Funding Free Debt Advice in South Africa: lessons from the UK, Croatia and Brazil.

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The paper outlines the funding models that have been used for debt advice in South Africa, comparing these with examples from elsewhere in order to make some proposals for a better-funded and more inclusive provision for the country. The three principal models it explores are ***(1) the charitable/NGO sector (2) state funding*** and ***(3) market mechanisms***. The countries compared have all shown steep rises in household indebtedness in recent years. They range from the UK (which has recently moved from a ***state-funded*** model to one involving ***market mechanisms***, compelling credit providing companies to pay for debt advice through a levy) through to Croatia (where a similar dwindling of ***state funds*** has meant a turn to ***charitable support*** and ***market mechanisms***) and Brazil (where different funding partnerships, but with a strong presence of ***state funding***, exist at national and local (state) levels in order to service constituencies of very diverse and unequal kinds).

South Africa

When in the 1990s efforts were being made in South Africa to dismantle credit apartheid and to tackle the worst excesses of the "reckless lending" that was growing apace during that decade, there were many discussions on how to provide help for debtors. Unsecured lending became pervasive, with large banks entering the fold and smaller banks like Capitec becoming mainstream. Between 2012 and 2018, the number of indebted people swelled as many of the country's 18 million grant recipients joined their ranks (James, Neves & Torkelson 2020). Debates about debt advice pitted those favouring the involvement of the **charitable/NGO sector** (for a free-to-borrower model) against those proposing **state funding.** Their chief opponents were political players who felt that debtors themselves, via **market mechanisms**, ought to pay for advice (and that members of their constituencies might consequently gain employment as counsellors). **State funding** was in the mix, mainly to subvent institutional players such as the National Credit Regulator. Despite a 2019 amendment to the law that establishes "debt intervention" for those with no income, there remains little roll-out of free-to-debtor advice to the (by now heavily indebted) population: especially its poorer, welfare-dependent members.

An early suggestion, during the 1990s, was to have advice provided by ***the charitable/NGO sector***, which was well-developed and funded.[1] As donor resources were withdrawn from the country following the advent of democracy, this model was jettisoned in favour of a ***market mechanism*** that favoured "job creation" for members of the newly enfranchised electorate. "Debt counsellor" was seen as a paid profession, and payment would be made by the debtors themselves. The professionalism involved was soon called into question as this sector split in two. Debtors from higher-earning salaried groups were given debt advice by the qualified lawyers and/or trained business people they could

[1] Interview with Riette du Plessis, Wits Law Clinic, 4th August 2010.

afford to pay, while those from the low-pay sector were often fobbed off with untrained or rogue counsellors. Even those advisers with good intentions and training who aimed to service this part of the populace often ended up with failing enterprises. Since they were unable to recoup the miserly sum of R50 that was charged for each advice encounter, many were bound to end up in debt themselves.[2] And with their extremely low levels of training these "barefoot debt counsellors" were no match for the legal experts hired by the creditors whose repayment demands they were trying to deflect (James 2015). Most importantly, the only debt relief measures that existed were "essentially repayment plans" that failed to "provide any actual debt relief in the form of a discharge" (Coetzee 2018: 596).

Debt Counselling	Credit Ombud	Debt Advice
Free/NGO-funded (early 1990s) => (debtor) market-funded (2000s)	Funded by membership fees from creditors	Free/charity/NGO-funded => (propose partial (levy-) market-funding)
Debt counsellor as new job opportunity	Voluntary (many creditor/members left following 2014 scandal)	(propose involuntary levy imposed by state)
Mainly serves middle-class/ salaried people with assets	Mainly serves middle-class/ salaried people	Serves low-wage people with no assets but regular grant payments

Figure 1: Debt advice provision in South Africa

The option of using a ***market mechanism*** to charge creditors for advice has not so far been adopted in SA in a manner similar to that adopted in the UK in 2010 (see below), but there are certain parallels. Its closest equivalent can be found in a series of ombud arrangements. The National Credit Act (section 1(39)) stipulates that the National Credit Regulator (with ***state funding***) "may" refer any matter to an ombud with jurisdiction. Each of these ombuds covers a different sector (such as long-term insurance, short-term insurance, financial intermediaries, etc): membership is voluntary and members pay contributions and these are used to fund the operations of the ombud. The credit ombud, initially successful in tackling the wave of "reckless lending", fell into disrepute when in 2014 its director was suspended pending the outcome of a probe into financial mismanagement. This led the banks to withdraw their membership and made for a steep dip in its income; it is currently under new leadership.[3] But even in its heyday the ombud's activities had only ever served a small proportion of the population: those with regular salaries/wages.

Meanwhile, the un/underemployed and (partly or wholly) welfare-dependent population of debtors, whose ranks had swelled after 2012 to include approximately 18 million grant recipients (out of a population of 58 million), have so far remained dependent on small-scale initiatives, partly ***NGO/charity-funded*** but with injections of ***state funding*** for specific projects. These include the mostly village-level organisations partnered with the Black Sash, such as Limehill Joint Monitoring Committee, Inter-Church Local Development Agency, Port St Johns Community Law Centre, Botshabelo Unemployed People's Movement, Hope 4 Destiny, Mamadi Advice Office, Refetse Health Care Project, Khutsong Youth Friendly Service and Lorna Mlofana Parents' Movement, all of whom made contributions to the initial research project. Many debtors, however, appear to have remained

[2] Ibid.
[3] Interview with Howard Gabriels, Acting Credit Ombudsman, 27th November 2020; https://www.iol.co.za/business-report/careers/credit-ombud-suspended-pending-probe-outcome-34277395

without any system of advice or recourse, despite their being at the sharp end of the lending industry's worst practices (James, Neves, Torkelson 2020).

Figure 1 provides a summary of the points made above. By 2019, none of the initiatives discussed above had addressed a fundamental problem: South Africa (like several of the countries discussed below, but to an even greater extent) has an overwhelmingly "advantage to creditor" legal culture (Boraine and Roestoff 2002, 4). As noted earlier, so-called debt relief (including "debt counselling") under the 2005 National Credit Act mainly consisted of enabling "repayment plans" ensuring that lenders would eventually get their money back. Matters looked set to change when, in 2019, an amendment to the 2005 National Credit Act was passed.[4] It was established to enable "debt intervention" - through a swift process of referral to the National Consumer Tribunal - for those who have "no income, no assets". The amendment promised to fulfil the key requirements of debt relief, by both providing help to allay the fears and sense of a lack of control of poor debtors and swiftly enabling insolvency for those who need it. However, many will still – paradoxically – be unable to afford this, while access for others will be restricted by various conditions, prohibitions and eligibility restrictions, as some critics have claimed (Coetzee 2018). One study estimated that "only 0,84% of all consumers earning less than R7500 a month" (the intended target) "would likely qualify "for debt extinguishment under the Bill" (Genesis 2019).

Most important for the current paper is the limited funding available to the bodies concerned: the National Credit Regulator and National Consumer Tribunal. Invited to comment, human rights NGO the Black Sash stressed its support of the aim of the Bill: to accommodate "those who are grant beneficiaries who are considered as a vulnerable group for unsecured debt". It noted "the adverse impact of loans on beneficiaries, especially where the loans are provided fraudulently, illegally and unlawfully by reckless lenders" (Black Sash 2019). It queried, however "whether the Tribunal will be given the necessary support to be able to comply with its extended mandate". The initiative is to be subvented by ***the state***, but estimates suggest that the relevant agencies will have insufficient funds to take on the extra work. One estimate has it that the budget for both the NCT and NCR would need to increase by 400% in order to facilitate debt intervention.

"Counselling on financial literacy and access to training", Black Sash advised, "should be at no cost to the applicant" but should rather "be subsidised by the relevant financial institutions" (Black Sash 2019). This draft paper is aimed at finding innovative ways to subvent free-to-debtor advice along the lines suggested here by the Black Sash submission.

The UK

The UK has numerous forms of debt advice, only some of which are free-to-borrower (the chief concern of the current paper). These different forms have long existed side-by-side in a 'mixed economy'. Despite many tweaks and adjustments to the sector as successive governments introduced changes and reforms promoting greater or lesser levels of state or market involvement, and despite many changes of name and acronym, these different forms continue to co-exist, but with the ***market mechanisms*** increasingly prevalent. The three chief means of support are: funded by the ***charitable/NGO sector*** (including donations from companies &/or staffed by volunteer/unpaid labour), ***state-funded***, and funded by ***market mechanisms*** (through money paid in by commercial lending companies). Those

[4] https://www.gov.za/sites/default/files/gcis_document/201908/42649gon1081.pdf

funded by ***market mechanisms***, in turn, have two subdivisions which have co-existed since 2010. The voluntary one, known as "Fair Share", began in the 1990s under a Conservative Government and remained in place under the Labour Government (1997-2009), while the involuntary one, levy-funded advice, was introduced as politics swung rightwards after 2010 following the defeat of Labour and the establishment of a Conservative/Liberal Democrat Coalition Government. It was intended to make up for the shortfall when ***state funding*** was cut. These two subdivisions continue to co-exist - albeit sometimes uneasily and despite often being viewed as having irreconcilable intentions.

The UK's mixed economy of debt advice has, for the past decade, veered increasingly towards the use of ***market mechanisms.*** These are of two kinds, one voluntary and the other mandatory, which co-exist but sometimes make odd bedfellows. "Fair share"-funded advice follows a kind of "corporate social responsibility" model. It is a voluntary agreement between creditors and debt advisers. A debt advice encounter generally results in a Debt Management Plan that disburses agreed monthly payments to the various creditors.[5] As a way of funding debt advice, those creditors in turn pay back a fixed percentage (ie a "fair share") of the amount they now receive in debt repayments, which is given to the debt advice agency. This model was imported to the UK from the US in 1993, and by 1996 a majority of mainstream consumer credit firms had signed up to make these voluntary contributions (Wyman 2018). Levy-funded advice is an involuntary system that was introduced in order to make up for the shortfall when the Labour Government's ***state-funded*** scheme was axed by the 2010 Coalition Government. The legislative basis for the levy was the Financial Services Act 2010 [6] which amended the Financial Services and Markets Act 2000.[7] The levy had been proposed for a number of years before its eventual introduction, in 2010, when it was used to fund what eventually became the Money Advice Service (MAS). By 2012, the MAS, funded in this manner, had been "given a statutory duty to work with partners to improve the availability, quality and consistency of debt advice across the UK".[8] The levy was at this stage collected by the FSA (Financial Services Authority).[9]

The Act introducing this levy was aimed at taxing all corporations and companies (glossed as "payment institutions") that lend money via automated systems, ie electronically. It required all "electronic money issuers", besides paying other statutory fees, to "contribute towards the cost of the Consumer Financial Education Body (CFEB)" (as MAS was then known). The levy varies depending on the size of the institution and extent of its business.[10] By 2021 a system had emerged, in which the DWP (Department of Work and Pensions) determines the annual amount, the FCA (Financial Conduct

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[5] https://capuk.org/connect/policy-and-government/the-case-for-fair-share#:~:text=Fair%20Share%20is%20a%20voluntary%20agreement%20between%20creditors,out%20the%20many%20advantages%20of%20this%20funding%20model.

[6] https://www.legislation.gov.uk/ukpga/2010/28/schedule/1

[7] https://www.legislation.gov.uk/ukpga/2000/8/schedule/1A

[8] https://www.moneyadviceservice.org.uk/en/corporate/money-advice-service-and-funding-of-debt-advice-services

[9] see https://webarchive.nationalarchives.gov.uk/20121119152627/http://www.fsa.gov.uk/pubs/cp/cp10_24.pdf p.29 onwards, and https://webarchive.nationalarchives.gov.uk/20121119120120/http://www.fsa.gov.uk/pubs/cp/cp11_02.pdf p.91 onwards.

[10] For example, in 2010/11, the minimum statutory fee paid by smaller "payment institutions" was £400, and the minimum additional levy was £10. It was calculated that the 470 small "payment institutions" would have contributed £4,700 towards recovery of the costs of debt advice (FSA 2010a: 31).

Authority – as the FSA has now become) levies the financial services sector, and the money is passed to MaPS (Money and Pensions Service - an "arm's-length body, sponsored by the Department for Work and Pensions"[11]) which controls how it is spent. Debt advice funding is divided equally between home finance firms (mortgages etc) and the consumer credit industry. This was about £65 million for 2020, but there has been an additional £38 million extra funding allocated because of the Covid-19 pandemic.[12]

If we compare the two market mechanisms (see Figure 2), the levy model is seen as having certain advantages over the "fair share" model. It decouples funding from outcomes (unlike the "fair share" model which ties agency income to the amounts that creditors manage to recoup in repayments from debtors), and is also seen as being fairer. (The "fair share" model has been seen as *not* entirely fair, because when a debt adviser counsels a client and lays out a Debt Management Plan for paying creditors in instalments, a wider variety of organisations will stand to benefit from recouping their debts than those actually paying that "fair share": ie not just banks and other financial services firms, but also telecoms providers, electricity and water providers, local councils, and the tax office. Peter Wyman who reviewed debt advice funding in 2019 said that "to the extent that debt advice assists organisations in recovering debts, they should pay for it. This is not universally the case now" (208: 24). The levy system is, in contrast, seen as a relatively stable source of income for debt advice, though it remains the case that telecoms providers and other agencies have, over time, become "unintended" creditors who do not pay that levy.

There have been criticisms of this system. The biggest problem from the perspective of debt advisers – who are the end users of the funding - is the targets and conditions that accompany the levy.[13] First, the funding comes with unrealistically high targets for advisers; there is an expectation that the money "needs to be used as effectively and efficiently as possible" (MAS 2011-12, p.2). Second, there is a sense of unfairness as some corporations find themselves paying via *both* schemes. "The financial services industry…are already directly funding some provision as part of their Corporate Social Responsibility [ie via Fair Share]…They may stop that first funding route because…who wants to pay for it twice?" said one funder (IFF 2012, p.119).

There is, then, an eye kept on getting "best value" for the creditors paying the levy, with an implication that pushing the levy too high or not meeting the targets by delivering enough "completed" cases risks the creditors cutting down either on forbearance or on the funding they give elsewhere (like through "fair share"). Although the levy does not *explicitly* drive an expectation of creditor repayment in the same way as "fair share" funding can, there is *still* a creditor-related pressure involved.

All in all, critiques have been levelled about the independence of the sector; about the fact that debt advice funded by creditors - under either "fair share" or the levy - means "you are part of the system", and that that system "is in the business of keeping people in the orbit of creditors". Debt advice as

[11] https://moneyandpensionsservice.org.uk/who-we-are/

[12] On the levy for 2020, see https://www.fca.org.uk/publication/consultation/cp20-06.pdf and https://www.fca.org.uk/publication/policy/ps20-07.pdf

[13] Written communication with Michael Agboh Davison, October 11th 2020. See research published by the IMA (Institute of Money Advisers) which underlines this: https://www.i-m-a.org.uk/workload-conditions-and-wellbeing-in-the-money-advice-sector/

implemented by the MAS was promoted as a "win-win" solution: one that achieves benefits for debtors *and* creditors alike (the latter, presumably because the government experiences pressure to justify the levy to big financial companies). Debt advice funded by a ***market mechanism*** in this way also favours those indebted people with disposable income (Davey 2017, 2020), and/or promotes the practice of debtors making small token payments which ultimately keep people connected to their lenders until the day when their circumstances improve. There was also criticism of the MAS itself. With the auditing, quality assurance and box-ticking increasingly ramped up, the system was becoming more bureaucratic, establishing a triage system which means clients only got the "tailored advice" if they are identified as having the greater level of need. In contrast to this ***market mechanism***, the funding models which seem to work best for clients, claimed one adviser, are those housing associations and foundations related to professions (e.g. the Charity for Civil Servants,[14] or Perennial, the Horticulture Industry Charity[15] – both of which offer debt advice). These deal with restricted groups rather than the whole public and are self-funded or ***charity-funded*** in a way that does not depend on the credit industry. This usually translates into higher pay and better working conditions for the debt advisers, and lower – or no – numeric "targets".

In addition, austerity policies have taken their toll. At about the time, in 2010, when official government policy was to cut funding across the board, advice services were hit hard. Advice offices, strapped for cash, were forced (for example in Plymouth) to see 60% more clients every week than before – often driving them in desperation to seek for those clients among sectors (like the homeless) who are in no position to pay. These cuts have seen an increase in advice run by volunteers, often church-based and aimed at the poorest and most vulnerable (Davey 2020). This is an indication that the ***charity-funded*** sector remains very important and is indeed becoming more so. A potentially fairer option, suggests Davey, would be a bolder levy than the UK's current one. Funding needs to be provided in such a way as to meet the need, irrespective of numerical targets and so-called "efficiency", and so as to offer more tailored solutions. With a levy option, it seems the amount of funding rather than the mechanism is crucial.

• **voluntary – "fair share"**	**mandatory – levy based on "polluter pays" idea**
Introduced in 1993, from the US	Introduced in 2010, when state funding withdrawn
Debt advice => Debt Management Plan. Creditor gets repayments; debt advice agency receives a "fair share"	Requires all "payment institutions"/"electronic money issuers" to contribute towards Money Advice Service (MAS)
Yielded uncertain returns	Yielded £65 million in 2020 - divided between home finance and consumer credit firms

Figure 2: "Fair share" and levy compared

In sum, despite changes over the past two decades, often aimed at reforming advice and delivering better efficiency and "value for money", the three funding systems continue to exist side-by-side, amounting to a "mixed provision" (Wyman 2018).

[14] https://www.foryoubyyou.org.uk/about-us/who-we-help
[15] https://perennial.org.uk/

Eastern Europe – Croatia

In general, free debt advice in Eastern Europe, which has been characterized as a semi-periphery of the global economy (Mikuš and Rodik in press), is underdeveloped, with the exception of Poland where consumer protection and consumer rights organizations are believed to be relatively strong. For example, in Slovakia there are several financial education initiatives, usually funded via ***market mechanisms*** by specific businesses (especially banks), but the only real debt advice is that provided as part of personal bankruptcy proceedings; something that (following their liberalization in 2017) rapidly became a very popular option for overindebted people. In Croatia specifically, a debt "boom" in the 2000s was driven by practices of foreign-owned banks, often lending in Swiss francs, that targeted Croatian borrowers. By 2008, Croatia had among the highest rates in Eastern Europe of household debt in relation to GDP and disposable income. After the boom, households struggled with their often risky and excessive liabilities. It was to meet this need that certain types of debt advice were made available. Fully free-to-debtor advice is provided on an unsystematic and semi-professionalized (or fully non-professional) basis mainly by the ***charitable/NGO sector*** – through various NGOs and informal groups dealing with debt issues – with a small but dwindling amount of ***state funding***.

In Croatia, debt advice receives a dwindling subsidy from ***state funds*** and is mainly funded by the ***charitable/NGO* sector.** It is done most systematically and extensively by the Association Franc/Udruga Franak. This started as an NGO/movement of Swiss Franc debtors (Mikuš 2019). They have one paid person plus a team of collaborators (including lawyers) who routinely respond to legal questions of various kinds by email and on the phone. They also do relatively regular (more or less monthly) consultation sessions in Zagreb as well as less frequently in other places in Croatia. Most of their funding comes from national ***state funding*** sources for civil society/NGOs, plus they have some income from their (low) membership fees. The NGO also relies extensively on unpaid voluntary labour.

There is also a number of general-purpose consumer protection NGOs that deal with consumer complaints (including debt-related ones), requests for advice, and so on. Six of them used to be organized in the Croatian Union of Consumer Protection Associations (known as Potrošac (Consumer)), each of which ran its own consumer advice centres (*savjetovalište*) with modest but steady ***state funding***. However, in 2018 the government drastically cut the funding earmarked for such NGOs. The Potrošač Union came to an end and most advice centres of its former members were either similarly terminated or survive largely on the limited local government funding. The government took over its main service of advising consumers in 2019. The data on the first year of functioning of this service - as a phone line operated part-time by three staffers of the Ministry of Economy - showed that there was a big drop in the number of queries received compared to the years before when the Potrošač network of advice centres was still active. The provision had reduced although the demand for advice was not necessarily diminishing.

Other than that, there are various debt-related ***NGOs*** and informal initiatives that are smaller and less active than Association Franc and that provide some free advice on an informal, small-scale basis. They probably also mostly rely on national and local ***state funding*** for NGOs (if they have the capacity to apply for such funding) and voluntary labour, and in some cases perhaps also one-off donations secured through links with political parties or individual officials.

Debt advice funded by a ***market mechanism*** includes a few small for-profit firms that specialize in financial advice and credit mediation for overindebted people - something like mortgage brokering except these loans are usually not mortgages. Instead, they refinance consumer loans for people who are heavily indebted, often to multiple creditors, often subject to debt enforcement proceedings and struggling to access mainstream refinancing loans to consolidate their obligations, reduce interest paid and get out of illiquidity. This is a substantial population in Croatia – in the end of 2017, eight percent of the entire population was subjected to the most common type of debt enforcement proceedings (Mikuš 2020: 242) – and some entrepreneurs recognized this as a market niche that is underserved. In addition to mediating between these people and (mostly smaller) banks who are willing to lend to them (which involves sorting out the client's balance sheet, presenting their case to the bank appropriately etc.), they sometimes also provide intermediary loans to these people, so that they can start repaying their liabilities and hopefully get the original creditors to suspend the enforcement proceedings. The aim is to enable the debtor to become liquid and creditworthy for the potential new creditor (one interlocutor called this "cleaning" the client). The service of credit mediation for the overindebted is typically free unless the refinancing deal is closed (or the intermediary loan provided) but there is no doubt that these are profit-driven ventures funded through ***market mechanisms***. If a new refinancing loan is issued, the companies charge a certain percentage of the principal as their fee. This also means that the most overindebted people – those unable to obtain a refinancing loan even with the aid of these companies – cannot benefit from this type of advice and depend on the patchy provision of advice from NGOs.

It is worth noting that Croatia also has the legal institution of personal bankruptcy (formally consumer bankruptcy). The law recognizes the possibility of out-of-court and in-court bankruptcy proceedings. Out-of-court proceedings (essentially a settlement between the debtor and the creditors) includes an element of debt advice, which the applicants can access for free in some of the branches in the extensive network of the state-owned company Fina, better known for its central role in the much-criticized system of debt enforcement (Mikuš 2020). The Consumer Bankruptcy Act stipulates that entities other than Fina can obtain permission to run their consumer bankruptcy advice centres, but this has not yet happened in practice. Essentially, licensed Fina "mediators" (as the law describes them) help applicants map their balance sheets and run negotiations between them and their creditors, which should result in an agreement on a repayment plan. However, in the first four and a half years of the existence of the consumer bankruptcy institute (January 2016 – June 2020), only 1,258 applications for out-of-court consumer bankruptcy have been received, only 16 of which resulted in at least partial settlement. Most of the applications were likely filed *pro forma* because a failed out-of-court settlement had been a prerequisite for in-court bankruptcy before 2019. In-court bankruptcy does not contain any element of debt advice.

Brazil

Brazil, like many other countries, has seen a sharp rise in indebtedness. According to the Brazilian Central Bank, in 2005, only 17 percent of the disposable income of all households was affected by debt, but by 2021 it had reached 55 percent. A survey carried out by the National Confederation of Trade in Goods, Services and Tourism, of Rio de Janeiro, states that 66.5% of Brazilian families are indebted, with about a quarter being in default. Other estimates indicate that 61.4 million people (out of 212 million) defaulted in December 2020. In 2010, the country saw the emergence of a variety of initiatives, many conceptualised as centred on "financial education" or "consumer protection". Most involve a mixture of support types, combining ***state funding***, ***market mechanisms*** and ***charitable sources***. Some are underpinned by relatively complex partnership models that combine different types of funding sources. They range from federal initiatives (themselves combining ***state*** and ***charitable/non-profit*** funding) through local ones specific to individual states (those discussed here are limited to the State of Rio de Janeiro).

From 2004 on, during Lula's presidency, consumer credit was newly extended to the population and the idea of "financial inclusion", led by the state, became a guiding principle. Like many other countries following the 2007/8 financial crisis, Brazil had been influenced by World Bank and G20 principles for innovative financial inclusion. This meant that it did not act to "expand social protection networks, hone poverty-fighting programs, and/or increase social spending on meeting basic demands ranging from shelter to food security and healthcare". Instead it adapted "remedies from the financial sector in the attempt to mitigate the effects of (future and present) crises on the most vulnerable in society" (Lavinas 2017). Lavinas offers a trenchant critique of such approaches, pointing to the irony involved in favouring the "financial inclusion" of low-income families and of orienting them to take out loans and rely on the ***market***/financial sector to meet their needs rather than on the ***state*** for the provision of welfare and the protection of welfare benefits.

"Financial inclusion", in short, has resulted in an avalanche of problems associated with householders' mounting debts to the financial sector. A range of civil society entities have collaborated to defend people in this kind of situation, and to ensure and protect consumer rights in general. Many of these are linked to the judiciary, such as associations of Public Defenders and Public Prosecutors at both national and state level (equivalent to provinces in South Africa). The Justice Department hosts the ***state-funded*** National Consumer Secretariat (SENACON) which is in charge of promoting consumer rights and drafting and implementing national policies towards that end. There are also ***non-profit*** organizations - such as BRASILCON (Brazilian Institute of Consumer Rights and Policy) - that bring together lawyers, law professors and students to organize seminars, publish reports, and launch national campaigns. ***Non-profit*** entities may or may not charge to assist citizens when they seek guidance to enforce their consumer rights. One of the best-known of these is IDEC (Brazilian Institute for Consumer Defence), which offers free online debt advice. Although it does not provide individual legal assistance, it gives the option to its more than 730,000 members to take class action against companies.

New initiatives aimed at combating over-indebtedness have also emerged, and consumer protection organizations have joined the effort. "Financial education" and debt advice have been funded through a variety of partnerships. In 2010 the Brazilian Central Bank Forum on Financial Inclusion was created as the result of a joint action between a number of national-level institutions: "the Ministry of Finance, Justice, Social Affairs, the Exchange Commission of Brazil, the National Superintendence for Pension Funds, and the National Superintendence for Private Insurance, among others" (Lavinas 2017:86). The resulting federal initiative, the National Strategy for Financial Education ENEF/AEF, came into being in 2011. Although partly ***state-funded***, it involves partnerships with the ***charitable/non-profit sector*** and other parts of civil society, as well as some ***market mechanisms***. It was created to "contribute to the efficiency and soundness of financial, capital, insurance, and pension funds markets" (Lavinas 2017: 87), through projects co-ordinated by AEF-Brazil (Association of Financial Education in Brazil). Focused on prioritizing financial education across the nation, AEF operates by developing social and educational technologies, aiming to make them available to society, and doing so free of charge. It is a ***non-profit*** organization, qualified as an OSCIP (Civil Society Organization of Public Interest). It operates based on partnerships, whether through support or sponsorships for project feasibility or through institutional cooperation. AEF-Brazil's portfolio for projects and initiatives are sponsored or supported in their development by ***market*** enterprises, ***state*** or ***charitable/non-profit*** entities that understand financial education as contributing towards their institutional objectives.

Local initiatives at state level[16] (in this case centred on the state of Rio de Janeiro) similarly involve the merging and partnering of ***state-funded*** institutions such as the Public Defender's Office with other organisations and funding sources, including volunteers and interns, but with a strong public orientation. They include *NUDECON* (the Consumer Protection Centre), an organ of the Public Defender's Office of the State of Rio de Janeiro. Its main objective is the protection and promotion of the rights of low-income consumers, small-scale business owners, etc. A group of experts – whether public defenders or interns - offers legal support for people to negotiate their debts with financial institutions. They offer some financial advice and preside over "conciliation hearings" which attempt to produce agreements between their client/advisees and the representatives of financial institutions. The aimed-at result is the renegotiation of the debt (eg timing and amount of repayments, amount of interest, etc) between the two parties, as well as the "clearing" of debtors' names and - somewhat like "cleaning" in Croatia – to stop creditors pestering them (Fernandes 2020). They also include the *Escola de Educação Financeira* (Financial Education School), now renamed "The Rioprevidência School of Social Security Education". It was founded in 2011 to deal with the growth (which far exceeded legal limits) of payroll loans to state employees, and in anticipation of Rioprevidência and the creation of the fully-funded pension plan. As it now stands it is a partnership between the Government of the State of Rio de Janeiro, Rioprevidência (Social Security of Rio de Janeiro) and the Securities and Exchange Commission. Experts work as volunteers offering lectures and short courses on financial education, covering topics such as "Private Pension - everything you need to know", "Financial Education - The Path to Financial Prosperity", "Banking Contracts and Over-indebtedness", and "Talking About Money – not just talking about numbers". Besides the courses, they have a monthly "Doctor Finance Service" – a financial planner expert who offers individual or family financial advice (lasting approximately 45 minutes) where personal financial issues can be discussed.

A further, public and ***state-funded*** service, Consumidor.gov.br, is a web-based facility for the alternative solution of consumer conflicts, allowing direct dialogue between consumers and companies from various sectors (schools, banks, telecoms, publishers, restaurants, e-commerce, utilities, construction companies and real estate companies, among others). It is an online platform for information, interaction and data sharing, monitored by Procons (a municipal or state institution designed to protect and defend consumer rights) and the National Consumer Secretariat of the Ministry of Justice.

Among Brazil's various initiatives, there are some that have a closer bearing on the case of South Africa's welfare recipients than others. These include forms of protection aimed at state pensioners, many of whom were harassed by banks and became easy prey to abusive loans that were often made without their consent. In response, consumer protection organizations filed a bill to enforce the

[16] Equivalent to South Africa's provinces.

Statute of the Elderly, created in 2003. In 2012, as a result of two years' worth of work by the Commission of Jurists for the Update of the Consumer Defence Code, Senate Bill No. 283/2012 came into being. It went on to the House of Representatives where it was renamed the Bill Against Over-Indebtedness. After stalling for a few years, debate on the Bill resumed in 2019, due in part to the need to renegotiate debts because of the social and economic crisis caused by the Covid-19 pandemic. (Even beyond those affected by Covid-19, debt has damaged a great number of Brazilian households, with around 60 million indebted adults having defaulted in 2020). Bill 3515, as it is now known, aims to protect mainly the most vulnerable consumers. Firstly, it deals with the prevention of indebtedness. It sets out rules on the need for total transparency in advertising and offering credit in order to make the risks more evident, prohibits suppliers from harassing consumers, especially the elderly, illiterate, infirm or vulnerable, insists on the importance of analysing the potential borrower's payment capacity, and establishes forms of judicial and extrajudicial conciliation, among other measures. Secondly, it aims to ensure better conditions for debt negotiation with financial institutions, so that the debtor can pay it back within his or her capacity. The Bill is still under discussion and these forms of protection have yet to be definitively resolved.

In Brazil, as in South Africa, welfare dependants' incorporation into the market – or "financial inclusion" - has thus carried particular risks of indebtedness. It has been "ensured by a regular benefit" that the state pays, which lenders then use to secure their repayment automatically; "the state ensures liquidity and a regular income stream through social policy, making it possible for government transfer recipients with no savings or other assets to enjoy wide and easy access to credit lines", in an evolving system in which "taking out loans, using credit cards or buying on instalment payments compensates for the lack of savings amidst … low-income beneficiaries of cash transfers" (Lavinas 2018). In both cases the need for particularly careful provision of protection has been recognized (James, Neves & Torkelson 2020), but finding adequate funds for that protection, and for advice to those needing their state benefits to be defended, is a challenge.

Comparison

These, although all have high levels of consumer debt, are rather different cases. How useful might lessons from these settings be for South Africa?

Croatia has a status as "semi-peripheral" or marginal with respect to mainstream finance circuits. This has disadvantaged many of its borrowers by leaving them vulnerable to currency changes and leading to a high level of "Swiss franc" debts to big banks based in Western Europe, including those debts stemming from mortgages and refinancing loans. The steep rise in debts has been accompanied by a sharp decline in state funding for debt advice, leaving borrowers more reliant on volunteer-staffed and charitable initiatives (themselves often dependent on a measure of state funding). Even Croatia's middle classes have suffered as a result of the country's marginal status vis-à-vis big European banks. In South Africa, the division between "marginal" and "core" is an internal one. The country has a well-developed banking sector and a highly sophisticated financial infrastructure. The involvement of these financialised platforms, especially Net1, in delivering welfare benefits and then in offering high-interest loans to welfare recipients, is one way in which this internal division is evident. Welfare beneficiary debtors depend for advice – in the few instances where this is available - on charitable initiatives with some state funding. Market-funded debt advice options do exist in South Africa as in

Croatia, but these are aimed at salaried or waged sectors (from which repayments can be recouped and hence from which profits can be garnered) not at welfare beneficiary debtors.

Brazil might be considered the most appropriate comparator. Like South Africa it has been classified as an "upper middle-income country". Like South Africa it is characterised as having high levels of inequality (Brazil's Gini index was 0.849 and South Africa's 0.806 in 2021), with the population divided between a small group that enjoys considerable wealth and a majority that relies on low wages and/or welfare benefits. Like South Africa, those initiatives that do exist involve patchwork-style partnerships that combine ***state***, ***market*** and ***NGO/charitable*** funding sources. Brazil has lower levels of centralisation than South Africa: many of its initiatives are undertaken at the level of individual states (with some government funding). It also seems to offer consistently higher levels of state funding to debt advice initiatives than South Africa does. Its federal initiative ENEF/AEF is reliant on partnerships that bring together business, state (particularly Department of Justice) and civil society entities, depending on their view of the importance of financial education. Whatever the levels of market buy-in, these seem to be voluntaristic and dependent on the kind of "enlightened self-interest" that is often associated with corporate social responsibility.

The UK's move – at least prior to the Covid 19 pandemic – was away from ***state*** funding and in favour of a ***market*** model. This echoed its overall move to the right and away from the "big state". South Africa, in contrast, has a political-economic order that combines neoliberal with redistributive aspects (Seekings and Nattrass 2005), but its *laissez-faire* attitude towards the big financial corporations that profit from lending to the poor seems to indicate that it has been inclining – like the UK – away from the "big state". So far, so neoliberal. Would it then be possible in South Africa to have a levy-funded ***market*** mechanism that seeks to alleviate problems caused by excessive lending to householders? To collect the levy imposed on creditors and redistribute it to the providers of debt advice, the UK has depended on its financial regulator, the FCA, which has a robust bureaucracy and system of audit. In terms of institutional strength, South Africa measures up well to this, with its Financial Sector Conduct Authority (FSCA), part of whose remit is "providing financial customers and potential financial customers with financial education programs, and otherwise promoting financial literacy and financial capability".[17] However, there are two problems of divided administration and unstable finances that mitigate against such a move. First, South Africa's administration of debtor and consumer protection is in fact split across various ministries and regulators. In a system of divided responsibility, the credit industry and consumer protection are the responsibility of the Department of Trade, Industry and Competition (DTIC),[18] of which the National Credit Regulator is part, whereas the financial services industry falls under the National Treasury. Adding further complexity, different sectors have their own ombuds, some voluntary (like those for credit, banking services, and long- and short-term insurance) and others statutory (like that for financial advisors and intermediaries). Second, the credit ombud, to which banks and other lenders belong and to which they pay membership fees and which has some resemblance to the UK's levy system, has recently been beset by a loss of income. The suspension of the previous credit ombudsman on grounds of fraud led the banks to withdraw their mandate in 2019, which led to a 30% loss in the membership fees used to pay the staff that handles complaints.[19] Any expansion of membership or levy-style fees would presumably need to

[17] https://www.iob.co.za/what-is-twin-peaks/
[18] Formerly the Department of Trade and Industry (DTI).
[19] Interview with Howard Gabriels, Acting Credit Ombudsman, 27th November 2020

be accompanied by more stringent regulation. In addition, the "cash loan", pay-day and micro-lenders that have never fallen the ombud or any other similar organisation, yet that claim to be registered with the National Credit Regulator, would need to be subjected to such regulations.

Arising from these various comparisons (and many more could be made), the following recommendations are suggested:

1. acknowledge that ***market mechanisms*** of the debtor-funded kind (as per current debt counselling) are unsuitable for debtors in the welfare-dependent population.
2. ***market mechanisms*** funded by creditors ("polluter pays") have some role, combined with other sources/measures. Avoid pitfalls of UK where amount levied is *insufficient* and advisers *overworked*; instead, attend to *needs* of indebted population.
   in respect of ***market mechanisms***, consolidate regulatory arrangements via NCR/ombud, facilitate or require the reinstatement of big lenders with credit ombud, expand the remit of ombud/NCR to require proper registration of "cash loan", pay-day/micro-lenders and mandatory payment of a membership fee/levy (similar to the UK's levy) from all of them.
3. solicit voluntary contributions from (eg) cell-phone companies and others along corporate social responsibility lines – somewhat similar to the UK's "fair share".
4. Since no model is likely to work on its own, strengthen ***state funding*** for partnership initiatives (eg ***market/charity*** initiatives like the Black Sash partnership model; collaborations with credit ombud, etc.)
5. Since the nation-wide provision of office-based debt advice is likely unworkable, especially to welfare dependents in far-flung areas, explore the possibility of travelling road-shows, regional workshops, radio or cell-phone campaigns, etc.

In the UK, even with the full backing of the FCO bureaucracy (or perhaps *especially* with it) the levy comes with its own drawbacks: specifically that of insufficient funds, excessive audit, irksome "targets" and the like. Most trenchant of all has been the criticism that, while the levy might enable free-to-debtor advice, the overriding purpose of this kind of encounter, with its Debt Management Plans, is to keep debtors in the loop so that they *do* eventually pay back. Compared with this and other market-funded schemes, the situation of South Africa's poorest debtors, its welfare beneficiaries, remains an outlier in one important respect – and has a close resemblance to that of its counterparts in Brazil, where taking out loans is similarly encouraged for the "low-income beneficiaries of cash transfers" (Lavinas 2018). The ease with which repayments are automatically deducted from accounts, in both settings, means that any debt advice would need to take place *after* the event, something like shutting the proverbial stable door after the horse has left. Correspondingly, the advantages to the creditors who lend to those in this sector *already* exist: prior to – and independent of – advice encounters, Debt Management Plans, and the like.

In all the cases described above, facilitating debt repayment *can* be seen, at worst, as ultimately facilitating an "advantage to creditor" legal and financial culture, because it encourages low-income families to embrace and become reliant on finance while ignoring the numerous structural inequities that have led people into debt in the first place. Debt advice nonetheless remains necessary, and is an important contributor to the public good if it can help to allay individual fears and the sense of a lack of control to which the poorest debtors are subject, and if it can provide a swift gateway to insolvency for those who need it.

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