



Committee	Parliamentary Joint Committee on Corporations and Financial Services
Inquiry	Oversight of ASIC, the Takeovers Panel and the Corporations Legislation
Question No.	048
Topic	Debt collection
Reference	Spoken, 20 October 2023, Hansard pages 62 and 63
Committee member	Senator Paul SCARR

Question

Senator SCARR: One other area of interest I have is the activities of certain debt collection firms who are contacting third parties in relation to debt. When we explored who they were contacting, they were, for example, contacting the relatives of someone who owed money or a landlord of a debtor in relation to money that was owed. That, to me, seemed to raise really disturbing issues of practice.

Ms Chester: We hear of that—and we have for a period of time—from many of the consumer advocates and consumer groups that we meet with on a regular basis. I should just go back a step. We don't wait to get an official report from AFCA on a systemic issue. We have monthly, quarterly and very regular meetings with AFCA across all of our enforcement and surveillance teams. Typically, by the time the systemic issue comes our way, it's not a surprise. If we've got concerns and we've identified the entity at large, quite often we've already got work underway.

On the debt collection side, that is an area that has been a priority for ASIC for a period of time now, including when debt management finally came into the licensing net. I might touch on that and then I'll hand to Deputy Chair Court to talk a little bit more about the other work that we have been doing with respect to debt management and debt collection.

When debt collection/debt management became a financial service—I think that was 18 months to two years ago—we made a call with our licensing team to make that a priority and to be very careful and thoughtful. We had a high-risk appetite for them to make sure that they felt very comfortable with those entities being licensed.

We then alerted consumer groups and state-regulated counterparts, who also had raised concerns with us around these firms, to watch live on our website as we licensed them. If they were becoming aware of entities that were continuing with now licensed services but that were unlicensed, they were to alert us straight away. We were quite stringent and prudent with our licensing, based on information that we may have had to hand on complaints and reports of misconduct.

Then we were making sure that consumer groups, financial counsellors that are at the coalface and our state regulatory counterparts could alert us to any unlicensed conduct that they became aware of as soon as possible. I will hand over to Deputy Chair Court to talk a little bit more about the sharper edge of the work that we have been doing there.

Ms Court: I can briefly add to that, or would you like me to put it on notice?

Senator SCARR: Ms Court, take it on notice, but could you give me some small comfort that it's on ASIC's radar?

Ms Court: It is definitely on our radar. In relation to that circumstance that you talked about—threatening text messages and emails to debtors, including friends and family—we have taken those kinds of cases to court. We continue to watch out for those kinds of cases because we completely agree with your assessment as to the nature of the conduct.

Senator SCARR: Excellent. Thank you.

Answer

Businesses collecting debts in relation to a financial product or service, whether on their own behalf or on behalf of another business, must comply with obligations under the *National Consumer Credit Protection Act 2009* and consumer protection provisions of the *ASIC Act 2001*. These provisions include prohibitions on the use of physical force, undue harassment or coercion, misleading or deceptive conduct, and unconscionable conduct.

ASIC and the ACCC have jointly published the *Debt Collection Guideline: for collectors and creditors (RG96)* which outlines how these provisions apply, including specific examples of court cases, and provides guidance on how debt collectors should act to reduce the risk of breaching these provisions. RG96 provides specific guidance for debt collectors regarding conduct towards members of debtors' families and other third parties. This guidance references ASIC action against a debt collector where the Court found the debt collector had engaged in undue harassment or coercion by contacting a debtor's neighbour.

ASIC is currently investigating a debt collection entity where we have concerns that the debt collector engaged in unconscionable conduct and/or undue harassment or coercion by inappropriately contacting third parties (including family, friends and social media contacts) after they said they did not want to be contacted, and contacting multiple third parties about the same debtor without providing reasonable time for the debtor to respond.

From 1 July 2021, providers of debt management services must hold an Australian Credit Licence with an authorisation that covers debt management services. A "debt management service" broadly covers the following activities related to consumer credit contracts provided that a fee, charge or other amount is paid or payable by or on behalf of the consumer in relation to the service:

- debt management assistance: suggesting or helping a consumer to apply for a change to a credit contract for which the consumer is a debtor, apply for a postponement of enforcement proceedings, make a complaint or claim to a credit provider, AFCA, ASIC or the Information Commissioner;
- credit reporting assistance: suggesting or helping a consumer to apply for a change to information collected by a credit reporting body about a credit contract for which the consumer is a debtor.

ASIC prioritises enforcement action against misconduct that impacts financially vulnerable consumers and, in this context, we draw your attention to the following outcomes:

- **2023:**
 - the Court ordered that **Membo Finance Pty Ltd** and its sole credit representative **Richmond Group Financial Services Pty Ltd trading as ClearLoans** pay over \$6 million in penalties after finding (among other things) that they were commencing court proceedings to enforce credit contracts in states other than where a borrower lived, failing to assess hardship requests, and failing to provide the necessary notices to borrowers as required by law prior to commencing proceedings ([23-037MR](#));
 - ASIC commenced action against Bakken Holdings Pty Ltd as operator of the debt management business **Solve My Debt Now** following concerns of substantial consumer harm. ASIC alleges in this proceeding that in many cases, the fees Solve My Debt Now charged for its services exceeded the amounts the debts were reduced, leaving consumers worse off ([22-212MR](#));
- **2022:** the Court ordered that **A&M Group Pty Ltd t/as Debt Negotiators** pay a \$650,000 penalty after finding it engaged in misleading or deceptive conduct and undue harassment or coercion against debtors who had missed payments under their debt agreements. In its finding, the Court found that Debt Negotiators contacted (or threatened to contact) friends, family and work colleagues of six debtors and this conduct, together with untrue statements made to debtors, was unduly harassing or coercive ([22-373MR](#));
- **2021:**
 - **Black Collections Pty Ltd** pleaded guilty and was convicted and fined for engaging in unlicensed credit activities and holding out that it held an ACL that would authorise it to collect consumer debts when it did not ([21-159 MR](#)); and
 - ASIC commenced proceedings against **Ultimate Credit Management Pty Ltd** for commencing proceedings against 24 borrowers in NSW when borrowers lived in other states ([21-275MR](#)). The matter remains before the Court.