; developing a media strategy targeting grassroots communities (including but not limited to radio broadcasts, facilitated through NCR's access to vernacular radio).
- 4 Other regional follow-up sessions to update paralegals and share experiences.
- 5 Ensuring access to information, with practical examples on the websites of government departments such as the DTIC and DSDS, that share examples of advisor/paralegal experiences.



More funding -

with the government allocating a dedicated budget to extend the footprint of government bodies, ensuring that they fulfill their mandate and reach the public and that they are easily accessible. This should be done in collaboration with NCR and the National Financial Ombud Scheme South Africa (NFOSA). At present, for example, there is only one education officer employed centrally, at national level, by NFOSA. Expanding this through added funding could facilitate the creation of offices in each province. We recommend that a regular roadshow be set up, involving all these bodies in collaboration, to do community outreach.

Our trainings demonstrated a need for financial literacy in rural or under-resourced areas. Financial inclusion means that we also share in the knowledge that we have as far and as wide as we can reach. A lack of visibility of both the NCR and NFOSA in these communities has the potential to make consumers more vulnerable to scrupulous credit providers.



Flexible and innovative solutions which are accessible and cost-effective.

These would build on some paralegals' existing practices of mediation, which we aim to share with others through the various educational/knowledge transfer arrangements proposed above. They would enable paralegals in the community to use their skills from the training in a solution-driven manner. Through education and effective engagements with government bodies, informal lenders will be encouraged to operate within the perimeters of the law. This would also enable certain moneylenders to register their businesses and thereby comply with the regulations stipulated in the National Credit Act.



Debt, Credit and Consumer Rights Evaluations with paralegals from Kwamhlanga, Mpumalanga



Dullah Omar School for Paralegals, 2023

Black Sash community-based monitoring of grant payment days in Kariega, Eastern Cape. Photograph: Nkosekhaya Vunjana



Appendix:

Roleplay scenarios used in training.



GROUP 1: Contracting with *mashonisas* - what are the dangers?

Thabo is so deep in debt that he is unable to approach legal credit grantors for financial aid. He has an exceptionally low credit score and has not made any alternative arrangements with his current credit providers to pay off his debt. He has exhausted all options to seek help from his family and friends because he is unable repay previous debts. He decides to enlist the services of a *mashonisa*.

Responses:

- They are not registered with NCR, meaning they do not follow the standard procedure (proper assessment & interest rate.)
- If you do not pay, your life may be in danger.
- You might be overindebted, as you will borrow from one *mashonisa* to pay another.
- They take your belongings (ID and bank cards).
- With your ID, they can illegally take up life insurance on your behalf without your consent or knowledge. And they might kill you, so they can claim funds from insurance companies.
- They give you change from your salary, resulting in your borrowing more - lifetime debt.
- They do not conduct eligibility assessments.
- They lend people money in absentia. (Gqeberha, Eastern Cape)

The group highlighted the risks associated with *mashonisas*, emphasising the absence of registration with the NCR. This lack of regulation allows *mashonisas* to charge arbitrary interest rates, potentially leading to borrowers paying triple the borrowed amount. The group raised concerns about individuals facing severe financial consequences, such as being unable to pay other debts, losing belongings, and even considering suicide due to *mashonisas*' aggressive practices. A crucial point mentioned was the unregulated nature of the *mashonisa* model, preventing victims from seeking help from regulators. Additionally, they highlighted the alarming tactics of *mashonisas*, such as employing hitmen instead of using other means for debt collection. One member mentioned a situation where loan sharks took out funeral policies on debtors, naming themselves as beneficiaries if the debtor failed to pay. (KwaMhlanga, Mpumalanga)

GROUP 2: Getting credit recklessly – what does it mean, and how can it affect you?

Boitumelo is in her late twenties and has been feeling pressure from her friends, who are all doing well in their careers. She has been considering buying a car that will attest to her success. Without doing any proper planning, she applies for vehicle financing and ‘qualifies’ for her dream car, but it comes at a cost. Boitumelo tweaked the numbers, making her expenses seem far less than they are, as a result, a residual/balloon payment of over R60,000 settlement awaits her.

Responses:

- This is done to access credit even when one is not creditworthy. It happens when credit providers fail to do a proper credit assessment or grant credit to individuals despite negative credit check results.
- Boitumelo’s credit assessor was at fault for ‘tweaking’ the numbers. Either for the purpose of earning a commission, or a result of bribery.
- Boitumelo could have misrepresented her financial standing as she was desperate for a vehicle.
- With reckless credit you can end up being over-indebted. The results are detrimental to you not to the credit provider.
- You may get a low credit score which can affect your employability. (Gqeberha, Eastern Cape)

The group explained the concept of a balloon payment, emphasising its potential to lead individuals into financial difficulties. (With such a payment, the deposit is paid at the end of the finance period). Odwa explained the likelihood of a balloon payment catching people off-guard due to being easily forgettable. The discussion shifted to the consequences of reckless credit acquirement. The group rightly identified stress, anxiety, and deep debts as possible outcomes for Boitumelo. They explored balloon payment restructuring as an option but acknowledged the associated risks and consequences. Legal consequences of deep debt were discussed, including potential insolvency, and limitations on starting certain businesses. (KwaMhlanga, Mpumalanga)



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Limehill, Kwa Zulu -Natal

GROUP 3: Consumer rights and faulty goods – where do you go to complain?

Reggie buys couches on credit. On the day of his delivery, the delivery man is in a hurry to cover all his deliveries for the day and has no time to linger, so Reggie should just sign the delivery note, which he does. A day later Reggie notices some defects with his purchase, and immediately calls the furniture store. He is told his couches, still under guarantee, will be collected and replaced. However, weeks pass without this happening. In his frustration, he decides to retaliate by withholding his monthly payments from the credit provider.

Responses:

- The group recognised Reggie's mistakes, emphasising that he should have checked on the conditions related to the sale of the couches before signing the delivery note.
- They highlighted the importance of customers being aware of their rights and not paying for products they are not satisfied with. Additionally, the group touched on consumer rights, mentioning the National Consumer Commission (NCC) and National Credit Regulator (NCR) as avenues for reporting issues concerning purchased goods or dealing with creditors.
- The discussion emphasised the significance of cancelling agreements properly and the consequences of not complying with them. (KwaMhlanga, Mpumalanga)

GROUP 4: Registering as a credit provider – how do you register, and with whom?

Kabelo is a young man who has a nine-to-five job. But things are tough financially and he has been thinking of ways to make extra money. He starts lending money to colleagues, and things are going well for him as a *mashonisa*. But he would like to turn his business into a legal one and charge his clients regulated interest rates.

Responses:

- Complete the NCR application form. Have a company registered as a sole proprietor.
- Acquire a police clearance form/certificate not older than 6 months.
- Produce a certified copy of his ID. Pay the required non-refundable registration fees of R500 and R250 for each branch.
- Acquire proof of registration from SARS. Wait

The group highlighted the importance of registering as a credit provider. They mentioned the legal process of registering, including completing an application form, obtaining a company register, and providing various documents and submitting them to the NCR. They touched on interest rates, explaining numerous factors that can influence them, such as the prime rate and individual credit history. Additionally, they discussed challenges and suggested simplifying the registration process to legally enter the credit-providing industry. (KwaMhlanga, Mpumalanga)



Photographs from Dullah OmarSchool 2023



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