# Debt collection in Aotearoa from the perspective of financial mentors

A report of research undertaken in 2021 by surveying financial mentors in New Zealand about debt collection practices

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# KEY FINDINGS

## Mentors are important in resolving debt issues

The aim of financial mentors is to help people put their financial affairs in order and learn skills to manage their financial affairs into the future. But the research shows that a huge part of this work involves dealing with debt. Many mentors noted that most, if not all, of their clients have unresolved or out of control debt.

Many participants in the study noted that debt collectors often take approaches to collection that are deliberately distressing and highly unsuccessful. Bombarding clients, frightening them or making constant unachievable demands do not, in the end, do much to see debt repaid.

Mentors are able to help in many ways to get debt repaid. The repayment rate might be slower than debt collectors wish for, and they may be encouraged to remove some or all of the fees and charges that are causing the debt level to balloon out of control (making it ever less likely it can be repaid). But in the end, mentors are good at ensuring a fair settlement is reached and the debt is repaid.

How do they do this? First, they work with clients to assure them that a solution can be negotiated, and that they will not face a future of debt collectors harassing them. In most cases solutions can be found, and the knowledge of this is empowering for clients.

Secondly, mentors use their expert knowledge to work with clients to put in place an attainable programme of debt repayment that is fair and sustainable.

Finally, mentors act as advocates to make a good settlement for their clients. Advocates are sorely needed to de-escalate the poor, threatening and ultimately ineffective tactics which appear to be still used by some debt collectors.

The most effective debt collectors would appear to be those who suggest that debtors get help from financial mentors and are them happy to work with those mentors to effect a solution.

## What is acceptable conduct by a debt collector?

The study reported many instances of poor conduct by debt collectors. The most common example of poor conduct was the use of multiple contacts, including "up to six phone calls a day", and multiple text messages and/or emails to the debtor. The goal of such constant calling was to "put pressure" on the client. Some collectors appeared to use computer programs to bombard clients with messages, which can be difficult to get stopped.

Constant messaging caused enormous anxiety but there was little evidence that it facilitated payment. The most common response to this tactic reported by mentors was that debtors would stop answering their phones, making it difficult for mentors (and collectors) to contact them.

A further tactic described was for the debt collector to contact the debtor at work. This was particularly difficult for clients who were not supposed to receive phone calls at work, for example a caregiver in a rest home. Such calls were sometimes accompanied by threats for debt collectors to turn up at the workplace. Some debtors consequently suffered anxiety and had concerns they might lose their job. Some mentors also reported phone tactics being used against the families or neighbours of debtors.

The tone of calls was often of concern. The aim of these calls appeared to be to force debtors into agreeing to payment plans, whether they could uphold these or not. The calls on occasion included threats of court action and other forms of bullying.

There were reports of debt collectors knocking on debtors' doors demanding payment, using 'foot in the door' techniques and refusing to leave until documents were signed. People felt intimidated and this was worse if there were young children in the house. This tactic would appear to be less common now.

Clients might have been bombarded either over one debt or because they had multiple debts. Threats of court action and repossession of goods would appear to be reasonably common, even when these were not possible. There were often implications for clients' mental health and wellbeing.

## The rules around charging fees are not clear

Fees are one way debt levels can increase very quickly. Initial and ongoing fees, administration fees, penalties, re-negotiation and debt collection fees may all make the debt balloon to many times its original size.

Mentors noted the very wide range of fees being charged to debtors both because of payment defaults and the charges added by the debt collector. One noted a 'standard' addition of debt collection fees of 30% for the services of a debt collection agent, but there would appear to be no single common figure. While the debtor does not make the debt collection contract with the debt collection agent (it is made between the debt collector and the creditor/service provider), the debtor is commonly responsible for paying the fees, under the terms of the contract that generated the debt.

The addition of multiple fees onto defaulted contracts is seen as counter-productive by mentors. Most debtors default because they cannot pay the debt; increasing the debt by large amounts is not going to make payment more likely (and may make it less likely as debtors become overwhelmed).

One of the first tasks of mentors assisting clients with debt is to understand the original debt, and the fees (and other charges) that have since been added to it. Often mentors would seem to be able to negotiate a reduction in or removal of fees as a precursor to a regime of debt repayment. The role of the mentor in being able to reduce the debt to manageable levels by the removal of fees appears to play a large role in the eventual repayment of debt on good terms.

There is a particular issue with debts, such as utility bills, which are not covered by the laws around fees on consumer credit contracts. As these other types of (non-consumer credit) debt constitute a large proportion of problem debt (by number if not necessarily by value), the largely unregulated nature of such bills in terms of fee charges is of concern.

## Questions about interest charges

Mentors raised a number of questions about interest charges, in particular on consumer credit debt. The first point is that mentors often have a lot of difficulty finding out what interest was charged on the original loan, unless they have a copy of the loan agreement.

It was even more difficult to work out the interest that has been charged in circumstances where payments are overdue and where the debt has been sent to a debt collector or sold.

A key question that arose is whether interest can be charged (in other words, continue to accrue to the debt) in various circumstances. In particular, whether interest can continue to accrue once the debt has gone to a debt collection agent or been sold. There are a variety of views on this and the law seems unclear to mentors. One mentor noted their understanding that a 2015 court opinion had expressed the view that interest should not continue to be charged at all one year after the debtor has defaulted.

The general view would appear to be that it is not common in New Zealand for interest to continue to accrue once a consumer credit debt has been sold, but that this can occur. Another mentor noted that, where a debt had been sold, interest could not continue to be added because the original contract was now defunct. A further suggested that the interest was frozen for three months on such debt, but after that it would be charged again, unless they applied for a continued freeze on interest.

It appeared there are few clear rules around the addition of interest to consumer credit debt that was in default, except for new laws that relate to interest on high-cost loans. This lack of certainty puts mentors at a disadvantage in negotiating settlements with debt collectors, forcing them to work contract by contract rather than applying global rules.

## The attachment order process needs reform

Attachment orders can be made by the court on application by a debt purchaser who has legally taken over the rights of the original creditor or service provider. In principle, the debtor is able to be involved, but in practice it would seem that debtors rarely attend sessions with the court registrar where attachment orders, typically, are made. The registrar is required to consider the circumstances of the debtor in awarding an order, but in the absence of this person, the views of the applicant for the order are likely to be prominent.

The order 'attaches' a repayment amount to the wages or benefit of debtors. Some mentors note that the default weekly amount that was ordered to be paid on a benefit appeared to be around $30 per week. This can be unaffordable for some. At its best, mentors noted, attachment orders can provide a good discipline to ensure people who can afford to repay, do so. Several mentors supported good use of attachment orders.

At their worst, attachment orders place onerous burdens on people to make unaffordable repayments. Mentors noted that there is the ability to apply to have orders varied, and often they do this on behalf of their clients.

Attachment orders also expose the financial difficulties of workers to their employers, as the amount must be deducted from pay. Debtors can find this embarrassing, and it potentially affects employment relationships.

One mentor noted that no beneficiary has surplus in their budget: "They all run at a deficit. Essentially, the only way to survive on a benefit is if you don't have any debt. If you have debt, you are actually screwed" (T22).

A key principle is that attachment orders need to be affordable. For those earning below the living wage, and for beneficiaries, any amount ordered by the courts may be too high. An important issue to consider is whether low-income groups including beneficiaries should be formally excluded from the use of attachment orders, perhaps in favour of a mediated process involving mentors. The implications for such a proposal in terms of access to credit would have to be considered. At a minimum it would seem that there needs to be more formal scrutiny of the debtor's ability to pay at the time the attachment amount is set by the court.

## Irresponsible lending

In the responsible lending principles, which are part of consumer credit law, the onus is on lenders to exercise "care, diligence and skill" in all dealings with consumer borrowers. These laws have recently been amended in an attempt to clarify the responsibilities on lenders when satisfying themselves that the loan will be affordable.

In practice, mentors noted a number of areas where lending principles have apparently been breached. The first such potential breach would appear to be a failure to do due diligence on the ability of applicants to repay debt.

The second potential breach appears to be supporting the proliferation of unsecured debt, in particular shopping and credit cards, afterpay-type arrangements, and power and phone charges, which are among the most common forms of debt.

Together these factors often lead to the situation of unaffordable debt. While not always the fault of lending agencies (applicants might have disguised their circumstances in order to get needed credit, for example), industry practice compounds the problem of unaffordable debt with high fees and interest charges (see preceding sections).

The increased normalisation of debt has contributed to a culture of irresponsible lending, according to some mentors. The ability to borrow for daily needs (from car repairs to schoolbooks, for example) just puts off, and makes worse, financial difficulties. The reduction in the number of mobile trucks in poor areas was cited by several mentors as a good consequence of reforms in the sector, but other schemes still exist. The co-existence of pawn shops and pay-day lenders beside benefit offices was cited as another example of debt normalisation.

Contracts need to be short, clear, comprehensible, available in a range of languages and fair. Mentors noted that clients often enter into contracts optimistic about the ability to repay, so pay too little attention to penalty and default clauses.

Although oppressive practices are outlawed, a number of examples of practices that could meet that standard were provided by mentors in relation to fees, collection methods and debt proliferation.

## Common problem debt

An interesting finding of this study was that mentors' perception of the most problematic debt was not large loans for cars or defaulted hire purchases (although both of these types were problematic). The most common type of problem debt cited was debts associated with unpaid power bills, and to a lesser extent phone and internet services.

The emergence of power bills as a major form of unsecured debt is of concern for several reasons. First, it is an expression of inadequate income to meet the basic cost of living of families. Incomes have been low for years among the bottom 40-50 percent of families, and power costs have risen, leading to the squeezing of credit. Second, power is a basic human need and owing money on past electricity bills makes it very much harder to get access to electricity in the present. Finally, as households form and reform, individuals can end up with the burden of unpaid power bills that are in their name but which they did not accrue alone.

Another common problem that came through from the study is the normalisation of debt for young people. Some mentors were shocked at the amount of credit offered to young people, who often had little means to repay and little concept of debt management.

Credit cards and shopping cards (for example Gem, Q Card) are forms of unsecured debt with high penalties and high interest, which can quickly grow. Mentors thought that this kind of debt led to more forceful collection conduct due to its unsecured nature.

A number of other forms of debt were discussed by mentors. Afterpay-type schemes would appear to be a growing problem. Other issues include car loans where the size of the loan and the ability to repossess can cause huge problems. People can end up with no car and still have a large debt to pay.

# DETAIL OF THE REPORT

## Background

There is very little regulation of debt collection activity in New Zealand. The Ministry of Business, Innovation and Employment's (MBIE) review of consumer credit regulation, conducted over the period 2017 to 2018, suggested that there have been problems around debt collection. Over the period 2017 to 2018, MBIE spoke to various interested parties including consumer advocates, lenders, the Commerce Commission, and industry bodies. The evidence gained from that consultation was then collated into a discussion paper released by MBIE in June 2018 (the June 2018 Discussion Paper). The June 2018 Discussion Paper stated that complaints to the Commerce Commission about debt collection have been steadily rising.[2] In the 2017-2018 period, the most complaints received by the Commerce Commission related to debt collection, exceeding complaints made about irresponsible lending, disclosure and fees in consumer credit issues.[3]

Submissions made to the June 2018 Discussion Paper over the subsequent consultation period (June to August 2018) provided additional evidence of problems around debt collection. Submissions to that paper came from lenders, the regulator, debt collectors, budget services and others, and almost every submission commented on problems around debt collection. Even lenders stated that debt collectors can be aggressive and behave irresponsibly and illegally.[4]

The only reform targeted at debt collection practices that was recommended by MBIE was to increase the disclosure requirements at the beginning of the debt collection process, where the debt arose from a consumer credit contract. This amendment has been enacted in Credit

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[2] Review of Consumer Credit Regulation, Ministry of Business Innovation and Employment, June 2018, at [112].

[3] The Commerce Commission received 125 complaints about debt collection, 84 complaints about responsible lending, 65 complaints relation to disclosure practices and 54 complaints about fees. See Commerce Commission *Consumer Issues 2017/18* (27 November 2018) at 3.
https://comcom.govt.nz/__data/assets/pdf_file/0017/108161/Consumer-Issues-Report-2017-18.pdf

[4] See DCO Finance, Rapid Loans and the Financial Services Federation submissions to the June 2018 Discussion Paper (n2).

Contracts Legislation Amendment Bill (cl. 42 of the Bill inserts new s. 132A into the Credit Contracts and Consumer Finance Act 2003 (CCCFA)) and is expected to come into effect in late 2021. The new provisions will require all debt collectors (which term includes debt collection agents and debt purchasers), when collecting in relation to a consumer credit debt, to disclose certain key information at the start of the debt collection process, including details of the debt and fees that will be added.[5] The disclosure obligation will arise if the debtor is a natural person, the debt arises from a credit contract, the credit was to be used for personal, domestic or household purposes, and the debt collection is carried out in the course of a business.[6] The obligation to disclose falls on the debt collector.[7]

Notwithstanding that there appeared to be a range of problems with the debt collection process, no other reforms were supported by MBIE. This may have been in part due to the fact that debt collection issues extend beyond consumer credit contracts, and that review was only of consumer credit regulation. Service providers (for example, phone and power companies) engage collection agencies to collect debt and/or sell debt to debt purchasers. MBIE's response may also may have been in part due to the lack of data on the nature and extent of the issues.

Aside from the evidence gathered by MBIE in the course of the consumer credit review, there has been little evidence gathered on the types of debt collection practices in use in New Zealand. In 2021, researchers at Victoria University of Wellington, in association with FinCap,[8] set out to gather evidence by talking to financial mentors around New Zealand. Many of these mentors see clients on a daily basis that are dealing with unmanageable debt. Many clients seen by these mentors are vulnerable consumers due to being on a low income or on a benefit,

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[5] See regulation 23 of the Credit Contracts and Consumer Finance Regulations 2004, which is expected to come into force in late 2021.

[6] Credit Contracts Legislation Amendment Act 2019, s 51. This inserts new s 132A into the Credit Contracts and Consumer Finance Act 2003 and is expected to come into force in late 2021.

[7] Section 132A.

[8] FinCap, formerly the National Building Financial Capability Charitable Trust, is a non-government organisation that acts as the umbrella organization for the approximately 200 free financial mentoring services around New Zealand. See <www.fincap.org.nz>.

lacking good English skills, having mental health issues or being solo parents or (often) a combination of those factors.

Many mentors told us that their clients had experienced conduct that might be considered to amount to harassment.[9] A common form of harassment was persistent phone calls and emails. Sometimes calls had been made to the debtor's workplace. Some mentors reported incidents of bullying or threatening conduct, for example, threatening to take household goods or threatening to tell others such as family or neighbours about the debt.

There is no law in New Zealand that targets conduct by debt collectors. There is also no formal industry self-regulation. In particular, there is no industry body that represents debt collection businesses. There is law in the Fair Trading Act 1986, the Privacy Act 2020 (and the earlier Privacy Act 1993) and the Harassment Act 1997 that can be relevant to conduct of the types referred to above. The Credit Contracts and Consumer Finance Act 2003 contains law relevant to collection of consumer credit debt. Debt purchasers are required to belong to an independent dispute resolution scheme but debt collection agents are not.[10]

Under the Fair Trading Act 1986 (FTA), there is a prohibition on using physical force, harassment or coercion in connection with the payment for goods or services (s 23), which is enforceable against debt collectors who act as agents and debt collectors who purchase debt. Breach of s 23 is not a criminal offence. If the court finds that a person has suffered loss or damage by reason of the conduct, it can make a variety of orders, most relevantly, compensation for the loss or damage.[11] There is no definition of what constitutes harassment

[9] Harassment is not defined for the purposes of the Fair Trading Act 1986. It is defined for the purposes of the Harassment Act 1997. For a discussion of what might amount to harassment in a debt collection context, see: Stace, Debt Collection in New Zealand: Enlivening the Prohibition Against Harassment and Coercion in s 23 of the Fair Trading Act 1986, (2020) 26 NZBLQ 3 (Stace, Debt Collection in New Zealand).

[10] Debt collectors that act as agent for the person owed the money do not have to register on the Financial Service Providers Register, as the business of debt collection is not a 'financial service' under s 5 of the Financial Service Providers (Registration and Dispute Resolution) Act. Debt purchasers legally become the creditor, meaning they are required to register under that Act.

[11] Fair Trading Act 1986, s 43.

or coercion for the purposes of this Act.[12] There has been some regulatory action enforcing the prohibition in the FTA on harassment in the context of debt collection.[13]

The Fair Trading Amendment Bill, which was passed into law in August 2021,[14] introduces a prohibition on unconscionable conduct in trade, which will be enforceable against both debt collection agents and debt purchasers. Breach will give rise to an offence or civil proceedings. It is possible that some of the types of conduct revealed in the research which is the subject of this report could be found to amount to unconscionable conduct. The threshold for unconscionable conduct, based on Australian law (which the prohibition is modelled on)[15] is high.

A person who has been harassed by a stranger or someone else in the community can take action against the person who did the harassing, under the Harassment Act 1997. An application to the District Court under this Act can result in a restraining order against the harasser. Criminal prosecution for harassment is also possible. "Harassment" is defined for the purposes of this Act as engaging in a pattern of behaviour that is directed against that other person, being a pattern of behaviour that includes doing any 'specified act' to the other person on at least 2 separate occasions within a period of 12 months. Specified acts include a wide range of behaviour, such as stalking, abusive phone calls, and threatening letters. This Act is aimed at protection of victims of harassment in particular in a family context, where the victim fears for their safety.

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[12] There is a limited amount of New Zealand case law interpreting s 23. See Stace, Debt Collection in New Zealand, n9, at 16-17.

[13] The only enforcement action by the Commerce Commission that relates directly to the prohibition on harassment or coercion appears to be a warning issued to Twenty Five Station Ltd and its director in relation to conduct that the Commission considered might have amounted to harassment or coercion. In the Commission's view, Mr Campbell and Twenty Five Station Ltd (which traded as Law Debt Collection) engaged in conduct with one person that was also likely to amount to harassment and/or coercion because of the volume, tone and content of the correspondence. See https://comcom.govt.nz/news-and-media/media-releases/2019/debt-collector-warned-for-likely-harassment,-coercion,-misleading-claims

[14] See the Fair Trading Amendment Act 2021.

[15] Stace, Debt Collection in New Zealand, n9, at 22.

All debt collectors (agents and purchasers) are subject to the privacy principles under the Privacy Act 2020 (which replaces the earlier Privacy Act 1993). The principles impose, for example, limits on disclosing personal information about a debtor's affairs to third parties. There has been some regulatory action against debt collectors to enforce privacy laws.[16]

Commonly the agreement between the debtor and creditor (or service provider) will state that if the debt goes to collection, then any fees associated with collection can be added onto the debt. If the debt collection agent charges a commission to collect the debt, that commission commonly gets on-charged to the debtor. Debt purchasers by contrast do not charge a commission, but commonly seek to recover an amount, which might be the whole debt or more likely a proportion of the debt, that will cover the amount paid for the debt and costs associated with collection. Sometimes the debt collector (agent or purchaser) will also charge fees for services associated with the debt collection process (e.g. a fee for the debtor making a payment or for sending the debtor a letter) and then charge that to the debtor (by adding that onto the debt).

There is law in the Credit Contracts and Consumer Finance Act 2003 (CCCFA) that is relevant to the issue of fees and charges added to a debt. This Act only applies to consumer credit debt, which is just one type of the debt commonly reported as being seen by mentors. Under s 41 of the CCCFA, the contract must not provide for a credit fee or a default fee that is unreasonable. A default fee is a fee or charge payable on a breach of a credit contract by a debtor or on the enforcement of a credit contract by a creditor, excluding default interest charges. The Commerce Commission takes the view that debt collection costs that are passed onto the

[16] In 2016, the Privacy Commissioner investigated and reported on a breach of principle 8 of the information privacy principles by a debt collection agency, Law Debt. The facts involved a disputed debt with a childcare centre. When contacted by Law Debt, the complainant informed Law Debt that the debt was disputed. Law Debt nonetheless continued to pursue him and eventually referred the debt to a credit reporting agency. The Privacy Commissioner found that Law Debt had breached principle 8 of s 6 because Law Debt did not take reasonable steps to check that the information regarding the debt was accurate, up to date, and not misleading before using it. See Privacy Commission "Case note 279069 [2016] NZ PrivCmr 12: Debt collector Law Debt fails to check accuracy of information before use" (5 December 2016).

borrower are default fees.[17] What is "unreasonable" in this context has been considered by the Supreme Court.[18] High cost loans have additional rules around fees.[19]

If the fees or manner in which a party is exercising their rights under a consumer credit contract is considered by a court to be oppressive, there are powers to reopen the contract, under Part 5 of the CCCFA.

In relation to the use of attachment orders, commonly these will be obtained by the creditor or debt collector through the process provided for under the District Court Act 2016.[20] Once a judgment has been obtained against a debtor, the judgment creditor (which could be the original lender (or service provider) or a person who has purchased the debt) can apply to the District Court for an attachment order against the debtor's wages or benefit. There is a fee for this application. The judgment creditor must have the debtor's employment details (or knowledge that the debtor is a beneficiary) in order to make this application. No more than 40% of the debtor's net income (which could be a benefit) can be deducted under one attachment order.[21] Debtors can apply to the Court for a variation in the amount of the attachment order[22] and there is no charge for this application. An application for an attachment order must be served on the debtor.

The data obtained in the research the subject of this report suggested that the use of attachment orders by creditors and debt purchasers was common. Often the debtor would not be aware that the judgment creditor (for example, the debt purchaser) was obtaining an attachment order until after it had been made. It would appear that on occasion the debtor would not have received any of the official notifications of the court process and on other

[17] See the Commission's Consumer Credit Fees Guidelines at [153]: Where a lender outsources the collection of debt or the enforcement of a loan, almost all collection and enforcement costs passed on to the borrower are default fees and are subject to sections 44A and 41. Where the loan is assigned to a collection agency or other third party, the assignee becomes the creditor, and all fees it charges are subject to sections 44A and 41. https://comcom.govt.nz/__data/assets/pdf_file/0024/90078/Consumer-credit-fees-guidelines-June-2017.pdf
[18] *Sportzone Motorcycles Limited (in liquidation) v Commerce Commission* [2016] NZSC 53.
[19] See Credit Contracts and Consumer Finance Act 2003, subpart 6A.
[20] See District Court Act 2016, ss 154-162. The High Court Rules also allow for the making of attachment orders – see Part 17 of the High Court Rules.
[21] District Court Act 2016, s 157.
[22] District Court Act 2016, s 161.

occasions the debtor would fail to engage with the court process. The reasons for failing to engage included feeling threatened, feeling afraid as they know they have defaulted, not understanding the process and feeling overwhelmed.

## Methodology

In early 2021, Victoria University in association with FinCap invited every financial mentoring service under the FinCap umbrella, plus other organisations that offer a free financial mentoring service, to participate in this research. Two organisations that offer debt management services for a fee were also invited to participate. All those who responded to the invitation to participate were either interviewed or provided written responses to the research questions.

31 interviews were then conducted by Victoria University researchers and a further 12 mentors provided written responses to the research questions. The data produced by these responses was then analysed and is recorded in this report.

## The role of the research participants

There were 31 interviews and 12 self-complete written responses. While some mentors saw many clients with unmanageable debt, some dealt with only a handful of debt clients, within the context of many other welfare needs:

> They are different clients. They are clients that are working through their debts, housing, a lot of things with Work and Income, benefits and a whole lot of stuff that these people need. A lot of them are homeless (T17).

A number of the mentors described the agencies they worked in and services they offered in relation to debt:

> Every one of them that goes to a debt collector has hassles, every one... The hassles are in varying degrees. It would be more than helpful if once it goes to a budget service the creditor or the agency has to deal with the budget services. It's a lot of pressure off the debtor and it's helpful for us to get a resolution. Rather than back to me, to the client, back to me and back and forth and it goes nowhere (T11).

A number of the mentors have access to community loans, often with no interest, so that clients can re-finance on a better basis. But before that, they often:

> …negotiate with the creditors. Negotiate if they can reduce the debts, the settlement balance. That is something I have to work on. If we can get it down, and then we put it through the micro tangata loans, they will approve it and then come back and say that loan will go through (T17).

The same agency can also access Whanau Direct, a service that offers between $500 and $1000 in debt mitigation for some clients.

Some deal with urgent situations such as the impending repossession of a car:

> I guess the hardest one for clients to deal with is the repossession of cars. That's probably the hardest, when the threat is to repossess the car, you've got to jump in pretty quickly and try and sort that out (T16).

A very important role of the mentor is negotiation of debt. The aim is first to try to get excess fees and interest removed from a debt, to bring it down, where possible, to the original level. Where debt has been on-sold, there is the opportunity to settle for much less:

> Now, as you would well know, a debt purchaser has actually paid a lot less to buy the debt in many cases than face value. So somebody bought a $600 debt and are trying to chase $1500. If we can say to them, "look we'll give you the $600 and call it quits", they are very likely to say "all right". Because it only cost them $400, they're making some money and they get the money tomorrow. Why wouldn't you? (T19).

This mentor noted that debt collectors tend to be reasonable to deal with, even though they may give debtors a hard time:

> And I suspect in fact that the reasonableness is the real them, the grumpiness is just the exasperation at the clients whom they have tried and tried and they get the run around and they get lies and all sorts of things (T19).

One mentor noted a significant shift from around 3-4 year ago. At that time, many of the debt collectors would be 'rude' and 'pushy' on the phone. Now, "I think what the shift has been is actually the financial mentors are now working alongside the collection agencies" (T22). An example was given of where a debtor had other issues came up that needed to be addressed, and the collector might agree to suspend repayments for a period of one to three months.

Another mentor noted that there still could be more collaboration between debt collectors and financial mentoring services:

> Some do engage with us really well and work with us really well and others think no we're just going to take this much money and you're going to pay it type attitude. Rather than well why don't you do to a session with a budget advisor and see how this sits. I'd rather get $10 a week out of them than try get $50 and have them miss payments and stuff. They still obviously want their money in a set amount of time but trying to negotiate. They don't tell people about our services, before it even gets to debt collection the creditor themselves don't tell people about our services when they're missing payments and stuff. And people do say oh I wish I had known about this years ago, I would have come years ago and got it sorted (T4).

The mentors interviewed for this project play a key role in resolving debt, by working with clients and also with debt collectors. It is not a perfect relationship (T8) but when it works well, the debt gets repaid, injustices get resolved and clients get their financial lives back on track.

## Number of clients

In looking at the number of clients, quite a number of factors affect this. Some mentors work in depth within individual clients over a long period of time, and can only take a small number of new clients each month:

> On average, I have 2 new clients booked in each month. Some of that depends.
> Two a month, how many is that a year? 24. So out of that, of course, there is a long waiting list through my centre. So some clients are waiting up to three months, so obviously at times if I can't get a client in, I have to rebook (T21).

Others have far more clients. One mentor (T20) noted that over the past year she had seen over 50 clients: "60% of these clients I saw 1 to 3 times; 30% I saw 4-7 times and 10% I have seen over 8 times each. I normally have 20 to 30 clients on the go at any one time".

Some have much larger numbers: "I work five days a week, so that means approximately 20 clients a week, but what happens is that most of the clients are repeat clients. So if I look at new clients, it is about 300 new clients a year" (T24).

Another service gets around 2,000 hits per month on its website, and around 500 progress to face to face visits (T26). Yet another "we're on like 909 clients" (T27). This person usually personally deals with 15-16 clients per month, but noted that recently in one month "I had 33-34 clients".

These differences in figures reflected different services, different roles and different outcomes. However, all participants worked to resolve client debt on an ongoing basis.

**Table 1. New clients over a 12-month period**

| Number new clients in past year | No. cases |
|---|---|
| Below 20 | 2 |
| 21-50 | 7 |
| 51-100 | 9 |
| 101-200 | 4 |
| 201-500 | 8 |
| More than 500 | 5 |
| Unknown | 2 |
| Not stated | 7 |

The table is a rough estimate because some did not say how many clients were new. Some noted that some clients are on the books a long time, while others are 'recurring'. "Sometimes clients only come once, sometimes twice, some can come for a year".

## Clients presenting with debt issues

Participants were asked how many of their clients presented with debt collection issues. Estimates ranged from 20% to 96%, depending on the services providers offer and also the clientele. It is often hard to know how much debt is being carried by clients. Sometimes clients do not disclose all their debt, or are not aware of it all. Some agencies have a procedure for ensuring that client debt can be assessed up front, to avoid surprises at a later date:

> Most times. Because the procedure is they come to us and we ask 'have you any other debt?'. They say yeah it's somewhere and we sent out a blanket email with a privacy waiver and say is there any debt against this person's name. We send about 15 emails, and get about 9-10 come back saying yes (T10).

Another mentor summed up the general view: "I would say the majority of them do have a lot of debt" (T17). Another noted that around 90% of clients have problems related to debt and that "Maybe 50% of them have debts that are with collections, actually probably more like 60%." (T18). Responses outlined considerable "loan stress" (T28) among clients:

> And they have problems as a result, quite often meaning they come because… well, for example: one woman I remember coming into the office and she was absolutely desperate because she couldn't get any electricity. She couldn't get any electricity because she'd got a bad debt, a bad credit rating, and the electricity providers are all doing this now… even though she had… well what had happened in her case was: she had a bad credit rating so her mother-in-law said "well you can put it in my name". But then she had a falling out with her mother-in-law and her mother-in-law said "no you can't". So she then got disconnected, and no other electricity provider would provide her with electricity. It was quite desperate. So there are problems that a lot of people have with debt, but I understand your research is much more finely tuned to debt collection practices, so that's probably all irrelevant to you (T30).

While many of the mentors noted that most have problems with debt collection, some have noted a change post-Covid: "and now a lot of people are more aware of their options and stuff…. or…. whether just not as many people are being granted loans that are putting them under pressure anymore?" (T28).

That person commented that they used to have a lot of people coming who had debt issues, but now they are "wanting to buy their first home". Others, however, have seen an increase in debt post-Covid due to a loss of employment, especially in areas affected by a loss of tourism (T7).

One participant noted there were different kinds of clientele with different frequency of seeking assistance:

> If we include those clients that are being chased for a debt by the organisation that provided the loan or service, as well as those being chased by a debt collector, then most of the time. If we only look at persons being chased by a debt collector, then sometimes (W11).

Finally, one mentor noted that many clients do have interactions with debt collection agencies, but the mentor is not often involved: "This is not to say that issues do not arise for clients but that we are not always informed of them".

## Need for advocacy

Advocacy is a really important role that financial mentors play. The need for advocacy comes from at least three sources:

1. Clients feel disempowered (T15), often because they have no solution to their debt and badly need one, or because they are unused to making arguments on their own behalf, or because they are scared and frightened both by the debt and the tactics that debt collectors use to engage with them, or for any number of other reasons (T7, T11 and others).

2. Financial mentors hold detailed expert knowledge about the law, engaging with debt collectors, how debt collectors operate, how to settle debt and procedural issues

relating to things such as Work and Income repayments, court and attachment orders and other debt issues (T22).

3. Finally, mentors have the ability to mediate between parties to get a settlement that works for all. In particular, they can dissipate the heat that often emerges in conflicts between clients and debt collectors, often because of the tactics that collectors use but also because clients can get scared and angry. Mentors have tools at their disposal to assist debt repayment options and are a source of financial education for clients (T24, T3).

Some think there is a strong argument for far more regulation of the debt industry to highlight issues with debt collectors but also the role of financial mentors in resolving problems. But there appears to be resistance to such a view from some collectors:

> We have just no visibility. It's a real concern for me that there's no umbrella group. You can't go to an industry body which is there to represent the debt industry, and so if there's rogue operators, they might do something to maintain the reputation. But there isn't one, so it's a free for all. No one really knows what's happening. There's no guidelines of how a debt collector should operate. A lot of the big ones are Australian-owned and they utilise the same processes that they use in Australia and they apply those guidelines. They'll say, you know, 'We don't need any industry body in New Zealand' or, 'We don't need any guidelines because we follow the practices our parent company does in Australia and they're both acceptable.' (T25).

Many mentors welcomed the current research and in particular a focus on fixing some of the endemic issues in debt collection in New Zealand. They note that the 2020 law changes “have been helpful” (W11), but there is still a way to go in fixing the industry.

## Debt Collection – The Industry

Debt collection would appear to be a thriving industry, with many companies offering agency collection services to creditors and service providers. It makes sense in many cases for organisations, large or small, to contract out debt collection, instead of hiring their own collections staff in a credit control environment. One participant noted: "…there seems to be quite a few of them now, there are debt collectors who collect debt on behalf of firms and we also have debt collecting agents who buy debt" (T10).

Some debt collection agents advertise that they only charge clients on debt that is recovered. As a result, these collection agents are under pressure to get the debt paid so that they can earn their fees from the business clients: "You have to see it from their point of view, they are paid when a certain amount is paid to the creditor but a lot of their pay comes from the collection fee"(T10).

They also, however, charge fees to debtors. One mentor noted:

> With most of my clients, the debt that they come to us with is far greater than the debt they started with, often because of all the fees and the interest (T23).

### Debt collection fees

Collection agents are people whose job it is to collect payments on a debt owed to a creditor or service provider. In order to make their living doing this work, they will generally add fees:

> Commonly the creditor's contract will include a clause that says that any costs incurred in collecting the debt will be charged to the debtor. But this is not full disclosure as required by the CCCFA as it does not disclose the amount of debt collection fees that may become payable by the debtor (W12).

Fees can be very high: “anything from 18-40% of the debt” (T10); “It used to be about 25%, but I was speaking with a bank yesterday and they said theirs is 35% now” (T14); “their fees of $950” (flat fee) (T17); “all these extra fees – they pay for a letter, they pay even to close an account, they have to pay to close the account”.

One participant noted that there appeared to be a “totally free market as to what people charge, so there’s a huge variation with fees” (T25).

Fees are cumulative and are added throughout the life of the debt:

> Yes, and again it’s a matter of asking for a full breakdown of the debt, getting them to send through all the fees and charges they have added on. Weighing up what is fair and what is not, based on the interest they are charging (T22).

Additional fees include processing fees, contact fees, mailing fees, administration, processing and, in one case, a debt purchaser charged “a fee for the debt to be in transit” (T22). When this was queried, the mentor was informed that only a certain amount of debt can be purchased at a time, so debts might stay in transit for a number of weeks, incurring additional fees.

Participants queried the lack of rules around fees that can be charged. There is a prohibition on unreasonable fees on contracts, but “the question mark is whether that applies once a debt has gone to collection” (T25).

In addition to fees are penalties, which might be charged when a person fails to reach the expected or agreed payment.  One mentor noted:

> I had a client – I can't give you the exact figures – but let's say she was supposed to pay $100, she could only pay $50, so even though she was paying in every week, she was being charged $75 for not having made the agreed charge. So even though she was still making contribution, she was being charged more than the contribution in fees and penalties (T23).

This kind of situation is made worse when clients are pressured into agreeing to pay more than they can afford.

## Interest

Participants in this study had a range of views over whether interest can continue to be charged on debts under collection. Where the debt is still owned by the original creditor or provider, and the debt collection agency has been contracted, interest is likely to continue to be charged:

> As far as I know, you can charge what you like in terms of debt collection fees, and you can also continue to apply the interest in the underlying contract (T25).

However, participants point out that continuing to charge interest, plus adding collection fees, may be detrimental to getting the debt repaid:

> A concern is loans and debts that are still interest bearing even after going to collections and the lack of willingness to amend this. This to me outlines a real lack of understanding of the financial hardship many people face. If someone is already struggling to pay at the point that the debt is transferred to collections then continual charges are not going change this (W9).

Another person noted that continuing to charge interest "is compounding the problem, not solving it" (T11).

Where a debt has been on-sold to a debt purchaser, the new owners of the debt will commonly attempt to collect the original amount of debt owed but may settle for less. The ability of the debt purchaser to continue to add interest was unclear to mentors, and this is discussed in the next section.

## Debt purchase

One category of debt collectors mentioned by a number of participants is those that purchase the debt from creditors and service providers at a discounted rate. Once a debt is purchased, the debt is then legally owed to the debt purchaser. Little is known about specific debt purchase arrangements, as these are highly commercially sensitive. For example, if company A purchased debt for ten cents in the dollar from company B, it would not want this known, as debtors and mentors would try and settle for a much lower repayment rate than if the debt was still at full value.

Collection fees can still be added to the debt, but one mentor told us that in their view purchasers cannot add interest onto such debt (T26). Debts can be sold more than once, with fees added so that the total debt grows further (W11). Some debtors are confused about who owns the debt. One participant (W12) noted that an amount of $8,500 borrowed in 2015, had been re-assigned and sold and by May 2021 had reached $32,380. That mentor believed that both fees and interest continued to be added by the new debt owner:

> Interest on the debt should stop once the debt is sold. While legally they step into the shoes of the original creditor, they are not really a creditor themselves. They are a debt collector (W12).

> Some companies don't charge fees. Some debt buyers don't charge a dollar in fees, they just collect on the face value because they've paid five or 10 cents in the dollar. So if they can collect, they will do that. Whereas there's other companies that charge 25 percent, 30 percent as a debt collection fee. Again, it's a free market (T25).

Another uncertainty around the sale of debt is the status of the debt once ownership has passed to the new entity:

> The sale of debt is quite harsh, I think, and two, actually, that came up last week, two debts had been sold and it was unsure whether they were still secured or not. Because

> obviously, if I'm a creditor and I've got a secured debt, well, if you're not going to pay up, I'm going to repossess your stuff because that's what a secured loan is for - but they've sold the debt on. And it's like, well, you can't tell me that it's now secured with you because I signed the contract with them over there as secured. So it's whether, you know, can a debt collector take on the security, which I don't think's fair (T26).

Some mentors noted that the entities that purchase debt can be quite reasonable in arranging settlements without additional costs:

> The debt collectors who have bought the debt are actually quite reasonable they just want a portion of what they paid so quite often they're happy to try to negotiate, but once again, they want that full and final payment but then our guys, if they can pay it will be like $5 or $10 a week (T3).

None of the mentors spoken to had a detailed knowledge of how the debt purchase market worked in Aotearoa. From the industry perspective, this is a secret that must be kept, as repayment offers would collapse to low levels if it were known, for example, that the debt purchase was for a few cents in the dollar.

## A lack of clarity re fees and interest

This leads to a further point. Even among the mentors interviewed for this project, there was a lack of clarity over the rules in relation to the treatment of debt by collection agents and those purchasing debt. The lack of certainty is summed up in the quote below, which reflects a lack of knowledge of the rules surrounding both fees and interest payments:

> I think fees are a grey area because I've seen some debt collectors add, like, 35 percent onto the debt, and it's always unclear as to whether interest is still, you know, compounded on the debt or has that stopped. My understanding is if you sell the debt, then there is no interest or fees, except fees that you would have in the normal day-to-day running of your business kind of thing. Like it might be you have an admin set-

up fee or something like that, but I don't think they can just add fees. I'm sure that's in there somewhere. I did get told by a debt collector that because he purchased the debt, he couldn't add interest on to it (T25).

It is hard to imagine that mentors can do effective work with their clients when their own knowledge of what is allowed and how the industry works is so unclear. Is this a problem of a lack of regulation, or of a lack of knowledge of regulations?[23]

In the face of such uncertainty, the role of the mentor is to engage with the original provider (creditor or service provider), debt collection agency or debt purchaser and try and provide a pragmatic and useful way forward. Some mentors, although not all, expressed the view that debt collectors and purchasers are happy to work towards settlement:

> Once we start engaging and say "we have a plan here, we fully acknowledge the client is behind, but we have a plan" most creditors say, I don't want to be too gushy so I'll use the word delighted guardedly, "thank goodness you are doing something about it, we are going to wipe the interest, wipe the fees" (T19).

The potential jeopardy for mentors is a lack of consistency within the industry. If there were well-known and agreed approaches, then some certainty could be offered. But, in effect, every engagement with a debt collector or purchaser is a new one.

The major problem in relation to debt collection is that lack of regulation and a (possibly deliberate) lack of certainty within and across the industry. The goal of the debt collection industry is to extract as much as possible of the debt from debtors using a range of methods, and eschewing consistency (W12). There is a feeling that the industry does not want debtors and mentors to know a particular 'formula' for debt repayment, as this might disadvantage

[23] The new disclosure requirements on debt collectors in an amendment to the Credit Contracts and Consumer Finance Act 2003, expected to come into effect late in 2021, which will require certain disclosures at the start of the debt collection process if the debt was created by a consumer credit contract, will be helpful in this regard.

debt collectors by having them settle for lesser repayments. Further, there is no monitor, at least for debt collection agents:[24]

> There is no dispute resolution services available for debt collections, so they are allowed to continue this behaviour with no consequences!!! (W1).

### The importance of mentors in dealing with debt collectors

Debtors have very many difficulties in dealing with debt collection agencies and debt purchasers (referred to below together as debt collectors). There are many reasons for this. Some relate to the conduct of debt collectors, which will be discussed in the next section of this report. Other reasons include debtors being unable to express their own needs or negotiate settlements that work for them. There is also a power imbalance in the relationship that affects communication. One mentor spoke of the particular behaviour that some debt collectors use that replaces negotiation with bullying and threats:

> On many occasions I have coached a client on how to speak to a debt collector. And they've made a call, in my presence, on speakerphone. So I can hear first-hand how the debt collectors speak to the client, and they're often really rude and threatening. If I speak up and say: "let me introduce myself, I'm [name of mentor] and I'm this person's financial mentor" their attitude completely changes and they become much more conciliatory and reasonable. So that's one thing. I don't know how you change it, but this is the sort of people they are. I think there needs to be a well-publicised complaints procedure within all debt collection organisations, and somewhere to take it to if you don't get any joy (T30).

Financial mentors play an important role in improving communication that can lead to settlement of debts on good terms. One explained:

[24] Debt purchasers are required to belong to a dispute resolution scheme as they legally become the 'creditor' in relation to consumer credit debt.

> Other than that, some of the debt collectors, clients have had issues where they have tried to deal with the matter themselves and the debt collection agent won't negotiate with them or won't discuss it or reduce the cost or anything like that but when we get involved and put them on speaker phone with the client. Nine times out of 10 the client will say 'how do you do that because they wouldn't even talk to me' (T8).

### A lack of standards in the profession

A small number of participants noted the need for professional standards in the industry:

> Each debt collection agency is different in how they handle it, there's no standard and in my view there should be a standard of conduct and as I mentioned before if a budgeting service is involved they should be dealing with the budgeting service rather than the client and that would be a faster outcome and less hassle for the debtor than possibly being badgered by the debt collection agency (T11).

Another noted the way in which problems manifested due to a lack of standards:

> Yes, very much so. They [debt collectors] are a necessary evil, but their behaviour can be quite poor. Some of them are good, and some of them are terrible, and there is so many of them. This is the other thing. Because there are so many of them, and some of them are subsidiaries of other ones, they are connected. But sometimes the debt keeps appearing in different names, and it is really complicated for them [the clients], they don't really understand (T18).

### Administrative inefficiency in debt collection

There are no set standards on how debt collection agencies (or purchasers) should do their business, and often it appears there are few clear procedures either. This can come at quite a cost to clients, who may be subject to arbitrary rules, poor treatment and punitive attitudes.

> Yeah, quite often the credit agencies, they pass their cases around different staff, and depending on the amount of information they log into the computer, there is often a follow-up again, and again with the person we have been working with (T12).

This section has examined the role of debt collectors from the point of view of financial mentors. The next section examines the conduct of debt collectors in their attempts to collect debt payments.

## The conduct of debt collectors

In order to do their business, debt collectors need to contact and make arrangements with debtors, deal with issues that arise such as non-repayment for a variety of issues and keep the debtor informed of how debt repayment is progressing. Debtors report numerous problems with such interactions. They may feel overwhelmed or intimidated by these contacts, whether that is an intended effect or not. There is, at least, a power imbalance in such contacts, and they can come to feel oppressive. The most common way of contacting debtors is via phone, text or email, which is covered in the next section. It was not apparent that there were different standards of behaviour as between debt collection agents and debt purchasers.

### Phone, text or email contact

In many cases, calls are used to "put pressure on" (T11) clients. "They ring the clients every single day and they text them, even if we are the advisors, the person who can talk on their behalf. They insist to contact them" (T13).

Pressure can be put on by both the sheer number of calls, and also by calling at strategic times, such as in the following case:

> Probably three years ago he started paying regularly $80 a week and he had been paying quite regularly every week and had not missed a payment, and then all of a sudden, he was starting to get phone calls from the debt collector asking him to increase his payments, asking him if he had assets he could sell to pay faster and they were harassing him at work, even though he had said to them he worked during the day, can you please not ring me during working hours. Initially, they had said yes, then they started ringing him 5-10 times a day. A lot (T18).

Calls and texts can also be combined with other approaches: “It was multiple texting, and phone calling and turning up at my client's place, which scared her. That was the issue. She was frightened “(T25).

Many mentors believe that calls should be limited to a reasonable number: “Yeah, phoning them like six times a day. Why? You spoke to them once – they’ve said no, so don't ring them again, you know… I mean, geez, it should only be one call a week I would have thought” (T26).

Other examples were given.

> Calling 4/5 times a day - Because you are working with a budgeter, we can’t help you. Aggressive language and tone (W10)
>
> Debtors being called, messaged and emailed 10-12 times a day by the same debt collector. Ignoring the fact that a repayment agreement has been reached in relation to this debtor but continuing to call and make demands for payment (W12).
>
> Repeated phone calls by collection agency for seven-year-old debts. Phone calls from collection agency triggered after request for a client credit-file has been lodged (W4).

The tactic of multiple phone calls appears to be used very frequently by debt collectors. From these interviews, there are significant question marks over whether it is a successful tactic. A common effect for mentors is “I can’t get through to my clients as they will no longer take phone calls from unknown numbers” (T18), which seems counterproductive.

As long as the calls are confined to the person, however, they can be ignored or managed. But this becomes harder when debt collectors start targeting workplaces or family members.

### Contact at work or to family

The pressure is made worse when debt collectors start "ringing up at work" (T11). A number of mentors mentioned that some debt collectors take the next step when continuing calls don't work:

> Yes, continual phone calls, actually finding out where they're working, ringing the office and asking for them (T14).

Again, it is difficult to know what the intention is but it can cause particular problems for clients, particularly when they are not in positions where they would normally be required to answer phones:

> I did recall a client that was rung at their work about their debt by a debt collection company. They were very humiliated by this especially as they were a carer at a rest home and it wasn't in a lunch break. Somehow, they had found out who she was working for as the call came through the receptionist (T15).

If the pressure of such calls is not enough, they may be accompanied by what amounts to threats:

> One of the most threatening I have seen which came up in the last few months, was repeated calls at work, where you are going either to a personal phone number, or actually in this case, actually through the main work number. And in that, threatening to attend the workplace and have those conversations about debt collection in the workplace, in front of colleagues and bosses etc (T23).

Another mentor mentioned that calls to a client's workplace were a threat to her employment and, as a result, were impacting on her wellbeing:

> I currently have a client who is feeling harassed as one agency is calling her place of work (rather than her cell phone) to try and make contact with her. She feels that this is potentially a threat to her employment and is impacting on her mental wellbeing (W9).

As well as calls to workplaces, some mentors report “constant phone calls to families/ individuals causing stress and anxiety” (W5). Again, such tactics appear counterproductive to getting debts paid, but are relatively widely used within the industry.

## The tone of calls

The two sections above examined the frequency and location of calls received. Another aspect mentioned by a number of mentors was the content of calls, including the tone of callers and what messages are being conveyed. The following example shows how the tone of the call, mixed with complex messages, pushes debtors into making repayment commitments that they cannot keep:

> Some shout at them on the phone. Some of the debt collection agents when you ask for hardship, their hardship documents are like 10 pages and you think come on this isn't necessary. It does stress people tremendously. It's understandable. The biggest thing is you get the easy money and unfortunately, you’ve got to pay it back. So it does cause tremendous stress on the client. Then they’ll sign for anything, yes, I can pay so much just to get them off the phone, without even looking at a budget or thinking how they are going to pay (T10).

Mentors noted that harassment over the phone was not unusual, along with a number of other practices, all of which combine to increase pressure on debtors:

> Harassment over the phone, forcing/encouraging unrealistic payment arrangements, threatening court action/repossession, imitating a bailiff, pressuring people to sign redirection forms or direct debit forms, calling people in their workplace, tracking them over social media, collection costs are not standardised and some accounts are interest bearing (W1).

A mentor noticed that the same method was being used with several of her clients who had debts with one agency:

> One debt collection company was over aggressive in their follow up, bullying and threatening calls. This particular debt collection was calling three separate clients I was working with, 3-4 times a week threatening to take legal action (W2).

At times, harassment as a method appears out of step with the nature of the debt:

> I have a client with a loan secured by a car. She was served with aggressive car repossession action when arrears only $600 and after a job loss. They wanted the arrears paid within five weeks and wouldn't consider the hardship twice (client completed the application herself and they wouldn’t let me correct it). A lot of harassments with multiple calls per day/ night. Wanting large repayments when no food budget for the family (W6).

Some debt collectors act as if they are above the law. One said to a client: ‘I’m calling from Australia and I don’t have to respect New Zealand law’. (T30) In order to force compliance, some debt collectors are prepared to pass themselves off as bailiffs or make threats they have no intention of carrying out. One participant noted there was also a level of illegal debt collection in the community, which remains somewhat hidden:

> But illegal debt collectors of course, there is the bash, there is all sorts of other things going on. But we are limited in what we can do with illegal debt collectors, I'm talking particularly the gangs, drug debts, things like that (T19).

## Contact at door

Phone calls can put pressure on clients but home visits are worse in terms of potential intimidation. One mentor noted that despite tighter regulations around debt collectors, home visits are still organised by some. The sole purpose of such visits would seem to be to intimidate the debtor into paying their debt:

> When there is a home visit there can often be intimidation behaviour. That intimidation behaviour can often just be a big burly Pacifica guy just turning up or somebody with visible patch markings. There is one debt collection agency out there, I can't remember which one it is, and they often turn up in full gear as if they're like police. They have vests and walkie talkies and the full gear. Some clients have said they have a real shock when they open the door because at first they thought it was something else. So, sometimes they don’t have to actually do anything. Many times because the clients are already emotional and in a vulnerable state they automatically feel intimidated because someone has knocked on their door (T8).

Some debt collectors roster home visits on a regular basis, using out-of-town staff:

> Twice a year, we, [town] get visited from a North Island debt collection company and the company door knocks all their debtors and this guy is absolutely huge, he's built like a brick shit house, he's wearing stab proof vest and he's got a camera. And it’s the intimidation. If someone opens the door and sees him there, they're going to say, "oh yeah I can pay you $50 a week". So, my argument is if he's got a stab proof vest and a camera why does he need to be 7-foot-wide and half that sideways? (T3).

One mentor explained that it was not just the look of the person, but the language they use, which can be highly directive: “And they do talk in a manner which is very direct and to the point and clients don’t feel that they can negotiate. It's more, this is what you need to do, this is what you are doing and they agree” (T8).

The intimidation can feel worse when there are young children in the house: “…people quite often sign because it’s scary, or they have young children around and sign whatever is presented to them (even if they can’t afford it) to make the people go away without reading it properly. Also they tend to scare people with court action which is not usually the truth (W1).

> The harassment angle doesn't come up a lot. I mean, of course people get emailed and things, but there's not many debt collection companies that go door to door. It's a lot easier to cope with phone calls or emails than it is to cope with some big guy coming to your door and scaring you (T25).

Other forms of face to face engagement occur. One mentor (W12) gave several examples: speaking to the debtor's neighbour, contact non-parties (such as a brother) for money and information; or "sitting outside the debtor's home until the debtor goes out, then breaking in and seizing goods". Another debtor had experienced a debt collector parked outside the home for "prolonged periods" (W4). One person was "physically pursued at her hospitality job" (T30).

In two cases men arrived at the door of the debtor demanding payment. The story of one of them is told by the mentor:

> She came with the problem of short term debt: she'd been to these high cost lenders that are now being reined in, and she'd gone out and got four loans. And it was only when I said to her "what did you actually get that money out for?" that she told me the story. And she said she was doorstopped by two men who came up from Auckland. No - it started with a phone call out of the blue, then there was this person on the doorstep - two of them - and they threatened her with court action, confiscation of goods, up to the value of an old joint debt that she had with a previous partner who she had left 3 years ago in the clothes she stood up in, because she was being abused. So, terrified, and they wanted $5800, and having got the short-term loans put in her bank they then went to the bank with her and took the money off her, and then made her sign a document but they didn't give her a copy. They said they'd put a copy in the post, stamped by the courts saying paid in full, she never heard from them again (T30).

And in another case, where arrangements for payment had already been made:

> One case, she was actually in a debt repayment order and the debt collector knocked on her door. These are her words, not mine: "he put his foot in the door until I'd signed the direct debit form." Obviously, that was not right anyway, because that debt was already under a debt repayment order and so shouldn't have even happened. I've had instances and I can't give you names not because I'm trying to keep them to myself - I just can't recall them. There's been that many over the years. I've had a case where the client's family and friends have been contacted (T26).

Another reason for home visits is repossession, and especially of a car. In one case, the mentor instructed her client on what to say and do if a person came to repossess her car. The person arrived shortly afterwards, and the client followed the instructions:

> And so she was then able to – she struggled – but she was able to get them to a point where they had to call our head office to confirm that we were actually working with this client, working with this family. But they clamped the car, and they were ready to tow the car away. However, because we were kind of intervening for her, acting on her behalf, they reneged on that and she was able to keep the car, and we were able to help her with that debt and clear the debt with that particular car company (T21).

The general view among research participants appeared to be that home visits of this kind are used by only a small number of agencies. Some may not see it as productive, and it may be uneconomic to visit debtors in small towns all around the country (T19). When used, however, this kind of approach can be particularly frightening and can make clients enter into all sorts of unsustainable commitments.

### Bombardment

Clients can find themselves bombarded with contacts from debt collectors, described as "a continual bombardment which is very hard for people to take" (T16). One reason for this is where there is more than one overdue debt, which is not unusual for the clients seen by the many mentors:

> Yes, because what happens, people are often being just bombarded with stuff that comes through their phone and also stuff through emails. They could come every week. Through the phone it could be a number of times a day. People, particularly this woman that I am working with, she has 12 debts in debt collection. She was being harassed all the time, either through her phone, or she did have 2 email addresses but some were not going to her current address. She was feeling overwhelmed and bombarded (T1).

But people with only one debt can also find themselves bombarded with contacts:

> Like, one of the clients down in [name of place], this guy came to the door and was dressed in army… really demanding, like, "you need to pay this money, otherwise…" and they keep going to the client's house until they sort something out with Work and Income. Also, one of the clients I had a few years ago received constant phone calls, even in the evenings, demanding payments. And letters saying they'll take the person to the courts and he'll end up paying more money and more fees. And they never stopped ringing and ringing until I rang them and they said sorry on the phone.... Then finally someone came into our conversation and they were apologising and they say it's automatic to go onto their emails or their phones or for these letters to keep going to the clients (T27).

> Not knowing their rights and being constantly hassled. I don't know how some people actually survive the barrage of text and emails and phone calls and letters in the post. But some people don't survive it which is why they come to us in tears and end up going insolvent just so they don't have that pressure (T3).

The harassment can often include threats, even though they may be untrue:

> Quite often people come in because they've been scared basically, scared into coming to see us. Sometimes just even the fact that collectors say they're going to sell their goods. Or they're scared that the debt collectors are going to come and sell all their household goods. So, they come see us and that's when I explain they can't come in and sell your goods unless that is on the contract. The debt collectors know that, but I think they use it as a bully tactic to get them to engage or to get some money out of them. But of course, people are scared they're going to lose their washing machine and fridge and so on (T4).

One mentor (W12) listed a range of aspects of harassment including:

> Yes. The types of harassment that have been evident from discussions with clients are:
>
> 1. Debt collector showing up at the debtor's workplace.
> 2. Debt collector talking to the employer and disclosing information to the debtor's employer about the debt.
> 3. Debt collector lying to the debtor e.g. saying if a certain amount is not paid by a certain time then debt collector will repossess goods when they have no legal basis to do so.
> 4. Coercive action such as threatening to continue to harass the debtor unless the debtor agrees to certain terms of repayment (especially when an overseas call centre is involved in the debt collection process).

It is not only the quantity of contacts that are seen as bombardment, but also types of contact. Contact via social media can be difficult for the recipients, or phone calls in the evening (after 9pm) and on weekends. (T20) Contacts that include threats, say of repossession, can also cause a burden. Facebook stalking was mentioned by several mentors (T3).

Sometimes mentors found themselves the recipient of bombardment tactics, when they were the contact for their client's debt:

> For one particular collection agency at the moment, they have my email address, my phone number. The other day, they called me, they texted me, then they emailed me. I was busy with a client so couldn't work with them, so then they rang the office and asked for the manager. It can be like five times, just one after the other. They don't give you an opportunity of thinking maybe they'll get back to me (T14).

The same mentor thought this might be part of a quota system, whereby workers are required to make a certain number of contacts:

> It is really aggressive and keeps on going, I don't know if they have numbers to meet or something, but that is what is happening (T14).

Bombardment tactics appear to take no account of any particular vulnerabilities of the recipient. Approaches that some people can cope with would appear to have negative effects on others.

> Yes. If the client has mental health problems or some big event in their lives has meant that they become unable to pay the debt such as loss of a job, then debt collection is particularly stressful for them. The types of harassment that I have seen are the debt collector threatening to tell the client's family or friends about the debt and threatening to try and collect the debt from that other person. Also, I have seen the collector threatening to put an attachment order onto the client's wages (W11).

Bombardment can cause mental health problems:

> The main complaint we would receive is that many people find it hard to deal with constant communications asking for payment of debt. Many will describe this as harassment, especially if their mental wellbeing is suffering. Many of the collectors are harsh, abrupt, and forceful in their communications and this can be perceived to be threatening and clients can most certainly feel intimidated (W9).

Finally, bombardment tactics take no account of vulnerabilities such as single parent status (T25), benefit-led households or disability:

> A client of mine with a medical certificate proving diminished capacity (mental capacity of a 12 year old) was being used by his family to tick up a bunch of household items and he was having to make the repayments out of his supported living payment. He was brought in by a social worker once he was removed from the family home for financial abuse and we decided to file for a non-asset procedure. I explained the situation to the collection agency but because my client didn't return his 10 year old headphones from the original creditor (a mobile truck) they claimed the security was not returned and so they would not recognise the NAP and continued to pursue my client to repay the debt (W1).

## Other poor conduct

When questioned about poor conduct and bombardment, a common response was that the contact process is automated and out of the control of individuals. One mentor got a response as follows when asking for the messages to stop:

> "Oh, I am sorry I don't know if I can stop them. Some computer somewhere just spits them out." And he said "although you don't need to worry about them, because you've talked with me and you don't need to worry, unfortunately, I may not be able to stop them. I'll try and see what I can do" (T19).

As well as automated messaging, the process for debt repayment is also partially automated, affecting the ability to make flexible arrangements:

> What I have found too with one of the debt collection agencies is they have a calculation system where they say the minimum repayment is $5 per week. Now I had a situation where I said "well, the client can only afford $2.50 per week". So what they did, rather than just shove it down, is that they actually worked with me. And they said, "We can't enter $2.50 into the system, but we can put $5 in a fortnight." Then she

> went in and tried to do that and it wouldn't let her do that, but eventually it let her do $10 per month, which worked out to be $2.5 per week (T22).

Apart from deliberate tactics to put pressure on clients, there were also issues of administrative failure: files being lost, not being updated, decisions not being recorded and so on.

> But it is not uncommon for them to… I guess the file just needs updating all the time and they don't bother reading the notes, and they contact the person when it has already been dealt with before (T12).

Sometimes dubious schemes were suggested to debtors to ensure that money keeps coming in when, for example, a person lost their job:

> I have had an employee at another high-cost lender suggest ways and means to get WINZ to pay for the loan that my client had. They said that they would provide a document stating that the client's car was due to be repossessed (although it was not at risk at all at this stage) and that WINZ would then pay for the loan as the client had health issues and needed the car. This was in a situation where the client was not behind on payments and was simply asking for a reduction in payments due to loss of work (W9).

### The effects of poor conduct on clients

According to several mentors, it is the pressure of the tactics outlined above that drives clients to seek the services of a financial mentor (T17), so this is not necessarily the worst outcome. However, pressure continues to affect the clients and also the relationship with the mentor: "I find it hard to get through to most of my clients now, because they don't recognise, if they haven't got my number in their phone and don't recognise my number, they assume it is a debt collection agency and don't answer. There is that real fear" (T18).

One mentor noted a lack of knowledge among mentoring services about how far the debt collectors are allowed to go in approaching clients:

> Where is the limit, you know? Like, how they can approach clients when it comes the debts and that: are they allowed to do that, to knock on people's doors? Or is there a certain way for them to approach these clients rather than doing that? (T27).

Another noted that not much can be done:

> So there's nothing in writing that stops the debt collector or protects the client when they are in hardship… that says their rights when they are approached by a debt collector. Clients just think that they have to comply to get rid of the totally bullying tactics of the debt collector (T20).

Overall, clients were put on the back foot by the poor conduct of debt collectors. Such conduct would appear to be designed to pressure and intimidate, and a lot of knowledge and self-advocacy is needed to counter such tactics. Unfortunately, debtors often do not have such knowledge and many have few negotiation skills. As one mentor pointed out, self-advocacy is always difficult because it involves "their own emotions – it is easier for us to do it on their behalf" (T20).

## The use of attachment orders

Attachment orders are orders of the court to deduct sums from (usually) the wages or benefits of debtors. One mentor explained them well:

> I have a few clients who have had attachment orders made against their wages or benefit. Issues here are sometimes the amount being taken via the attachment order is too high and outside the client's financial resources. However, it is my understanding that the client is advised of when this hearing is and invited to attend. It is possible for a client to attend, who has a budget already prepared, and for their situation to be taken into account when they set the figure, but most do not attend. My understanding is that if they do not attend the figure deducted is assigned by the court, possibly in association with a figure put forward by the creditor. If there is no one debating the figure, it gets set. If this happens and the figure is too high, it is possible to apply for a variation to the attachment order – there is a downloadable form – and have the attachment ordered lowered through this process. Attachment orders may also be reviewed by the creditor over time, and I've known of the deductions going up (W8).

The number of attachment orders encountered by mentors ranged from "a small number" (T15) to "many" (T25). A number of mentors noted that debtors often do not open letters or answer calls (trying to avoid bombardment) and therefore the issue of an attachment order may come as a complete surprise to them.

> I have seen clients that have had attachment orders put on their wages. Often the client will not open emails or letters because they are not able to deal with the debt and the information about the attachment order process comes in by email or letter and the client will not have seen it. The next thing they know there is an attachment order on their wages. And often it is for an amount they cannot afford (W11).

Such action has a variety of effects. Some mentors noted that the amounts ordered were reasonable and there is the ability to have them reviewed or set aside (T19 and T13). Others had a different experience, with large financial orders being made that were unaffordable. One person noted that the structure and form of the attachment order disrupts the budgeting process (T22).

> I have not seen major issues with this among my clients. However, there is a great risk that an attachment order puts a client in a more precarious financial position than the debt collector would know - or care about. Once such an order is placed, a debt collector can easily apply a non-contact approach and be ignorant of any issues the order may create (W3).

> Clients experience hardship. There does not seem to be any taking into account changes in client's financial circumstances. A client with an attachment order experienced increased cost of rent which was in arrears and also could not afford a fair amount for food (W4).

Apart from being unaffordable in many cases, workers may be embarrassed that their debts are brought to the attention of their employers (T20). There is some concern that debt collectors use the attachment order process to pad further fees and interest onto debts (T9). One mentor noted that the process is rarely used by banks and other mainstream lenders. It is "smaller and more fringy creditors" who tend to use this process (T25). There is some concern that courts grant attachment orders without due concern for the ability to pay:

> I have a client who has considerable debt and suffered job loss, we applied for hardship for a second time with the creditor and they declined assistance. The client had goods on HP and had returned all the goods that the company would accept, they refused the return of a TV that they said was damaged. They had full details of the client's financial situation and knew there was not enough in the client's budget to pay but have issued an attachment order regardless of this (W9).

Mentors work hard to mitigate the effects of poorly-applied attachment orders:

> So, what I've been doing quite often is doing a variation to the attachment order and getting it stopped. In my mind, what should be happening is the debtor should be asked to go into a meeting at the courthouse with the registrar to see if they can afford to have the attachment order (T11).

Others also discussed ways in which they have sought to change attachment orders to make them affordable, and noted this procedure is often effective. However, individual circumstances can make this challenging:

> Some clients come to us already with attachment orders attached. I did have in the past a client who had attachment orders but the court administration came back to us and we did a budget sheet and managed to get hardship so the attachment orders couldn't be put in place. I have got a client at the moment who has restarted her benefit due to domestic violence and there are a number of attachment orders that are attached to her benefit which means she is not getting enough to live on for her children. Although I've gone to individual court administrators. Like I've gone into [town] and I've gone into [town] they're saying that you can't deal with them there, so I've now got to ring I assume [city] and work out how we can do a hardship. Because this particular woman without her family tax credit is only getting $133 from work and income after rent is paid when she has five children at home. So that $133 is not covering her power and her food let alone any debt, any additional debts. In that particular case this particular lady has come from a domestic violence situation where there's been financial and verbal violence. So all the debts and ongoing financial stuff were put in her name but she had no money (T8).

## Attachment orders on benefits

There is some question among mentors over whether attachment orders should be used at all with beneficiaries, given that benefit incomes are barely adequate to meet daily costs.

> So that is a real issue the attachment orders to a benefit particularly. If they don't respond to the whole going to court, if they don't turn up to court and defend themselves it just gets attached. I feel the courts, if they know it's a beneficiary then they shouldn't be attaching it, a benefit is under the living wage. It is a practice they use (T1).

The barriers appear to be quite large for beneficiaries in turning up to court to defend themselves against these orders:

> I do know that the clients have the opportunity to turn up to court and put their side forward. I know of one in particular they didn't get the paperwork until after the order was made. Whether it's just the postal system but a lot of the clients are quite transient anyway so they will never get that mail saying you could be or should be appearing to put your case forward. So, they don't have a leg to stand on. That, and it's a really confronting process having to show up to court to front up to someone you owe money to and then having to justify why you can't afford to pay. Yeah, there's a lot of shame and embarrassment involved in that as well as the intimidation as well (T3).

The same mentor noted the principle should be that no-one on the minimum wage, or indeed no-one earning below the living wage, should have an attachment order on their income. Another mentor outlined the reality facing those on a benefit with debt:

> When it comes to beneficiaries, they are most affected by these attachment orders and it's because it's set at that benchmark which seems to be $30 a week. And it doesn't matter how much you owe, it just always seems to be set at $30 a week. It just causes all sorts of nightmares. People who come in here on benefits, after their basic essential living needs are met, they run at a deficit. So they already can't afford to pay the power, purchase food. Rent is always the top priority, then power, then water, and food always sits at the bottom of the list. And every beneficiary client of mine with debt, not one of them has any surplus in their budget. They all run at a deficit.

> Essentially, the only way to survive on a benefit is if you don't have any debt. If you have debt, you are actually screwed (T22).

Mentors often find that beneficiaries are paying debt to quite a number of people, often without any clear knowledge of what or why:

> We ask them to obtain a printout from work and income and they give us a printout that says who the payees are. And we say "why are you paying this?". It could be for rent arrears or a debt collection. We contact them first and say here is a privacy waiver can you let us know the balance and when it occurred. We then find out they've got these, very often people are having something taken out of their benefit and sometimes people are having stuff taken out of their wages (T10).

Another mentor explained that some beneficiaries are paying relatively small debts back for years, because before the attachment order fees and interest were allowed to accumulate, making the debt balloon. It was unclear if this was a deliberate strategy by the debt collector (to increase the amount of the debt) but that was the impression the mentor had:

> I've probably seen 20 of these credit contracts. They're all pre-2010, but the attachments orders are all still live, so it's impacting my client’s budget. Essentially the creditor, sometimes they've purchased the debt; sometimes they were the original creditor. But what they did is, it's this thing of adding interest after the person has clearly defaulted and is unable to pay. They added interest, in some cases, for five or six years before going to court, and so, of course, by the time they got to court, a $2,000 debt had turned into a $7,000 debt. The court - there was never any scrutiny of these claims and so the judgment was given and then it's just a gravy train. Particularly if it's a long-term beneficiary, MSD is obliged to collect the debt because it's a court order essentially. Um, so that $7,000, they just sit back and the money rolls in (T25).

CASE STUDY

I'd like to tell you about a particular company - I'm not going to name them anyway. This is just general background. In [town] we have got a company that sells household goods and electronic goods and they're also selling cars, and they specifically target low-income people, many of whom are on the benefit. They entice people in and persuade them to spend more money than they can afford, on credit cards.
They particularly choose… I can say this because I've been doing this work for about 8 years now, in [town], and I did some statistics not long ago for my own interest, and a third of all my clients owe money or have owed money to these people or are involved in the debt collection process with them. It's people like, the less educated people and solo mums. Because… a solo mum, she suddenly finds she's got a baby on the way, and she might be able to find a Housing New Zealand house or she's got to set up her own household, and she's got nothing. She goes to these people, and they'll sell her tables, chairs, anything you want. So, what happens with these people is they inevitably fall behind because they can't really afford what they've agreed to pay, and then they get hit with penalties and many of them become permanently trapped into paying a substantial proportion of their income. I've had a man come to me once and his debt went back 50 years. 50 years to these people because what they did was, they rolled it over - each time he was getting near to paying it off they'd say "oh come on in, you're a very important customer, come and buy something else", and then he would, and they'd roll everything up into the security so there'd be one big loan that went back many, many years.
And you can't stop paying it because then you could lose your household. So, that's how they work, and what they often do is they get people to sign a redirection from their benefit. So the company gets the money directly. Even so, you know people come to us and they say "I've got 1 dollar to live on for the week". So then we go back to Work and Income and we say "this just isn't fair, this isn't right" and they stop the redirection, and then these people try other methods to try and get the debt paid. And if it can't be paid then they've got their own… I think it's owned by the same people - I'm pretty certain it is if you look on the company's website - they have quite a slick little process to take it to court. And before you know it, these people are having a court order taking the money straight out of their benefit, with the extra costs of course. And then of course, if you're a mentor like me, you can apply back to the court and try to get variation on the court order, which sometimes happens. But the interesting thing is these people… I don't know if they actually get a notice to tell them when it's coming up before a judge, or not. But, they're the sort of people who wouldn't go anyway. So nobody advocates for them. Nobody says: "well you do realise that if you grant this order this person has $1 a week to live on?" The judge making the order: I don't think they'd have the information. I think somebody should be advocating for these people, because they can't do it for themselves. So yes I've had lots of those (T30).

The ability to apply to vary the conditions of the attachment order is crucial to the work of financial mentors:

> I've got one going on at the moment for $30 and she's on a benefit and when she's back in for her next appointment I'll be doing a variation. One of the problems with these clients is they cash out their benefit so it's hard to do a budget for them so I'm going to have to think my way around that one. I'll be looking to do a variation to suspend, well to ask for it to be suspended, for 6 months and it to be reassessed in those 6 months. But the amount is normally around $25 - $30 that we see, that seems to be the yardstick that's applied. I probably would be doing a variation probably 3-4 times a month. Some of them I can't do a variation because they can afford it. 9 times out of 10, well if they're working, they can afford it, but if they're on a benefit they can't, they're on a knife edge of going into a deficit or a surplus (T11).

In terms of proliferation of debt, some beneficiaries are simply unable to accumulate any more:

> I do have clients where they have been case ordered. So they have to come into the budgeting services with WINZ because their debt is accumulating. Because they have gone in there and they need power bills to be paid, and rent arrears, and they are not entitled for any more assistance, financial assistance. So they get case ordered (T17).

Clients who are good self-advocates appear to be more able to manage the attachment order process:

> Her application to the court gave her a six-month stand-down on paying any, it is going to be reviewed again in six months' time. So that is what the court did. So that particular client is quite knowledgeable and computer savvy. But not all clients are like that, so I don't think all of them would be able to actually do that process. If you're served with an attachment order my clients tend to think there's no way out of it. So vulnerable clients are left in hardship, because of these attachment orders (T20).

Mentors say that there is much that is problematic about the way beneficiaries are encouraged into debt, often for things they sorely need, and then forcing them to "sign benefit recollections at the point of taking out the loan. Which ensures that the debtor gets paid, but often doesn't leave the client with food and rent money" (T23)

## Debt Collection Agents' fees

Most of the participants were of the view that the amount of fees that debt collection agents attach to debt, once it is sent to them, is entirely unregulated. These are not the first fees which the debt has attracted. By the time a debt is sent to a debt collection agent, there is usually a mixture of late payment fees, default penalties, additional interest and other costs added. Even before reaching debt collection, then, the sum owed may bear little relation to the original amount borrowed. In earlier sections, mentors have noted that they are often able to reduce the size of the overall debt by scrutinising and negotiating lower amounts.

Mentors noted that the agency fee for a debt collection agent "can be anything from 18-40% of the debt" (T10); "It used to be about 25%, but I was speaking with a bank yesterday and they said theirs is 35% now" (T14); "to add on their fees of $950" (T17); "they automatically add 30% on, that's standard debt collection practice" (T28); "I've got another case where a client took out a short term high cost loan of $150 in June, by September it had been passed to a debt collector who demanded $687" (T30); "No, I don't think they would have been able to pay the original amount but when the fees are added there is no way, so they give up. So, it is insurmountable" (T6).

If the debt is moved to another debt collection agent or sold, additional fees would sometimes be added:

> But also that's where… we want to know: if the collection agencies are allowed to add fees, how much they can add, and also if they are allowed to add any interest on these debts, regarding the law. These are the things that we are not really sure about. What happened there is the bank added $11000 on top, it was like $35000? But now the client is paying back $51000 to the collection agency (T27).

> Yes. Once a debt goes to debt collection then fees get added on. For example, a client might have a $500 power bill that was incurred years ago but then it goes to debt

> collection and it's now a $1500 debt. And the client has no way of paying that. Sometimes the debt is sold to a debt purchaser, and it might be sold more than once and each time the fees are added to the debt so that it gets bigger and bigger. Then the client has no way of paying that debt (W11).

Mentors noted many ways in which a debt could grow. There were some extreme cases mentioned; one example was:

> Extreme case in 2017: client had borrowed $1695 in February 2001, had repaid $7610 over the 16 years, had charges of $1070 and interest $7738, she still owed $3206 (W2).

A different kind of example relates to debt that is not covered by a credit contract. A lot of debt derives from transactions that remain unpaid to suppliers of goods and services outside of any credit contract. The following example shows what can happen to such debt:

> One that we particularly have problems with is a debt collector where they pick up debts that haven't got credit contracts behind them. Like this one that I had was a debt with a doctor surgery that had gone to debt collection. Maybe it had come in at $300 and they'd added $75 every time they missed a payment and it was up to $2000 or something. It was really outrageous. I went back to them and argued there was no contract signed so how could they have known it was going to go to collection and no fees outlined. I really had a go at them and ended up settling the debt. But man those are difficult because … they can do whatever they like (T9).

The loading of fees onto debt at times can cause extreme distress:

> One client was in tears in the office wondering how she was going to pay this latest debt total, which she said was much larger than the one that she had incurred. She said how embarrassed she was to have to be seeking help but that she had no other avenue to pursue to pay back this debt. She had a personal loan already with her bank and the bank wasn't interested in helping her any further along that line. She was too

> embarrassed to approach any of her family or friends so was feeling very vulnerable and alone (W7).

However, mentors also explained that, in negotiation, they were often able to get fees and interest remitted by debt collectors, on a promise to ensure the debt was paid:

> A debt collector was applying interest rates of 29.5% and 25.9% to two debts my client has. After negotiation, the debt collector has, thus far, removed all interest and fees on the largest of the two debts. This removed more than $10,000 from the debt. In addition, the debt collector has agreed to a moratorium on that debt for 3 months to give us time to work on my client's budget and return to them with a repayment plan. The debt collector may have been managing the debt for the company which supplied it to them, in which case, the interest rates still stood. Whether the debt collector negotiated with their supplier to remove the interest and fees or decided themselves to remove them is not known. Whatever the case, we are satisfied with the outcome and have not investigated this aspect further (W3).

Many mentors recounted stories of fee charges being reduced or removed in exchange for a payment plan.  This is generally not something that debtors can do themselves – it requires a mentoring service to organise it on their behalf.

## Interest charges

Interest charges can be a major barrier to the repayment of debt. They are also a major contributor to people getting into problems with repayment to start with: "The acquisition of credit, high interest rates and low benefit rates and wages all contribute to financial difficulties for consumers" (W8).

As with fees, it has been difficult for debtors to work out how much interest is being or has been charged and at what rate:

> Often it is very hard to find out what the interest is. So often someone is going for a reconciliation loan or something, the push then is to find the interest rate. They are not something that are disclosed very commonly, maybe on the original paperwork. It is quite hard to get that information (T16).[25]

High interest rates make a significant contribution to problems in debt repayment. Mentors reported situations where the debtor was making regular payments but the interest being added was actually more than the repayment, and the debt continued to increase:

> A client can be paying, on a credit card or to a company they owe money to, but the interest rate is more. So it doesn't depreciate, because the interest rate is above the payment which they are actually making (T21).

> Interest bearing debt can be a big problem with collection agencies, often the client can only afford to make minimum repayments and they don't even cover the interest on the account, they also snowball into large debts fairly quickly (W1).

[25] The new disclosure requirements on debt collectors that will apply at the start of the debt collection process will require some disclosures around interest charges – see new reg 23 of the Credit Contracts and Consumer Finance Regulations 2004.

One mentor noted that power and or phone bills that start to accrue interest may cause particular problems for repayment (this is one of the areas of problem debt explored later in this report):

> I mean I haven't come across anything 'illegal', yet. Definitely high interest, definitely high fees, especially it seems to be with power bills and phone bills. The amounts just go up and up and up and it makes it very difficult for the client to ever get on top of it (T5).

Another mentor discussed issues with debt collection and interest rates. One example given was where a client had approached the debt collector for assistance and they responded "by reducing the interest rate from 54% to 34.5%!" (W3).

Mentors held a variety of views about the ability of debt collectors to charge interest on debts once the debt was in collection. Some noted that debt collectors "continue to charge interest" (T10). However, if the debt has been purchased outright, this person noted: "then they do stop the interest for three months and we've got to ask them every three months to ask them to stop it again" (T10).

Another mentor noted that in collection: "It is not regular for them to add interest. Usually it stays at the same amount-ish, but they add fees on because they are not allowed to keep charging lots of interest" (T18).

One mentor held a strong view that interest should never be charged on debts that have gone for collection:

> I don't think interest should be added once something's gone to a debt collector, but occasionally it is. There's a couple of debt collectors that do that, that add interest, which I think is inappropriate. Because if it's gone to a debt collector, it's obvious that the person has trouble paying, so if you keep applying the terms of the original

> contract of just adding interest, they're just going to get further and further into debt. It's not common in New Zealand (T25).

That mentor noted that this view was backed up by a court opinion in 2015, noting that creditors should not be "charging any interest after a year of default" (T25).

Another mentor was also unsure about whether interest was able to be charged once the debt went to collection:

> I think fees are a grey area because I've seen some debt collectors add, like, 35 percent onto the debt, and it's always unclear as to whether interest is still, you know, compounded on the debt or has that stopped. My understanding is if you sell the debt, then there is no interest or fees, except fees that you would have in the normal day-to-day running of your business kind of thing. Like it might be you have an admin set-up fee or something like that, but I don't think they can just add fees. I'm sure that's in there somewhere. I did get told by a debt collector that because he purchased the debt, he couldn't add interest on to it. The new law says that you can't compound fees and interest. They can't compound, can they? Only the interest on the loan. You can on put interest on the loan; you can't compound the interest on interest and fees. But then I also thought that that was just the high-cost loans, not other loans (T26).

Another mentor was sure that, in certain circumstances, interest could continue to be charged on debts which have been purchased:

> The other thing is that some debts are actually bought with the interest component. That's a killer. The client is probably just never going to pay it off because the interest component just keeps them in the debt cycle (T4).

A further issue is whether interest can be charged once goods are repossessed. One mentor (T9) noted that this does happen once the debt is transferred to collectors, while another (W12) stated that debt collectors are "deliberately not repossessing goods so that interest continues to accrue on the debt".

Although these opinions were provided in interview, which may account for differences, it does appear that there are a wide variety of views about the role of interest charges by debt collectors.

## Costs of debt collection

It is normal practice in the industry for debt collection costs to fall onto the debtor, and this is usually stated in credit contracts and also in contracts for the provision of services such as phone and power. This then requires the debt collection agent to collect the original debt, any fees and interest charged by the original provider, plus the costs of collection. This issue primarily concerns debt collection agents rather than debt purchasers. When a debt is sold (eg for 10c in the dollar), the debt purchaser is likely to have factored in the costs of collection to the price paid for the debt.

It is often difficult for debtors to calculate what part of the additional costs are collection costs:

> Sometimes we can get them to tell us how much that is or we can get a copy of it, I had one last year that had $1300 collection costs on a debt of about $5000 which is significant (T1).

Debtors do not always understand what these costs are for, because "typically the contract is about 5-6 pages long… so all they want is the money… so it's those finer charges that are often not looked at" (T12).

Once there is a default, costs and penalties come into play:

> The clients keep defaulting and then the penalties on that, it just seems like a never-ending cycle. A lot of our clients, the amount that they can pay, sets them up to fail because they can never get on top of that original debt (T16).
>
> Like I said, if you are paying a Spark bill, or any utility bill, this is the most common one which we have. So what happens is the bill will be for $200 and the client will come back and say I have to pay $800, and there are so many interest and penalties or admin costs or debt collection costs (T24).

One mentor thought that collection fees could not continue to be added once a debt was sold to another organisation but had no evidence for this view.

## Irresponsible lending

The lender responsibility principles are legally prescribed and binding on those who provide consumer credit. Two key principles are:

> **Principle 1**
>
> Lenders must exercise the care, diligence and skill of a responsible lender in all dealings with borrowers and guarantors. This includes when advertising, before entering into a loan, and in all subsequent dealings relating to the loan or guarantee. Some elements of this principle are set out in specific lender responsibilities and lenders can take guidance from the Responsible Lending Code as to how to comply. However, the "care, diligence and skill" principle stands alone, and to satisfy it, lenders might need to take an action which may not necessarily be specified in the lender responsibilities or in the code.
>
> **Principle 2**
>
> Lenders must comply with the specific listed lender responsibilities set out in the Credit Contracts and Consumer Finance Act 2003.[26]

This section considers how participants feel that lenders have been complying with various responsibilities they have under the principles. The law around responsible lending has recently undergone significant change, in particular the Credit Contracts and Consumer Finance (Lender Inquiries into Suitability and Affordability) Amendment Regulations 2020 have set out detailed rules for how lenders must assess whether a loan is likely to cause substantial hardship to a consumer borrower. The data collected in the study reflects the situation before the implementation of these new rules.

### Debt proliferation

[26] Retrieved at https://comcom.govt.nz/business/your-responsibilities-if-you-provide-credit/the-lender-responsibility-principles

Part of the lender responsibility principles requires that lenders look into the borrower's circumstances to ensure that additional debt will not be harmful to the borrower.[27] This can be a fraught process, as often the need for the loan, or the goods or services that the borrower needs the money for, is extremely pressing. Mentors are often required to trace back debt to the original loan, to work out whether there was irresponsible lending in the first place (T1).

Most mentors interviewed mentioned that unsecured debt is the major problem in terms of repayment, including the proliferation of credit cards and store cards and power and phone costs (T15). Hire purchase is also a problem, especially when a family ends up with two, three or more HP commitments (T21).

There was a widespread view among the research participants that most of the debt they see was unaffordable from the start:

> And 9 times out of 10 they would pay if they could and 9 times out of 10 they probably shouldn't have been lent the money in the first place because they would have failed the affordability test. That's why I don't have much sympathy for creditors in those circumstances and we see it way too often (T11).

One example was about a lender who is "no longer operating in New Zealand":

> So the $200 was simply to buy food for her mother. She was living down here and the mother was up in [area]. She was going back to [area] and she just wanted to buy some food for Mum. She went to this organisation and they loaned her $200. The initial $200 became $350 because of the $150 application fee, and within 3 months, because she didn't make any payments it had gone to $800 (T12).

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[27] The specific requirement under the Credit Contracts and Consumer Finance Act 2003 (s 9C) is that a lender must, in relation to an agreement with a borrower,—
(a) make reasonable inquiries, before entering into the agreement, so as to be satisfied that it is likely that—
(i) the credit or finance provided under the agreement will meet the borrower's requirements and objectives; and
(ii) the borrower will make the payments under the agreement without suffering substantial hardship.

According to some mentors, consumer credit lenders are required to request and scan documents to ensure that a person can afford to repay a loan. “Sometimes applicants lie in order to get funds, through desperation. But they should not get through a basic due diligence process, but often do” (T22).

## Problems in how the industry works

One view that came through the data was that some mentors believe the consumer credit industry must be held responsible for unaffordable debt:

> If it was debt they couldn’t handle they're not even going to acknowledge it in debt collection and never going to be able to pay. They get frightened when they see the debt has increased such a lot. You know, how to even start making a payment? And should they be liable for it if they were put into hardship from the beginning? Is it really a debt that should have gone to debt collection? The one that I had from the phone last year that has the $1300 on it. It was a bank debt and it was a bank loan, to a very young woman, just starting out in life. She never made one repayment on a $3900 loan that the bank felt they had asked all the right questions for. She was going to buy a second-hand car. But she never made one repayment so her situation must have been so tight. For a year or more it was left out of order, she never made payment, she moved, the bank lost touch with her she changed her bank and that debt was just sitting there and then they moved it to debt collection (T1).

Another mentor noted that debt has become increasingly normalised. Instead of something to be engaged in rarely, if at all, it would appear to be treated as an everyday thing:

> The encouragement and easy ability to take out debt. That is 100% the biggest problem. It's not only encouraged, even the advertisements, it's trying to make it a completely normal thing to borrow money from a finance company for example to fix your car tomorrow or take all the kids to movies or buy schoolbooks and that just leaves

> families and individuals in a really tough situation. If they could do that, fix their car or buy schoolbooks slowly by paying it off then they would but they don't have any spare money not even $7 a week. So to give that money to them it's absolutely setting them up to go down that debt collection journey (T7).

One mentor, while pleased that the 'red vans' had stopped operating due to changed rules, was concerned that the lenders positioned themselves near the most vulnerable:

> I mean look at Work and Income in [town], it is right across the road from SuperLoans, and across the road from [name of mall] is Cash Converters. They position themselves in very convenient places and so it's very tempting. That's very good commercial enterprise on their behalf, but if the process of lending money isn't properly conducted it is making people vulnerable (T12).

## Contracts and communications

Some mentors were very critical of hard-to-read, long, contracts which would seem to be stacked in favour of the provider or lender. The following comment relates to the 'sunny day' scenario that often applies at the beginning of a loan period:

> And the need for clear, plain, understandable English. Some of the agreements and the forms that you see are just so full, I don't think many people who take them out ever actually understand the actual detail. I highly doubt the plain English version they might get talked through actually talks through the risks and the what-ifs. It is always a sunny day scenario, where you can actually afford the repayments (T23).

Other mentors were critical of failure to communicate the problems that can accrue if clients fail to keep up agreed payments. Companies want to sell goods and advance credit to people, and people are often desperate for that service. Clear communications can improve information flows but will not necessarily prevent the formation of risky contracts.

## Oppression

There are provisions in the CCCFA that outlaw oppressive practices.

The CCCFA defines "oppressive" as "harsh, unjustly burdensome, unconscionable, or in breach of reasonable standards of commercial practice."[28] In layman's terms, this means that the contract or lender's conduct is extremely unfair or unreasonable. It is a court that determines if a contract or a lender's conduct is oppressive.

Some of the participants in this research expressed their opinion on what practices were oppressive. One noted: "To me it's a very oppressive system. Why we're living with such oppression in this day and age I'm not sure so it's about time we did something about it" (T1).

A number of examples were given, such as a bankrupt individual "who was still being harassed over his debts" (T12). Old debts, historical debts, being brought up beyond expiry. Loans secured against "household chattels, so they will visit the house and take photos and things. That hangs over people because they are scared of the repossession process" (T25). The compounding of fees and interest was another example (T26).

Many of the practices described by the participants as oppressive related to the conduct of debt collection agents, which is discussed earlier in this report. Another example of how conduct can become what might be an oppressive practice is shown below:

> Clients from down at Work and Income, some of them were afraid because they [debt collectors] were knocking on their door when they haven't got anything but they were very demanding and it sounded to me like they were threatening the clients so that they would obey or would arrange some payments or something like that. And that's really out of… you know, like, we're not sure… like, me as a financial mentor, regarding the law. Where is the limit, you know? Like, how they can approach clients when it comes the debts and that: are they allowed to do that, to knock on people's

[28] See the Credit Contracts and Consumer Finance Act 2003, s 118.

> doors? Or is there a certain way for them to approach these clients rather than doing that? (T27).

One mentor noted that there may be "a lot more underhand stuff going on in this space than I am privy to" (W9). That person noted three (in their view) oppressive practices: additional fees when clients are already struggling; the forceful nature of communications on vulnerable people; and the continuation of interest once loans and debts go to collection.

## Issues with types of debt

Participants were asked what kinds of debt were causing problems for their clients. Some saw the problems as global: "any and all kinds of debt" (W9). Some thought the problem lay not in the debt but in the lack of financial education of clients (W7). Some noted that clients had no notion of the ability to negotiate once they have got into a financial fix with a provider (W9). In other sections of this report, it is noted that one of the key problems facing debtors is a strong need for the purchased good or services, but without the ability to pay.

Other red flags include where there has been a change in circumstances, such as loss of employment, or where there is overuse of credit, where a client with reasonable means ends up with simply too much debt to manage. Two participants noted that a whole new generation of young adults appear to be being inducted into a debt society:

> This woman that I'm working with, she went into Noel Leeming to buy a laptop, $3400 laptop and she got given a credit card for $6000. She's a young woman just starting out. Another one, what I've noticed too they load up young people, young adults with debt. Then her family because she had that cash there, that credit available there was pressure from her family to give them that available credit. It got all the way to $6000, she had no benefit from it. It's irresponsible for someone who wants to go to a shop and buy a computer gets a credit facility they didn't actually ask for (T1).

> But the young people I'm dealing with, they don't look at the … they just look at the interest rate and not the penalty rates or not the finer details. And I suspect that the person giving them the money isn't going through meticulously with them to point those things out (T12).

A past means by which debt is accrued was the mobile trucks that sold overpriced goods in poor areas (W1). While the number of mobile traders in the community would seem to have significantly decreased after a law change in 2020, replacing it is the ubiquitous loan system of after-purchase partial payments, such as Afterpay, which would appear to be a growing problem.

## Power and communications

By far the most common type of problem debt cited was power and phone bills, and especially power. Other communication types, especially Sky, used to be common also, but the advent of Netflix and other cheap, flexible viewing options has seen that category of debt fall. There is particular concern among mentors over power-related debt, as a reliable supply of electricity is a staple of modern living. Around half of all participants in this study specifically mentioned power bills as a form of problem debt:

> So, probably the one that I see the most, that just about everyone has, is historical energy/electricity debts. So just about everybody, some people will have three or four. That is the biggest one I see (T16).

> Utilities: power, telecommunications. Because they're a need. They are an essential need and like I said, if you have a change of financial circumstances for worse, not for better, it screws you over (T22).

> Actually, the debts that go to debt collection are mostly utilities. I have a huge amount of clients with telephone and power debt that's gone to debt collection (T6).

> I would say, utility bills. Often end up at collection, and sometimes they don't even know about them and the power's signed up under the mother's name and they didn't know. But you know Spark and those telecommunication companies they flick them on pretty quick [to collectors] and we'll see that regularly (T9).

Family and historical utilities debt can cause a lot of problems, especially when there is a major change in circumstances:

> I've got a client that has just split up with her partner, has a child under 1, has moved into a new property and cannot get power because when she left the last rental property she was getting invoices and emails to say she owed $300. So that $300 has now been sent to debt collector and now she's backlisted for power. So now she's getting difficulty getting power. On Friday she managed to obtain power herself but to do that she has to put in a bond and she doesn't have the bond (T8).

There are voluntary guidelines in place at present that have been developed by the Electricity Authority that provide guidance to retailers when engaging with customers which require that customers facing difficulty with payment are supported, for example by working with customers in difficulty and referral to other agencies. A recent review recommended that the Government should set mandatory minimum standards that retailers and others must meet when providing electricity or electricity-related services to vulnerable (and medically dependent) consumers.[29] That review acknowledged that there is no "magic bullet" to solve energy hardship.[30]

## Credit cards

The next most common debt type cited was credit cards, including shopping cards such as Gem and Q Card plus bank credit cards: "the credit cards are huge. I don't know if it's completely relevant, but I think it is, I still think there's too much free rein on credit. People are just lending without using the sensible lending criteria. Then all these debts occur and go to debt collection" (T4).

One mentor noted that credit cards and shopping cards will tend to bring about a stronger response than secured loans, where the loan is backed by assets:

[29] Electricity Price Review, Final Report, 21 May 2019, https://www.mbie.govt.nz/assets/electricity-price-review-final-report.pdf

[30] At 18.

> I think those unsecured debts probably give greater rise to more forceful debt collection because it is only on the basis of fear and intimidation that they can actually get their money back and can get those payments made (T23).

## Afterpay and similar shopping schemes

In the past few years, schemes such as Afterpay have arrived in New Zealand. They are very attractive to low-income purchasers. They allow the purchaser to pay for goods in (usually) four equal payments. They are now widely used not only to purchase new goods but on shopping websites such as TradeMe. The scheme makes goods accessible but possibly also encourage proliferation of debt:

> One of the big issues hitting people are the moment is 'Afterpay'. Many people don’t qualify for loans but they seem to be allowed Afterpay… a lot of the generation like my kids’ age and below they seem to spend their whole life swiping and buying online but they don’t actually look at what they can afford and what they can’t. Well, this is only Afterpay, this is only $5 a week for so many weeks. But they forget that they've already done 5. So there doesn't seem to be limits on that (T8).

One person talked about how recent law changes have come to make it harder for people to access risky debt, until Afterpay came into the country:

> Now, with the law changes that are very slowly being implemented, it is making it a little more difficult. However, it gets easy again because now you have got all these Afterpay things. And they are so easy to access. To me, Afterpay is like a credit card with no interest (T22).

The afterpay-type schemes (respondents noted there are about six of them now in operation with different names) are seen as an emerging problem. As yet, such debt has not been sent to collection in great numbers, perhaps because the value of the loans are relatively small. But proliferation is a problem, especially among young and vulnerable groups. It is all very well, mentors noted, for repayments to be spaced over a period of time, but it does not help when there is no spare surplus in the budget.

One mentor commented that Afterpay has coincided with growth in online shopping and it heavily enables such shopping. There are advantages with afterpay-type arrangements because the goods are a lot cheaper than the inflated rates which have in the past been charged by the shopping trucks. On the other hand, there seems to be no limit on the number of debts that can be run up (T17). Some mentors wondered how so many small shopping debts can be managed in debt collection, where the cost of collection will quickly outrun the value of the debt.

Afterpay and similar schemes are not subject to the responsible lending principles under current law as there is no credit element to the arrangement. The way the scheme works is that the retailer offers the product for (e.g.) $200, the purchaser buys on day one and takes the product away, having entered into a contract with Afterpay (or similar business) to pay off $200 in several (eg four) equal instalments. The retailer gets an amount from Afterpay for the product (eg $180) and Afterpay takes over the responsibility for collection of the instalments. If the purchaser pays all 4 instalments on time, they only pay $200. But if they default on an instalment, they pay a penalty fee in addition to the instalment amount. Australia is looking at regulating such schemes under consumer credit regulation and it is possible that New Zealand will follow suit at some point, in particular if there is evidence of irresponsible use of the product.[31]

## Other

Other types of debt noted include car loans, finance company debt and old debt.

[31] MBIE appear to be keeping a close eye on the afterpay industry and there is some expectation that a discussion paper outlining options for regulation will be produced later in 2021. See https://www.rnz.co.nz/news/business/450210/officials-keep-close-eye-on-buy-now-pay-later-usage-during-lockdown and https://www.newshub.co.nz/home/money/2021/07/shoppers-forgoing-food-for-buy-now-pay-later-purchases-officials-warn.html

> Car finance. I'm not sure whether this is correlation or causation. Most of my clients have delinquent car finance debt because that's the one that gets out of control really quickly. There are some dodgy lenders who will lend the money for really expensive cars that they can't afford (T18).

Others noted that car debt was a problem for a number of reasons, usually because of the size of the debt, high default interest and the threat of repossession (T20, T21).

Other kinds of debt are also risky. The following case study looks at one particular company which uses a model that others also mentioned, that is of particular risk:

> [Name of online retailer] is another shopping place that clients get tempted to go and buy things, for phones and TVs and things. What [name of retailer] do is that they do up a contract for them and they get them to do payments – and I just had a client who had to pay $150 before he could get the goods. What happened was his payments were getting declined. So [name of retailer], they called him up and said to him "Your payments are failing, so we are going to close the account". So he had paid $120 and when I called them and said "Are you going to give him a refund", they said "No. There is no refund and no goods". When they sign onto a contract, they have to finish the contract of $150, he got to $120. So they stopped the payment because there were too many failed payments, so they stopped it. But they weren't prepared to give him a refund (T17).

Finally, one mentor noted that they see a lot of people with gym debt. This sometimes occurs with people who have mental illness and need the gym to maintain their fitness but "get taken advantage of" and end up in debt (T22).

## Repayment

Many issues around repayment are canvassed in other parts of the report, and this section highlights a few themes around debt repayment.

The first theme is that the work of mentors to pay back debt collectors is sometimes stymied by the lack of co-operation from debt collectors themselves. They "don't sometimes accept talking with us. They ask for a lot of paperwork on behalf of the client, and the only thing we are trying to do is to pay them back" (T13).

One potential reason for this is that mentors will always ask questions about fees and interest charges and will work hard to reduce the debt so it can be repaid (T12). One mentor outlined a case study about a debt owed to one of the red mobile trucks ) and sent to a certain debt collection agency for collection. The mentor outlined to the mobile truck retailer a scheme for repaying the debt (which was $4000 including charges) but the total amount had to be less than $3000. The debt collection agent insisted on adding charges that brought it back up to nearly $4000. By going backwards and forward, where "we really had to fight for these people to get their debts paid" they were able to repay that expensive debt and get the amount consolidated in a community loan (T17).

Another struggle between debt collectors and mentors is over rates of repayment:

> And a lot of the debt collection agencies don't allow you to organise repayments that are less than $20 a week, and $20 a week when you have no money is a lot. That, as a minimum, is difficult. I could arrange payments for $5 a week that would be more manageable. $15 a week is probably two meals for the family, three meals for the family even (T18).

However, when the sides do work together, debt repayment can eventually be achieved in even the most trying circumstances:

> I actually had a client we were working with and there was absolutely no money, not even 50 cents in the budget to put towards this debt, the debt was around $3.5k, so what they did is they just wanted an updated budget from me every 12 weeks to prove that there was no affordability to repay the debt. They stopped all interest incurring on the debt, and it was like 2 years before the client could even afford to make a repayment towards this debt (T22).

Mentors can also educate debt collectors on how to use more effective tactics to ensure repayment:

> But yeah, some of them have been known to go to people's work and some of them have been known to knock on people's doors and keep the foot in the door until they've signed a piece of paper. Now, one debt collector who used to do that has seen the light. They say they've stopped doing that now and they've started a much more proactive approach, which I think is better for them. I think they're seeing better returns over a longer period of time. They've realised that, you know, getting $10 a week off someone's better than forcing them to pay $50 or $100 a week when they don't have that money (T26).

As another mentor put it: "I think the debt collectors need to probably more have a conversation and say "how much do you think you can afford?" and "if you're not sure if you can work out your affordability then you need to go and see someone to do it" (T28). The need for "flexibility when things go wrong" (T5) was mentioned by some mentors.

It appears that not only do mentors teach financial literacy skills to their clients, but they can also offer good advice to the industry to ensure repayment of debt over time.

## Why debtors get into an unmanageable debt situation

Unmanageable debt comes about as a result of a wide range of potential factors, including the following mentioned by various mentors:

1. Taking on too many debts and not being able to keep up payment on all of them: "people would come in with an average of 5-6 debts on their debt schedule" (T1).

2. Repayment levels that are too high for income: "I had a client which I produced a budget for, there was a $60 surplus, so we offered to the collection agency that we would pay $50 a week. They came back with "no, we have made an assessment and assessed he has a surplus of $338 a week" (T14).

3. Clients fall into a spiral of default leading to additional costs and additional payments: "The clients keep defaulting and then the penalties on that, it just seems like a never-ending cycle. A lot of our clients, the amount that they can pay, sets them up to fail because they can never get on top of that original debt. And that is also owing to the high interest rates" (T16).

4. A change of circumstances, especially job loss or family break-up, that makes previously affordable debt no longer sustainable: "I had a client come in last week, he was actually working, but on a really low wage, probably less than some beneficiaries get. His wife had just had a baby so he had had some time off work, but not been in his role long enough to get paternity leave. He had missed some payments with the car finance. His loan with them was $25,000, he had bought a $25,000 car. The irresponsible lending impacted on the debt collection and had a flow-on effect" (T18).

5. Beneficiary debt in the context of inadequate benefit levels: "One of the biggest worries for me around debt in the last 12 months has actually been the encouragement by

Work and Income. When a family or an individual requires something substantial for their life, a core thing they need, not whiteware because they have a contract to provide whiteware but things like a bed, blankets a vehicle. They're encouraged to go out and get this debt" (T7).

6. Housing costs in an unstable housing market: "We've never had such an unstable rental market. So they're forced to keep moving. It can cost up to $2000 a time to move once they've paid their bond and stuff" (especially but not only for beneficiaries) (T7).

7. Irresponsible lending: "My concern is more leading up to it being put into debt collection, firstly 2nd / 3rd tier lenders are not following the responsible lending code, lending to clients that don't have the ability to make the repayments. Clients are not fully understanding the implications of their loan terms and conditions, normally that desperate to get the $$$ they'll sign anything. Problem once it goes to debt collection, they add on collection charges, clients end up owing a lot than they initially borrowed/owed" (W2).

Mentors made a number of comments about unaffordable debt. Some saw a collision between the need to purchase goods and services and the inability to pay, which can act as a trigger for unaffordable debt. If the family cannot borrow, how is the need going to be met?

One mentor believed we needed to educate against debt, and teach financial literacy:

> I think at its heart it's education. It's understanding the long-term detriment of debt, versus the need to learn how to save. That even on a very, very low income, you can still save for life's emergencies. It is that understanding, that financial literacy. Because once you get caught in a cycle of debt and lending and borrowing, for many people – some people can manage it – but for those that can't, it is just this horrific cycle that people get sucked into and it is almost impossible to get out of (T23).

## Vulnerability

The issue of debtor vulnerability has been mentioned in various places in this report in the context of different issues. This final section provides a brief summary of the issues and how they link together. The general framework for considering vulnerability within the context of debt may be set out as follows.

Some lenders and retailers would appear to often target low-income people, beneficiaries and vulnerable communities to purchase goods and services on credit. Such groups often have a high need for certain good and services but no or limited ability to pay, making their borrowing precarious. Because this credit is risky, and/or offered by second and third level lenders, interest rates, fees and penalties tend to be high.

Work and Income has the ability to support beneficiaries' borrowing to purchase core items, with repayment through their benefits. This can exacerbate inadequate incomes over the longer term.

Due to a range of factors, vulnerable populations tend to have reduced knowledge or understanding of the terms and conditions of their loans, in particular if they do get into difficulties in repayment.

At the same time, the ability of such populations to repay debt may be low due to inadequate income, fixed incomes, disruptive lives or other factors.

Once in debt, vulnerability increases. The tactics of some debt collectors as outlined earlier in this report borders on bullying and harassment, through numerous repeated phone calls, visits at home, threats re workplace and neighbours. Such tactics are both alienating and counter-productive. Instead of engaging with people in a problem-solving way, these tactics can force people into their shells, to defend themselves against the onslaught. Such families are also often beset by embarrassment and humiliation (whakamā) (W7) which is also detrimental to effective financial planning to repay debt (T8).

It would seem that New Zealand's lower income groups, including beneficiaries and those with other vulnerabilities, can become forced into a cycle of growing debt and growing inability to repay.

One mentor said:

> They don't take into consideration the interest that's put onto the debt which is money that they'll have to pay on top of the original price. All they see is the item they're going to have without thinking long-term as to how they'll service that debt. There's often no record of personal saving admitted, or the person in question feels 'pressure' from elsewhere e.g. children / family to obtain the item without having the wherewithal to pay there and then. The 'hustle' of the salesperson may be another factor, or the enthusiastic 'advertising spiel' is too hard for that person to resist. Other pressing problems include companies giving out debt too freely, no due diligence of lending companies / banks to check on whether the customer has the ability to repay, and imprudent lending by banks. (W7).

A number of mentors interviewed for this project wanted debt collectors to stop the whole repertoire of their problematic contacts with debtors. If initial approaches to debtors fail, some mentors suggested that debt collectors should have to refer the matter to a financial mentoring organisation. If the offer was taken up by both parties, the mentor could both educate people about debt and assist with repayment of their debt burden. Such initiative would need support from the Government to ensure mentoring services were adequately funded and had capacity to meet increased demand.

## Particular vulnerabilities

Aside from general vulnerabilities discussed above, mentors outlined a number of issues faced by debtors that are not covered elsewhere in this report, and are outlined here.

One mentor discussed work with the Salvation Army with transitional housing and debt, working with people to help them reduce their debt burden (T12). Others worked with homeless clients, and in that case the priority was getting them into emergency housing or Kainga Ora (T17). This service also assisted with employment and transport:

> …but again most people have health issues, they have little children, no vehicles so they can't get to places. We actually have got a service where we can pick them up, we have a vehicle which can pick up clients to come to appointments. We pick them up, take them to appointments, even to doctors, so they get to those appointments. So the demand on them is that they don't have the transport. They can't even afford petrol or transport (T17)

Language is sometimes a barrier, in particular for Pasifika and migrant communities. This mentor outlined a case of a person who negotiated a debt settlement but then did not understand it. The mentor noted:

> My suspicion is that when you move into the demographic areas where more people don't speak good English then there is probably a lower level of comprehension about what this whole thing is about. Now, the interest and charges in New Zealand have to be upfront. But that only works if people understand what it is saying (T17).

This mentor also noted that some finance companies advertise in Pacific Island languages, but their contracts were still written in English: "But if they put up a poster which says "come and borrow money from us" in a Pacific Island language, then they should be willing to furnish a contract in that same language". (This issue has been addressed in the new laws on responsible advertising. Under law changes due to come into effect later in 2021, lenders will need to take reasonable steps to provide information about the loan to borrowers in the same language as they advertise in.)

Health and mental health issues can come to the fore when debtors are being chased by debt collectors:

> She was yelled at by the particular debt collector. I was there. When I got involved, he was very relentless about getting her to pay. But he wanted evidence of her medical condition, why she couldn't work. He wanted all these things, when she was sick. He wanted all these things and I really felt that it was not appropriate (T20).

This same mentor noted that bullying and harassment of debtors can worsen mental health problems.  Third party advocacy can take the pressure off and improve mental health and wellbeing.

The legacy of the mobile trucks that used to frequent the residential streets of poor communities continues.[32]  The following account of years of high-cost debt is worth quoting as a case study:

> I had a discussion with, you know the trucks that go around especially in the low socio economic areas. So [town] would often have a truck go around with a whole lot of stuff on it and prices were so out of sync with what you could get in the stores. But, of course, you could get it straight away from them.
>
> I had a discussion with them because I have a client who has a debt with them and I said "each time that she rings and wants to buy something that's like a new loan so you should be doing new due diligence". The company argued no, they are like banks with credit cards. So, this particular client opened her account in 2010, it's now 2021, and at no stage have they reassessed her ability to pay back what her limits are. Whereas she's had children since then, she's lost jobs and they're saying that she has a rolling credit and they don't have to reassess it. That's something that organisations need to look at because circumstances change.

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[32] From June 2020 mobile traders have been subject to the Credit Contracts and Consumer Finance Act 2003 (see s 16A of the CCCFA) meaning (in particular) that mobile traders must comply with responsible lending laws. Some mentors suggested there has been a significant reduction in the number of mobile traders, likely consequent on this law change.

> All our circumstances change. Covid has made that obvious because so many people have lost their jobs for a period of time and then come back. …There was a client recently who purchased something from [name of retailer] because they had a 36 months interest free so I had lengthy discussions with them that what they were paying by minimum amount or what they had already put on hold because of Covid they still need to pay it off by a certain date otherwise they would be hit with the whole interest and they didn’t seem to get that until you discuss it with them 4 or 5 times (T8).

Finally, a more generic comment about the need for debt collectors to take both a pragmatic and a humane approach with their clients, many of whom come from vulnerable communities:

> I think the biggest problem with debt collectors is they're not looking at the human side of who they're hounding and the harm that they're actually doing. I mean these people aren't paying their debts for a reason, whether or not it's because they don’t know about it, or they don't have enough money or ill mental health or whether or not it's actually theirs. If the debt collector actually told them about their rights with debt collection and laid off. I've got one client, I can't remember her name but she said she was being texted about 3 times a day by a debt collector and this was happening over 5 or 6 weeks so it's relentless (T3).