

## **Debt collection – What can I do if a debt collector calls?**

by Consumer Action - Friday, March 18, 2016

<http://help.consumeraction.org.au/debt-collection-what-can-i-do-if-a-debt-collector-calls/>

### **Use this fact sheet if:**

a creditor or debt collector has contacted you demanding that you pay a consumer debt; and legal proceedings have not been issued.

[If your problem relates to Centrelink debt collection, click here for information from the National Welfare Rights Network.](#)

### **What can I do when a debt collector contacts me?**

#### **Step 1: Find out if you owe the debt.**

Consider the following:

Are they chasing the right person?

Are they chasing the right amount of money?

Do you have a legal defence?

#### **Step 2: Develop a plan of how to deal with the debt**

For free, independent and confidential financial counselling you can call the National Debt Helpline on 1800 007 007

#### **Step 3: Deal with any harassment.**

You can take steps to:

stop any harassment;

seek compensation for any stress or inconvenience caused.

### **Who is the debt collector?**

People collecting debts can be from:

a creditor's debt collection department,

a debt collection firm that works for the creditor; or  
a debt collector who has bought the debt from an original creditor.

**WARNING – Do not make any payment or acknowledge that you owe a debt without reading our Information Sheet *Debt Collection – Old Debts*, or calling Consumer Action’s Advice Line. Contact details can be found at the end of this Information Sheet.**

### **Step 1: Find out if you owe the debt.**

Just because you are told by a debt collector that you should pay a debt doesn’t mean that you owe the money. Before you make any payments you should check whether you owe the money that is being claimed.

Many debt collectors buy computer-based information about debts. Sometimes the original creditor will have incomplete information on its computer and will mistakenly sell a debt that has previously been paid or settled. Sometimes debt collectors even demand money from the wrong person.

If you are unsure whether you owe the money, write to the debt collector or creditor and ask for details of their claim and copies of documents that prove you owe the debt. You can use the sample letter at the end of this factsheet.

Often debt collectors will add large amounts of interest and fees to a debt. Unless you are certain that you signed a contract agreeing to the interest and charges claimed, ask for a copy the contract and account statements and check. Again, you can use the sample letter at the end of this factsheet.

### **Do I have a defence?**

Even if your records show that you owe the debt, you might have a defence – a legal reason to argue that you cannot be made to pay – for part or all of the debt.

Some common defences are:

1. The debt is old and statute barred – that is, the debt collector or lender is outside the time provided by the law to sue for the debt. See our fact sheet *Debt Collection – Old Debts*.
2. You were misled or deceived about what you were signing or getting when you first entered the contract.
3. The way you were entered into the credit contract was unjust or unconscionable. For example, a bank has given you credit or increased your credit limit at a time when you could not afford to repay the money without substantial financial hardship.
4. The contract you signed contained unfair contract terms which affect the amount you have to pay. For example, the contract might contain an unfair cancellation penalty.

There are many laws protecting consumers. You can call the Consumer Action Advice Line on (03) 9629 6300, Monday-Friday, 10am-1pm, to get advice on your consumer rights.

### **Step 2: Develop a plan of how to deal with the debt**

### **What if I think I don't owe the money?**

If your records prove that you do not owe the money, write to the creditor or the debt collector stating that you don't owe the money, and why. Attach the documents you have to show this.

Pay any amount that you think you do owe, but make it clear why you think you don't owe the rest.

If the creditor or debt collector disagrees with you, and still wants you to pay the debt, you can dispute this further.

If the dispute relates to a credit, telecommunications, energy or water company you should make a complaint to the external dispute resolution (EDR) scheme to which the debt collector or the creditor belongs, such as the:

Financial Ombudsman Service (<http://fos.org.au>)

Credit and Investments Ombudsman (<http://www.cio.org.au>)

Telecommunications Industry Ombudsman (<http://www.tio.com.au>) or

Energy and Water Ombudsman Victoria (<http://www.ewov.com.au>)

These schemes can investigate and help resolve your dispute. They can make a binding determination if you and the creditor can't agree on how to resolve the issue. In most cases the company can't take legal action against you while your matter is being dealt with by the Ombudsman Scheme.

If one of the EDR schemes cannot help you, seek advice about whether the Victorian Civil and Administrative Tribunal (VCAT) or a Court might be able to resolve the dispute.

### **What if I agree that I owe money and can pay the full amount?**

If you have funds available, pay the debt.

Use a method of payment that gives you proof of payment, such as a cheque or internet bank transfer. Keep your proof of payment for at least 7 years. Unfortunately, it is possible to be chased for a debt many years after it has been paid.

Sometimes creditors and debt collectors are willing to accept a smaller amount of money as "*full and final settlement of the matter*". It usually depends on how old the debt is, what your income and assets are, the difference between what you offer, and what you owe and the total amount due. You should get free advice from a financial counselling service if you are unsure of what amount to offer. If you come to an agreement with the creditor or debt collector to settle the debt for less, make sure you get this in writing.

### **What if I agree that I owe the money but I can't pay?**

If you are in difficult financial circumstances and you can't afford to pay the debt (or not all at once), you should seek advice from a free financial counselling service about your rights and payment options. You can call the National Debt Helpline on 1800 007 007 for free financial counselling.

There are a range of possible options available *depending upon your circumstances* including:

informal payment arrangements;  
entering into a formal “hardship variation” (payment plan) under one of the various credit, telecommunications or energy laws,  
an instalment order through a court (only if a judgment has already been entered),  
bankruptcy (in some circumstances) or other formal arrangements under the Bankruptcy Act;  
simply not paying.

### **Step 3: Deal with any harassment.**

The law puts limits on what a debt collector can and cannot do when chasing a debt.

In some circumstances you can:

stop the debt collector contacting you; and  
claim compensation for humiliation or distress caused by the debt collector.

Refer to our other fact sheets on debt collection for more information about harassment and unfair debt collection practices:

Debt collection: prohibited debt collection – I’m being hassled by a debt collector, what can I do?

### **Sample letter requesting proof of debt**

Click [here](#) to view a sample letter requesting proof of a debt.

### **Free legal advice and assistance**

#### **National Debt Helpline**

Telephone: 1800 007 007

[www.ndh.org.au](http://www.ndh.org.au)

**Warning: This fact sheet is for information only and should not be relied upon as legal advice. This information applies only in Victoria, Australia and was updated on 6 June 2017**

Image from [Steven Lilley](#).