



national consumer tribunal

Guide for applications and referrals

to the National Consumer Tribunal
in terms of the National Credit Act 34 of 2005



Note: The intention of this document is to provide an easy-to-understand guide to some of the applications and referrals that can be brought to the National Consumer Tribunal. It should not replace the need to consult the National Credit Act, Rules for the Conduct of Matters before the National Consumer Tribunal or a suitably qualified legal practitioner.

Information furnished by the Tribunal or its employees to members of the public is done on a without prejudice basis and does not bind the Tribunal's discretion or purport to override the law. The Tribunal accepts no liability whatsoever for actions taken by members of the public arising out of any information furnished by the Tribunal or its employees.

What is the National Consumer Tribunal?

The National Credit Act became law in South Africa in 2006, and established the NCT.

The National Consumer Tribunal (NCT) is an independent body, whose aim is to achieve fairness and justice for everyone in the consumer and credit market.

The NCT achieves its aim by fairly and independently adjudicating on disputes about consumer credit. Applications and referrals can be brought before it by any participant in the credit market and the National Credit Regulator. It can also review decisions and adjudicate on referrals made by the National Credit Regulator.

The NCT hears all sides of an argument before making a decision. A decision made by the NCT has the same status as one made by the High Court of South Africa.



Who can bring an application or refer a matter to the NCT?

Various parties can bring an application to the Tribunal. They are:

- The consumer. This is a person who buys goods and services under a credit agreement;
- A complainant. This is someone who has laid a complaint with the National Credit Regulator, claiming that the National Credit Act has been contravened;

"A credit provider is a person who supplies goods and services under a credit agreement or advances money or credit."

- A registrant or someone who wishes to be a registrant. This is a person or body registered or who wishes to be registered as a credit provider, a credit bureau or a debt counsellor.
- A credit provider is a person who supplies goods and services under a credit agreement or advances money or credit;

- A credit bureau is a body (such as a company) that, amongst others, receives and collects reports on credit agreements, credit applications, payment history or patterns or consumer credit information;
- A debt counsellor is someone who is registered with the National Credit Regulator (NCR) and who assists consumers who are experiencing debt-related problems and are having difficulty making their current monthly payments. The debt counsellor provides them with budget advice support and mediation with credit providers.
- The National Credit Regulator ensures that all participants in the credit market's activities are in line with the National Credit Act. The National Credit Regulator is established by the National Credit Act to establish an accessible credit market, register persons requiring registration under the Act, enforce the provisions of the National Credit Act and be responsible for research and public information on consumer credit matters.

What kind of applications and referrals can be brought to the Tribunal?

There are approximately 35 different types of applications that can be brought to the Tribunal. Some of the types of applications are set out in Table 1 of the Rules for the Conduct of Matters before the National Consumer Tribunal (Government Notice no 30225,

28th August 2007). The requirements for each type of application are set out in Table 2 of the Rules. Referrals are charges of contraventions of the Act for adjudication by the Tribunal. They can be made by either the National Credit Regulator or by a consumer.

What kinds of cases can be brought to the Tribunal by a complainant?	Application or Referral number
A complainant is someone who has laid a complaint with the National Credit Regulator for investigation, claiming that the National Credit Act has been contravened.	
<p>Application for leave to refer a non-referral</p> <p>The National Credit Regulator may decide <u>on receipt of the complaint</u> to either:</p> <ul style="list-style-type: none"> • Non-refer the matter, in which case the complainant may him or herself refer the matter to the Tribunal; • Refer the matter to a debt counsellor (if it appears to concern over-indebtedness or reckless credit), or to an ombud with jurisdiction, consumer court, or an alternate dispute resolution agent, or direct an inspector to investigate. 	<p>Section 141 (1)(b) application</p> <p>Section 139 (1)(a) application</p>

Once the Regulator has investigated the complaint it may:

- Issue a notice of non-referral and the complainant may then himself or herself refer the allegations of the contravention of the Act to the Tribunal to adjudicate on and make a finding;
- Refer the matter for adjudicating and a decision to either the Tribunal or the consumer court;
- Make an application to the Tribunal if the complaint concerns a matter that the Tribunal may consider on application;
- Refer the matter to the National Prosecuting Authority if the complaint relates to a criminal offence in terms of the Act.

Note:

If a complainant is not satisfied with the Regulator's non-referral decision, whether before or after an investigation, he or she can refer the case directly to the Tribunal for adjudication with the written notice of non-referral from the Regulator.

Urgent relief

Whilst the complaint is being investigated by the Regulator, or before or during a hearing of a complaint, the complainant may be in need of urgent relief. In this case, he or she may apply for urgent relief (known as interim relief) to the Tribunal. For any person to apply for interim relief, he or she must already have filed a complaint with the Regulator.

Section 149 application

What kinds of cases can be brought to the Tribunal by a registrant, or someone who wishes to be a registrant?	Application or Referral number
<p>A registrant is a person or body acting as a credit provider, a credit bureau or a debt counsellor (see above). There are several matters that a registrant may bring to the Tribunal.</p>	
<p>Review of compliance notices issued by the Regulator</p> <p>The Regulator may decide that:</p> <ul style="list-style-type: none"> • A registrant is not registered for the activities in which he or she is engaged; • A registrant's actions are not allowed by the Act; • A registrant has not obeyed either the provisions of the Act or the conditions of his or her registration. <p>The Regulator will then issue a compliance notice in which the registrant will be advised what he or she has to do, or what he or she may not do.</p> <p>A Registrant dissatisfied with the compliance notice issued by the Regulator may apply to the Tribunal to review the Regulator's decision and have it set aside.</p>	<p>Section 56 (1) application</p> <p>Section 59 (1) application</p>
<p>Review of Regulator's decisions regarding language proposals</p> <p>If the Regulator decides not to accept a registrant's language proposals, or require it to submit a fresh proposal, the registrant may apply to the Tribunal to review the decision of the Regulator.</p>	<p>Section 63 (5) application</p>

What kinds of cases can be brought to the Tribunal by consumers?	Application or Referral number
<p>A consumer is a person who buys goods and services. These can be paid for in cash or by credit, through borrowing money from an authorised credit provider. The consumer agrees to repay the money borrowed, plus interest, over a certain period of time.</p>	
<p>Non-issue of a clearance certificate</p> <p>In cases where the consumer has been unable to repay the money borrowed in the time agreed, he or she is in breach of contract, meaning that the agreement has been broken. In some cases, the credit provider may have allowed the consumer to borrow too much money, without making sure that he or she will be able to afford the repayments.</p> <p>In such cases, a consumer may approach a debt counsellor for help to have his or her repayments changed so that they are more affordable. Once the consumer has repaid all the debt, the debt counsellor can be asked for a clearance certificate which will be issued if all his or her obligations have been met. However, if the debt counsellor does not issue the clearance certificate, a consumer may ask the Tribunal to review this.</p>	<p>Section 71 (3) application</p>

"In cases where the consumer has been unable to repay the money borrowed in the time agreed, he or she is in breach of contract, meaning that the agreement has been broken."

<p>Pawnbroker to pay for goods lost or sold too early</p> <p>Sometimes, a consumer borrows money from a pawn broker in exchange for goods in order to settle his or her debt. If the consumer pays his or her debts in time, he or she can approach the pawnbroker to have the goods returned. However, if the pawnbroker has lost or sold the goods, the consumer may ask the Tribunal to order the pawnbroker to pay for the goods that have been lost or sold.</p>	<p>Section 99 (2) application</p>
<p>Statement of account</p> <p>A consumer has the right to ask a credit provider for a statement of account. This should show:</p> <ul style="list-style-type: none"> • The amount owing at a particular date (ie, the current balance); • The amounts that have been credited (for example, through a payment made by the consumer); • The amounts that have been debited (for example, the interest charged by the credit provider); • The amounts overdue (ie, the amounts that have not been paid on time); and • The full amount that must be paid in order to pay everything that is owing, or settle the debt. <p>If the credit provider does not make such a statement of account available to the consumer, he or she can approach the Tribunal to get the credit provider to do so.</p>	<p>Section 114 (1) application</p>

<p>Disputed entry</p> <p>Sometimes, a consumer may not agree with an item in his or her statement of account with a credit provider. This is called a disputed entry. He or she must first try to reach agreement with the credit provider. If still unable to do so, he or she must approach the Regulator, the ombud, a provincial consumer court or another agent who settles disputes. If agreement is still not reached, the consumer may then approach the Tribunal for a decision about the disputed entry.</p>	<p>Section 115 (1) application</p>
<p>Dissatisfaction with sale of goods</p> <p>If consumers are having difficulty paying for goods they have purchased on credit, they can cancel the contract and hand the goods back to the credit provider. If they are in default, the credit provider can cancel the contract and can follow the steps set out in the Act to reclaim the goods. Once the credit provider has the goods in its possession, whether these goods were surrendered by the consumer or repossessed, the credit provider must sell the goods within a reasonable time and for the best possible price. The price the credit provider receives is used to pay off the consumer's debt. If the consumer is unhappy with the sale of the goods, the consumer may approach the Tribunal, <u>but only after the consumer has unsuccessfully attempted to resolve the disputed sale of goods</u>, for an order that the credit provider pay an additional amount to the consumer.</p>	<p>Section 128 (1) application</p>

What kinds of cases can be brought to the Tribunal by credit providers and credit bureaux?	Application or Referral number
<p>A credit provider is a person who supplies goods and services under a credit agreement or advances money or credit.</p> <p>A credit bureau is a body (such as a company) that, amongst others, receives and collects reports on credit agreements, credit applications, payment history or patterns or consumer credit information.</p> <p>Credit providers and credit bureaux can bring the following matters to the Tribunal:</p>	
<p>Limit of obligations</p> <p>A consumer has the right to ask a credit provider for:</p> <ul style="list-style-type: none"> • A reason in writing as to why his or her application for credit has been turned down or his or her credit has been ended; • Copies of documents relating to his or her credit history, if these have been lost; • Statement of balance owing; • Settlement amount, which is a statement of the amount that would be needed to settle the debt at a point in time. <p>A consumer has the right to ask a credit bureau for:</p> <ul style="list-style-type: none"> • Information about the consumer that is being held by the credit bureau; • An investigation into how accurate such information is. <p>However, the credit provider or credit bureau may believe that such requests are frivolous (no basis for the requests), vexatious (the requests have been made purely to cause trouble or to be annoying), or unreasonable. In this case, an application can be made by the credit provider or credit bureau for the Tribunal to limit its obligations to give reasons, document statements or settlement amounts.</p>	<p>Section 142 (3)(f) application</p>



<p>Proceeds of sale of goods</p> <p>A consumer may have handed over goods to a credit provider in settlement of a debt, and the credit provider may have sold the goods to settle the consumer's debt. In some cases, the amount of money raised through the sale may be more than the consumer's debt. If another credit provider has a registered credit agreement with the same consumer for the same goods, then the money from the sale must be fairly and justly shared among the credit providers.</p>	<p>Section 127 (6) application</p>
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<p>What kinds of cases can be brought to the Tribunal by the National Credit Regulator?</p>	<p>Application or Referral number</p>
<p>The National Credit Regulator (NCR) is a body that acts as a "policeman" towards credit providers and makes sure that their activities are in line with the National Credit Act.</p> <p>The Regulator can bring the following matters to the Tribunal:</p>	
<p>The Regulator can ask the Tribunal to cancel the registration of a registrant in cases where a registrant:</p> <ul style="list-style-type: none"> • Does not comply many times over with a condition of its registration; • Does not meet a commitment of its registration; or • Acts in a manner that is contrary to the provisions of the Act. 	<p>Section 57 (1) application</p>

<p>Responsibilities of credit providers</p> <p>A credit provider has to be responsible in giving credit, and cannot give credit to someone who will not be able to repay his or her debt. If a credit provider gives credit many times over to people who cannot repay their debts, it is not being responsible.</p> <p>In order to decide who can borrow money or buy goods on credit, and in what circumstances, a credit provider can set its own guidelines. These guidelines can be pre-approved by the Regulator. Alternatively, the Regulator can set guidelines which credit providers can refer to when making their decisions. If a credit provider fails to act fairly and objectively, the Regulator can apply to the Tribunal for an order that the credit provider apply the guidelines set by the Regulator, or guidelines which are consistent with practice in the industry, as determined by the Tribunal.</p>	<p>Section 82 (4) application</p>
<p>Dispute over information</p> <p>If there is a dispute with a credit bureau about information that it holds, the Regulator can ask the Tribunal to resolve the dispute.</p>	<p>Section 137 (1)(a) application</p>
<p>Statement of account</p> <p>The Regulator can ask the Tribunal to insist that a credit provider give a statement of account, or decide if a statement of account is correct.</p>	<p>Section 137 (1)(b) application</p>

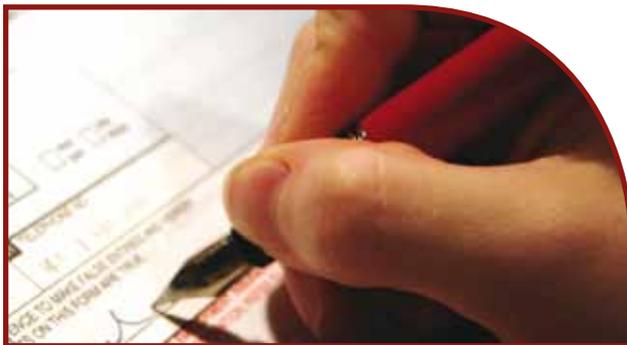
<p>Review of sale of goods</p> <p>The Regulator can ask the Tribunal to review the sale of goods, or the distribution of the proceeds of a sale.</p>	<p>Section 137 (1)(c) application</p>
<p>Permission to bring a complaint early</p> <p>The Regulator can ask permission to bring a complaint directly to the Tribunal before the investigation into the complaint has been concluded. For example, the case may need to be referred to many different forums which could delay it for too long.</p>	<p>Section 137 (1)(d) application</p>
<p>Referral of prohibited conduct</p> <p>The Regulator must investigate a complaint and if it believes that a person has been involved in conduct which is prohibited in terms of the Act, it may refer the matter to the Tribunal for a hearing.</p>	<p>Section 140 (1) application</p>
<p>Intervention of the Regulator</p> <p>If another party brings an application to the Tribunal and the Regulator is not already a party to that application, then in some circumstances (as set out in s137) the Regulator may intervene in that application.</p>	<p>Rule 11 application</p>
<p>Permission to use documents submitted late</p> <p>If documents required in a matter are not handed in on or before the required date, the Regulator can apply to allow these documents to be used in the matter before the Tribunal.</p>	<p>Section 137 (1)(e) application</p>

What kinds of cases can be brought to the Tribunal by other parties?	Application or Referral number
<p>Consent orders</p> <p>When a consumer has fallen seriously behind in his or her credit instalment payments, or has built up unmanageable debt, he or she may ask a debt counsellor for help to review his or her debt and change payment terms to ones that he or she can afford. Once agreement on the new terms has been reached with all parties, then the new arrangements are referred to the Tribunal. If the Tribunal accepts them, they become a consent order of the Tribunal. Various parties can apply for a consent order from the Tribunal. They include an ombud, a consumer court, an alternate dispute resolution agent, the National Credit Regulator, or a debt counsellor.</p>	<p>Section 138 (1) application</p>
<p>Referral of non-agreement</p> <p>If a consumer and a credit provider have not been able to reach agreement about a credit dispute through alternate dispute resolution, either party can apply to the Tribunal to resolve the matter.</p>	<p>Section 137 (3) application</p>

"When a consumer has fallen seriously behind in his or her credit instalment payments, or has built up unmanageable debt, he or she may ask a debt counsellor for help to review his or her debt and change payment terms to ones that he or she can afford."

<p>If a consumer and a credit provider are not able to reach agreement about a credit dispute, the matter must first be referred to an ADR agent, an ombud with jurisdiction or a consumer court. If this ADR fails, the consumer may file an application with the Tribunal. If the matter was dealt with by an ADR agent, the consumer must obtain a certificate from the ADR agent stating that the ADR has failed and the consumer must file the application within 20 days of the ADR having failed. If the consumer is unable to file the application within 20 days, the consumer can still apply to the Tribunal and the Tribunal may agree to hear the matter provided the consumer is able to show that there was a good reason why he or she could not file the application within 20 days.</p> <p>However, if the dispute resolution agent is not able to resolve the dispute, then the agent issues a certificate of failed alternate dispute resolution and the credit provider or consumer can then file a section 137(3) application with the Tribunal.</p>	
<p>Involvement of all parties</p> <p>If there are parties that have an interest in the dispute, but have not been included in the matter, they can ask the Tribunal to allow them to be included in the matter.</p>	<p>Rule 12 application</p>
<p>Referral to alternative forum</p> <p>Any party can ask the Tribunal to refer a matter to an alternative forum. For example, if the matter is referred by the Regulator to a consumer court, a consumer may ask that the matter be referred to another consumer court or to the Tribunal.</p>	<p>Section 140 (4) or 141 (2)(a) application</p>

<p>Permission to file documents late</p> <p>If any party has not been able to file documents on time, or for some reason cannot comply with the Tribunal's rules, it can apply to the Tribunal to be allowed to file the documents late or to condone any other departure from the rules.</p>	<p>Rule 34 application</p>
<p>Referral to a full panel of the Tribunal</p> <p>If any party is not satisfied with a decision by a single member of the Tribunal, it may appeal to the full (3-member) panel of the Tribunal.</p>	<p>Section 148 (1) application</p>
<p>Correction of an error in a Tribunal judgment or order</p> <p>If there is an error in an order, any party can apply for it to be corrected.</p>	<p>Section 165 application</p>



Steps to file an application or referral

The following steps will help you bring a matter to the Tribunal. If you follow these steps carefully, you will save time and your problem will be sorted out more quickly and easily.

1

Properly identify the type of application that you need to file. The types of applications are set out in Table 1 of the Rules and the requirements for each application are set out in Table 2 in the Rules. To do so, you need to read the Rules for the conduct of matters before the National Consumer Tribunal (Government Notice no 30225, 28th August 2007). You can find the Rules at www.thenct.org.za (click on “The Act”), or visit the offices of the Tribunal where the staff will be happy to help you.

There are time limits for the submission of applications. Be aware of them and act within them. If you are late in making an application, you may apply to the Tribunal to allow you to still file, giving good reasons why you did not file the application within the time allowed.

2**3**

Complete the correct form. You will see from Table 2 of the Rules which form/s you have to complete. You will find the forms in the Rules and in the National Credit Act. Both of these are at www.thenct.org.za (click on “The Act”).

Include any other documents or photocopies of documents you need as part of your application, as set out in Table 2, with your application.

4

Steps to file an application or referral - continued

5

Pay the application fee into the Tribunal's bank account and include a copy of the deposit slip or other type of payment to your application. If you cannot afford to pay the fee, you can apply to the Chairperson of the Tribunal to have the fee set aside.

Check Table 2 of the Rules regarding who needs to be informed about and given copies of the application. These are the parties in the application.

6

7

Make sure all the parties in the application are given copies of the application documents as set out in Table 2 of the Rules. Attach this proof of delivery to the application. Proof of delivery can be either a signed document from the party that they have received it, or a registered post receipt.

File your application and all the required documents and payment (unless you have permission from the Tribunal Chairperson not to pay) set out in Table 2 of the Rules with the Tribunal. This can be done by email, fax, post, or hand delivery. See below for contact details for the Tribunal.

8



How to contact the Tribunal

If you need help with your application, please contact the Registrar of the Tribunal:

Telephone: 012 663 5615 / 012 683 8140
Email: registry@thenct.org.za
Fax: 012 663 5693
Postal address: Private Bag X110
Centurion
0046
Physical address: Ground floor
Block B
Lakefield Office Park
272 West Avenue
c/o West and Lenchen North
Centurion





Physical Address:

Ground Floor,
Block B,
Lakefield Office Park,
272 West Avenue,
Centurion,
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Postal Address:

Private Bag X110,
Centurion
0046
Tel : 012 663 5615 / 012 683 8140
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www.thenct.org.za