

Are debt administrators creating economic oppression?

*Debt administrators are responsible for administering debt for an increasing number of workers. **Reneé Grawitzky** looks at the implications of this for workers and how administrators – some, who are also operating as micro lenders, could abuse them.*

In more recent years access to credit has become easier. This has played an important role in putting an increasing number of people in debt.

What does it mean to be put under administration?

Various employers, especially on the mines and some financial institutions (involved in providing micro loans) began to notice about two to three years ago that debt administrators were cropping up in various parts of the country. They were mainly lawyers who had set themselves up as administrators.

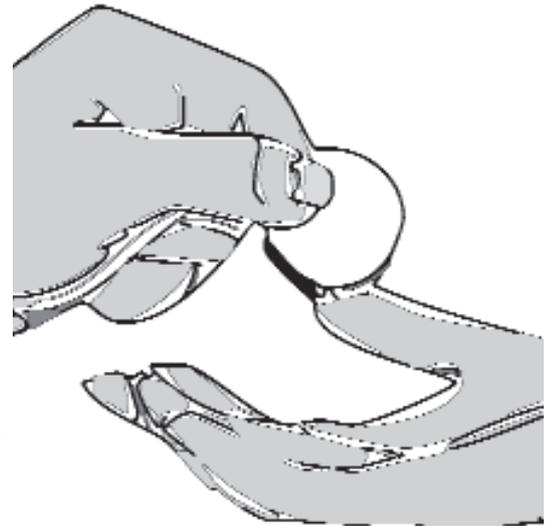
How often have you seen pamphlets or notices stating: 'We will solve all your debt problems' or 'Are you tired of being in debt?' Administrators promote themselves as being in a position to help people get out of debt. But are all administrators acting in your best interest?

Being placed under administration is a drastic measure that should not be taken lightly. It has future implications if you want to get future access to credit as it effectively means that you are putting yourself under voluntarily liquidation (bankruptcy). In addition, the cost of being placed under administration can be high if abuse is involved. This measure does not also necessarily mean that you will become debt free – especially if you come up

against an unscrupulous administrator who is in it to make profits.

People in debt turn to administrators in the hope that they will help them. The debtor (person in debt) gives the administrator a fixed monthly amount, which is supposed to be used to pay off debt that exists. Some administrators do operate within the law and attempt to help people. But there is a growing market of administrators who are encouraging people to go into administration for their own gain. They charge very high fees to administer the debt and in some cases receive payments from the person in debt but pocket the money and do not pay it over to the creditors. Therefore, a person in debt could land up in a worse position at the hands of administrators.

The Micro Finance Regulatory Council (MFRC), a regulatory body that has been entrusted with regulating the micro-lending industry and ensuring that borrowers are protected from unscrupulous moneylenders, argues that people placed under administration must be properly counselled and advised about the consequences of his/her decision. The MFRC is concerned that most debtors who are placed under administration do not qualify for this drastic measure and that they are not informed about the legal consequences.



The legal aspects of an administration order

The law provides for people to be put under administration. The MFRC explains that section 74 of the Magistrate's Court Act 32 of 1944 makes provision for the granting of administration orders. An administration order can be regarded as initiating a process of a 'modified form of insolvency'. The process is appropriate for dealing with the affairs of debtors who have few assets, a low income and who genuinely wish to settle their financial obligations but are experiencing financial difficulties.

If an order is granted, rescheduling

of the payments of existing obligations occurs without sequestration of the estate of the debtor. An administrator is appointed to control the financial affairs of the debtor. The administrator must:

- calculate the debtor's reasonable living expenses;
- propose a distribution schedule of the remaining funds available to creditors; and
- inform creditors that the debtor is under administration. This has the effect that they are no longer entitled to institute legal action against the debtor.

The administrator is entitled to levy a fee for the rendering of the above services and the debtor will naturally reimburse any expenses incurred by him/her during administration.

Where abuse occurs

Independent administrators often approach people in debt with the seemingly appealing offer to consolidate all their debt and settle it over a period. Sometimes this type of approach is made by an intermediary of the micro lender (who often pushes himself forward as the administrator) who tells the person in debt that he can get a loan equal to the consolidated amount of all his existing debts once an administration order is granted. This promise is not disclosed to the creditors or the court. Once the order is granted, the names of all the other creditors are deleted from the list of creditors and the micro lender enters his/her name as the sole creditor. The micro lender then has the security of an administration order to ensure his loan is paid off but the other creditors are not paid. The debtor may not strictly be unable to meet his/her financial obligations; the administration order may merely appear to be an appealing way to simplify his financial position.

Debtors are often not aware that the entering of an administration order

against them has a number of negative implications:

- Debtors are unfairly required to pay additional fees for obtaining the orders and paying the administrators.
- Debtors are required to service their debt over a longer period of time. This often impacts negatively on the position of the debtor.
- The debtor's ability to obtain credit in the future may be affected.
- Creditors cannot recoup monies owed by debtors under administration and are often compelled to write off the debt.

Very often the administrator is connected with the micro lender in some way. He/she is often merely acting on behalf of the micro lender and therefore, cannot administer the estate independently and equitably. The danger then exists that a monthly sum is claimed from the debtor in excess of that which he can reasonably afford. There is also a discrepancy in legislation relating to the fees that can be levied by administrators: in the Act they are capped at 12,5% of the collected monies while the rules relating to the Act refer to fees of 10%. Unscrupulous administrators then levy fees of 22,5% of monies collected or even higher.

Administrators also often enter into agreements with debtors to the effect that a sum in costs may be deducted from monies paid in by the debtor before any payments are made to creditors. This sum is often taken in addition to the percentage prescribed for fees (as discussed above). A recent phenomenon is the setting up of pyramid schemes. Some unscrupulous operators offer to decrease monthly payments required if the debtor in question introduces more people to be placed under an administration order.

The MFRC has received complaints from debtors under administration orders relating to administrators who instructed debtors to inform creditors that they were under administration.

Creditors still harass debtors, and in some instances, creditors still deduct amounts from debtors' bank accounts (in addition to payments made to administrators) even after administration orders were granted. This leads to situations where debtors have insufficient funds for their basic needs. In many instances, debtors were unable to contact administrators, and, when they did reach the administrators and leave messages, these were not returned.

Conclusion

There is rising evidence that micro lenders are involved with debt administrators and in some instances are in fact acting as both. These people are benefiting from the adverse position in which some workers find themselves. Workers, unions and employers should be aware of this trend and the potential negative impact this could have. Workers through their unions should begin to lobby for the setting up of a non-profit making organisation, which will provide debt counselling on a national basis.

Many questions have been raised as to the rise of micro lenders post 1994 and the subsequent emergence of debt administrators. One observer asks: 'Are debt administrators previous apartheid supporters who are replacing political oppression with economic oppression?' ¹⁶

In the absence of a national non-profit making body providing debt counselling, workers and employers who have questions about the dangers of administration orders or those who are seeking debt counselling can contact the following organisations:

- MFRC (011) 647-4446
- Black Sash (044) 382-4458

Every province has a consumer desk, which is normally located within the provincial department for economic affairs and finance.