

## PART 10

### MATTERS ARISING FROM MR. SWINBOURN'S EVIDENCE

Mr. Swinbourn was the Vice-President with responsibility for HFC's revolving credit business and for the development of its proposed revolving lending operation.

It was from Mr. Swinbourn that the Authority received almost all the evidence about procedures used by HFC with its existing revolving credit business, which business, it will be recalled, involves the provision of continuing credit to persons purchasing goods from retailers with whom HFC has standing merchant agreements.

The importance of that evidence did not lie only in what it disclosed about HFC's revolving credit operations. Because revolving credit is HFC's only existing form of continuing credit, the Authority considered that evidence concerning revolving credit would also be of assistance in understanding some of the issues that might arise when HFC implemented its major proposed new form of lending, namely revolving lending.

CCLS cross-examined Mr. Swinbourn at considerable length about various aspects of the revolving credit operation. It was clear that CCLS wished to test whether HFC employed satisfactory credit assessment techniques when deciding whether to approve applications for revolving credit. There were two forms of application for revolving credit accounts in evidence. One form of application required the applicant to disclose any other credit card type accounts, together with particulars of amounts outstanding and repayment obligations relating thereto. On the other form of application all that was required to be

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disclosed was the name of the card issuer and the credit card number.

The Authority raised with Mr. Swinbourn the fact that the second mentioned form did not appear to seek information about amounts outstanding. Mr. Swinbourn responded that that was what HFC was really after (6710).

Mr. Swinbourn then told the Authority "We can obtain a reference usually on an account number for a Mastercard or a Visacard and that will also tell us what the balance is at the time that we make an enquiry ... If we have a Mastercard number, account number, or a Myercard number of a department store number and so forth we make a credit reference enquiry. We ring them, the institution."

Chairman: "You mean the bank?"

Mr. Swinbourn: "Yes"

Chairman: "The issuing bank?"

Mr. Swinbourn: "Yes"

Chairman: "And they will tell you?"

Mr. Swinbourn: "Yes, and we obtain a balance and we obtain a payment history on it and invariably the monthly repayments"

Chairman: "Which banks give you that information Mr. Swinbourn, could you tell me?"

Mr. Swinbourn: "Yes, the State Bank of Victoria was giving it to us here on Visacard for example. I believe we have some arrangements with Westpac in some cities. It is a matter of quid pro quo as they say. If we give them we get them." (6711-12)

The Authority returned to the matter with Mr. Swinbourn on the following day's hearing. It put to Mr. Swinbourn the relevant parts of the previous day's evidence and then asked Mr. Swinbourn -

Chairman: "I would like to take that a little further and in more detail with you if I could. What is the position with other banks. Did you say you can get particulars and payment history on a Commonwealth Bank bankcard?"

Mr. Swinbourn : "From memory we have in Sydney, Mr. Chairman."

Chairman: Yes, but...is it HFC's position that it can obtain as a matter of routine the balances and credit limits and payment histories on Bankcard, Visacards and Mastercards issued by Australian banks as a general...?"

Mr. Swinbourn: Yes, it is, Mr. Chairman. I have definitely seen it and it is a general practice."

Then followed some discussion of which particular banks would provide HFC's Victorian Revolving Credit Office with those particulars. Mr. Swinbourn made it plain that HFC's Victorian Office was not able to obtain balances and payment histories on those accounts with all major banks. He then said "I am aware that we have relationships with other Australian banks and we do obtain that information. I would need to ask the respective 91 Managers (the term "91", in HFC's terminology, means a State Revolving Credit Office) to give me a list of who their current referencing partners are to come back to you on it."

It was then agreed that Mr. Swinbourn would, during a convenient adjournment, find out from the Victorian Revolving Credit Office

what information it can routinely obtain from bank issuers of Bankcard, Mastercard and Visacard concerning account balances, payment histories and credit references. (6834-36).

Later the same day the Authority was informed that Mr. Swinbourn had made the enquiries requested. He was then asked -

Chairman: "We are interested in the measurement of the indebtedness, the existing indebtedness of a customer at the time the decision is made to grant further credit so could I ask which institutions who issue the cards that you were talking of provide you with balances?"

Mr. Swinbourn: "I believe the ANZ does, Mr. Chairman. The Challenge Bank doesn't, the Commonwealth Bank doesn't, the Citibank does, Metway Bank does, National Australia Bank, State Bank and Westpac Bank I believe." (6854)

The Authority felt in some difficulty in that Mr. Swinbourn's evidence was at variance with the Authority's own understanding of bank practices. On 5 December, 1988 the Authority explained that difficulty to Counsel for the Applicant and suggested that the appropriate course for the Authority to take was to call for all the revolving credit applications that were approved in the Victorian Office over a particular period so that it could examine the credit assessment information as recorded on the documents. Counsel for the Applicant indicated that the Authority's suggestion seemed an appropriate course to take. Ultimately it was agreed that there would be delivered to the Authority the original application forms (including

the credit assessment material) relating to all revolving credit applications that had been approved in HFC's Victorian Revolving Credit Office during the first two weeks of November, 1988.

In accordance with the arrangements, the Applicant caused 353 approved revolving credit applications to be delivered to the Authority on 9 December, 1988. The Authority analysed the applications and concluded that they revealed the following:

- (i) of the 353 approved applications, 143 were applications made by consumers who disclosed in the applications that they held one or more bank issued credit cards in the nature of a Bankcard, Mastercard or Visacard;
- (ii) of those 143 applications, there were 7 cases only where a balance outstanding or the cardholder's credit limit or a monthly payment figure appeared to have been provided to HFC by the bank which issued the card;
- (iii) there were 4 cases in which general credit comment appeared to have been obtained from the issuing bank, being comment in the nature of "account maintained satisfactorily", "A credit rating" and like expressions ;
- (iv) there were 3 cases where the application papers contained a notation that the bank concerned had refused to provide any information; and

- (v) there were 3 cases where the papers indicated that the bank concerned had confirmed that it held a mortgage over the cardholder's property.

In summary, the Authority's examination of the 353 approved applications showed that -

- (i) 41% of applicants held bank issued credit cards;
- (ii) in 5% only of cases where consumers held bank issued credit cards, was HFC provided with information as to the credit card limit, the current balance outstanding or the monthly payment or some combination thereof.

Because of the volume of documents comprised by the 353 approved applications and the difficulty of copying them adequately, the Authority did not consider it practical to retain the documents as exhibits. It had recorded in tabular form from the application documents the applicants' names, bank details, types of credit card (if any) disclosed by the consumers and what information, if any, was recorded as having been supplied to HFC by the card issuing bank. The Authority offered to make a copy of those working papers available to the Applicant. The Applicant responded that it would be more convenient if it conducted its own survey and if that survey produced different results, the Authority's working papers might then be resorted to as a means of resolving the differences. The application documents were returned to the Applicant.

Counsel for the Applicant then asked the Authority whether it had any questions which it wished to ask of Mr. Swinbourn arising out of the analysis and further indicated that it was convenient for those questions to be based on the assumption that the Authority's analysis was correct. The Authority responded -

Chairman: Mr. Habersberger I think that our present view of it is that the figures speak for themselves... We think that it is an acceptably random survey and it (i.e. the period covered) has not been selected by us to give a particular result or to avoid a particular result. We have no particular desire to ask questions ourselves.

Mr. Habersberger: I only want to say that because if the Authority were holding back until we had come back and said "We agree with those figures" and then the Authority said "Well, now we want to ask Mr. Swinbourn some questions" it is just a further disruption whereas he is here now to clear up..."

Chairman: No, none occur to us."

It seemed to the Authority to be obvious that the results of the examination that it had outlined to the Applicant revealed that Mr. Swinbourn had grossly overstated the extent to which HFC regularly obtained from certain banks the information as to the level of indebtedness or the repayment obligations of Bankcard, Visacard and Mastercard holders who were applying to HFC for revolving credit. In only 5% of such cases was the information obtained.



The Authority did not consider that there was any room for doubt in Mr. Swinbourn's mind as to what the Authority had been asking him; after all it had raised the matter with increasing degrees of particularity on three separate occasions. Moreover it had explained in answer to an enquiry from Mr. Bevan John for the Applicant, that the Authority was not interested in the privacy aspects of the disclosure by banks of information, rather its concern was how comprehensive and reliable was the information available to HFC on which HFC based its credit judgements. Subsequently, of course, an issue had arisen about the conflict between Mr. Swinbourn's evidence and the Authority's own understanding of bank practices. That also had been explained to the Applicant and indeed the examination of the application documents was resorted to in order to resolve the conflict.

Nothing further concerning this matter arose until 10 April, 1989 when, on the resumption of the Authority's hearing from 17 February, 1989, notice was given of an application by CCLS to re-open its case. It appears that during March 1989 two persons who were employed in HFC's Melbourne Revolving Credit Office during December 1988 but had since left HFC, had provided CCLS with affidavits suggesting, inter alia, that certain of the revolving credit applications approved during the first two weeks of November, 1988 had been withheld from the Authority.

It further appears that CCLS had then written to the Applicant advising that on the resumption of the Authority's hearing in April 1989, CCLS intended to seek leave to re-open its case and to have the matters raised by the affidavits examined by the Authority. On the resumption of the hearing on 10 April, 1989 the parts of the affidavits which contained the allegations concerning the removal of certain approved

applications were admitted by consent . The Applicant indicated its desire to deal with this allegation immediately and Mr. Miller proceeded to give evidence concerning it.

Mr. Miller told the Authority that immediately after receiving the letter from CCLS, he investigated the allegation concerning the application forms. He told the Authority what he had discovered by questioning staff in the Melbourne Office and other relevant HFC staff, including Mr. Swinbourn and Mr. Doig, an Assistant Vice President who had been assisting in the Melbourne Revolving Credit Office in December, 1988.

From Mr. Miller's evidence it emerged that -

1. After it had been agreed on 5 December, 1988 to produce to the Authority all of the revolving credit applications that had been approved during the first two weeks of November 1988, Mr. Swinbourn had directed relevant staff in the Melbourne Revolving Credit Office and Mr. Doig to take certain action before the approved applications were delivered to the Authority.
2. Many of the November applications had been approved without the credit scoring sheets having been completed. After Mr. Swinbourn's intervention, those credit scoring sheets were completed, notwithstanding, of course, that the applications had been approved and, presumably, credit extended, some weeks earlier.

3. Many of the November applications, probably about one third, had been approved even though the applicants did not attain the minimum credit score. Those applications were withheld from the Authority out of fear that they "would make us look bad if the Tribunal saw them, in terms of the quality of the business" (8583).

Mr. Miller also told the Authority that after Mr. Wilson had left HFC, he had read all of the evidence given by every HFC "Executive". It appeared that having read Mr. Swinbourn's evidence, Mr. Miller was concerned as to whether Mr. Swinbourn had been frank on certain matters with the Authority. Mr. Miller spoke to other HFC staff with knowledge of those matters and to Mr. Swinbourn.

As a result of that Mr. Miller told the Authority that he thought that Mr. Swinbourn had not been frank with the Authority in that -

1. In his evidence Mr. Swinbourn had sought to have the Authority believe that there was on issue to HFC staff an instructional manual, as distinct from a technical computer software guide, for HFC's revolving credit operations. No such manual existed.
2. In his evidence Mr. Swinbourn had sought to have the Authority believe that HFC had provided to retail dealers with which it had merchant agreements a brochure which told the dealers what their obligations were under the Credit Act, the Trade Practices Act and the Insurance Act. No such brochure existed.

3. Mr. Miller said that he was satisfied, after speaking to a Mr. Doyle, who was a senior HFC employee but a subordinate of Mr. Swinbourn, that Mr. Swinbourn had sought to mislead the Authority in connection with the circumstances surrounding a letter despatched to HFC Revolving Credit Offices dealing with the requirement to have on hand a signed application by a consumer for revolving credit before a credit card could be sent to the consumer. This was a matter in relation to which an undertaking was given by HFC to the Trade Practices Commission.

Mr. Miller told the Authority that Mr. Swinbourn would not acknowledge to him the truth of the allegations concerning the revolving credit application forms but nor, on the other hand, did Mr. Swinbourn unequivocally deny them. (8584).

As a result of what he had learned from his investigations, Mr. Miller dismissed both Mr. Swinbourn and Mr. Doig. He had not dismissed the other staff involved at the Melbourne Revolving Credit Office who had been acting on the instructions and under the direction of a Vice President and an Assistant Vice President. Mr. Miller had counselled these staff and directed them that if ever in the future they were faced with an instruction to undertake anything illegal or a violation of the law, they were "to go right up the line - their boss; if they didn't get satisfaction from him, me; if they didn't get satisfaction from me, call my boss in the United States. Call the President of the company (ie. Household International). If he doesn't given you satisfaction, then you ought to go to the Authorities." (8586).

There is little, if any, point in considering how the evidence referred to so far in this Part reflects on Mr. Swinbourn or Mr. Doig. For the purposes of the Authority's task, the importance of that evidence lies in what it indicates about the Applicant itself.

Both Mr. Swinbourn and Mr. Doig, but particularly Mr. Swinbourn, were senior officers of HFC with considerable service and experience. Mr. Swinbourn's service commenced in 1976 when the company was known as David Jones Finance Ltd and by the end of 1988 he was the longest serving senior executive other than Mr. Wilson. After occupying a variety of senior positions in HFC, Mr. Swinbourn had by August 1988 been promoted to the position of Vice President, Office of the Managing Director. Mr. Swinbourn said of that position "I work for the Managing Director. I am at his disposal to pursue matters as he directs." (6489). This was not the first occasion on which Mr. Swinbourn had held a position within HFC that was concerned with a major development within the company and which brought him into very close contact with Mr. Wilson. In March 1984 Mr. Swinbourn was promoted to the position of Assistant Vice President in which he was "an Assistant to the Managing Director becoming principally concerned with the acquisition of BFC." (A184, para 3). Mr. Swinbourn held that position until December 1985.

Mr. Swinbourn was the person entrusted by HFC with the development of the revolving lending project, undoubtedly the most important business development to be undertaken by HFC for some considerable time and possibly eclipsing in importance even the takeover of BFC in 1984/85. It is common ground that HFC sees its future as being absolutely dependent upon the success of the revolving lending project.

Thus it appears that until the arrival of Mr. Miller and Mr. Shafferman, Mr. Swinbourn occupied a position in HFC that in many senses was second only in importance to Mr. Wilson's.

It is in that light that the Authority considers it must view Mr. Swinbourn's conduct in directing that the application forms be tampered with and in misleading the Authority as to the other matters detailed by Mr. Miller.

The Authority considers that the conclusion it must come to is that Mr. Swinbourn's conduct was in accordance with HFC's then prevailing standards, or at least Mr. Swinbourn's understanding thereof. Having regard to Mr. Swinbourn's long service with HFC, to the nature and importance of positions which he had held and to his close association with Mr. Wilson in two of those positions, the Authority considers that Mr. Swinbourn's understanding of the standards of conduct expected by HFC of its most senior executives would have been at least the equal of that of any other such HFC executive. There is nothing in these episodes which indicates any other motive for Mr. Swinbourn's conduct, such as personal gain, and no other motive has been suggested.

Mr. Doig's conduct lends support to the conclusions that have been reached in relation to Mr. Swinbourn's conduct. It cannot be seriously suggested that he was at risk of dismissal if he had merely defied a corrupt instruction from Mr. Swinbourn. Appointments and dismissals at Assistant Vice President level were not within Mr. Swinbourn's power - indeed even Mr. Wilson required the approval of Household for staffing decisions at levels as senior as Mr. Doig's.

There are other matters of concern which arise out of Mr. Swinbourn's evidence about the provision by banks of information to HFC, the tampering with the application forms and the subsequent investigations by Mr. Miller.

Mr. Miller also told the Authority that although HFC had in place a strict policy that credit was not to be granted unless the applicant achieved a minimum set score in the credit scoring process, he had ascertained that Mr. Swinbourn had, in July, 1988, overridden that policy and directed HFC's Revolving Credit Offices that they could use their judgement and approve applications even though the applicants did not achieve the minimum credit score. Mr. Miller learned that Mr. Swinbourn had told Mr. Doyle, at the time of directing Mr. Doyle to take that action in the Brisbane Office (of which Mr. Doyle was then Manager), that HFC's policy was costing the revolving credit offices too much business.

During this hearing HFC had gone to considerable lengths to explain the methodology of its credit scoring system, the validity of the results which that system produced and the overall importance of that system to HFC's lending policies and procedures. It called the designer of the system, Mr. Zion, a senior Household officer in the United States to give evidence in detail about the testing of the system for HFC's Australian environment. The Authority was left in no doubt about the importance of the system to HFC.

It is a little difficult to believe that Mr. Wilson would not have known that Mr. Swinbourn had overridden HFC's credit scoring policy. It seems highly probable, from what Mr. Swinbourn is said to have told

Mr. Doyle, that Mr. Swinbourn was under pressure to lift the performance of the revolving credit operation. Mr. Shaw's evidence showed that the revolving credit operations were making substantial losses. It is also highly probable that Mr. Wilson and possibly other members of HFC's senior management had discussed with Mr. Swinbourn what action might be taken to improve the financial results of the revolving credit operation.

There are only two possibilities - either Mr. Wilson knew of Mr. Swinbourn's actions or he did not. There is no direct evidence either way. We consider that we should conclude that Mr. Wilson did not know. The consequences of concluding otherwise are extremely grave; it would follow that the Applicant had withheld from the Authority the fact that it had made a major exception to HFC's policy as explained to the Authority in the AC2 proposal and particularly as described in Annexure 14 thereto.

Accepting that Mr. Miller is a truthful witness, it can be assumed that he also was unaware of Mr. Swinbourn's overriding of the credit scoring requirements, for Mr. Miller said in December that he was confident that Mr. Swinbourn was thoroughly competent, trustworthy, honest and fair. (7990)

For those reasons, it is appropriate for the Authority to assume that Mr. Wilson did not know of Mr. Swinbourn's action and that Mr. Miller did not learn of it until March of 1989.

In the Authority's opinion, it reflects badly on HFC that a critically important policy directive could be overridden without senior management becoming aware that such had occurred. It indicates a



serious lack of control within HFC. It raises doubts as to the extent to which the Authority can rely on the Applicant honouring the various assurances which it has given about its future conduct.