

# Consumer Ombudsman's guidelines

October 2005

## GUIDELINES ON GOOD PRACTICE IN CONSUMER DEBT COLLECTION

The Consumer Ombudsman monitors the collection of consumer debts. These guidelines set out the Consumer Ombudsman's views regarding good practice in this area. They also provide businesses and public corporations concrete advice on how to avoid problems. Decisions concerning the application of the Debt Collection Act and the content of good practice are ultimately made by the Market Court.

The standard terms of contracts between consumers and businesses must be fair. Public corporations can also be expected to operate fairly in relation to citizens. This is also true if a breach of contract occurs. A debtor must bear responsibility for a delay in payment, but the consequences must not be unreasonable. Collection costs cannot be used to gain extra profits or for punitive purposes.

Provisions concerning collecting overdue debts are contained in the Debt Collection Act (513/1999, amended 28/2005). The Act defines debt collection as measures whose purpose is to get a debtor to pay an overdue bill voluntarily. The Debt Collection Act does not apply to legal proceedings for debt recovery or enforcement. A debt can be collected by the original creditor or an agency such as a collection agency. Debt collection is a licensed trade in Finland and a debt collector must be registered, with certain exceptions. The register authority for the whole country is the

State Provincial Office of Southern Finland.

### WHAT IS A CONSUMER DEBT?

The Consumer Protection Act defines a consumer as a natural person who acquires consumer goods and services primarily for a use other than business or trade. A business is defined as a natural person or a private or public legal person who, in order to obtain income or other economic benefit, deals in, sells or otherwise offers consumer goods or services on a professional basis and for a consideration. Consumer goods and services are defined as goods, services and other merchandise and benefits that are offered to natural persons or which such persons acquire for their private households.

Consumer debt includes

- debts owed to a business that are based on the transfer of consumer goods or the granting of credit to a consumer debts owned to public corporations or related to the management of a public task when the debtor is a private person.

*Typical consumer debts are bills for magazines and other products, telephone bills, hire-purchase bills, credit card bills, insurance premiums and bank loans. If someone else besides the person who entered a contract is*

*responsible for a consumer debt, the debt is regarded as a consumer debt if the person responsible for payment has the status of a consumer. For example, a charge that is demanded from a private person who has provided a guarantee is a consumer debt if the main debt relationship is classified as such.*

Rent charged by a private person acting as a landlord is not generally regarded as a consumer debt, nor is the maintenance charge collected by a housing corporation from an owner-occupant. The Debt Collection Act also requires good practice to be followed in these cases.

### Applying the Debt Collection Act and mandatory nature of the Act

The Debt Collection Act is mandatory. This means no deviations can be made to the detriment of the debtor. A debtor cannot be placed in a worse position than the Act allows, even with his consent. In drawing up contract terms a business must keep in mind the provisions in the Debt Collection Act concerning the cost of reminders, for example. If contract terms deviate from what is allowed in the Debt Collection Act, to the detriment of the debtor, they are not binding on the debtor.

The Debt Collection Act does not apply in cases that are covered by

other Acts. Separate Acts cover the collection of public charges such as driving licence fees, taxes and fines. The consumer credit provisions in the Consumer Protection Act, the Electricity Market Act and the Communications Market Act, among others, also contain provisions concerning consequences for delays in paying consumer debts. These specify what actions can be taken if a consumer debt is paid late or not at all, together with time limits. The applicable parts of the Debt Collection Act also apply.

*The Consumer Ombudsman does not have authority to intervene once a debt has reached the enforcement stage after court handling or if it is directly enforceable. If voluntary collection takes place alongside enforcement in one way or another, the Debt Collection Act applies to the relevant part of collection. Enforcement is also subject to similar requirements of good practice, however, since this is part of good governance.*

### **Debtor's right to receive information on his debt situation**

According to the Debt Collection Act, a debtor has the right to receive from a creditor once a year and free of charge up-to-date information on his total debts, an itemized list of unpaid debts and instalments on them, and principles concerning interest on debt capital and costs. A debtor also has the right to receive information on the possible expiration of debts and measures taken to prevent debts from expiring.

Information on total debts is free of charge. The creditor can demand reasonable compensation for itemizing and explaining debts if less than a year has passed since information was provided.

## **COLLECTION BY THE CREDITOR OR AN AGENCY**

### **Starting collection**

Before starting collection measures, a creditor must make sure that collection is justified and that collection does not cause the debtor unreasonable consequences. A debtor must bear responsibility for a delay in payment, but the consequences must be in proportion to the nature of the delay. A creditor cannot use a delay to gain extra profits.

When a debtor cannot pay a bill, if possible the problem should be resolved through negotiations so as to cause the least harm to the debtor. Generally this means agreeing on a new due date or preparing a new payment schedule.

*If a new due date is agreed, the creditor should not send the debtor reminders based on the original payment schedule.*

*If a debt has expired or is not justified, a creditor or agency cannot start collection. A reminder or collection letter is not sufficient grounds for collection. The debt must be based on a previous debt relationship, obligation or contract.*

*A debt that has expired may not be collected. The general limitation period on a debt is three years after the debt has fallen due or the creditor has presented a demand for payment. The expiration of a debt can be interrupted. The general limitation period applies unless legislation provides otherwise. A number of special Acts contain provisions concerning the calculation of limitation periods, interrupting the expiration of debts and the legal consequence of the expiration of debts that differ from the general provisions on the expiration of debts. These mostly concern debts for public charges.*

### **Collecting debts from minors**

Minors or persons under the age of 18 have limited legal competence. Minors may only perform transac-

tions which, in view of the circumstances, are usual and of little significance. In addition minors have the right to decide how to spend their own earnings as well as money provided for personal use by their guardian. Minors do not have the right to incur debt, however, even if the intention is to pay off the debt with the minor's future earnings. The right to perform transactions which are usual and of little significance does not allow a minor to incur even a small debt independently. As a rule a minor can only perform cash transactions. A business must bear the risk if a contract made with a minor is invalid.

According to the Guardianship Services Act, a transaction beyond the competence of a minor is not binding unless the guardian has consented to it. Even with their guardian's consent, the only debt commitment a minor can make is to take out a student loan guaranteed by the state. Any other kind of loan requires permission from the guardianship authority. A transaction performed by a minor without the necessary permission is not binding, nor can the resulting debt be collected from a minor.

According to the Guardianship Services Act, when a minor reaches maturity he is only responsible for paying a debt incurred while a minor without the necessary permission or consent if he voluntarily agrees to do so. Good practice requires that a debtor's rights are explained to him when a debt is collected after a minor has reached maturity.

The point of departure in the Guardianship Services Act is to protect minors from incurring debt so that they can enter adult life without the burden of a bad credit record. Consequently in contracts that require the guardian's consent, the guardian should be the one to assume responsibility for paying, rather than the minor who uses a service.

Even if debt collection is based on grounds that are binding on a minor, the principle of protecting minors should still be taken into consideration. Collecting debt from a minor should be exceptional.

Consumer debts that can be collected from a minor include debts for transactions which a business cannot

refuse to make with a minor according to law. The best example is providing mandatory insurance to the owner and operator of a registered motor vehicle. Debts based on property ownership or the renting of an apartment can also be collected from a minor, as can back taxes and damages.

The Consumer Ombudsman issued guidelines on Minors, marketing and purchases in 2005. These guidelines are based on cases handled by the Market Court and the Consumer Ombudsman.

### **Information to the debtor concerning the collector and the stage of collection**

A debtor must always be told whether collection is being made by the creditor or an agency. The debtor must also be told what stage collection is in. This means the debtor must be informed if a letter is a reminder or a written demand for payment preceding legal action.

*If a collection agency has been engaged to provide credit management services, a debtor should not be left in doubt as to whether a letter is a bill from the creditor, a reminder or a demand for payment from the collection agency. A demand for payment must include the collection agency's contact information so that complaints can be made. If the creditor changes or a debt is transferred, the party to which the debt has been transferred becomes the debtor's new contract partner. The debtor must be informed if the creditor changes.*

*It is against good practice for a collection agency to hand over demand for payment, invoice or letter forms or other materials bearing its name that are intended for collection purposes to an outside party. A debtor must not be given a misleading picture of who is actually taking care of collecting a debt.*

### **Content and number of reminders and time limits**

A reminder is generally a copy of a bill or other notification sent by a

creditor to inform a debtor that a bill or other debt has not been paid. A reminder can also be sent by an agency. A reminder is usually given in writing but can also be given by telephone, electronically or in person.

The time limits in the Debt Collection Act ensure that a debtor has sufficient time to make payment arrangements, pay a bill and make complaints.

A reminder, which is subject to a charge, can be sent according to the 2x14 days rule. An ordinary bill must be sent at least 14 days before the due date. A reminder can be sent no earlier than 14 days after the due date.

Sometimes a consumer may agree that a separate bill will not be sent. In this case a charge can be collected if a reminder is sent no earlier than 14 days after the agreed due date.

A charge can be collected for a new reminder only if it is sent no earlier than 14 days after the previous reminder.

Generally a creditor must send at least two reminders concerning an unpaid bill. Only then can the creditor proceed to harsher consequences - turns the bill over to a collection agency, stop service, call in a loan or take the matter to court.

If information concerning an unpaid bill is merely added to the next bill and no separate reminder is sent, a charge cannot be collected for sending a reminder.

A reminder can be sent electronically, for example by e-mail or text message, if the creditor and debtor have communicated in this way before or agreement has been reached to this effect.

*A creditor or agency cannot unilaterally change the means of communication during the collection stage unless, after a reminder sent in the agreed way it has become evident that the debtor can no longer be reached in this way. The owner of a mobile phone number or e-mail address cannot be expected to keep his phone or e-mail turned on all the time, nor can the owner of a mobile phone be expected to use the text message function unless this has been agreed.*

A debtor must be given sufficient

information in a reminder. This includes:

- the name and address of the creditor,
  - the nature of the debt, an itemized bill and the total amount of the debt,
  - a payment address and due date and
  - information on where complaints concerning the debt and collection charges should be sent and within what period. Special appeal periods for debts owned to local authorities should be mentioned, for example.
- Providing this basic information allows the debtor to determine whether the amount owed is correct and evaluate his own legal position. Payment instructions must also be clear.

The creditor must inform the debtor of the consequences of failing to pay a bill at least in the final reminder.

*Simply listing possible consequences is not enough. A reminder must inform the debtor of the specific consequence to which the creditor will probably have recourse in this particular case.*

*If a creditor turns a bill over to a collection agency, this cannot be referred to as enforcement. It is also important to give the debtor truthful information concerning at what stage failure to pay can result in a bad credit record.*

If a debtor has complained about a debt or reported a social obstacle, the situation must be clarified before collection can proceed. In some cases a debtor may be required to contact a consumer adviser, financial and debt counsellor or other expert such as a goods inspector or doctor before making a complaint.

*A general, unspecified claim by itself may not lead to the interruption of collection, nor may an unsubstantiated claim concerning a social obstacle. If a debtor does not provide the necessary additional information despite a request for details, collection can generally proceed. The debtor must be kept up to date on the measures taken by the creditor; however.*

If a collection matter is disputed in court, the Consumer Complaint Board

or some other settlement body, collection is always interrupted.

If debts are included in debt adjustment, payment and collection are interrupted during the time required to prepare, handle and approve a payment programme.

A creditor is entitled to collect interest on late payments in accordance with the Interest Act from the date on which payment is due. Interest on late payments is not a collection charge. The amount of interest on late payments can be adjusted according to the grounds mentioned in the Interest Act and also on the grounds that payment has been delayed because of reasons beyond the debtor's control.

### **Collection must not be dragged out**

Collection must not be dragged out unnecessarily. Collection should be efficient and should not last more than a year, unless the matter goes to court.

If measures to collect a debt are only taken several years after the due date, problems may arise with regard to the existence of a debt relationship and the plea of payment.

The longer time has passed since the due date, the stronger the burden of proof on the creditor to show that a debt has not been paid. It is not reasonable to expect a consumer to save every receipt for years in case a creditor begins to collect a debt years later.

If a long time has passed since the due date, a creditor must be prepared to show with the help of accounting materials that a debt relationship has existed and that a debt still has not been paid. If a long time has passed before collection begins, this is also strong grounds for adjusting interest on late payments.

*In its decisions the Consumer Complaint Board has also called for collection to be efficient so that it is not drawn out, as part of good practice (CCB 99/32/3085 and 02/39/338, among others).*

### **Voluntary debt adjustment and good practice**

Voluntary debt adjustment is in the interests of society. The key content of

debt adjustment is something that has to be negotiated. Nevertheless, the point of departure in debt adjustment and its terms is to provide the debtor a minimum level of protection, according to established practice.

The Act on the Adjustment of the Debts of a Private Individual takes precedence over debt adjustment agreements with regard to the consequences for neglect. If an agreement between a debtor and a creditor contains consequences that are harsher than those prescribed in the Act on the Adjustment of the Debts of a Private Individual, these are invalid.

The Consumer Ombudsman also monitors good practice in debt adjustment.

### **Sales promotion may not be combined with collection**

In connection with collection a business may not offer the purchase of a new product or the signing of a new contract as an alternative to paying debt. This kind of practice can be considered to place unfair pressure on the debtor. A debtor cannot be enticed to pay a debt by promising special benefits, such as gift cards, which are not directly connected to the debt that is being collected.

### **No pressuring or threatening**

Collection may not cause the debtor unreasonably harsh consequences. Collection must be discreet and a debtor may not be pressured to pay using methods that unreasonably make the debtor's situation more difficult or are offensive. Methods must be evaluated according to generally accepted values in our society.

A debtor's privacy must always be respected. Care must always be taken so that information concerning collection does not come to the knowledge of a third party, regardless of what methods are used to collect a debt and who collects it. Attention should be paid to details in this respect.

*It is unfair even to threaten to pass on information concerning an unpaid debt to a third party, such as an employer, relative or other person in the debtor's immediate circle.*

*Correspondence may not be*

*sent in an envelope that is marked to show that it contains a collection letter. Nor may the name of a collection company be used in a pressuring way. The name may not be threatening or convey an impression of unfair methods. Information materials used in collection should be neutral in style.*

If collection requires other methods besides correspondence, special attention must be paid to protecting the debtor's privacy.

*If it is necessary to visit a debtor's home for some exceptional reason, special attention must be paid to provisions concerning trespassing and the protection of privacy. It goes without saying that an agency must act in a businesslike manner. An agency may not make threatening statements to a debtor or a family member or otherwise act in a menacing way.*

Telephone collection in itself cannot be considered unfair as long as privacy is protected and unreasonable bother is avoided. This includes calling at unreasonable times, for example.

*Collection calls may not be made on weekends, holidays, the eves of holidays or between the hours of 8pm and 7am.*

*It is also unfair to make it difficult for a debtor to contact a creditor or agency by having very short and limited customer service times or only allowing contacts by e-mail, for example. Contacts may not result in extra charges for the debtor.*

A draft may not be used to collect consumer debt, according to the Debt Collection Act.

In collection activities an agency should primarily use the same means of communication that the creditor has used in the customer relationship. If a creditor has originally billed a customer by mail, collection should also take place primarily by mail.

## SPECIAL FEATURES OF COLLECTION BY AN AGENCY

### Obligation to take special care

A professional debt collector such as a collection agency must pay special attention to a debtor's rights regardless of the fact that it represents the creditor. Consumer debtors - as well as creditors - often lack sufficient knowledge concerning legislation regarding voluntary collection and enforcement and the conditions for enforcement. A collection agency must therefore take special care in collection activities.

When collection is professional, the consequences in case of negligence are harsher. A professional debt collector may be liable for damages if it is guilty of improprieties.

*A professional debt collector may have to pay costs resulting from a demand for payment that is incomplete, unclear or unjustified, for example.*

*An agency may also have to pay a debtor's legal costs if the agency has not sent a written demand for payment to the debtor. An agency may have to compensate costs if it has asked for a court judgment before a demand for payment has been given and the payment deadline and complaint period mentioned in it have elapsed.*

*Another person besides a debtor, for example a person who has been the target of unjustified collection, can also demand damages from an agency.*

All communications by a collection agency, regardless of the medium, must clearly state

- what debt is being collected
- that the debt is being collected by an agency and
- the agency's name and contact information. The agency's registration number should also be given.

In agreeing to take a job, a professional debt collector must verify basic matters that can be investigated fairly easily.

*The agency must make sure that the creditor has reminded the debtor that payment is late, for example.*

An agency may not collect debts that are illegal or clearly unjustified. As a rule an agency has the right to trust that a debt is justified, however.

*An agency may not collect a debt that has expired or collect higher interest on late payments than the Interest Act allows.*

If a debtor upon receiving a demand for payment clearly states that the debt is not justified, the agency must immediately investigate whether the debt is justified, even if it does not interrupt collection. A simple claim by the debtor is not enough; there must be clear and sufficient grounds. If the matter is taken to court or to a settlement body, collection must be interrupted.

*If a debt appears unclear and disputed in the light of the debtor's arguments, collection should be interrupted. The agency must confer with the creditor to see if there are grounds for continuing voluntary collection or whether the matter should be taken to court. The debtor must be told whether collection will continue or stop.*

### Written demand for payment

According to the Debt Collection Act, a professional debt collector must give or send a debtor a written demand for payment when a consumer debt is being collected. A written demand for payment ensures that the debtor receives sufficient information to determine whether the debt is correct and to evaluate his own legal position. A written demand for payment must also be given when telephone collection is used, for example.

A professional debt collector generally may not petition a court for the payment of a consumer debt before a valid written demand for payment has been given and the payment deadline and complaint period mentioned in it have elapsed.

If a proper written demand for payment as required by law has not been given, a debtor is not liable for collection costs unless the oversight has been minor.

A demand for payment must mention at least the following:

- he name, address and telephone number of the creditor and the

agency.

*The debtor must be informed that the creditor has passed a debt on to an agency and that he will in future be dealing with an agency.*

- The grounds for the debt. The debt relationship, obligation or contract on which the debt is based must be specified adequately.
- Information concerning the debt, specifying the capital, interest, interest on late payments and collection costs as well as the total amount.

*With regard to interest, information should generally include the rate of interest, the interest period and the amount of capital on which interest or interest on late payments has been accumulated. Euro amounts must also be given. If the interest rate is not mentioned, the debtor must be told that information on how interest is calculated is available on request.*

*If collection costs are higher than the maximum allowed by the Debt Collection Act, these must be explained along with the grounds.*

- The recipient, the payment method and the payment address.
- The debtor's possibility to complain about the amount of the debt and its grounds and the date by which the debt must be paid.

*The debtor must be given a reasonable time to make complaints and pay the debt. So that complaints can be handled efficiently, the debtor should be given sufficient information about what complaints can concern and what additional information the debtor needs to supply.*

*The due date must be no earlier than 14 days after the demand for payment has been given or sent to the debtor.*

*A debtor should also be informed of the possibility to prepare a payment plan.*

*If a debt is directly enforceable, a demand for payment must inform the debtor of the legal means that are at his disposal and the possibility to apply for an extension of the payment period.*

*A debtor must be given a reasonable amount of time to make complaints, at least 14 days from the date on which the demand for payment is given or sent.*

*A debtor is not obligated to pay collection costs if he has made complaints concerning the grounds of the debt, for example, and these should have been investigated before collection could begin.*

*A demand for payment must always mention a debtor's possibility to make complaints to the agency concerning the amount and grounds of collection charges particularly if these are higher than the maximum allowed by the Debt Collection Act. In addition a debtor's possibility to have the reasonableness of collection costs evaluated by the Consumer Complaint Board or a public court should be mentioned.*

A demand for payment must state to whom complaints should be presented.

*A demand for payment must provide contact information for the unit or person to whom the debtor can make complaints and whom the debtor can easily reach.*

## Payment protection

A payment made by a debtor to an agency is also valid with regard to the creditor. A debtor has the right to trust that the agency is acting within the limits of its authority in making agreements concerning the commission. An agreement between the debtor and the agency concerning the payment period, payment method or other arrangement with regard to the payment of a debt is also binding on the creditor.

Payment is generally valid if a debtor pays a debt to the creditor and not an agency even after the matter has been passed on to the agency. In this case a debtor must pay any collection costs already incurred by the agency, however.

## VAT in consumer debt collection

An agency may not collect VAT from a debtor when a consumer debt is collected and the creditor is a business that is entitled to deduct VAT included in a debt collection commission in its own taxation. Maximum collection costs include VAT in cases when VAT can be collected from a consumer debtor.

A business that is obligated to collect VAT can generally deduct the VAT paid to a collection agency in its own taxation. Local authorities are also obligated to collect VAT when they are engaged in business activities. The ban on collecting VAT also applies to debts concerning services and goods provided by a business or local authority that are free of VAT. If VAT paid on collection services does not wind up as costs for a business or local authority, they cannot collect VAT from a consumer debtor as part of collection costs (MC 2001/005).

## Collecting debt incurred abroad

A professional debt collector that is registered in Finland can accept a commission to collect a debt that has been incurred abroad. In the voluntary collection of a foreign debt, in addition to good practice, attention must be paid to the special features of the debt. In particular the grounds of the debt, which are often based on foreign legislation, must be investigated. Language difficulties and travel schedules may have also prevented or limited the debtor's possibility to react on the spot. It is therefore important to inform the debtor of his rights and available means of protection.

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## SPECIAL ROLE OF PUBLIC CORPORATIONS

When a public corporation collects a debt from a citizen, it must do so in a business-like and discreet manner, taking into consideration the same re-

quirements that businesses must meet. The Consumer Ombudsman monitors the collection of debt by public corporations from private persons before enforcement.

A local authority has a heightened responsibility as a creditor since it often has better possibilities to evaluate a debtor's situation than other creditors. From the viewpoint of social responsibility it is essential for a local authority to consider the overall burden on a debtor before increasing the costs that must be paid by a debtor.

*In passing a debt on to a collection agency, a local authority must remember that professional debt collectors do not have the same responsibility as public officials. A local authority must sufficiently oversee an agency's collection methods. In 1999 the Parliamentary Ombudsman confirmed this in decision 1681/4/97. In 2004 the Parliamentary Ombudsman noted in decision 1964/4/03 that collection agencies perform a public task when they collect public charges and similar debts as referred to in section 1 of the Act the Collection of Taxes and Public Charges.*

Passing on a debt to a collection agency when a debtor has a social obstacle is seldom wise. Payment agreements and different payment arrangements can be used, especially when a local authority is the creditor, so that the debtor's position does not become excessively burdensome.

*If a portion of a debtor's pay is regularly garnished, starting separate collection for individual debts should be considered quite carefully. One can justifiably ask whether collection will be delayed unreasonably if a debt is passed on to an agency and then enforcement after the local authority's own collection. The costs may have to be borne by the local authority itself, for example in the form of increased income support.*

Local authorities' services are also used by minors. As a rule minors do not have the right to incur debt. A guardian must agree to pay a debt in transactions where his consent is re-

quired. Bills for health clinic visits and social services should primarily be sent to a minor's guardian. A minor should also have the possibility to receive services anonymously, however.

## Debts for public charges

From the viewpoint of the Debt Collection Act, public corporations can have four kinds of charges owned to them:

- Charges that are not covered by the Debt Collection Act. These include taxes, fines and charges for public authorities' performances.
- Charges that are covered by the Debt Collection Act but cannot be passed on to a collection agency. These include parking fines, penalty fares and TV licence fees.
- Charges that are covered by the Debt Collection Act and can be passed on to a collection agency. These include charges for municipal social welfare and healthcare, care for the elderly and day-care as well certain educational charges.
- Charges that are of a private law nature.

Debts owed to a public corporation are generally directly enforceable on the basis of an Act or Decree. Collection costs for directly enforceable debts are also directly enforceable without a judgment or decision.

*Library fees and rent for apartments owned by a local authority, for example, are not directly enforceable. These are of a private law nature. If the voluntary collection of these debts - by a creditor or an agency - is not successful, a court must be petitioned to obtain a judgment that can be enforced.*

*Insurance companies, which are private businesses, in some cases have a legal right to collect debts directly through enforcement.*

In their business activities local authorities have an obligation to collect VAT and they can deduct VAT from a collection agency's fee. Consequently an agency cannot collect VAT from a consumer debtor.

*This also applies to debts for goods and services that are not*

*subject to VAT, such as health clinic charges.*

A professional debt collector must give a debtor a written demand for payment. In collecting enforceable debts both the creditor and an agency must inform a debtor of the possibility to apply for an extension of the payment period and the legal means that are at his disposal.

*Legal means include the right to seek a correction or change, the right to appeal the grounds for a debt and the right to seek an execution ban.*

*A demand for payment must also include instructions for appeals. In addition it must provide contact information for the unit or person to whom the debtor can make complaints concerning the debt or collection. It must also mention that the Consumer Ombudsman is the authority that monitors compliance with the Debt Collection Act and that a debtor can take the matter to court.*

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## COLLECTION COSTS

According to the Debt Collection Act, a debtor must compensate a creditor for reasonable costs resulting from collection regardless of whether the debt is collected by the creditor or an agency. In evaluating reasonable attention must be paid to the size of the debt, the amount of work required, the efficient performance of collection and other matters.

Collection should not cause a debtor unnecessary costs. Methods that artificially increase collection costs cannot be used to get around the reasonable cost requirement in the Debt Collection Act.

For example, it is not good practice to divide a debt into several parts during collection. It is of course possible to prepare a payment plan containing several instalments.

It is also not good practice if telephone collection, for example, is used to collect several debts owed to the same creditor and then separate costs are charged for each individual debt.

If a debtor is sent an account statement on request the same day that a separate collection letter is sent, this also constitutes unnecessary costs.

In addition to the requirement of reasonableness, limits have been set on the amount of collection costs. Reasonable collection costs are not automatically the same as the maximum allowed by law.

In collecting consumer debt, collection fees may not exceed the following limits. Costs may only be collected according to the time limits stipulated in the Debt Collection Act.

The maximum fee for a written reminder is 5 euros.

*A debtor must also compensate a creditor for costs resulting from telephone and e-mail reminders. Average costs can be charged for these but costs must be reasonable.*

The maximum fee for a written demand for payment from a professional debt collector is 21 euros if the debt principal does not exceed 250 euros and 45 euros if the debt principal exceeds 250 euros.

The maximum fee for a written demand for payment from a professional debt collector is 12 euros if the debt is directly enforceable.

The maximum fee for a written payment plan covering the entire remainder of a debt is 30 euros.

*The maximum fee is intended to cover all the costs of measures related to a payment plan, including partial payment.*

*The maximum fee is also intended to cover ordinary and minor changes in a plan, such as postponing payment of an instalment or extending the payment period.*

Maximum fees are unconditional for enforceable debts. If actual collection costs exceed limits, the debtor must be given an itemized list of costs and their grounds and informed that costs exceed the maximum limits that are generally applicable.

Sometimes a debtor may pay a debt at the same time that a creditor sends a reminder. A debtor has to pay reminder costs if a reminder has actually been sent before payment reaches the creditor. A reminder, which is subject to a charge, can be sent no earlier

er than 14 days after the due date and a new reminder can be sent no earlier than 14 days after the previous reminder. If a debt has been passed on to a collection agency, the debtor's obligation to pay depends in this stage on whether the agency has taken collection measures for which the debtor is obligated to provide compensation before payment has arrived. If measures have not been taken, an agency has not incurred costs that it can collect from the debtor.

### **Debtor's responsibility for total costs**

In voluntary collection a debtor may not be charged more than the following total costs for a single consumer debt:

- 190 euros if the debt principal does not exceed 250 euros
- 220 euros if the debt principal exceeds 250 euros
- 59 euros if the debt is directly enforceable, regardless of how and by whom the debt has been collected.

A debtor can be charged actual collection costs exceeding the above limits if collection has been exceptionally difficult and collection measures cannot be considered unreasonable particularly in view of the amount owed. In this case the debtor must be given an itemized list of costs and their grounds and informed of the reasons why total costs exceed the max-

imum limits that are generally applicable.

Maximum limits are unconditional for directly enforceable debts, however.

If a debt is a directly enforceable consumer debt, collection costs are also directly enforceable without a judgment or decision, regardless of whether costs arise from collection measures taken by the creditor or an agency.

A debtor is not generally obligated to pay collection costs if a creditor or agency has not complied with good practice. Furthermore costs do not have to be paid if a professional debt collector has not given a debtor a valid demand for payment.

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## **AMENDMENTS TO THE DEBT COLLECTION ACT AND THEIR APPLICATION**

An amendment (28/2005) to the Debt Collection Act concerning maximum limits on collection costs, related time limits and a debtor's right to information came into effect on 1 May 2005. This amendment applies to collection costs from this date forward even if an agreement that was made before the amendment came into effect places greater responsibility for collection

costs on the debtor.

*After the amendment came into effect a debtor may have paid a creditor higher collection costs than the amendment allows. Owing to transition provisions, however, a creditor is not obligated to refund costs that were collected before the amendment came into effect, even if they exceed the maximum limits in the amendment.*

### **Monitoring compliance and coercive means**

The Consumer Ombudsman will primarily strive to negotiate if a business or public corporation does not comply with the provisions in the Debt Collection Act. If necessary the Consumer Ombudsman will use coercive means or take the matter to the Market Court.

A creditor or agency that does not comply with good practice or an agency that does not comply with the Debt Collection Act in giving a debtor a written demand for payment can be banned from continuing such a procedure or renewing it or a similar procedure. The ban can be addressed to a person employed by a business if necessary. A temporary ban can be issued by the Consumer Ombudsman and will be backed by a conditional fine unless this is unnecessary for some special reason.