

Hardship applications:

The Credit Contracts and Consumer Finance Act 2003 provides borrowers with a right to apply for changes to a consumer credit contract on the basis of unforeseen hardship.

What is unforeseen hardship?

“Hardship” means an event such as illness, injury, loss of employment, the end of a relationship or other reasonable cause that causes the borrower to be unable to meet their obligations under a consumer credit contract in the short term.

What is a hardship application?

A borrower in this situation can apply for changes to the consumer credit contract on the grounds of unforeseen hardship.

They apply to the lender in the first instance – if the lender does not agree to change the consumer credit contract, the borrower can apply to the Court.

What changes can the debtor apply for?

The only changes that a borrower can apply for under a hardship application are:

1. extending the contract term and reducing the amount of each payment due under the contract (without a consequential change being made to the annual interest rate or rates); or
2. postponing the dates on which payments are due (without a consequential change being made to the annual interest rate or rates); or
3. extending the contract term and postponing payments (without a consequential change being made to the annual interest rate or rates).

The borrower may not seek changes to reduce the annual interest rate or the unpaid balance under the contract.

The changes are to give the debtor short-term relief so they can meet their contract obligations in the long term. They may not seek any changes to the consumer credit contract that are more extensive than necessary for this purpose.

The borrower’s statutory right to apply for a hardship variation does not limit any changes that may be made by agreement between the creditor and the borrower.

When can the borrower not apply?

The borrower must show that they have suffered unforeseen hardship. They cannot apply if:

- they are currently in default on a payment (the payments must be up to date); or
- they have exceeded a credit limit; or

- the hardship was foreseeable at the time the borrower entered the contract eg, if a borrower sustained an injury before entering the contract.

A borrower is not prevented from making a hardship application if the borrower has remedied the default or the credit limit is no longer exceeded.

If a borrower requests that a lender postpone repayments, then the lender must obtain the consent of QBE LMI by way of the QBE LMI Repayment Assistance Request Form.

The following supporting documentation may be required in order for QBE LMI to consider your Repayment Assistance Requests:

- Reason for request - what causes the borrower to require assistance?
- Copy of written request from borrower
- Evidence that Council rates and insurance are up to date
- Current estimate of value of security property if obtained by lender
- Evidence of consent of Guarantors (and any joint borrowers) to the proposed request for assistance
- Current, balance details of the insured loan account

This type of variation is actioned by the Home Ownership Preservation Team and is outlined in QBE LMI's Default Policy & Procedure manual.

If consent is given, QBE LMI requires the lender to confirm that the borrower has recommenced repayments upon expiry of the approved assistance period. This advice and confirmation should be noted on the Lenders Monthly Arrears Report to the QBE LMI Default Inspection Team.

The lender and QBE LMI must be satisfied that the proposal is financially viable for the borrower and is not merely delaying the inevitable necessity of a sale of the security property.

For further information on hardship applications please refer to the following website:

CCCFA – Credit Contracts and Consumer Finance Act 2003

Hardship Provisions:

<http://www.consumeraffairs.govt.nz/businessinfo/cccfacta2003/bus-note-creditors/cccfacta-hardship.html>

If you require further information regarding the QBE LMI Policy for any borrower request for assistance, please contact the:

Home Ownership Preservation Team
 QBE Lenders' Mortgage Insurance Limited
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