

Decision

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2020-10-14

DI-2019-11314

Sergel Kredittjänster AB

Supervision according to the Debt Collection Act (1974: 182) - Sergel

Kredittjänster AB

The Data Inspectorate's decision

The Data Inspectorate finds that Sergel Kredittjänster AB has violated section 4

the Debt Collection Act through

to have as a routine to send debt collection claims via digital mailbox even if

a debtor has informed the company that he cannot or does not wish to take

part of shipments via that channel,

to urge in response to so-called simple objections

debtors to substantiate their objection to the debt collection company and send it in

evidence, as well as by

- extensive shortcomings in the availability of debtors.

The Data Inspectorate assumes that Sergel Kredittjänster AB takes measures for

to rectify the identified deficiencies. The management of digital

mailings and simple objections may be followed up. Sergel

Kredittjänster AB's measures in order to improve accessibility for

debtors will be followed up through renewed supervision.

The case is closed.

Report on the supervisory matter

On October 24, 2019, the Data Inspectorate conducted an inspection at Sergel

Kredittjänster AB (hereinafter Sergel). The inspection was undertaken

due to the fact that the Data Inspectorate routinely examines large players such as
has a debt collection permit.

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The purpose of the inspection was to investigate how the business is conducted and that
review Sergel's procedures for the debt collection procedure. Questions raised at

The inspection included, among other things, changes in operations, initial
checks, mutual information, design of debt collection claims, periodically
recurring receivables, accounting of settled amounts,
the use of digital mailbox, debtor contact, choice of process,
amortization plans and long-term monitoring.

After the inspection, the Data Inspectorate received many complaints against
Sergel from debtors who made it difficult to get in touch

with Sergel, both by phone and through My pages. Therefore expanded

The Data Inspectorate supervision on March 26, 2020 to also include
debtors' opportunities to get in touch with the company.

Reason for the decision

Applicable regulations

Debt collection operations must be conducted in accordance with good debt collection practice (Section 4 of the Debt
Collection Act).

What is good debt collection procedure is stated in Sections 5–11 of the Debt Collection Act,

The Swedish Data Inspectorate's general advice "Application of the Debt Collection Act" and

The Data Inspectorate's practice in debt collection issues.

Digitized mailings of debt collection claims

Applicable provisions, etc.

Legal action in connection with the claim may not be taken until the debtor

requirements referred to in section 5 of the Debt Collection Act and the specified time has expired (Section 6

debt collection law). Section 5 of the Debt Collection Act requires that debt collection claims be made

in writing and have a certain content.

In the preparatory work for the Debt Collection Act, it is stated that the provision that the debtor must have

requirements do not imply anything other than that the creditor or his representative must have

have taken reasonable measures to ensure that the debtor receives the claim. Normally should

it should be sufficient that the demand letter is sent by post under the debtor's usual

address (prop. 1974: 42 p. 110).

According to good debt collection practice, mail to a debtor, who is not a trader,

sent to his population registration address or the special postal address which

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has been registered with the Swedish Tax Agency, provided that the debtor has not provided information

that he or she can be reached at another address or this has been found on

other way (Datainspektionen's general advice, pp. 31.-32).

It can be considered contrary to section 6 of the Debt Collection Act to take legal action in this regard

has become known to the debt collection company that the claim has been sent to an incorrect one

address, unless the debt collection company knows that the claim has actually been reached

the debtor (Datainspektionen's general advice p. 17).

Background

Since 2018, Sergel has been using the digital mailbox service Kivra as supplier for sending digital debt collection claims. Today, about 50% of all are sent debt collection claims via Kivra.

Sergel considers that the company fulfills the requirement that the debtor must have been served the debt collection claim by the debtor himself joining the service and identified himself via BankID. Sergel equates the service with a regular mailbox and uses the same deadline as for ordinary mailings in the debt collection claims sent digitally, ie eight calendar days.

Sergel currently does not offer any opportunity for debtors who are affiliated with Kivra to receive collection claims by post instead of via Kivra. Sergel can, however inform the debtor of his possibility to remove Sergel as sender in Kivra, which means that future letters from Sergel will be sent by post.

In the event that a debtor turns to Sergel and states that he does not has received a collection request, for example due to limited access to the Kivra service, it is possible to send the current debt collection claim via mail.

Sergel has an ongoing discussion with its new debt collection system provider and print supplier that Sergel will in future have the opportunity to on debtors request themselves stop future digital shipments. However, Sergel experiences that questions or wishes regarding this are unusual.

The Data Inspectorate has read the general terms and conditions for the Kivra service. In the general terms and conditions state, among other things, that a user can at any time notify Kivra that it no longer wishes to receive e-mails from one or multiple senders. After such notification, the user can continue to receive e-mailings from the sender in question for a maximum of fifty-two days.

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Sergel has been given the opportunity to comment on the current writing in the terms. Sergel has stated that Sergel makes checks against Kivra before each separate debt collection claim, that Kivra's register with deregistrations is updated once a week and that a debtor can therefore receive debt collection claims from Sergel via Kivra no later than one week after the time of deregistration.

The Data Inspectorate's assessment

By joining the Kivra digital mailbox, companies and authorities, instead of sending letter in paper form by physical mail, send letters as electronic mail to individuals and companies such as has registered an account with Kivra.

In a decision on 28 August 2019, the Data Inspectorate has a case with record number DI-2019-5660 assessed a debt collection company's mailing of debt collection claims via Kivra. The decision stated that there is no requirement in Section 5 of the Debt Collection Act stipulates that a debt collection claim must be sent to the debtor in paper form. The Data Inspectorate further considered that the digital mailbox Kivra is such a place that can be equated with the debtor's address about the debtor voluntarily joined Kivra and did not notify the debt collection company or Kivra that the digital mailbox may not be used for mailing by the debt collection company debt collection claims. The Data Inspectorate found that mailing of a debt collection claim via the digital mailbox, in the circumstances of the case, could be considered to have been sent to the debtor in accordance with section 6 of the Debt Collection Act. The Data Inspectorate thus considers that a debt collection company, under such circumstances, can be considered to have taken reasonable measures for the debtor to receive the claim when a debt collection claim is sent via a digital mailbox. The

assumes, however, that the conditions for the mailbox service are such that the debtor has undertaken to monitor the digital mailbox and to take part in it the shipments sent to it. In order for a debt collection company to be paid out from the time the debtor monitors his digital mailbox, one must therefore, at the election of a digital mailbox service as well as continuously during the contract period, in particular review the terms and conditions that govern the user's obligation to take part shipments.

If a debtor turns to the debt collection company and announces that he does not wants future debt collection claims to be sent via a digital mailbox has one debt collection companies, however, according to the Swedish Data Inspectorate, are no longer reasonable to expect that the debtor will take part in shipments that are still sent on this

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way. After the time a debt collection company has actually become aware that one the debtor can not or does not wish to receive consignments from the company in it digital mailbox, the Data Inspectorate considers that the debt collection company can not be considered have taken reasonable measures to ensure that the debtor receives a collection claim which is still sent to the digital mailbox. In that situation should the debt collection company send items via physical mail to the debtor's population registration address or the special postal address that has been registered with The Swedish Tax Agency, provided that the debtor has not stated that he or she can be reached at another address or this has been obtained in another way.

The Data Inspectorate further considers that it is contrary to section 6 of the Debt Collection Act that take legal action if it has become known to the debt collection company that the claim has been sent to a digital mailbox that the debtor has stated to him

does not monitor, unless the debt collection company knows that the claim has actually been met to the debtor.

Sergel currently lacks the opportunity to stop future digital mailings

debtors' request but refers to Kivra. There is a risk that

Sergel may in certain situations take legal action in violation of 6

§ Debt Collection Act. The Data Inspectorate therefore assesses that Sergel's routines for

dispatch of debt collection claims via digital mailbox, when a debtor has provided information

that he can not or does not wish to receive consignments in this way, is in conflict

with good debt collection.

In light of what Sergel has stated that the request from debtors about

other means of dispatch are unusual, that debtors can unsubscribe from dispatch

via Kivra and then Sergel intends to offer this option in the future

The Data Inspectorate does not see a need to take any action at present.

However, the handling of digital mailings may be followed up within

framework for future supervision.

Handling simple objections

Applicable provisions, etc.

A summary process is not meaningful when the debtor has made a factual

objection which means that the claim must be examined substantively. If

it is clear that the debtor's objection is objectively substantiated should one

any action may instead be brought in court through a writ of summons.

According to good debt collection procedure, an application for an order for payment is therefore not received

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submitted if the debtor has made it clear that the claim is disputed and stated one

factual basis for their objection (Datainspektionen's general advice p. 36 f.).

An incorrect choice of process form can further lead to an application or a decision in cases of injunction, which in turn means that the debtor on incorrect grounds are noted in the credit information register (Datainspektionens general advice p. 37).

Background

In the case, it has emerged that when a debtor objects to a debt collection claim

Sergel handles the case in different ways, depending on the objection classified as a simple objection or not. Examples of simpler

objections are that the debtor claims one he has paid but that Sergels

The client has stated that payment has not been received.

After Sergel has obtained the client's attitude to a dispute

of a simpler nature, and considers the matter investigated, Sergel tries as much as possible

to meet the debtor. In these cases, Sergel informs the debtor

the client's response and that the debtor can return if he wishes

maintain the opposition. If the debtor does not return after Sergel responded

in the case, the company may proceed with the application for

order for payment, which the debtor was also informed of earlier. At

more qualified objections, the case is handled directly by Sergels

legal department.

Sergel has submitted the following template for addressing an objection payment.

The Data Inspectorate's assessment

The Data Inspectorate has stated in connection with previous supervision of Sergel on Sergel's handling of so-called simpler objections, see

The Data Inspectorate's decision of 23 March 2012 in a case with a record number

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1901-2011.

The Data Inspectorate emphasized in the decision that it is important for legal certainty that debt collection companies do not act in court themselves, without letting the court decide whether the debtor is liable to pay or not. To use it summary process after the debtor has made a factual basis objection is therefore required that the debtor withdraw his objection or that the debt collection company in any case clearly urges the debtor to return for it case he maintains his objection and in connection with it informs about his intention to otherwise turn to the Swedish Enforcement Agency and then give the debtor reasonable time to respond. The Data Inspectorate assumed that Sergel would follow these instructions so as not to cause debtors unnecessary inconvenience.

The Data Inspectorate can initially state that it is an example of treatment that Sergel gives in broadly follows the instructions that

The Data Inspectorate provided in the previous decision. In the treatment of Sergel now submitted, however, the debtor is also asked to substantiate his objection by to send proof that payment has been made.

It is the courts that will finally try to pay the obligation due to of an objection and in connection with this test the probative value of it documentation submitted by the parties. The debt collection company does not have the authority to decide a dispute that has arisen nor to decide how the evidence would be assessed in a future dispute in court. Debt collection companies should therefore avoid make use of words and wordings that may give the impression that the debtor need to substantiate its objection to the debt collection company. It should be clarified that in

and in itself there is no obstacle for a debt collection company to ask the debtor if he or she can submit certain documentation. Such an issue should, however formulated so that it is clear that it is voluntary for the debtor to send in the documentation.

In response to so-called simple objections, urge debtors to to the debt collection company to substantiate its objection and submit evidence in dispute therefore against good debt collection.

The Data Inspectorate assumes that Sergel reviews and clarifies the writings used to address objections to avoid any misunderstandings from debtors and to ensure that the design of the letters is compatible with good debt collection.

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Debtor contact - availability

Applicable provisions, etc.

Good debt collection means that the debt collection company should respond without delay the debtor's questions about the claim and the legal basis for it.

The debt collection company should also be available to the debtor at least during one fixed phone time all weekends Monday-Friday. (Data Inspectorate general advice p.31-32)

It is not a good debt collection procedure to take a debt collection action on the basis of objections from the debtor or in another way it appears that the claim has no legal basis.

According to good debt collection practice, the debt collection company should therefore investigate one as soon as possible objection from the debtor is justified. (Data Inspectorate's general advice p. 19).

Background

Since mid-December 2019, the Data Inspectorate has received many written complaints in which the complainant alleges that he or she has difficulty get in touch with Sergel, both by phone and through Sergels web service "My pages". The complainants claim, among other things, that it has been impossible to fit in the telephone queue, or that they had to wait for several hours to arrive. Several have also stated that they have had difficulty entering on My pages when they are met by error messages about temporary interruption or maintenance. Several of the complainants have also claimed that they sent several messages via My Pages that are only answered after a long time, or not at all. One complainant has further stated that she sent an email to Sergel which was answered with that automatic default response.

In addition to the written complaints, the Data Inspectorate has received several phone calls regarding difficulties in getting in touch with Sergel.

The Data Inspectorate has also, in June 2020, been made aware that the telephone number for Sergel's customer service has been removed from the company's website. Instead, visitors to the site were directed to find telephone numbers on their debt collection claims.

In its opinions, Sergel has mainly stated the following.

Sergel has had some issues with accessibility both via debtor web and customer service by phone. However, Sergel has taken one

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several measures to address accessibility and call times and availability have improved significantly since the beginning

of the month of March. It has been during December through February unusually long response times on the telephone. This is partly due to the fact that the debtor web has had accessibility problems, partly for longer processing times and talk times during the transition to a new one debt collection system. In addition, one of Sergel's larger customers has sent out one several unplanned reminder mailings, which meant a lot loading of Sergel's telephone resources. One of Sergel's customers also has transferred larger volumes than Sergel had the opportunity to plan for in May, June and July.

The telephony solution that Sergel uses has a limitation to prevent the system from becoming overloaded and crashing. At long queue times the lines become "busy" instead. When it happens and Sergel does not have opportunity to receive more calls, the caller is met by one message that reads: "We are unable to receive your call at this time, please call again at a later time. For more information about yours matters, you can log in to My Pages via www.sergel.se. "

On December 1, 2019, Sergel launched a new debtor website - "Mina Pages" - at the same time as Sergel implemented a new debt collection system. During December, the debtor's website was shut down for 10 days a week and on a number of additional occasions due to maintenance and troubleshooting. There have also been operational disruptions due to updates. This in turn has contributed to very strong pressure on incoming phone calls.

Sergel's new debtor website currently operates stably and is available. Sergel and its suppliers have prioritized troubleshooting for to stabilize the debt collection system and the debtor web. Sergel has too

carried out an update of the telephony platform on 27 February, which meant an improvement in the capacity for incoming traffic.

Sergel's telephony solution has not been overloaded since then. The number incoming calls and response times have decreased and returned to normal inflow and call times. Sergel has expanded since mid-February staffing with 23 administrators and a further 12 administrators shall start in the month of May. Sergel has during the period of lack

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availability has been very restrictive in forwarding cases to

The Swedish Enforcement Agency.

Sergel plans to introduce a chat feature under My Pages as one alternative channel. The chat requires authentication via BankID. Sergel sees the chat as a complement to telephony when the debtor needs fast, easy feedback. Some of the information from the chat is recorded in the debt collection system. Sergel will also wind up its ledger management which may prevent certain disturbances and variations of volumes from these calls.

Sergel has chosen to minimize its communication with debtors via email as such communication involves data protection risks.

Sergel has three

public e-mail addresses which, since October 7, 2019, no longer

used for communication with debtors but who still can

found on the internet and in old letters. Sergel intends to steer in the long run

remove traffic from these email addresses. Until that can happen has

Sergel as a routine to answer incoming emails from debtors the same

day, with the following standard answers:

"NOTE! Important information for you!

The communication channel via this email address has ended. Your errand will therefore not be answered here. That means you from now on asks us questions, and sees our answer at [Sergel.se/loggain](https://sergel.se/loggain). This because further increase the security of the handling of data and personal data then we follow the Data Protection Regulation (GDPR), and that is the change we are making because we protect your privacy. An additional step in increasing your security is that we delete the original message in this conversation.

Welcome to [Sergel.se](https://sergel.se) "

Receipts received are documented in the debt collection system and answered via "My Pages" or by mail.

Sergel can state that the routine description has not been followed for two of the general e-mail addresses. Incoming emails to these addresses has in most cases only been answered with a standard answer with reference to other channels, which then unfortunately had shortcomings

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availability during December through February. Sergel sees seriously on what has happened.

Sergel intends to clarify its routine description and ensure the handling of disputes until they can close the current ones the e-mail boxes. Sergel will also review the contents of the default answer and specify all the channels the debtor can use for

to get in touch with Sergel.

In connection with Sergel's website and all its content being moved to a new IT platform on June 10, 2020, the phone number did not follow the new text that was introduced regarding "Contact with Customer Service" on the debtor website. It has not been preceded by any special discussions or considerations. Sergel has corrected this on July 8 2020.

Sergel's management has the highest priority to ensure a stable, simple and secure delivery of debt collection services with high availability.

The Data Inspectorate's assessment

A prerequisite for a debt collection company to be able to fulfill its obligations to promptly answer debtors' questions and deal with objections in a timely manner that it is easy for debtors to get in touch with the company. With taking into account the normal time limit for objection or payment in one collection requirements are short, it is very important that the debtor is given the opportunity to get in touch with the company within a reasonable time, partly to be able to take a position to if the requirement is correct, partly to be able to object in due time.

Sergel offers contact opportunities via its debtor website and by telephone. Of Sergel's statement states that the company has had problems with technical access to its debtor web and long response times on the phone during one and the same period.

The answer also shows that Sergel has removed the possibility for debtors to communicate with the company via e-mail, at the same time as e-mail addresses such as previously used for this purpose are still active.

The Data Inspectorate, which in this decision does not take a position on issues concerning personal data processing, has an understanding that debt collection companies want to use

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secure and appropriate communication channels. To refer to only Login to the debtor's web, which requires BankID for private individuals, is at risk however, to exclude many debtors who do not hold BankID from the opportunity to contact the company. Such a communication channel must therefore be complemented by other appropriate channels.

The Data Inspectorate wants to emphasize that a debt collection company should handle these issues and objections received by the company regardless of which contact routes the debtor uses. This means, for example, that a question or a objection received by the wrong department at the company should be forwarded to the department that can answer the debtor's questions. Although a debtor uses a contact route that is not assigned, the company should therefore handle the issue or the objection. This does not mean that the question needs to be answered in the same channel to which the question was asked, but the company can choose the mode of communication which is most appropriate in the individual case.

Sergel states that they routinely respond to objections from debtors even when they arrive via email but that this routine has broken. Sergel has further stated that they will refer to more contact routes in the default answer.

Sergel has also for a period removed telephone numbers for customer service from their website. Instead, visitors to the site were directed to find telephone number on their debt collection claim. The Data Inspectorate considers that a debt collection companies should make it easier for debtors to get in touch with the company. By only referring to the debt collection requirement to find telephone numbers

the availability of debtors deteriorates. In this context, it should be taken into account that a debt collection case can last for several years and that it may have been a long time since the debtor received a debt collection claim. It is therefore not certain that the debtor even has access to this information. As previously stated is not nor debtor web a contact route that suits all debtors. The debtor can also not contact Sergel via e-mail, e.g. to ask about the phone number.

The Data Inspectorate can state that Sergel has, or has had, a number shortcomings regarding the availability of

- restricted access to the debtor's website,

long response times or the opportunity to access customer service via phone,

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failure in some cases to deal with issues and objections such as

received by e-mail, and

difficulties for debtors to find different contact routes to the company.

The Data Inspectorate states in a weighted assessment that they

the shortcomings listed are so extensive that Sergel cannot be considered to have survived

to the requirements for availability and the obligation to respond without delay

debtors' issues and to promptly investigate objections arising from good

debt collection. Sergel has taken action on some of the shortcomings. Certain

of the problems, however, still remain and the Data Inspectorate still receives

complaints against Sergel regarding accessibility for debtors.

The Data Inspectorate, which takes seriously the shortcomings regarding accessibility, presupposes that Sergel takes measures to further improve the availability of debtors. The Data Inspectorate therefore does not consider it necessary to take some action against Sergel at present. The Data Inspectorate will, however, follow the development of incoming complaints regarding the availability of Sergel. The question of accessibility for debtors comes also followed up within the framework of future supervision of the company.

Other

What has otherwise occurred in the case does not give rise to any further action

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How to appeal

If you want to appeal the decision, you must write to the Data Inspectorate. Enter in the letter which decision is being appealed and the change you are requesting.

The appeal must have been received by the Data Inspectorate no later than three weeks from the day you received the decision. The Data Inspectorate sends the appeal on to the Administrative Court in Stockholm for review, if the inspection does not yourself change the decision in the way you have requested. The Chancellor of Justice also receives appeal against the decision in the public interest. The time for

However, an appeal to the Chancellor of Justice is counted from the date of the decision was announced.

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Provided that the appeal does not contain any privacy concerns personal information or information that may be covered by confidentiality, you can e-mail the appeal to datainspektionen@datainspektionen.se.

This decision has been made by the unit manager Catharina Fernquist after
presentation by lawyer Evelin Palmér.

Catharina Fernquist, 2020-10-14 (This is an electronic signature)

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