

## Debt collection issues and complaints

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### CASE STUDY

Julie received a phone call from a debt collector at 7am on Saturday demanding that she pay up an old credit card debt. The debt collector has been to her house six times in the past week and threatened to report her to the Department for Child Protection and Family Services (DCPFS) if she did not pay up. Julie rang CCLS because she could not afford to pay the debt in full and was also afraid of being reported to the DCPFS. CCLS advised Julie the debt collector breached the Debt Collection Guideline by calling before 9am on a weekend, by making contact more than 3 times in one week, and by their threat to report to DCPFS. CCLS also advised Julie to make a complaint about the debt collector's conduct.



### What do debt collectors do?

If you have overdue debts, you may be contacted by a debt collector.

It is important to determine if the debt collector is contacting you on behalf of your credit provider (i.e., as agent for the person or entity you owe money to) or whether they are collecting for themselves (i.e., they have bought your debt from your original credit provider).

Knowing who you owe the debt to is important because it will determine who you may negotiate with or where you may direct complaints.

### What is the Debt Collection Guideline?

ASIC and ACCC publish the [Debt Collection Guidelines](#) which sets out how consumer protection legislation applies to debt collection conduct. Generally, ASIC has jurisdiction where the debt relates to a credit facility or financial service, and ACCC has jurisdiction over debts related to goods and services.

### How and when can a debt collector contact you?

The Debt Collection Guidelines place limitations on the location, hours, frequency of contact and the forms of communication allowed.

Contact will usually be by telephone, though face-to-face contact may be considered as a last resort when all other forms of contact (e.g. telephone, email or letter) have failed. Generally, the following contact may be considered reasonable:

Contact	Day	Time	Frequency
Contact by telephone	Monday to Friday	7:30 am to 9 pm	3 times a week
	Weekends	9 am to 9 pm	10 times a month
Face-to-face contact	Monday to Friday	9 am to 9 pm	As a last resort, once a month
	Weekends	9 am to 9 pm	
All workplace contact	Monday to Friday Normal working hours (if known)	9am – 5pm	As a last resort, or as requested or agreed.

No contact is recommended on public holidays.

Unnecessary or unduly frequent contact may be considered undue harassment.

When conducting face to face visits at home or at work risk, debt collectors risk breaching privacy obligations. They must not reveal the purpose of the visit or discuss your debt with third parties. If you refuse to allow a debt collector to visit your home, or if you have requested that they do not attend your workplace and have provided an alternative means of communication, then they must not visit. They must leave immediately, if asked.

### Can a debt collector demand payment in full?

The Debt Collection Guidelines encourage debt collectors to adopt a flexible, fair and realistic approach to negotiating repayment arrangements, ensuring payment arrangements are meaningful and sustainable.

Debt collectors must not mislead you about your rights to seek a repayment arrangement or the consequences of non-payment.

It is unacceptable for a debt collector to:

- pressure you to pay in full or pay large instalments they are aware you are unable to pay;
- only consider a repayment arrangement after an initial large upfront payment, or they have seen proof of unsuccessful attempts to obtain alternative credit;
- pressure you to get into further debt in order to pay out your existing debt;
- encourage you to borrow from family or friends;
- pressure you to access your superannuation early.

### What about old debts?

A debt collector must not mislead you about the legal status of a debt.

If it has been six years since you have last acknowledged or made a payment towards a debt and there has not been a court judgment against you, the debt may be statute-barred. This means the right to pursue the debt in court has expired. Implying or stating that legal proceedings will be taken when the right to pursue the debt has expired may be considered misleading or deceptive.

### How can you make a complaint against a debt collector?

If you feel you are being unduly harassed by a debt collector or believe they may have breached the Debt Collection Guidelines, you may make a complaint.

We recommend that you make your complaint in writing and keep a copy for your records.

Please see our **Sample Letter to Complain about a Debt Collector** on our website. If the debt collector has bought the debt, then they step into the shoes of your original creditor, and you should direct your correspondence to the debt collector.

If the debt collector is merely an agent for your creditor, you may direct your correspondence to your credit provider.

If you do not receive a response or if are not satisfied with the response you receive to your complaint, you may wish to escalate your complaint to the appropriate external dispute resolution scheme. Most debt collectors are members of the Australian Financial Complaints Authority. However, if the original debt relates to a telco, energy or water, you may escalate your complaint to the [Energy and Water Ombudsman](#) or the [Telecommunications Industry Ombudsman](#).

In addition, if you have been physically assaulted or verbally abused by the debt collector, you may wish to report the incident to the police.

<b>Further information</b>
<b>Consumer Credit Legal Service</b> Website: <a href="http://www.cclswa.org.au">www.cclswa.org.au</a> Advice line: (08) 9221 7066
<b>Other useful contacts</b>
<b>Australian Financial Complaints Authority</b> Website: <a href="http://www.afca.org.au">www.afca.org.au</a> Phone: 1800 931 678
<b>National Debt Helpline</b> Website: <a href="http://www.ndh.org.au">www.ndh.org.au</a> Phone: 08 9221 7066
<b>MoneySmart by ASIC</b> Website: <a href="http://www.moneysmart.gov.au">www.moneysmart.gov.au</a> <a href="#">MoneySmart Consumer Leases Factsheet</a>
<b>Telecommunications Industry Ombudsman</b> Website: <a href="https://www.tio.com.au/">https://www.tio.com.au/</a> Phone: 1800 062 058
<b>Energy and Water Ombudsman</b> Website: <a href="https://energyandwater.ombudsman.wa.gov.au/">https://energyandwater.ombudsman.wa.gov.au/</a> Phone: 1800 754 004