

A Legal Perspective on the Psychological Factors Behind Over-Indebtedness of Consumers

G van Niekerk*

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Author

Gerda van Niekerk

Affiliation

University of Limpopo,
South Africa

Email

gertruida.vanniekerk@ul.ac.za

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Abstract

Consumers who are susceptible to psychological factors, such as a lack of self-control and compulsive buying, require protection from becoming over-indebted. This question is addressed by evaluating the legislation applicable to consumer credit and analysing the psychological landscape that might lead financial institutions and other credit providers to prey on vulnerable debtors. The provisions in the *National Credit Act 34 of 2005 (NCA)* and the *Consumer Protection Act 68 of 2008 (CPA)* are insufficient to protect consumers prone to psychological factors linked to over-indebtedness from taking on more credit than they can afford. More should be included in the *NCA* than the costs, charges, and add-ons to credit as currently set out in the Act. In section 76 of the *NCA*, advertising and marketing prescriptions should be amended to address the psychological factors of over-indebtedness, warning consumers against credit risks. Section 3 of the *CPA* should be amended to include individuals with psychological difficulties as a category of vulnerable consumers, and section 22 of the *CPA* should require an explicit notice alerting potential consumers that taking on credit inevitably involves costs. Evaluating psychological factors as causes of over-indebtedness highlights the potential of financial education, through financial literacy and credit marketing, with warnings added to advertisements. This approach could help individuals with a lack of self-control or those prone to compulsive and impulsive buying to reconsider taking up credit and becoming over-indebted. Consumers need a high level of financial literacy to digest the information and assess it adequately. A holistic approach is recommended that combines financial literacy and education in a multidimensional framework to regulate credit providers. Adopting this approach would ensure that they advertise credit in a manner that does not exploit individuals with compulsive and impulsive buying syndromes or those lacking the self-control to resist advertisements. Advertising should warn potential clients that credit can be dangerous, ensuring that individuals benefit from credit opportunities and are not destroyed by them.

Keywords

Credit providers; over-indebtedness; financial literacy; financial education; compulsive buying.

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1 Introduction

A significant number of South Africans feel overwhelmed by their financial situation. In 2023 the Mail & Guardian reported that 42% of South Africans across all income levels struggled to meet their debt obligations, while only 16% said they were debt-free.¹ Due to power imbalances between credit providers and consumers, a significant portion of the population enters into unaffordable credit contracts, taking on more debt than they can manage.² When consumers enter risky credit agreements because of poor decisions, such financial mistakes can have unrecoverable effects on them and their households.³ Errors in financial decisions may result in over-indebtedness, which has a high social and economic impact on consumers and their families.

Two schools of economists, namely behavioural and neoclassical economists, differ in their solutions to financial mistakes.⁴ The former focusses on solutions through legal interventions whereas the latter maintains that such interventions are unnecessary, as a competitive market is more likely to deliver better outcomes than government regulation.⁵

Gathergood⁶ highlighted that over-indebted households are more than twice as likely to be impulsive spenders than non-over-indebted households. Psychological factors like impulsiveness may thus increase individuals' susceptibility to taking on more debt than they can manage.⁷

In this contribution I consider the protection through legal measures of individuals prone to psychological factors, such as a lack of self-control and compulsive buying, from becoming over-indebted. I will address this question by shedding light on the psychological landscape that might lead vulnerable debtors to becoming prey to financial institutions and other credit providers, and I evaluate the legislation applicable to consumer credit. Lastly, improved financial literacy will be addressed as a possible solution to over-indebtedness.

This contribution will rely on existing literature from various disciplines, including law, psychology and economics. Over-indebtedness must not only

* Gerda van Niekerk. BCom LLB LLD (UP). Associate Professor, Department of Mercantile Law, University of Limpopo. Email: gertruida.vanniekerk@ul.ac.za. ORCID ID: <https://orcid.org/0000-0002-8020-1616>.

1 Comins 2023 <https://mg.co.za/news/2023-10-18-broke-and-stressed-south-africans-spiral-into-debt-trap>.

2 Stoop 2009 *SA Merc LJ* 366.

3 Mak and Braspenning 2012 *Journal of Consumer Policy* 308; Epstein 2006 *U Chi L Rev* 111.

4 Mak and Braspenning 2012 *Journal of Consumer Policy* 308.

5 Mak and Braspenning 2012 *Journal of Consumer Policy* 308; Epstein 2007 *Minn L Rev* 804.

6 Gathergood 2012 *Journal of Economic Psychology* 596.

7 Gathergood 2012 *Journal of Economic Psychology* 596.

be addressed from a legal perspective but should also be analysed holistically to find solutions to this problem.

2 A concise explanation of the concept of over-indebtedness

Leandro and Botelho⁸ examined 136 academic articles concerning consumer over-indebtedness from 1969 to 2019. Their analysis revealed a lack of a universally agreed-upon definition of over-indebtedness in the existing literature.⁹ Despite this diversity, common threads in all definitions include the acknowledgement of the psychological distress that accompanies over-indebtedness.¹⁰ They found that consumer over-indebtedness has a high social and economic impact on consumers and their families, raising concerns for practitioners, regulators and policymakers.¹¹

Stone and Maury¹² studied over-indebtedness and found that financial, economic and psychological aspects, amongst others, are implicated in an overall explanation. According to Schicks,¹³ researchers have not sufficiently explored over-indebtedness from the customers' perspective, and insight into factors related to over-indebtedness is needed to develop measures to address the phenomenon. From the borrower's perspective, the causes of over-indebtedness include socio-demographic factors, the borrower's economic characteristics, business and loan-related factors, sociological influences, and psychological influences.¹⁴ A multi-faceted approach should therefore be adopted in addressing this phenomenon.¹⁵

A consumer is considered by the *National Credit Act (NCA)*¹⁶ to be over-indebted if s/he cannot satisfy all the obligations under his/her credit agreements on time, considering the consumer's financial means, prospects and obligations.¹⁷ In this contribution, an over-indebted consumer is defined as one who cannot meet all of his/her financial obligations on time, given his/her financial means and existing obligations.

⁸ Leandro and Botelho 2022 *Journal of Business Research* 536.

⁹ Leandro and Botelho 2022 *Journal of Business Research* 537.

¹⁰ Leandro and Botelho 2022 *Journal of Business Research* 537; d'Alessio and Iezzi 2013 https://www.researchgate.net/publication/256056004_Household_Over-Indebtedness_Definition_and_Measurement_with_Italian_Data 7-8.

¹¹ Leandro and Botelho 2022 *Journal of Business Research* 537.

¹² Stone and Maury 2006 *Journal of Economic Psychology* 553.

¹³ Schicks 2014 *World Development* 314.

¹⁴ Schicks 2013 *Oxford Development Studies* 114; Schicks 2014 *World Development* 315.

¹⁵ Stone and Maury 2006 *Journal of Economic Psychology* 553.

¹⁶ The *National Credit Act* 34 of 2005 (NCA).

¹⁷ Section 79(1) of the NCA.

3 Psychological landscape of over-indebtedness

Research demonstrates that psychological factors are significant in consumers taking up debt, and many psychological variables correlate with debt.¹⁸ In a study on financial behaviour in Dutch households, Webley and Nyhus¹⁹ found that psychological factors, including self-control and attitudes towards debt, can predict indebtedness. Individuals who are chronic debtors, where debt is not only a short-term problem, have more limited economic and social resources, are more present-oriented and find it more difficult to control their expenditure than temporary debtors.²⁰

Previous research shows that the four psychological factors mainly associated with consumers being over-indebted are a lack of self-control, compulsive and impulsive buying, and a particular attitude towards debt.²¹ All the factors are interconnected to some extent, so it is not clear from the research if any of them have independent effects.²² For example, poor self-control is strongly associated with compulsive buying, often leading to over-indebtedness and financial problems.²³ An evaluation of the literature analysing the four main factors will follow. Since a lack of self-control is relevant to all these psychological factors, it will be analysed more comprehensively, briefly mentioning the other factors.

3.1 Lack of self-control

Baumeister first mentioned the concept of self-control and its significant aspects: controlling thoughts, emotions, performance and impulses.²⁴ Self-control problems are a possible explanation for over-indebtedness, specifically credit card borrowing.²⁵ Self-control includes breaking bad habits, keeping self-discipline and resisting temptation.²⁶ Measures that can be applied to gauge self-control are spending, obesity, smoking and drinking.²⁷ When individuals have self-control, they interrupt undesired behaviours and attempt to alter their dominant response tendencies by controlling their thoughts and emotions, resisting temptations and keeping

¹⁸ Lea, Webley and Walker 1995 *Journal of Economic Psychology* 682, 699.

¹⁹ Webley and Nyhus 2001 *British Journal of Psychology* 442; Livingstone and Lunt 1992 *Journal of Economic Psychology* 115.

²⁰ Webley and Nyhus 2001 *British Journal of Psychology* 442; Livingstone and Lunt 1992 *Journal of Economic Psychology* 115.

²¹ Webley and Nyhus 2001 *British Journal of Psychology* 442; Livingstone and Lunt 1992 *Journal of Economic Psychology* 115.

²² Lea, Webley and Walker 1995 *Journal of Economic Psychology* 685.

²³ Leandro and Botelho 2022 *Journal of Business Research* 541; Gathergood 2012 *Journal of Economic Psychology* 591; Ahtziger et al 2015 *Journal of Economic Psychology* 142; Webley and Nyhus 2001 *British Journal of Psychology* 443.

²⁴ Baumeister et al *Losing Control*; Ahtziger et al 2015 *Journal of Economic Psychology* 142.

²⁵ Gathergood 2012 *Journal of Economic Psychology* 591.

²⁶ Ahtziger et al 2015 *Journal of Economic Psychology* 142.

²⁷ Webley and Nyhus 2001 *British Journal of Psychology* 442.

their temper.²⁸ The lack of self-control sometimes leads to the use of more high-cost credit.²⁹ Consumers with less self-control can get into and stay in debt more quickly and are more exposed to financial shocks.³⁰ A positive link was reported between impatience, which is characterised by a preference for immediate rewards, credit card use, and an inability to save money.³¹ Self-control in spending behaviour was negatively associated with debts, so fewer debts occurred when individuals could control spending money.³²

An empirical study by Gathergood³³ examined the relationship between self-control and consumer over-indebtedness. He measured self-control in households by asking questions such as whether they tended to buy things even when they couldn't afford them; whether they were prepared to spend now and let the future take care of itself; and whether they regarded financial services as complicated and confusing.³⁴ He made essential findings, namely that over-indebtedness occurs disproportionately highly in individuals with self-control problems; and that such individuals make greater use of quick-access credit products like in-store credit cards, mail-order catalogues, home credit and payday loans, which facilitate impulse-driven purchases.³⁵ These findings would support the implementation of policies where individuals who exhibit these problems might benefit from having restricted access to such products.³⁶ He further found that individuals with poor self-control and financial literacy skills are more likely to suffer financial shocks.³⁷ These results demonstrate that consumers' behavioural characteristics significantly impact on their use of credit and the drivers of over-indebtedness, explaining consumer over-indebtedness.³⁸

Achtziger *et al*³⁹ conducted a study in Germany using a representative sample of the German population. They explored the links between self-

²⁸ Achtziger *et al* 2015 *Journal of Economic Psychology* 142.

²⁹ Leandro and Botelho 2022 *Journal of Business Research* 541; Gathergood 2012 *Journal of Economic Psychology* 591.

³⁰ Achtziger *et al* 2015 *Journal of Economic Psychology* 142; Webley and Nyhus 2001 *British Journal of Psychology* 442; Gathergood 2012 *Journal of Economic Psychology* 591.

³¹ Achtziger *et al* 2015 *Journal of Economic Psychology* 142.

³² Achtziger *et al* 2015 *Journal of Economic Psychology* 142; Webley and Nyhus 2001 *British Journal of Psychology* 442; Gathergood 2012 *Journal of Economic Psychology* 591.

³³ Gathergood 2012 *Journal of Economic Psychology* 591. The study specifically examined how "financial literacy and self-control relate to consumer over-indebtedness."

³⁴ Gathergood 2012 *Journal of Economic Psychology* 595.

³⁵ Gathergood 2012 *Journal of Economic Psychology* 600.

³⁶ Gathergood 2012 *Journal of Economic Psychology* 591.

³⁷ Gathergood 2012 *Journal of Economic Psychology* 600.

³⁸ Gathergood 2012 *Journal of Economic Psychology* 600.

³⁹ Achtziger *et al* 2015 *Journal of Economic Psychology* 146.

control, compulsive buying and debt.⁴⁰ They provided evidence that the ability to control unwanted behaviour (for example, to avoid browsing in one's preferred online store) and to alter inner states (for example, to get over a negative mood that otherwise might lead to a compensatory excess of buying) is linked to both compulsive buying and debts.⁴¹ Hence, people with high self-control skills do not have many problems in controlling their compulsive buying impulses, and they spend their money wisely. The tendency to run into debt and to buy compulsively seems to be more of a psychological problem of low self-control and less a reaction to financial problems.⁴² The researchers found that self-control and debts were inversely related, whereas compulsive buying and debts were positively correlated.⁴³ Detailed analyses revealed that compulsive buying fully mediated the link between self-control and debt.⁴⁴ Finally, there was a gender element in compulsive buying: Women were more prone to it than men.⁴⁵

3.2 Compulsive buying

Compulsive buying has been defined as continuous and repetitive buying behaviour that is stimulated by and can result in negative feelings or events.⁴⁶ I use Achziger's description of compulsive buying as buying behaviours that are repeated, uncontrollable, extensive, occur frequently, and result in negative consequences.⁴⁷ Some of these consequences include negatively affecting personal relationships, feelings of guilt, increased distress, and the potential accumulation of significant high debts.⁴⁸ Compulsive buying involves buying unnecessary products to cope with negative emotional states and unmet needs and desires.⁴⁹

Three aspects of impulsivity, namely urgency, lack of perseverance, and lack of premeditation, are related to compulsive buying.⁵⁰ Of these, urgency

⁴⁰ Achziger et al 2015 *Journal of Economic Psychology* 146.

⁴¹ Achziger et al 2015 *Journal of Economic Psychology* 147.

⁴² Achziger et al 2015 *Journal of Economic Psychology* 147.

⁴³ Achziger et al 2015 *Journal of Economic Psychology* 143.

⁴⁴ Achziger et al 2015 *Journal of Economic Psychology* 143.

⁴⁵ Achziger et al 2015 *Journal of Economic Psychology* 143.

⁴⁶ Moon, Farooq and Kiran 2017 *UW Journal of Management Sciences* 16.

⁴⁷ Achziger et al 2015 *Journal of Economic Psychology* 141.

⁴⁸ Achziger et al 2015 *Journal of Economic Psychology* 141; Black 2007 *CNS Spectrums* 128; O'Guinn and Faber 1989 *Journal of Consumer Research* 150.

⁴⁹ Achziger et al 2015 *Journal of Economic Psychology* 142; McElroy 1994 *Journal of Clinical Psychiatry* 245; Dittmar 2005 *British Journal of Psychology* 472; Thornhill, Kellett and Davies 2012 *Psychology and Psychotherapy* 234.

⁵⁰ Achziger et al 2015 *Journal of Economic Psychology* 143.

is the most significant driver of compulsive buying.⁵¹ Low self-control leads to compulsive buying, which in turn leads to debts.⁵²

3.3 *Impulsive buying*

Moon, Farooq, and Kiran⁵³ highlight that impulsive buying is an unintentional behaviour that involves prompt decision-making and the propensity to acquire the product immediately. Impulsive and compulsive buying behaviours are difficult to distinguish based on their consequences. Both result in excessive, unnecessary and unwanted purchases that lead to damaging penalties.⁵⁴ Both of these behaviours are caused by a lack of strength of will and a lack of self-control, which are categorised as personality disorders.⁵⁵

3.4 *Attitude*

A person's attitude towards debt plays a significant role in determining whether they are over-indebted or not.⁵⁶ Livingstone and Lunt,⁵⁷ and Lea, Webley and Levine,⁵⁸ in studies in the early nineties, found a correlation between attitudes to debt and debiting behaviour. In another 1995 study Lea, Webley and Walker⁵⁹ found no association between debt and attitudes, but they argue that this does not undermine the importance of a psychological analysis.⁶⁰ For example, having a negative attitude towards credit makes a person less inclined to have consumer debt⁶¹ and parents' attitudes and views on credit influence the financial decisions of their children.⁶² Furthermore, attitudes towards debt have been changing, with a culture of indebtedness growing since the end of the twentieth century, when taking up credit was accepted as a part of modern consumers'

⁵¹ Ahtziger et al 2015 *Journal of Economic Psychology* 143.

⁵² Ahtziger et al 2015 *Journal of Economic Psychology* 142; Leandro and Botelho 2022 *Journal of Business Research* 541.

⁵³ Moon, Farooq and Kiran 2017 *UW Journal of Management Sciences* 16.

⁵⁴ Moon, Farooq and Kiran 2017 *UW Journal of Management Sciences* 16.

⁵⁵ Moon, Farooq and Kiran 2017 *UW Journal of Management Sciences* 16.

⁵⁶ Webley and Nyhus 2001 *British Journal of Psychology* 424; Leandro and Botelho 2022 *Journal of Business Research* 541.

⁵⁷ Livingstone and Lunt 1992 *Journal of Economic Psychology* 115.

⁵⁸ Lea, Webley and Levine 1993 *Journal of Economic Psychology* 87; Webley and Nyhus 2001 *British Journal of Psychology* 441.

⁵⁹ Lea, Webley and Walker 1995 *Journal of Economic Psychology* 699.

⁶⁰ Stone and Maury 2006 *Journal of Economic Psychology* 554; Leandro and Botelho 2022 *Journal of Business Research* 542.

⁶¹ Leandro and Botelho 2022 *Journal of Business Research* 541; Baek and Hong 2004 *Journal of Family and Economic Issues* 363.

⁶² Lea, Webley and Walker 1995 *Journal of Economic Psychology* 699.

behaviour.⁶³ Individuals who spend cautiously are likely to have lower consumer debt levels.⁶⁴

Evaluating psychological factors as causes of over-indebtedness highlights the potential of financial education, through financial literacy and credit marketing, with warnings added to advertisements. This approach could help individuals with a lack of self-control or those prone to compulsive and impulsive buying to reconsider taking up credit and becoming over-indebted.

4 South African legislation protecting consumers from over-indebtedness

The provisions in the *NCA* and the *Consumer Protection Act 68 of 2008 (CPA)*⁶⁵ that might influence the psychological aspects of consumers' over-indebtedness are evaluated below.

4.1 The National Credit Act 34 of 2005

The *NCA* aims to address and prevent consumer over-indebtedness.⁶⁶ Sections 79, 80 and 81 in the *NCA* aim at resolving over-indebtedness by preventing reckless lending.⁶⁷ Credit providers must take reasonable steps to assess a consumer's understanding of the risks and costs of the proposed credit and ensure that the consumer is appropriately informed of the rights and obligations under a proposed credit agreement before entering into such a contract.⁶⁸ Credit providers should provide adequate information to consumers to empower them to evaluate the risks associated with taking up credit. If a credit provider fails to conduct the assessment or the consumer does not understand the risks, costs or obligations under the credit agreement, a court may order that the consumer's obligations and rights be set aside or that the credit agreement's force and effect be suspended.⁶⁹ An in-depth evaluation of the provisions in the *NCA* regarding reckless lending falls outside the scope of this contribution, as these provisions do not address any psychological factors that might lead to over-indebtedness.

⁶³ Lea, Webley and Levine 1993 *Journal of Economic Psychology* 87; Lea, Webley and Walker 1995 *Journal of Economic Psychology* 682.

⁶⁴ Leandro and Botelho 2022 *Journal of Business Research* 541; Baek and Hong 2004 *Journal of Family and Economic Issues* 362.

⁶⁵ *Consumer Protection Act 68 of 2008 (CPA)*.

⁶⁶ Section 3(g) of the *NCA*; Renke and Steennot 2020 Part 1 *PELJ* 3.

⁶⁷ Stoop 2009 *SA Merc LJ* 367.

⁶⁸ Section 81(2) of the *NCA*. For more detail on responsible lending and pre-agreement assessment in South Africa, see Van Heerden and Steennot 2018 *PELJ* 3-26; Stoop 2009 *SA Merc LJ* 367; Kelly-Louw 2008 *SA Merc LJ* 218-222; Roestoff and Renke 2005 *Obiter* 572.

⁶⁹ Section 83 of the *NCA*; Stoop 2009 *SA Merc LJ* 367.

The provisions in the *NCA* that might influence psychological tendencies in consumers are the marketing and advertising provisions. The Act prescribes various provisions for credit marketing practices and prohibits specific credit marketing and advertising activities.⁷⁰ Advertisement, according to the *NCA*

means any written, illustrated, visual or other descriptive material, communication, representation or reference through which a person seeks to bring to the attention of the public the nature, properties, advantages or uses of, conditions on, or prices of goods to be purchased, leased or otherwise acquired; any available service; or credit to be granted.⁷¹

Section 76 of the *NCA* determines advertising practices and applies to providers of credit advertised or sellers of goods or services advertised for purchase on credit.⁷² It focusses on information that must be in advertisements; that is, it provides that advertisements must show the cost of comparative alternatives, the interest rates, and all other credit costs.⁷³ However, these provisions do not protect consumers from internal psychological onslaughts. More should be incorporated to address psychological factors such as a lack of self-control. Kelly-Louw highlights the fact that unsolicited credit offers cause consumers to take on more debt, although this is against their sound judgment.⁷⁴

Renke and Steennot⁷⁵ analysed consumer credit marketing in 2020, when Belgian law required all advertising relating to consumer credit to include the warning "Be careful; credit also costs money." They expressed the opinion that this could help some prospective consumers realise what seems obvious and therefore to be circumspect.⁷⁶ In Belgium advertising that encourages consumers to take out credit they cannot afford is prohibited.⁷⁷ These prohibitions aim to protect the most vulnerable consumers from over-indebtedness and deception.⁷⁸ Although the *NCA* goes a long way towards protecting consumers, it should also include provisions similar to those in Belgian law to ensure that credit marketing is a responsible lending tool that sensitises consumers to the dangers of too

⁷⁰ Part C of the *NCA*, ss 74-77.

⁷¹ Section 1 of the *NCA*: definition of advertisement. See paragraph 3.2 below for the definition of advertisement in the *CPA*; Renke and Steennot 2020 Part 1 *PELJ* 4.

⁷² Section 76(2) of the *NCA*; Stoop 2009 *SA Merc LJ* 378; Renke and Steennot 2020 Part 1 *PELJ* 6.

⁷³ Sections 76(4) and 76(5) of the *NCA*; Stoop 2009 *SA Merc LJ* 378; Renke and Steennot 2020 Part 1 *PELJ* 7.

⁷⁴ Kelly-Louw 2008 *SA Merc LJ* 211; DTI 2004 <https://static.pmg.org.za/docs/2005/050608consumer.pdf> 30.

⁷⁵ Belgian Code of Economic Law Art VII.65 (Belgium 2013 <https://journals.sas.ac.uk/deeslr/article/download/2315/2266/3540>); Renke and Steennot 2020 Part 2 *PELJ* 18.

⁷⁶ Renke and Steennot 2020 Part 2 *PELJ* 18.

⁷⁷ Renke and Steennot 2020 Part 2 *PELJ* 19.

⁷⁸ Renke and Steennot 2020 Part 2 *PELJ* 19.

much debt and the cost of credit.⁷⁹ Kelly-Louw refers to Willemse and Mxunyelwa,⁸⁰ who contend that

[L]ike tobacco and liquor, credit is something that is best if not taken in abundance. Whilst it is essential that people should have access to it, people should not be bombarded with it when they do not need it. If there can be restrictions on how tobacco and liquor can be sold then there could also be restraints on how and when credit may be sold. Health warnings are not out of place when it comes to credit.

Thus, I support the contention mentioned above that, like tobacco advertisements warning users against the health risks attendant upon smoking, advertisements offering credit should also warn users about the risks of taking on credit.⁸¹ The *NCA* provisions are insufficient to protect consumers prone to psychological factors linked to over-indebtedness from taking on more credit than they can afford. Section 76 of the Act, which deals with advertising practices, should also consider the psychological factors of over-indebtedness, and more should be included in the Act than the costs, charges and add-ons to credit as currently set out in the Act. Stricter provisions should require credit providers to assist consumers in not taking up credit for the wrong reasons.

4.2 The Consumer Protection Act 68 of 2008

The *CPA* aims to promote and advance the social and economic welfare of consumers in South Africa.⁸² Furthermore, the preamble of the *CPA* determines that the Act is enacted to prohibit certain unfair marketing and business practices.⁸³ The *CPA* does not apply to any transaction that constitutes a credit agreement under the *NCA*, but the goods or services that are the subject of the credit agreement are not excluded from the *CPA*'s ambit.⁸⁴ Credit marketing for goods or services could contribute to

⁷⁹ Renke and Steennot 2020 Part 2 *PELJ* 21.

⁸⁰ Kelly-Louw 2008 *SA Merc LJ* 211; Willemse and Mxunyelwa *Report for Purposes of the Credit Law Review* para 6.2; Mnxuma *Analysis of the Protection Afforded by the National Credit Act* 21.

⁸¹ Also see s 3 of the *Tobacco Products Control Act* 83 of 1993 on the required information in respect of advertisements and packages of tobacco products: "(1) No person shall advertise or sell any prescribed tobacco product, unless (a) (i) the advertisement contains; or (ii) on the package in which the tobacco product is sold is reflected, the prescribed warning concerning the health hazards incidental to the smoking of tobacco products; and (b) the quantities of the hazardous constituents present-in the tobacco product concerned are stated in the advertisement or on the package."

⁸² Section 3(1) of the *CPA*.

⁸³ Preamble of the *CPA*.

⁸⁴ Section 5(2)(d) of the *CPA*.

consumers' over-indebtedness; therefore, the provisions in the *CPA* applicable to marketing for goods or services will be considered here.⁸⁵

Section 11 of the *CPA* addresses a consumer's right to restrict direct marketing, and section 12 regulates the time for contacting consumers. Sections 22 to 28 of the *CPA* address the right to information in plain and understandable language.⁸⁶ Sections 29 to 39 of the *CPA* provide for fair and responsible marketing and prohibit the marketing of any goods or services falsely or misleadingly.⁸⁷ Section 39(1) of the *CPA*, regarding agreements with persons lacking legal capacity, determines that a contract for the supply of any goods or services is void if the consumer is subject to an order of a competent court holding that person to be mentally unfit, if the supplier knew, or could reasonably have determined, that the consumer was the subject of such an order.⁸⁸ In determining that such a contract is void, this subsection protects individuals who have been declared mentally unfit, once suppliers have been assessed in relation to the knowledge requirements set out in this section. However, it does not extend protection to individuals experiencing psychological difficulties who have not been formally assessed, and who may have impairments that predispose them to conclude contracts leading to over-indebtedness.

Advertisement, according to the *CPA*,

means any direct or indirect visual or oral communication transmitted by any medium or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium by means of which a person seeks to bring to the attention of the public the existence or identity of a supplier; or the existence, nature, availability, properties, advantages or uses of any goods or services that are available for supply, or the conditions on, or prices at, which any goods or services are available for supply; promote the supply of any goods or services; or promote any cause.⁸⁹

Although the *CPA* defines an advertisement even more broadly than the *NCA*,⁹⁰ it does not contain any provision regarding protecting individuals prone to psychological challenges that might lead to over-indebtedness to safeguard them from taking up credit, as it includes no warnings about credit. The provisions in the *CPA* do not adequately protect consumers vulnerable to psychological factors that drive over-indebtedness and lead them to take on unaffordable credit. Based on the arguments above that advertisements about credit should also warn users about the risks of credit, I suggest that the *CPA* should be amended to add such a warning. At

⁸⁵ See Renke and Steennot 2020 Part 1 *PELJ* 13-14 for an in-depth discussion of the interpretation of the *CPA* and interpreting inconsistencies between the *CPA* and the *NCA*; Stoop 2014 *THRHR* 136.

⁸⁶ Sections 22-28 of the *CPA*.

⁸⁷ Sections 29-39 of the *CPA*; Renke and Steennot 2020 Part 1 *PELJ* 16.

⁸⁸ Section 39(1)(a) of the *CPA*.

⁸⁹ Section 1 of the *CPA*: definition of advertisement.

⁹⁰ Renke and Steennot 2020 Part 1 *PELJ* 4.

present, section 3 of the *CPA* does not explicitly acknowledge individuals with psychological difficulties as a category of vulnerable consumers.⁹¹ I therefore suggest that the provision be amended to reflect this. In the same way, section 22 of the *CPA*, which promotes informed decision-making by requiring information to be presented in plain and accessible language,⁹² could be revised to include an explicit notice alerting potential consumers that taking on credit inevitably involves costs.

5 Financial literacy for consumers

A study published by Gutiérrez-Nieto and Serrano-Cinca⁹³ provides evidence that financial institutions' pressure on debtors can lead to irresponsible lending and over-indebtedness. They conclude that the risks associated with over-indebtedness need to be addressed through improved financial literacy.⁹⁴ In another study, Murthi, Girju and Steffes⁹⁵ demonstrate that limited-time teaser interest rates (known as promotional annual percentage rates) offered by financial institutions persuade consumers to borrow money which they sometimes cannot pay off at the end of the promotion period. This can later lead to over-commitment and over-indebtedness.⁹⁶ Schicks⁹⁷ contend that the literature indicates that a borrower's financial literacy may be related to over-indebtedness. Borrowers with good debt literacy are less likely to be over-indebted, but general financial literacy and numeracy seem insufficient to reduce over-indebtedness.⁹⁸ In the study by Gathergood,⁹⁹ concepts derived from financial literature are used to measure financial literacy.¹⁰⁰ Measures against over-indebtedness should focus on borrowers' repayment capacity and address financial literacy.¹⁰¹ Training is essential to adequately address over-indebtedness by enabling individuals to be financially literate.

Financial literacy incorporates various elements, including sound financial decision-making and knowledge and skills in budgeting, saving, investing

⁹¹ Section 3 of the *CPA*.

⁹² Section 22 of the *CPA*.

⁹³ Gutiérrez-Nieto and Serrano-Cinca 2017 *International Journal of Consumer Studies* 197; Leandro and Botelho 2022 *Journal of Business Research* 543.

⁹⁴ Gutiérrez-Nieto and Serrano-Cinca 2017 *International Journal of Consumer Studies* 198.

⁹⁵ Murthi, Girju and Steffes 2019 *Journal of Financial Services Marketing* 18; Leandro and Botelho 2022 *Journal of Business Research* 543.

⁹⁶ Murthi, Girju and Steffes 2019 *Journal of Financial Services Marketing* 18.

⁹⁷ Schicks 2014 *World Development* 305.

⁹⁸ Schicks 2014 *World Development* 315.

⁹⁹ See paragraph 4.1 above.

¹⁰⁰ Gathergood 2012 *Journal of Economic Psychology* 595; Lusardi and Tufano 2009 https://www.nber.org/system/files/working_papers/w14808/w14808.pdf. The concepts are simple interest, interest compounding, and the effect of monthly payments. Other concepts, such as real versus nominal returns and portfolio diversification, were omitted and did not apply to over-indebtedness.

¹⁰¹ Gathergood 2012 *Journal of Economic Psychology* 593.

and borrowing.¹⁰² The Jump\$tart Coalition for Personal Financial Literacy introduced financial literacy in the United States in 1997, defining it as "the ability to use knowledge and skills to manage one's financial resources effectively for lifetime financial security".¹⁰³ In 2010 Remund examined more than one hundred resources, including academic and professional journal articles, compared the use of the term financial literacy in them, and conceptualised financial literacy as follows:¹⁰⁴

Financial literacy is a measure of the degree to which one understands key financial concepts and possesses the ability and confidence to manage personal finances through appropriate, short-term decision-making and sound, long-range financial planning, while mindful of life events and changing economic conditions.

The Organisation for Economic Cooperation and Development (OECD) defined financial literacy in 2014, including both the knowledge and the application domain:

Financial literacy is knowledge and understanding of financial concepts and risks, and the skills, motivation and confidence to apply such knowledge and understanding in order to make effective decisions across a range of financial contexts, to improve the financial well-being of individuals and society, and to enable participation in economic life.¹⁰⁵

According to Abdullah, Fazli and Arif¹⁰⁶ financial literacy is the ability to make financial decisions on budgeting, spending, saving, borrowing, investing and planning for the future. In a nutshell, financial literacy is the ability of consumers to understand complex financial products and/or services and navigate the financial market.¹⁰⁷

Studies differ on whether financial literacy and financial knowledge affect people's becoming over-indebted. Some studies find that poor financial literacy is associated with over-indebtedness¹⁰⁸ and that being financially literate reduces household vulnerability.¹⁰⁹ On the other hand, other studies find that more comprehensive financial knowledge does not necessarily

¹⁰² Mak and Braspenning 2012 *Journal of Consumer Policy* 316; Remund 2010 *Journal of Consumer Affairs* 288.

¹⁰³ The JumpStart Coalition for Personal Financial Literacy Date Unknown <https://www.jumpstart.org/>; Stolper and Walter 2017 *Journal of Business Economics* 633.

¹⁰⁴ Remund 2010 *Journal of Consumer Affairs* 284.

¹⁰⁵ OECD *PISA 2012 Results* 35.

¹⁰⁶ Abdullah, Fazli and Arif 2019 *Pertanika Journal of Social Sciences and Humanities* 363.

¹⁰⁷ Mak and Braspenning 2012 *Journal of Consumer Policy* 309; Remund 2010 *Journal of Consumer Affairs* 284.

¹⁰⁸ Gathergood 2012 *Journal of Economic Psychology* 591; Schicks 2014 *World Development* 314; Leandro and Botelho 2022 *Journal of Business Research* 542.

¹⁰⁹ Aristei and Gallo 2016 *International Journal of Consumer Studies* 457; Leandro and Botelho 2022 *Journal of Business Research* 542.

lead to better financial management,¹¹⁰ and financial knowledge does not prevent financial distress.¹¹¹ Stolper and Walter¹¹² find a lack of evidence on the effectiveness of financial education in changing behaviour in Germany. Still, they confirm that economically vulnerable groups are further disadvantaged because they lack financial knowledge.¹¹³ They contend, though, that most analyses document a positive correlation between measures of financial literacy and sound financial behaviour.¹¹⁴ In a study in Poland, published in 2025, Świecka¹¹⁵ analyses the importance of financial literacy in reducing consumer over-indebtedness from a generational perspective. She finds that although financial literacy as a single factor does not play a significant role in consumer over-indebtedness, Generation Z emerged as the most sensitive group in the financial literacy and over-indebtedness study.¹¹⁶ This is because Generation Z has the lowest level of financial literacy, coupled with the least financial reserves and savings, and is the group most exposed to the risk of over-indebtedness.¹¹⁷ Mak and Braspenning¹¹⁸ highlight that the consumer market in the European Union provides consumers only with information to make informed decisions about the risks and suitability of financial products. More is needed than the current regulation, which is not suited to protecting consumers by providing them primarily with information.¹¹⁹ They argue that the law is ill-equipped to protect consumers from rash and impaired decision-making.¹²⁰ Many calls for responsible lending from financial institutions and other credit providers involve holding these institutions more accountable by requiring them to verify the consumer's ability to afford a loan when they offer credit to borrowers¹²¹. In this contribution I mention responsible lending only in passing since the focus is on the psychological factors behind over-indebtedness and not specifically on the responsibility of financial institutions and other credit providers in areas other than the psychological impact of their strategies.

¹¹⁰ Loke 2016 *International Journal of Social Economics* 15; Leandro and Botelho 2022 *Journal of Business Research* 542.

¹¹¹ Loke 2016 *International Journal of Social Economics* 15; Leandro and Botelho 2022 *Journal of Business Research* 542.

¹¹² Stolper and Walter 2017 *Journal of Business Economics* 633.

¹¹³ Stolper and Walter 2017 *Journal of Business Economics* 633; Leandro and Botelho 2022 *Journal of Business Research* 542.

¹¹⁴ Stolper and Walter 2017 *Journal of Business Economics* 633; Leandro and Botelho 2022 *Journal of Business Research* 542.

¹¹⁵ Świecka 2025 *Journal of Banking and Financial Economics* 14.

¹¹⁶ Świecka 2025 *Journal of Banking and Financial Economics* 7 and 14; According to Świecka, Generation Z was born in 1995 - 2004 (age 18-27).

¹¹⁷ Świecka 2025 *Journal of Banking and Financial Economics* 14.

¹¹⁸ Mak and Braspenning 2012 *Journal of Consumer Policy* 309.

¹¹⁹ Mak and Braspenning 2012 *Journal of Consumer Policy* 309.

¹²⁰ Mak and Braspenning 2012 *Journal of Consumer Policy* 313.

¹²¹ Mak and Braspenning 2012 *Journal of Consumer Policy* 313; Leandro and Botelho 2022 *Journal of Business Research* 544.

In a study investigating the empirical relationship of financial literacy to debt problems and over-indebtedness, Schicks¹²² argues that borrowers with good debt literacy are less likely to be over-indebted, but that general financial literacy and numeracy seem insufficient to reduce a tendency toward over-indebtedness. Financial education is needed to address *specific* aspects of financial literacy to be effective.¹²³ Policy measures address over-indebtedness by focussing on the repayment capacity of borrowers.¹²⁴ This is also the case in South Africa, where the *NCA* requires credit providers to assess the borrower's repayment capacity.¹²⁵ A key finding in Schicks's study,¹²⁶ relevant to our discussion, is that while financial literacy can mitigate the risk of over-indebtedness, focussing financial literacy training on debt literacy is necessary to achieve the desired outcome. Hence, careful planning of the training content is necessary. Mak and Braspenning¹²⁷ recommend that vulnerable consumers should be prevented from entering into credit agreements that they are unlikely to be able to honour. Leandro and Botelho¹²⁸ note that the most vulnerable consumers are those who are least prepared and educated to utilise complex financial services. They recommended that measures to protect consumers' interests should be included in regulating financial institutions and other credit providers, and developing their products.¹²⁹ Policymakers and interest groups worldwide should put considerable effort into increasing people's financial literacy.¹³⁰

This contribution focusses on the consequences of consumers' low financial literacy in debt-related decisions. There is a strong link between financial literacy and debt-related decision-making.¹³¹ Gerardi, Goette and Meier¹³² contend that an individual's financial literacy level is a good predictor of whether the consumer will default on his debt. Research shows that possessing information can be insufficient to protect consumers from bad decision-making.¹³³ In 2025, Suharto, Lidiana and Elliyana¹³⁴ confirmed that the relationship between self-control and financial literacy is increasingly

¹²² Schicks 2014 *World Development* 314.

¹²³ Author's emphasis. Schicks 2014 *World Development* 314.

¹²⁴ Schicks 2014 *World Development* 315.

¹²⁵ Section 81(4) of the *NCA*

¹²⁶ Schicks 2014 *World Development* 315.

¹²⁷ Mak and Braspenning 2012 *Journal of Consumer Policy* 314; Leandro and Botelho 2022 *Journal of Business Research* 547.

¹²⁸ Leandro and Botelho 2022 *Journal of Business Research* 547.

¹²⁹ Leandro and Botelho 2022 *Journal of Business Research* 547.

¹³⁰ Stolper and Walter 2017 *Journal of Business Economics* 633.

¹³¹ Mak and Braspenning 2012 *Journal of Consumer Policy* 318; Lusardi and Tufano 2009 https://www.nber.org/system/files/working_papers/w14808/w14808.pdf 25.

¹³² Gerardi, Goette and Meier 2010 <https://www.econstor.eu/bitstream/10419/70651/1/637330404.pdf> 4; Mak and Braspenning 2012 *Journal of Consumer Policy* 318.

¹³³ Mak and Braspenning 2012 *Journal of Consumer Policy* 314.

¹³⁴ Suharto, Lidiana and Elliyana 2025 *World* 4.

acknowledged as being central to understanding over-indebtedness. Although financial literacy enhances knowledge and decision-making, its effect on borrowing behaviour remains limited in the absence of sufficient self-control.¹³⁵ Conversely, self-control on its own cannot make up for a lack of financial knowledge, as individuals may still find it challenging to make sound financial choices.¹³⁶ Further research is needed to assess the impact of warning consumers about products that are not suitable to their needs.

The National Credit Regulator (NCR), which is established under section 12 of the *NCA*, is responsible for increasing knowledge of the nature and dynamics of the consumer credit market and industry and promoting public awareness of consumer credit matters by implementing education and information measures to develop public awareness of the provisions of the *NCA*.¹³⁷ The NCR must also monitor socio-economic patterns of consumer credit activity and identify factors concerning over-indebtedness and its patterns, causes and consequences.¹³⁸ I recommend that the NCR utilise its powers to address the psychological factors contributing to over-indebtedness by promoting public awareness of this issue and supporting my recommendation to amend the *NCA* and *CPA*, requiring credit providers to include a warning in advertisements about the potential risks associated with accepting credit.

6 Implications of this research

By analysing the psychology behind over-indebtedness, the research suggests that debtors require protection against financial institutions and other credit providers who need to lend more to make more profit and through marketing practices persuade vulnerable people to take on debt they cannot repay.

The current financial regulation of credit providers is insufficient to address the psychological landscape of debtors and to protect them. Financial institutions and other credit providers conduct creditworthiness assessments and provide consumers with information to empower them to evaluate the risks associated with taking up credit.¹³⁹ These institutions can still give credit to consumers who need help and therefore need to take significant financial risks.¹⁴⁰ Consumers need a high level of financial literacy to digest the information and assess it adequately.¹⁴¹

¹³⁵ Suharto, Lidiana and Elliyana 2025 *World* 4.

¹³⁶ Suharto, Lidiana and Elliyana 2025 *World* 4.

¹³⁷ Section 16(1)(a) of the *NCA*; see Stoop 2009 *SA Merc LJ* 373-374.

¹³⁸ Section 16(1)(c)(i) and (ii) of the *NCA*; see Mnxuma *Analysis of the Protection Afforded by the National Credit Act* 18.

¹³⁹ Mak and Braspenning 2012 *Journal of Consumer Policy* 309.

¹⁴⁰ Mak and Braspenning 2012 *Journal of Consumer Policy* 309.

¹⁴¹ Mak and Braspenning 2012 *Journal of Consumer Policy* 309.

Legal interventions in amending the *NCA* could promote consumer protection against over-indebtedness. The reformative measure I recommend involves amending section 76 of the *NCA*, regarding the marketing of credit, so that credit providers (including banks and other financial institutions) are required to warn potential customers that borrowing money would cost money. Furthermore, section 3 of the *CPA* should be amended to recognise persons with psychological challenges as vulnerable consumers. Likewise, section 22 of the *CPA*, which facilitates informed decision-making by providing information in plain and comprehensible language, could specifically include a warning that potential customers should be aware that borrowing money incurs costs.

Legislation could in this way assist in protecting consumers from taking on more debt than they can manage. Regulating the marketing practices of financial institutions and other credit providers is necessary to protect consumers from incurring excessive debt and becoming over-indebted.

There is a strong relationship between financial literacy, impulsiveness and over-indebtedness.¹⁴² A possible explanation is that individuals who act impulsively in their spending decisions use forms of consumer credit, making them more vulnerable to debt problems.¹⁴³ Consumers with a higher level of financial literacy are "more able to assess the risks of financial products they consider purchasing."¹⁴⁴ Considering the psychological factors, enhancing financial literacy could empower consumers and protect them against over-indebtedness. I therefore recommend that financial literacy and education be combined in a multidimensional approach to regulating financial products, where the training is carefully planned to address the debt literacy of individuals who lack self-control.

Further research should be conducted into the contention that consumer credit law should strike a balance between consumer empowerment through the enhancement of financial literacy and consumer protection through duties to warn.¹⁴⁵ Gathergood¹⁴⁶ suggests that different forms of consumer credit present greater or lesser opportunities to facilitate impulse-driven purchases. Thus, I recommend that scholars assist legislators and regulators by researching how warnings about credit should be worded to discourage impulse-driven purchases by individuals lacking self-control and inclined to compulsive and impulsive buying. Researchers could also focus on the type of financial literacy needed to address the psychological factors behind consumers' over-indebtedness, should compare the legislation in

¹⁴² Gathergood 2012 *Journal of Economic Psychology* 597.

¹⁴³ Gathergood 2012 *Journal of Economic Psychology* 597.

¹⁴⁴ Mak and Braspenning 2012 *Journal of Consumer Policy* 309.

¹⁴⁵ Mak and Braspenning 2012 *Journal of Consumer Policy* 309.

¹⁴⁶ Gathergood 2012 *Journal of Economic Psychology* 597.

various jurisdictions, and should develop best practices for improving current regulations.¹⁴⁷

7 Conclusion

A single set of characteristics cannot explain over-indebtedness. The concept must be addressed in an interdisciplinary way to find answers for over-indebted individuals. Much has been written about the psychological reasons behind debt in psychology journals, and various models have been presented about the variables associated with over-indebtedness in economic journals. In this contribution I have given a legal perspective on the psychological reasons behind over-indebtedness.

The behavioural economist's approach is correct when it concerns vulnerable consumers who need legal intervention to protect them from financial institutions and other credit providers which prey on their defencelessness and psychological vulnerabilities by persuading them to take on debt they cannot afford.¹⁴⁸ According to such research, consumers require more protection than just being told whether or not they can afford a debt, as provided for in the *NCA*.¹⁴⁹ They need protection from their lack of self-control. This contribution highlights the necessity of such protection. It proposes that financial institutions and other credit providers should issue warnings when advertising debt, just like tobacco products in South Africa. Such warnings should be prominent and clear – either in writing or on the radio or through other media. However, further research is needed to determine ways to provide consumers with more psychological protection. Credit providers must be regulated to ensure that they advertise credit in a way that does not exploit people with compulsive and impulsive buying syndromes or who do not have the self-control to resist advertisements. Advertising should warn potential clients about the risks of credit, ensuring that communities benefit from credit opportunities without being harmed. Provisions in the *NCA* and the *CPA* protect consumers using credit in South Africa. However, South African law does not sufficiently protect vulnerable consumers from credit marketing, where psychological factors are exploited. I submit that to prevent more people from becoming overly indebted, the legislation addressing credit in South Africa should be amended to go further than the current measures. The most appropriate way to do this is to amend the advertising provisions in section 76 of the *NCA* to include more comprehensive protection of consumers, considering the psychological causes of over-indebtedness as well as amending section

¹⁴⁷ Leandro and Botelho 2022 *Journal of Business Research* 547.

¹⁴⁸ Mak and Braspenning 2012 *Journal of Consumer Policy* 308; Epstein 2007 *Minn L Rev* 804.

¹⁴⁹ Gathergood 2012 *Journal of Economic Psychology* 600. "In the context of the consumer credit market, there may be an argument for restricting credit available at the point-of-sale or delaying access to funds so as to mitigate consumer self-control problems."

3 of the *CPA*, to include individuals with psychological difficulties as a category of vulnerable consumers and to amend section 22 of the *CPA* by including an explicit notice alerting potential consumers that taking on credit inevitably involves costs.

Potential debtors' financial literacy should be enhanced to assist them in taking a more sophisticated approach to credit, safeguarding them from taking on credit for the wrong psychological reasons.

Reformative measures concerning the regulation of credit marketing through legal interventions and improved financial literacy would protect fragile consumers from being persuaded to take on more debt than they can manage. Consumers would be better protected from themselves, reducing overspending and over-indebtedness through psychological factors. They would be supported in refusing to take on credit for the wrong reasons or while not being aware of the financial consequences of doing so.

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The JumpStart Coalition for Personal Financial Literacy Date Unknown *About* <https://www.jumpstart.org/> accessed 13 November 2024

List of Abbreviations

CPA	Consumer Protection Act 68 of 2008
DTI	Department of Trade and Industry
Minn L Rev	Minnesota Law Review
NCA	National Credit Act 34 of 2005
NCR	National Credit Regulator
OECD	Organisation for Economic Co-operation and Development
PELJ	Potchefstroom Electronic Law Journal
SA Merc LJ	South African Mercantile Law Journal
THRHR	Tydskrif vir Hedendaagse Romeins-Hollandse Reg / Journal of Contemporary Roman-Dutch Law
U Chi L Rev	University of Chicago Law Review