



Review

16 August 2016

- Judgment debt
- Debt purchaser
- Privacy breach
- **Validity of judgement**
 - **Enforcement action**

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16 August 2016

Mrs C
The consumer's property

Our ref: xx/xxxx
Contact: XXX

Dear Mrs C

Complaint regarding Mrs C and FSP

We refer to the consumer's complaint against the FSP received on xx May 2016.

The Rules under which Credit and Investments Ombudsman (**CIO**) operates, limits the types of complaints and issues that we can consider.

Having reviewed the information, the consumer provided us, we are unable to consider the consumer's complaint further.

Complaint summary

The complaint relates to:

1. a security certificate breach message that appeared on the FSP's website on or around xx June 2012, and
2. a default judgment obtained by the FSP from the Local Court of NSW on xx October 2015 to recover \$47,454.49 from the consumer.

On xx May 2016, the Local Court of NSW dismissed the consumer's motion to set aside the default judgment and upheld the original default judgment dated xx October 2015.

Consumer's claims and preferred outcome

The consumer claims that:

1. the FSP committed a breach of the consumer's privacy by not remedying the security certificate breach,
 2. the Statement of Claim was issued to the wrong address although the consumer had updated the new address on xx July 2015, and
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3. the FSP attended the hearing on xx May 2016 despite being aware of the complaint being open with CIO.

In resolution of the complaint the consumer would like the judgment set aside and a compensation of \$75,000.

Our review

The claim that the FSP committed a breach of the consumer's privacy by not remedying the security certificate breach

The claim that the consumer's privacy was breached as the FSP did not remedy the security certificate breach. We would not be the appropriate forum to consider complaints about security certificates.

Based on the available information, we consider it more appropriate that the consumer direct this claim with the Office of the Australian Information Commissioner (**OAIC**).³ The OAIC can investigate privacy complaints covered by the Privacy Act 1988 (CTH) and also complaints relating to handling of the consumer's personal information by the FSP.

The consumer's claim that the Statement of Claim was issued to the wrong address despite the consumer updating the consumer's new address on xx July 2015

The FSP has provided us a copy of the judgment by the Local Court of NSW against the consumer dated xx October 2015 and a copy of the notice dismissing the consumer's motion to set aside the default judgment dated xx May 2016.

A court has ordered that the consumer pay the judgment debt. We cannot deal with a complaint if the subject matter of the complaint has been determined by the court.⁴ This is because we are not able to make a decision that would be seen to conflict with a decision of the court. Furthermore, only a court is able to set aside a court's judgment.

If the consumer wishes to set aside the default judgment, the consumer's claim would be better raised with the Local Court of NSW.⁵

The consumer's claim that the FSP attended the hearing on xx May 2016 despite being aware of the complaint being open with CIO

We received the consumer's complaint against the FSP on xx May 2016. When we receive a complaint, the financial services provider is required to cease enforcement action for as long as we deal with the complaint.

On or around the same time the consumer lodged the complaint with us, the consumer approached the Local Court of NSW to set aside the default judgment obtained by The FSP.

Both the parties attended the hearing to set aside the default judgment on xx May 2016. The court dismissed the consumer's motion to set aside the default judgment and upheld its original default judgment against the consumer dated xx October 2015.

We do not consider that the FSP breached our Rules by attending the court hearing. This is because the FSP already obtained a judgment against the consumer on xx October 2015 and was attending the court to respond to the consumer's notice to set aside the default judgment. We are unable to find that this amounted to a continuation of enforcement action as The FSP is entitled to defend itself to legal proceedings commenced by the consumer.

³ CIO Rule 10.1(o), CIO Rules 9th Edition. All references to a CIO Rule are to the 9th Edition CIO Rules.

⁴ CIO Rule 10.1(m).

⁵ CIO Rule10.1(o).

Responding to our Review

For the reasons stated above, we are unable to consider this complaint further.

If our understanding of the complaint is incorrect, or if the consumer has further information which indicates that we should continue dealing with some or all aspects of this complaint further, please provide this to us by **xx August 2016**.

If the consumer provides us with new information by **xx August 2016**, we will review this information to consider whether it changes our view. If it does, we will continue dealing with this complaint.

If we do not receive a response from the consumer by **xx August 2016**, or if the information received does not change our review, this complaint about The FSP will be closed without further notice. Once closed, a complaint can only be reopened in exceptional circumstances.

The consumer can also ask for a Determination. A Determination is made by the Ombudsman and is a final decision about the complaint.

Further assistance

If the consumer wishes to lodge the consumer's complaint with the OAIC, they can

be contacted on:

N Office of the Australian Information Commissioner
T 1300 363 992
E enquiries@oaic.gov.au

Please be aware that The FSP is entitled to continue with enforcement action once the CIO complaint is closed.

If the consumer wish to seek urgent legal advice on this matter, please contact the Credit and Debt Hotline on 1800 007 007.

Case Manager