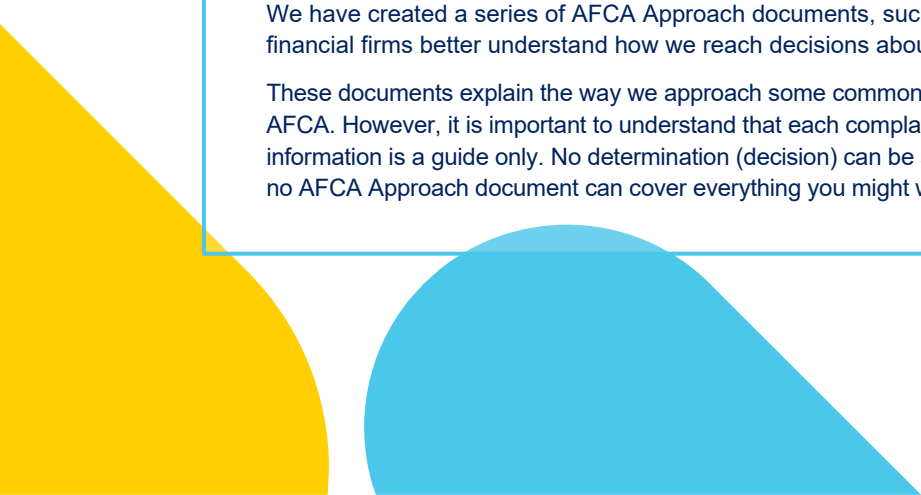


# The AFCA Approach to joint accounts and family violence

June 2022

<b>1</b>	<b>Purpose of this approach document</b> .....	<b>3</b>
1.1	Scope .....	3
1.2	Summary of this approach.....	3
1.3	Who should read this document? .....	3
<b>2</b>	<b>Jurisdiction</b> .....	<b>4</b>
2.1	AFCA's purpose .....	4
2.2	AFCA's jurisdiction .....	4
<b>3</b>	<b>In detail</b> .....	<b>5</b>
3.1	Issues that may arise with joint accounts .....	5
3.2	Understanding and responding to family violence .....	5
3.3	Account management where there is family violence.....	7
3.4	Protecting a customer's confidentiality and safety .....	7
3.5	Preventing financial abuse .....	8
3.6	Financial difficulty and joint debts .....	10
3.7	Financial difficulty in the context of family violence .....	13
3.8	Credit reporting and default listing.....	14
<b>4</b>	<b>Case studies</b> .....	<b>15</b>
	Case study 1 – Financial abuse in lending and breaches of privacy.....	15
	Case study 2 – Withdrawals from joint accounts.....	16
	Case study 3 – Financial difficulty assistance on joint loans.....	17
<b>5</b>	<b>References</b> .....	<b>18</b>



We have created a series of AFCA Approach documents, such as this one, to help consumers and financial firms better understand how we reach decisions about key issues.

These documents explain the way we approach some common issues and complaint types that we see at AFCA. However, it is important to understand that each complaint that comes to us is unique, so this information is a guide only. No determination (decision) can be seen as a precedent for future cases, and no AFCA Approach document can cover everything you might want to know about key issues.

# 1 Purpose of this approach document

## 1.1 Scope

The purpose of AFCA's approach documents is to explain how we look at common issues and complaint types. This document sets out our approach to assessing complaints about joint accounts and family violence.

This approach is consistent with AFCA's obligation to deal with complaints in a cooperative, efficient and timely way and to make decisions that are fair in all the circumstances. It is important to understand that each complaint that comes to us has a unique set of facts and this information is a guide only.

## 1.2 Summary of this approach

Joint loans or transaction accounts held in the name of two or more borrowers can lead to problems where a relationship breaks down, or where there is financial abuse or other forms of family violence.

Where a complaint involves a joint account, we will consider issues including whether the financial firm:

- Identified any signs of family violence or financial abuse that should have been apparent.
- Took appropriate steps in the circumstances – for example, by restricting access to accounts, keeping information confidential or making further enquiries to ensure its customer obtained a benefit from a loan.
- Responded to any request for financial difficulty assistance by considering what could be done to assist the individual borrower without the co-borrower's consent.

## 1.3 Who should read this document?

- Financial firms, consumers and consumer representatives who have a complaint at AFCA about joint accounts and family violence.
- Anyone dealing with or working with people experiencing family violence including carers, powers of attorney, family members and professionals such as financial counsellors, lawyers, and accountants.
- Financial firm employees who need to recognise warning signs and respond appropriately.
- Anyone who wants to understand how AFCA applies legal principles, industry codes and good industry practice when considering complaints about joint accounts and family violence.

## 2 Jurisdiction

### 2.1 AFCA's purpose

AFCA is the independent external dispute resolution scheme for the financial services sector. AFCA provides fair, independent, and effective solutions for financial disputes. We do this by providing fair dispute resolution services. We also work with financial firms to improve their processes and standards of service to minimise future complaints. In addition to resolving financial complaints, AFCA identifies, resolves, and reports on systemic issues and serious contraventions of the law.

### 2.2 AFCA's jurisdiction

AFCA can consider complaints against financial firms that are members of AFCA.

When a complaint is not resolved by agreement, negotiation or conciliation, we make a decision. Our decision reflects what is fair in all the circumstances having regard to legal principles, applicable industry codes or guidance, good industry practice and previous decisions of AFCA or predecessor schemes (which are not binding).<sup>1</sup>

When assessing a financial firm's conduct, we have regard to the law, codes, and standards of industry practice that were in place at the time of the conduct.

We may decide that a financial firm must compensate a consumer for direct financial loss, indirect financial loss or non-financial loss.<sup>2</sup> We may also decide that a financial firm is required to take, or refrain from taking, particular actions. If a consumer accepts our decision, the financial firm is bound by that decision.<sup>3</sup>

#### Fair in all the circumstances

Our decisions are intended to reflect what is fair in the circumstances of each complaint. This includes providing a fair outcome in cases where we find an error or breach has occurred.

In assessing what is fair, we apply a standard of fairness which focuses on concepts such as fair dealing, fair treatment and fair service. This allows us to assess the conduct of a financial firm over the life cycle of the firm's relationship with its customer.

The primary focus of our investigation is to assess whether the financial firm breached its obligations to its customer, however we also consider the conduct of the consumer when determining a fair outcome.

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<sup>1</sup> See AFCA Rule A.14.2.

<sup>2</sup> See AFCA Rule D.3.

<sup>3</sup> See AFCA Rule A.15.3.

## 3 In detail

### 3.1 Issues that may arise with joint accounts

Joint accounts include transaction accounts or credit facilities (such as home loans and personal loans) held in the name of two or more borrowers. Each customer is jointly and severally liable for debts held in joint names. This means they are each individually responsible for the whole debt and the lender can pursue either of them for the entire amount owing.

Joint accounts can lead to problems where a relationship breaks down, or where there is financial abuse or other forms of family violence.

Some of the issues that we commonly see in complaints include:

- One borrower is pressured into a loan which is not for their benefit, or they are unaware that a loan has been taken out in their name.
- A guarantee is signed under duress, or the guarantor is misled and does not understand what they are signing.
- One borrower wants to be released from or split a joint loan following a relationship breakdown, to become responsible for none or only part of the debt, but the other borrower or the lender does not agree.
- One borrower is experiencing financial difficulty and requires assistance, while the other borrower refuses to engage in any discussions with the financial firm.
- Co-borrowers disagree about how a joint debt should be repaid.
- One account holder makes withdrawals or other transactions without the other account holder's knowledge or consent.
- A customer's privacy is breached. This may have particularly serious consequences if family violence is involved.
- One borrower's actions result in credit reporting and default listing of both co-borrowers.

### 3.2 Understanding and responding to family violence

#### What is domestic and family violence?

1800 RESPECT defines domestic and family violence as:

A pattern of abusive behaviour in an intimate relationship or other type of family relationship where one person assumes a position of power over another and causes fear...It is often referred to as a pattern of coercion and control.

Family violence can have serious detrimental effects on a person's physical and emotional health and financial wellbeing. While anyone can be a victim of family violence, the majority of victims are women, and the perpetrators of violence are usually men.

## Financial abuse

Financial abuse is a form of family violence that involves financial control. It can include forcing someone into debt, making all the key financial decisions in a relationship, spending joint funds without the other person's knowledge or consent, or using joint assets and debts to control someone, for example to prevent them from leaving an abusive relationship.

An abuser may also withhold child support or use joint debts or jointly owned assets to continue to exert control over their victim even after a relationship has ended. This type of financial control can limit a person's efforts to recover from the abusive relationship and rebuild their economic independence and security.

## Warning signs of potential financial abuse

In April 2021, the Australian Banking Association (ABA) published an updated industry guideline on preventing and responding to family and domestic violence.

While not all financial firms are ABA members, we consider that this guideline is indicative of good industry practice. In particular, it is important that financial firm staff are appropriately trained to understand family violence and financial abuse and can recognise and respond appropriately to the warning signs, including at the time of lending.

Some indications that there may be financial abuse include when a customer:

- is seen or heard to be taking instructions from another party
- remains silent while another party does all the talking
- appears fearful (particularly of the person accompanying them), unfocused or withdrawn
- agrees to offer additional security or take on additional liabilities when there is no apparent benefit to them from doing so
- does not understand or is unaware of recent transactions on an account, or loans or guarantees in their name
- appears confused or reluctant to talk about what the funds being borrowed or withdrawn will be used for
- is not physically present during the transaction, instead allowing the co-borrower to handle the matter
- expresses concern about their privacy and disclosure of information to a co-borrower or joint account holder
- appears reluctant to involve a co-borrower when seeking assistance to repay a debt
- mentions that an intervention order (or equivalent) is, or has recently been, in place
- is agreeing to take on liability or provide security for amounts owed by an ex-partner.

## Engaging effectively

It will often be difficult for a customer experiencing family violence to discuss their situation with their financial firm. For this reason, financial firm staff should be trained to ask appropriate and sensitive questions where there are warning signs of potential family violence or financial abuse, to find out more about the customer's situation.

Where customers disclose family violence, financial firms should handle this information sensitively and offer flexible options to their customer, such as:

- Minimising the number of times a customer needs to disclose their situation to the financial firm by, for example, having a dedicated staff contact.
- Recognising that someone experiencing family violence may not have access to their financial records and other documents and modifying requests for information to reflect this.
- Working with the customer's appointed representative or referring them to appropriate support agencies if required.
- Providing information about how the financial firm can help the customer to protect their accounts, for example by setting up a separate account in their own name, or by changing an operating authority on a joint account to 'both to sign'.

### 3.3 Account management where there is family violence

A financial firm has obligations to protect their customers' personal information. A customer experiencing family violence may need additional help from a financial firm to ensure their contact information is kept secure and confidential from the co-borrower or joint account holder.

We have seen instances where a perpetrator of family violence has been able to access information about a vulnerable customer by contacting the financial firm. These privacy breaches can put the vulnerable customer and their family members (including children) at risk of harm.

### 3.4 Protecting a customer's confidentiality and safety

Financial firms should assess the way that they can protect a customer's safety on a case-by-case basis, including by:

- Safeguarding personal information that may put the customer at risk, such as new address or contact details.
- Discussing safe ways to communicate with the customer.
- Setting up new accounts (including 'silent' accounts) or changing access codes, passwords, and operating authorities for existing accounts.
- Not requiring the customer to make direct contact with the abuser.
- Limiting access to the account to staff specifically trained in family violence protocols.

- Informing customers of the nature of the information they may need to share with the other borrower, such as information about a child's account, so the customer can make appropriate arrangements.
- Supporting their customer to contact family violence services for help in managing their safety, or with emergency services if there is an immediate threat to their safety.

While it is crucial that financial firms ensure they do not share current information about one borrower with the other borrower, this does not mean that financial firms should decline all requests for information from borrowers.

However, financial firms should carefully consider any requests for information to ensure they comply with their privacy obligations and do not inadvertently place customers at risk.

### **3.5 Preventing financial abuse**

#### **Recognising and acting on warning signs**

Financial firms should take steps to prevent financial abuse, for example where a customer enters into a loan or withdraws funds under duress. Acting on warning signs of undue influence at the time of lending or withdrawals may help prevent financial abuse from taking place.

One example of where early awareness may help make a difference is at a car dealership, where a male customer who is rejected for finance later returns with a female friend or partner, and the loan application is made in her name even though the car is registered solely in the male's name.

Financial firms should be alert to the warning signs of potential financial abuse at the time of lending or withdrawal of funds. A financial firm should not approve a loan or other transaction if it suspects that financial abuse may be occurring, without first making further enquiries.

It is highly unlikely that a vulnerable person will be able to respond freely in the presence of the abuser, so a financial firm should try and speak to the customer alone.

This needs to be done carefully and sensitively, because if the potential abuser is put on notice about what is happening, this could have serious consequences for the vulnerable customer.

During the conversation, the financial firm should ask the customer if they are under pressure or duress and if they are receiving a benefit from the transaction. The financial firm should make a note of the conversation and retain this as part of its records.



Where a financial firm becomes aware of family violence after the time of lending, the financial firm should proactively explore with its customer whether financial abuse was present at the time of lending, and if so, whether there was anything the financial firm could have done to identify and prevent the abuse from occurring.

If there were warning signs at the time of lending which the financial firm failed to identify, then AFCA would expect the financial firm to take steps to rectify the issue, for example by agreeing to release the customer from liability or waive the debt, and correcting the customer's credit records

### **Where a borrower does not benefit from a credit facility**

A financial firm should generally not accept a customer as a borrower where the customer will not receive a substantial benefit from the facility. Examples could include a loan in joint names where only one borrower benefits, a credit card account that is to be used only by the secondary cardholder, or a loan solely in the customer's name that is obtained for another person's benefit.

If the customer will not benefit from the funds advanced, then they cannot be regarded as a borrower or co-borrower and should instead be treated as a guarantor. Guarantors receive special protection because they do not benefit from the loan.

An exception may apply where customers seek to have a facility structured in a particular way for asset protection or taxation purposes.

Where one borrower does not receive a substantial benefit, the lender should make enquiries to find out why the facility is being structured in this way and confirm that the borrower understands the risks involved. The lender should also take steps to satisfy itself that the borrower is not experiencing financial abuse.

Where a customer should not have been accepted as a borrower because the financial firm was, or should have been, aware that they did not benefit from the credit facility, the financial firm should release the customer from liability for the facility. This includes where warning signs of potential financial abuse were present at the time of lending and the financial firm failed to recognise or act on those warning signs.

The customer should not be liable for the facility in these circumstances because as a borrower, they did not receive the protections they would have been entitled to, had the facility been structured with them as a guarantor, for example a warning to seek independent advice.

Where a customer obtains a minimal benefit only from borrowed funds, then it may be appropriate for the financial firm to release the customer from liability for any portion of the loan which did not benefit them. One of the warning signs of potential financial abuse is where a borrower receives only a small benefit from a loan. Where a financial firm is aware of this at the time of lending further enquiries should be made before approving the loan.

Case study one below provides an example of where a financial firm failed to act on signs of potential financial abuse at the time of lending, and the customer did not receive a benefit from a joint loan. In that case, AFCA required the financial firm to compensate the customer for her share of the equity (\$190,000) which was lost when the security property was sold to repay the loan.

### **Disputed transactions**

Transactions may be disputed on the basis that they were not authorised by the account holder. Alternatively, an authorised transaction may be disputed by a joint account holder who believes they should not be liable, for example because they did not obtain any benefit from a transaction made by the other account holder or because they were subject to financial abuse when the transaction was made.

In these circumstances, the financial firm is required to show that the transactions were correctly authorised, for example that the person making the transaction had the authority to operate the account.

Where a financial firm becomes aware that the parties to a joint account are in dispute with each other, it should immediately change the operating authority for the account so that both parties are required to sign. This will help to preserve any joint assets until the account holders are able to resolve their dispute, for example through the Family Court.

If the financial firm is aware that the parties to a joint account are going through a separation but is uncertain whether the account is in dispute, the financial firm should ask both parties if the operating authority should be changed to 'both to sign'.

If warning signs are present, then a financial firm should make further enquiries before approving any transaction, even if the customer has authorised the transaction (see case study two).

## **3.6 Financial difficulty and joint debts**

### **Requests for assistance from individual borrowers**

Our financial difficulty approach document series explains that we expect financial firms to work with an individual borrower who is requesting assistance with a joint loan to explore options for resolving their financial difficulty. If there is an arrangement that would assist an individual borrower, then we would expect the financial firm to implement this. It is not necessary for the financial firm to first obtain the other borrower's consent.

There is no requirement in the National Credit Code and the Code of Banking Practice for a request to come jointly from all borrowers to a loan. Each borrower is also individually entitled to ask for assistance if they are having difficulty meeting their obligations.

## Assessing requests for assistance from individual borrowers

Where only one borrower requests assistance on a joint facility, the financial firm should consider the financial situation of an individual borrower only when considering how it might assist. If a financial firm needs more information, that request should be kept to a minimum to avoid this becoming a barrier to assistance.

If the customer fails to provide the information, the financial firm should still work to identify what options are available based on the information it does have, even if this is limited.

The financial firm must not require the vulnerable customer to contact a co-borrower to obtain information or consent in relation to a request for assistance, regardless of whether the hardship is short term or longer term.

The borrower requesting assistance will generally need to show that they can repay the debt alone, without help from the co-borrower, if the financial firm assists them.

## Options for assistance

Solutions offered to the borrower seeking assistance will depend on that borrower's individual circumstances. Options for assistance include:

- Capitalising arrears by absorbing overdue amounts into the loan so they are not repayable immediately in a lump sum but are instead repaid over the remaining term of the loan. This is likely to be suitable where the borrower can meet the ongoing loan repayments but is unable to clear the arrears.
- Extending the loan term – this may help reduce repayments to a level that is affordable by one borrower alone
- Temporarily reducing or waiving repayments, interest and/or fees – this might provide time for the borrower's situation to improve, for one borrower to refinance a joint loan into their own name, or for co-borrowers to resolve their disagreements, for example in the Family Court. However, financial firms are not expected to wait for an indefinite period without any repayments.
- Agreeing not to pursue one borrower for the loan, while retaining the financial firm's right to pursue the other borrower. This is covered in more detail below.
- Waiving part or all of a debt (debt reduction). This is covered in more detail below.

## Agreeing to settle a debt where there is joint and several liability

Each borrower on a joint loan is jointly and severally liable to repay the full amount of the debt. This does not prevent a financial firm from agreeing to settle or waive a debt with one borrower only, while retaining its right to pursue the other borrower(s) for the remaining balance.

Alternatively, a financial firm may agree to separate settlements with each borrower individually or, waive debt for all borrowers on the loan. A financial firm should act fairly in its treatment of each borrower.

When settling joint debts, it is important to consider any unintended consequences, and financial firms should encourage their customer to seek independent legal and/or financial advice about the impact the settlement may have on the asset pool and any family law proceedings.

### **Collection of debts when a settlement is agreed**

Financial firms should not outsource collection of the debt or sell the debt unless that borrower has been fully released from their liability under the loan. This is because there is a risk that the collection agency will attempt to pursue both borrowers for the full amount of the debt, which would be in breach of the settlement that the financial firm reached with one of the borrowers.

If a debt has already been outsourced or sold to a third party collection agency and the financial firm subsequently agrees to a settlement with one borrower, it should work with the collection agency to:

- buy back the debt from the third party, if appropriate; or
- instruct the collection agency to pursue only the other borrower for the debt.

### **Where financial difficulty cannot be overcome**

In some cases, there may be no form of assistance a financial firm can provide that would enable a borrower to overcome their financial difficulty and repay a joint debt alone, even in the longer term.

If the debt is secured by an asset, such as a house or vehicle, then the only realistic solution may be to sell that asset. Delaying the sale may worsen the borrower's position because their equity in the asset will be reduced as interest and fees continue to apply. In these circumstances, we encourage financial firms to consider allowing their customer a reasonable time to sell the asset themselves.

### **A financial firm's obligations to co-borrowers**

As outlined above, financial firms should work with individual borrowers who request financial difficulty assistance. If there is a solution that will assist an individual borrower to repay the debt alone, and which does not require the other borrower to contribute, then the financial firm should implement that arrangement without requiring the other borrower's consent.

Where a financial firm agrees to assist one borrower, the financial firm should notify the other borrower of the arrangement, unless exceptional circumstances apply (for example, concerns about family violence).

Notifying the other borrower gives them an opportunity to protect their position, for example by making repayments or putting forward an alternative repayment proposal to minimise additional interest charges.

If the other borrower makes an alternative proposal, then the financial firm should consider this. However, where the other borrower disagrees with the assistance offered but cannot provide a reasonable alternative repayment proposal, then the other borrower's objection should generally not prevent the financial firm from going ahead with the arrangement if this will see the debt repaid within a reasonable timeframe.

A financial firm may have concerns that a borrower who has requested assistance may not meet the proposed repayment arrangements. If the borrower cannot meet the new repayments then there is a risk that interest will accumulate, and the debt will increase, potentially placing all borrowers in a worse position.

If a financial firm has concerns about affordability, it may be prudent to require the borrower who has asked for assistance to show that they can make payments at the agreed level for a period of time, for example six months, before agreeing to make other changes such as capitalising arrears or extending the loan term.

Case study three below gives an example of where a financial firm told one borrower it could not consider his request for assistance in relation to a joint loan unless all the other borrowers and guarantors agreed. In that case, AFCA determined the information provided by the financial firm was incorrect and awarded compensation for non-financial loss suffered by the borrower.

### **Where a co-borrower seeks the sale of property securing a loan**

Where there is a breakdown in the relationship between co-borrowers, the borrowers may want the financial firm to take conflicting actions. For example, one borrower may ask the financial firm to provide financial difficulty assistance to help them keep the security property, while the other borrower wants the financial firm to take possession of the property and sell it to prevent their financial position getting worse.

As explained above, the financial firm has obligations to an individual borrower who is seeking assistance to make loan repayments. If there is an affordable arrangement that would see the loan repaid within a reasonable timeframe, then the financial firm should consider this. Where borrowers disagree about what should happen to jointly owned property, they should be advised to seek independent legal advice about how to resolve the dispute.

Sale of a security property will usually only be appropriate where financial hardship is long-term and neither borrower is able to repay the loan within a reasonable timeframe, even if assistance is provided.

### **3.7 Financial difficulty in the context of family violence**

The principles outlined above for handling financial difficulty requests made by one borrower to a joint loan also apply in situations where family violence is involved. This

includes the expectation that a financial firm will work with an individual borrower who is requesting assistance, without requiring the consent of the other borrower.

Additional considerations where a borrower is (or may be) experiencing family violence include:

- Where a customer discloses family violence the financial firm should take this on face value and not require the customer to provide evidence, for example, in the form of an intervention order.
- If it is difficult for a customer experiencing family violence to gather supporting documents such as payslips or account statements, a financial firm should be willing to consider providing assistance without these documents
- Waiving all or part of a debt may be an appropriate solution if this will help the customer to move on from an abusive relationship and achieve economic independence.
- As safety considerations will be particularly important, a financial firm should ensure that any discussions or correspondence it has with the other borrower, or with third parties such as collection agencies, protect the confidentiality and safety of their customer.

### **3.8 Credit reporting and default listing**

Financial firms have an obligation to provide accurate information if they are reporting credit or default information to credit reporting bodies. As co-borrowers are jointly and severally liable for joint debts, if one borrower stops making repayments to the loan, then both borrowers are at risk of having adverse information placed on their credit report. In situations where family violence is present, this may represent one form of coercion by one borrower over the other.

Accurate credit reporting information is important in assisting financial firms to meet their responsible lending obligations. However, adverse credit information on an individual's credit report can be a significant barrier to recovery and achieving financial independence. Taking this into account, there may be occasions where financial firms should consider whether it is appropriate to remove or refrain from entering credit information about a vulnerable borrower.

#### **If a financial firm is on notice that a borrower is experiencing family violence**

Where a financial firm is aware a borrower is experiencing family violence, it should place enforcement action on hold while it works with the borrower to consider options to overcome their financial difficulty with the loan. This does not prevent the financial firm from entering a default listing, or proceed with enforcement action, against the other borrower, if appropriate.

### **If a financial firm is unaware family violence is or was present until after a default listing is made**

Where a financial firm default lists a borrower (who has experienced family violence) because it was not aware of the borrower's circumstances at the time of the listing, the financial firm should consider whether it is appropriate to remove the listing.

This is because customers who have experienced family violence are likely to struggle to achieve financial autonomy if they have adverse information on their credit file which may not reflect the circumstances in which they entered into the credit facility.

### **If a customer did not receive any benefit from a loan**

Where a customer entered into a loan because they were subject to duress and received no benefit from the funds, and the financial firm was or should have been aware of this at the time of lending, then the financial firm should release the customer from liability under the loan. At the same time, the financial firm should also remove any adverse credit information related to the debt.

## **4 Case studies**

These case studies are based on previous determinations by AFCA. While previous determinations are not binding precedents, where relevant they will inform AFCA's approach to an issue.

### **Case study 1 – Financial abuse in lending and breaches of privacy**

Ms Y and her ex-husband held several loans with the bank. In late 2013, the couple separated, and Ms Y left the family home and moved interstate. Ms Y said her ex-husband financially controlled her and forged her signature to obtain a line of credit (LOC) for \$350,000 in their joint names. She believed her ex-husband's family had continued to access her bank account information and change her address.

AFCA found that Ms Y should not have been a borrower under the LOC as she did not receive a benefit. Ms Y did not find out about the LOC until her lawyer issued a subpoena during Family Court proceedings.

All the accounts held by Mr and Ms Y were managed by the same staff member, who worked with Mr Y's sister. The staff member only interviewed Mr Y for the LOC and did not contact Ms Y, despite being aware the couple had separated. Ms Y's signature on the LOC documents did not match sample signatures and AFCA's independent handwriting expert confirmed Ms Y's signature was forged.

AFCA found the bank should have taken more care to compare the signatures on the loan documents and make sure Ms Y was receiving a benefit. The LOC was controlled by Mr Y and the majority of the funds were used for his benefit. AFCA

found that the issues with the LOC were not dealt with in the Family Court settlement partly due to an imbalance of power between the couple. We required the bank to compensate Ms Y for her share of the equity (\$190,000) which was lost when the family home was sold to repay the LOC.

AFCA found the bank had breached Ms Y's privacy on multiple occasions by allowing others to access her accounts and change her contact details when it was aware of the separation. Ms Y changed her address after she moved out of the family home, but this change was later reversed several times over a three-year period. The bank was unable to show it had complied with its identification and privacy obligations on five occasions when Ms Y's account was accessed. It also failed to respond when Ms Y raised her concerns on multiple occasions. AFCA required the bank to pay Ms Y a total of \$13,500 as compensation for the severe stress and anxiety she suffered as a result.

### **Case study 2 – Withdrawals from joint accounts**

The complainant and her ex-husband each held a personal account in their own name with the bank. Each of them had authority to operate the other's account. The couple separated in September 2018. The complainant says her ex-husband forced her to transfer \$70,000 from her personal account into his personal account later that month. The complainant said the bank should not have processed the transfer.

AFCA noted the obligations on financial firms to ensure that their staff are appropriately trained to understand family violence and financial abuse, and to recognise and respond appropriately to any warning signs. However, after reviewing the information provided, AFCA concluded it did not show that the bank was aware (or should reasonably have been aware) that the complainant was being financially abused or coerced into making the transfers.

When the complainant attended the branch in September 2018, she did so alone. She gave the teller a handwritten note signed by herself and her ex-husband that said the couple were separating and had agreed to split their assets 50/50. The bank immediately changed the account authority on the complainant's personal account so only she could operate it, not her ex-husband. The complainant then instructed the bank to make the \$70,000 transfer.

AFCA found the bank had acted appropriately by changing the account authority and did not make an error by processing the transfer. There were no warning signs that the complainant was not acting of her own free will when she made the transfer. The transfer did not raise any 'red flags' as it was consistent with the handwritten note advising the couple had agreed to divide their assets between them.

AFCA noted that the complainant may be able to pursue her concerns about her ex-husband's conduct and his right to the funds through the Family Court process that was under way.



### Case study 3 – Financial difficulty assistance on joint loans

Mr M had three home loans with the financial firm in the joint names of himself and his ex-wife, who was not a party to the AFCA complaint. The loans were secured by the Mr M's home (which was in the sole name of his ex-wife) and a property owned by his ex-wife's parents, who were also guarantors on the loans.

Mr M suffered severe mental health issues which caused him to stop work, sell his business and apply for income protection benefits. He also separated from his wife and she stopped contributing to the loan repayments. Mr M approached the financial firm on several occasions over a two-year period to seek assistance as he wanted to retain the home where he was living with his young son.

The financial firm advised Mr M that all borrowers and guarantors on the loans needed to sign off on 'assistance'. Mr M replied that the guarantors (his ex-wife's parents) would not agree and therefore he would withdraw his application for hardship assistance.

AFCA found that the information provided by the financial firm was incorrect as the financial firm had an obligation to consider Mr M's financial hardship and seek to assist him as an individual customer. AFCA noted that, while some options may have required the agreement of Mr M's ex-wife and her parents, not all options for assistance would have required their consent.

AFCA found that the financial firm ought to have taken additional steps to make it clear to Mr M the type of assistance it could have offered him as an individual borrower and not led him to believe that any assistance was subject to the approval of his ex-wife and her parents.

AFCA required the financial firm to pay \$2,000 to Mr M as compensation for the significant stress and anxiety its actions had caused him.

## 5 References

### Definitions

Term	Definition
Complainant	An individual or small business that has lodged a complaint with AFCA
Financial firm	An organisation or individual that is a member of AFCA

### Useful documents

Document type	Title / Link
Rules	AFCA Complaint Resolution Scheme Rules <a href="https://afca.org.au/rules">afca.org.au/rules</a>
Industry Guideline	<i>Financial abuse and family and domestic violence guidelines</i> <a href="https://ausbanking.org.au/financial-abuse-and-family-and-domestic-violence-policies/">ausbanking.org.au/financial-abuse-and-family-and-domestic-violence-policies/</a>
Code	<i>National Credit Code</i> <a href="https://asic.gov.au/regulatory-resources/credit/credit-general-conduct-obligations/national-credit-code/">asic.gov.au/regulatory-resources/credit/credit-general-conduct-obligations/national-credit-code/</a>
Code	<i>Code of Banking Practice</i> <a href="https://ausbanking.org.au/wp-content/uploads/2021/10/2021-5-Oct-Banking-Code-WEB.pdf">ausbanking.org.au/wp-content/uploads/2021/10/2021-5-Oct-Banking-Code-WEB.pdf</a>