

THE FAIR TRADING ACT DEBT COLLECTING

There will be times when customers do not pay on time for the goods or services provided. When a business, or a collection agency working on its behalf, seeks to recover debts, it must take care to comply with the law.

Under the Fair Trading Act, the Commission is concerned about debt collectors:

- demanding collection fees and late payment fees, when there is no contractual entitlement to make such demands;
- warning debtors that non-payment of the debt will cause particular inevitable legal consequences; and
- telling debtors that court action has already commenced when it has not.

Businesses wishing to recover additional costs from customers who have not paid for goods or services they have received must inform customers of these potential costs when they agree to the supply of goods or services. This can be done in a number of ways, for example, by displaying large on-premise notices, or by providing written notice of terms of trade. What is reasonable will vary according to the circumstances. If debtors are not warned before they incur debt, then any attempt to make them believe they have to pay additional collection and late payment fees is likely to be misleading.

EXAMPLE

A debt-collecting agency added a \$50 collection fee to a debt it was recovering. Its client had not told the customer a collection fee would be added if the debt was not paid on time. The company was convicted and fined.

If costs are demanded in a misleading way by a debt collector acting on behalf of a business, the business may be held responsible for their actions. The debt collector also risks breaching the Fair Trading Act.

If debtors still do not pay their debts, businesses are entitled to take legal action to recover the debt and any other costs, such as collection and late-payment fees, which relate to the non-payment of the debt. It is then up to the court to decide whether to order the payment of such costs, or any other penalties, and the debtor has the right to challenge the claim before the court. Businesses should, therefore, take care that in any warnings to debtors, the possible legal consequences of non-payment are not represented as inevitable. In the Commission's view it is misleading to tell debtors they will be fined and face other costs from court action. Debt collection documents must not mimic court or other official notices or orders.

The Act also prohibits the use of physical violence, harassment or coercion to extract payment for goods or services supplied.

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CONTACT

Contact the Commerce Commission with information about false or misleading trading practices.

TELEPHONE

Our Contact Centre during office hours on 0800 943 600

WRITE

To us at Contact Centre,
PO Box 2351, Wellington 6140

EMAIL

Us at contact@comcom.govt.nz

This fact sheet is a guideline only, and reflects the Commission's view. The publication is not intended to be definitive, and should not be used instead of legal advice. It is traders' responsibility to remain up to date with legislation.

The purpose of the Commerce Commission is to promote dynamic and responsive markets so that New Zealanders benefit from competitive prices, better quality and greater choice. The Commission does this by enforcing legislation that promotes competition in New Zealand markets and prohibits misleading and deceptive conduct by traders.

Only the courts can make an authoritative ruling on breaches of the Fair Trading Act. Courts may fine companies found guilty of breaching provisions of the Fair Trading Act up to \$200,000 and individuals up to \$60,000.