

# Debt collection – a consumer guide

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If you borrow money from a lender, you must meet your obligations under your loan agreement. If you do not pay the lender, they can take steps to collect the debt from you and pay back the money.

The lender will contact you to let you know you are behind on your repayments. This is known as being in arrears. The lender will usually ask you to pay the missed payment or to contact them to make a payment arrangement.

If you remain behind on your loan repayments, the lender may decide to do one of the following.

- > Sell the debt to a collection company. This is known as purchase debt ledger (PDL). If this happens, the PDL that purchased the debt take over from the original lender. You now owe the debt to the PDL.
- > Hire a debt collection agency to collect the debt for the lender. If this happens, the debt collection agency (not the lender) will contact you about payment of the debt. Most lenders will still allow you to contact them directly to negotiate a repayment plan.

These two situations are covered by this guide.

The lender may also decide to repossess and sell an asset that is security for your loan (eg a motor vehicle) or to take you to court. These two situations are not covered by this guide.

## What can FSCL help with?

FSCL can help with complaints about lenders and PDLs.

If a PDL purchased the debt, they are responsible for complaints about the loan, including complaints about something that happened before they purchased the debt. PDLs must belong to a dispute resolution service.

If a debt collector is collecting the debt for the lender, you can complain to us. Debt collectors that collect debts for lenders do not have to belong to a dispute

resolution service, but lenders must belong to a service and they are responsible for the actions of debt collectors they hire. This means we may not be able to take a complaint up with the debt collector, but we can take it up with the lender.

If FSCL cannot help with your complaint because the lender or PDL belong to a different dispute resolution service, we will refer you to the service the lender or PDL belongs to.

### **What can FSCL not help with?**

We cannot consider complaints about a lender's commercial judgement. This includes complaints about a lender's decision to sell a debt.

Occasionally, a lender will agree to the borrower's request that the lender buy the debt back from the PDL. It is for the lender (not FSCL) to decide whether they will buy a debt back. We cannot require a lender to purchase a debt back from the PDL or require a PDL to sell a debt back to the lender.

We also cannot help with complaints where a debt collector is collecting a debt for an organisation that is not a financial service provider. For example, where the debt collector is collecting a debt for a phone or power provider, or they are collecting unpaid parking fines.

If you want to dispute a debt, you should complain to the organisation the debt is with – for example, the phone or power provider. They may belong to a dispute resolution service that can help if you are not able to resolve your complaint directly with the organisation. For example, you may be able to complain to:

- > [Utilities Disputes](#) about your electricity or gas provider, a water provider, or about broadband installation
- > [Telecommunications Dispute Resolution](#) about your phone or internet provider.

Alternatively, you could go to the [Disputes Tribunal](#).

### **Do not delay in complaining about your loan**

We encourage you to contact FSCL as soon as possible if you have a complaint about your loan. If you delay in complaining, it may be more difficult for us to help you and the lender or PDL resolve the complaint in a timely manner.

Lenders and PDLs cannot take debt collection action while FSCL are considering a complaint unless they have our consent.

## I do not understand a letter about my debt

We sometimes see letters that use complicated terms. For example, if you receive a letter that says:

Notice is hereby given that on [date] [lender] assigned all its legal and beneficial right, title, and interest in the above listed debt and account to [PDL]. This does not affect the terms of the contract you entered into, however, the amount due is now owed to [PDL].

This means the lender sold your debt to a collection company (the PDL). The only thing that has changed is that you now owe the debt to the PDL (not the original lender).

If you receive a letter or email that you do not understand, we encourage you to contact the company or person that wrote to you to ask them to explain the letter or email. If you are not satisfied with their response, you can contact FSCL for help.

## Can I dispute the debt?

You can complain to FSCL if you dispute the debt or the amount of the debt – for example, because:

- > you believe you have already paid the debt in full
- > a payment you made to the lender was not applied to your loan
- > you dispute the fees charged.

We sometimes receive complaints from consumers where someone stole their identity and borrowed the money fraudulently. If this has happened to you, it was most likely the fraudster, not the lender or PDL, that caused the problem. Please understand that the lender or PDL want to check you are telling the truth. They will probably ask you to confirm your identity and to report the matter to the Police.

If the lender or PDL are satisfied that the debt is not yours, they will stop debt collection action. If the lender or PDL continue to say you owe the money, we can probably investigate your complaint.

## Can I complain about the debt collection process?

We can consider a wide range of complaints about loans, including concerns about the debt collection process. For example, we can consider complaints that

the borrower has not been treated fairly and complaints about debt collection fees.

If your loan is a [consumer credit contract](#), the responsible lending consumer protections in the Credit Contracts and Consumer Finance Act 2003 apply to your loan. This means the lender or PDL must treat you reasonably and in an ethical manner.

We can also consider complaints about loans that are not consumer credit contracts, such as business loans. The responsible lending protections in the Credit Contracts and Consumer Finance Act 2003 will not apply to the loan, but we can consider, for example, whether the lender or PDL complied with the terms of the loan agreement and whether they have followed good industry practice.

## Cases

The following are examples of cases about debt collection we have considered. Each case turns on its facts. More case notes are on [our website](#).

### **Debt sold to a PDL**

Trevor's debt was sold to a PDL. He said he had never heard of the lender and did not owe the money. He contacted us because the PDL said he needed to give them:

- > a copy of his driver licence
- > a copy of his passport
- > a statutory declaration that he did not owe the money
- > the reference number from his Police report.

Trevor said he had already spent four months trying to resolve the issue and that the stress was worsening his heart condition.

We referred the complaint to the PDL's internal complaints process. They reconsidered the matter and decided the Police report number was enough for them to be satisfied the debt was not Trevor's. He was pleased with this outcome.

### **Lender agreed to waive fraudulent debt**

A debt collector was collecting a debt for a buy now pay later provider, but this was not clear to Sharee because she did not understand the information the debt collector gave her.

We contacted the debt collector who referred us to the buy now pay later provider. They said Sharee's credit card was used to pay the first instalment of the purchase that she disputed. Sharee said this suggested her credit card details had been compromised.

To resolve the complaint, the buy now pay later provider waived the debt on the condition that Sharee's buy now pay later account, which had been open for over 12 months, would be closed and she would no longer use the provider's services. Sharee was satisfied with this outcome.

#### [Who is responsible for the complaint?](#)

A lender sold Isabella's debt to a PDL. She wanted the lender to buy the debt back because she wanted them to take responsibility for mistakes they had made before they sold the debt. Isabella did not want to complain about the PDL because they had not done anything wrong.

Isabella decided to take her complaint up with the PDL when we explained to her that they were responsible for complaints about the way the lender had handled the loan. If we investigated the lender and found the debt (or part of it) should be waived, the lender would not be able to action this because they did not own the debt.

#### **More information about debt collection**

The [Responsible Lending Code](#) sets out guidance for lenders under consumer credit contracts about how they can comply with their obligations under the Credit Contracts and Consumer Finance Act 2003. Past versions of the code are available in the Ministry of Business, Innovation and Employment's [document library](#).

The Financial Services Federation have a [Responsible Debt Collection Code](#). They are an industry body that promote ethical and responsible lending practices. [Members of the Financial Services Federation](#) agree to follow the code.

[Consumer Protection](#) and the [Commerce Commission – Te Komihana Tauhohoko](#) have information for consumers about debt collection. The Commission also have [guidance for lenders](#) about their legal obligations.

If you are struggling with debt, Te Ara Ahunga Ora Retirement Commission's [Sorted website](#) has information about tackling debt.

You may also want to contact [MoneyTalks](#). They are a free service that help people and whānau with day-to-day money matters like budgeting and debt management. They can also help people and whānau find their way through processes to access government assistance and find community organisations that help people and whānau in hardship, such as food banks.