



**CUSTOMER OWNED BANKING  
CODE COMPLIANCE COMMITTEE**

# Financial Difficulty Own Motion Inquiry

---

Examining Customer Owned Banking Institutions' compliance with section 24 of the Customer Owned Banking Code of Practice: "If you are in financial difficulty".

**December 2014**

## ABOUT THIS REPORT

### The Code

The 2014 Customer Owned Banking Code of Practice (the Code) was developed by the Customer Owned Banking Association (COBA) and commenced operation on 1 January 2014. The Code replaces the 2010 Mutual Banking Code of Practice. All Code Subscribers were expected to transition to the new Code by 1 July 2014.

Through the Code, 89 subscribing credit unions, mutual banks and mutual building societies voluntarily commit to fair and responsible banking. The Code contains 10 key promises stating that these institutions will:

1. be fair and ethical in dealings with customers (including small businesses)
2. focus on customers in their service delivery
3. give customers clear information about products and services
4. be responsible lenders
5. deliver high customer service and standards
6. deal fairly with any complaints
7. recognise their customers' rights as owners of the institution
8. comply with legal and industry obligations
9. recognise their impact on the wider community
10. support and promote the Code of Practice

### The Committee

The Code Compliance Committee (the Committee) is an independent compliance monitoring body established under the Code and the Code Compliance Committee Charter (the Charter). It comprises an independent chair, a person representing the interests of the customer owned banking sector and a person representing the interests of consumers (including small businesses). The Code and Charter entrusts the Committee with a number of functions and responsibilities, including to:

- conduct 'Own Motion' inquiries into compliance with aspects of the Code, and
- provide advice to COBA on training and other activities necessary to assist subscribers to meet their Code requirements.

### How to read this report

For ease of reference when reading this report:

- "The Code" means the 2014 Code unless otherwise stated.
- "Consumer/customer" includes individuals or small businesses that are members or customers of Code Subscribers.
- "Institution" means a Customer Owned Banking Institution that subscribes to the Code.

## CONTENTS

<b>1. EXECUTIVE SUMMARY</b>	4
<b>2. INTRODUCTION</b>	9
2.1 This Inquiry	9
2.2 Our Objective	9
2.3 The Code's Obligations	9
2.4 What does "Financial Difficulty" mean?	10
2.5 What laws apply	11
<b>3. WHAT WE DID</b>	11
<b>4. KEY FINDINGS AND RECOMMENDATIONS</b>	12
4.1 Accessibility of financial difficulty information on Institutions' websites	12
4.2 Accessibility of complaints and dispute information on Institutions' websites	13
4.3 Dealing with requests for financial difficulty assistance promptly and proactively	14
4.3.1 Identifying customers experiencing financial difficulty	14
4.3.2 Dealing with request for financial difficulty 'promptly'	15
4.4 Types of financial difficulty assistance available	16
4.5 Procedures regarding listing and external sale of debt	21
4.6 Training	22
<b>APPENDIX 1: Financial Difficulty Code Obligations under the 2014 Customer Owned     Banking Code of Practice</b>	23
<b>APPENDIX 2: Scenarios used for teleconferences</b>	24
<b>APPENDIX 3: Questionnaire to financial counsellors</b>	26

## 1. EXECUTIVE SUMMARY

- 1.1 This report has been prepared by the Customer Owned Banking Code Compliance Committee (the Committee) following its inquiry into Customer Owned Banking Institution's (Institution's) compliance with their financial difficulty obligations under the 2014 Customer Owned Banking Code of Practice (the Code).
- 1.2 The financial difficulty obligations under the Code demonstrate the Customer Owned Banking sector's commitment to assisting those customers who need help to deal with their financial situation. The specific Code obligations in relation to financial difficulty are outlined later in this Report.
- 1.3 Our inquiry comprised three stages – a desktop review of information about financial difficulty on participating Institution's websites, a scenario based survey undertaken with 30 Institutions and a survey of 52 financial counsellors and community lawyers to understand their experiences of the financial difficulty services provided by Institutions.
- 1.4 We thank all participants for their contribution and the time and commitment taken to respond to the inquiry.

### Key findings and recommendations

- 1.5 Overall, we found participating Institutions were genuinely willing to work with their customers to assist them when in financial difficulty. There was, however, broad interpretation and inconsistent application of those obligations across those Institutions surveyed which may create a spectrum of conduct and behaviour, if this result is indicative of broader practice.
- 1.6 There was generally very good knowledge amongst participating Institutions about their financial difficulty obligations and the significant majority provided visible and accessible information about financial difficulty matters on their website. Many of the participating Institutions also referred customers to financial counsellors or similar services for further assistance as required by the Code.
- 1.7 In the Committee's view, obligations under the Code should always be interpreted in a manner which is consistent with the spirit of the Code and its objectives.
- 1.8 Those participating Institutions that attempted to engage with the Code's framework of good industry practice seemed better placed to respond to the customer's individual circumstances when responding to our hypothetical case scenario than Institutions that did not. If this occurred in practice, it may impact on the quality of the financial hardship assistance experience of customers.
- 1.9
  - (a) Only 45% of financial counsellors and community lawyers surveyed believed that Institutions tailored repayment arrangements to the individual need of each customer.
  - (b) The Committee recognises that there is no "one size fits all" approach to compliance under the Code and that the way Institutions comply with their Code obligations will differ depending on the size, nature and complexity of their market. However, it is important that procedures are documented, that staff conduct is monitored, that repayment arrangements are tailored and that genuine and proactive engagement with customers in financial difficulty occurs.

A summary of our key findings are found in **Table 1** below:

**Table 1: Key findings**

Category	Key Findings
<b>4.1 Accessibility of financial difficulty information on Institutions' websites</b>	76% of participating Institutions' search functions provided results for financial difficulty key words  87% of participating Institutions provided basic financial hardship information
<b>4.2 Accessibility of complaints and dispute information on Institutions' websites</b>	10% of participating Institutions provided such information on their website
<b>4.3 Dealing with requests for financial difficulty assistance promptly and proactively</b>	60% of participating Institutions referred customers to a different department if a customer sought financial difficulty assistance  90% of participating Institutions relied on account arrears as their main method of identifying customers who may be in financial difficulty  42% of financial counsellors stated that Institutions responded to financial hardship assistance in a timely manner
<b>4.4 Types of financial difficulty assistance available</b>	43% of participating Institutions have a documented procedure to help staff consider suitable repayment arrangements  53% of participating Institutions would offer a short term repayment arrangement to the customer in the case scenario  73% of participating Institutions have a list of financial counselling services they can refer customers to  80% of financial counsellors experience a standard solution to their clients
<b>4.5 Procedures regarding listing and external sale of debt</b>	73% of participating Institutions do not sell their debt to an external third party  30% of financial counsellors have experienced an Institution list a default on their customer's credit file and/or sell a debt whilst a financial hardship request was being considered
<b>4.6 Training</b>	77% of participating Institutions provided financial difficulty training to their collections/lending staff

A summary of our recommendations are found in **Table 2** below:

**Table 2: Recommendations**

<b>4.1 Accessibility of financial difficulty information on Institutions' websites</b>
<p><b>R1</b> Institutions should consider providing information about financial difficulty assistance on their websites.</p> <p><b>R2</b> Institutions should consider developing a financial difficulty information fact sheet, which includes what happens if the Institution does not agree to the customer's request for financial difficulty assistance.</p> <p><b>R3</b> Institutions should consider placing links to financial counselling and similar services in local areas on their websites.</p> <p><b>R4</b> Access to complaints resolution information, which includes the timeframe in which a customer may bring a complaint to an external dispute resolution scheme, is considered good industry practice.</p> <p><b>R5</b> Online financial difficulty application forms and online tools, such as budget spreadsheet and calculators, may assist customers facing financial difficulty to engage proactively with their Institution.</p>
<b>4.2 Accessibility of complaints and dispute information on Institutions' websites</b>
<p><b>R6</b> Institutions that employ a range of mechanisms for proactively identifying and engaging with customers who are experiencing financial difficulty, are better placed to offer assistance at an earlier stage. This will have benefits for both the customer and the Institution.</p>
<b>4.3 Dealing with requests for financial difficulty assistance promptly and proactively</b>
<p><b>R7</b> Whilst there is no Code obligation to have specialised teams handling financial difficulty matters, Institutions should be aware of the real and perceived conflicts that can sometimes arise between positive obligations to work with customers in establishing individual tailored repayment arrangements and the interests of the Institution in recovering outstanding debts.</p> <p><b>R8</b> Inconsistencies in the timeliness and responsiveness to financial difficulty matters seem to lead to a poorer customer experience. The customer experience results suggest that there may still be some work to do in these areas.</p>
<b>4.4 Types of financial difficulty assistance available</b>
<p><b>R9</b> The Committee encourages Institutions to approach some of the repayment strategies with caution. We refer all Institutions to the ASIC/ACCC Debt Collection Guidelines for further guidance. The objective is to take a flexible approach and work towards a meaningful and sustainable repayment arrangement that makes reasonable allowances for a customer's individual circumstances, ongoing living</p>

expense and basic comfort.<sup>1</sup> Suggestions or strategies that could humiliate or offend should be avoided.

**R10** It is also unacceptable to pressure a customer to borrow from family and friends to pay out a debt or to access their superannuation early.

**R11** The survey results indicate that participating Institutions are genuinely willing to work with their customers to assist them with their financial difficulties. There does appear, however, to be broad interpretation and application of the Code's obligation in Part D, sections 24.1 and 24.2 of the Code, by different Institutions. This is coupled with some inconsistency between the documented processes and procedures outlined to us and how they are applied in practice. This seems to have resulted in a very inconsistent overall experience of consumer advocates in dealing with Institutions about financial difficulty matters.

**R12** Institutions that engage in tailored and flexible repayment arrangements based on a customer's individual circumstances seem better placed to meet their legal and Code obligations. This might also ensure a more consistent and tailored experience for customers and consumer advocates when negotiating repayment arrangements.

#### 4.5 Procedures regarding listing and external sale of debt

**R13** The Committee recommends that all Institutions ensure that default listing and external sale of a debt does not occur whilst financial hardship is being considered, in accordance with the Code obligations and section 14(c) of the ASIC/ACCC Debt Collection Guidelines.

**R14** Institutions have an obligation to record instances of non-compliance with the Code. The Committee notes that self-reported breaches of section 24.2.6 and 24.2.7 in the Annual Compliance Statements have historically been very low. The Committee encourages Institutions to review their monitoring and reporting frameworks in relation to these obligations as well.

**R15** It would seem that there may be a gap between procedure and practice which needs to be addressed. The experience of consumer advocates is that procedures may not always be followed and applied by Institutions' staff.

#### 4.6 Training

**R16** Training is crucial to ensuring that staff are aware of their financial difficulty obligations under the Code and how they should be applied in practice. Training should also ensure that staff understand the importance of customers experiencing financial difficulty receiving fair and appropriate assistance.

1.10 The Committee has created a checklist which aims to assist Institutions in their application of the financial difficulty Code obligations. The checklist can be found in **Table 3** on page 8:

<sup>1</sup> ASIC/ACCC Debt Collection guidelines: For Collectors and Creditors, July 2014

**Table 3: Checklist – Financial Difficulty Obligation**

## **Financial Difficulty Obligation**

### **Accessibility of information on Institutions' websites**

- Make sure information about your financial difficulty processes, including the types of assistance that may be available, a financial difficulty information fact sheet and links to financial counselling and similar services in your area are readily accessible.
- If possible, have a financial difficulty application form available on your website.
- Develop tools that may help the customer handle their financial matters, such as budget spreadsheet, calculators and helpful tips.

### **Prompt and proactive service**

- Have a dedicated staff member or team of staff who will deal with financial hardship matters and ensure their contact details are accessible to customers.
- Train customer-facing and other relevant staff to identify 'triggers' which may indicate that a customer may be experiencing financial difficulty.

### **Types of financial difficulty assistance**

- Ensure financial assistance is assessed based on a customer's individual circumstances and that tailored and flexible options are available.
- Ensure that options for repayment arrangements, including access to superannuation or a customer's expenditure pattern, are handled in accordance with the law and the Code obligations.
- Have procedures in place to deal with authorised financial counsellors, refer customers to financial counsellors or similar services and increase engagement with such third parties, where possible.

### **Default listing and external sale of debt**

- Ensure that debt collection and external sale of a debt does not take place once a financial difficulty request has been made.

### **Staff training**

- Provide training and refresher training on all legal requirements associated with financial difficulty to relevant staff.
- Have financial difficulty focused training so staff understand the causes of financial difficulty and the possible solutions available to customers experiencing financial difficulty.

## 2. INTRODUCTION

### 2.1 This Inquiry

This Own Motion Inquiry examined how effectively 30 Customer Owned Banking Institutions' complied with their obligations under the 2014 Customer Owned Banking Code of Practice (the Code) to assist customers who might be experiencing financial difficulty.

The Inquiry required the assistance and cooperation of a number of stakeholders, including staff members from those 30 participating Institutions and 52 financial counsellors and community lawyers, throughout Australia.

We appreciate the genuine and constructive engagement we have had with all the participants during this review. We particularly thank the members of Financial Counselling Australia for their assistance in the development of the consumer advocate questionnaire.

### 2.2 Our Objective

The objective of this Inquiry was to:

- investigate and assess Institutions' compliance with Part C Key Promise 4 and Part D section 24 of the Code
- examine how Institutions currently identify and work with customers experiencing financial difficulty
- identify good industry practice for dealing with customers in financial difficulty;
- identify possible gaps in compliance, and
- make recommendations about possible areas for improvement in service delivery.

This is an important area of Code obligation.

Whilst Institutions and consumer advocates have continued to work together to improve industry practice when dealing with customers in financial difficulty, it continues to be an ongoing source of consumer complaint within External Dispute Resolution schemes.<sup>2</sup>

A total of 90 disputes related to financial difficulty assistance against Institutions were lodged with the Financial Ombudsman Service (FOS) in 2013-14<sup>3</sup> and 78 disputes were recorded by Institutions within their internal dispute resolution functions<sup>4</sup>.

Almost all of these disputes related to consumer credit products – in particular, home loans (43%), credit cards (28%) and personal loans (18%).<sup>5</sup>

### 2.3 The Code's Obligations

The Institutions that subscribe to the Code have made a commitment to try to assist their customers experiencing financial difficulty. This is a key promise made under the Code, namely:

---

<sup>2</sup> In its 2013-14 Annual Report on Operations, the Credit Ombudsman Service (COSL) reported that complaints about financial hardship continued to be one of its largest sources of complaints. A copy of the report can be found at [http://www.cosl.com.au/cosl/assets/File/COSL\\_annual-report-on-operations-2014.pdf](http://www.cosl.com.au/cosl/assets/File/COSL_annual-report-on-operations-2014.pdf).

<sup>3</sup> Financial Ombudsman Service Annual Review 2013-14, page 52.

<sup>4</sup> Customer Owned Banking Code Compliance Committee Annual Compliance Statement 2013-14 statistics.

<sup>5</sup> Financial Ombudsman Service Annual Review 2013-14, page 80.

**Key Promise 4 of the Code** - ‘We will lend responsibly, and will try to assist you if you find yourself in financial difficulties.’

**Part D section 24 of the Code** - Institutions have agreed to work with customers in a constructive way if they experience genuine difficulties meeting their financial commitments to the Institution. With the customer’s agreement and commitment, the Institution will try to assist the customer to overcome those difficulties. The Institution will do this whether or not the customer has a right to seek a hardship variation or change under consumer credit laws.

The financial difficulty obligations under the Code are outlined in full in Appendix 1. They are also highlighted throughout this report.

In addition, there are a number of related obligations under the Code that are relevant to this Inquiry, including:

- Key Promise 1 – treating customers fairly and reasonably
- Key Promise 3 – providing clear and accessible information about products and services
- Key Promise 5 – delivering high customer service and standards and ensuring that all staff and agents or representatives are well trained
- Part D section 6 – responsible lending practices
- Part D section 15 – timely, clear and effective communication
- Part D section 25 – working with consumer representatives
- Part D section 26 – debt collection and legal action
- Part D sections 28-30 – complaints and disputes, and
- Part E – training staff on the Code.

To assist Institutions to comply with the Code, the Customer Owned Banking Association (COBA) issued a Code Compliance Manual to Institutions in November 2013. The Committee encourages Institutions to use this manual as a key reference tool. Relevant sections of the manual are referred to throughout this report.

## 2.4 What does “Financial Difficulty” mean?

There are many ways to define the term financial difficulty.

The Committee has adopted the following guidance provided by FOS when defining this term for the purposes of the Code:

*“Financial difficulty occurs when a consumer is unexpectedly unable to meet their repayment obligations. This can be as a result of a variety of causes including accident, separation, death of a family member, unexpected medical or funeral expense, reduction of work hours, redundancy or a downturn in business.” (Financial Ombudsman Service, The FOS Approach to Financial Difficulty, April 2013)*

The FOS approach to financial difficulties can be found [here](#)<sup>6</sup>.

Financial difficulty is often the result of a change of circumstances, such as unemployment, illness or relationship breakdown – events that can happen to anyone.<sup>7</sup>

---

<sup>6</sup> <http://www.fos.org.au/resolving-disputes/our-approach/the-fos-approach-to-financial-difficulty/?sstat=224540>

In order to broadly distinguish between the different types of financial difficulty that may be experienced by customers, the Committee recognises the language used by consumer advocates and the industry:

1. Those customers that 'CAN' pay at some stage and there is a finite timeframe before a consumer's financial position will recover. The types of assistance they may need include simpler repayment arrangements and moratoriums<sup>8</sup>.
2. Those customers that 'MAY' be able to pay at some stage and where solutions need to be more flexible and tailored to a customer's individual circumstances.
3. Those customers that 'CAN'T' pay. A person may fall into this group where they have no assets or permanent income. The solutions for this group are likely to be long term and more complex, and may require the services of financial counsellors or similar services.

## 2.5 What laws apply?

There are numerous laws and regulatory guidance that also apply to the handling of financial difficulty matters by Institutions, including the National Consumer Credit Protection Act 2009 (NCCPA).

Under section 26 of the Code, Institutions have also agreed to comply with the Australian Securities and Investments Commission (ASIC) and the Australian Competition and Consumer Commission's (ACCC) Debt Collection Guidelines, which were updated in July 2014. These Guidelines will be a relevant consideration when an Institution is pursuing a debt from a customer who may be experiencing financial difficulty.

Further information about the applicable laws can be found on ASIC's website [here](#)<sup>9</sup> and ASIC's Moneysmart website [here](#)<sup>10</sup>.

## 3. WHAT WE DID

Our review comprised of three stages:

Stage 1: A desktop review of the websites of 30 participating Institutions to assess the visibility and accessibility of information available to customers about financial difficulty assistance (found on page 12).

Stage 2: A survey of 30 Institutions about how they assess financial difficulty matters, using case scenarios and hypothetical customers (found on page 16).

We also requested the following information:

- policies and procedures for meeting obligations under KP4 and Part D section 24 of the Code (with provisions regarding financial difficulty highlighted), and
- details of training conducted by Institutions for staff, who conducts this training and staff training guidelines.

The size and location of the 30 Institutions selected to participate in stages 1 and 2 of the Inquiry were representative of all Code Subscribers and is represented in **Table 4** on page 12.

---

<sup>7</sup> Hardship Policies in Practice - A comparative study by Lauren Levin and Fiona Guthrie - May 2014

<sup>8</sup> A moratorium on payments is generally described as a situation where repayments are not required.

<sup>9</sup> <http://www.asic.gov.au/>

<sup>10</sup> <https://www.moneysmart.gov.au/borrowing-and-credit/consumer-credit-regulation#about>

**Table 4: Size and location of participating Institutions**

Size	States						Total
	NSW	QLD	SA	TAS	VIC	WA	
Large <sup>11</sup>	5	2	1		2	1	11
Medium <sup>12</sup>	3	2			2		7
Small <sup>13</sup>	3	1	1	1	5	1	12
Total	11	5	2	1	9	2	30

Stage 3: A survey of 52 financial counsellors and community lawyers to understand their experiences when representing clients who sought financial difficulty assistance from Institutions (see page 13).

The consumer advocate questionnaire was distributed through the following organisations:

- Financial Counselling Australia
- Financial Consumer Rights Council
- Financial Counsellors' Association WA
- Consumer Action Law Centre, and
- Legal Aid QLD.

A copy of the case scenarios and survey questions is located in [Appendix 2](#) and [Appendix 3](#).

## 4. KEY FINDINGS AND RECOMMENDATIONS

### 4.1 Accessibility of financial difficulty information on Institutions' websites

#### Code obligations

Under **Key Promise 3**, Institutions have agreed to provide clear and accessible information about their services. When customers find themselves in financial difficulties it is important that they can access information from their Institution regarding how that Institution may be able to assist them to deal with their situation.

Whilst the provision of information about financial difficulty assistance does not have to be made available on Institutions' websites in order to comply with the Code, many consumers now rely on the internet and web-based material as a primary source of information.

The Committee therefore encourages Institutions to engage in transparent communication and place information on websites (where possible) so that customers have immediate and visible access to relevant information about financial difficulty.

#### What we found

- **Site search function**

Overall, information about financial difficulty was easily located on the websites of participating Institutions without using the search engine (provided by 26 Institutions).

<sup>11</sup> More than 100 full time equivalent staff.

<sup>12</sup> Between 31 and 100 full time equivalent staff.

<sup>13</sup> Up to 30 full time equivalent staff.

Twenty three Institutions assisted the user to find information on financial difficulty assistance through searches using the keywords “financial difficulty” or “financial hardship”.

- **Financial difficulty information**

Of the 30 Institutions surveyed, 26 had basic information about the need for customers to contact them as soon as possible if they were experiencing financial difficulty. This information usually included a contact number for the relevant department or staff member.

Only four Institutions did not contain any specific information regarding financial difficulty on their websites.

#### **4.2 Accessibility of complaints and dispute information on Institutions’ websites**

Under section 28.2 of the Code, Institutions are required to provide information about their complaints handling process and rights to External Dispute Resolution (EDR) on their website (where they have one). Dispute resolution information is very important to customers in financial difficulty who have rights of review where an Institution decides not to provide financial difficulty assistance or does not comply with Code obligations.

We found that only three Institutions provided such information on their websites. The Committee encourages other Institutions to consider adopting this good industry practice.

#### **Recommendation**

The development of website strategies and online communications are a matter for each Institution and will be dependent upon the size, nature and complexity of the business. The Committee believes that customer awareness and access to website-based information in relation to financial difficulty may be improved if relevant information is provided on websites.

The Committee recommends that:

- R1** Institutions should consider providing information about financial difficulty assistance on their websites.
- R2** Institutions should consider developing a financial difficulty information fact sheet, which includes what happens if the Institution does not agree to the customer’s request for financial difficulty assistance.
- R3** Institutions should consider placing links to financial counselling and similar services in local areas on their websites.
- R4** Access to complaints resolution information, which includes the timeframe in which a customer may bring a complaint to an external dispute resolution scheme, is considered good industry practice.
- R5** Online financial difficulty application forms and online tools, such as budget spreadsheet and calculators, may assist customers facing financial difficulty to engage proactively with their Institution.

## 4.3 Dealing with requests for financial difficulty assistance promptly and proactively

### Code obligations

Under **Part D, section 24.2.2** of the Code, Institutions must have procedures in place to ensure they:

- respond promptly to any request or application made by [a customer]
- [Institutions] may also initiate contact to discuss [a customer's] financial situation

#### 4.3.1 Identifying customers experiencing financial difficulty

Institutions are required to have processes and procedures in place to proactively engage with customers who may be experiencing financial difficulty.

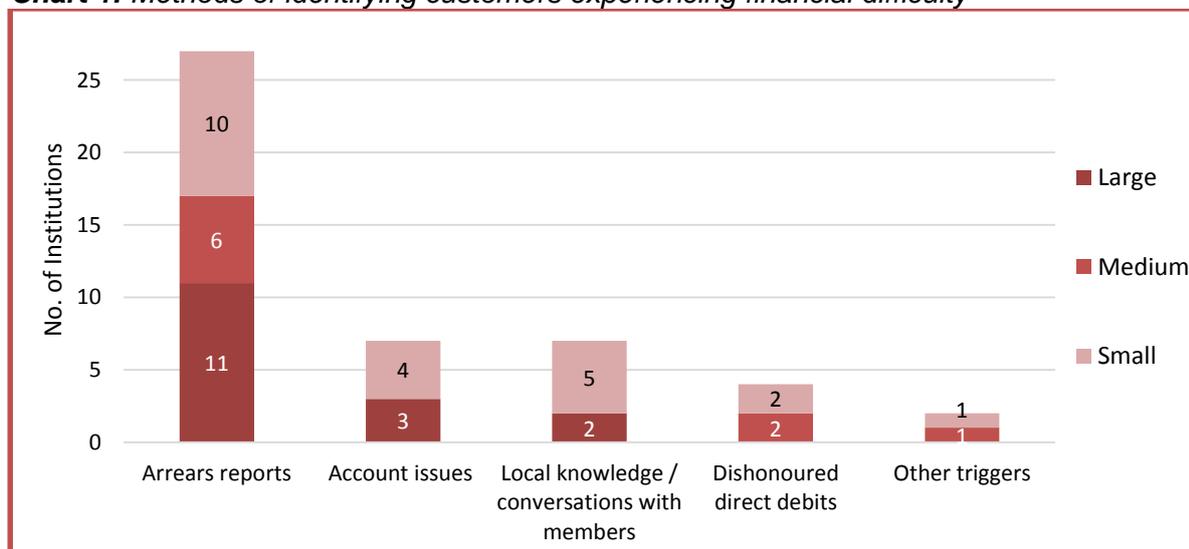
#### What we asked

We asked about the circumstances in which participating Institutions would initiate contact with a customer to discuss their financial situation and whether they have systems in place to identify and/or detect customers who may be experiencing financial difficulty.

#### What we found

The majority of Institutions surveyed (27) stated that they rely on arrears reports to assist them to identify customers experiencing financial difficulty (see **Chart 1** below). The points at which the Institutions generate the report and when they make contact with the customer varied from Institution to Institution. We found that arrears reports may be generated daily, weekly or monthly.

**Chart 1:** Methods of identifying customers experiencing financial difficulty



Other 'triggers' which participating Institutions advised may prompt them to initiate contact include:

- account issues such as a history of over limit and/or overdrawn patterns
- local knowledge including the impacts of reductions in local industries
- a direct debit and/or cheque being dishonoured on their transaction account

- telephone disconnection, and
- application for relief under Part 9 of the Bankruptcy Act

Generally, participating Institutions could also describe mechanisms for assisting customers who indicated to staff in branches that they were experiencing financial difficulty.

## Recommendation

**R6** Institutions that employ a range of mechanisms for proactively identifying and engaging with customers who are experiencing financial difficulty, are better placed to offer assistance at an earlier stage. This will have benefits for both the customer and the Institution.

### 4.3.2 Dealing with request for financial difficulty ‘promptly’

#### What we asked

We asked each participating Institution how they would respond to the hypothetical customer’s request for assistance, as outlined in the case scenario (see [Appendix 2](#)).

#### What we found

##### Institutions’ response

We identified, not unexpectedly, that the staff member who is tasked with responding to a financial difficulty request or application will depend on the size of the Institution. Often in medium and large Institutions these appear to be staff in the collections or credit teams. In some small Institutions it is a branch manager or supervisor.

Eighteen Institutions reported that customers who seek assistance are referred to different departments. A further seven Institutions described their procedure as attempting to deal with a customer’s request for financial difficulty assistance “immediately”.

Three small or medium Institutions reported that they would invite the customer into the branch to have further discussions about their financial situation.

Prompt and secure engagement with customers who may be experiencing financial difficulty is consistent with the Code’s obligations and the mutual nature of the Customer Owned Banking financial sector where members’ interests are considered paramount.

##### Customer Advocates’ response

Our survey results highlighted that 66.6% of participating financial counsellors and community lawyers rated their dealings with Institutions as either fair, good or excellent.

A further 42.1% of those who responded stated that Institutions responded in a timely manner either all of the time or most of the time.

Some financial counsellors voiced concerns, however, about the lack of dedicated financial difficulty teams, particularly within larger Institutions.

## Recommendation

- R7** Whilst there is no Code obligation to have specialised teams handling financial difficulty matters, Institutions should be aware of the real and perceived conflicts that can sometimes arise between positive obligations to work with customers in establishing individual tailored repayment arrangements and the interests of the Institution in recovering outstanding debts.
- R8** Inconsistencies in the timeliness and responsiveness to financial difficulty matters seem to lead to a poorer customer experience. The customer experience results suggest that there may still be some work to do in these areas.

## 4.4 Types of financial difficulty assistance available

### Code obligations

Under **Part D** and the following sections of the Code, Institutions have agreed to have procedures in place to ensure they:

- 24.2.3** genuinely consider a customer's request for financial difficulty assistance, taking account of their situation
- 24.2.5** consider longer term as well as short term financial issues when they are relevant and try to develop an appropriate solution with a customer to allow them to meet their obligations
- 24.2.8** suggest other options or avenues that may be available to a customer, if the Institution is unable to their request
- 24.2.9** advise the customer promptly in writing, if the Institution is unable to assist the customer
- 24.2.10** refer the customer to a financial counselling or similar service in appropriate cases (subject to availability).

### What we asked

The case scenarios we used in our survey with participating Institutions referred to a hypothetical customer who had just lost their job and had a history of making late payments on either a credit card or personal loan (due to the fluctuation in his/her wages and employment history). Based on this information, we asked a series of questions relating to the financial difficulty assistance that the participating Institution may offer to this customer.

In addition, we asked financial counsellors and community lawyers about the types of assistance Institutions usually offered to their clients experiencing financial difficulty.

### What we found

#### Assessment of short or longer term financial difficulty

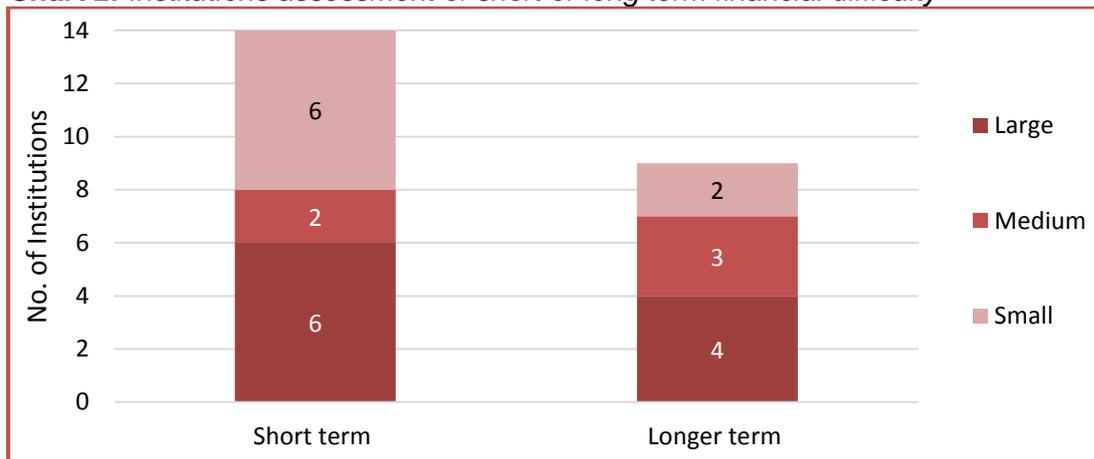
**Section 24.2.5** states that Institutions will have procedures in place to ensure they consider longer term as well as short term financial issues when they are relevant and try to develop an appropriate solution with a customer to allow them to meet their obligations.

To assess whether participating Institutions classified the customer as being in short term or longer term financial difficulty and whether they had any documented procedures to assist in making that distinction, we provided the following information:

*“Following a request from your Institution for relevant financial information, the customer provides the Institution with a copy of their statement of financial position showing that they are in a financial deficit every month (expenses exceed income), along with relevant supporting documents. The customer states that they will be applying for jobs but it appears that it may be sometime before they are re-employed.”*

**Chart 2** below indicates that participating Institutions were divided about whether the case scenario described a customer in short (2 months or less) or longer term financial difficulty (more than two months).

**Chart 2: Institutions assessment of short or long term financial difficulty**



13 out of 30 Institutions confirmed that they have a documented procedure to assist in making this distinction. Six Institutions confirmed they used a set of key criteria to assist staff to make this assessment.

**The types of assistance that Institutions would provide to the customer in the case scenario**

Under the following sections of the Code, Institutions have agreed to have procedures in place to ensure they:

- 24.2.3** genuinely consider a customer’s request for financial difficulty assistance, taking account of their situation
- 24.2.5** consider longer term as well as short term financial issues when they are relevant and try to develop an appropriate solution with a customer to allow them to meet their obligations

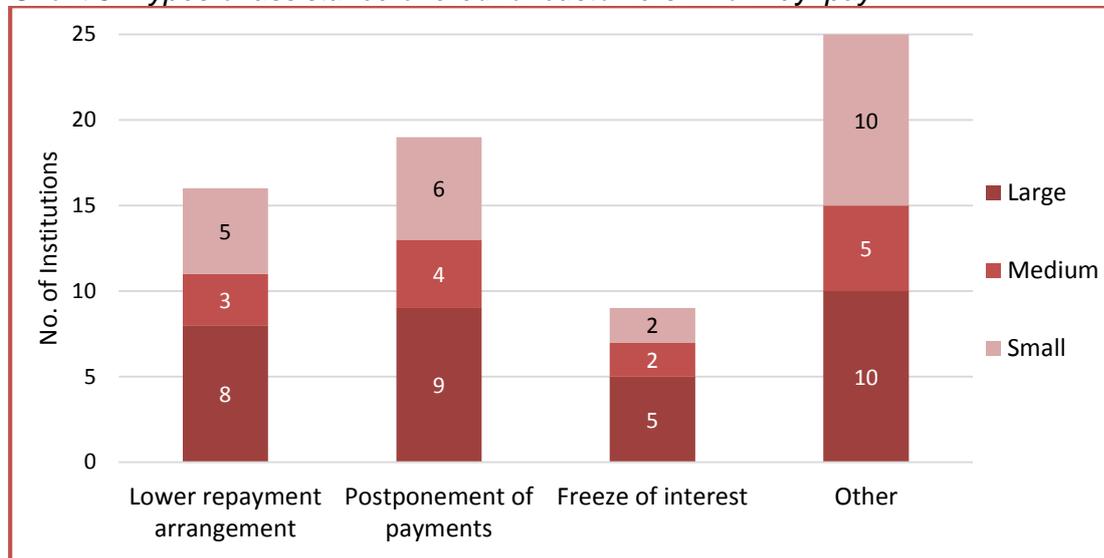
To determine the types of financial difficulty assistance that might be provided and how that assistance was tailored to the customer’s individual circumstances, the following additional information was produced:

*“Your Institution reviewed the customer’s details and found that they have no savings or substantive assets to make a lump sum payment.”*

**Charts 3 and 4** on page 18 provide details of the types of assistance participating Institutions advised they offered customers in the ‘may’ pay and ‘can’t’ pay categories respectively.

Most participating Institutions advised that they usually offer customers who seek financial difficulty assistance a reduced payment arrangement (for a period of three or six months) or a short term moratorium on payments. Nine Institutions would have agreed to a temporary or permanent suspension and/or freeze of payable interest on the loans of our hypothetical customer.

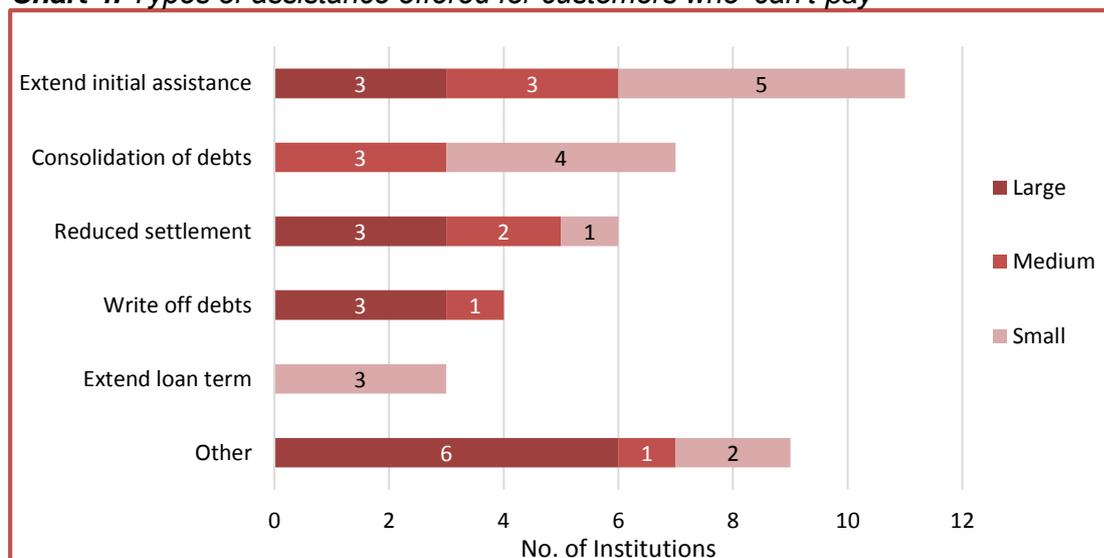
**Chart 3: Types of assistance offered for customers who 'may' pay**



Some of the other types of assistance the participating Institutions would have offered to the customer in the case scenario were to:

- consolidate or refinance existing debt to a different product with a lower interest rate if the customer had multiple debts with the Institution, but only if there is evidence of serviceability (16 Institutions)
- capitalise the arrears if the customer continued in financial difficulty for some time (3 Institutions), and
- write the debt off if other assistance was unsuccessful or as a compassionate decision (4 Institutions).

**Chart 4: Types of assistance offered for customers who 'can't pay**



Some participating Institutions mentioned that they may also consider the following strategies when negotiating repayment arrangements with customers in financial difficulty:

- encourage customers to stop using certain services to save money, such as Paypal and Foxtel
- restrict the account so that the customer is unable to transact, or suspend the credit card facility without consent
- ask if customers have a family or friend that can help them with repayments or settling the debt
- encourage the customer to seek advice about accessing superannuation funds to pay the debt
- ask if they have unemployment insurance cover through their superannuation fund that could be utilised, and
- look at the customer's statement of financial position to see areas where the customer may be able to reduce expenses.

## Recommendation

**R9** The Committee encourages Institutions to approach some of the repayment strategies with caution. We refer all Institutions to the ASIC/ACCC Debt Collection Guidelines for further guidance. The objective is to take a flexible approach and work towards a meaningful and sustainable repayment arrangement that makes reasonable allowances for a customer's individual circumstances, ongoing living expense and basic comfort.<sup>14</sup> Suggestions or strategies that could humiliate or offend should be avoided.

**R10** It is also unacceptable to pressure a customer to borrow from family and friends to pay out a debt or to access their superannuation early.<sup>15</sup>

The experience of the financial counsellors and community lawyers surveyed, when negotiating repayment arrangements with Institutions on behalf of their clients, was varied.

Of the financial counsellors surveyed:

- a. Only 45% agreed that the financial difficulty assistance provided by Institutions they had dealt with was tailored to the needs of the client.
- b. 70% identified that financial difficulty arrangements offered by Institutions sometimes resulted in fair, reasonable and appropriate outcomes for their clients.
- c. 50% had experienced repayment arrangements where Institutions provided a combination of reduced repayment arrangements, postponement of repayments and freezing of interest as their most common assistance for the "can pay"<sup>16</sup> group. However, some noted that these offers were only made after a long advocacy challenge.
- d. A large number however, stated that standard solutions were applied to "may pay"<sup>17</sup> clients with inadequate consideration made for the client's individual circumstances.
- e. A debt waiver was seen by them as the only workable solution for the "can't pay"<sup>18</sup> group. The experience was that this was rarely offered by Institutions.

---

<sup>14</sup> ASIC/ACCC Debt Collection guidelines: For Collectors and Creditors, July 2014

<sup>15</sup> ASIC/ACCC Regulatory Guideline 96 of page 29.

<sup>16</sup> The "can pay" group has a finite period of financial hardship. There is a clear plan for recovery and a workable solution.

<sup>17</sup> For the "may pay" group it is harder to predict whether their situation will improve and over what timeframe.

<sup>18</sup> The "can't pay" group are clients who have permanently reduced income and no assets.

**R11** The survey results indicate that participating Institutions are genuinely willing to work with their customers to assist them with their financial difficulties. There does appear, however, to be broad interpretation and application of the Code's obligation in Part D, section 24.1 and 24.2 of the Code, by different Institutions. This is coupled with some inconsistency between the documented processes and procedures outlined to us and how they are applied in practice. This seems to have resulted in a very inconsistent overall experience of consumer advocates in dealing with Institutions about financial difficulty matters.

### **Referral to financial counselling or similar services**

**Section 24.2.10** states that Institutions will have procedures in place to ensure they refer customers to a financial counselling or similar service in appropriate cases (subject to availability).

This obligation is an important one. Institutions should work with financial counselling and similar services when assisting customers in financial difficulty in order to ensure an effective repayment arrangement tailored to the individual.

We asked the 30 participating Institutions whether and in what circumstances they would refer the customer in the case scenario to a financial counsellor.

Most of the participating Institutions advised that they would refer, where they were unable to reach an agreement about a repayment arrangement. Some Institutions refer customers to a particular financial counselling service or to a local council where counselling services can be provided. Others preferred not to advocate for a particular organisation. Rather, they refer customers to the ASIC website, which provides links and contacts suitable in the customer's state, free of charge.

Twenty two Institutions also provide customers with a list of financial counselling and similar services that can be utilised. Four Institutions stated that when declining a request for financial difficulty, details about financial counsellors are included in the letter sent to the customer or the Institution's financial difficulty brochure. Two Institutions stated they may also refer the customer to other staff who may be able to provide basic financial advice regarding budgeting.

The Committee was pleased to note that 65% of the financial counsellors surveyed stated that they had received financial difficulty referrals from Institutions in the last 12 months. The Committee commends the participating Institutions for their active engagement with this obligation.

### **Recommendation**

**R12** Institutions that engage in tailored and flexible repayment arrangements based on a customer's individual circumstances seem better placed to meet their legal and Code obligations. This might also ensure a more consistent and tailored experience for customers and consumer advocates when negotiating repayment arrangements.

## 4.5 Procedures regarding listing and external sale of debt

### Code obligations

Under **Part D** and the following sections of the Code, Institutions have agreed to have procedures in place to ensure they:

**24.2.6** do not list a customer's default on their credit reference file while the Institution is considering the customer's financial difficulty application or request, unless legally required to do so, and

**24.2.7** when a customer has made an application or request in respect of a debt, not sell that debt to a third party debt buy-out company while the Institution is still considering the application or request.

### What we asked

We asked Institutions whether they have a documented procedure to ensure collection activity did not take place whilst a customer is seeking financial difficulty assistance. We also asked the financial counsellors what their experience was in relation to default listings and external sale of debts.

### What we found

Most participating Institutions advised that they have relevant procedures in place to ensure that they do not enter a default listing on a customer's credit file while they are considering a customer's request for financial difficulty assistance, unless they are legally required to do so.

Twenty two Institutions stated that they do not sell the debt to an external debt buy-out business under any circumstances. However, Institutions may use collection agencies to collect on their behalf during the life of the facility.

The experience of financial counsellors and community lawyers, however, was varied. 30% of financial counsellors surveyed stated that they have experienced an Institution list a default on their customer's credit file and/or sold the debt to an external debt buyer while it was considering the application for a client's financial difficulty assistance.

### Recommendation

**R13** The Committee recommends that all Institutions ensure that default listing and external sale of a debt does not occur whilst financial hardship is being considered, in accordance with the Code obligations and section 14(c) of the ASIC/ACCC Debt Collection Guidelines.

**R14** Institutions have an obligation to record instances of non-compliance with the Code. The Committee notes that self-reported breaches of section 24.2.6 and 24.2.7 in the Annual Compliance Statements have historically been very low. The Committee encourages Institutions to review their monitoring and reporting frameworks in relation to these obligations as well.

**R15** It would seem that there may be a gap between procedure and practice which needs to be addressed. The experience of consumer advocates is that procedures may not always be followed and applied by Institutions' staff.

## 4.6 Training

### Code obligations

Under **Part E, section 2** of the Code, Institutions are required to ensure that relevant staff receive training (including financial difficulty obligations) and then apply this training in their dealings with their customers.

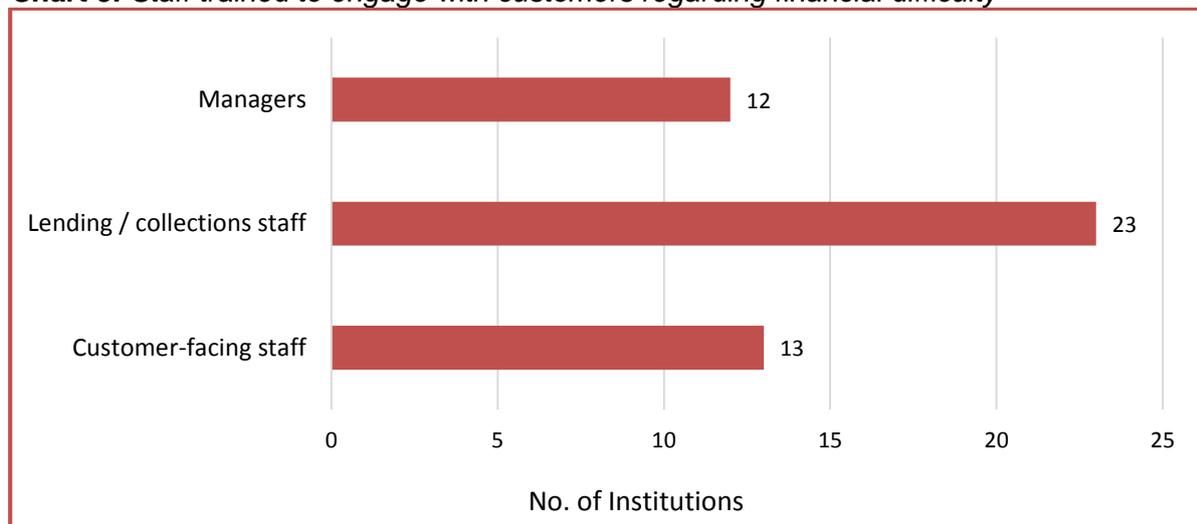
### What we asked

We asked the 30 participating Institutions about their staff training on financial difficulty in accordance with section 24 of the Code. We also asked how Institutions ensure that compliance is achieved and whether financial difficulty processes and procedures are independently reviewed and monitored.

### What we found

The types of staff trained to deal with financial difficulty within participating Institutions is explained in **Chart 5** below:

**Chart 5:** Staff trained to engage with customers regarding financial difficulty



### Recommendation

**R16** Training is crucial to ensuring that staff are aware of their financial difficulty obligations under the Code and how they should be applied in practice. Training should also ensure that staff understand the importance of customers experiencing financial difficulty receiving fair and appropriate assistance.

## APPENDIX 1: Financial Difficulty Code Obligations under the 2014 Customer Owned Banking Code of Practice

<b>Part C Key Promise 4</b>	<b>We (Institutions) will be responsible lenders</b>
	We will lend responsibly, and will try to assist you (the customer) if you find yourself in financial difficulties.
<b>Part D section 24</b>	<b>If you are in financial difficulties</b>
24.1	We will work with you in a constructive way if you experience genuine difficulties meeting your financial commitments to us. With your agreement and commitment, we will try to assist you to overcome those difficulties. We will do this whether or not you have a right to seek a hardship variation or change under consumer credit laws.
24.2	Without limiting (24.1), we will have procedures in place to ensure we:
24.2.1	adhere to hardship variation or change provisions of consumer credit laws
24.2.2	respond promptly to any request or application made to us (we may also initiate contact to discuss your financial situation)
24.2.3	genuinely consider your application or request, taking account of your situation. However, we will only be able to do this if you provide us with the financial information and documents we may reasonably need to assess your situation for ourselves
24.2.4	encourage you to keep making whatever payments you can while we are considering your request
24.2.5	consider longer term as well as short term financial issues when they are relevant. If you are experiencing longer term difficulties, we will try to develop an appropriate solution with you to allow you to meet your obligations
24.2.6	not list your default on your credit reference file while we are considering your application or request, unless legally required to do so
24.2.7	when you have made an application or request in respect of a debt, not sell that debt to a debt buy-out business while we are still considering the application or request
24.2.8	suggest other options or avenues that may be available to you, if we are unable to agree to your application or request
24.2.9	if we are unable to assist you, advise you promptly in writing
24.2.10	refer you to a financial counselling or similar service in appropriate cases (subject to availability).

## APPENDIX 2: Scenarios used for teleconferences

### Hypothetical scenario

**Product:** Credit card/ *Personal loan*

**Issue:** Financial Difficulty

#### Background:

The customer contacts your Institution via telephone to discuss a recent transaction/ *their account*. During that call they advise that they have lost their job and that they will be unable to make repayments on their credit card/ *personal loan* as they fall due until they find another job.

#### Summary of financial difficulty assistance request:

“In the past, I have been late in making repayments to my credit card/ *personal loan* as the number of hours I got at work fluctuates. Recently I have lost my job and now I am concerned about my credit card/ *personal loan* debt in particular. My debt is currently at \$10,000 and I am over my limit/ \$10,000. I am currently looking and applying for a new job and am hoping that I will be back on my feet soon.”

#### Further information:

Your Institution reviewed the customer’s details and found that they have no savings or substantive assets to make a lump sum payment.

#### Proposed questions:

When answering the following questions, where possible, please refer to the relevant provisions in the procedures, policy documents and internal staff guidelines you have in place regarding financial difficulty. The proposed interview will be structured into five sections covering the following key areas:

No.	Question	Section	Comments
<b>Prompt and proactive</b>			
1	How would your Institution respond promptly to this particular customer’s concerns?	D 24.2.2	
2	In what circumstances would you initiate contact with a customer to discuss their financial situation?	D 24.2.2	
<b>Types of financial difficulty assistance available</b>			
3	<i>Following a request from your Institution for relevant financial information, the customer provides the Institution a copy of her statement of financial position showing that she is in a financial deficit every month (expenses exceed income), along with relevant supporting documents. The customer states that they will be applying for jobs but it appears that it may be sometime until they are reemployed.</i>		
3 (a)	Would you classify this customer as being in short term or longer term financial difficulty? Do you have any documented procedures to assist in making that distinction? Do you use any key criterions?		<i>This question is about how Institutions characterise a customer in financial difficulty.</i>
3 (b)	What types of financial difficulty assistance might you able to provide to this customer? i.e. lower repayment arrangement, postponement, freeze of interest.	D 24.2.3	<i>Does the institution provide assistance tailored to specific needs of the customer, rather than a standard solution applied to all?</i>

3 (c)	Do you provide different types of assistance if the customer looks likely to be in a longer term financial difficulty? Or are all requests for assistance dealt with on a similar basis? What kind of long term arrangements are you able to provide? i.e. reduced settlement or consolidation.	D 24.2.5	<i>How do Institutions apply their obligations to customers in longer term financial difficulty?</i>
<b>Training</b>			
4	Are Collections and other customer facing staff appropriately trained to:		<i>This question looks at whether staffs has been provided with adequate training to engage with customers in financial difficulty in accordance with section 24 of the Code.</i>
4 (a)	encourage this customer to make whatever payments they can while your Institution is considering their request?	D 24.2.4	
4 (b)	engage with customers in financial difficulty in accordance with section 24 of the Code. Is this documented in a staff guideline?	D 24	
4 (c)	How do you ensure that compliance is achieved? i.e. are the financial difficulty process independently reviewed by Compliance and/or Internal Audit?		<i>This question looks at whether Institutions have quality assurance framework in place for financial difficulty.</i>
<b>Procedures regarding listing and selling of debt</b>			
5	Do you have documented procedure stating that you will not list a default on this customer's credit reference file and will not sell the debt to a debt buy-out business while your Institution is considering the customer's application or request, unless legally required to do so?	D 24.2.6 & 24.2.7	<i>This question looks at whether Institutions have documented procedures detailing that they will not list a default on a customer's credit file and sell the debt while it is considering the customer's application or request.</i>  <i>And whether staff are aware of the above.</i>
<b>Other assistance provided to customer</b>			
6	What kind of options or avenues would your Institution suggest to this customer if you are unable to agree to their application or request?	D 24.2.8	<i>This question looks at what kind of options does the Institution provide to its customers when it is unable to agree to an application or request.</i>
7	If your Institution is unable to assist this customer will you notify them in writing? What is the timeframe to this? Is this documented in procedure and/or policy documents?	D 24.2.9	
8	Having regard to questions 6 and 7, is there a list of financial counsellors or similar services that staff can provide to the customer in this instance?	D 24.2.10	

## APPENDIX 3: Questionnaire to financial counsellors

### Question 1

<b>Have you ever dealt with credit unions, building societies and mutual banks on behalf of a financial counselling client?</b>
<b>Answer Options</b>
<b>Yes.</b> Please proceed to question 2.
<b>No.</b> If your answer is no, you are not required to complete this survey as the Inquiry is focused solely on credit unions, building societies and mutual banks.

### Question 2

<b>How would you rate your overall experience when dealing with credit unions, building societies and mutual banks about financial difficulty matters on behalf of your clients?</b>
<b>Answer Options</b>
Excellent
Good
Fair
Poor
Very poor
Unable to rate

### Question 3

<b>What is the most common issue you find when dealing with credit unions, building societies and mutual banks about financial difficulty matters? Please provide comment.</b>
--

### Question 4

<b>On average, do credit unions, building societies and mutual banks respond to you in a timely way in regards to an application or request for financial difficulty assistance? (refer to Code section D 24.2.2)</b>
<b>Answer Options</b>
All of the time
Most of the time
Some of the time
None of the time
Not applicable
Unable to rate

### Question 5

<b>On balance, how would you classify the types of financial difficulty assistance that have been granted to your clients by credit unions, building societies and mutual banks? (refer to Code section D 24.2.3)</b>
<b>Answer Options</b>
Specifically tailored to the needs of the client
A standard solution that is applied to all clients
Other (please comment below)

### Question 6

<b>In your experience, what types of financial difficulty assistance have generally been provided by credit unions, building societies and mutual banks in circumstances where your client 'can pay'? (refer to Code section 24.2.3)</b>
<b>The 'can pay' group has a finite period of financial difficulty. There is a clear plan for recovery and a workable solution.</b>
<b>Examples of these situations include an unexpected, but once-off small expense,</b>

temporary unemployment (e.g. an injury from which the person will recover), short term illness, maternity leave (where there is a job to return to).

**Answer Options**

Reduced repayment arrangements

Postponement of repayments

Freezing of interest

A combination of the above

Other (please specify below)

**Question 7**

In your experience, what types of financial difficulty assistance have generally been provided by credit unions, building societies and mutual banks in circumstances where your client 'may pay'? (refer to Code section 24.2.5)

For people in this category, it is harder to predict whether their situation will improve and over what timeframe.

Examples are people who:

- may have lost their job and prospects of a new job are difficult to predict. For some people, the possibility of re-training may be a pathway out. Some people will have seasonal or casual work or part-time work.
- may have had a long period of assistance already and continuation is being reviewed.
  - would have otherwise been in the "can't pay" category, but have an asset.
  - have unsecured debts, past the write-off period. Others may have secured debt, with negative equity but good prospects for recovery.
- have intermittent health problems or a health prognosis that could go either way.
- have any capacity to pay even a small amount.

**Answer Options**

The same types of assistance provided under question 5

Reduced settlement

Consolidation of credit facilities

Capitalisation of arrears

Other (please specify below)

**Question 8**

In your experience, what types of financial difficulty assistance have generally been provided by credit unions, building societies and mutual banks in circumstances where your client 'can't pay'?

The 'can't pay' group are clients who have permanent income reduction and no assets. There may have been a significant change of circumstances, such as a terminal illness. There are no prospects of future recovery and they have exhausted all avenues and options. Most people will be in receipt of long-term Centrelink benefits.

**Answer Options**

Debt waiver

Other (please specify below)

**Question 9**

On balance, do the financial difficulty arrangements offered by credit unions, building societies and mutual banks result in fair, reasonable and appropriate outcomes for your clients?

**Answer Options**

Always

Often

Sometimes

Never

Not sure

**Question 10**

<b>How would you rate the quality of service provided by collections and other client-facing staff of credit unions, building societies and mutual banks? (refer to Code section D 24)</b>
<b>Answer Options</b>
Excellent
Good
Satisfactory
Poor
Unsatisfactory
No experience
Other (please specify)

**Question 11**

<b>Has there been any instance where a credit union, building society or mutual bank has listed a default on your client’s credit file and/or sold the debt to a debt buyer while it was considering your client’s application or request for financial difficulty assistance? (refer to Code section D 24.2.6 and 24.2.7)</b>
<b>Answer Options</b>
This has not happened to any of my clients
This has happened to some of my clients
This has never happened to any of my clients (please provide comment below)

**Question 12**

<b>In the last 12 months, how many referrals of clients have you received from credit unions, building societies or mutual banks? (refer to Code section 24.2.9)</b>
<b>Answer Options</b>
None
Between 1 and 5 referrals
Between 6 and 10 referrals
More than 10 referrals

**Question 13**

<b>Are there any further comments you would like to make with regard to this Inquiry?</b>
---

**END OF REPORT**