

Untangling financial abuse for women escaping DV

The factsheet will briefly cover:

1. What is financial abuse?
2. Is the victim of financial abuse liable to pay? And if so, what can she do?
3. How can you assist? What can you ask, what documents can you request to provide context to the debts?
4. What outcomes/remedies are available?
5. When to get legal advice? Where to get legal advice?



What is financial abuse?

Financial abuse is defined as a “form of family violence that negatively impacts a person financially and undermines their efforts to become economically independent” [1].

Financial abuse (as detailed in the Australian Bank Association’s Industry Guideline) includes, but is not limited to:

- Controlling behaviour that denies a person financial autonomy such as access to finances, bank accounts and financial records or the ability to work, study or access benefits;
- Withholding or threatening to withhold essential financial support which may be necessary for the maintenance of a partner and/or dependent child;
- Coercing a person into particular financial arrangements: by relinquishing control over their assets, taking out a loan, credit card or guaranteeing a loan for the benefit of the controlling partner;
- Using control of finances or debt to prevent a person leaving a relationship.

At its heart, financial abuse is about power, control and manipulation of an individual. Financial abuse often occurs with other forms of violence including physical violence, intimidation and controlling behaviour.

The consequences of financial abuse could be that the victim has insufficient funds to meet basic needs, suffers homelessness or the prospect of long term financial hardship, being forced to pay all joint loan payments, and potentially acquiring a poor credit history from a joint loan. It may also result in a person being prevented from engaging in regular employment.

The abuse is generally long term and may continue after an individual has left an abusive partner.

Case Study

Often DFV cases involve many debt/insurance issues: Context is critical

Elanor, returns to live in the family home with 2 young children, after her partner is sentenced to prison for breaches of ADVO and other offences. The home had been heavily damaged by her partner. The mortgage and insurance for the home is in joint names. The mortgage and council rates are in arrears; as is a joint car loan for a car used solely by her partner and now disposed of. Elanor has used her savings and consequently is making only minimum payments on the credit card in her sole name. She works part-time and receives parenting payment and family tax benefit.

Joint car loan: unjust, no benefit, ABA Guidelines invoked. Waiver of remaining balance, account closed, client released from further liability.

Council Rates: repayment arrangement for arrears over 12 mths and manage ongoing rates

Insurance claim for property damages: insurer had an ‘innocent party clause’ for joint policy holders in situations of DFV.

Joint Mortgage: hardship arrangement – interest only for 12 mths.


Credit Card: min payment = 15 yrs. Cancelled card, reduced debt and repayment arrangement negotiated.



What were we able to do?

This fact sheet accompanies an Ask Lois webinar presentation on 4 August 2021 by Financial Rights Legal Centre and Women’s Legal Centre.

The resources are information only and you must seek legal advice in relation to any particular circumstances.




Is the victim liable to pay?

Is the victim of financial abuse liable to pay? And if so, what can she do?

The short answer is that a victim-survivor may be liable to pay for debts but that seeking assistance will help to identify whether that is the case and what can be done.

The victim of financial abuse is not automatically liable for her partner's debts signed only in his name, but if she has signed a contract as a co-borrower or guarantor, or was a director or partner in a small business with her abuser or has received a service (like Netflix) she is liable for that debt unless she can raise a defence or seek to be released from the contractual obligations.



How can you assist?

What can you ask? What documents can you request to provide context to the debts?

There are three main avenues towards a resolution:

1. *identifying whether duress occurred;*

Duress may be argued with undue influence: which focusses on the quality of the consent of the victim-survivor and/or with unconscionable conduct: which focusses on the quality of behaviour by the perpetrator. But what may be difficult is arguing that the credit provider knew, or ought to have known, about the duress. Did your client participate in the loan negotiations, was she silent throughout, or did she disclose an ADVO?

2. *arguing other legal defences where they apply;*

There are other legal defences which may apply: perhaps the contract was unjust or unsuitable; did the victim-survivor sign as a co-borrower or guarantor and was the prescribed information provided; is this a debt to which the Limitation Act applies? If you are unsure whether any legal defence will apply, it is best to seek legal advice.

3. *requesting a compassionate release.*

Finally, based on all the circumstances the most ideal outcome may be a compassionate release from the debt.

It is likely that your client won't have all the documents that you need. You can request these on your client's behalf with their consent (which usually requires written authority). When requesting documents, always ask for a hold on any enforcement action to allow time for the client to get advice after the documents are provided: generally 30 days after the documents have been provided.

Certain timeframes apply and the Financial Rights Legal Centre has a fact sheet to help:

["How do I get copies of my loan documents?"](#) [2].

Once you receive the documents summarise what you find in the documents and although this is not an exhaustive list we would look out for some of the following:

- Is the income stated on the forms/documents higher than your client's actual income?
- Did your client have only Centrelink income or no income at the time of application?
- Are debts or liabilities not listed or are they inaccurate?
- Does contact information not match your client? Ex-partner's email or phone number only
- Were enquiries made about your client's income and expenses
- Did the lender verify your client's financial situation? Are there any payslips, Centrelink Income Statement or bank account statements requested by the lender?
- Was there limited or no contact between the lender and your client? Or was contact controlled by partner? Consider language barriers.

Outcomes and remedies

What outcomes and remedies are available?

It is a good idea at the start of your discussions with your client, to work out what sort of remedy she is seeking, or what she is able to afford. The legal argument(s) available to the client will impact the outcome or remedy that can be expected and these can range from:

- a full or partial waiver of the debt
- a refund
- a waiver of interest and/or fees to a hold on fees and interest
- a counter-offer of a lump sum reduced payment
- a repayment plan
- a release from liability
- cancellation of the account
- a hardship period for 3-6 months with reduced or no payments
- removal of any default listing on a credit report when the matter is resolved. This can be important as a victim's credit report can affect their ability to obtain credit in the future and re-establish financial independence.



In addition to the legal remedies available, the Banking Code of Practice 2021 and Industry Guidelines set out standards of best practice which include how members should work with those clients experiencing FDV and financial abuse. Banks are bound to comply with the Code and breaches can lead to binding remedies being sought through the Australian Financial Complaints Authority.

Get legal advice?

When and where should I get legal advice?

It is always helpful to seek legal advice if your client presents with a complex set of credit, debt and insurance problems especially if a default notice has been issued, or there is a default judgment



Your client may have had her income garnisheed and her assets and savings are being eroded quickly. She may have received a bankruptcy notice, creditor's petition or received a sequestration order. If a Statement of Claim has been received or court proceedings have been commenced or she has received a court order that you are unsure of (a writ for levy of property or notice to vacate). In all of these instances, seek urgent legal advice.

For warm referrals, please contact:

FINANCIAL RIGHTS LEGAL CENTRE

Caseworker Hotline: 1800 650 084 or
info@financialrights.org.au

WOMEN'S LEGAL SERVICE NSW

(02) 8745 6900 or reception@wlsnsw.org.au



[1] Restoring Financial Safety: Legal Responses to Economic Abuse, Camilleri, O., Corrie, T., Moore, S., Good Shepherd ANZ and Wyndham Legal Service, 2015, p7

[2] financialrights.org.au/factsheets/

Some DFV cases may involve fraud

After leaving her abusive partner Mary, a single mother, receives Centrelink as her sole source of income. While still in a DV relationship, her partner took out a payday loan in her name and increased the limit on a credit card without her knowledge. Mary was being pursued by debt collectors and was continuing to make repayments on both the payday loan, the credit card and a telephone bill which she had incurred.

What were we able to do?

Requested documents,
prepared historic and current money plan to show hardship,
argued breach of responsible lending obligations,
unjustness and breach of
regulatory guidelines

Payday Loan outcome:

loan balance waived
and client refunded
repayments made.

Credit Card outcome:

amount remaining
owing waived and client
refunded repayments
made



Family Violence and Insurance - Maria

After separating from a financially abusive relationship, Maria and the children remain in the home. Her partner, Richard, had all insurance policies in his name; In 2020 a house fire damaged the home; Maria and the children escaped to crisis accommodation; Richard claimed on the insurance policy to repair the home, but refused to claim for temporary accommodation for Maria and the children; The Insurer said she was not a policy holder.

What were we able to do?

Called the Insurer,
argued Maria was
a third party
beneficiary, tenant
in the property and
equitable owner

Argued Insurer
was assisting
furtherance
of Richard's
financial abuse

Insurer's FDV
policy promised
to recognise
vulnerable
customers

Lodged Complaint
with AFCA.
Maria given 2 wks
accommodation
+ longer term
arrangement until
repairs completed