

# Money matters: Cancelling contracts

If you cannot make decisions for yourself, this is called 'lacking capacity'. This factsheet explains what happens if you borrow money from a lender when you lack capacity. It also explains your rights to cancel unwanted items you buy, and what to do if you have borrowed money from a loan shark. This factsheet is for people who experience mental illness and their carers.

 KEY POINTS

- If you can't make a decision for yourself, you may 'lack capacity'.
- If a lender knows that you lack capacity to borrow from them, they are not allowed to lend you money.
- Lenders can refuse to lend to you if they have a good reason to think you lack capacity to borrow money.
- There are guidelines that could help you to show when a lender has been irresponsible.
- You can make a complaint if you are not happy with the way a lender has treated you.
- There are options for dealing with debts you can't repay.
- You usually have a 14 day 'cooling off' period to cancel items you buy online, over the phone or by mail order.
- If you have borrowed from a 'loan shark' you can take action.

## This factsheet covers:

1. [Can I borrow from a lender when I am unwell?](#)
2. [What can I do if I have a debt I cannot pay?](#)
3. [How can I complain?](#)
4. [Can I return goods I bought when I was unwell?](#)
5. [What can I do if I have borrowed money from a 'loan shark'?](#)

## 1. Can I borrow from a lender when I am unwell?

There are different ways you can borrow money from a lender, such as a loan, an overdraft or through a credit card. In this factsheet we have referred to these things as a 'borrowing facility'.

If you are so unwell that you cannot make a decision for yourself, this is called 'lacking capacity'.

You might have borrowed money when the lender knew or should have known that you lacked capacity. If this is the case you might not have to pay the money back.<sup>1</sup>

If you want the lender to write off, or change your repayments you will have to prove that you were lacking capacity when you borrowed the money. You will also have to prove that the lender knew about this, or should have known about this.

### What does 'capacity' mean?

If you have the mental capacity to make a decision, it means you are able to make that decision at that time. The law that governs mental capacity is the Mental Capacity Act 2005.

You have capacity to borrow money if you can:

- understand and remember information about the borrowing facility,
- weigh up that information when deciding whether you want the borrowing facility, and
- let someone know what your decision is.

If you can't do one of these things you may lack the mental capacity to borrow at that time.

You can find more information about '**Mental capacity and mental illness**' at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

### How can I prove that I was lacking capacity?

Proving that you were lacking mental capacity when you borrowed money can be difficult.

It can be hard to prove that:

- you lacked capacity when you took out the borrowing facility, especially if it was a long time ago, and
- the lender should have known that you lacked capacity.

The lender will probably want evidence before they agree to write off your debt or come to another agreement.

There might be records of what happened at the time. If there are no records this can make it difficult to prove that you lacked capacity. The lender's staff member(s) who dealt with you might not remember what happened at the time.

You might have got the borrowing facility online without meeting or talking to another person. If you did it can be even harder to prove you lacked capacity and the lender should have known about it.

It may be more likely that the lender should have known you lacked capacity if:

- you or someone else told them you had an illness,
- they know you have an appointee for benefit purposes,
- your attorney under a Lasting Power of Attorney told the lender you lack capacity,
- the lender knows that you are subject to a Court of Protection order,
- they could see that you were finding it hard to follow the conversation and understand what they said,
- you told the lender that you wanted to spend the money on something unusual, or
- you talked about unusual or unrelated things when they were explaining the borrowing facility agreement.

If you have evidence of this, you could take this to the lender when you ask them to write off your debt or change the repayments.

### **Why might I still have to repay, even if I lacked capacity?**

You might have to repay the borrowing facility even if you lacked capacity. This happens if:

- the lender didn't know that you lacked capacity, and
- the lender couldn't have reasonably known that you lacked capacity.

When they lend money, the lenders usually assume that you:

- can understand the borrowing facility agreement, and
- have the capacity to make a decision about your money.

They will assume this unless they have clear evidence that you lack capacity.

### **I often borrow money when I am unwell, what can I do?**

If you are unwell and thinking about borrowing money it may be helpful to take a friend or carer with you. They can try to help you through the process and make sure you understand what is happening.

If you are worried you will borrow money in the future, you could ask a friend or carer to help. Or you could take out a 'Lasting Power of Attorney' (LPA) so that someone else controls your finances when you lack capacity.

You can take out a LPA without seeing a solicitor. But we recommend you use a solicitor if you are taking one out to stop you borrowing when you are unwell.

Creating a Lasting Power of Attorney might not completely stop you borrowing money when you are unwell. You can seek advice on how your LPA will work. And what problems there might be.

You can ask your bank or building society what their policies and procedures are on LPAs.

If you want to include any preferences or instructions in section 7 of the LPA you can:

- seek legal advice before doing this, and
- ask if the preferences or instructions are acceptable to your bank or building society.

You can find more information about Lasting Powers of Attorney here: [www.gov.uk/power-of-attorney](http://www.gov.uk/power-of-attorney);

### **I've become well again, what should I do?**

If you got a borrowing facility when you lacked capacity you should get advice as soon as you can. It is important to act quickly while there is still evidence of what happened.

You can get free advice from National Debtline and StepChange. Their details are in the '[Useful contacts](#)' section at the end of this factsheet.

If you got a credit card you can't afford, stop using it. Continuing to use it when you are well is a way of agreeing to the credit card conditions. This means you may have to pay back money you have spent on it. This is called "ratifying" the credit card facility.

### **What should lenders do to protect me?**

There is guidance on how lenders should act. These guidelines are not the law. But many lenders and debt collection agencies have agreed to follow them. If your lender follows some of these guidelines, you could point this out if you ask them to write off or change your payments.

### Mental capacity guidance

The Financial Conduct Authority has produced guidance to lenders.<sup>2</sup> It covers:

- looking for signs of capacity problems, and
- setting up procedures to make sure they don't lend to vulnerable people.

You can read the guidance by clicking the web link here: [www.handbook.fca.org.uk/handbook/CONC/2/10.html](http://www.handbook.fca.org.uk/handbook/CONC/2/10.html)

## Mental health and debt guidance

The Money Advice Liaison Group (MALG) has written guidance. It is called 'Good Practice Awareness Guidelines for Consumers with Mental Health Problems and Debt'.

You can read the guidance by clicking the web link here:

<http://malg.org.uk/wp-content/uploads/2017/03/MALG-Debt-and-Mental-Health-Guidelines-2015.pdf>

The guidance says that lenders should:

- make sure people with mental illness are treated fairly,
- work with health care professionals and money advisers,
- only take court action as a last resort, and
- consider writing off a debt if the person that owes it is unable to pay because of their illness.

If your lender is a member of a trade association, they may have their own code of practice. You can search on the trade association's website to see if they have a code of practice. If the lender hasn't followed the code, this is also grounds for complaint. [Top](#)

## **2. What can I do if I have a debt I cannot pay?**

If you have a debt you can't repay you have different options.

It is best to get advice on the right option for you. You can get advice from the organisations shown at the end of this section.

Your options include, but are not limited to, the following.

- Pay reduced and affordable payments
- Offer a lump sum
- Ask the lender to write off the debt
- Apply for a debt relief order
- Apply for bankruptcy

Not all of these options will be right for you. The options available to you depend on your situation. The following things could affect your decision.

- Your income
- The amount of money you owe
- The type of debt you have
- The value of your home and other expensive belongings

You should get specialist debt advice before you make your decision. You can get free advice from National Debtline and StepChange. Their details are in the '[Useful contacts](#)' section at the end of this factsheet.

You can find more information about '**Options for dealing with debt**' at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

### 3. How can I complain?

If you are not happy about the way you have been treated by a lender, you can complain.

Your lender should have a complaints procedure. They should give you a copy of it if you ask for one. Lenders usually need you to complain in writing.

When you write your complaint email or letter, clearly mark it with the word 'complaint'. This helps to make sure they deal with it properly.

In your complaint explain:

- what has happened,
- why you can't repay the loan or borrowing facility, and
- what you want your lender to do as a result of your complaint.

Once you have finished your email or letter, keep a copy for your records. If you send a letter by 'recorded delivery' then you can prove the lender got it.

It will help to include any evidence that you lacked capacity at the time you took out the borrowing facility. You might be able to get evidence from a mental health or medical professional such as:

- your GP,
- your psychiatrist,
- a social worker,
- a support worker, or
- your community psychiatric nurse (CPN).

Your lender should deal with your complaint within 8 weeks.<sup>3</sup>

If you are not happy with their response, you can ask the Financial Ombudsman Service (FOS) to look at the complaint for you.

The FOS will investigate and they can advise the lender on how to resolve the problem. The contact details for FOS are at the end of this factsheet.

Ask your lender if they are a member of a trade association. If they are, you can also send your complaint to the trade association.

### 4. Can I return things I bought when I was unwell?

If you buy something when you are unwell, you may not think it was a good idea when you are well again. If this is the case for you check if the shop has a returns policy. You might still be able to return the item.

Many people buy things online, over the phone and by mail order. This is called 'distance selling'. When you buy items from a business this way, you have the right to cancel the contract within 14 days of making it.<sup>4</sup> This is called the 'cooling off period'.

The cooling off period does not apply to personalised items or items that will deteriorate quickly, like flowers. There are certain other exceptions.

To cancel the contract in the cooling off period, write or email the business to let them know that you want to cancel. They will tell you what to do next.

You can get free advice from 'The Citizens Advice Consumer Service'. You can find their details in the '[Useful contacts](#)' section at the end of this factsheet.

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## **5. What can I do if I have borrowed money from a loan shark?**

All lenders have to be authorised by the Financial Conduct Authority (FCA) to lend money<sup>5</sup>. It is illegal for a person or company to lend you money if they are not authorised by the FCA.

You can search the Financial Services Register for companies and individuals authorised by the FCA. If someone has offered you money, you can use this register to check they are registered. You can search the register by clicking on this web link: <https://register.fca.org.uk/>.

A person who is not authorised to lend money is known as a 'loan shark'. Loan sharks should not lend you money even if you have capacity.

Loan sharks often charge very high interest rates so people find it difficult to pay the money back.<sup>6</sup>

If you can answer yes to one or more of these questions you might be borrowing from a loan shark.<sup>7</sup>

- Did they offer you a cash loan?
- Did they not give you paperwork?
- Did they add huge amounts of interest or APR to your loan?
- Have they threatened you?
- Are you scared of people finding out?
- Have they taken your bank card, benefit card, passport, watch or other valuables from you?

If you think or know that you or someone else has borrowed money from a loan shark you can get help.

You can contact the 'Illegal Money Lending Team' (IMLT). They are part of National Trading Standards. You can find their details in the '[Useful contacts](#)' section at the end of this factsheet.

You can contact the IMLT:

- to get advice from them,
- to report loan sharks to them so they can take action. They have the power to investigate and prosecute loan sharks, and
- to report a loan shark anonymously if you want to.

You don't have to pay loan sharks back. But some loan sharks can be intimidating or threaten violence. It is best to contact the IMLT as soon as you can. They can help you stay safe while they investigate the loan shark.

For any loan shark issues please contact the IMLT first and not the police. The police have no power to prosecute loan sharks. The police might get involved if a loan shark has committed other crimes like assault. But it is best to contact the IMLT first.

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### **National Debtline**

This organisation provides free, independent and confidential advice about debt. You can contact them over the telephone, by e-mail or letter.

**Telephone:** 0808 808 4000 (Monday to Friday 9am to 8pm and Saturday 9.30am to 1pm)

**Website:** [www.nationaldebtline.org](http://www.nationaldebtline.org);

**Webchat** service available on the website.

### **StepChange**

StepChange provide free, confidential advice and support to anyone worried about debt. You can contact them over the telephone or online.

**Telephone:** 0800 138 1111 (Monday to Friday 8am to 8pm and Saturday 8am to 4pm)

**Email via website:** [www.stepchange.org/Contactus/Sendusanemail.aspx](http://www.stepchange.org/Contactus/Sendusanemail.aspx)

**Website:** [www.stepchange.org](http://www.stepchange.org)

### **The Financial Ombudsman Service (FOS)**

Can investigate further if you are unhappy with your lender's response to your complaint.

**Telephone:** 0800 023 4567 or 0300 123 9 123

**Address:** South Quay Plaza, 183 Marsh Wall, London E14 9SR

**Email:** [complaint.info@financial-ombudsman.org.uk](mailto:complaint.info@financial-ombudsman.org.uk)

**Website:** [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

### **The Citizens Advice Consumer Service**

Contact the Citizens Advice consumer helpline if you need more help with a consumer problem.

**Telephone:** 03454 04 05 06

**Address:** 2nd Floor, Fairfax House Merrion Street Leeds LS2 8JU

**Online contact:** see the website.

**Website:** [www.citizensadvice.org.uk/consumer/get-more-help/if-you-need-more-help-about-a-consumer-issue/](http://www.citizensadvice.org.uk/consumer/get-more-help/if-you-need-more-help-about-a-consumer-issue/);

### **Illegal Money Lending Team (Part of National Trading Standards)**

The IMLT investigates and prosecutes illegal money lenders while supporting those who have borrowed money from a loan shark.

**Phone:** 0300 555 2222

**Email:** [reportaloanshark@stoploansharks.gov.uk](mailto:reportaloanshark@stoploansharks.gov.uk)

**Text:** a report to 07860 022 116

**Website:** [www.stoploansharks.co.uk/](http://www.stoploansharks.co.uk/); and [www.gov.uk/report-loan-shark](http://www.gov.uk/report-loan-shark);



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<sup>1</sup> Imperial Loan Company Ltd. v Stone [1892] 1 Q.B. 599.

<sup>2</sup> Financial Conduct Authority. *Mental Capacity Guidance (ref: CONC 2.10)* <https://www.handbook.fca.org.uk/handbook/CONC/2/10.html>; (accessed 13<sup>th</sup> September, 2017).

<sup>3</sup> Financial Conduct Authority. *How to complain.* <http://www.fca.org.uk/consumers/complaints-and-compensation/how-to-complain> (accessed 13 September, 2017).

<sup>4</sup> Reg 29 and 30, The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 SI 2013/3134.

<sup>5</sup> Gov.uk. *Report a loan shark.* <https://www.gov.uk/report-loan-shark>; (Accessed 08 September 2017).

<sup>6</sup> Gov.uk. *Report a loan shark.* <https://www.gov.uk/report-loan-shark>; (Accessed 08 September 2017).

<sup>7</sup> Illegal Money Lending Team. *What is a loan shark?* <http://www.stoploansharks.co.uk/what-is-a-loan-shark/> (Accessed 08 September 2017).

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This factsheet is available  
in large print.

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## Rethink Mental Illness Advice Service

Phone 0300 5000 927

Monday to Friday, 9:30am to 4pm  
(excluding bank holidays)

Email [advice@rethink.org](mailto:advice@rethink.org)

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### Did this help?

We'd love to know if this information helped you.

Drop us a line at: [feedback@rethink.org](mailto:feedback@rethink.org)

or write to us at Rethink Mental Illness:

RAIS

PO Box 17106

Birmingham B9 9LL

or call us on 0300 5000 927.

We're open 9:30am to 4pm

Monday to Friday (excluding bank holidays)



Leading the way to a better  
quality of life for everyone  
affected by severe mental illness.

For further information  
on Rethink Mental Illness  
Phone 0121 522 7007  
Email [info@rethink.org](mailto:info@rethink.org)



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[www.rethink.org](http://www.rethink.org)

### Need more help?

Go to [www.rethink.org](http://www.rethink.org) for information on symptoms, treatments, money and benefits and your rights.

### Don't have access to the web?

Call us on 0121 522 7007. We are open Monday to Friday, 9am to 5pm, and we will send you the information you need in the post.

### Need to talk to an adviser?

If you need practical advice, call us on 0300 5000 927 between 9:30am to 4pm, Monday to Friday. Our specialist advisers can help you with queries like how to apply for benefits, get access to care or make a complaint.

### Can you help us to keep going?

We can only help people because of donations from people like you. If you can donate please go to [www.rethink.org/donate](http://www.rethink.org/donate) or call 0121 522 7007 to make a gift. We are very grateful for all our donors' generous support.