



Recommendation

13 November 2017

- Car Loan
 - Car finance lender
 - Illegal repossession of vehicle
- Personal belonging not released
 - Theft from vehicle
- Excessive enforcement costs
 - Reduced input tax credit

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13 November 2017

RECOMMENDATION

1. This Recommendation provides the parties with our assessment of the consumer's complaint.

Summary

2. The consumer's complaint relates to a commercial vehicle loan he entered into with the FSP in May 2013.
3. The complaint has been brought by Mr A, as director of the consumer. Mr A also provided a guarantee for the loan, in his personal capacity. For simplicity, a reference in this Recommendation to the consumer includes a reference to Mr A.
4. We find that:
 - (a) the FSP was entitled to repossess the vehicle and did so in accordance with the terms and conditions of the loan contract¹ (**the terms and conditions**),²
 - (b) the FSP did not prevent the consumer from collecting his personal belongings from the vehicle,³
 - (c) we are not the appropriate forum to consider the claim relating to items allegedly stolen from the vehicle,⁴ and
 - (d) the FSP was entitled to pass on enforcement costs it incurred in relation to the consumer's loan. However, we consider that the enforcement costs charged by the FSP were incorrectly applied to the loan account, as the FSP should not have charged the consumer a rebate it was entitled to.

Recommended resolution

5. Our calculations indicate the FSP was entitled to a reduced input tax credit being in the amount of \$108.75. The FSP has offered to refund the amount of \$108.75 to the consumer, being the portion of enforcement fees incorrectly charged to the consumer's account.
6. The FSP's offer represents a reasonable offer under our Rules. Accordingly, we recommend that the consumer accepts the FSP's offer in full and final settlement of the complaint.⁵

¹ Commercial Loan and Mortgage – Standard Terms version 00204.

² CIO Rule 36.1(d) – 9th Edition. All references to CIO Rules are a reference to the 9th Edition Rules.

³ As above.

⁴ CIO Rule 10.1(o).

Background to complaint

7. On or about 14 May 2013, the consumer entered into a commercial loan agreement and mortgage with the FSP (**the loan contract**) for a \$70,021.80 loan. The loan was secured by a vehicle (**the vehicle**).
8. Under the loan contract, the consumer was required to make 60 monthly repayments of \$1,167.03 to the FSP.
9. On or about 3 September 2015, the consumer began to default on his loan repayments.
10. On 21 December 2015, the FSP referred the consumer's loan to an agent (**the agent**) to commence enforcement action.
11. On 23 February 2016, the agent repossessed the vehicle from a property (**property 1**) and towed the vehicle to an auction company (**auction company**).
12. On 11 April 2016, the consumer lodged this complaint with the Credit and Investments Ombudsman (**CIO**).

Consumer's claims

13. The consumer claims that:⁶
 - (a) the FSP inappropriately or illegally repossessed the vehicle,
 - (b) the FSP prevented him from collecting his personal belongings from the vehicle,
 - (c) when his personal belongings were collected from the vehicle, his authorised representative, Mrs B, discovered that items had been stolen from the vehicle, including a laptop, paperwork and \$5,380 in cash, and
 - (d) the enforcement costs charged by the FSP are excessive.
14. To resolve the complaint, the consumer wants the FSP to:
 - (a) return the missing personal belongings to him,
 - (b) return the vehicle to him, and
 - (c) allow him the opportunity to repay the loan.

Considerations CIO is required to have regard to

15. In dealing with this complaint, CIO has observed procedural fairness and has had regard to:⁷
 - (a) relevant legal requirements and rights provided by law to consumers,

⁵ CIO Rule 22.1(e) - 9th Edition. All references to the CIO Rules in this Recommendation are references to the 9th Edition Rules.

⁶ Consumer's complaint form dated 8 April 2016 and supporting documents.

⁷ CIO Rule 12.1.

- (b) applicable codes of practice,
 - (c) good industry practice in the financial services industry, and
 - (d) fairness in all the circumstances.
16. Both the consumer and the FSP have been given the opportunity to provide information to support their respective positions.
17. We are satisfied that, with the exception of any information considered to be confidential and/or commercially sensitive such as the agent's report regarding the repossession,⁸ all information relevant to this complaint received from the FSP and the consumer has been exchanged between the parties.
18. If the consumer wishes to seek access to this document, we request that the consumer provide us with his submissions as to why he should be provided with access to this document.⁹

Did the FSP inappropriately or illegally repossess the vehicle?

19. The consumer says that the FSP inappropriately or illegally repossessed the vehicle, as the FSP:¹⁰
- (a) did not notify him that the account was in arrears and did not send any notices to him,
 - (b) failed to provide him with the FSP's account details and statements prior to repossession, when he requested them,
 - (c) declined his attempts to pay the arrears prior to repossession,
 - (d) repossessed the vehicle from private property, and
 - (e) refused to follow his instructions to send all correspondence to the email address he had provided.
20. The FSP says that:¹¹
- (a) the loan fell into default from 14 September 2015,
 - (b) it issued valid default notices and a demand to the consumer in accordance with the terms and conditions, and
 - (c) its agent legally repossessed the vehicle from the property 1.

Relevant considerations

21. The consumer is a corporate borrower and entered into a commercial loan contract with the FSP to purchase the vehicle.

⁸ CIO Rule 33.

⁹ CIO Guideline 22 - 5th Edition. All references to CIO Guideline are a reference to the 5th Edition.

¹⁰ Consumer's complaint form dated 8 April 2016 and supporting documents.

¹¹ Email from FSP to CIO dated 16 April 2016 and letter from FSP to consumer dated 15 March 2016.

22. Therefore, the loan contract is not a consumer credit agreement, and the repossession requirements as set out in the National Credit Code¹² do not apply to the consumer's loan contract.
23. Accordingly, the FSP is not required to apply to the court to authorise entry to the property or obtain the consent of the occupier of the property to enter the property to repossess the vehicle.¹³
24. Instead, when repossessing the vehicle, the FSP must comply with its contractual obligations under the loan contract.¹⁴
25. Under the terms and conditions, the FSP can effect service of a document by:¹⁵
 - (a) sending it through the post to the address specified in the loan contract,
 - (b) delivering it to the address specified in the loan contract,
 - (c) sending it by facsimile,
 - (d) emailing it to the consumer, if the consumer has authorised and only if the consumer has agreed to receive notices by email, without electronic notification of communication failure.
26. In relation to default, the terms and conditions state that:
 - (a) the borrower (the consumer) is in default if he fails to pay an amount payable under the loan contract and also fails to subsequently comply with a notice of default given by the FSP requiring payment to be made, and¹⁶
 - (b) in the event of a default, the FSP may enter any premises and take possession of the goods (the vehicle), by force if necessary.¹⁷
27. The loan contract provides that the rights and powers conferred on the FSP by the loan contract or the law are in addition to any rights and powers conferred by the *Personal Property Securities Act 2009* (Cth) (**PPSA**).
28. Under the PPSA, a secured party (the FSP) may seize collateral (the vehicle), by any method permitted by law, if the debtor (the consumer) is in default under the security agreement (the loan contract).¹⁸

How CIO deals with information

29. CIO deals with information supplied to us by the parties.¹⁹
30. In cases involving verbal conversations, we determine what is more likely than not to have occurred, taking into account:
 - (a) the information provided to us by the parties,

¹² Schedule 1 to the *National Consumer Credit Protection Act 2009* (Cth).

¹³ National Credit Code s99 and National Credit Code Regulations, Form 13.

¹⁴ Clause 9, Default: terms and conditions.

¹⁵ Clause 17.2 of the terms and conditions.

¹⁶ Clause 9.1(a) of the terms and conditions.

¹⁷ Clause 9.2(d) of the terms and conditions.

¹⁸ S.123 of the PPSA.

¹⁹ CIO Guideline 3.2.

- (b) whether the conduct of the parties was consistent with the version of events they say occurred, and
- (c) any inferences drawn by us from the facts of the matter, because we cannot cross examine the parties on the statements or documents they have provided.

Our finding

31. From the information made available to us, it appears that:²⁰

- (a) on 22 July 2014, the consumer emailed the FSP to change the residential and mailing address for the account to:²¹
 - (i) Residential – 1 Blue Lane, Blue Town, and
 - (ii) Postal – PO Box 123, Blue Town,

this was the last postal address provided by the consumer to the FSP (**the consumer's last known address**),
- (b) on 5 August 2014, the FSP received third party authorisation from the consumer for Mrs B. The authorisation also provided Mrs B's, residential address²² and telephone number,
- (c) on 3 September 2015, the consumer's direct debit dishonoured and the account fell into arrears,²³
- (d) on 8 September 2015, the FSP sent the consumer a letter advising that the direct debit had dishonoured,²⁴
- (e) on the same date, the FSP attempted to call the consumer and left a message advising that the account was in arrears,
- (f) on 11 September 2015, the FSP attempted to call the consumer and left a message advising that the account was in arrears,
- (g) on 15 September 2015, Mrs B called the FSP and requested a payout figure for the account. The FSP advised Mrs B that the account was in arrears. She advised the FSP that the arrears would be paid by BPAY by 18 September 2015,
- (h) on 23 September 2015, the FSP attempted to call the consumer and left a message advising that the account was in arrears,
- (i) on 24 September 2015, the FSP sent an overdue letter to the consumer,²⁵

²⁰ The FSP's file notes and the agent's report. We note that the FSP has advised that the agent's notes are confidential material have been treated as confidential. CIO has summarised the parts of the agent's notes it has relied upon in carrying out our review of this complaint: CIO Guideline 22.

²¹ The FSP's file notes recorded for 22 July 2017.

²² Which was the same address as the consumer.

²³ Detailed in the statement of account.

²⁴ Detailed in the FSP's file notes. We note that we have not been provided with a copy of this letter and that the file notes do not state the address the letter was sent to. However, we consider it is more likely that not that it would have been sent to the consumer's last known address, as the FSP noted the details had been updated in July 2014 and that future letters that we have been provided with copies of were also sent to the consumer's last known address.

- (j) on 29 September 2015, the FSP attempted to call the consumer and left a message advising that the account was in arrears,
- (k) on 5 October 2015, the FSP sent a default notice to the consumer's last known address, providing the consumer with 14 days to rectify the default, which was by 19 October 2015 (**default notice**),²⁶
- (l) the consumer failed to comply with the default notice,
- (m) on 24 November 2015, the FSP sent an email to the consumer's email address (**the consumer's email address**) requesting the consumer urgently contact the FSP,
- (n) on the same date, Mrs B emailed the FSP thanking the FSP for its email and setting out that the consumer wanted to enter into an arrangement to clear the arrears,²⁷
- (o) on the same date, the FSP responded to Mrs B advising that the arrears were currently \$3,576.09, which amount was equal to three monthly instalments,
- (p) on 2 December 2015, the FSP's solicitor sent a seven-day demand letter to the consumer. The demand letter was addressed to both the consumer's last known address and the consumer's email address,
- (q) on 7 December 2015, Mrs B emailed the FSP requesting a payment arrangement and offered to make a payment of \$300 by 15 December 2015,
- (r) on 14 December 2015, the FSP emailed Mrs B regarding the consumer's promise to pay \$300 by 15 December 2015.²⁸ The FSP advised that the amount of \$300 was not enough to pay the arrears and stop collections action. The email advised Mrs B that the consumer should contact the FSP by telephone that day,
- (s) on the same date, the FSP spoke with Mrs B regarding the promise to pay \$300 by 15 December 2015. The FSP proposed that the consumer make weekly payments of \$584.76 to repay the arrears in full. Mrs B said that the consumer was unable to commit to that arrangement,
- (t) the consumer did not pay \$300 by 15 December 2015,
- (u) on 8 February 2016, Mrs B emailed the FSP requesting the arrears amount on the account,
- (v) on 9 February 2017, the FSP emailed the agent a copy of Mrs B's email dated 8 February 2016,
- (w) on 9 February 2016, the agent emailed Mrs B advising that it was acting on behalf of the FSP and requested that she contact the agent urgently,
- (x) Mrs B did not contact the agent,

²⁵ As above.

²⁶ Default notice to consumer dated 5 October 2015 sent to the consumer's last known address.

²⁷ Mrs B's email was sent from the Mrs B's email address (**Mrs B's email address**).

²⁸ The email was sent to Mrs B's email address.

- (y) on 16 February 2016 at 9.35am, Mrs B emailed the agent and asked him to call her at 12.30pm that day to discuss,
- (z) later on the same date at 10.20am, the agent confirmed the time of proposed call was suitable,
- (aa) later on the same date at approximately 12.30pm, Mrs B called the agent and advised she would talk to the consumer about paying the arrears,
- (bb) on 17 February 2016, Mrs B sent two emails to the agent asking for details about how the arrears on the account had reached \$8,800,
- (cc) later on the same date, the agent sent an email to Mrs B, which stated:

Please note the account is in arrears for-

14/9/15	\$1167.03
14,10,15	\$1167.03
14/11/15	\$1167.03
14/12/15	\$1167.03
14/1/16	\$1167.03
14/2/16	\$1167.03
Late fee	\$60.00
Dishonour fee	\$120.00
Account keep fees	\$15.00
Enforcement charges	\$1602.82.
Total	\$8800.00

- (dd) on 18 February 2016, Mrs B emailed the agent stating that she would call him at 10am the next day to discuss a payment arrangement,
 - (ee) Mrs B did not contact the agent on 19 February 2016,
 - (ff) on 23 February 2016 at 12.11pm, Mrs B emailed the agent asking for account details in order for the consumer to pay the arrears. Mrs B proposed to pay \$700 that day and provide the agent with a payment receipt,
 - (gg) the consumer did not make the proposed payment of \$700,
 - (hh) later on the same date shortly before at 2.57pm, the agent repossessed the vehicle from a basement car park at property 1, and
 - (ii) on 3 March 2016, the consumer called the FSP to ask how he could get the vehicle back and discussed the reason the vehicle had been repossessed.
32. As noted above, we rely on the information provided to us. From the information provided to us, we find that there is no evidence that:
- (a) the consumer or Mrs B requested statements from the FSP prior to repossession, or
 - (b) the consumer requested that the FSP send all correspondence to the consumer's email address on 3 March 2016. However, we note that this telephone call occurred after the repossession had taken place and therefore even if these were the consumer's instructions, this would not have affected whether the FSP was entitled to proceed with the repossession.

33. In view of the information above, we find that:
- (a) the FSP notified the consumer numerous times that the account was in arrears,
 - (b) the FSP issued default notices and demands to the consumer in accordance with the terms and conditions of the loan contract,²⁹
 - (c) the FSP provided the consumer and Mrs B with its account details prior to repossession. We note that the default notice contained the FSP's BPAY details,
 - (d) the FSP acted appropriately by:
 - (i) referring Mrs B's email dated 8 February 2016 to its agent to respond to, as the FSP had already transferred the file to its agent, and
 - (ii) declining the consumer's attempts to pay part of the total arrears prior to repossession, as the FSP required repayment of the arrears in full. The FSP was not required to accept a payment arrangement from the consumer in order to cancel the repossession,
 - (e) as the consumer failed to comply with the default notice, the consumer was in default under the terms and conditions of the loan contract,³⁰ and
 - (f) as a result, the FSP was entitled under the terms and conditions to repossess the vehicle from any property, including private property.³¹
34. Accordingly, we find that the FSP repossessed the vehicle in accordance with the terms and conditions of the loan contract.
35. Consequently, we find that this aspect of the consumer's claim has not been established.³²

Did the FSP prevent the consumer from collecting his personal belongings from the vehicle after it was repossessed?

Relevant considerations

36. We repeat paragraphs 21 to 24 above. The loan contract is not a consumer credit agreement and the repossession requirements set out in the National Credit Code do not apply.
37. Accordingly, in order to repossess the vehicle, the FSP must comply with its contractual obligations under the loan contract.
38. Under the terms of the loan contract, the consumer agreed to waive his rights to receive a notice of a proposal to dispose of goods under section 130 of the PPSA.³³

²⁹ Clause 9.1(a) of the terms and conditions.

³⁰ Clause 9.1(a) of the terms and conditions.

³¹ Clause 9.2(d) of the terms and conditions.

³² CIO Rule 36.1(d).

³³ Clause 11.1(c) of the terms and conditions.

Our finding

39. From our review of the information made available to us, it appears that:³⁴
- (a) Mrs B rang the agent at 2.57pm on 23 February 2016, shortly after the vehicle had been repossessed,
 - (b) the agent asked when Mrs B wanted to collect the consumer's personal belongings so that he could arrange it with the auction company. Mrs B advised him that she would call back,³⁵
 - (c) on 25 February 2016, Mrs B called the FSP requesting to collect the consumer's belongings from the vehicle. The FSP advised her that she needed to have the consumer contact the FSP to discuss this request,³⁶
 - (d) on 26 February 2016, the FSP sent a Notice After Taking Possession of Mortgaged Goods (**repossession notice**) to the consumer's last known address. The repossession notice informed the consumer that:³⁷
 - (i) he could redeem the vehicle by:
 - A. paying the arrears and enforcement expenses in the amount of \$8,780.18 within 21 days, or
 - B. paying out the loan in full within 21 days,
 - (ii) alternatively, he could introduce a buyer to the FSP within 21 days, who was willing to pay the estimated value or greater for the motor vehicle, and
 - (iii) if he did not do (i) or (ii) above within 21 days (by 14 March 2016), the FSP may sell the motor vehicle and deduct the sale proceeds from the loan,
 - (e) on 3 March 2016, the consumer called the FSP to ask how he could get the vehicle back and discussed the reason the vehicle had been repossessed. The consumer did not mention the belongings in this call, but informed the FSP that he had video footage of the tow truck driver breaking into the vehicle. The FSP asked the consumer to provide it with the video so it could review the footage,³⁸
 - (f) on 7 March 2016, the consumer emailed the FSP stating that:
 - (i) he disputed that he had been notified of the intention to repossess the vehicle,
 - (ii) he had tried to resolve the dispute by trying to enter an arrangement,
 - (iii) in his call with the FSP on 3 March 2016, he had tried to arrange collection of his personal belongings and had been told it was not possible, and

³⁴ The FSP's files notes and the agent's report.

³⁵ There are no notes showing that Mrs B called back.

³⁶ FSP file notes dated 25 February 2016.

³⁷ Form 14 Notice dated 26 February 2016.

³⁸ FSP file notes dated 3 March 2016.

- (iv) if the FSP did not provide the details of how to collect his belongings by 8 March 2016, then he would contact the police to report the belongings as stolen,³⁹
 - (g) on the same date, the FSP emailed the consumer with details of how to arrange the collection of his personal belongings and provided its account details for the consumer to make payment of arrears and enforcement costs, if the consumer wanted to redeem the vehicle,
 - (h) on 9 March 2016 at 10.59pm, the consumer provided the FSP with details of the personal belongings he wanted to collect from the vehicle, and informed the FSP he thought the redemption period should start from 7 March 2016, being the date he said he received the account details from the FSP for the first time,
 - (i) on 10 March 2016, the FSP informed the consumer that as it did not have the keys, the vehicle remained locked and Mrs B would need to bring the keys with her to provide to the auction company,
 - (j) on the same date, the FSP notified the auction company that Mrs B would be attending its premises to collect the personal belongings, and
 - (k) on 11 March 2016, Mrs B collected the consumer's personal belongings and claimed that there were items missing.
40. The consumer was advised on 26 February 2016 that in order to redeem the vehicle, he needed to pay the arrears and enforcement expenses in the amount of \$8,780.18 within 21 days, which was by 14 March 2016.
41. The consumer did not pay the arrears and enforcement expenses by 14 March 2016, but was granted access to the vehicle on 11 March 2016 to collect the personal belongings from the vehicle, shortly after identifying what was to be collected.
42. Accordingly, we do not consider that the FSP prevented or delayed the consumer from collecting his personal belongings.
43. Consequently, we find that this claim has not been established.⁴⁰

We are not the appropriate forum to consider the consumer's claim regarding the alleged stolen items

44. The consumer says that the following items were stolen from the vehicle during or after the repossession:
- (a) a laptop bag containing a laptop and paperwork, and
 - (b) \$5,380 cash in an envelope.
45. The FSP says that:⁴¹

³⁹ FSP's file notes dated 7 March 2016.

⁴⁰ CIO Rule 36.1(d).

⁴¹ The agent's report and the FSP's Initial Review response dated 9 March 2017.

- (a) the vehicle was repossessed without keys and was taken to the auction company locked,
- (b) its agent advised the auction company to make sure the vehicle was secure and it was not to be opened, and
- (c) it denies all claims about the alleged stolen items.

Relevant considerations

- 46. Under our Rules, we will generally not deal with a complaint if there is a more appropriate forum to deal with that claim, such as a court or the police.⁴²
- 47. If the claim relates to criminal activity, such as theft, the relevant standard of proof requires guilt to be proved beyond reasonable doubt. However, we can only determine what is more likely than not to have occurred. A court is therefore the only appropriate forum for an allegation of criminal activity to be tested.⁴³

Our finding

- 48. We consider that this claim relates to a criminal activity and as such, it would be more appropriately dealt with in another forum such as a court or by the police.⁴⁴
- 49. The consumer has told CIO that he had registered an event with the police regarding the stolen items however, CIO has not been provided with a police event number.⁴⁵
- 50. Accordingly, we consider that this complaint falls outside of our jurisdiction.⁴⁶

Were the enforcement costs charged by the FSP excessive?

- 51. The consumer has raised concerns that enforcement fees of \$1,595, charged to the loan on 23 February 2016, are excessive.

Relevant considerations

- 52. Under our Rules we are unable to consider a complaint if it relates to a fee or charge, unless:
 - (a) the complaint concerns the non-disclosure, misrepresentation, miscalculation or incorrect application of the fee or charge,
 - (b) the fee or charge is unconscionable or otherwise in breach of the law.⁴⁷
- 53. In deciding cases involving unconscionable conduct under the *Australian Securities and Investments Commission Act 2001 (ASIC Act)*,⁴⁸ the courts have observed that the conduct in question needs to show no regard for conscience,⁴⁹ be irreconcilable with what is right or reasonable⁵⁰ and warrant a high level of public

⁴² CIO Rule 10.1(o) and CIO Guidelines 82-84.

⁴³ CIO Guideline 84.2.

⁴⁴ CIO Rule 10.1(o).

⁴⁵ Telephone call with CIO dated 16 February 2017.

⁴⁶ CIO Rule 36.1(a).

⁴⁷ CIO Rule 10.1(d).

⁴⁸ Section 12CB, and its mirror provision under section 51AC of the former *Trade Practices Act 1974* (Cth).

⁴⁹ *Australian Competition and Consumer Commission v Allphones Retail Pty Ltd (No 2)* 2009 FCA 17, at [1133].

⁵⁰ As above.

condemnation.⁵¹ This analysis can be employed for considering whether fees should be considered unconscionable.

54. We note that the FSP is entitled to claim for a Reduced Input Tax Credit (**RITC**) from the Australian Taxation Office (**ATO**), which is generally 75% of any GST included in its debt recovery and litigation costs.⁵²
55. It is CIO's position that this benefit should be passed onto the borrower, regardless of whether the financial service provider actually claims the rebate from the ATO. Accordingly, the FSP ought to reduce any enforcement costs they have passed onto the consumer by the RITC amount they are entitled to claim.

Our finding

56. The loan contract discloses that the consumer must pay all costs of and incidental to the enforcement of the loan contract by the FSP, including any costs of repossession and storing the vehicle.⁵³ Accordingly, the FSP was entitled to apply the agent's invoice to the consumer's loan account.
57. We have reviewed the invoice issued by the FSP's agent to assess whether the enforcement costs incurred by the FSP and passed on to the consumer were reasonable.
58. The agent's file notes provide a detailed breakdown for the amounts charged in relation to the following work:

Costs included for the following:

2 x Field Calls – Property 2
1 x Field Call – Property 3
1 x Field Call – Property 4
1 x Field Call – Property 5
1 x Field Call – Property 6
2 x Field Call – Property 7
1 x Field Call – Property 8
2 x Field Call – Property 1
Phone Calls
Enquiries
Searches
Repossession
Tow Cost

59. Under the terms and conditions of the loan, the consumer must keep the vehicle at the address specified in the schedule. If the address at which the vehicle is kept changes, the consumer is required to advise the FSP promptly.⁵⁴

⁵¹ Or "moral obloquy" – *Attorney General of New South Wales v World Best Holdings Ltd* [2005] NSWCA 261, at [121].

⁵² *A New Tax System (Goods and Services Tax) Act 1999* (Cth) s 70.5; *A New Tax System (Goods and Services Tax Regulations 1999* (Cth) 70.5.02, 70.5.03. Recoverable costs include, among other costs, lender's mortgage insurance, valuation costs for valuations obtained for the purposes of any loan application or management and processing of a loan, debt recovery services including litigation relating to debt recovery. GST Ruling 2004/1 at section 429 – The acquisition of services that are intrinsic or integral to recovering a debt is a reduced credit acquisition.

⁵³ Clause 9.3 of the terms and conditions.

⁵⁴ Section 5.2 and 5.3 of the Commercial Loan & Mortgage standard terms.

60. Our review of the agent's report indicates that the addresses he attended were obtained from skip trace searches and information provided to the agent when he conducted enquiries during his field calls, while attempting to locate the vehicle. This was because the vehicle was not kept at the address specified in the schedule.
61. As such, the costs charged in relation to the work appear to be reasonable for the work conducted by the agent, being to locate the vehicle.
62. Accordingly we find that the enforcement costs were not excessive and that this claim has not been established.⁵⁵

Reduced input tax credit

63. However, as the FSP is entitled to a RITC, we consider that the FSP should reduce the enforcement fees by the RITC amount it was entitled to claim.
64. The agent's invoice was for \$1,595, which was inclusive of \$145 GST.
65. Accordingly, our calculations indicate that the RITC amount totals \$108.75, being 75% of the GST amount.
66. The FSP has confirmed that the full amount of GST was applied to the consumer's account in error.
67. The FSP has offered to apply a credit to the consumer's account in the amount of \$108.75.⁵⁶

Recommended resolution

68. To resolve this complaint, we would recommend the FSP refund to the consumer the amount of \$108.75.⁵⁷

Case Manager

⁵⁵ CIO Rule 36.1(d).

⁵⁶ Email from FSP to CIO dated 5 September 2017 (attached).

⁵⁷ CIO Rule 22.1(e).