

Banking and Finance - Bulletin 53

March 2007

In this issue:

Follow up to Bulletin 46

- Customers in financial difficulty – Code of Banking Practice and UCCC Obligations

** On 1 July 2008, the Banking & Financial Services Ombudsman (BFSO), Financial Industry Complaints Service (FICS) and Insurance Ombudsman Service (IOS) merged to form the Financial Ombudsman Service (FOS).*

ISSN 1834-6510

Introduction

In June 2005 we issued Bulletin 46 which tackled issues concerning obligations owed by members of the Scheme who have subscribed to the Code of Banking Practice (“CBP”) to customers in financial difficulty.

We also discussed how we approach disputes which raise the hardship variation provisions of the Uniform Consumer Credit Code (“UCCC”).

In particular, in that Bulletin we:

- Described the circumstances which might give rise to financial difficulty. Those circumstances included illness and unemployment as mentioned in section 66 of the UCCC but also a range of other circumstances including an increase in overall liabilities and maladministration by a credit provider;
- Said that we regard compliance with clause 25.2 of the CBP as consistent with good industry practice for members of the Scheme which have not subscribed to the Code. In cases where the only issue raised in relation to a non subscribing member relates to a request for a variation under section 66, our practice is to draw the attention of both parties to our view about good industry practice and to suggest that the non subscribing member have regard to Bulletin 46 when considering such a request. We tell the customer that we will not investigate these cases, because ultimately we cannot make an order requiring a variation and we consider it more appropriate and time efficient for a dissatisfied customer to apply to the relevant state Tribunal;
- Said that we will review the manner in which a member of the Scheme has responded to an application for assistance under either clause 25.2 when it applies and/or section 66 but that we cannot impose a repayment arrangement or a change to the credit contract. Our ability to review the process, particularly in relation to clause 25.2, comes from the fact that the obligation to try to work with the customer under the CBP is contractually binding. While the outcome is a commercial matter for the subscribing bank, whether or not the steps taken amount to compliance with this promise falls squarely within our jurisdiction; and
- Set out in some detail the matters we would consider when determining whether we consider that the obligation under clause 25.2 of the CBP and good industry practice has been met in a particular case.

At the centre of compliance with these obligations is that the credit provider responds when put on notice that the customer is in financial difficulty and gives real and genuine consideration to the relevant information their customer has provided about their financial position.

Since Bulletin 46 was issued, we have dealt with a number of cases which raise financial difficulty. The surrounding circumstances of the cases are often complex. The customers are usually under great financial pressure, not only from their financial

institutions but also from other service providers. Subscribing banks are faced with the challenge of managing overdue accounts in a fair manner but also in a way that minimises the negative financial consequences for both parties.

We thought it timely to discuss some of the issues which have arisen and how we consider they ought to be addressed.

In this Bulletin:

- We discuss systemic issues we have identified as arising under clause 25.2 of the CBP;
- We provide direction on issues which have been raised in disputes; and
- We include individual case studies which illustrate some of the wide variety of matters we have considered under clause 25.2 of the CBP and which can also arise under section 66 of the UCCC.

It is important to note that this discussion is primarily concerned with cases where maladministration or another claim which might affect legal liability does not arise. Accordingly, in cases where the only mitigating factor is financial difficulty, there is no presumption that repayment arrangements should involve waiver of interest or debt write off.

Having said that in two of the case studies there was an offer from the relevant bank to reduce the principal debt, with one of those cases also raising possible maladministration. In other cases we have seen offers to waive interest.

These offers indicate that, in individual cases, careful consideration has been given to the particular circumstances of the disputant and the resolution has been developed to take a realistic approach to their capacity to repay and the individual bank's interest in recovering as much of the debt as is reasonable in the circumstances. It is encouraging to see Scheme members taking a practical approach to these issues.

The case studies below ought not to be taken to indicate what the outcome should be in similar cases but they can be taken as illustrations of a Scheme member giving real and genuine consideration to their customer's financial difficulty.

While some of the matters discussed in this Bulletin arise primarily from the CBP, many comments can equally apply to Scheme members who are not subscribers to the CBP. Where the point being made relates only to the CBP we refer to "banks". Where the point has broader application we refer to "Scheme members".

Systemic Issues

In our 2005 - 2006 Annual Report we reported that we had received several disputes about a number of our bank members which indicated that those banks were not complying with clause 25.2. In particular, we had concerns about the second limb of

clause 25.2, that is the obligation to inform customers in financial difficulty about the hardship provisions of the UCCC if they could apply to them.

In order to resolve the particular systemic issue the individual member banks agreed to take steps such as:

- Updating procedures to ensure that genuine consideration would be given to the customer's individual circumstances;
- Revising standard form correspondence to inform customers of their rights under the UCCC;
- Providing written reasons to customers for declining a financial difficulty application; and
- Training staff to recognise when customers are experiencing financial difficulty.

Since the 2005-2006 Annual Report was published, we have continued to receive disputes which point to systemic issues in this area.

We have advised a number of member banks that we believe they have a systemic issue in relation to their compliance with the first limb of clause 25.2, that is the obligation to try to work with customers in financial difficulty.

It has become apparent that across a number of banks the material provided to customers and the internal processes applied focus almost entirely on the matters arising under section 66 of the UCCC and do not pay adequate regard to the fact that:

- Financial difficulty could arise from circumstances other than illness, unemployment or another cause; and
- The ways in which a subscribing bank may respond to those circumstances are potentially broader than by the express changes described in section 66.¹

Some of the forms of communication or processes about which we have concerns include:

- Staff appearing not to respond when a customer indicates that he or she is in financial difficulty and so information about how to obtain assistance with their financial difficulty is not given. In some cases it seemed that the bank member did not respond at all unless and until the words "financial difficulty" or "hardship" were used by the customer and then the response was driven by the UCCC rather than the broader CBP obligations;

¹ The changes which may be made on an application under section 66 are limited to extending the contract and reducing repayments (no change to interest rates); postponing during a specified period the dates on which payments are due (no change to interest rates); or a combination of both.

- Requiring customers to show that there is a “reasonable cause” for their financial difficulty which indicates a UCCC focus rather than looking at what the financial position of the customer is, separate from the cause;
- Customers being told that, if specified information was not returned within comparatively short time frames, the account would automatically be referred back to collections meaning that the application would also be automatically rejected. In our view a short time frame does not recognise the time needed to seek and receive supporting documents from bodies such as Centrelink;
- Procedures which limit available responses to short term solutions of three months duration rather than looking at longer term solutions which may be more appropriate. In some cases the use of three month moratoriums seem to be driven by an exception to the UCCC section 65 obligation to document a change. The exception arises under sub section (2) where the change defers or reduces obligations for a period not exceeding 90 days. Again this seems to show that responses are confined to UCCC considerations. The question of moratoriums is discussed further below;
- Requiring the customer to apply to access their superannuation before an application for assistance will be accepted; and
- Not applying clause 25.2 processes to small business or investment loans or if the loan value is over the UCCC threshold, most recently \$309,760.²

While it is not the role of this office to approve individual bank’s procedures, we will review the applicable guidelines to try to understand why the dispute has arisen and take into account practices we have identified in our dealings with other Scheme members. If a systemic issue is raised by our review, our usual procedures will be applied to the resolution of the matters raised.

Moratoriums - Credit Cards and Other Lending

In Bulletin 46 we said in relation to moratoriums:

- Financial difficulties may be short term or long term. Depending on the circumstances, including the type and duration of the credit contract, a short term solution may not be appropriate and a long term solution ought to be considered;
- The aim of any repayment arrangement should be, however, that the debt is repaid, even if that happens over a longer period. This means that any repayment proposal should be realistic and should not simply be postponing inevitable default;

² The threshold is a floating threshold linked to an Australian Bureau of Statistics (ABS) index of the cost of new houses in Sydney. The hardship threshold equals 110% of the average loan size for the purchase of new dwellings in New South Wales. This figure is released monthly by the ABS and set out in the Table of Housing Finance Commitments in the publication entitled Housing Finance Australia.

- If there is to be a moratorium on payments, but the credit provider does not agree to waive interest, the moratorium should not be for so long that the debt blows out and becomes unmanageable in the long term; and
- A moratorium on payments should only be sought where there is some prospect that the customer's circumstances will improve and they will be able to catch up on missed repayments within a reasonable time. Similarly, reduced repayments that are insufficient to repay interest should only be in place for a limited period unless the credit provider agrees to forgo interest.

It can also be noted that moratoriums may raise other issues. For example, where the credit card limit has been reached and so the accruing interest will lead to that limit being exceeded. In those circumstances we would expect a bank which agreed to a moratorium to agree to waive overlimit fees as to do otherwise could not be said to amount to trying to assist the customer to overcome their financial difficulty.

Given that credit card minimum payments tend to be set to repay interest plus a comparatively small amount of principal, there are very limited opportunities to vary the arrangements. In cases where there is no real prospect of an improvement in the customer's financial position, it might be preferable to consider the possibility of refinancing the credit card debt into an unsecured personal loan at a lower rate and a reasonable term for repayment provided that the customer meets the applicable lending guidelines. Of course, in such a scenario it would be expected that the credit card would be cancelled so that further debt cannot be incurred. To do otherwise may amount to maladministration.

For personal loans and home loans a moratorium may be quite appropriate where a change in the disputant's financial position is foreseeable. This is because the term of the loan may be able to be increased to ensure repayment of the debt, albeit over a longer time frame. Reduced repayments for a period of time may also be an option.

Multiple Debts and Requests for Reduced Payments

We receive many disputes from customers who have multiple credit facilities, only one or some of which may be held with banks which subscribe to the CBP. These customers often have other debts which they are also having difficulty repaying.

As stated in Bulletin 46 it is important that customers and their advocates are willing to provide updated and accurate information about their financial position to all of their creditors and to put forward realistic repayment proposals in relation to their debts.

In our view it is not an adequate answer under the CBP to say that a bank will not agree to a reduced repayment amount unless other creditors are also paid less than their full entitlement. While there is no obligation on a credit provider to agree to accept lesser payments than are required under the credit contract, this option should not be automatically excluded from consideration. To do so would suggest that a bank has not given real and genuine consideration to the customer's financial difficulty.

Of course, if the reduced repayments being sought would not pay out the debt or cover interest then the request may well be rejected. To demonstrate compliance with the CBP the bank should provide reasons for its decisions taking into account all of the customer's circumstances.

A blanket refusal to consider anything less than the full contractual entitlement may lead the customer to choose bankruptcy with the result that none of the creditors, including the subscribing bank, are paid. These comments can equally be applied to Scheme members who have not subscribed to the CBP.

Repeat Requests for Assistance

We have seen cases where an arrangement has been made as a result of a request for assistance and then at the end of that arrangement further assistance is sought.

No Change to the Disputant's Circumstances

If it is apparent that the bank gave genuine consideration to the initial request for assistance and that the disputant's financial position has not changed since that assessment, there may be little this office can do. This is because we cannot require the bank to agree to extend an arrangement or enter into another arrangement where we are satisfied that the initial arrangement was reached after an appropriate consideration of the disputant's financial position.

An Improvement in the Disputant's Circumstances

If, however, there has been a change in the disputant's financial situation, it would be appropriate for the Scheme member to again undertake an assessment of the disputant's financial position in order to comply with clause 25.2 and/or section 66.

Mr and Mrs A had made an application to a bank for assistance under clause 25.2 regarding their home loan which was in arrears. The request was rejected and a dispute was lodged with this office. Our preliminary view was that the bank had not complied with clause 25.2 for a number of reasons including the fact that it had assessed the request as if it were a new loan application.

While the case was under investigation, Mr A said that as a result of a workplace review his salary had increased and he had also taken on some additional work. Having made no repayments for in excess of a year, regular repayments were commenced. Mr A was unable to provide definitive information about the extra work, but he did establish that his income had increased. Coupled with the fact that the security property had also increased in value since last valued by the bank, it seemed to us that, if the term of the loan was extended, repayment would be affordable. The bank came to the same view and offered to refinance the loan at a more advantageous rate. On this basis the long running dispute was resolved.

Mrs B had a home loan and the balance owing on 30 June 2005 was around \$149,500. In October 2005 the bank agreed to a request to reduce the mortgage repayments from \$285 per week to \$200 for 12 months.

In early September 2006, Mrs B's agent wrote to the bank informing them that her financial position had not improved and requested a further twelve month extension. The bank rejected the request.

On 30 October 2006 the bank advised Mrs B that she was in default of her contract and had failed to make payments totalling \$1911.00. She was given 38 days to repay this amount.

At this time Mrs B had been seeking employment since 20 October 2005.

When the case was referred to the bank for response by BFSO it again declined Mrs B's request to reduce repayments on the home loan for a further 12 month period. This was because the bank did not think that such an arrangement was likely to result in Mrs B overcoming her current financial situation and the bank was concerned the debt would increase to a level that would not be manageable in the long term. A continuation of repayments of \$200 per week for 12 months would not have covered interest and would have increased the loan arrears to more than \$6,500.

The bank was, however, prepared to continue with the reduced payments of \$200.00 per week for a further period of three months.

Mrs B decided to access her superannuation and made a payment of \$6,500 into her home loan account in December 2006. As a consequence the loan was almost \$3,400 ahead and the bank agreed that she could use those funds to meet payments of \$200 per week until September 2007, as long as she did not redraw any available funds.

This arrangement allowed more time for Mrs B to continue looking for employment.

Arrangements with One Debtor about a Joint Debt

We have received disputes where one joint debtor has sought assistance under clause 25.2 and/or section 66 because of financial difficulty but the other joint debtor has not been a party to the dispute and is not able to be contacted by either the disputant or the Scheme member. In other cases, where there has been a breakdown in the relationship, the other party wants the loan to remain in default so that the bank will take action to sell the property.

Ideally, any application to vary a contractual arrangement should be made by all borrowers. Where that is not possible, it is our view that a bank should consider the application from one of the borrowers and, if the bank is of the view that the arrangement is satisfactory, it should write to both debtors setting out the proposal to which it is prepared to agree. The party who did not make the application could be invited to say why the proposal should not be implemented, including any proposal they may have to ensure that the loan is up to date and payments made on time.

In circumstances where there has been a breakdown in the relationship between the co-borrowers and one co-borrower is not making payments but does not agree to a repayment proposal, a practical solution may be for the bank to agree to a short term repayment arrangement with the co-borrower who is making repayments while the co-borrowers resolve their differences in the Family Court or in another forum.

In our view these suggestions are consistent with the "several" obligations of co-borrowers.

While there is not any specific authority on this point, some support is gained from the decision of *Commissioner for Consumer Affairs v Burton and General Motors Acceptance Corporation* [1980] WAR 218. In this case relief was granted on the grounds of hardship to one of the two hirers who was in financial difficulty, even though the other was not. It was enough that it could be shown that one of the two co-hirers had become adversely affected in terms of s 36A of the Western Australian *Hire Purchase Act*. Wallace J stated that where there were one or more hirers, the financial position of them as a whole will be adversely affected by the position of the one out of employment.³

Mr C approached the bank for assistance in relation to a joint personal loan. He said that as his partner was not contactable and was not contributing to the loan and as he was receiving a disability support pension he could not repay the whole loan himself. He asked to be held liable for half.

The bank said that it could only consider a request if both parties to the loan sought assistance as it could not vary a loan contract without the consent of each party. It said that if the other party did not become involved the arrears would have to be repaid and the required repayments made to avoid legal action.

We wrote to the bank and said that, in circumstances where Mr C had requested assistance on the grounds of financial difficulty, where he was no longer in contact with the co-borrower and where she was not making any contributions to the repayment of the loan, the bank was still obliged to give effect to clause 25.2 in its dealings with Mr C. A refusal on the part of the bank to enter into discussions as to how it may be able to assist Mr C may have been a breach of the bank's obligations under that clause.

We noted that Mr C had offered to pay half of the amount outstanding in exchange for a release of his liability under the current loan contract and acknowledged that, if under the contract the borrowers were jointly and severally liable, the bank was entitled not to accept this proposal. We said, however, that, if this was the bank's decision, it should provide Mr C with reasons and, further, explain to him the contractual basis on which it is entitled to hold him liable for the repayment of the debt in full.

We also said that, as the liability was joint and several, the bank could still consider whether it could develop some repayment plan with Mr C in respect of the liability. Therefore, it would have been appropriate to request information from Mr C concerning his current financial position in order to assess what arrangement(s) may have been possible, in accordance with the bank's usual procedure for dealing with customers in financial difficulty.

³ At p 222

The bank took up this suggestion and asked Mr C to provide information about his then financial position. It said that it was considering accepting half the required monthly payments for a period of three months and deferring the balance to be payable at the end of the personal loan term. Mr C responded with the requested information. He said that he would still have difficulty meeting half the usual repayments and said that a reduction for three months would not address this. He also expressed concern that the bank was not seeking repayment from the other borrower.

The bank advised that it had been seeking repayment from the other borrower and that she had refused and indicated that there may be a property settlement between her and Mr C which would cover the personal loan debt.

The bank and Mr C agreed that he would pay half the required repayments for three months. Our file was closed on the basis that we were satisfied that the consideration given by the bank was appropriate. Mr C was encouraged to seek legal advice about his options in relation to a property settlement with the co-borrower.

Responding to Information Requests

In some cases it appears that disputants are being asked to provide information which is not strictly necessary to allow the bank member to make an assessment under clause 25.2.

An example is a request for detailed medical records in addition to a doctor's certificate to support what a customer has said about his or her medical condition. While some confirming medical information might be appropriate, requests for detailed material indicate a focus on section 66 and short term changes rather than the broader considerations arising under clause 25.2.

If adequate information is held about the disputant's current financial position then the next step is for the bank to make an assessment as to any proposal it can make to achieve repayment of the debt on reasonable terms. We note that in many cases the disputant holds accounts with the bank and so those records can assist in determining what income is received. If some information is missing and is not provided by the disputant, it is open for the bank to make its assessment and state expressly any applicable provisos or assumptions made. The onus would then be on the disputant to show that incorrect information has been used or that an assumption is incorrect.

We also see cases where disputants and their advocates provide insufficient information for the Scheme member to assess the financial position of that customer who simply says that he or she cannot afford to repay at all.

Where past efforts to obtain information have been unsuccessful and a disputant will not provide a current statement of financial position and/or necessary supporting material, we consider that a response should be sent to the customer which sets out any repayment arrangement the bank would accept or, if none are regarded as appropriate, an explanation as to why that is the case.

If genuine consideration has been given to options based on what information is available, we are likely to conclude that the obligation under clause 25.2 has been met.

Collection Activity during the Assessment Process

In Bulletin 47 we discussed the 2005 Debt Collection Guideline issued by ASIC and the ACCC. We drew attention to aspects of the Guideline which concerned debt collection and external dispute resolution. The Guideline encourages debt collectors to allow the dispute resolution process in the context of debt collection to work effectively and, in particular, it says:

- Collection activity should cease when a debtor disputes a debt and the creditor is investigating that dispute. A credit listing should not be made in relation to a disputed debt;
- When applicable, creditors and debt collectors must advise debtors of an EDR scheme to which the debtor can take his or her unresolved dispute, ensuring that this information is provided at the appropriate time;
- Once a dispute about a debt has been referred to an EDR scheme, collection activity should cease while the dispute is considered;
- A debt should not be sold, or passed on to an external agent for collection, while the EDR scheme is considering a dispute; and
- If the debt is inadvertently sold, the assignor/creditor should seek to retrieve the debt from the assignee and/or seek to ensure that the assignee does not undertake collection activity or start legal proceedings until the EDR scheme has resolved the dispute (and only if liability is confirmed).

In our view these same comments can be applied to an assessment under clause 25.2 and/or section 66.

Credit Reporting

We have seen cases where a debt has been listed before a request for assistance has been finalised. In such cases, as outlined above, it is inappropriate to continue with collection activity and so this precludes the issuing of notices necessary to comply with the notice requirements contained in the *Privacy Act 1988* (Cth) and the Credit Reporting Code of Conduct.

Further listings in these circumstances would not appear to be in the spirit of the CBP and may also put an end to any opportunity for the customer to refinance the debt with which they are having difficulty into a debt that he or she can manage.

Where a Scheme member has met the notice requirements for listing prior to commencing a clause 25.2 or section 66 assessment and intends to list the debt which has been overdue for more than 60 days even if a repayment arrangement is reached,

in our view the intention to list ought to be clearly disclosed to the customer before any repayment arrangement is finalised.

Mr D complained that, as a consequence of illness, he had fallen into arrears on his line of credit account. He sought assistance from a financial counsellor in April 2006 and the counsellor asked for consideration of a financial difficulty claim. After this request had been made Mr D said he received continued telephone and written contact about the debt. The required information was provided to the bank and an arrangement was reached.

Later in 2006 Mr D was able to resume work and made enquiries about refinancing his debt only to find the line of credit debt had been listed between when the request for assistance had been made and when the arrangement had been reached. Mr D complained about the listing having been made and claimed loss arising from his inability to refinance.

The bank said in its first response to Mr D that it was entitled to default list the account as it had been in arrears for an extended period of time but that, as the account was under review at the time of listing, it had arranged for that listing to be removed.

In relation to the claim for loss, it referred again to the lengthy period of arrears. It also noted that Mr D had not refinanced since the default listing had been removed and this was inconsistent with the claim that the existence of the default had prevented the disputant from refinancing.

We asked Mr D to show that he had sought refinance while the listing was on his credit record and what loss had been incurred. As that information was not provided, our file was closed.

Note: had the case continued an issue would have been the continued contact with the disputant when he had appointed a financial counsellor who was in discussions with the bank. Such action may have given rise to a claim for non financial loss under the ACCC/ASIC Debt Collection Guidelines.

Conditional Offers

We have recently seen a number of cases where an offer is made to resolve a dispute by the disputant paying a lesser amount in full and final settlement of a dispute but with the proviso that a default listing will be made. In some cases alternate offers are made: a repayment arrangement for the whole debt or acceptance of a lesser amount with consent for a listing.

Our concerns in these cases are:

- Whether the Scheme member has complied with the notice requirements contained in the *Privacy Act 1988* (Cth) and the Credit Reporting Code of Conduct and what amount is intended to be listed. An individual disputant's consent to be listed cannot overcome the strict obligations which must be met before a listing can be made; and
- Where there is no obligation under legislation to list, then the seeking of consent to do so may, in some circumstances, amount to unfair pressure or have a punitive effect. An offer to accept a lesser amount on an existing debt,

presumably on commercial grounds, from a customer in financial difficulty ought not to be linked to future requests for credit in this way.

Further Case studies

The following case studies are additional illustrations of how we have resolved or assessed individual disputes. As we always consider each case on its own facts, these cases should not be read as setting out prescriptive guidelines but they can be taken as indicating the matters we may consider in a similar case.

Unexpected Events Leading to Financial Difficulty

Mr E was \$4,400 in arrears on his car loan due to family and unexpected financial difficulties and his vehicle had been repossessed. Mr E said that he had attempted to make payment arrangements and he was willing to make two \$2,000 payments in December 2006. He complained that the bank was unwilling to consider this proposal. On his dispute form Mr E wanted to get his car back to repair it and then "take it from there".

Before the dispute was received by us the bank had forwarded Mr E documentation for completion to assess his financial position but the completed forms had not been received by the bank.

The parties came to the following arrangement:

- Mr E agreed to pay \$2000 before the end of December 2006 and a further payment of \$2800 by early to mid January 2007;
- Mr E was to send to the bank by early January documents showing that the vehicle registration and comprehensive insurance were up to date. He was also to provide information setting out his financial position;
- Upon receipt of the requested information and the first promised payment the bank would arrange for the vehicle to be returned to Mr E. Mr E accepted that, under the terms and conditions of the loan, he was liable for the repossession costs which had been incurred; and
- With the arrears repaid usual loan repayments would then be made.

This case study is an illustration of the bank genuinely "working with" its customer to not only deal with the problems he was having with the debt but also allowing him to have access to his vehicle again which was more likely to lead him to be able to earn an income to repay the debt.

Financial Difficulty Linked to Overcommitment

In November 2004 Ms F obtained a \$7,000 personal loan. In October 2005 she obtained a 'top up' of that loan of an additional \$9,000. At the time her only income was a Centrelink benefit and by January 2006 she was unable to meet her loan repayments.

Ms F requested to have her repayments altered, however this was declined and the bank would only consider extending the loan by four months. Ms F did not think the bank had adequately responded to her concerns and that she should not be liable for the 'top up' loan. The bank denied that there was any maladministration in the assessment of the top up funds. The limited information about the loan approval indicated that the information on the application may not have been accurate. If this had been established then, in accordance with our approach in Bulletin 45, we would have concluded that the bank would have been entitled to rely on it unless it was clearly questionable or unusual.

Financial information about her position at the time the dispute was being considered was provided by Ms F. While there were inconsistencies in some respects, it was apparent that Ms F was supporting her child without assistance from the father and that her income was solely from Centrelink benefits. The information also showed that she had changed rental accommodation and was paying more than she had in the past. The bank commented that, while the increased rent was a factor in her ability to repay, the decision to move was Ms F's decision. It would seem to us that caution ought to be applied when commenting on how applicants for assistance spend their income as all of the surrounding circumstances may not be known.

In one letter the bank stated that "the *standard* arrangement for repayment of *any* debt during a time of financial difficulty is at a rate of up to 10% of the Centrelink benefit amount received" [our emphasis]. The bank very fairly followed this comment by acknowledging that repayment at this rate would lead to severe financial difficulty for Ms F and her child.

The dispute was resolved with Ms F accepting the bank's proposal that the total amount of the loan be reduced to \$15,500 and repayable without interest at the rate of a minimum of \$15 per fortnight. While this meant that the loan would take some time to repay, as Ms F was undertaking tertiary studies and so was likely to obtain employment in the future, it was not regarded as unreasonable.

It was our view that this result was more than fair even if there had been maladministration in granting the additional \$9,000 as interest would have been payable on the initial \$7,000.

The reference to 10% in the bank's letter would seem to come from the fact that under the Centrelink Code a financial institution is limited to 10% of any one Centrelink payment to meet certain types of debt owed by a Centrelink recipient. Given that the operation of the Centrelink Code is discussed in Bulletin 39 it is not necessary to

comment here at length on its detail other than to say this statement by the bank would seem to be inconsistent with the intentions behind the Centrelink Code and is potentially misleading in this context because it is suggesting that all Centrelink recipients are obliged to agree to pay 10% of their benefit to repay any debt when they are in financial difficulty. Banks should be wary of setting policies that include fixed positions about minimum payments or terms of arrangements because this is not necessarily an appropriate way to approach clause 25.2.

Financial Difficulty Leading to Homelessness

Ms G had taken out a personal loan to purchase a car for a family member. The car had been involved in an accident and required repair. Her financial counsellor wrote to the bank explaining this background and saying that her client was currently unemployed and homeless, the latter in part because of the continuing debiting of loan repayments. Ms G had applied for Newstart Allowance and had applied for a number of positions. In the meantime she was working on a voluntary basis to assist her prospects of employment. Ms G's financial counsellor sought a three month moratorium on payments to allow Ms G time to find employment and recommence repayments. A request was also made for the waiver of late payment fees.

In a letter of complaint to our office, we were told that, in its direct response to the financial counsellor the bank said it would allow a three month moratorium but that on its expiry, repayment of the whole debt of nearly \$10,000 would be payable. The offer was rejected. The letter also said that, on her next contact with the bank, the financial counsellor was told that legal action had commenced. This was in fact not the case. Ms G's agent complained that the bank's response to Ms G's severe financial difficulty, in relation to her personal loan, has been inappropriate and inadequate.

We referred the dispute to the bank which reviewed Ms G's circumstances. Part of those circumstances included that two payments of \$200 were taken from Ms G's account incorrectly, Ms G had been evicted from a hostel because she had inadequate funds to pay the rent and, in addition, she had been making payments to a fast food store using the "book up" system when she had no obligation to do so.

The matter was resolved on the basis that the bank offered to abandon the outstanding balance on the personal loan and refunded one dishonour fee of \$35 and two of the loan repayments to Ms G's transaction account.

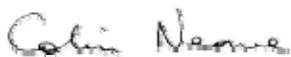
Summary of Key Points

- Clause 25.2 of the CBP calls for a broader and more flexible approach than under section 66 of the UCCC;
- There would seem to us to be room for the development of processes which more effectively recognise when clause 25.2 applies and how the bank member should give effect to the contractual obligation in a particular case.

Dedicated teams within banks may be part of the answer;

- In order to determine whether a bank has complied with its obligations under the CPB to try to work with a customer experiencing financial difficulty, this office expects that the customer will complete a statement of financial position and that the bank will consider the information and respond to the customer with reasons explaining its response to the request ;
- Arrangements for credit card debts need careful thought and moratoriums or arrangements which do not repay interest may not be appropriate for either party where there is no prospect for a change in the customer's financial position;
- Continuing debt collection activities are not appropriate where either a clause 25.2 or a section 66 request is under consideration. Listings should not be used as an unfair negotiating tool or punitively for customers in financial difficulty;
- Compliance with the principles underlying clause 25.2 is regarded as good industry practice; and
- A case by case assessment will always be required.

As is always the case, we welcome feedback on this Bulletin.



Colin Neave
Banking and Financial Services Ombudsman