

The FOS Approach to Financial difficulty series: Working together to find solutions

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We have created a series of FOS Approach documents, such as this one, to help consumers and financial services providers better understand how we reach decisions about key issues.

These documents explain the way we approach some common issues and dispute types that we see at FOS. However, it is important to understand that each dispute that comes to us is unique, so this information is a guide only. No determination (decision) can be seen as a precedent for future cases, and no FOS Approach document can cover everything you might want to know about key issues.

1 At a glance

1.1 Scope

When a consumer (an individual or small business owner) experiences financial difficulty, they will often ask their financial services provider to help them with a repayment arrangement. Many successful arrangements are entered into regularly, but sometimes the consumer and financial services provider are not able to agree on an arrangement that suits them both. That's where FOS can help.

1.2 Summary

Who should read this document?

1. Financial services providers (FSPs) that deal with credit products, consumer representatives and consumers (individuals and small business owners), who are experiencing financial difficulty.
2. Anyone who wants to understand how to work together to resolve financial difficulty, including working with FOS if a dispute is lodged with us.
3. Consumers and their representatives who may have a proposal which will see their financial difficulty overcome, as well as consumers who may be unable to identify a way forward.
4. Anyone faced with dealing with financial difficulty that may not be able to be overcome in the short or medium term.

Summary of FOS Approach

Financial difficulty occurs when a consumer is unexpectedly unable to meet their repayment obligations. This can be as a result of a variety of causes including accident, separation, death of a family member, unexpected medical or funeral expenses, reduction of work hours, redundancy, or a downturn in business.

A large number of financial difficulty disputes that come to us are resolved by mutual agreement. The best solutions are often found when the parties work together to develop a plan for overcoming financial difficulty. For this reason, we encourage the parties to be willing to communicate and exchange information with each other.

Any requests made by the FSP for information should not be so complex or large that it is overwhelming for the consumer. This is because excessive requests for information are often a barrier to providing hardship assistance and may prevent the early resolution of financial difficulty disputes.

A consumer should respond promptly to an FSP's reasonable requests for information, and make payments if possible. For example, if a consumer has suggested a repayment arrangement that has been rejected by the

FSP, they should at the very least make repayments of the offered amount while we are considering the dispute.

In some disputes it is clear that financial difficulty cannot be overcome with further assistance, even in the longer term, and the only realistic solution is the sale of an asset such as a home or investment property. In these circumstances we will encourage the parties to agree on a reasonable timeframe for the consumer to sell the asset voluntarily.

In order to reach a successful and lasting outcome, it is important that all parties understand what is required of them. If a hardship arrangement is agreed to, it is good industry practice for the FSP to confirm it in writing.

Depending on the circumstances, including the type and length of time of the credit contract, a short-term solution may not be appropriate. The aim of any repayment arrangement should be for the debt to be repaid, even if that happens over a longer period.

A credit provider is under no obligation to waive debt on the grounds of financial difficulty alone. If the parties agree to temporarily suspend repayments the FSP does not have to agree to waive interest or debt.

2 In detail

2.1 The FOS Approach

An FSP should assess each request for assistance on an individual basis. Solutions offered to the consumer need to be appropriate to the individual circumstances of that particular consumer. We encourage all parties to look at the broader situation when thinking of the available options for assistance. It may be that a consumer is focused on one facility when in fact they hold multiple facilities with the FSP. By considering all facilities, a more robust solution may be found.

A consumer should be willing to start making repayments at the amount they've proposed under a repayment arrangement, even if the FSP has not yet agreed to the arrangement. This demonstrates good faith and a willingness to deal with the financial difficulty.

2.2 Working together – reaching resolution

The best solutions are often found when the parties work together to develop a plan for overcoming financial difficulty. For this reason, we encourage the parties to be willing to communicate and exchange information with each other.

Depending on the circumstances, an FSP may need to ask the consumer for information about their financial position. This may include details of their income, expenditure and debts held with the FSP and other financial institutions. We consider that reasonable requests for information are an important step to helping a consumer overcome their financial difficulty.

An FSP should work to identify the available options, even when a consumer is yet to provide requested information.

But, any requests made by the FSP should not be so complex or large that it is overwhelming for the consumer. This is because excessive requests for information are often a barrier to providing hardship assistance and may prevent the early resolution of financial difficulty disputes.

To make an initial assessment, it is generally not necessary for an FSP to request copies of rental agreements, medical certificates, bills or rates notices. The exception would be if there is a particular reason for the FSP to doubt the information provided by the consumer.

Unless there is a valid reason why the documentation is not available, a consumer should be willing to support their request with relevant documentation.

If a consumer does not provide information, the FSP should still work to identify what options are available with the information it does have, even if this information is limited. If the consumer's primary banking relationship is with that FSP, the FSP will have a lot of information available to it already which can be used to make an assessment.

If an FSP doesn't have all the necessary information and needs to make some assumptions, it should state what assumptions it has made. For example, the FSP could assume that the monthly wages figure the consumer has given is accurate, even though the consumer may not have provided payslips.

If the FSP is unable to agree to a repayment arrangement based on the information available, it should provide the consumer with written reasons for its decision. The FSP should also identify what, if any, additional documentation it requires from the consumer in order to reconsider its decision.

Providing detailed written reasons lets the consumer assess whether they can meet the FSP's requirements and decide whether to make another proposal to resolve the situation. In other words, providing reasons to the consumer allows the conversation to continue so that the parties can work together to try and reach a solution.

2.3 Working with FOS

If the consumer and FSP have not been able to resolve the disputes themselves, the consumer may choose to bring the dispute to FOS.

We will consider a financial difficulty dispute by giving thought to how the FSP has responded to the consumer's financial difficulty in the past. We will also look at the options available to assist the consumer overcome their financial difficulty in the future. To do this, we require both parties to provide information to help us assess and investigate the dispute. The sooner we receive this information, the easier it is for us to help the parties negotiate a resolution.

FOS will look at how well the FSP responded to a consumer's previous financial difficulty and how the current situation can be overcome.

The information we often ask parties to send to us includes:

What we look at	What we need from the FSP	What we need from the consumer
How well did the FSP respond to the consumer's financial difficulty in the past?	<ul style="list-style-type: none"> • Contact records showing details of discussions with the consumer about their requests for assistance. • Copies of correspondence showing how the FSP responded to the requests for assistance. • Copies of any information the FSP relied on to make its decision about providing assistance. • A copy of account statements showing the history of payments, the balances outstanding and any default fees, charges or other costs debited to the consumer's account following the request for assistance. • If relevant, a copy of documents relating to legal proceedings, so that we can see the status of these proceedings and review whether or not we are able to consider the dispute. 	<ul style="list-style-type: none"> • A copy of any letters to the FSP that show what assistance was requested, and when. • Details of why the consumer believes the FSP has not met its obligations. • Details of any loss suffered as a result of the FSP's actions, including supporting documentation if available.

What we look at	What we need from the FSP	What we need from the consumer
How can the current financial difficulty be overcome?	<ul style="list-style-type: none"> • Enough details of the loan/s to be able to perform calculations such as a loan amortisation schedule. • Details of any payment arrangement that the FSP is prepared to accept. • Details of any additional information or other conditions that the FSP requires before it will agree to a proposed repayment arrangement. • If the FSP is not prepared to accept a payment arrangement, reasons for this decision. 	<ul style="list-style-type: none"> • For an individual, a completed Statement of Financial Position showing full and accurate details of their current circumstances. • For a small business, information relevant to the request being made of the FSP. • Details of how they expect their circumstances to change. • A realistic repayment proposal that will see the debt, including any arrears, repaid within a reasonable timeframe. • If they cannot afford a repayment arrangement, details of their alternative proposal (for example, a timeframe for sale of an asset).

We ask consumers in financial difficulty to provide us with a Statement of Financial Position (SOFPI). We will often still progress a dispute even if we have not received an SOFPI, including holding a telephone conciliation conference. This is because the consumer's situation can be discussed at the conference.

However, if the consumer does not provide an SOFPI then it may limit the assistance options the FSP will consider. Also, we will generally not require the FSP to vary a regulated credit contract if an individual (not small business) has not provided an SOFPI. More information on our power to vary regulated credit contracts can be found in our power to vary regulated credit contracts approach document.

If a consumer has lodged disputes with several FSPs, we encourage sharing all information with all FSPs. This can help to resolve the disputes, because each file may contain information that is relevant to our assessment of each dispute. For this reason, we may require the consumer to sign a Multiple FSP Authority form, which will allow us to share all the information with each of the FSPs.

2.4 It is in the consumer's best interest to pay what they can

A consumer should respond promptly to an FSP's reasonable requests for information, and make payments if possible. For example, if a consumer has suggested a repayment arrangement that has been rejected by the FSP, they should at the very least make repayments of the offered amount while we are considering the dispute.

Regular repayments can show that the consumer is able to service the debt, even if it is at a lower amount than the contracted payments. Not only will regular repayments reduce the amount of interest accruing, it may also result in the FSP viewing the consumer's proposal more favourably.

It is also important for the consumer to continue making whatever payments they can. This is because interest and fees will continue to be charged while the FSP is assessing their repayment proposal, and while FOS is considering any dispute. This may mean that equity in a property will erode and the arrears will continue to increase. For this reason, if the consumer does not make payments then their position is likely to worsen, and may reach a point where the financial difficulties cannot be overcome.

When the financial difficulty cannot be overcome

In some disputes it is clear that financial difficulty cannot be overcome with further assistance, even in the longer term, and the only realistic solution is the sale of an asset such as a home or investment property. In these circumstances we will encourage the parties to agree on a reasonable timeframe for the consumer to sell the asset voluntarily.

The situation is likely to be more challenging for both FSPs and consumers if there is long-term financial difficulty and there are no assets that can be sold. We cannot require an FSP to waive debt on the basis of long-term financial difficulty alone, so in these circumstances the options available to a consumer may be limited.

Resolution agreements

In order to reach a successful and lasting outcome, it is important that all parties understand what is required of them.

A large number of financial difficulty disputes that come to us are resolved by mutual agreement. An agreement can be reached at any stage of our process before we make a written decision about the dispute. If a hardship arrangement is agreed to, it is good industry practice for the FSP to confirm it in writing. The arrangement should include as much detail as possible about what the parties have agreed to, the timeframe for the arrangement and when normal repayments will resume.

A settlement occurs most often in a telephone conciliation conference where an in-principle agreement is reached. Following the conciliation conference, we ask the FSP to draft a settlement agreement reflecting what was agreed.

In [Circular 8](#)¹ we outlined several principles that FSPs should bear in mind when drafting settlement agreements. We consider the acceptance by both parties of a settlement agreement document ensures certainty for the FSP and consumer about what has been agreed to, and ends the existing dispute.

However, if an entirely new and unforeseen event of financial difficulty arises after the settlement has been agreed, the FSP should review the matter with fresh eyes. You can read more about what happens when a consumer requires further assistance in our [Dealing with common financial difficulty issues](#)² approach document.

Longer term financial difficulty

Financial difficulties may be short-term or longer term. The FSP's obligations under the Code of Banking Practice are not limited to short-term difficulties. Depending on the circumstances, including the type and length of time of the credit contract, a short-term solution may not be appropriate and a longer term solution will need to be considered.

The aim of any repayment arrangement should be for the debt to be repaid, even if that happens over a longer period. This means that any repayment proposal should be reasonable and realistic and should not simply be postponing inevitable default.

We encourage participants not to be constrained by timeframes, but instead be open to exploring viable options that will see the financial difficulty situation overcome, even if this is over a longer period of time.

Examples of longer term solutions include:

- Capitalisation of arrears, where the consumer is able to meet ongoing repayments but is not able to clear the arrears.
- Extension of the loan term, resulting in a permanent reduction of the repayment amounts.

While we encourage the parties to explore both short- and long-term solutions, a credit provider is under no obligation to waive debt on the grounds of financial difficulty alone. If the parties agree to temporarily suspend repayments but the FSP does not agree to waive interest or debt, the suspension should not be for so long that the debt becomes unmanageable in the long-term. Similarly, reduced repayments that are insufficient to repay interest should only be in place for a limited period, unless the FSP has agreed to reduce or waive interest.

We are increasingly seeing disputes involving consumers in long-term financial difficulty. We acknowledge that these situations are particularly challenging for both consumers and FSPs. For this reason we are committed to continuing to develop our approach in this area through ongoing consultation with FSPs and consumer representatives.

¹ Circular 8 (www.fos.org.au/the-circular-8-home/)

² Dealing with common financial difficulty issues (www.fos.org.au/approach)

3 Context

3.1 Case studies

Case 1: When financial difficulty cannot be overcome

Max and Susan, who were farmers, brought a complaint to us. Their farm had been affected by drought and the loan secured over the farm property had fallen into arrears of \$100,000. Over a number of years the FSP tried to assist them with various repayment arrangements, however, they were unable to return to making full repayments.

A telephone conciliation conference was conducted by FOS and the couple acknowledged that the only option was for the farm property to be sold. The parties agreed that Max and Susan would have an extended period of time because this allowed them to complete the next harvest and use this income to reduce their debt as well as ensuring the farm remained operational through the marketing campaign.

Case 2: A consumer should pay what they can whilst their proposal is being considered

Nick requested assistance when he was unable to make full repayments on his car loan, which had three years remaining. He provided the FSP with a Statement of Financial Position (SOFP) that showed that he could afford repayments of \$120 per month if the loan term was extended by a further year.

The FSP declined to vary the loan term and sought additional information from the consumer, including a statement from his non-English speaking partner regarding the payment of household expenses.

Nick lodged a dispute with FOS. FOS contacted the FSP and noted that the proposal put forward appeared to be reasonable based on the information held by the FSP. This was because the SOFP showed that:

- Nick could afford repayments of \$120 per month
- he had been making repayments of this amount for several months, and
- the extension of the loan term by one year would see the remaining debt repaid.

FOS considered that Nick had demonstrated an ability to repay the debt if the contract was varied. Therefore, it was appropriate for the Ombudsman to exercise his power to vary the regulated credit contract if a resolution was not reached between parties.

The FSP reconsidered its position and accepted Nick's proposal without the need for further information. The resolution was formalised in a settlement agreement.

3.2 References

Definitions

Term	Definition
CBP	Code of Banking Practice
Consumer	An individual or small business owner who uses the services of a financial services provider
Credit contract	A credit facility provided to an individual or small business which may include a consumer credit contract
Financial Difficulty	A consumer may experience financial difficulty if they are unexpectedly unable to meet the repayment obligations on a credit contract
FSP	Financial services provider (a business that has chosen FOS as their external dispute resolution scheme)
SOFP	Statement of financial position is used to provide current and accurate details of all aspects of a consumer's financial position

Useful links

This document is one of a series we have produced about financial difficulty. We have also created documents which cover:

- How FOS approaches financial difficulty, taking into consideration legal principles, industry codes and good industry practice
- Our power to vary regulated credit contracts
- Dealing with common financial difficulty issues

All four documents can be found on [our website](#) at

- www.fos.org.au/approach

The following sites provide useful information to help people experiencing financial difficulty:

- Australian Securities and Investments Commission's [MoneySmart](#) website www.moneysmart.gov.au
- Australian Bankers' Association 'Doing it tough' website www.doingittough.info
- [Financial Counselling Australia](#) website www.financialcounsellingaustralia.org.au

The following Code of Practice was referred to in this approach document:

- The [Code of Banking Practice](#)
<http://bit.ly/291ZkqN>