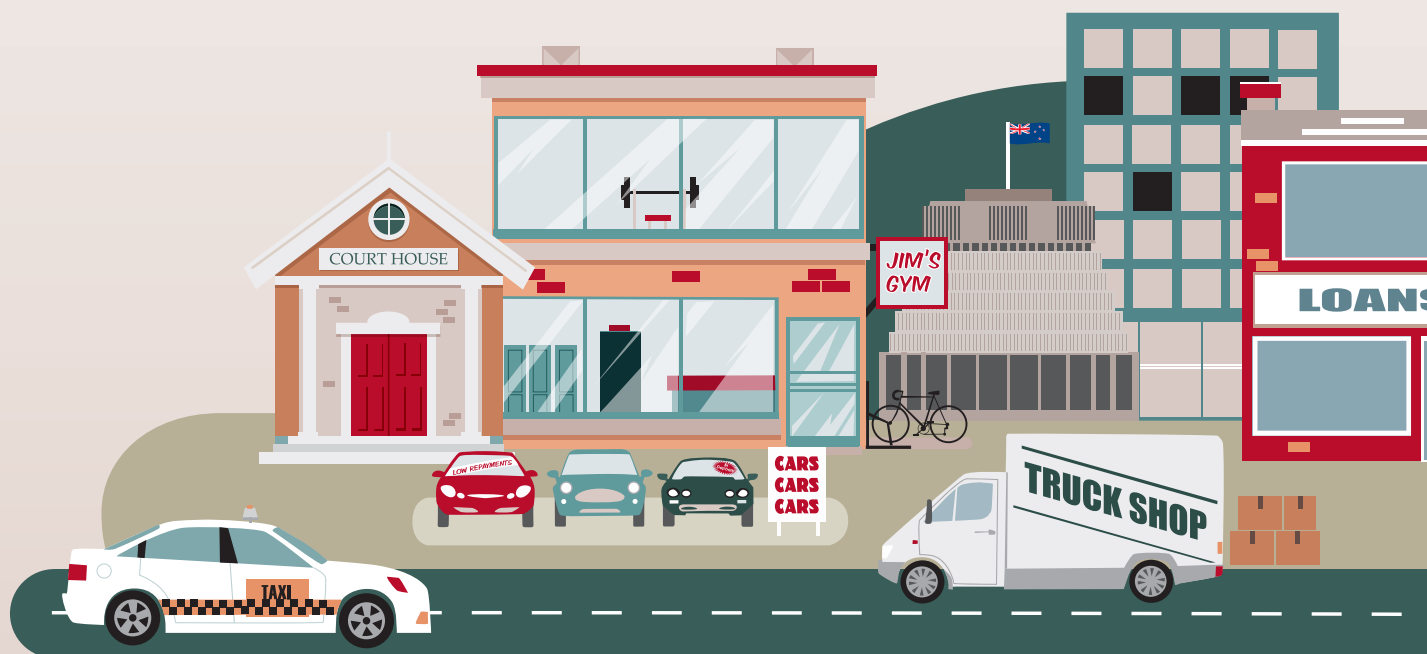


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Guidance on the disclosure requirements when engaging in debt collection



Overview

If you are engaged in debt collection, then from 1 December 2021 you are required to disclose information to borrowers before you start collecting debts owing under some types of credit contracts.

The disclosure requirements apply whether the credit contract was entered into before or after 1 December 2021 and the information that must be provided is described in Regulations.

This guidance provides an overview of the information a debt collector must disclose to a borrower, and how that information must be provided before debt collection begins.¹



1. Refer to section 132A, Credit Contracts and Consumer Finance Act. Regulation 23 of the Credit Contracts and Consumer Finance Regulations 2004 sets out the information that must be disclosed.

Which borrowers must receive information before debt collection begins?

Under the Credit Contracts and Consumer Finance Act 2003 (CCCF Act), a person has been given credit and has entered into a **credit contract** if they have been given the right to put off paying an existing debt, incur a debt and put off paying it, or buy goods or services and put off paying for them, such as under a buy now, pay later product.



A **consumer credit contract** is a type of credit contract where the borrower is a private individual and intends to use the credit wholly or predominantly for personal, domestic or household purposes and has to pay interest, pay a credit fee, and/or provide a security interest.

You can read more about credit, credit contracts and consumer credit contracts in our [Consumer Credit Contracts Overview fact sheet](#).

Disclosure about debt collection must be provided to borrowers **before** debt collection begins for **credit contracts** that meet the following criteria:

- the borrower is an individual (in other words they are not a company or organisation such as an incorporated society);
- when the contract was entered into, the credit was to be used, or intended to be used, wholly or predominantly for personal, domestic or household purposes (as opposed to business or investment purposes); and
- debt collection is, or is to be, carried out in the course of a business. For example:
 - a business may collect its own debts;
 - a business may collect debts on behalf of another creditor as an agent; and/or
 - a business may collect debts where credit contracts were entered into with another creditor and that creditor has assigned the debts to the business collecting them.

The credit contract need not be a consumer credit contract. The requirements for disclosure before debt collection apply to credit contracts meeting these criteria, **even if interest or fees are not charged, or a security interest is not taken** (as is the requirement for a credit contract to qualify as a consumer credit contract under the CCCF Act).

What is debt collection?

Debt collection is the act to recover, or attempt to recover, any money that is owing by a borrower under a credit contract. For example, money loaned under a credit contract that a borrower has failed to pay back on time, so the borrower is in breach of that credit contract.

Who is a debt collector?

If you are a business that contacts a borrower to recover, or attempt to recover, any money that is owing by a borrower under a credit contract, then you are a debt collector for the purposes of section 132A of the CCCF Act, whether or not the debt is owed to you or another business. For example, when you are collecting your own debts, or are collecting a debt on behalf of another creditor which is owed the debt.

What is debt collection disclosure?

Debt collectors must disclose key information about the credit contract and the debt to the borrower before any steps are taken to start debt collection.

Providing disclosure before debt collection begins helps borrowers to understand:

- how much is owing;
- who will be collecting the debt;
- information about the borrowers' rights (including information about how to apply for assistance in cases of unforeseen hardship);²
- obligations of the lender, borrower and debt collector under the credit contract; and
- key information about the availability of independent financial advice.

Exceptions

Debt collectors do not need to provide disclosure before debt collection if:

- the act to recover, or attempt to recover, money is a payment reminder provided by the lender who made the advance under the credit contract,³ or by a person to whom the rights of the lender have been assigned (if the assignment was not for the purpose of the assignee undertaking debt collection);
- the lender has given the borrower notice, as required by section 119 of the Property Law Act 2007, before the lender can market and sell the property;
- the lender has given the borrower notice, as required by section 83G of the CCCF Act, before the lender can repossess goods secured by the credit contract; or
- the action is in respect of a repossession of goods that are at risk.⁴

² See section 55 of the CCCF Act.

³ See the definition of 'payment reminder' in section 132A(6) of the CCCF Act.

⁴ Section 132A(5) of the CCCF Act.

When does disclosure about debt collection need to be made?

Debt collectors are required to disclose to all borrowers under relevant credit contracts, specific information prescribed in regulation **before** starting debt collection.⁵

If you become a debt collector after debt collection has started, for example, by collecting the debt on behalf of another or because the credit contract has been assigned to you, you must also disclose the required information within 10 working days of becoming the debt collector.

There are exceptions which explain when disclosure before debt collection is not required, and these are set out above on page 4 of this guidance.

What needs to be disclosed?

Before beginning the debt collection process, all debt collectors must provide the following information to the borrower.

1. Information about the credit contract

- the full name and contact details of the lender at the time the credit contract was entered into;
- the date of the credit contract; and
- information that will help the borrower identify the credit contract, such as the borrower's purpose of the credit contract, when the credit contract was entered into or the product type or name.

2. Information about debt collection

- the full name and contact details of the debt collector;
- information regarding how the borrower can make a complaint about a debt collector;
- if the lender is required to be a member of a dispute resolution scheme, then the information about how to make a complaint must include:
 - an explanation that the borrower has access to a free and independent dispute resolution service;
 - that the service may help to investigate or resolve the complaint; and
 - the name and contact details of the dispute resolution scheme that the lender is a member of; and
- the contact details of the Commerce Commission.

3. Other information

- information about the borrower's right to seek relief by varying their contract as a result of unforeseen hardship and how to make that application;
- information about how the borrower can get free and confidential financial advice from an independent service; and
- the name and contact details of a building financial capability service funded by the Ministry of Social Development (this must be displayed on the first page of the debt collection disclosure statement or near the front if the statement has no pages).

⁵ Section 132A of the CCCFA and regulation 23 of the Credit Contracts and Consumer Finance Regulations 2004.

4. A statement about the debt to be collected

The disclosure must also include a statement about the debt to be collected. The kind of statement borrowers must be provided with differs depending on whether the debt being collected is:

- owed under a consumer credit contract where continuing disclosure statements must be provided to the borrower; or
- owed under any other consumer credit contract or credit contract.

Continuing disclosure statements are regular statements provided to a borrower which contain certain information about their consumer credit contract.⁶ Further information about continuing disclosure requirements and continuing disclosure statements can be found in our [Continuing disclosure under a consumer credit contract fact sheet](#).

If you are collecting a debt owed under a **consumer credit contract where continuing disclosure statements are required**, the statement you must give has to include information relating to the debt from when the last continuing disclosure statement was made and ending on the date on which debt collection disclosure is made,⁷ and include for that period:

- opening and closing dates of the time period that the statement covers;
- opening and closing unpaid balances;
- the date, amount, and a description of each advance made to the borrower;
- the date and amount of each interest charge debited to the borrower's account;
- the date and amount of each amount paid by the borrower to the lender or credited to the borrower;
- the date, amount and a description of each fee or charge debited to the borrower's account;
- if the debt collection disclosure statement does not include default fees yet to be debited, the total amount of default fees and total amount to be collected (as increased by those further fees), to the extent that those amounts are ascertainable at the time of disclosure; and
- the rates of any ongoing interest charges, credit fees, and default fees that the borrower will be charged under the contract, to the extent that they are ascertainable at the time of disclosure.

For all other consumer credit contracts and credit contracts, the statement you must give about the debt has to include:

- the unpaid balance before any default fees relating to the debt collection are debited to the borrower under the contract;
- the total amount of any default fees to be debited to the borrower under the contract, and the total amount to be collected (as increased by those further fees), to the extent that those amounts are ascertainable at the time of disclosure; and
- the rates of any ongoing interest charges, credit fees, and default fees that the borrower will continue to be charged under the contract, to the extent that those amounts are ascertainable at the time of disclosure; and

⁶ See sections 18 and 19 of the CCCF Act.

⁷ If debt collection has already started, the debt collector will need to provide some of the information contained in the last disclosure statement again.

- information about the website at which the borrower can access information about their loan if the lender has a website and no continuing disclosure statement is required because information that would otherwise be disclosed in a continuing disclosure statement is published on the website and the borrower has agreed to access the information on the website.⁸

How is disclosure made?

Disclosure about debt collection must:

- be in writing and contain the information required by the CCCF Act and regulations;⁹
- express the information clearly and concisely and in a way that is likely to bring the information to the attention of a reasonable person; and
- not be likely to mislead or deceive a reasonable person in relation to any material information.¹⁰

Disclosure about debt collection may be given to the borrower by either:

- giving a written statement containing the information required by the CCCF Act to the borrower in person; or
- posting the statement to the borrower's last known place of residence or to an address specified by the borrower for this purpose; or
- using electronic communications, provided the borrower has agreed to this, and that the information remains readily and reasonably accessible, stored in a permanent and legible form so that it can be referred to again throughout the life of the contract. This includes:
 - emailing or texting the borrower a link to the lender's website, or an electronic communication that otherwise allows the borrower to access the disclosure about the debt collection;
 - emailing (or faxing) the disclosure about the debt collection to the borrower; and
 - any other electronic means of communications that may be agreed between the borrower and the lender notifies the borrower of how to access the information about debt collection.

If a place of residence, or electronic information system (like an email address or fax machine) are the same for two or more persons, the debt collection disclosure sent to that residence or stored in that system will be treated as disclosure to all people living at the residence or using those systems.

For most purposes, whether disclosure about debt collection is made by post or electronic means, disclosure is treated as having been made on the day on which the information is posted or sent.

For more information about disclosure, please refer to our [Disclosure for Lenders Guidelines](#).

⁸ Section 21(1)(b) of the CCCF Act.

⁹ For the purposes of disclosure before debt collection this is the information outlined in this guidance. For further details see section 132A of the CCCF Act and regulation 23 of the Credit Contracts and Consumer Finance Regulations 2003.

¹⁰ Section 32(1) of the CCCF Act.

What happens if the debt collector fails to disclose this information?

If the debt collector does not disclose the required information to the borrower before debt collection begins, the debt collector may breach the CCCF Act and:

- The creditor may be required to pay the borrower statutory damages.¹¹
- If some of the required information is not disclosed before debt collections begins:
 - The Commission may issue the creditor with an infringement notice requiring the creditor to pay an infringement of \$1,000 per offence if some of the required information is not disclosed before the debt collection begins;¹² or
 - The creditor may be liable for an infringement offence. If liable for an infringement offence the Court may fine a creditor up to \$10,000 for an individual or \$30,000 for a body corporate per offence.¹³
- If the debt collector completely fails to provide a debt collection disclosure statement (described above) to the borrower, the Commission can prosecute the creditor who could be convicted and fined up to \$200,000 for an individual and \$600,000 for a body corporate per offence.¹⁴

Additional information

If you would like further information about your rights and obligations as a debt collector, please refer to our [Guidance for debt collectors](#) fact sheet.

11 Section 88(1)(e) of the CCCF Act.

12 Section 105B of the CCCF Act.

13 Section 102A of the CCCF Act.

14 Section 103 of the CCCF Act.

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This is a guideline only and reflects the Commission's view. It is not intended to be definitive and should not be used in place of legal advice. You are responsible for staying up to date with legislative changes.

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