

The Credit Contracts and Consumer Finance Act

Applying for hardship – information for lenders and borrowers



The rules set out in this fact sheet apply to hardship applications made on or after 6 June 2015 – regardless of when the contract was entered into.

This fact sheet explains when a borrower may be able to apply for changes to a consumer credit contract because they are facing hardship. It is designed to give both lenders and borrowers an understanding of when a hardship application is appropriate and what types of changes can be made to a contract.

Anyone who is facing financial difficulty and thinks they may struggle to meet their debt repayments has two options. They should either talk to their lender as soon as possible to discuss changes to the contract or, if they qualify, they can make a **hardship application**.

Making a hardship application

Under the Credit Contracts and Consumer Finance Act 2003 (CCCF Act), a borrower has the right to ask their lender for a change to their personal loan, mortgage, credit card or other consumer credit contract, if they meet the following criteria:

- the borrower has suffered a hardship they couldn't reasonably have seen coming, such as illness or injury, loss of employment, the end of a relationship, or death of a partner or spouse
- as a result of that hardship, the borrower cannot reasonably meet their debt repayments, and
- the borrower believes they would be able to meet their debt repayments if the contract was changed in the ways specified by the CCCF Act (see below).

An application to change a consumer credit contract in these circumstances is called a **hardship application**. While a borrower can approach the lender at any time to discuss changes to a contract, if a borrower makes a hardship application a lender must consider it and follow specific processes required by the CCCF Act.^{1,2}

It is important that a borrower contacts their lender quickly if they cannot make their debt repayments as they have a limited time to make a hardship application if they are in default (see below).

Even if a borrower is not able to make a hardship application (because they don't meet the criteria or timeframes set out in the CCCF Act), a lender must still comply with the lender responsibility principles when the borrower is having difficulties under the contract.³ This includes that a lender must treat the borrower and their property reasonably and in an ethical way.

When can a borrower make a hardship application?

A borrower can make a hardship application at any time, unless the borrower:

- has been in default for two months or more
- has been in default for two weeks or more after receiving a repossession warning notice or Property Law Act notice, or
- has failed to make four or more consecutive debt repayments on their due dates.



1. All section references in this guidance are to the CCCF Act as amended in 2014.
 2. The relevant provisions are sections 55 – 59 of the CCCF Act.
 3. Part 1A of the CCCF Act; see section 9C.

Borrowers may only make one hardship application on the same grounds within any four month period, unless the lender agrees to consider another application.

If the borrower catches up on the debt repayments and defaults, they are again entitled to make a hardship application.

What changes can be made?

A borrower can ask for a contract to be changed by either:

- extending the term of the contract and reducing the amount of each payment, or
- postponing debt repayments for a specified period of time (a payment holiday), or
- extending the term of the contract **and** postponing debt repayments for a specified period of time (a payment holiday).

While these options will provide temporary relief, they are likely to increase the total amount owing on a loan.

The borrower cannot seek changes that are more extensive than is necessary to enable them to reasonably meet their obligations under the credit contract. The changes asked for must also be fair and reasonable to both the borrower and the lender when all the circumstances are taken into account.

Note: when a contract is being changed due to a hardship application, the lender is not permitted to increase the interest rate.

Is changing a contract the same as refinancing?

No. Having an existing contract changed following a hardship application is not the same as refinancing a loan. Refinancing may involve new fees and changes to parts of the contract, such as the interest rate.

A borrower may also choose to refinance with a different lender in which case an entirely new contract will be needed.

There will be advantages and disadvantages with either option, depending on a borrower's individual circumstances. For example, changing a contract may provide immediate relief from hardship, but no long term solution. Refinancing might enable a borrower to get a lower interest rate, but there may be fees for breaking the first loan early. In addition, other terms and conditions might be different and these could affect the borrower in different ways.

Any borrower facing financial difficulty should talk to their lender about what options might be available to help them, and what might be best for their particular situation.

What if a borrower has payment protection insurance?

A borrower should check their contract to see whether they have a payment protection plan or insurance which covers them for the loss of their job, sickness or the hardship that they face. If they have payment protection insurance, their debt payments may be covered. However, it is a good idea to apply for hardship at the same time as making an insurance claim, in case the insurance claim is declined. A borrower can discuss the effect of any insurance on their application with their lender.

How does a borrower make an application for hardship?

A borrower must make their application for hardship in writing and it must be given to the lender. The borrower must state in their application the reason or reasons for the unforeseen hardship. It may also help to include supporting information, such as a letter advising redundancy or a doctor's certificate.

An application letter must include the specific changes the borrower wants to make, ie, whether the borrower wants to:

- extend the term of the contract and reduce the amount of each payment under the contract, or
- postpone debt repayments for a specified period of time (a payment holiday), or
- extend the term of the contract **and** postpone debt repayments for a specified period of time (a payment holiday).

The borrower and lender must agree to the changes before a borrower is permitted to make any changes to the borrower's repayments.



What does a lender have to do when it receives a hardship application?

When considering a hardship application, a lender must comply with the lender responsibility principles. These require the lender to consider the hardship application in a careful, diligent and skilful way. They also require the lender to treat the borrower reasonably and in an ethical manner.

Lenders must meet specific timeframes within which they must acknowledge the hardship application, request further information from the borrower (if they need it), and make a decision.

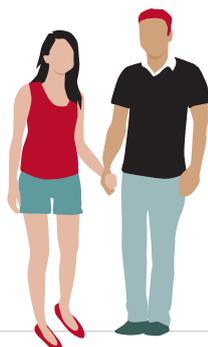
Lenders obligations when considering hardship applications

A lender must do the following things if they receive a hardship application:

- Send a written receipt or acknowledgement to the borrower within **5** working days of receiving the application.
- Send a written request to the borrower for any further information necessary to decide the application within **10** working days of receiving the application.
- If the lender does not request further information, they must decide whether or not to agree to the changes and notify the borrower (in writing) of the decision, within **20** working days of receiving the application.
- If the lender has not agreed to the changes, the lender must advise the borrower of the reasons for the decision, together with a clear summary of the borrower's rights to apply to the courts to change the terms of the credit contract.
- If the lender agrees to change the contract, the lender must provide the borrower with specific information about the change before the change takes effect.

If the lender has requested further information from the borrower, the lender must decide whether or not to agree to the changes by the later of:

- **20** working days after making the request for further information, or
- **10** working days after receiving the information requested.



A lender must not charge a credit fee for receiving a hardship application. However, if the application is successful and the contract is changed, a lender may charge a fee for the variation, providing the fee:

- is set out in the contract, and
- has been disclosed to the borrower.

Also, the fee must be reasonable and reflect the lender's costs of documenting the changes to the contract (excluding the cost of dealing with the hardship application).

If a consumer credit contract is secured over consumer goods, a lender must not take enforcement action in relation to those goods while they are considering a hardship application including:

- giving a repossession warning notice, or
- repossessing consumer goods or entering premises for the purpose of repossession.

There is one exception to this. A lender may repossess consumer goods while they are considering a hardship application if the goods are "at risk".⁴ However, lenders must not take any further enforcement action until the hardship application has been decided.

Does a lender have to agree to change a contract as a result of a hardship application?

No. A lender must **consider** a hardship application, but they do not have to agree to change the contract.

There are a number of reasons lenders may decline an application. For example, a lender may have reason to believe that:

- the hardship is not unforeseen, and the borrower reasonably could have anticipated the situation leading to the hardship, or
- the changes being proposed aren't reasonable – that is, the lender considers the borrower can afford to continue to meet their existing obligations under the contract.

If a lender does not agree to change the contract, the lender must:

- set out the reason for their decision in writing, and
- give the borrower a clear summary of their rights to apply to the Court to change the terms of the contract.

4. As defined by section 83E (2) of the CCCF Act.

What can a borrower do if they don't agree with the lender's decision?

If a lender does not agree to change the contract as a result of the hardship application, the borrower can ask the Court or Disputes Tribunal to change the terms of the contract in the way requested in the hardship application. The Court or Disputes Tribunal can order a change to the contract or make any other order it sees fit. The Court can also prevent any enforcement action from being taken against the borrower until it has made a decision about the application for hardship.

If a borrower does ask the Court or Disputes Tribunal to change the contract, the lender has the right to appeal any orders made.

A borrower can also complain to the lender's financial dispute resolution service if they disagree with the lender's decision to decline their application for hardship.

Lenders and borrowers

The CCCF Act uses a number of different terms to describe lenders and borrowers, depending on the nature of the transaction:

- responsible lending – lenders and borrowers
- consumer credit contracts – creditors and debtors
- consumer leases – lessors and lessees
- buy-back transactions – transferees and occupiers.

In these fact sheets, the terms **lender** and **borrower** are used when referring generally to credit transactions, but the specific terms are used where these help readers better understand their rights and obligations.

This fact sheet provides guidance only. It is not intended to be definitive and should not be used in place of legal advice. You are responsible for staying up to date with legislative changes.

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