

Credit providers need to help with long-term financial hardship

John Dickinson of Just Budget argues that credit providers need a policy in place to help clients in the long run

Let's face it, no credit provider wants to learn that their client is struggling and is unable to pay back a loan at the required level. Creditors are faced with this situation every day and we find that while some approach these matters commercially and with the borrower's interests in mind, many are still taking a hard line, often to their own detriment.

There is legislation related to financial hardship that creditors must comply with, and among the most relevant is the National Consumer Credit Protection (NCCP) Act. This legislation states that a debtor who is unable to meet their obligations under a contract due to illness, unemployment or other reasonable cause may apply for a change to the terms of the contract.

An application by a debtor must seek to change the terms of the contract in one of the following ways:

(a) Extending the period of the contract and reducing the amount of each payment due under the contract accordingly (without a change being made to the annual percentage rate or rates);

(b) Postponing during a specified period the dates on which payments are due under the contract (without a change being made to the annual percentage rate or rates);

(c) Extending the period of the contract and postponing during a specified period the dates on which payments are due under the contract (without a change being made to the annual percentage rate or rates).

The NCCP does not state that relief in cases of financial hardship can only to be provided over a limited period. This is interesting as many credit providers still hold this view.

Another relevant code that covers financial hardship is the Banking Code of Practice. This is a voluntary scheme; however, once a credit provider has subscribed to it, they are under an obligation to comply with its principles. Most major lenders subscribe to this code, which states:

With your agreement and co-operation, we will try to help you overcome your financial difficulties with any credit facility you have with us. We could, for example, work with you to develop a repayment plan.

The Banking Code of Practice does not limit the time in which financial assistance



is to be offered. It is clear that the intention of this code is for a credit provider to offer assistance that is consistent with a borrower's financial situation, and not just to apply a blanket short-term solution that in many cases does not take the borrower's financial circumstances into account.

“UNFORTUNATELY, MANY CREDITORS HAVE NO CLEAR INTERNAL POLICIES FOR DEALING WITH CASES OF LONG-TERM FINANCIAL HARDSHIP”

The Credit and Financial Ombudsman Services also have strong views on hardship, as do ASIC and the ACCC. However, much of the information published by these bodies is more of an expectation or guideline than actual policy and is therefore subject to interpretation. As a result, there can be confusion and misunderstanding by some creditors in regard to what their obligations actually are with respect to offering financial hardship assistance.

The period of time in which assistance is offered can also be a problem for borrowers. Generally speaking, credit providers look at offering assistance over a relatively short period of time, typically 90 days. While such

a solution can help people who are experiencing a temporary restriction of cash flow, this doesn't help those who need financial assistance over a longer period.

Unfortunately, many creditors have no clear internal policies for dealing with cases of long-term financial hardship. It's common for a creditor to offer a borrower a short-term solution to what is a long-term problem and then pass the debt on to their collections area or even a mercantile agent when the borrower is unable to continue with regular payments. These situations have the potential to push borrowers into exploring insolvency options such as a 'Part IX'. While insolvency may be appropriate for some, there is no doubt that many people are forced into this option unnecessarily.

The good news is that some credit providers are becoming aware of this and have formed new divisions to handle cases of longer-term financial hardship. These credit providers understand that if they work with their clients in a positive and productive way they are far more likely to not only effectively help their clients but also recover what they are owed.

We find that most people who are suffering long-term financial hardship want to pay what they owe; they just need a little help and understanding to do so.

Credit providers who take a more flexible approach to financial hardship and offer longer-term solutions are leading the way to positive change within the industry, which ultimately will help them as well as their clients. **EB**