



# Consumer Rights under a Consumer Credit Contract – Hardship

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 may be 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 should talk to their lender as soon as possible.

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

- the borrower has suffered a hardship they couldn't 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, they can't meet their repayments.
- they believe they would be able to meet their repayments if the contract was changed.

When they apply for a change to their contract, a borrower must not already be behind in their repayments, and their account must not be over its credit limit. In other words, it is important a borrower contacts their lender as soon as the borrower thinks they might not be able to make a payment.

If a borrower is behind in their repayments or has exceeded their credit limit, they can still apply for a change to their contract once they manage to get up to date again.

## How can a contract be changed?

A contract can be changed by either:

- reducing the amount of each payment and extending the period of the contract
- postponing payments for a period of time (a payment holiday)
- combining the above.

While all of these options will provide temporary relief, they will actually increase the total amount owing on a loan.

### Lenders and borrowers

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

- for consumer credit contracts it uses creditors and debtors
- for consumer leases it uses lessors and lessees
- for buy back transactions it uses transferees and occupiers.

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

### **Is changing a contract the same as refinancing?**

No. Changing an existing contract due to hardship is not the same as refinancing a loan. When a contract is being changed due to hardship, the lender can't change the interest rate being charged (unless they lower it). The lender can only change the amount and timing of each repayment.

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.

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, but no long term solution. Refinancing might enable a borrower to get a lower interest rate, but there are likely to be fees for breaking the first loan early.

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. If they do, their 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 claim is declined.

### **How does a borrower make an application for hardship?**

A borrower should put their application for hardship in writing, so they have a record of what they've requested, when and why.

An application letter should clearly state that the borrower is making an application for hardship under the Credit Contracts and Consumer Finance Act. It must include the specific changes the borrower wants to make, such as whether the borrower wants to:

- extend the term of the contract, and if so, for how long
- reduce the amount of each payment under the contract and to what amount.

It may also help to include:

- why the application is being made – in other words, the reason the borrower can't meet their existing repayments
- any supporting information, such as a letter confirming an unemployment or sickness benefit or a doctor's certificate.

The borrower and lender must agree to the changes before a borrower makes any changes to their repayments.

**Any borrower facing financial difficulty should talk to their lender.**

## Does a lender have to accept an application for hardship?

No. A lender does not have to accept an application for hardship. There are a number of reasons they may turn down an application. For example, the lender may have reason to believe that:

- the changes being proposed aren't reasonable – that is, the borrower can afford to pay more
- the borrower is unlikely to be able to pay off their debts in the longer term
- the hardship could have been anticipated.

A lender may also turn down an application for hardship if the borrower is ineligible because they have already defaulted on their repayments or are over their credit limit.

If a borrower thinks their lender has unfairly declined their application for hardship, they can ask the Court or Disputes Tribunal to consider their 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 review their application, the lender has the right to appeal any orders made.

### Contact Us

Contact the Commerce Commission with information about possible breaches of the Credit Contracts and Consumer Finance Act.

**Phone:** 0800 943 600

**Write :** Contact Centre, PO Box 2351, Wellington 6140

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