

THE FINANCIAL COUNSELLOR'S TOOLKIT

Responsible lending and credit cards



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What can go wrong?

Banks, credit unions and other lenders are required to lend responsibly. In other words, they should not lend someone more money than they can afford to pay back.

You may have a client who has accumulated a credit card debt that they can't pay off. The critical question is this: could your client afford the repayments when their credit card was granted or when their credit limit was increased?

If not, then there may have been what is called **maladministration** in the decision to lend. Maladministration means that the lender has not met its obligations.

What is FOS's approach?

A lender should only provide credit if the customer can afford to make the repayments. We look at the financial position of the customer at the time the credit was approved, to see what the appropriate limit *should have been*.

If there has been maladministration in lending, the lender will need to reimburse the interest and fees charged on any credit advanced beyond the appropriate credit limit. The customer will usually still need to pay back the principal amount borrowed, minus any repayments already made.

For further information on our approach, please refer to the article 'Responsible Lending Conduct Obligations and Maladministration' in Issue 5 of *The Circular*, available at www.fos.org.au/circular.

How can I help my client?

If you think a client was given a credit card (or a limit increase) that they could not afford the repayments on, you should first complain to the lender. To find the lender's complaint contact details, go to www.fos.org.au/members or call us.

If you are not happy with the response or you don't get a response, then you should lodge a dispute with FOS. You can lodge a dispute on our website or by calling 1300 78 08 08.

What if ...

- Your client was able to make repayments for a while, but then their circumstances changed (e.g. they lost their job) and they couldn't keep up the repayments? In this case, speak to the lender about making a new payment arrangement to allow for your client's financial hardship, and lodge a dispute with FOS if you can't reach an agreement with the lender.
- The bank has offered to waive all interest and fees charged on the account, but your client wants them to write off the full balance? FOS can check the bank's calculations, but because the customer has had the benefit of the funds, FOS would expect your client to repay the principal amount borrowed.

CHECKLIST

Before contacting FOS

We recommend that you or your client collect the following information before lodging a dispute with FOS:

- details of the person's income and expenses on the date the credit card or the credit limit increase was granted
- details of the person's current financial position - a template for a statement of financial position is available on our website at www.fos.org.au/financialposition
- an affordable repayment proposal for the balance of the debt that's likely to be left over, after any adjustment for refundable interest and charges.



Case study

Maria applied to Zed Bank for a credit card in May 2008. She was earning \$3,000 a month after tax, but already had three other credit cards with debts totalling \$33,000. Maria told Zed Bank about her other credit cards, but Zed Bank still gave her a credit card with a limit of \$10,000. Nine months later, Maria requested a credit limit increase to \$12,500 and Zed Bank approved it.

Maria had always struggled with her repayments, but then she lost her job and stopped making any payments. The credit card balance had reached \$15,000 when she lodged a dispute with FOS.

FOS discovered that Maria's monthly expenses in May 2008 were \$3,100, including repayments towards her existing credit cards. Her expenses were even higher nine months later, when Zed Bank increased the credit limit.

FOS found that Zed Bank's decisions to grant the credit card and to approve the later limit increase were maladministration. This is because even though Maria was working when the credit card was approved and when the limit was increased, her expenses were higher than her income. So she could not afford the repayments on the credit card from the start. Zed Bank should have realised this from the information Maria provided on her application form.

Zed Bank reversed all interest and charges on Maria's account, which reduced the debt by \$5,000. Maria still had to pay the remaining balance of \$10,000, but Zed Bank couldn't charge any interest on the account. Maria and Zed Bank agreed on a repayment plan of \$40 a month. Maria said she'd increase her payments once she found work.



Contact us

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