



Financial Rights

LEGAL CENTRE

FACT SHEET



Financial Rights Legal Centre
ABN 40 506 635 273

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I'M FINDING IT HARD TO MANAGE MY FINANCES: SHOULD I SIGN UP WITH A PERSONAL BUDGETING SERVICE?

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

Personal Budgeting Services (or “Money Management”) offer to take away the stress of managing your money by doing it for you. Beware, you are giving up some control of your money and there will be limits to what they will take responsibility for. Most importantly, if you don't have enough money to go around now, adding another bill for the management services is not going to help!

CASE STUDY

James and Jane feel like they are always struggling when it comes to pay day. They have 4 kids, a mortgage, credit card debt, utility and electricity bills coming out of their ears. They fight about money all the time. They haven't been on a holiday for years and at Christmas they are always scrounging for money to buy something nice for the kids. They see advertising on the television for a service that promises to relieve them of the stress. They decide they will call and see what it is about.

They go to a nice office, and sit down with all their bills. The salesperson seems really professional, and they are left to watch videos about other couples who have benefited from the service. The salesperson tells them how easy it is and that they do all the hard work. All James and Jane need to do is re-direct their pay into the PERSONAL BUDGETING SERVICE bank account. Then, every week, they will be given \$200 for petrol, groceries and living expenses.

Jane, who normally does the weekly shop says that \$200 seems really low, she spends more than that in a week just to feed her family of 6 plus James drives to work for an hour a day. She has reservations but the salesperson says that they have to cut down on the spending if they are really committed to saving for that Christmas fund and for that holiday goal. He says that all the money they will save will be available for emergencies all they need to do is ring them and they will have it!

James and Jane sign up. The fees are \$40 per week, plus they will need to pay \$1200 to set up the service. They are told that this upfront fee will be spread over the first 6 months. James and Jane tell their paymaster to start paying into the new account and they sign authorities for the PERSONAL BUDGETING SERVICE to contact their creditors.

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This fact sheet gives you information about why signing up to Personal Budgeting Service may be harmful, suggests alternatives and also explains what to do if you find yourself already signed up.

WHAT IS A PERSONAL BUDGETING SERVICE?

Personal Budgeting Services, or 'debt payment services' operate on the promise that they will manage your income to ensure the payment of bills and debt on your behalf, while providing you with an allowance for daily expenses. Some personal budgeting services will also claim to provide other services, such as reviewing your financial position on a regular basis and negotiating future repayment arrangements with your creditors. In managing your payments, they will often charge you periodic 'maintenance' or management fees. This is often in addition to, up-front 'establishment' fees charged to set up accounts with them.

WHAT IS A PERSONAL BUDGETING SERVICE?

We strongly recommend you **DO NOT** sign up to a Personal Budgeting Service. This is because:

1. Personal Budgeting Services are currently not bound by any statutory regimes or licensing requirements. This means there is little a company or individual has to demonstrate before setting up a personal budgeting service.
2. Personal Budgeting Services do not have to be a member of a free external dispute resolution (EDR) scheme, such as the Credit and Investments Ombudsman (CIO) or Financial Ombudsman Service (FOS). In contrast, other financial services companies must be members of an EDR. EDR schemes provide an important consumer protection role, as it provides you a free way to resolve disputes fairly. Some Personal Budgeting Services may voluntarily be a member of EDR, but they could stop their membership at any time as it is not mandatory. What this means is if things go bad, you may have limited options to resolve any dispute.
3. Personal Budgeting Services will hold and manage your money – without any regulatory oversight. This is concerning, as there are no rules about whether your assets are separated from the businesses' assets. This can cause difficulties if a third party sues the Personal Budgeting Service and wants to gain access to funds they hold, or if the Personal Budgeting Service becomes insolvent.
4. Personal Budgeting Services are also likely to keep the interest earned from their client's account. This can lead to conflict of interest type situations, where they may be more likely to keep the money in the account for as long as possible to accrue interest, instead of paying your debts when they fall due.
5. Personal Budgeting Services rarely advertise their fees and



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there is often a wide range of fees charged in the industry. When consumers first make contact (often at a highly stressed time), the Personal Budgeting Service is likely to structure payments to make it seem like it is not much and affordable. In signing up and incurring an ongoing cost, you are effectively adding another creditor to your list. If you don't have enough money to start with, paying someone to manage your money is going to make the problem worse.

6. If you do fall behind in your payments, the Personal Budgeting Service may not take any responsibility for dealing with legal notices and other consequences. They will only distribute the money you earn, and won't necessarily take action on your behalf if this is not enough. This could leave you vulnerable to debt collection and enforcement action.
7. Many Personal Budgeting Services provide specialised debt solutions, without appropriate qualifications. This means the debt solutions they are offering may not be suitable, affordable or sustainable.

Some people consciously choose to outsource an activity because they don't have the time or energy to do it themselves. Given the concerns outlined above, we do not suggest this as a preferred method of action. However, if you want to sign up with Personal Budgeting Service, we suggest you do the following things:

1. Specifically ask the Personal Budgeting Service about their fee structure, including any establishment fees, ongoing fees and cancellation fees. You may also want them to send a schedule of the fees before you sign up. If you cannot afford the fees you should not go ahead.
2. Ask the Personal Budgeting Service to send you their contract before you sign up. You should read the **ENTIRE** contract very carefully. Contracts will often contain terms that the sales consultant may not advise you of. You should consider:
 - a. The scope of their management of your debts – who will deal with your creditors if you fall behind.
 - b. Are they qualified to provide the services they are purporting?
 - c. Whether there is priority for their fees to be paid before your debts.
 - d. What happens to any interest earned on your money?
 - e. Are there contract terms which may be unfair? (i.e. give them more power than you by allowing cancellation without reason.)

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3. If the proposed budget leaves you with insufficient money to cover your basic living expenses do not go ahead.
4. DO NOT sign anything unless you are absolutely sure about what you are paying for. If you are unsure what any terms mean, you should get legal advice. You can contact the Credit & Debt Hotline on 1800 007 007 or contact your local community legal centre.

WHAT ARE THE ALTERNATIVES TO USING A PERSONAL BUDGETING SERVICE?

1. [ASIC's Budget Planner](#) is a helpful calculator to work out where your income is going.
2. 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 are required to provide reasonable hardship assistance. See our [Financial Hardship Fact Sheet](#) for more information.
3. If you use Internet banking you can set up scheduled payments to pay your most important bills as soon as your money comes in and it won't cost you thousands of dollars. That way you remain in control – you can change your scheduled payment if you are short of money some weeks.
4. 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 Helpline, 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.
5. If your finances are in trouble because of an addiction, such as gambling, contact a financial counsellor as soon as possible. There are specialised gambling financial counsellors that can help you sort out your money problems and assist you manage your addiction.

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 Personal Budgeting Service and raise a dispute:

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

If you are unable to resolve the dispute with the Personal Budgeting Service 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 Personal Budgeting Services to NCAT or Court.** If the Personal Budgeting Services 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.

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5. **Make a complaint to the regulator, Australian Securities and Investment Commission (ASIC):** Although 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

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.

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