

# Calls from a debt collector?

## Here is what you need to know



### What to expect - debt collection

If your bills or loans are not paid on time, the business you bought the goods or services from or the business you borrowed money from might ask a debt collector to collect the money from you. The business might also tell a credit reporter about the debt. That means the debt is listed on a credit report and stays for 5 years. If this happens, it could be harder to get credit later when you need it.

It is the debt collector's job to collect payment from you. The debt collector might not be the same business that you bought the goods or services from, or that you borrowed money from.

It is important that if a debt collector is asking you to pay a debt, you do not ignore them because this could result in the debt growing bigger or the debt collector taking you to the Disputes Tribunal or court to require you to pay.

If you do not pay the debt collector, they might ask the Disputes Tribunal or the court to decide whether you should pay. If your debt relates to a loan, they might also repossess the item that you bought on credit. But you still have rights and there are some rules about how the debt collector must treat you. Here are some things you can do.



### What are my rights

If you owe a debt, you must pay it. But if you are unsure about where it came from or the amount owing you can talk to the debt collector:

- You can ask for information about the debt being collected.
- If you do not think you owe the debt, or you think the amount is wrong, you can tell the debt collector and explain why you think this is. They need to consider this and tell you whether they agree or not.
- If the debt collector still says you have to pay, you can ask the Disputes Tribunal or the court to decide whether you should pay. This is a good option if you are sure that the debt is not yours or the amount is wrong, and you want the debt collector to stop contacting you to ask you to pay. Read more on [how to make a claim](#) on the Dispute Tribunal's website.

[Make a complaint](#) to the Commerce Commission if you think that you have been misled, harassed or coerced into paying a debt. We are not able to take action on every complaint we receive but we can investigate and take enforcement action in appropriate cases.

### EXAMPLE

#### Misleading conduct by a debt collector

A debt collector misled a debtor by representing that it specialised in commencing legal proceedings and that it was able to immediately commence legal proceedings against the debtor when this was not true.

The threat of court action was used as a method to get the debtor to pay. This was misleading because the debt collector rarely initiated court action and was not able to do so immediately.

*ASIC v Accounts Control Management Services Pty Ltd [2012] FCA 1164*

## EXAMPLE

### Harassment by a debt collector

A debtor was medically unwell (with limited verbal communication), unable to work, reliant on a disability pension, and lived in care. The debt collector contacted them 60 times over 4 years to demand payment of a debt.

The debt collector represented that it would shortly begin court action to recover the debt if it was not paid. The debt collector had no plans of doing so, and there was no evidence that the debt collector's internal processes had been followed to initiate court action. The debt collector knew of the debtor's condition, living situation and inability to pay the debt. It was even noted on the debtor's file that they should not be called.

The court determined that the debt collector's multiple phone calls to the debtor together with the number and content of its letters was calculated to intimidate, demoralise, tire out, or exhaust the debtor. The debt collector's conduct amounted to harassment.

*ASIC v Accounts Control Management Services Pty Ltd [2012] FCA 1164*

## What information should I ask for?

If you get a call or a visit from a debt collector, you have the right to see the personal information a debt collector holds about you. Most of the time, they have to share it with you – but read more about your [right to personal information](#) on the Privacy Commissioner's website to learn more.

Start by asking the caller for his or her name, the name of the debt collection company, and their contact information. Then get as much information as you can from the debt collector about the debt.

Ask for your information in writing, so that you have a record of what the debt collector tells you. If you ask for information in a conversation with the debt collector, write down what they tell you and make a note of the date and time of the conversation. Records like this might help you to remember the details if need to seek advice about your debt or speak to the debt collector again.



Here are some suggestions:

- Ask for a copy of the original contract that you signed – for example, for the service you agreed to or your loan agreement.
- Ask when the debt was sent to the debt collector.
- Ask what the debt relates to and how the total debt is made up – for example, how much you owe on your electricity bill and whether fees or charges have been added and how much they are.
- If there are additional fees or charges, ask who added these and why.

## What should I do if I think the debt is not mine or the amount owing is wrong?

If you believe the debt is not yours or the amount owing is wrong, tell the debt collector. You have a right to ask the debt collector to correct information that you think is wrong and you might not have to pay a debt that is not yours or is not calculated correctly.

Explain what you think is wrong in writing and provide any documents you have that help explain your position. If you are not sure how to do this, ask for help from one of the organisations listed below.

It is up to the debt collector to decide what to do next. If the debt collector does not agree with your request to correct your information, you can ask them to add to the file your views about what the correct information is. You can learn more about your [right to correct personal information](#) on the Privacy Commissioner's website. In all cases, ask the debt collector to explain in writing the reasons for their decision.

Debt collectors can still ask you to pay the debt. If you refuse, they could take you to the Disputes Tribunal or to the court and ask them to decide whether you should pay. This can be helpful because someone independent can settle your dispute. The decisions are binding which means that you and the debt collector must follow the decision even if you disagree.

## What do I do if I cannot pay?

If the debt is yours and you agree with the amount, talk to the debt collector about what you can afford to pay. You can get free help from a budget advisor to work out what you can afford. They can help you make a budget and a payment plan.

## What if my debt relates to a loan?

If your debt relates to a loan and you cannot pay because of an unexpected situation, you might be able to make a [hardship application](#) with the lender to change some of your payment arrangements. If you meet the requirements, the lender must consider it carefully and fairly.

You also have the right to argue repossession of an item that is not listed in your loan agreement, or if the debt collector has taken an essential household item. Read more about your [repossession](#) and other borrower rights on our website.

## How did I get this debt?

You might be in debt because of an unpaid bill or an overdue loan payment.

### Unpaid bill

Many unpaid bills are for services you signed up for, like electricity, the internet, or a gym.

If a debt is more than 6 years old, you usually do not have to pay it. But if you started paying after 6 years, or you acknowledged the debt, then you have to repay it.

A debt collector can add collection fees to your debt if you do not pay by their deadline. But, you need to have been told that fees might be added (either in writing or in person) when you signed up for the service.

### Unpaid loan

You might have borrowed money to help you buy or pay for something, like a car or a funeral. If you stopped paying or did not make payments on time, your loan could be passed on to a debt collector.

Also, if you pay late, the lender can add fees to your debt. Those extra costs must be explained to you when you sign up for the loan. They must also be in your contract.

## Where can I find help?

- Get budgeting advice from community agencies such as [Money Talks](#) or [your local budgeting advisor](#).
- If you need legal advice, consult a lawyer. Contact your local [Citizen's Advice Bureau](#) or [Community Law Centre](#).

### Contact us

If you think that a debt collector is misleading, harassing, or coercing you to make payment then [make a complaint](#) to the Commerce Commission.

We assess every complaint we receive, but we are unable to investigate all of them or find a solution for everyone. Our focus is to make sure New Zealand markets work well and consumers and businesses are confident when buying or selling goods and services. This means that we tend to follow up the issues causing the most widespread harm to New Zealanders. Complaints like yours can help us to identify these issues, even if we cannot find a solution for your particular case.

**Phone:** 0800 943 600

**Write:** Enquiries Team, PO Box 2351, Wellington 6140

**Email:** [contact@comcom.govt.nz](mailto:contact@comcom.govt.nz)

**Website:** [www.comcom.govt.nz](http://www.comcom.govt.nz)

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Contact us with information about possible breaches of the laws we enforce:

**Phone:** 0800 943 600 **Write:** Contact Centre, PO Box 2351, Wellington 6140 **Email:** [contact@comcom.govt.nz](mailto:contact@comcom.govt.nz)

