

The Credit Ombudsman Service Limited's Guide to Conciliation Conferences

What is a conciliation conference?

A conciliation conference provides the parties to a dispute with an opportunity to share information, discuss the issues further and attempt to settle the dispute with the facilitation of an independent conciliator (a COSL Case Manager trained in mediation/conciliation).

The conciliation conference may be conducted in person, over the phone or by video conference.

What you need to know about confidentiality

Discussions held in a conciliation conference are confidential, unless agreed otherwise.

The parties may agree:

- that another person may be told (such as a representative, spouse or colleague); and
- that only certain information may be shared with that other person.

There may also be situations where the conciliator is required to disclose information that has been shared in the conciliation conference, such as if a party threatens to commit a crime or if a court orders the conciliator to give evidence. However, the courts are generally hesitant to order a conciliator to disclose information and will only do so in rare situations.

Conciliations are confidential so that the parties can feel free to have full and frank discussions in an attempt to reach an agreement.

Having another person with you

You do not need to bring a representative, such as a lawyer, to the conciliation conference. However, if you would like to have a representative present, we will consider your request. If you choose to be represented, you will be responsible for the costs of your representation.

Each party is entitled to have a support person attend the conciliation, such as a family member, friend or financial counsellor.

Prior to the conference, you must advise the conciliator of any person you would like to have with you at the conciliation conference.

The role of the conciliator

The conciliator will assist the parties to identify the issues, develop or recommend options for the settlement of the dispute, consider alternatives and try to bring the parties together to reach a mutually acceptable agreement between themselves.

The conciliator will not:

- 'take sides' or advocate for either party;
- provide legal or other advice; or
- make a decision about how the complaint will be resolved.

Where the parties reach an agreement to settle the dispute, the conciliator will ensure that the agreement is reasonable and has been made with the informed consent of the parties.

The conciliator may end the conciliation if he or she believes that it is inappropriate to continue the conciliation for any reason.

How to prepare for the conciliation conference

1. Think about what you want to say about each agenda item.
2. Think about what options may resolve the dispute.
3. Ensure that you have provided relevant documents to the conciliator and advised the conciliator of any person that you want to be present with you.
4. Ensure that you have authority to settle on the day if an agreement is reached within any range which can be reasonably anticipated.
5. Bring the following items with you to the conciliation conference:
 - relevant documents;
 - pen and paper; and
 - a glass of water.

Expectations at the conciliation conference

The parties in dispute are expected to participate in good faith during the conciliation. They should be willing to:

- make a genuine effort to resolve the dispute;
- consider and suggest options to resolve the dispute; and
- be honest and open in the discussion of issues.

We also expect that each party will be ready and available at the time and place arranged. If a party is unable to attend, they are expected to notify the conciliator so that the conference can be rescheduled.



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Stages of the conciliation process

Preparation

The conciliator will:

1. contact the parties to explain the process and arrange a date; and
2. consult each party about what the issues are so that an agenda for discussion at the conference can be established.

The parties are expected to:

- consider the relevant issues that they want to discuss;
- consider ways that the dispute may be resolved; and
- give the conciliator any relevant documentation so that it can be forwarded to the other party before the conciliation conference.

Conciliation conference conducted

The conciliation conference is usually by a teleconference where both parties and the conciliator will be able to talk directly.

The conciliation conference may take up to 2 or 3 hours, and generally proceeds as follows:

1. The conciliator will:
 - welcome the parties and introduce them to each other;
 - explain the process and the conciliator's role; and
 - establish 'ground rules' for the most effective conduct of the conciliation.
2. The parties will then be invited to each speak in turn, giving a basic summary of the issues as they see them.
3. The conciliator will outline the key issues and confirm the agenda for discussion.

2. The parties will then be given an opportunity to discuss each issue at length, and to ask questions of each other. The purpose of this stage of the process is to ensure that each party understands the views, needs and interests of the other party.
3. The conciliator may, if necessary, spend time in private discussion with each of the parties in turn. This will give each party an opportunity to raise with the conciliator any additional issues or concerns, and put forward options for the settlement of the dispute. The private discussions are confidential between the conciliator and the party.
4. The parties will then come to joint session again, and the conciliator will assist them to discuss the possible options for the settlement of the dispute.

The conciliator or the parties may request a break at any time during the conciliation.

Where an agreement is reached

If an agreement is reached about some or all of the issues, the conciliator will record the basic terms of the agreement. The remainder of the discussions at the conciliation conference will not be kept on COSL's file.

The conciliator will assist the parties with any settlement documentation that may be required.

Where an agreement is not reached

If an agreement is not reached about some or all of the issues, the conciliator will put a note on COSL's file indicating that the issues were not resolved. The issues that remain in dispute will generally be referred back to a COSL case manager for further assessment and a decision on the merits of the case. In some cases, the complaint will be referred directly to the Ombudsman for a determination.

The case manager or Ombudsman will not be given any information about what was disclosed in the conciliation conference, unless the party who made the disclosure consents to this.

To assist in COSL's assessment of the issues that remain in dispute, the conciliator may recommend to one or both parties that information they shared or offers they made in the conciliation conference should be disclosed to the case manager or Ombudsman. If the party does not consent to this, the information or offers will not be disclosed. However, it may affect the progress or outcome of the complaint.

Process Flow

