

The Credit Ombudsman Service Limited's Guide to Financial Hardship

Our guide to financial hardship

It is likely that a borrower will encounter a significant change in their financial circumstances at least once during a loan.

Financial hardship may be caused by increases in interest rates or changes such as family break-up, death of a spouse, workplace injury, unemployment or illness.

This Guide provides some basic information about what you can do if you are in financial hardship and how the Credit Ombudsman Service Limited ('COSL') may be of assistance if your lender is a Member of COSL.

What should I do if I'm in financial hardship?

If you're finding it difficult to meet your loan payments or if you've received a default notice from your lender, you should contact your lender as soon as possible to discuss your situation. Your lender usually has more options when approached early.

You can ask your lender to vary your loan payments and 'stay' legal proceedings when you are in financial difficulties. However, you should make what payments you can in the meantime.

You should also seek advice from a financial counsellor or a community legal centre. They provide a free, independent and confidential service and can tell you what your options are.

What sort of information will I need to provide to the lender?

The lender will need to consider whether your financial circumstances are likely to improve and whether you will be able to repay the loan eventually.

They may require you to complete a financial hardship application form. You may be asked to complete a statement of financial position. This sets out your income, expenses, assets and liabilities. You may also be asked to provide supporting documentation such as bank account statements, pay slips, utility bills, tax returns and medical certificates.

The lender is only required to consider your request for financial hardship assistance if you provide them with the information they reasonably need to assess your financial situation.

What can a lender agree to?

The lender may agree to:

- extend the term of your loan and reduce your payments;
- postpone your payments for some time;
- extend the term of the loan *and* postpone some payments;
- convert your loan to an interest-only loan for a period of time;
- reduce the interest rate on your loan for a period of time; or
- any other reasonable proposal that enables you to eventually repay the loan.

What if the lender has agreed to vary my payment obligations?

If your lender agrees to vary your loan payments, it must write to you telling you about the new payment arrangement. Make sure you understand how the new arrangement will work. For example:

- what is the new payment?
- on what date do you have to start making the new payments?
- what is the frequency of the new payments?
- do you need to change your direct debit authority because the date of payment has changed?
- if the arrangement is temporary, on what date do you have to re-commence your normal payments?

If your lender offers you a payment arrangement that you're not sure you can afford, be very careful about accepting it. If you do and then can't meet the new payments, it may be difficult to later ask your lender for another payment arrangement.

What if the lender has declined my application for financial hardship assistance?

If the lender declines your application:

- it must write to you and set out its decision and the reasons for its decision; and
- you can lodge a complaint with us (if your lender is a Member of COSL).

Contact us on 1800 138 422 to find a member or make a complaint.



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For more information visit www.cosl.com.au or call **1800 138 422**

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How do I make a complaint to COSL?

You need to make a written complaint by either:

- completing the complaint wizard on our website (www.cosl.com.au);
- downloading a complaint form from our website and returning it to us; or
- calling us on 1800 138 422 if you would like us to mail you a complaint form.

How will COSL deal with my complaint?

When we receive your complaint, we may ask you to provide us with information to assess your financial circumstances.

It's important that you provide this information to us by the date requested. If you can't, please let us know and we will give you more time. However, if you still don't provide us with the information, we may close your complaint.

We may require you and the lender to attend a conciliation conference to try to resolve the complaint with the assistance of an independent conciliator (a COSL case manager). Please refer to our Guide to Conciliation Conferences for more information about this process.

If your complaint cannot be resolved through conciliation and negotiation, we may direct the lender to vary your payments if:

- your loan is covered by the Consumer Credit Code or the National Credit Code; and
- you are likely to be able to meet your obligation to repay the loan if it is varied in a particular way.

However, we may not be able to assist you if your financial hardship is long-term and you are not able to show us that you will be able to eventually repay the loan.

Can I ask for time to sell the property?

If your loan is secured by your property, you will need to consider whether or not you should sell the property to repay the loan. In some cases, it may be in your interests to sell the property. You should seek advice from a financial counsellor or other expert to help you make the right decision.

If you decide that your property has to be sold to repay the loan, we can ask your lender to give you time to sell your property. We can also ask your lender to reduce or postpone your payments until the property is sold.

If your lender allows you time to sell the property, it may require you to agree to some or all of the following conditions:

1. the property must be put up for sale within a certain period;
2. unconditional contracts of sale must be exchanged by a certain date;
3. you must agree that if contracts of sale are not exchanged by a certain date, you will give possession of the property to the lender;
4. the contract of sale must say that settlement will take place within a certain period;
5. you must agree to make whatever payments you are able to during the sale period; and/or
6. you must authorise the lender to get updates from the real estate agent on the progress of the sale.

What if I want time to access my superannuation?

We understand that a borrower can apply to the Australian Prudential Regulation Authority ("APRA") for the partial release of their superannuation funds. Depending on the circumstances, it may or may not be appropriate for you to do this.

If you are considering making an application for early release of your superannuation funds, we recommend that you first discuss this with a financial counsellor or a community legal centre.

If you decide to make an application to APRA and you have asked your lender to provide you with information to support your application, the lender should provide it as soon as possible.

What if the lender is taking legal action against me?

While we are reviewing a financial hardship application, your lender must not:

1. begin or continue with legal action (unless you have already taken a step in the legal proceedings beyond lodging a defence or a defence and counterclaim);
2. sell the debt to another company; or
3. list a default on your credit reference file.

Do remember that although legal action is on hold, you should continue making whatever payments you can.

The lender may re-commence legal action if we can't deal with your hardship application further. However, they must allow you 14 days in which to file a defence or a defence and counterclaim (if you have not already done this).

Can anything be done about default fees, default interest and legal expenses charged by the lender?

Generally, the lender can charge default fees and default interest under the loan contract. They are also usually entitled to charge legal costs that they have 'reasonably incurred'. However, in certain circumstances, we can ask the lender not to charge these.



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What if my co-borrower wants nothing to do with my request for hardship assistance?

It is preferable for a financial hardship application to be made by all co-borrowers. However, there are occasions where one co-borrower is in financial hardship and the other:

1. is not able to make the payments on their income alone;
2. cannot be contacted; or
3. is not making payments (because, for example, there has been a breakdown in the relationship between the co-borrowers).

A lender should consider a hardship application even if it is from only one of the co-borrowers.

If you are making an application for financial hardship assistance and the other co-borrower is not contributing to loan payments, you will need to show that you are able to meet your obligations under the loan without the other co-borrower.

Contacting Us

Complaint Enquiries	1800 138 422 Monday to Friday from 9am - 5pm AEST <i>(mobile charges apply)</i>
Overseas	+61 2 9273 8400
TTY users	1800 555 677
Speech & Hearing impaired	1800 555 727
Telephone Interpreter	131 450 or contact us to have an interpreter organised.
Fax us	02 9261 2798
Write to us	PO Box A252 SYDNEY SOUTH NSW 1235
Email us	complaints@cosl.com.au
Online Complaint Form	Complaints can be made by using our online Complaint Form www.cosl.com.au
Membership Enquiries	Phone 02 9273 8455 Monday to Friday from 9am - 5pm AEST Fax 02 9261 2792 Email members@cosl.com.au



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