

4 December 2023

[ ]  
General Manager  
Intercoll Holdings Limited  
[ ]  
Auckland 1026

By email: [ ]  
[ ]

Dear [ ]

## **Fair Trading Act 1986: Warning for misleading representations**

1. As you are aware, the Commerce Commission (**Commission**) has been investigating Intercoll Holdings Limited (**IHL**) (now trading as DebtManagers). Specifically, whether IHL engaged in conduct in breach of the Fair Trading Act 1986 (**FT Act**). We have now completed our investigation and are writing to inform you of our views.
2. The Commission has been investigating the following conduct which, in our view, is likely to have breached the FT Act:
  - 2.1. *Representations to consumers:* Between December 2020 and December 2021, some IHL agents when initially contacting consumers<sup>1</sup>, used the representation “I am a process server, and my job is to file and serve District Court documents” (or similar). In our view, the representations taken together may have misled debtors into thinking that the services are a particular kind in that IHL’s debt collection services relate to a debt that is before the Court and/or relates to a Court proceeding, when they were not – likely to be in breach of s 13(b) of the FT Act.
  - 2.2. *Pursuing the wrong individual for a debt owed:* IHL sent a Notice of Assignment letter to Mr [ ] (of Christchurch) on 22 February 2021, requesting payment of a debt. That letter was followed up with further correspondence demanding settlement of the debt. The debt was however owed by a different Mr [ ] (of Auckland) with a different date of birth and different spelling of the surname. The representations made by IHL to Mr [ ] (of Christchurch)

---

<sup>1</sup> Debtors and members of the public.

following the initial assignment letter, were that it had the right to pursue and recover the debt from him when it did not have that right as the debt was instead owed by another Mr [ ] (of Auckland) – likely to be in breach of s 13(i) of the FT Act.

3. Having finalised our investigation into the above conduct, we are issuing IHL with this warning letter as an alternative to litigation. In our view:
  - 3.1. the evidence that has been gathered is sufficiently strong to establish a prima facie case;
  - 3.2. there has therefore been a likely breach of sections 13(b) and 13(i) of the FT Act; and
  - 3.3. the matter can be satisfactorily resolved without legal proceedings for reasons explained below.
4. A warning is not a finding of non-compliance; only the courts can decide whether a breach of the law has occurred, and we have determined that on this occasion we will not be bringing legal action.<sup>2</sup> The purpose of this warning letter is however to inform you of our view that there has been a likely breach of the FT Act, to prompt changes in behaviour and to encourage future compliance.

### **The investigation**

5. Between 29 November 2020 and December 2021, the Commission received complaints in relation to IHL and its agents/employees. As a consequence, the Commission initiated an investigation which (in time) concentrated on the two forms of conduct mentioned above, being the representations to consumers and pursuing the wrong individual for a debt owed, which we discuss further below.
6. During the course of the investigation, IHL has fully cooperated with the Commission, in comprehensively responding to two Requests for Information (**RFI**), attending an initial meeting and attending a voluntary interview with Commission staff in Auckland on 22 February 2023.

*Representations to Consumers: “I am a process server. My job is to file and serve District Court documents”*

7. A complainant to the Commission alleged that when telephoned by an IHL agent in October 2021, the agent advised he worked for the courts, and that the agent wanted particular personal information and details including the complainant’s WINZ number and information about his benefit.
8. The Commission subsequently reviewed a random sample of telephone calls provided by IHL in response to the Commission’s Requests for Information. Of over 200 calls reviewed:

---

<sup>2</sup> Commission’s published *Enforcement Response Guidelines* at [41].

- 8.1. There were 12 calls made by one IHL employee and one call made by another employee where, during their introduction to the person answering the call, they made the representation “*I am a process server, and my job is to file and serve District Court documents*” (or similar).
  - 8.2. Two of the above calls were made to members of the public: one to a receptionist at a government department, where the IHL employee was wanting to speak to an employee of the department; and the other, to the father of a debtor (in an attempt to locate the debtor).
  - 8.3. Many of the 200 calls reviewed were a call back or follow up call, and/or a discussion when the debtor knew of the agent and the debt to be discussed.
9. IHL advised the Commission that the responsibilities of one of the relevant IHL employees included serving documents, while the other employee's role included approving the commencement of legal action in respect of the debt. However, IHL did note that legal action was the last consideration/ resort.

*Pursuing the wrong individual for a debt owed: IHL’s right to pursue and recover the debt from Mr [ ] of Christchurch*

10. On 22 February 2021, IHL sent a Notice of Assignment to Mr [ ] (of Christchurch)<sup>3</sup> (**the Notice**). The Notice advised that he owed money (\$1,875) to [ ], that the debt had been assigned to IHL, and that payment of the debt was due to be paid to IHL by 5 March 2021.
11. In correspondence with IHL, Mr [ ], albeit in confrontational terms, requested an explanation for the letter received, sought details about who the alleged debt was owed to, how much the debt was and when it was incurred, and stated that he thought he was being scammed. Mr [ ] also requested that IHL cease contacting him. **Attachment A** sets out in more detail the correspondence between Mr [ ] and IHL.
12. IHL confirmed the name of the previous debt collection agency, [ ], and also the name of the original debtor, [ ]. However, it did not otherwise provide Mr [ ] with more details of the debt or, for example, supply a copy of the contract for the original debt. Nor did IHL check the documentation in its possession that it had received from [ ] that identified the original debt and the correct debtor, either at the time of purchasing the debt or for the purposes of corresponding with Mr [ ]. That said, IHL did request details of purchases and payments from [ ] on 15 July 2021. [ ] did not provide the details prior to Auckland going into Covid lockdown in August 2021. At that point, the vendor was unable to supply documents due to the documents being in the company building.

---

<sup>3</sup> All references after this paragraph, are to Mr [ ] of Christchurch who was incorrectly identified as owing a debt.

13. IHL told the Commission at interview, that it did not consider Mr [ ] responses constituted a dispute of the debt and believed at that time it had a right to collect, not realising it was pursuing the wrong Mr [ ]. Some months after the Commission's intervention, IHL realised and acknowledged that it had been attempting to collect from the wrong individual. IHL has since expressed an intention to personally apologise to Mr [ ].

### **The legislative context**

*Representations to Consumers: "I am a process server. My job is to file and serve District Court documents" – section 13(b) of the FT Act*

14. Section 13(b) of the FT Act prohibits the making of false or misleading representations that services are of a particular kind.
15. Our investigation has considered whether the statements, either individually or taken together, may have misled the debtors about the kind of debt collection service being undertaken by IHL and the status of their debt.

*Pursuing the wrong individual for a debt owed – section 13(i) of the FT Act*

16. Section 13(i) of the FT Act prohibits the making of a false or misleading representation concerning the existence, exclusion or effect of any right. The Courts have held that s13(i) not only relates to representations regarding consumers rights but also a supplier or trader's rights.
17. Our investigation has considered whether IHL represented that it had the right to pursue and recover an assigned debt from Mr [ ], in circumstances where it did not have that right.

### **IHL's response**

18. In addition to the information provided in response to the Commission's two RFIs, during the interview IHL advised the Commission:

*Representation: "I am a process server. My job is to file and serve District Court documents"*

- 18.1. The IHL agent was such a person, as their responsibilities within IHL could include recommending, and when prepared by various departments, the filing and subsequently serving of court documents.
- 18.2. IHL's training material included content regarding not misrepresenting an employee's job description and did not include any scripting in place similar to "*I am a process server. My job is to file and serve District Court documents*".
- 18.3. There was a vague awareness at management level that these representations were being made but management were only aware of two staff members who made those representations.

- 18.4. IHL had already taken steps unrelated to the Commission's investigation, as part of a wider programme of business improvements, which prevent these representations from being made. Staff at IHL are now instructed to introduce themselves as being an employee of DebtManagers and they are there to discuss an assigned debt. Further, IHL undertakes assessment of calls and recorded visits; where there are concerns, feedback is given to team leaders, and recorded non-compliance with the process is included in subsequent training if necessary.
- 18.5. Since the introduction of these new review processes, there has been an improvement in compliance with IHL's policies.

*Mr [ ] - Pursuing the wrong individual for a debt owed*

- 18.6. When a debt ledger is purchased by IHL, information and documents relating to debtors are provided by the vendor. In this case, IHL was provided incorrect information in a summary sheet from [ ], at the time IHL purchased the debt ledger. IHL used this data when pursuing the debt, albeit they did have access to documents about the debt, including information identifying the correct debtor. IHL used the data supplied because of the volume of debts and the fact IHL has limited time to load the debt (as it is required to make disclosure of the assignment of the debt under the Credit Contracts and Consumer Finance Act 2003 within 10 working days).
- 18.7. In respect of Mr [ ], IHL could not adequately explain:
- 18.7.1. why it took three months to respond to Mr [ ] email of 1 March 2021 questioning what the assignment letter was about; and
  - 18.7.2. why Mr [ ] was at no time supplied a copy of the contract that related to the debt.
- 18.8. IHL has subsequently explained to the Commission that it:
- 18.8.1. provided some additional detail of the debt to Mr [ ] on 1 June 2021;
  - 18.8.2. did not take any further steps to pursue the debt from Mr [ ] after 13 July 2021 as at that point IHL determined, having reviewed the contract itself and when it was incurred, that the debt may not have aligned with IHL's collection requirements;
  - 18.8.3. requested further detail from [ ] on 15 July 2021; and
  - 18.8.4. experienced disruptions and delays due to COVID-19 lockdowns and restrictions in Auckland throughout 2021.

### The Commission's view

19. In this case and having fully considered relevant information obtained during the course of the investigation, the Commission's view is that it is likely that IHL's conduct breached the FT Act, specifically sections 13(b) and (i).
20. We have reached this view because:
- 20.1. *Representations to Consumers:* While recognising that the representation "*I am a process server, and my job is to file and serve District Court documents*" may literally be true, in our view the representation may have been misleading to consumers. The representations taken together, may have misled debtors into thinking that IHL's services in collection of a debt related to a debt that was before the Court and/or related to a Court proceeding when it did not. It is our view that this conduct amounts to a likely breach of s 13(b) of the FT Act.
- 20.2. *Pursuing the wrong individual for a debt owed:* We consider that IHL made misrepresentations in its correspondence with Mr [ ] following the initial sending of the Assignment Letter on 21 February 2021, where IHL stated that it had the right to pursue and recover the debt from him, when it in fact did not have that right. It is our view that the representations made in correspondence following the initial assignment letter were likely in breach of s 13(i) of the FT Act.

### Dispute of the debt

21. IHL advised during the interview that it did not accept that Mr [ ] disputed the debt at any stage because in their view, a dispute arises when, put simply, the debtor specifically says that they "... do not owe this because.." and provides a valid reason for non-payment.<sup>4</sup>
22. Having reviewed correspondence between Mr [ ] of Christchurch and IHL, we do not necessarily agree that Mr [ ] did not raise a valid dispute. In our view, the nature of Mr [ ] protest and comments made in response to IHL's pursuit of the debt should have given IHL reason to pause collection activity and enquire into the dispute further. This would likely have resulted in a more detailed consideration of the debt file at an earlier stage and IHL would likely have noted the discrepancy in debtor information provided by [ ] and the loan documentation itself. In that scenario, IHL would not have continued to make the representation to Mr [ ] that it had the right to pursue the debt from him, when it did not have that right.

### Warning

23. We acknowledge that in late 2020 IHL purchased an existing business, and since then it has made substantial changes to the business model and operations, with a focus on enhancement of its debt collection business processes including around compliance and regulatory matters. We also note that as part of its everyday practice, it continues

---

<sup>4</sup> Further information regarding the dispute of a debt was provided by IHL on 31 August 2022, by way of response to our RFI dated 4 July 2022.

to monitor the quality of its services and interactions with customers. We also acknowledge that IHL has fully cooperated with the Commission's investigation.

24. After weighing up the factors set out in our Enforcement Response Guidelines, we determined that it is appropriate and sufficient to conclude our investigation by issuing this warning letter rather than by issuing legal proceedings/prosecution.
25. This warning represents our opinion that the conduct in which IHL has engaged in is likely to have breached the FT Act. If this (or similar) conduct is continued or repeated, it is open to the Commission to take legal action in respect of that continued/repeated conduct. This warning would be brought to the attention of a court in any subsequent proceedings brought by the Commission against IHL.
26. This warning letter is public information and will be published on the case register on our website. We may also make public comment about our investigations and conclusions, including issuing a media release or making comment to media.

### **The Commission's role**

27. The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the FT Act. The FT Act prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.
28. We also remind IHL that individuals can be found liable for breaches under the FT Act.

### **Penalties for breaching the FT Act**

29. As indicated above, only the courts can decide if there has actually been a breach of the FT Act. The court can impose penalties where it finds the law has been broken. A company that breaches the FT Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.
30. You should be aware that our decision to issue this warning letter does not prevent any other person or entity from taking private action through the courts.

### **Further information**

31. We recommend that you seek legal advice and encourage you to regularly review your compliance procedures, training, and policies.
32. We have published a series of fact sheets and other resources to help businesses comply with the FT Act and the other legislation we enforce. These are available on our website at [www.comcom.govt.nz](http://www.comcom.govt.nz). We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the Act.
33. You can also view the FT Act and other legislation at [www.legislation.co.nz](http://www.legislation.co.nz).

34. Thank you for your assistance with this investigation. Please contact [ ] on [ ], or by email at [ ]@comcom.govt.nz if you have any questions about this letter.

Yours sincerely

[ ]  
Investigations and Compliance Manager (Acting)  
Fair Trading



## Attachment A

*Pursuing the wrong individual for a debt owed: IHL's right to pursue and recover the debt from Mr [ ] of Christchurch*

35. On 22 February 2021, IHL sent a Notice of Assignment to Mr [ ] (of Christchurch). This Notice of Assignment stated:

*"For some time you've had money owing to [ ]. This letter is to notify you that [ ] has absolutely assigned all its legal and beneficial right, title and interest in your debt to ILL<sup>5</sup> on 18<sup>th</sup> February 2021 and explain to you how your debt will be managed in the future.*

*As a consequence of the assignment you now owe the full balance of \$1,875.00 to ILL and if it remains unpaid 30 days after the date of this letter we reserve the right to load a default against you on various credit bureaus. This could have a negative effect on your credit score and prevent you from obtaining finance in the future.*

*This amount is due in full by **4PM Friday 5 March 2021**"*

36. On 1 March 2021, Mr [ ] questioned this notice of debt by an email to IHL wanting 'an explanation for the threatening letter received', advising that 'it better be a good (explanation) or the Police will be involved'. IHL did not action this request to explain the demand for payment until 1 June 2021 when it repeated the request to Mr [ ] to contact IHL 'to rectify the situation re the debt owed'. IHL did however clarify that the debt was an "assigned matter from [ ]", which IHL says was an attempt to make it clearer to the debtor who the original debt was incurred with.
37. IHL did not check the documentation in its possession that it had received from [ ], at the time of purchasing the debt. That documentation recorded the original debt and the correct debtor. Mr [ ] did not respond to this 1 June 2021 email request immediately. On 17 June 2021, IHL again emailed Mr [ ] advising that as he had not made any payments towards the debt and it was "...planning on escalating the matter to our field team...", where an agent would "...visit you at work or home to rectify this outstanding matter".
38. On 19 June 2021, Mr [ ] telephoned IHL and in confrontational language requested that IHL cease sending him emails.
39. On 13 July 2021, IHL sent another email to Mr [ ] stating that he "...had not made contact regarding the outstanding debt with Intercoll". The email also asked him "to confirm his intention to sort the matter, otherwise we may go ahead to the next stage of the escalation process".
40. In response that same day, Mr [ ] (of Christchurch) rang IHL on two occasions and following these calls, Mr [ ] emailed IHL stating "if you cannot/will not supply details about who this alleged debt is owed to, how much and when it was incurred, I'll

---

<sup>5</sup> Intercoll Ledger Limited (ILL) is a subsidiary of IHL.

*continue with my complaint to the Commerce Commission". "The letter I was sent months ago looks extremely suspicious. A debt alleged by a company I have never heard of".*

41. The recipient of the email at IHL replied *"Have you been supplied a contract to validate the debt"*, to which Mr [ ] replied *'No, I have not'*. IHL did not provide a copy of the contract requested by Mr [ ] and from IHL file notes did not correspond with him again.
42. From IHL's files notes, on 14 December 2021 IHL discovered that the debt, allegedly owed by Mr [ ], related to a contract in June 2014, and therefore collection may have been time barred by statute. IHL closed its file on 5 January 2022, and made no further contact with Mr [ ].