

PART 7

IMPROPER COLLECTION PRACTICES

In the examination that has been made of HFC's training and supervision, reference has been made to admissions by HFC as to the lack of knowledge and understanding on the part of HFC staff of important debt collection matters. In this regard, the failure of HFC to train its staff properly about the legal consequences of bankruptcy and about basic aspects of rights of repossession are particularly relevant.

There were, however, a number of other cases in which it was alleged that HFC officers had engaged in improper conduct in the course of collecting debts owed to HFC or BFC, but in which it appeared that if the allegations were established, it is unlikely that the improper conduct could be attributed merely to failures in training. The Authority proposes to examine four of those cases.

The Toms matter:

On 14 July, 1982 a Mr. Rupert Toms borrowed \$12,000 from HFC, repayable by 60 monthly instalments of \$345.22. It is not clear whether Mr. Toms' wife, Mrs. Esma Toms, was a co-borrower but Mrs. Toms' evidence was to the effect that the loan was for Mr. Toms' purposes only and that he attended to the repayments (1837). However, Mrs. Toms supported the loan by giving HFC a second mortgage over the family house in Richmond of which she was the sole proprietor.

On 9 January, 1985 Mr. Toms entered into another loan contract with HFC, borrowing \$1054 repayable by one instalment of \$82.56 and 22 (or 23) instalments of \$61. This loan was unsecured and involved Mr. Toms alone. There is no suggestion that Mrs. Toms received any benefit whatever from this loan.

Mr. Toms died on 20 February, 1985. At the time of his death Mr. Toms had made no payments on the 1985 loan and there was a substantial amount still to be repaid on the 1982 mortgage loan. It appears that Mrs. Toms sought assistance in straightening out affairs after her husband's death and for that purpose she saw a Ms. Gianna Rendina of the Fitzroy Financial Counselling Service in March 1985.

Ms. Rendina telephoned the Richmond branch of HFC on 22 March, 1985 and advised that branch of the death of Mr. Toms and of the fact that his estate was without assets. A confirmatory letter to that effect was sent to the Richmond branch on 28 March, 1985. Ms. Rendina made a similar telephone call and sent a similar letter to the Hawthorn branch of HFC in May 1985.

In early 1986, more than nine months after being advised of Mr. Toms' death, the Richmond branch of HFC posted to Mrs. Toms a repayment book for the 1985 loan made to Mr. Toms. No letter was sent with the repayment book.

Mrs. Toms believed that this repayment book related to the 1982 mortgage loan which she had been repaying since her husband's death. She said that she thought that because the mortgage loan was the only loan that she was currently paying to HFC. She also thought that the

mortgage payments must have reduced because it was close to the end of the term of the mortgage loan (1839, 1841). Mrs. Toms stopped paying the \$345.22 monthly instalment on the 1982 mortgage loan and made three monthly payments of \$61 to HFC as per the repayment book she had just received, in the belief that the payments of \$61 per month were those now required for the 1982 mortgage loan.

After Mrs. Toms had made the last of these payments she received a telephone call from a person in HFC's Richmond office who told her that she was behind in her mortgage payments.

It should be explained that Mrs. Toms became very distressed while giving evidence to the Authority. She is approximately 60 years of age and working as a domestic at the Henry Pride Hospital, Kew. She struck the Authority as a very sincere, honest and hardworking woman, for whom the task of relating the events of 1986 proved most distressing to the extent that she was in tears. Unfortunately because of her distressed state her evidence became a little difficult to follow when it got to the stage of what had been said between herself and HFC when she was telephoned by HFC. For those reasons it is preferable to quote directly from the transcript (1841/2).

Mr. Bingham: Now after you received the payment book and after you started making the payments did you have any further contact from HFC?

Mrs. Toms: I started paying them and then I got a phone call from HFC saying that I was behind in my mortgage. I couldn't understand I was behind on my mortgage and I said

"But I've been sending the money," and he said "It's for your husband." I said "What do you mean 'It's for your husband;' he's passed away." He said - I kept on - I got very kind of hysterical. I didn't know what he was talking about because all in my mind then I was going to have a - and now I could lose my house because I'm that far behind. And he rang and then I rang. I couldn't understand it. I just couldn't understand it."

Mr. Bingham: Did he explain to you at all - - -?

Mrs. Toms: That's another one and I had to pay my \$345.22 too. That was another one.

Mr. Bingham: What do you mean by that?

Mrs. Toms: Well, the book that was sent to me, because it was so close to the end of my other mortgage book, I thought it was something to do with that, that's all, and that's why I kept on paying it until he rang.

Mr. Bingham: Did that man explain the situation at all to you?

Mrs. Toms: Well, he said "It's another payment book," and he said "This is your husband's." I said "What do you mean it's my husband's; he's been passed away." He said "Well, this is what you keep on telling me; he's passed away." But I said "I want to" - he said this; "You've got to still pay your \$345," so I said what am I going to do?" I kind

of went hysterical. I couldn't make heads or tails what was going on.

Mr. Bingham: Did he say anything about payments of \$61?

Mrs. Toms: Yes, but that's what I said; "I've sent it." And I said "You didn't send me a book to say what it was about. I didn't know."

Mr. Bingham: What happened then?

Mrs. Toms: Then the next day I went to work after he had rang me a couple of times; I went to work and saw my supervisor and asked could I take time off to go and see Gianna because see if she could work it out because I was still kind of all upset and nothing made sense to me.

Ms. Rendina was also called to give evidence. She said that she had assisted the whole Toms family in March 1985 with their affairs after Mr. Toms had died and in the course of that she had notified the Richmond and Hawthorn branches of HFC. She said that in 1986 she received a telephone call from Mrs. Toms. Mrs. Toms told her that a man from HFC had rung her up and told her that she had not paid her mortgage and that she was paying less money. Ms. Rendina said that she did not quite understand what Mrs. Toms was telling her and asked Mrs. Toms to come to see her.

Later the same day Mrs. Toms called on Ms. Redina and brought with her the repayment book that she had received in the post and she told Ms.

Rendina that she had paid it. Ms. Rendina said that Mrs. Toms was very very upset, that she was crying and shaking. Ms. Rendina said she then telephoned HFC but that she could not remember to whom she had spoken. She gave the following evidence of her telephone conversation with the person at HFC (1847).

Ms. Rendina: I rang him and I said "What's this?" and he said "You know, it's a debt," and I said "Whose debt?" and I remember he says "Mr. Toms." I said "But look, I rang you up because I had a few contacts with HFC. I wrote you a letter and I said to you - I told you Mrs. Toms is not liable for this debt." You know, "How dare you come back after 12 months and upset my client," because she was really upset. He said "She has to pay. It's her husband but she has to pay," and I said "You're joking. She's not liable. Her husband's dead." "No, she has to." Anyway, we had sort of a bit of a conversation and we were fighting and I thought, you know, at the end it just came to me "I'll bet the licensing authority would love to hear this," and the HFC man said "You financial counsellors think you're God," and we are sort of still talking and at the end he agrees - sort of retreat when I mention the licence authority and he, you know, he sort of agreed that, to put that money into the mortgage after a bit of a fight and for Mrs Toms to pay the rest.

It is to be noted that none of the evidence of Mrs. Toms or Ms. Rendina as set out above was challenged in cross-examination. Ms. Rendina

was asked in cross-examination again about her telephone call with HFC's Richmond branch, as follows (1850/1).

Mr. Habersberger: Now, coming back to this telephone conversation, was the question of the mortgage repayments discussed in that telephone conversation?

Ms. Rendina: It was because I asked them - I asked Mrs. Toms to move the money into the mortgage.

Mr. Habersberger: Yes, but before that had happened, was there any discussion of the fact that Mrs. Toms was behind on her mortgage payment?

Ms. Rendina: There was, yes. I think he'd - for what I can remember - it's a long time ago, of course - but he was very rude, he was saying that, you know, "They'll sell the house."

Mr. Habersberger: So that he was talking about the mortgage being behind and you were talking about this other debt, were you?

Ms. Rendina: No. We were discussing this other debt, saying - I was saying to him that that is not Mrs. Toms' debt, that -

Mr. Habersberger: Yes, I understand you said that. But what was said about the mortgage; that it was behind. Was that right?

Ms. Rendina: Yes.

Mr. Habersberger: He was saying that?

Ms. Rendina: He was saying that she was behind.

Mr. Habersberger: Yes, and what were you saying about that?

Ms. Rendina I cannot remember.

Mr. Habersberger: Apart from saying - as I understand you, he said that she had to pay, did he give any explanation as to the sending of the payment book?

Ms. Rendina: No, he said it's Mr. Toms's debt and she has to pay.

Mr. Habersberger: It is Mr or Mrs?

Ms. Rendina: Mr ---

Mr. Habersberger: Mr. Toms' debt?

Ms. Rendina: Tom's debt.

Mr. Habersberger: And she has to pay?

Mr. Thompson denied that he had initially told Ms. Rendina that Mrs. Toms had to pay, or that it is her husband's debt but she had to pay. He said that he did not recall Ms. Rendina saying "I bet the licensing authority would love to hear this" (3646). He also denied saying "You financial counsellors think you are God." He also stated that the tone of his conversation with Ms. Rendina was a normal business like conversation.

The Toms matter raises two important questions -

- (i) was the repayment book for the 1985 loan sent by HFC to Mrs. Toms intentionally, that is knowing that Mrs. Toms was not liable for the debt or was it, as Mr. Thompson said, sent as a result of "a mistake" made by "one of the receptionist staff"?
- (ii) did Mr. Thompson tell Mrs. Toms or give her to believe that she was obliged to make payments on account of the 1985 loan?.

The answer to the first question is to be found, in the Authority's opinion, in certain entries on the loss card. The critical entries are -

CUSTOMER DECEASED HOLD FOR DM TO REMOVE TO DEAD LOSS

21.11.85 Cust has current mortgage account in advance. Try to collect on this through wife
COLLECT WITH MORTG.

Ms. Rendina: She has to pay.

An important document tendered in the Toms matter was Exhibit A112 which was the "loss card" created for Mr. Toms' 1985 loan account. HFC's practice when no payments had been made on a loan for six months is to "charge off" the loan and to create a loss card. This does not mean that the loan has been written off but rather reflects the fact that the loan has reached a state where it is evident that regular payments are not being made and the collection of the amount outstanding may be a matter of some difficulty.

HFC's practice with all of its ledger cards, including loss cards, is to record payment details on the front of the card in ruled columns. The back of the card is used for the writing of notes of collection activity. Collection instructions from district managers and branch managers to branch staff are also recorded on the back of ledger cards.

The back of the Toms' loss card has the following entries on it -

CUSTOMER DECEASED HOLD FOR DM TO REMOVE TO DEAD LOSS H 1/8
(Note - "H" means hold)

5/8/85 Did we lodge claim with the estate?

21/11/85 Cust has current mortgage account in advance.
Try to collect on this through wife. H 30/12

COLLECT WITH MORTG

3/7 Fitzroy Legal Service contacted, she not liable
for this Debt as has not signed, apply these 3
payments to mortgage, lodge caveat on house so
this amount is collected from the estate, try
arrange payments of small amount per month when
she next pays. H 15/8

9/7/86 3 x \$61 belongs to R/E A/c No 0001
Dr. P & L A/c R/E A/c.

31/3 Ded. Loss

Mr. Thompson, who had formerly been a branch manager at Richmond (and other branches) was called by the Applicant to give evidence concerning the Toms matter. Part of his evidence-in-chief was as follows:

Mr. Habersberger: Do you recall ever speaking to Mrs. Toms?

Mr. Thompson: I think I may have on one occasion.

Mr. Habersberger: Do you remember what the content of that conversation was?

Mr. Thompson: I believe there had been a misunderstanding of one of the assistant managers and Mrs. Toms. There'd been, I guess, a mistake made over who was liable for a personal loan in the branch and a payment book had been sent out to Mrs. Toms. She had then contacted me at some stage and we had a discussion on the matter that her mortgage was in arrears and that there had been payments made to another account which was in her husband's name. I suggested that she come in and we have a discussion about it to see how we could rectify the situation because a mistake had been made.

Mr. Habersberger: And what did Mrs Toms say?

Mr. Thompson: She seemed a little upset by the situation but said she'd take some time off and come in and speak to us

about it and we'd see what we could do to rectify the situation." (3642)

Mr. Thompson was asked what he understood had happened as a result of his having spoken to Mrs. Toms. His answer was "The mistake had been made possibly a period of three months earlier when one of the receptionist staff had sent out a payment book on an account that Mr. Toms had held with the branch. Mrs. Toms had mistakenly undertaken - understood that to be a new book for her mortgage account, which I believe her previous book was almost completed and she commenced making payments of \$62 from that period onwards." (3645) Mr. Thompson told the Authority that he had not been Branch Manager at Richmond at the time when the payment book was sent out and that he had had nothing personally to do with the Toms' file until he took over the telephone from the other staff member who had rung Mrs. Toms and then had his first conversation with Mrs. Toms.

Mr. Thompson said that Ms. Rendina rang him and talked about the matter. He said that "When we realised our mistake, we told Mrs. Rendina that those - that amount would be credited to the mortgage account of Mrs. Toms as she had no liability for the payments on Mr. Toms' account." (3643)

Mr. Thompson said that he certainly would have become aware of the fact that Mr. Toms had died during his telephone conversation with Mrs. Toms but that he did not think that even by the time he spoke to Ms. Rendina that he was aware of the actual date of Mr. Toms' death.

The conclusion is irresistible that the sending of the repayment book was done in the knowledge of Mr. Toms' death and that the maker of the entries was instructing branch staff to try to collect from Mrs. Toms. The reference to the mortgage account being in advance indicated, it would seem likely, a belief that there are good prospects of collecting through Mrs. Toms.

Other evidence given by Mr. Thompson is not only confirmatory of or consistent with that conclusion but puts HFC's conduct in the Toms matter in an even worse light. It appears that Mr. Thompson -

- (a) having agreed with Ms. Rendina that HFC had made a mistake in sending to Mrs. Toms the repayment booklet for a loan for which she was not liable; and
- (b) having agreed to transfer the payments made by Mrs. Toms to the credit of the 1982 mortgage loan account,

then proceeded to endorse on the loss card an instruction "Try arrange payments of small amount per month when she next pays." The giving of that instruction in the circumstances was surely disgraceful conduct.

Mr. Thompson explained it in his evidence thus "The further situation of trying to arrange payments of the small amount would be just to discuss with Mrs. Toms whether she was able to make a small decrease in the account if she felt morally obliged to do so." (3651)

Mrs. Toms, it should be recalled, had been duly repaying a much larger loan obtained by her husband but for which she had offered her house as security. She had been severely distressed as a direct result of the

sending to her of the repayment book several months earlier. She was relatively recently widowed. All of these matters were known to Mr. Thompson. To suggest that further approaches to her were justified by what she might feel is her moral obligation to HFC was both callous and hypocritical.

When cross-examined about his instruction to attempt to get Mrs. Toms to pay small amounts, Mr. Thompson gave an equally disingenuous answer. He was asked "But you were still intending to try and recover some payments on Mr. Toms' account?" and he answered "If it was possible to do so without affecting the borrower, yes." (3708). The Authority believes that the only sense that can be made of this answer is to interpret it as meaning whatever the person concerned can be cajoled into paying, by fair means or foul.

An answer of a similar nature was given by Mr. Thompson when he was asked by Mr. Nelthorpe why, during his telephone conversation with Mrs. Toms, he had asked Mrs. Toms to come into the HFC office. Mr. Thompson answered

"She was very upset. I wanted her to come in so that we could talk about it and if she didn't have any - at that stage I had not seen any of this, so if she didn't have anyone who could advise her on what her rights and what courses of action she could take, we would have taken action to try and help her out."
(3705)

Doubtless Mr. Thompson was anxious to have the opportunity to assist Mrs Toms in understanding and fulfilling her moral obligations to HFC.

If it had been the case that the conduct of HFC towards Mrs. Toms appeared to be exceptional or an aberration, it was still a very serious matter. But that is not the case. The evidence of Mr. Thompson reveals that there is nothing untypical about this episode. Mr. Thompson said "...we were under instructions to try and attempt to collect on dead loss accounts, if it was possible." (3707). He said that attempting to recover some payments on Mr. Toms' account was acting in accordance with instructions. (3708). Significantly he also said that he did not believe those instructions were in writing. (3708).

It is important to bear in mind that Mr. Thompson was a witness called by the Applicant and that it appears that one of the purposes for which he was called was to give evidence about practices and procedures in HFC branch offices in matters that were directly relevant to the hearing. In fact, in its final written submission the Applicant invited the Authority to rely on evidence by Mr. Thompson as to the extent of supervision provided by district managers to branch staff (para 56.4). Thus the Authority regards Mr. Thompson's evidence that branch staff acted in collection matters in accordance with unwritten instructions as reliable.

As to the second question, we do not believe that the evidence establishes that Mr. Thompson told Mrs. Toms that she was obliged to make payments in reduction of her late husband's debt although it certainly raises strong suspicions that such may have occurred.

For the reasons that we have explained earlier, Mrs. Toms' evidence is extremely hard to understand and, having regard to the seriousness of the question we are examining, it does not seem appropriate to find that Mr.

Thompson did tell Mrs. Toms that she had to pay unless the evidence in favour of that conclusion is compelling.

There is plainly a contradiction between the evidence of Mr. Thompson and Ms. Rendina as to whether Mr. Thompson initially told Ms. Rendina that Mrs. Toms had to pay. The Authority is inclined to prefer the evidence of Ms. Rendina, notwithstanding the arguments put to the Authority as to why Ms. Rendina's evidence should be regarded with suspicion, principally because there are some serious inconsistencies in Mr. Thompson's evidence. But in the Authority's view what Mr. Thompson said to Ms. Rendina about Mrs. Toms' liability for her late husband's loan is very much a matter of secondary importance by comparison with what he told Mrs. Toms.

There is one other matter which the Authority considers important arising out of the Toms affair. It appears that Mrs. Toms made four payments, not three, from the repayment book posted to her before she was telephoned by HFC and told that her mortgage account was in arrears. Apparently the stub on which the first payment would have been recorded had been torn out leaving stubs for the three payments of \$61 only. However, the first transaction entered on the loss card records that on 25.2.86 a payment had been made of an amount of \$82.56 which, it will be recalled, was the amount of the first instalment due under the loan. It appears certain that that payment also was made by Mrs. Toms since her husband died more than a year before that date.

The evidence is that when both Mrs. Toms and Ms. Rendina spoke to Mr. Thompson the only payments of which they (i.e. Mrs. Toms and Ms. Rendina) were aware and thus raised with Mr. Thompson were the three payments of

\$61 for which there were stubs in the repayment book. Thus it was those three payments only which Mr. Thompson agreed to transfer to the mortgage loan account.

It appears that when HFC proceeded to transfer payments made by Mrs. Toms over to the credit of her mortgage loan account, the only payments so transferred were the three payments of \$61 that had been discussed. The question arises why the first payment of \$82.56 was not also transferred at the same time. It is improbable that HFC would have transferred the payments of \$61 without being certain as to the date on which Mr. Toms died although we accept that Mr. Thompson may have taken Ms. Rendina's word about Mr. Toms' death for the purposes of his agreeing during their telephone call to transfer the three payments. It is also improbable that the first repayment recorded on the loss card would have been overlooked at the time the other three payments were being transferred since at that time the loss card contained only four entries. There is no room for an explanation that HFC might have believed that the date recorded on the loss card for the first payment was wrongly typed as 25.02.86 in lieu of 25.02.85 because the first item on the loss card is "charged off 1.7.85" and in any event Mr. Toms had died before the 25.2.85.

In the Authority's opinion the evidence leads to a conclusion that HFC deliberately failed to credit Mrs. Toms with the first payment made by her for the simple reason that the transfer of that payment had not been specifically raised by Mrs. Toms or Ms. Rendina with Mr. Thompson and therefore HFC saw no obligation to transfer that payment also.

We regard the failure to transfer the payment of \$82.56 simultaneously with the other payments as dishonest. The Authority has been informed that, during the course of the hearing, HFC has attempted to repay the amount of \$82.56 with interest to Mrs. Toms, Mrs. Toms having completely discharged the 1982 mortgage loan in the meantime.

The Stoate matter

As a result of admissions made by the Applicant in its formal response document, it is unnecessary to do more than explain the facts sufficiently to place those admissions in a fair context.

In April 1985 a Mr. Stoate borrowed approximately \$2900 partly to refinance an existing loan with HFC and partly to enable him to purchase a Honda motor cycle. The loan was secured by a goods mortgage over the motor cycle.

Mr. Stoate said that about one year later he wanted to sell the motor cycle and sought HFC's consent. He gave evidence that the HFC office agreed to his selling the motor cycle provided that he came back to the office with the proceeds of the sale. He further stated that after he sold the motor cycle he returned to the HFC office as agreed with \$2000 which he was willing to pay off the loan balance but was advised he would be better off continuing with ordinary payments and banking the money.

The latter is not as improbable as it might seem; the evidence in another matter (Kilbride) established that another borrower was similarly advised in analogous circumstances. Mr. Stoate said that he did not think that any notes or records were made by the HFC staff with whom he dealt.

Subsequently Mr. Stoaate got into severe financial difficulties and eventually, after consulting a financial counsellor, petitioned for his own bankruptcy. At the time of bankruptcy a substantial amount was owing to HFC and there were debts to other finance companies.

Mr. Stoaate told the Authority that after he had become bankrupt he and his mother both received calls from HFC asking what had happened to the motor cycle. Mr. Stoaate said that he told HFC that he no longer had the motor cycle and told them to contact George Williams, from whom Mr. Stoaate had sought assistance, about the matter.

The other witness in this matter was Mr. Williams who said that he was spoken to by two officers from HFC, including a Mr. Mercadante. Mr. Williams gave evidence that he told Mr. Mercadante that the motor cycle had been sold, that it was his understanding that Mr. Stoaate had been given permission to sell the motor cycle and that Mr. Stoaate was bankrupt.

Mr. Williams then said that Mr. Mercadante said to him that HFC was not really interested in the motor cycle but in recovering the money. Mr. Williams then gave evidence that Mr. Mercadante made two suggestions to him -

(i) that he was willing to come to an arrangement with Mr.

Stoaate rather than pursue Mr. Stoaate for fraud; and

(ii) that Mr. Stoaate could have someone else make the payments to HFC.

The Applicant has admitted the truth of both of those matters.

It scarcely needs to be said that HFC's conduct in this matter was grossly improper and constituted harassment of the most serious kind. It is also obvious from Mr. Mercadante's suggestion that Mr. Stoate employ someone else to make payments on his behalf to HFC that Mr. Mercadante was fully aware of the wrongfulness of his suggestion.

The Condotta matter

Mr. Condotta became seriously in arrears in instalments due under a hire purchase agreement entered into with BFC Finance Limited on 12 February, 1985.

The administration of that contract had been taken over by HFC on BFC's behalf and because of the extent of arrears the collection of the account was in turn transferred from HFC's Frankston branch to HFC's Central Collections office.

In January 1986 a letter of demand was sent to Mr. Condotta and on the bottom of the letter an unknown HFC officer added a handwritten note "Please contact me so that we can come to a suitable arrangement to pay back this amount without involving courts or the police." (0219)

The Carrigan/Baxter matter

A Mr. Baxter had permitted a motor vehicle owned by him to be mortgaged as security for a loan given by HFC to his wife's parents. Repayment of the loan fell into arrears and Mr. Baxter was telephoned by an HFC

officer who told him that unless a large amount of money was paid to HFC by 3.00 p.m. that day, HFC were coming to repossess his vehicle (841).

Conclusions

The evidence in the Toms, Stoate, Condotta and Baxter matters shows that on occasions HFC staff have used quite improper tactics in an attempt to collect monies outstanding to HFC. Of all the matters the Toms matter is by far the most serious in that -

- (i) it involved grossly unfair conduct;
- (ii) it involved dishonest conduct; and
- (iii) it revealed the existence of unwritten instructions used by staff in collections.

There is other evidence which indirectly corroborates Mr. Thompson's evidence as to the existence of unwritten instructions. A Mr. Weste who had served with HFC for four years and had been a branch manager told the Authority that he had read all of HFC's manuals except the collections manual in their entirety but that he had not read the whole of the collections manual. (4412) It is particularly significant that Mr. Weste said he had to read all the other manuals in their entirety, thus indicating that no similar obligation was seen or felt, at least by Mr. Weste, with respect to the collections manual.

The Authority regards the evidence of HFC staff acting in accordance with unwritten instructions as revealing a disturbing state of affairs. The

full extent of the unwritten instructions can only be speculated about, but if the conduct in the Toms matter is any guide to the sort of conduct which those instructions directed, it seems highly probable that the reason why those instructions were unwritten was that they would be highly incriminating if they were to come to light.