



Demanding Better

**Why debt collection practices
in Aotearoa need to change**

christians
against
poverty

CAP

Contents

Summary	4
Introduction	5
Overview of Impact of Poor Debt Collection	7
Piles on the pressure	8
Causes people to hide	8
Unfairly targets women and beneficiaries	8
Pushes people into insolvency	9
Limits long-term agencyy	9
Those in hardship do not make complaints	9
About CAP Clients	11
Ethnicity	12
Income	12
How long are clients in debt?	13
What kind of debts?	13
Already in hardship	14
Average amount of debt owed by household type	15
Original debts – what type of debt was the original creditor?	15
What else is going on in their lives?	16
Issues with Debt Collection in Aotearoa	17
False and misleading claims	18
Unaffordable payment demands	19
Fees	21
Harassment and coercion – section 23 of FTA	22
Recourse	24
Case Studies	25
Recommendations	33
Notes	37

Summary

This report investigates poor debt collection practices in New Zealand to bring regulatory reform and better protection for vulnerable families.

Poor debt collection practices is an under-reported issue in New Zealand that continues to push many vulnerable families into unmanageable and crushing debt. CAP regularly receives reports of clients that have been on the receiving end of misleading and unconscionable conduct by some debt collectors. The scale of the impact worsens the material and financial hardship for many families, strains relationships, engenders broken families, and affects mental health and wellbeing.

There is some form of regulation on what should constitute reasonable behaviour for debt recovery in New Zealand but gaps in the guidelines have allowed poor debt collection practices to perpetuate. These practices have included undue harassment, bullying, coercion, false or misleading claims, and unrealistic repayment demands. The aftermath has left many borrowers feeling anxious, stressed, and living in perpetual fear.

Based on the findings of this report, CAP calls for the following:

- Broadening the scope and clarifying the interpretation of what constitutes harassment and coercion in the current legislation
- Criminalisation of undue harassment of borrowers
- Licensing of debt collectors in New Zealand
- Reform of application for the variation of attachment orders
- Making beneficiaries judgement-proof debtors
- Establishment of new guidelines for repayment plans, fees, and legitimate and undue contact
- Systematic changes to protect vulnerable people by providing opportunities for recourse and alternative dispute resolution

Introduction

The debt collection industry is a key part of New Zealand's economy providing employment for many individuals and businesses. Debt forms part of the social and economic life of today's world and gives borrowers the flexibility to make purchases, utilize future earnings, and deal with crises to make up shortfalls. CAP acknowledges that debt is not a bad thing when it is properly managed and there is appropriate support for people that face financial instability and hardship. However, each day CAP sees the complex social challenges of financial hardship and the intergenerational patterns of crisis and indebtedness on many vulnerable families across Aotearoa. CAP is concerned that appropriate support for borrowers is sorely missing and the prevalence of poor debt collection practices exacerbates material and financial hardship.

Debt collection refers to all recovery actions taken after a consumer defaults on a loan. The process of debt collection, though often accompanied by stress, is ideally an opportunity to engage with borrowers in a civil way to recover unpaid debts. This has, however, not too often been the case. CAP continues to receive regular accounts of bullying and harassment of clients when debts are overdue. Some members of the community receive automated phone calls from debt collectors' multiple times using computerised auto-diallers (or robocalls). CAP clients report feeling 'bombed', harassed and ashamed.

Current debt collection regulations do not explicitly state how often a debt collector can contact a borrower, which enables debt collectors to hassle borrowers with calls and messages. The frequency of constant contact made with the debtor can be a significant contributor to stress and anxiety. Creditors sometimes put 'official' or 'court-like' stamps or logos on their collection's paperwork, possibly to misrepresent their authority. There is currently no licensing of debt collectors in New Zealand and no industry body performing oversight functions for debt collectors.ⁱ

A 2018 Ministry of Business, Innovation and Employment report based on the feedback of consumer advocacy groups on the issue of poor debt collection found several misleading and unacceptable practices continue to be employed by debt collectors in New Zealand. These practices "frequently include false or misleading claims, harassment, excessive charges and unrealistic payment demand."ⁱⁱ While there are regulations proscribing these unconscionable behaviours by debt collectors such as the Consumer Credit and Consumer Finance Act 2003 (CCCFA) – which sets applicable guidelines enforceable against debt collectors and debt purchasers – and section 23 of the Fair Trading Act (FTA) 1986 – which prohibits harassment and coercion, misleading conduct by debt collectors – CAP regularly receive reports of these practices.

Furthermore, there are gaps in current legislation that allow poor debt collection practices to perpetuate. For instance, guidance under the Responsible Lending Code on what should constitute legitimate contact after a default payment does not go into details of what constitutes undue and acceptable contact.ⁱⁱⁱ There is also a narrow definition and delineation in the guidelines on what constitutes harassment and unconscionable behavior. Compared to the Australian debt collection guidelines, existing guidelines obtainable in New Zealand does little to offer protection for vulnerable people from harassment. Breach of s 23 of the FTA is currently not a criminal offence, thus, doing little to incentivize good behaviour by debt collectors.

This report is divided into five parts:

- The impact of debt collection in New Zealand
- The make-up of CAP clients
- Problems with debt collection in New Zealand, including the gaps in legislation and existing guidelines
- Case studies of CAP clients that have experienced poor debt collection practices
- CAP's recommendations

Overview of Impact of Poor Debt Collection

The following impacts related to debt collection causes additional stress for borrowers that default on payment or who need help to assess their best options.

Piles on the pressure

Stress may be hard to define, but it manifests itself in obvious ways – lack of sleep, loss of focus, nagging worry. The emotional strain of dealing with debt, as some CAP clients report, can be almost as damaging as getting your electricity cut off, having debt collectors showing up at your workplace, having your car repossessed, or having your long-term agency constrained by a having a bad credit score. Poor debt collection practices readily exacerbate physical and mental health problems that many people dealing with unmanageable debt already experience.^{iv} From CAP's experience, incessant harassing phone calls and letters sent to vulnerable families over unpaid debts compound the stress levels of borrowers. It also negatively affects their bandwidth and ability to engage well with life. Some CAP clients live with a permanent disability, long-term medical condition, cancer, or heart conditions. Debt-related stress is likely to worsen all of these.

"I had six debtors chasing me every day. It was stressful. I had to juggle between who to pay, lots of letters, threats, and calls."

Causes people to hide

Debt causes many people to hide for the fear of being shamed. CAP clients have reported living in denial due to fear of debt collectors. Symptoms of denial can include: not answering the phone when you suspect a collection agency is calling, unwillingness to leave the house, zero appetite for social interaction, leaving bills unopened or stuffed in the letterbox, panic attacks, apprehension to answering the door, and being suspicious of people. These behaviours are often in reaction to the fear of harassment, bullying, coercion that some debt collectors have exhibited in debt recovery.

"I never answered my phone out of fear that it was a debt collector. It was miserable."

Unfairly targets beneficiaries and women

Families in financial hardship face a daily struggle to meet even their most basic needs – food, housing, power, phone, clothing, furniture, transport, health care and education costs. Women are more likely (84%) to head a sole-parent family, which is one of the high-risk factors associated with persistent poverty.^v The burden of debt in most families is mostly carried by women, as they carry the burden of childcare following family breakdown and during financial hardship and a third (31%) of sole parents with dependent children live in material hardship.^{vi}

Prior to COVID-19, the international picture showed that women were already much more likely to experience poverty than men. This is supported by the Commission for Financial Capability who report that more Kiwi women are more likely to suffer from financial abuse.^{vii} The New Zealand poverty rate for women over 65 was 14% and 6.6% for men.^{viii} In CAP's experience, it is far more convenient for a creditor to apply for an attachment order on a stable benefit than on less-stable wages, making it more likely that a stay-at-home mother with children on a benefit is more likely to receive an attachment order, and more likely to experience hardship if the orders are unaffordable.

Pushes people into insolvency

For the families who rely on government income as their primary source of household income, meeting everyday living expenses can be very challenging. Income from benefit or superannuation is seldom not enough to factor in debt repayment. Trying to repay debt while relying on a benefit is a gradual decline into further financial hardship, struggling to make payments to debt collectors, never having enough to save for future needs, and often relying on further expensive credit to juggle the weekly budget.

“Was in a lot of debt... every one of them requested that I pay it back in full which wasn’t possible for me, so I just gave up and accepted I’ll be in debt for the rest of my life.”

Missed loan repayments often incur additional charges which can push already vulnerable families into insolvency. CAP regularly sees cases where the high debt collection costs have pushed families’ debt balances so high that they have no option but to apply for insolvency. This could look like an \$808 collection fee added to a \$3,000 loan after the first default. While insolvency can help stop borrowers’ debt balances from growing and offer protection from creditors in the short term, the long-term effect of becoming insolvent increases financial and material hardship. This includes negative credit ratings that make it more difficult to get loans in the future, opening and maintaining bank accounts, and affects a person’s ability to stay gainfully employed.

Limits long-term agency

Creditors will often threaten to apply a default or negative score to a borrower’s credit rating if they do not meet payment demands. Poor credit ratings pose a significant barrier to almost all aspects of life, far beyond one’s ability to take out additional loans. Credit defaults remain on credit ratings for five years, and a cycle of bad credit scores inevitably leads to immense constraints on a borrower’s ability to access future services, products and even accommodation.

A poor credit rating is a major concern to borrowers as it directly impacts one’s likelihood of being accepted into a rental property, obtaining a phone plan, a mortgage, switching utility providers, accessing financial products, applying for managerial positions (as employers often require an acceptable ability to manage a budget), while also increasing insurance premiums. As a result, borrowers will often prioritise creditors’ demands over their family’s immediate wellbeing, as they perceive the situation as one where they need to prioritise long-term agency over short-term essentials.

Those in hardship do not feel able to make complaints

Vulnerable consumers are highly unlikely to raise complaints with the Police or with disputes resolution services. A recent report on debt collection practices in Aotearoa highlighted the lack of regulation around repayment schedules, noting that this enabled unethical and unconscionable debt collector conduct, such as turning up at a borrower’s workplace and coercing unrealistic payment demands.^{ix} Enforcement actions by regulatory agencies are, in part, based on consumer complaints. However, in CAP’s experience, borrowers are reluctant to make a complaint due to a number of reasons: fear of repossession, getting into trouble, cultural and language barriers, no clear outcome to making a complaint, guilt of debt itself, and unawareness of what constitutes illegal behaviour from creditors. This leaves many as victims of unconscionable behaviour from lenders.

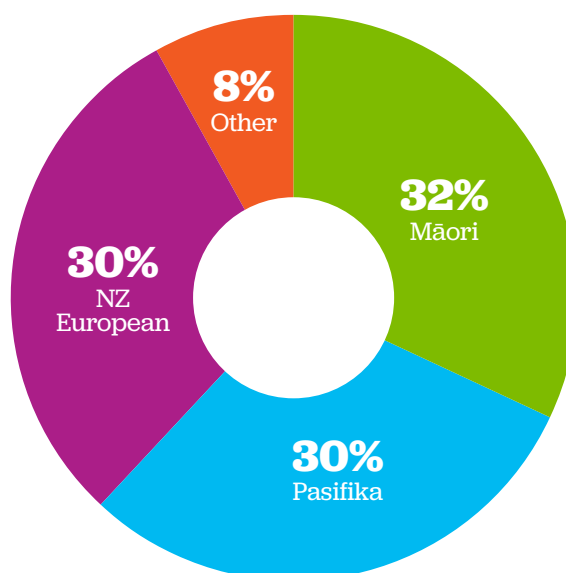
“People that I owed money would not talk or negotiate. There was no one willing to help.”

The overarching issues with debt collection practices are examined in subsequent sections.

About CAP Clients

CAP has had the privilege of helping and supporting thousands of New Zealand families and individuals over the past 12 years. This section explores the makeup of those families and individuals.

Ethnicity



Income

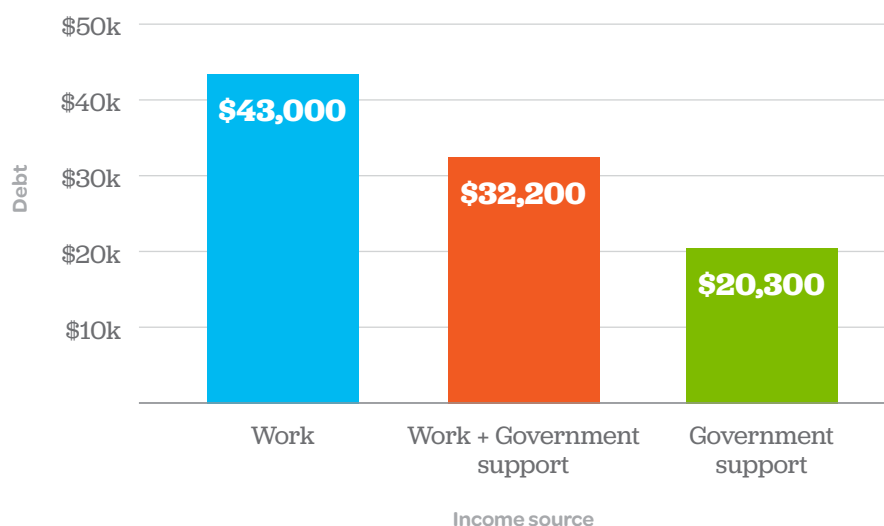
70%

of CAP clients rely on government support as their **main source** of household income.

40%

of CAP clients rely entirely on government support as their **only** source of household income.

Average amount of debt owed by income source

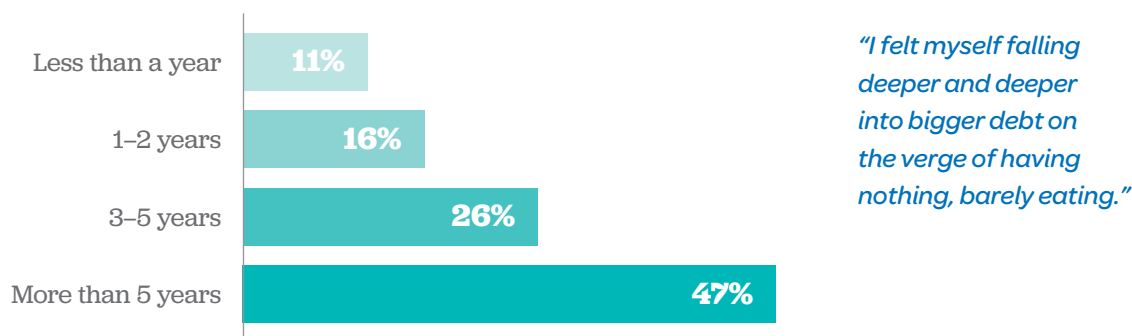


How long are clients in debt?

Sometimes a sudden event, such as illness or job loss, has meant debt is now unaffordable.

But most clients struggle for years in debt, trying to improve their situation, trying to stay afloat.

Before reaching out to CAP for help, most clients have lived with debt for more than 5 years:



What kind of debts?



*Supporting quotes from CAP's 2020 Survey

Before – "I had 6 debtors chasing me every day. It was stressful. I had to juggle between who to pay, lots of letters, threats, and calls."

Now – "My power is now in credit; my rent arrears are being paid. I have more money for myself and daughter for essential needs and leisure activities. I am now able to help my family [overseas]."

Before – "Was in a lot of debt...every one of them requested that I pay it back in full which wasn't possible for me so I just gave up and accepted I'll be in debt for the rest of my life."

Now – "I have a budget and my debt is being paid off in parts instead of being whole."

Before – "People that I owed money would not talk or negotiate. There was no one willing to help."

Now – "I am in control, there is someone that cares, there is a light on the horizon."

Before – "Anxious and bullied by [lender's name]. I was just about to lose my car as I lost my job due to sickness."

Now – "I am able to communicate with CAP between my debtors. They are reassuring especially when I'm sick and short paid due to being off sick."

Already in hardship

Families who are in financial hardship are often significantly cutting out spending on essentials **before** defaulting on loans. Before coming to CAP:



74%

skipped meals, often regularly, to make loan repayments



30%

owed money for medical or school expenses



65%

owe money for utilities and housing

Families cannot save, cannot afford enough good quality food, put up with feeling cold, postpone health visits, cannot replace damaged appliances and cannot spend money on clothing and shoes for their family.

“My kids missed out on everyday activities... playground, couldn’t afford petrol, snacks, to take them. Kids always ate spaghetti or sometimes a loaf of bread for the day...”

“My hearing loss 6-year-old was unable to attend appointments with head nose and throat or surgery for lack of petrol money or credit to confirm appointment.”

*Supporting quotes from CAP’s 2020 Survey

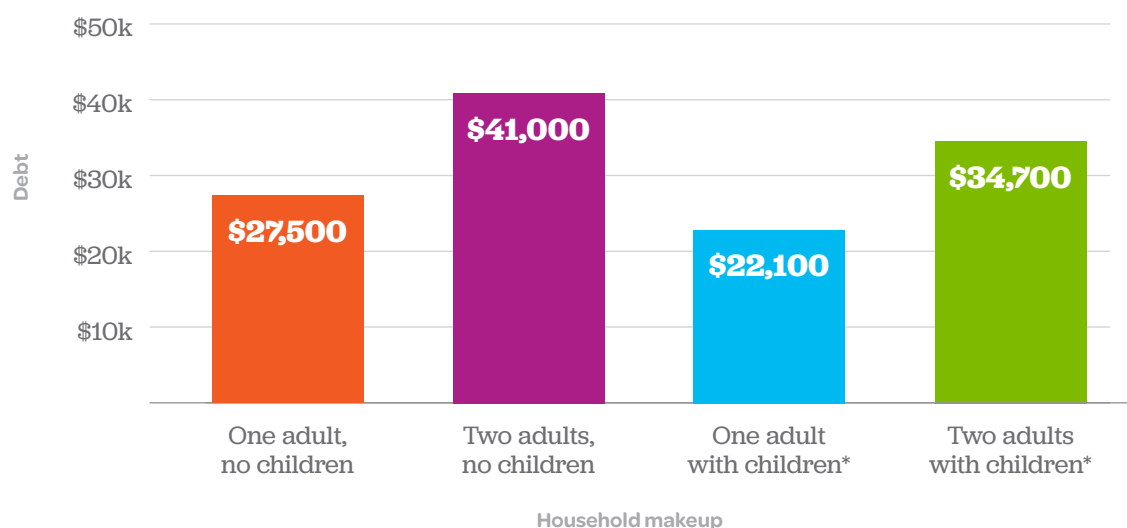
Before – “I was constantly anxious and stressed. I went to sleep thinking about it, I woke up thinking about it. I worked a well-paid job and so did my husband, but we still weren’t able to catch a break. I never answered my phone out of fear that it was a debt collector. It was miserable.”

Now – “I feel free, I feel less anxious. I don’t feel like I need to worry about it, as long as I stick to my budget and I also get to spend a little on myself, as if to treat myself for working so hard.”

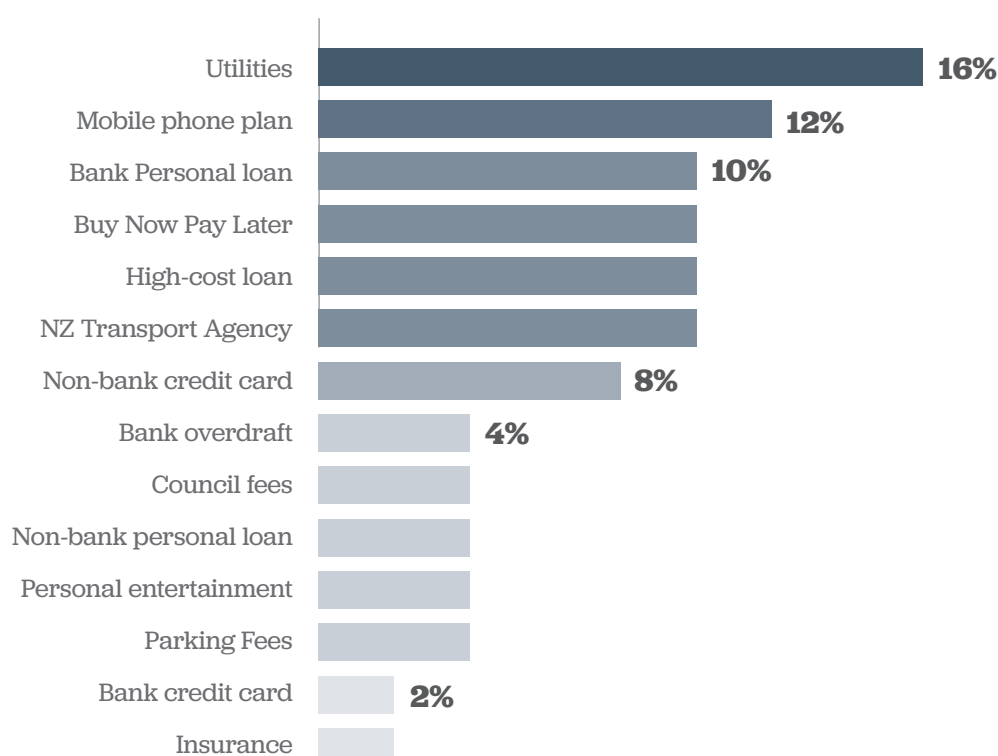
Before – “We were at the end of ourselves, the debt was growing and the pressure from lenders etc was becoming untenable. They were relentless with their phone calls and it became rather depressing.”

Now – “It took all of the stress away in terms of how to pay bills.”

Average amount of debt owed by household type



Original debts – what type of debt was the original creditor?



What else is going on in clients' lives?

The numbers are clear – CAP clients and their families are drowning in debt and in need of urgent help. However, **the need for a financial solution is only half the answer**. There are many barriers families face before they will even contemplate reaching out for help.

95%

said debt made them feel

stressed

58%

said debt made them

fearful

68%

said debt made them feel

ashamed



90%

of clients said that their **health was affected** as a result of debt. Of these, **71%** specifically mentioned that they felt **depressed or were on medication for depression**



24%

of clients admitted that before CAP they had **thought about, or attempted, suicide** as a way out

57%

said that they couldn't buy healthy food

66%

couldn't buy adequate clothes or shoes

84%

felt they couldn't be a good parent



84% of clients say being in debt made them stay away from people; of these:

70%

stayed away from **social/sporting**

68%

stayed away from **friends**

60%

stayed away from **family**

71%

of parents say their children were affected. *"Stress caused anger leading to conflict as I struggled to live day by day."*



Nearly
35%

of CAP clients noted – "Relationship problems or breakdown" as a main factor for getting into debt

Issues with Debt Collection in Aotearoa

Overview of Issues

This section investigates the problems of debt collection in Aotearoa highlighting the gaps and the key issues.

False and misleading claims

It is well-recorded that debt collection practices in Aotearoa today include behaviour that is intended to mislead debtors.^x CAP clients frequently report debt collectors that make false or misleading claims to coerce greater repayments from clients. As a result, debtors make payments they cannot afford and that perpetuate their hardship. False or misleading claims also obscure the truth about a debtor's rights, preventing them from making informed choices. The following practices are commonly employed by debt collectors and cause additional stress for people who cannot afford to repay or who need help to assess their best options.

Pre-repossession notices

One common example of a misleading claim would be the issuing of pre-repossession notices. This is a particularly common tactic where the loan is secured over household items – many of nominal value – where the costs of repossession, storage and sale may be greater than the sale prices. An advocate may know that this is not a realistic threat and recognise that the creditor has no intention of repossessing the goods. Yet debtors become scared that they will lose important household items and agree to repay debts that they cannot afford to.

Court action

While some creditors must rely on court action to recover funds, many debt collectors make exaggerated claims of impending court action which can only be diverted by the immediate full settlement of the outstanding balance, including the addition of all associated costs.

"We may forward your file to our legal representatives for advice and/or further action, in which case you could incur further costs and in the event that legal action is taken, you could also face having money sent to us from your employer/benefit, or ultimately, you could be made bankrupt."

– Letter sent to a young couple with kids on a low income – the debt balance was never high enough to warrant court action or bankruptcy.

While the debt balance is often not of a high enough value for court action to be a viable method of enforcement, debt collectors will often mislead debtors of their intention to continue with court action precisely because it creates fear and anxiety around non-payment. Debtors often pay far more than they can afford to avoid this non-existent threat, perpetuating the hardship that they may already be experiencing.

Misrepresentation of Authority

CAP clients have reported that people will show up at their houses demanding loan payments. They are dressed like officers from the court or a police officer in stab jackets, with radios and earpieces and have badges or IDs (see Nina's story later in the report). They may carry big stacks of documents and may make false claims, saying that if the debtor does not pay, they could be taken to court or that

the police could arrest them. The manner of the debt collector's appearance is designed to mislead about what action could be taken and to allude to the involvement of government. This is a very intimidating and frightening experience and debtors may often agree to a repayment arrangement that they just cannot afford. These practices are reported to be especially prevalent in South Tāmaki Makaurau, with fewer CAP clients experiencing this in the regions.

Despite protections from misleading or false complaints being present in the law, evidence from the lived experiences of our clients indicates that false or misleading debt collection practices such as those described are still taking place. Debtors need better protections from misleading or false claims, so regulating guidance and proactive enforcement is required to ensure clear expectations around what claims, and behaviours are deemed acceptable.

A debt coach describes how one single mother had a letter sent to her workplace which looked like a court order, but was not:

"It looked like a court order letter, to the pay clerk. So, the pay clerk... started taking the money out of her wages. And then when she showed me the letter... it wasn't on letterhead for district court. But the way that the letter was formatted, it looked like it had come from court, even the wording..." Debt coach – Tāmaki ki te Tonga

Unaffordable payment demands

Debt collectors have a strong incentive to seek as high a payment as possible from a debtor. CAP clients are usually juggling multiple creditor repayments, so it is just not possible to make the demanded payments whilst also meeting their essential living costs. Before reaching out for help, most clients' situations become materially worse as they fall into further hardship by constantly paying out more to creditors than they can afford. Debt collectors are often competing for a debtor's limited means to repay, leading to debt collectors refusing to accept realistic repayment arrangements and escalating debt collection practices. Incredibly, clients have reported that lenders will offer them a loan re-finance or suggest that a client go elsewhere to get a loan to pay off their debt.

The following issues are common repayment demands reported by CAP clients that perpetuate financial hardship and often make debtor's situations significantly worse:

Payment arrangements that perpetuate financial and material hardship

When debt collectors do not accept fair and reasonable repayment offers, debtors often feel they have no choice but to pay far more than what is sustainable. This comes at the expense of buying healthy food or of paying rent on time. Bills get backlogged and there is rarely enough money for car maintenance or a warrant of fitness. Debtors fall further into material and financial hardship, but for some debt collectors, this is not their concern. This is particularly the case when debtors have struggled to make repayments for some time: creditors who may have been understanding to start with can become harsh and unwilling to negotiate. This behaviour only pushes the problems further down the road and, ironically, leads to further defaults on other loans and more collection actions and costs.

"We need her to make payments to us...we will take further action on the account unless she starts payment on her account for \$171.50 per? week."

Debt coach – Tāmaki ki te Tonga, describing the variation in experiences with debt collectors when clients try to negotiate repayment plans based on what their life circumstances allow.

Full and immediate repayment

Initial debt collection demands are often for the full and immediate repayment of the outstanding balance (which may increase due to collection costs). This can be both overwhelming and exasperating for a debtor, already deep in debt and faced with the unrealistic expectation from creditors to make complete and immediate payment.

“Unless payment in full is received by [date 7 days later], further action may include:

- *Visit to your home or workplace by our Agent*
- *A Default on your personal Credit Report*
- *Legal Proceedings including the possibility of Bankruptcy/Liquidation.”*

– First letter from a debt collector relating to a small utility debt

In CAP’s experience, most debt collectors are happy to accept a payment arrangement when presented by experienced advocates, so the threat of full and immediate repayment by debt collectors to debtors is only an aggressive ‘opening offer’ towards an agreed payment arrangement. Yet the threatened consequences of not making full and immediate payment are scary. A frightened debtor may try to avoid this by entering an unsuitable payment arrangement.

Court judgements and attachment orders

It is common for creditors to collect their debts through an attachment to a debtor’s benefit ordered by the court.

“If [debtors are] not able to repay it and it’s been quite some time for the debt people to be chasing it, then it sorts of starts to get a bit... nasty. The leaders, themselves, threatening court action, that sort of thing...” Debt coach – Tāmaki ki te Tonga

A court attachment on a benefit is often unaffordable and causes a gradual decline into further hardship. While debtors can apply to the courts to vary their attachment order due to hardship, of the debtors who did complete an application, only 51% were successful.^{xi} Further, the take-up of this attempt by debtors is negligible in number compared to creditors’ applications. This is understandable as knowing your rights and navigating through a court process are very high hurdles to overcome, particularly for people in vulnerability and hardship. As a CAP debt coach notes:

“...they get away with it because people don’t know...what their rights are, or whether their behaviour or what they are doing is legal.”

Of particular concern, of CAP clients with attachment orders, there is a much higher number of women that have an attachment order against their benefit (see table below). An attachment order to a benefit has higher certainty of longevity compared to one against wages which may no longer apply if a debtor changes job. This can lead to debt collectors preferring to attach to a benefit, which is more likely to affect women, and consequently children whose whānau rely on the benefit to meet their essential living expenses.

Court ordered debt by CAP clients

Single	Female	Male
Based on 22 unique debts	91%	9%
Based on 15 unique client IDs	87%	13%

Couple	Female	Male
Based on 16 unique debts	31%	44%

Court ordered debt in name of Beneficiary – based on 38 unique Debts	84%
--	-----

Fees

The additional costs that can become payable by a debtor through debt collection can add mounting pressure to an already unmanageable situation. Sometimes debtors struggle on, doing their best to make regular repayments but can have years added to the repayment term as they stumble from one default to the next. While many debtors strive to repay their debts, the fees of debt collection have sometimes been so high that it has meant that a debtor has to go through insolvency. CAP has also seen cases where the high debt collection costs have pushed debtors' debt balances so high that they have no option but to apply for bankruptcy (with debt balances higher than the threshold of \$47,000) as opposed to less-burdensome insolvency options.

The following issues relate to the adding of additional costs by debt collectors that can add significant misery and stress to debtors already experiencing hardship.

Indeterminable additional costs

It is frequently very difficult to determine how much the costs of debt collection will add to a debt balance. There is a large spectrum of costs charged, which vary between debt collectors, of the original debt balances. There is very little information available to debtors around what will happen to their debt balances through the process of debt collection and how much they will be charged. There is rarely any communication about the likely costs for external debt collection. CAP clients are often managing multiple debt balances and the lack of information makes it extremely difficult to determine the best use of limited resources to minimise a growing debt balance.

In a sample of debt collection demands analysed by CAP from the top 10 debt collectors by a count of client debts (n=44/217), only 20% of demands for debt had a breakdown of how much the debt collection charges had increased their debt balance by.

Fees are poorly understood

About 49% of CAP clients owe money to multiple debt collectors. Missed loan repayments incur not only additional fees but require a repayment schedule that is agreed upon by the borrower and creditor. These agreements are often dictated by the debt collector, which means the interests of

the borrower are not usually considered. Frequently, these repayment schedules are unaffordable, unrealistic and place the borrower in further financial hardship.

While some of the costs of collection may be listed in a credit contract, there are often a myriad of costs that are difficult to understand, and it is not clear when these fees become applicable. These fees are often worded into a credit contract using broader language, e.g. "all costs associated with debt collection will be borne by the debtor". An example of default fees listed by a lender below highlights this.

Default Fees:		Default Loading Fee	\$15.00	Further Advance	\$40.00
Arrangement requested	\$13.00	Dishonour Fee	\$12.00	Property Law Notice	\$265.50
Arrears Letter	\$20.00	Fifteen Day	\$25.00	Refund Charge	\$16.00
Broken Promise	\$15.00	Final Notice	\$30.00	Repossession Authority	\$65.00
Car Searches	\$14.45	Gone No Address	\$35.00	Repossession Fee	COST
Cell Phone Call	\$8.60	Insurance default	\$26.00	Repossessed Vehicle Sales Fee	\$500.00
Change of Direct Debit	\$6.50	Letter Correspondence	\$10.00	Statement of Account After Sale	\$26.00
Caveat / Mortgage	COST	Monitoring Fee	\$14.50	Storage (daily)	\$18.00
Comment / Diary	\$6.50	Phone Call	\$8.60	Text Message	\$6.50
Direct Debit Transfer	\$4.00	Post Possession	\$32.50	Variation Cost	\$35.00

In a sample of debt collection notices analysed by CAP from several debt collectors, only 20% provided information on how the original debt and collection costs had been calculated.

Harassment and coercion – section 23 of FTA

There are widespread examples of harassment by debt collectors; behaviours that cause widespread frustration and anxiety for debtors already struggling. Debt collectors often resort to tactics to press debtors to prioritise the repayment of their company's debt first. This vicious cycle unfortunately incentivises harassing behaviours by debt collectors who may employ ethically questionable practices to compete against each other for a debtor's limited resources.

More aggressive debt collection is rewarded by being prioritised for repayment over other debt, which disincentivises responsible debt collection. To then avoid the constant harassment, debtors may hide from the debt collector, worsening the situation, or enter an unsustainable arrangement just to get the debt collector off their backs.

Robotic, automated phone calls

Many clients of CAP report being telephoned dozens of times a day about their debts by an automated message. These calls can be relentless and exhausting for debtors, and there is sometimes no discrimination between those that may have raised a complaint, have disputed the debt, or who have already signalled that they are experiencing hardship.

The phone calls may come during work hours, over weekends, in evenings or very early in the morning and the phone number shows up as 'private number'. This harassing behaviour can cause people to avoid taking phone calls or to agree to payments that they cannot afford to limit the number of calls they receive.

Visits by the heavies

While it may at times be necessary for a debt collector to visit a debtor's home, debt collectors have been known to conduct these visits in an intimidating and coercing fashion. Some may employ

strongmen-type enforcers to visit a client to intimidate a client to pay a debt. This is particularly distressing for vulnerable people, who can feel physically threatened and in danger. While some people experience overt physical threats and intimidation, the implied threat can be just as scary for a debtor and for their family who may worry about their property being taken or damaged.

Involving family or workplace

Some debt collection practices are designed to coerce co-operation by threatening to involve family, friends, and employers about their debts. In the process of calling or visiting a household, family members can be told about the debts and how much trouble the debtor is in. Not only is this a significant breach of a debtor's right to privacy, but family members may also be embarrassed and can become embroiled in debt repayment to protect the debtor from further collection activity.

In the particularly worrying example below, the lender had included conditions in the debtor's credit contract to shame the debtor in the newspaper or to contact their employer if they fall into arrears. The lender stated that this was standard practice and, although they had never carried out the threat, the mere threat of action or belief that this is allowed, can cause debtors to pay despite the hardship this may cause.

TERMS AND CONDITIONS

I (Borrower/guarantor) hereby agree that if I do not comply with the loan agreement above and failed to meet my commitment under the contract, _____ have the authority and the right to the following terms:

1. To advertise my photo in any newspaper of their choice.
2. To write to my current employer to requesting a deduction of loan repayments required until loan is paid in full
3. Authority for my employer to deduct repayments as per the contract until this loan is paid in full

– Contract terms from a CAP client's lender

Vehicle Immobilisers

Despite retaining the right to repossess a vehicle that a loan is secured over, some car finance creditors install an immobiliser into the vehicle. This immobiliser allows the creditor to disable the vehicle if repayments are missed or not made in full. The mere presence of these immobilisers' further imbalances the power dynamic between a borrower and creditor by reinforcing an ever-existing threat to disable a vehicle if repayments are not prioritised.

An immobilised vehicle is an unusable vehicle, causing significant hardship far beyond reasonable inconvenience. Without a usable vehicle, borrowers' lives are disrupted to the point that they may not be able to travel to work, make doctor's appointments, drop children off at school, run essential errands, visit elderly relatives, or even get to the supermarket for weekly groceries. As a result of vehicle immobilisers, borrowers are coerced into prioritising loan repayments over other essential items necessary for wellbeing. This is the exact behaviour creditors desire to elicit – payments made on time and in full, no matter the circumstances or cost to quality of life.

Recourse

CAP affirms the importance of a creditor being able to recover their debts, however we have concerns that the rights of debtors to understand, query and dispute debts are not made clear and are not protected by appropriate guidance to debt collectors.

Debtors often do not receive appropriate information to make an informed decision about their debts. In a sample of creditors' debt collection notices analysed by CAP, only 6% (n=14), provided information on recourse. CAP clients have stated that they feel powerless to question a decision or charge or to make a complaint where they feel they have not been treated fairly. The following issues are barriers to debtors understanding their rights and to their avenues for help and advocacy.

Debt collectors are especially likely to mistreat borrowers with low knowledge of their rights.

“They smell blood, like the sharks. They know, okay, this person does not know what they’re talking about, or this person doesn’t have as good [a command] of English”

Ian, Debt coach – Tāmaki ki te Tonga, regarding how debt collectors will particularly target borrowers with less ability to protest

Confusing statements

CAP has seen countless examples of statements that are hard to make sense of: ambiguous and confusing acronyms, debits and credits, additional charges, and charge reversals. It can be very unclear just how much debt is owed and how much of it relates to debt collection costs. For people that struggle with numbers and reading, it can be very challenging to interpret and calculate the additional charges they have or may incur.

Guidance for disputes debts, hardship, and complaints

Demands to repay debts are very rarely accompanied by information that would be of valuable assistance to the debtor. It is uncommon to see information in a demand for payment noting how a debtor can raise a dispute they may have or where they can go for help with a debt query.

In a sample of debt collection demands analysed by CAP from the top 10 debt collectors by count of client debts, only 6% of debt collection demands contained details about how to make a complaint or raise a dispute. Instances of this information were only found in the correspondence of one of the 10 debt collectors sampled.

Case Studies

Nina's story

Female, Māori

40s

Single, Mother of two children

Tāmaki Makaurau

Sole Parent Support

**Best Start and Family Tax Credit,
Disability Allowance**

Ongoing health issues

Debts: \$16,000

- Finance company loan
- Bank overdraft
- Power company arrears
- Work and Income debt
- Debt to a health centre, a clothing company, and Cash Converters



For Nina, a single mother of two children, full of life and energy, her experience with debt collectors has been nothing close to pleasant. Nina's debt grew as a result of ongoing health problems and the struggle of raising two young kids alone and solely depending on government assistance.

"I feel like I got stuck using the card all the time when I'd try to get something."

As her debt increased over the years, so did her frustrations and struggles. She reported feeling trapped and hamstrung into taking out more loans to survive. This marked the beginning of her ordeals with debt collectors. It started with incessant phone calls at odd hours where the debt collector threatened and harassed her and her children. The calls were frequent, harsh, condescending and often followed by unrealistic demands for repayments.

"They try to talk to me like I'm a kid and I'm not a kid."

Nina felt overloaded by the countless emails, letters, phone, and court orders – a feeling she admitted made her emotionally drained, distressed and prioritizing debt repayment over essentials. The experience that startled her the most was one when the debt collector came banging on her door dressed in a checkered jacket with a bullet-proof vest that resembled a police uniform. They had an earpiece and a walkie-talkie. Fearing the worst, and disconcerted by the feeling of trouble, she answered the door only to find out the person was from a debt collector agency. She felt frightened, terrified and intimidated. Looking back, Nina describes the experience as one intended to misrepresent authority to coerce borrowers to yield to creditor's repayment demands.

"They'll say, 'Well, I'm sorry, you're just going to have to pay this.'"

Her friends and whānau were not insulated from the undue harassment. She recalled a debt collector once chased down a friend who had visited her and was on her way home when they arrived with their vehicle. That incident made her feel unsafe, vulnerable, and perplexed. On her part, she had tried to negotiate with creditors to prevent her repayments from affecting her ability to buy groceries, pay utilities and provide heating for her kids.

"A lot of them will say, 'Oh, you can't give less than \$20 or less than \$30.' I'll say, 'I'm sorry, I'm on a benefit and I have two kids to feed, so you will get what I can give you.'"

Some of the creditors did show some understanding, she recalled, but their repayment demands did not take heed of her financial circumstances. Nina was shocked when despite being with Work and Income, debt collectors applied for a court order to have her debts deducted from her benefit.

"I didn't have to go into court... All they did was just put it through the court and then they signed off on it and then attached it to my benefits."

Not only was she not given the opportunity to be involved in the decision on what amount to be deducted, but she was also stonewalled when applying for an adjustment order for the deductions.

"It's quite annoying. You know, the paperwork and then they give you the run-around... That's why by the end of it, everyone's like 'Oh, forget it. Just take it out then.'"

Once Nina started working with CAP to negotiate with creditors and paying off her debts, her family and friends noticed a difference; she was less worried and a much happier person. "It's helping loads." She no longer receives regular harassing phone calls and visits. She suggests in the future, "maybe some of those debt collectors could be trained a bit more on how to handle people" so that others are treated with the respect they deserve. Nina is on her journey out of debt, and on track to being debt free in 18 months' time.

Api's story

Female, Pasifika

Late 30s

Married, 3 young children

South Auckland

Full-time employment

Debts: \$55,000

- Vehicle finance
- Secured loans
- Unsecured debts to finance companies
- Debt to External Debt Collection Agency
- Credit card debt



Api's experiences with debt collectors has left a sour taste in her mouth. Api is a busy mum, working full time to support her 3 young children and her spouse studying at university. While she has a good income from her job in senior leadership, a lack of budgeting meant she resorted to taking out loans with finance companies to get by. Access to credit was easy, as were debt consolidation loans. This would however become the beginning of their steep journey to rock bottom.

On top of all the debt, they did not have the headspace to budget well. Trying to repay the debts left very little for the family.

"We just couldn't do anything as a family because we were restricted due to our financial capability at that time. We were making quite a bit of money, but most of it was going on paying the debts and we didn't have enough for ourselves and to buy [food] to feed our kids."

The impact placed a heavy burden on her marriage. She recalled getting into frequent arguments with her husband due to their complex financial situation with the feeling of stress, anxiety, and pressure palpable in their homes. This was only the tip of the iceberg as the finance company secured Api's loan against essential items, including beds, cooking equipment and a washing machine. They had threatened to advertise her photo in any newspaper and repossess her properties if she failed to meet her repayment commitments.

Api felt overwhelmed by the several phone calls that bombarded her daily, including her workplace – breaching her privacy, letting her colleagues at work know she had taken out a loan with their company and leaving her humiliated.

"I used to get calls left, right and centre. If I happened to be behind just one payment and stuff, they just wouldn't stop calling, ringing."

This was beside the additional fees charged for each visit which were added to her debt balances, and letters sent to her workplace or home address – which she described as "really unfair," and harrowing. Rock bottom for her was when debt collectors made unaffordable deductions from her income using attachment orders from the court – a situation she found difficult to vary.

But from the very first time they reached out to CAP for help, they felt love and no sense of judgement. CAP has worked with Api and her husband to stick with a budget and to negotiate a repayment plan for her creditors. Her home life for her whānau has also improved because of the changes.

"We're not struggling, there's always food on the table, lunches for my kids... We're not arguing over financial issues and problems.... We're in a good place... We're happy."

The family are now able to do things together which they couldn't afford before. They no longer take out new debt or even consider the option. Together with CAP they have repaid around 60% of their debt and are on a journey to go debt-free in 15 months.

"All the anxiety or the stress and stuff from debt collectors...we don't have that anymore."

Other Harassment Experiences

"They [creditors] were relentless.... It was just awful and every time the phone would ring, you'd see no caller ID... I just dodged it. Just didn't answer. I was just jumping out of my skin every time the phone rang and oh no, it was horrible, absolutely horrible."

Mark and Carol, former CAP clients

"I was constantly getting phone calls at work or wherever from people saying, 'where's my money, where's my money?' That was getting a bit embarrassing at work too, cause you know I didn't tell them what the problem was, but it's really awkward when you're getting harassed by people for money that you just don't have."

CAP client

"To begin with I'd say to them 'I just can't afford it', and they really didn't care. So I got to the point where I would just ignore it, and then one of the creditors actually must have tracked down my work phone number, and actually started phoning me at work, so I had to take the call, because other people would answer it. It was really difficult; I was really stuck"

Rachel* former client, now debt-free

"They [creditors] were just always demanding money and I didn't have money. The stink thing about it was that I would always be at work and it would make me cry, just the stress....I had no energy and had no money to give to these people who were ringing me all the time – they'd ring me on Saturday and Sunday – I never got a break from it."

Alaina, former client, now debt-free

"It was like I had to hide, like I know my debts are there, but at the time being on a benefit, it was like how do I pay for it? If I can barely just feed myself and my children, like do you know what I mean? How I deal with these people coming to me, demanding all this? I just don't know how to explain it to them, yes it was my fault that I got into debt in the first place, but it was still hard to explain to them your situation at the time, because they just want their money paid, and then they'll leave you alone. It was really hard; it was just not answering phone calls"

Savannah*, former client, now debt-free

"Sometimes I missed my children's hospital calls, because I'm avoiding all phone calls that are private, or phone calls that I don't know the number is. I'm avoiding all of that and then come to find out that I've missed an appointment that one of my girls needed to go to. So, it was really hard."

CAP Client

“Eventually creditors were catching up with us, and they were asking for money, and they were asking me, solely, and kept contacting me at work, and [I was] so embarrassed because you know the managers would say, “Oh another company’s rung”... It just got to the point where it just got too much.”

Tamara*, former client, CAP debt coach

“I know now [as a debt coach] why our clients don’t answer the phone, that’s the exact same reason why I didn’t. You try and hide from that... It’s so overwhelming when people contact you demanding money... It starts off with the niceness, but then it can turn quite...some conversations I’ve had with creditors, they’d be quite mean.”

Former CAP client

“She talked right over the client and made her feel really small, shameful, and belittled...and if you knew this client, she’s such a lovely lady. She’s gentle and kind, and she doesn’t like the situation she’s in... And then [the bank representative] started to threaten our client... In the end, she just got so mad. Then, she hung up on the client... She was so angry.”

Ian, CAP Debt coach

“[The behaviour by debt collectors is] very threatening and very intimidating... I think, oftentimes, they do actually set out to really demean the clients and totally embarrass them and shame them.”

Ian, CAP Debt coach

“We have had a situation where this creditor actually went to this client’s place of work and demanded that they see them. They really bullied this guy, basically threatened him so much that he forced him into signing up a repayment plan right there and then... Such was the force and this intimidation that he had on the client that he just kept out to it and ended up signing a repayment plan.”

Ian, CAP Debt coach

*pseudonym

Recommendations

In the preceding parts of this report, the various issues in the debt collection space in New Zealand were examined and determined misleading. Unconscionable conduct by debt collectors are punitive towards those already in hardship, and existing guidance offers little protection for vulnerable people.

This section makes recommendations for systematic changes to be introduced to bring about better regulatory reforms.

1. Introduce regulations that provide clear guidance to limit harm from poor Debt Collection practices:

CAP calls for regulations that set out clear guidance to protect vulnerable borrowers from predatory collection practices. Introducing these new guidelines would ensure that issues pertaining to privacy, contact and repossession are clearly delineated and defined in legislation. CAP acknowledges recent reforms that have taken place to scale back the impact of unconscionable debt collection. However, CAP is concerned that despite the new consumer credit laws, the predatory scope for unacceptable and unethical debt collection practices remains at large. There is a need for more work to be done to protect vulnerable families, communities, and poor consumers from harm.

Making undue harassment a criminal offense

There are plausible grounds to argue that the lack of a clear definition of what constitutes harassment in section 23 of the Fair Trading Act incentivises inappropriate behaviour by debt collectors. This is because guidance is only effective in altering conduct if there is enforcement action for breach of existing laws by a regulator. CAP calls for a new prohibition to be inserted in the regulation to govern the conduct and operations of debt collection. The new prohibitions should define and interpret what constitutes appropriate behaviour and make the violation of the Act a criminal offence. Making undue harassment a criminal offence would aid the Commerce Commission in ensuring the CCCFA and section 23 of the FTA can be enforced, and hold debt collectors to account for their conduct.

CAP believes this has the potential to generate better outcomes for debt collectors as well as vulnerable borrowers.

"As soon as [debt collectors] come down to your level, you feel more empowered and you're more encouraged to say, "I'm going to come up... I've got to try and pay off this loan." But if they're coming at you like a shark, of course, it's like, "I don't want to deal with you anymore." Debt coach – Tāmaki ki te Tonga

Providing guidance for legitimate and undue contact (not workplace, respecting privacy, within normal hours).

There has been very little regulatory action in New Zealand that has alleged breach of section 23 of the FTA. Current legislation regulating debt collectors' behaviours fails to identify and clarify unacceptable behaviour. This legalises harassment of borrowers as debt collectors can get away with this behaviour. For many borrowers, this is punitive and exacerbates their financial and material hardship. CAP calls for regulatory reforms that provide guidance on what constitutes legitimate and undue contact and define and interpret what constitutes harassment. Additionally, more punitive consequences for creditors that fail to comply and are repeat offenders.

There are rules in place that set out detailed, practical guidance on what constitutes undue harassment or coercion in the Australian regime and there is an opportunity for New Zealand to insert this into our legislation. New guidance should set the boundary and specify what constitutes the appropriate level, time, and frequency of contact with a debtor. It should also contain specifics on what conduct by lenders is likely to breach the law including aggression, coercion, bullying, shaming, and fear-mongering.

“Treat people with dignity. Yes, it's someone who owes money to the organisation, but at the end of the day, that somebody's mom, someone's dad, someone's brother, sister, someone's child and they need to put themselves in that person's shoes.”

Debt coach – Tāmaki ki te Tonga

How-to guidelines for debtors to dispute charges, access dispute resolutions, advocacy services

A significant barrier for debtors to exercise their rights to dispute debts and to access hardship payment arrangements is a lack of awareness of their existence or of how to exercise them. This results in debtors becoming stuck in their predicament when there may be an existing alternative. This is particularly problematic for people experiencing vulnerability and hardship who may face other barriers to raising complaints or disputing charges, such as language differences or mental health challenges. CAP calls on regulators to develop new and detailed guidance for debt collectors to provide information to debtors about how they can dispute debts or charges and how debtors can access dispute resolution and advocacy services. There are existing guidelines in place that set out practical guidance on how this may be achieved in the Australian regime and there is an opportunity for New Zealand to insert this into legislation. The information provided to debtors should be in a user-friendly format, potentially including other media such as video and in other languages, to overcome literacy and language barriers.

Licensing of debt collectors in New Zealand

There is a greater need for a governing body in New Zealand that oversees the activities of debt collection agencies. Licensing of debt collection will ensure that operations are conducted under law and practices do not violate the code of conduct. Among other things, it will dictate the manner and content in which debt collectors and external agencies contact debtors over consumer debt and allow regulators to enforce violations in connection with poor and unconscionable conduct.

Guidelines for fees

CAP calls for new guidelines on fees charged in the debt recovery process in New Zealand. Indeterminable additional fees increase the debt balances of many consumers, deepening their financial hardship and pushing many into insolvency. New guidelines should provide transparency and clarity on costs charged in debt collection, including when outsourced to an external agent. It should also mandate debt collectors to fully disclose any added fees, interest rates, and the total cost of collection.

Guidelines for establishing an affordable repayment plan

Regulators must develop detailed guidelines on affordable repayment plans when debtors are in default. Guidelines must set the benchmark on what should be an industry-accepted standard, what is unacceptable and help to provide consistency around affordability assessment and repayment plans by lenders.

Guidelines for next steps if debtors genuinely cannot afford to repay

Like the Australian regime that gives discretionary powers to the Finance Minister to grant a debt waiver, new guidelines must be put in place to help vulnerable debtors in severe hardship who owe money to government or private lenders. New guidelines would provide debt collectors with next steps on what to do when a particular borrower is consistently in default and cannot afford repayment. These guidelines should include detailed next steps for the creditor if they decide to pursue debt forgiveness.

2. Make beneficiaries judgement-proof debtors

Court-mandated attachment orders for debt recovery perpetuate hardship for beneficiaries in unmanageable debt. The process which is at times completed without the active participation of the debtor, allows the creditor to make deductions from the debtor's benefit. Based on CAP's data, a clear majority of people in problem debt receive a benefit as their main source of income, so the impact on these vulnerable families is that they cannot pay their essential living costs, such as food and rent. CAP calls for the adoption and implementation of a judgement proof policy in New Zealand, that would prevent direct deductions from beneficiaries on a benefit, or who have no source of income, and are in severe financial and material hardship.

3. Reform application to vary attachment orders to enable more people to access this process

An attachment order requires an employer or Work and Income to deduct money from the debtor's wages or benefit which is then paid to the creditor. These deductions are taken from a beneficiary's income or wages. A debtor can apply to vary an attachment order if they are experiencing financial hardship, however the process of varying an attachment order is lengthy, cumbersome and a barrier to borrowers engaging in the process. It can be frustrating for people with poor financial capability or with literacy challenges to navigate the various forms. Additionally, the process can be demoralising and humiliating for people as they must demonstrate their hardship. Applications must currently be posted in and often get lost in the mail or remain unprocessed. The current process is outdated and marginalises those who may not have access to resources and knowledge on legal processes underpinning attachment orders. CAP calls for the current process to be simplified and streamlined. This would include the option to make an application online that accepts electronic signatures, and one that debt solution services and financial mentors can take part in on their client's behalf.

Notes

- i. Stace, V. (2021). Debt collection in New Zealand: Considering the case for adoption of guidelines, modelled on Australian debt collection guidelines, to address poor conduct by debt collectors. *Available at SSRN 3799718*.
- ii. Submissions to the 2018 Discussion Paper, *Review of Consumer Credit Regulation*, are available at “Changes to consumer credit law 2020” Ministry of Business, Innovation and Employment, <https://www.mbie.govt.nz/business-and-employment/consumer-protection/review-of-consumer-credit-law/>
- iii. *Review of Consumer Credit Regulation*, (Ministry of Business, Innovation and Employment). Additional Information to support the discussion paper. <https://www.mbie.govt.nz/business-and-employment/consumer-protection/review-of-consumer-credit-law/>
- iv. Ministry of Social Development, “When debt becomes a problem’. <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/literature-reviews/when-debt-becomes-problem/index.html>
- v. Torrie R, and Bailey, R (2017) Frameworks and approaches for building financial capability of New Zealanders experiencing hardship: what the literature says. <https://www.msd.govt.nz/documents/what-we-can-do/providers/building-financial-capability/literature-review-summary.pdf>
- vi. Ibid.
- vii. Commission for Financial Capability, Financial stress affects mental wellbeing, <https://cffc.govt.nz/news-and-media/news/financial-stress-impacts-mental-wellbeing>
- viii. Dale M.C., and St John, S., (2020) Women and retirement in a post-Covid world. <https://cdn.auckland.ac.nz/assets/business/about/our-research/research-institutes-and-centres/RPRC/OtherPapers/Womenpdf>
- ix. Stace, V (2020) Debt collection in New Zealand: Enlivening the prohibition against harassment and coercion in s 23 of the Fair-Trading Act 1986.
- x. Commerce Commission complaints, Ministry of Business, Innovation and Employment, Credit Contracts and Consumer Finance Act review.
- xi. Data sourced from the Ministry of Justice

About CAP

Christians Against Poverty (CAP) is a non-profit organisation, passionate about releasing New Zealanders from debt, poverty, and its causes.

CAP has been providing professional debt counselling in partnership with local churches since 2008. In that time, thousands of people have received the help and support needed to break free from unmanageable debt, and step into a life filled with freedom and hope. Also, in partnership with local churches, CAP runs community groups offering help with money management.

All CAP's services are FREE, and available to anyone who needs our help.

Data

The statistics and data contained within this report are analyses of CAP's past and current clients. Where appropriate, we indicate data that has not been sourced by CAP. The names of clients within the case studies have been changed to protect their identities. All client quotes within the report are genuine but anonymous as obtained from the CAP's 2020 Client Survey.

Acknowledgements

Thank you to the client families who shared their stories and their lives to bring this report to life.

Authors

CAP External Engagement Team /
Dr Francis Okpaleke, External Engagement Manager
francis.okpaleke@capnz.org

© CHRISTIANS AGAINST POVERTY

For more information about CAP or data used within this report, please contact:
External Engagement
Christians Against Poverty (CAP)
PO BOX 12041, Penrose, Auckland 1061

christians
against
poverty

