

FS12C Debt collection: prohibited debt collection - seeking compensation in relation to consumer credit contracts and leases

Use this fact sheet if you:

- are being hassled by a debt collector in relation to a consumer credit contract or lease; or
- think that a debt collector or a creditor might be acting unfairly in relation to a consumer credit contract or lease

Key messages:

If a debt collector has engaged in undue harassment, or other unlawful behaviour in relation to a *consumer credit contract or lease* (see our Factsheet: *I'm being hassled by a debt collector for more information*) you may be able to seek compensation through the Financial Ombudsman Service or Credit Ombudsman Service Limited if you have suffered:

- financial loss (such as out of pocket expenses caused by the debt collector's conduct);
- non-financial loss (such as humiliation, distress or inconvenience).

Seeking compensation for unlawful debt collection practices through the Financial Ombudsman Service or the Credit Ombudsman Service

Step 1: Send a letter to the debt collector or creditor demanding compensation (an example is provided below)

Step 2: Lodge your complaint with the Financial Ombudsman Service or the Credit Ombudsman Service Limited

The Financial Ombudsman Service and Credit Ombudsman Service provide free dispute resolution for disputes with credit providers, lessors, and debt collectors dealing with credit contracts and leases. .

Before proceeding you should make sure you understand all of your rights. Details of where you can seek advice are listed below

You may also wish to consider whether you wish to make an application to the Victorian Civil and Administrative Tribunal (see our factsheet: *Debt collection: prohibited debt collection - seeking compensation in VCAT*). Generally it is best to make a complaint to the Financial Ombudsman Service or the Credit Ombudsman Service first. If you are unhappy with the outcome, you can then consider making an application to the Victorian Civil and Administrative Tribunal.

If you have suffered a significant injury, you need to consult a personal injury lawyer urgently.

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Sending a letter of demand

Before you make your complaint to the Financial Ombudsman Service or Credit Ombudsman Service you are generally required to send a letter making your demands directly to the debt collector. A sample letter is reproduced below.

It is a good idea to send a copy of your complaint to a Regulator (details below) to alert them to any unlawful debt collection practices that you have experienced.

Complaining to the Financial Ombudsman Service or Credit Ombudsman Service Limited?

Generally, where the credit contract or lease being pursued was obtained for personal, domestic or household purposes, the credit provider, lessor and/or the debt collector must be a member of either the Financial Ombudsman Service or Credit Ombudsman Service Limited.

You can check whether the company you are dealing with is a member of the [Financial Ombudsman Service](#) or [Credit Ombudsman Service](#) by checking on their respective websites or calling them (see details below).

What compensation can I seek?

In addition to financial loss, the Financial Ombudsman Service can provide compensation where there has been:

- an unusual degree or extent of physical inconvenience, time taken to resolve the situation or interference with the a consumer's expectation of enjoyment or peace of mind;
- injury has occurred to a consumer's feelings or humiliation experienced in relation to a breach of privacy rights.

The maximum amount of compensation for non-financial loss will be \$3,000 per claim made in the Dispute.

In addition to financial loss, the Credit Ombudsman Service can award compensation for, amongst other things, non-financial loss. The Credit Ombudsman has not set any specific limits on when such damages will be awarded.

Past decisions by Courts and the Financial Ombudsman Service indicate that any award of damages is unlikely to be substantial.

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Sample Letter

Your Name
Your Name
Your Address

Name of debt collector
Address

Date

Dear Sir/Madam

Re: Account [details]

I am writing to complain about your debt collection practices.

I consider that the following actions to be prohibited debt collection practices:

Example 1

You continued to contact me without lawful reason when I had asked you in writing to stop all communication with me.

Example 2

You communicated with me in a manner that was unreasonable in its frequency, nature or content by [provide details of unreasonable communication].

List the actions or statements that you believe to be unfair/illegal. Include dates and the names of staff members if possible.

These actions have caused me considerable humiliation or distress.

Please pay to me the amount of \$ [...] in compensation for the humiliation and distress caused. [If applicable, I have also suffered a loss of \$[...] as a result of [insert details of loss].

Yours sincerely,

Your Name

CC: Australian Security and Investment Commission,
Australian Competition and Consumer Commission
Consumer Affairs Victoria

Yours sincerely,

Your Name

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Free Advice & Assistance

Consumer Action Law Centre

Legal Advice line

Telephone: (03) 9629 6300, or 1300 881 020 for country callers.

Email: advice@consumeraction.org.au

Mon – Fri 10.00 am – 5.00pm

Free telephone and email advice regarding credit and debt and consumer law matters

Financial Ombudsman Service

Tel: 1300 78 08 08

Email: info@fos.org.au

Website: www.fos.org.au

Credit Ombudsman Service Limited

Tel 1300 78 08 08

Email: info@creditombudsman.com.au

Website: www.creditombudsman.com.au