

Reckless Lending Investigation Checklist

Company name :

Prepared by: _____, Registered Debt Counsellor (NCRDC_____)

Date: [Insert Date]

1) Introduction

This checklist is designed to **streamline reckless lending investigations** by ensuring compliance with the **National Credit Act (NCA), relevant regulations, and case law**. It provides a structured approach to evaluating credit agreements for reckless lending.

2) Consumer & Credit Agreement Details

a) Consumer Details

- Full Name
- ID Number
- Employment Status (Employed/Unemployed)
- Monthly Income
- Existing Financial Obligations

b) Credit Agreement Details

- Credit Provider Name
- Account Number
- Date of Agreement
- Credit Amount
- Interest Rate
- Repayment Terms
- Type of Credit (Personal Loan, Credit Card, Mortgage, etc.)

3) Legislative Compliance Review

a) A credit agreement is deemed reckless if:

- The **credit provider failed to conduct an affordability assessment** (Section 81(2), NCA)
- The **consumer did not understand the risks and costs** of the credit (Section 81(2)(a))
- The **consumer was over-indebted at the time of approval** (Section 81(3))

b) Key References:

- **Nedbank v Tshoga:** Failure to assess affordability is reckless lending
- **ABSA v Goolam:** Misapplication of minimum expense norms leads to reckless lending
- **National Credit Act's Remedies for Reckless Credit (2018):** Consumer awareness is a requirement

4) Document Request from Credit Provider

A formal request should be sent to the credit provider for the following:

a) **Mandatory Documents:**

- Credit Application Form
- Credit Report at Time of Application
- Salary Advice / Proof of Income
- Signed Quotation & Pre-Agreement
- Meaningful Affordability Assessment
- Credit Agreement
- Full Statement from Account Inception

If the credit provider fails to provide these documents, this strengthens the reckless lending case.

5) Reckless Lending Audit Checklist

a) **Did the Credit Provider...**

- Conduct a credit assessment? (*NCA Section 82(2), Nedbank v Tshoga*)
- Explain the risks, costs, and obligations of the credit? (*NCA Section 81(2), National Credit Act's Remedies for Reckless Credit (2018)*)
- Use all consumer income (including spousal contributions) in the affordability assessment? (*Regulation 23A(3), ABSA v Goolam*)
- Validate consumer income with supporting documents? (*Regulation 23A(4), Nedbank v Tshoga*)
- Obtain a full declaration of financial obligations? (*Section 78(3), 81(2)(a)(ii)*)
- Apply the correct **Minimum Expense Norms**? (*Regulation 23A(9), ABSA v Goolam*)
- Ensure the consumer **fully understood** the agreement? (*Case Law Requirement, National Credit Act's Remedies for Reckless Credit (2018)*)
- Verify the consumer's **repayment history**? (*Case Law Requirement*)
- Consider all **obligations, including existing debt and maintenance**? (*Regulation 23A(11)*)
- Provide **due diligence documentation** before granting credit? (*ABSA v Goolam*)

6) Affordability Assessment & Over-Indebtedness Check

Section 81(3) requires an assessment of whether the consumer was over-indebted at the time of credit granting.

Account Reference	Credit Provider	Instalment (R)	Cumulative Instalment (R)	Nett Income (R)	Affordability Outcome
[Insert]	[Insert]	[Insert]	[Insert]	[Insert]	[Insert]

If expenses exceed available income, reckless lending is highly likely.

7) Findings & Recommended Action

Classification of Credit Agreements:

- **Not Reckless** – Meets affordability assessment and compliance standards
- **Potentially Reckless** – Lacks full compliance but requires further scrutiny

- **Reckless Lending Confirmed** – Clear violation of affordability rules, incorrect application of expense norms, or failure to assess total obligations

8) Next Steps:

If reckless lending is confirmed, consider:

- **Court Application** (Section 83, NCA) to declare the loan reckless
- **NCR Complaint** (if intervention is preferable over court litigation)
- **Negotiation with Credit Provider** for improved repayment terms

9) Additional Notes & References

Legal Precedents & Regulatory References:

- National Credit Act 34 of 2005
- Regulation 23A of the NCA
- **Nedbank v Tshoga (55936/2020) [2022] ZAGPPHC 196**
- **ABSA v Goolam (2016/8629) [2025] ZAGPJHC 62**
- National Credit Act's Remedies for Reckless Credit (2018)