

Dealing with Debt Collectors

Even debtors have rights!

What if I'm contacted by a debt collector?

Debt collectors can only contact you if it's necessary and for a reasonable purpose, such as making a demand for payment. Generally, contact is limited to a maximum of 3 phone calls or letters per week, and they should only contact you between 7.30 am to 9.00 pm on weekdays, and between 9.00 am to 9.00 pm on weekends, and no contact at all on national public holidays.



I dispute the debt!

If the debt collector is contacting you about a debt that you do not owe, you can dispute the debt. You should ask them for account information and copies of contracts. If you believe that you owe some of the debt but the debt collector is asking for a different amount, you should ask for an itemised statement of your account that clearly sets out the amount and date of the debt, how it is calculated, and details of all payments made and all amounts owing.

Don't forget to keep a record of your conversations and names of people you spoke to, as well as copies of all letters you send and receive.

It could be my debt, but ...

If the alleged debt is several years old, do not confirm that you owe the debt or make a payment without getting independent legal advice. If your debt is over 6 years old, and you have not made a payment for 6 years, or acknowledged your debt in writing in that time, then the debt is **statute-barred**. This means you have a defence if the debt collector takes you to court to recover the money.

May's story

May was contacted by a debt collector over a mobile phone debt for under \$500. She had not heard about the debt for the past 6 years. She explained to the debt collector that her phone had been stolen and she had reported this incident many years ago. The debt collector refused to listen, insisted on a lump sum payment and refused to make a reasonable repayment arrangement.

May sought legal advice from a solicitor, who advised her that the debt was statute barred.

IMPORTANT: Never pay **any money** towards a very old debt or a debt that you do not believe you owe without getting legal advice first.

Can they do this?

There are consumer protection laws that regulate how debt collectors should approach and treat you. They cannot use force or physical violence against you – if they do so, report to the police immediately. Debt collectors must not damage or threaten to damage your property, or use or threaten force of any kind towards you or your family. They cannot abuse you verbally or make any harassing, intimidating remarks at you, and they cannot embarrass you by revealing your debt to other people.

Examples of harassment include:

- contacting you very often
- telephoning you late at night or very early in the morning
- threatening your friends and family or your property
- using abusive language
- sending letters that look like court documents but are not
- discussing your financial affairs with your employer, colleagues or other associates.

If you feel you are being harassed, you should make a complaint to ASIC or the ACCC. If you have been threatened or abused, or a debt collector refuses to leave your home or workplace, you should call the Police.

I can't afford to pay it now ...

If it is your debt and the amount is correct, but you are having problems paying it now, try to negotiate a repayment plan with the debt collector. Contact a financial counsellor for help with a money plan or budget if that's needed, or even if you just need help to negotiate with the debt collector. Make sure you do not offer more than what you can realistically pay. Be honest with the debt collector about your situation. If they agree to a repayment plan, get confirmation in writing and keep a copy.

Even if the debt collector refuses your offer, you should start paying the debt. Keep trying to get a repayment arrangement with the debt collector.

Mark's story

Mark had just returned from a trip overseas when he received a letter from a solicitor stating that he owed \$1,000 on a credit card from three years ago. He had forgotten to pay for this before he went overseas, but Mark spent all his savings while he was away, and he has only been able to find a part-time job that pays about \$100 a week.

Mark was worried because he could not find a full-time job. The solicitor contacted him many times to chase up this debt, and Mark began avoiding the telephone. He felt that he may have missed a number of employment opportunities and he felt even more anxious.

Mark made an appointment to see a financial counsellor who requested documents from the solicitor to determine whether the debt was in fact Mark's and that it was not statute-barred.

Mark signed an authority for the financial counsellor to act on his behalf. The financial counsellor wrote to the solicitor and requested that all telephone calls and correspondence be forwarded to the financial counsellor instead. Mark immediately felt a lot better now that he would not be getting distressing calls from the solicitor.

The financial counsellor and Mark prepared a money plan which showed exactly what Mark's income and living expenses were. The money plan showed that Mark could pay \$10 per week to the creditor. The financial counsellor offered this amount to the solicitor and confirmed in writing that the solicitor would accept the amount. Mark also told the financial counsellor that he would now be able to look for a full-time job with confidence and may be able to increase the amount when he was earning more money.

Getting help -----

LEGAL ADVICE

Consumer Credit Legal Centre (NSW) Inc. gives free legal advice to people who are experiencing difficulty with loans or who have been contacted by debt collectors about a loan: **(02) 9212 4111**

Law Access helps callers find information and services to assist with legal problems and questions: **1800 806 913**

FINANCIAL COUNSELLING

Credit and Debt Hotline Information and referral to a financial counsellor who can assist you to examine your budget, negotiate with your creditors, complete some court documents or refer you to other relevant services: **1800 808 488**

COMPLAINTS ABOUT DEBTOR HARASSMENT

Office of Fair Trading: 13 32 20

ACCC: Australian Competition and Consumer Commission: 02 9230 9133

ASIC: Australian Securities and Investment Commission: 1300 300 630

TRANSLATING AND INTERPRETING SERVICE

You can call this free service and ask for an interpreter to assist you to explain your problem to one of the above services on the telephone: **13 14 50**

A project of Consumer Credit Legal Centre (NSW) Inc. 2006. Other Fact Sheets in this series are available at **www.cclcnsw.org.au** or **(02) 9212 4216**.