



# Financial Rights

LEGAL CENTRE

FACT SHEET



Financial Rights Legal Centre  
ABN 40 506 635 273

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## I'M IN DEBT - SHOULD I SIGN UP WITH A DEBT NEGOTIATION FIRM?

This fact sheet is for information only. We strongly recommend that you get legal advice about your situation.

Employing a Debt Negotiator to deal with your creditors may sound like an attractive option, but the wrong service can make your situation much worse, and still charge you for their services.

This fact sheet gives you information about why Debt Negotiation may be harmful, suggests alternatives and also explains what to do if you find yourself already signed up

### CASE STUDY

Dani had a large number of debts owing and could not afford to make her minimum payments. Dani saw TV ads for a DEBT NEGOTIATION FIRM and called them for assistance negotiating repayments.

Dani was told that she had to pay a fee of \$1250 up front as well as repayments of \$102.25 a week by direct debit. Dani was informed that until the initial payment was received the DEBT NEGOTIATION FIRM would not begin negotiating with her creditors. Dani was told to not be alarmed if she received threats of legal action, default notices, and demand letters as these were 'automatically generated by a computer system' and all she had to do was to forward such letters to the DEBT NEGOTIATION FIRM. Dani was advised to save as much money as she could. Dani was also instructed to stop making repayments to her creditors. She was advised that by stopping her repayments she would increase her savings. These saving would then enable her to pay the settlements offers that the DEBT NEGOTIATION FIRM achieve through negotiation with her creditors.

After not hearing from the DEBT NEGOTIATION firm for some time, and not having her calls returned, Dani began to worry. She was receiving increasingly threatening calls from debt collectors and one of them had served her with a Statement of Claim (the first step in starting court proceedings in NSW).

### WHAT IS DEBT NEGOTIATION?

Debt negotiation is a negotiation between a debtor and creditor (or creditors) to settle a debt on terms which are beneficial to both parties. Sometimes a creditor may be willing to accept a lower amount than the actual debt figure if they receive the amount as a lump sum.

[www.financialrights.org.au](http://www.financialrights.org.au)



## WHO ARE DEBT NEGOTIATION FIRMS?

Debt Negotiation Firms market themselves as professional debt negotiators. They present debt negotiation as something they do as experienced “professionals.”

However, Debt Negotiation Firms do not need to have an Australian Financial Services License or Credit License. They do not have to have any qualifications, skills or training. There are no industry standards as to best practice that are binding on these firms. Anyone can say they can negotiate on your behalf.

Debt Negotiation Firms do not have to be a member of a free external dispute resolution (EDR) scheme, such as the Credit and Investment Ombudsman (CIO) or Financial Ombudsman Service (FOS) that credit licensee and financial services need to be. EDR schemes provide an important consumer protection role, as it provides you a free way to resolve disputes fairly. Some Debt Negotiation Firms may voluntarily be a member of EDR, but they could withdraw their membership at any time as it is not mandatory.

Debt Negotiation Firms are NOT required to satisfy any particular requirements such as meeting the ‘fit or proper’ person test, satisfying competence standards, meeting conduct or disclosure obligations, managing conflicts of interest or belonging to an EDR scheme to resolve consumer complaints. This can leave consumers vulnerable, with the commercial needs of the Debt Negotiation Firm being placed above the best interests of the client. Consequently you may have limited options to resolve any dispute.

Debt Negotiation Firms operate in different ways and may charge different amounts for the services. For example, they may charge you a fee based on a percentage of the amount of your debts, or as a percentage of any amounts they save you. These fees can add up to thousands and even tens of thousands of dollars depending on the size of your debts.

Some problems with Debt Negotiators are:

- A Debt Negotiation Firm may suggest you stop paying your creditors and pay them instead. Only once you have paid them their fee, or an agreed part of it, will they negotiate with your creditors. This can leave you subject to debt collection and enforcement action in the meantime.
- A Debt Negotiation Firm may ask if you can obtain a lump sum amount by borrowing from friends, borrowing from a mortgage or other credit facility or accessing your superannuation early. They may not have the skills, experience or professional knowledge as to whether this is suitable, strategic, in your interest or the best solution for you.



- In some cases they rely on you to save up a lump sum by not paying your creditors. Ask yourself if this is realistic. If you are already missing payments, you may not have any capacity to save at all.
- A Debt Negotiation Firm may advise you to stop paying your debt to create “leverage” with your creditor and this could lead to default listings, legal proceedings being commenced and other negative outcomes.
- A Debt Negotiation Firm may negotiate with multiple creditors with no regard to the implications of paying one creditor over another. For example, the Australian Tax Office has hardship policies which allow for generous reductions and remittance of interest only if you pay them in preference to other discretionary debts.
- A Debt Negotiation Firm may misrepresent your circumstances to your creditor by exaggerating your health or financial circumstances in order to negotiate with your creditor on “compassionate grounds?” This may affect your ongoing relationship with your creditors, if the negotiation fails or you later intend to get a loan with them. As a Debt Negotiation Firm is your agent, it will be assumed you authorised their misrepresentation.
- The Debt Negotiator may charge you considerable fees without actually fixing your financial problems. For example, they may have your debts reduced by \$30,000, and claim fees as a percentage of this amount, but you may still not be able to afford to pay the \$40,000 in debts you have left. The contract will usually say that they can charge you if they reduce your debts, there will be no obligation to ensure that this is sufficient to fix your problem.

## SHOULD I SIGN UP TO A DEBT NEGOTIATION FIRM?

Financial Rights strongly recommends that you DO NOT sign up with a Debt Negotiation Firm. But if you are considering signing up it is important to understand and clarify how the Debt Negotiation Firm is proposing to assist you and what the fees are.

You need to consider the following:

1. Can you afford the lump sum (to offer your creditors)?
2. Can you afford the fees?
3. Is the strategy the Debt Negotiation Firm proposing logical? What if only some creditors agree and others don't? Are you going to be worse off or should you consider a different option?
4. Will your situation deteriorate while you are paying the Debt Management Firm's fees and not paying your creditors?



5. Ask yourself: Can you trust that they will deal with your debts? What if they disappear and you never see them again? Will they take responsibility if things go wrong?
6. Are there better, free alternatives?

## WHAT ARE THE ALTERNATIVES TO USING A DEBT NEGOTIATION FIRM?

1. If you are having financial difficulties, contact a financial counsellor as soon as possible. They can help you come up with a plan to tackle your money problems. You can be referred to one if you call 1800 007 007. This is the number for the Credit and Debt Hotline in NSW, which is a free service that gives legal advice and referrals to financial counsellors to consumers about personal debts. Similar services exist in the other States and Territories and can be accessed on the same number. Financial counsellors can assist you with realistic, sustainable arrangements with your creditors.
2. [ASIC's Budget Planner](#) is a helpful calculator to work out where your income is going.
3. If you are going through temporary hardship (for example, because you have been sick, temporarily unemployed, or suffering from a relationship breakdown), you can contact your creditors and ask for hardship assistance. Most financial service providers and telecommunication and electricity providers have channels to provide hardship assistance. See our [Financial Hardship Fact Sheet](#) for more information.

## HELP! I HAVE ALREADY SIGNED UP AND I AM NOT HAPPY WITH THEIR SERVICES!

Whilst it can be difficult to cancel a contract, there may still be options. As a general rule, once you have signed up to a contract, you are usually bound by its terms. You should follow the steps outlined below if you want to cancel your contract with the Debt Negotiation Firm and raise a dispute:

1. **Check your contract.** You may fall under a 'cooling off' period, or there may be a provision for termination. However you may be liable for cancellation fees or fees until the termination date.
2. **Call the Credit and Debt Helpline** on 1800 007 007 to obtain legal advice regarding your prospects of success in cancelling your contract and/or obtaining a refund. Try and have a copy of your contract when you call for advice.

Whether you can (i) terminate the contract and pay nothing further; or (ii) seek a refund of the fees already paid will depend on the individual facts and circumstances of you signing up.



You could potentially make a claim under the Australian Consumer Law, arguing that:

- i. the services rendered were not fit for your stated purpose;
- ii. the CRF engaged in misleading and deceptive conduct or;
- iii. unconscionable conduct;
- iv. the contract included unfair contract terms.

All of these arguments are complicated and can be hard to establish.

3. **Contact the Debt Negotiation Firm and raise a dispute.** This can include you asking to cancel your contract, or asking for a refund of fees paid. Some Debt Negotiation Firms may be members of either the Financial Ombudsman Service ([www.fos.org.au](http://www.fos.org.au), 1800 367 287) or the Credit and Investments Ombudsman ([www.cio.org.au](http://www.cio.org.au), 1800 138 422). If so, you can find the relevant contact details for the Debt Negotiation Firm's dispute resolution officer from either Ombudsman.

If you are unable to resolve the dispute with the Debt Negotiation Firm and they are a member of an EDR scheme, you can lodge a dispute with either FOS or CIO. You can lodge a dispute online.

4. **Take the Debt Negotiation Firms to NCAT or Court.** If the Debt Negotiation Firms is not a member of an EDR scheme, and you are unable to negotiate a settlement with them, you can take the matter through to NSW Civil and Administrative Tribunal (NCAT) or court (NSW only, contact the Credit & Debt Hotline on 1800 007 007 for the equivalent tribunal in your state). If you are considering this option, we strongly advise you obtain legal advice before doing, as there are risks, including payment of costs if you are unsuccessful.
5. **Make a complaint to the regulator, Australian Securities and Investment Commission (ASIC):** Although the ASIC is only likely to intervene if a number of consumers are affected, it is still important to keep ASIC informed of problems. A complaint can be made at [www.asic.gov.au](http://www.asic.gov.au)

## NEED SOME MORE HELP?

Need some more help? Call the **Credit & Debt Hotline** on 1800 007 007 for free legal advice or financial counselling help. See [Fact Sheet: Getting Help](#) for a list of additional resources.

*Last Updated: July 2016*