

PART 14

CONCLUSIONS

The principal question with which the Authority has been concerned in this matter is whether it believes the Applicant, if licensed, will not perform the duties of a holder of a credit provider's licence efficiently, honestly and fairly. If it has that belief the Authority must refuse the application, but any other belief requires it to grant the application.

It is not the function of the Authority to penalise the Applicant in any way for shortcomings in its past conduct. The Authority agrees entirely with the submission made by the Applicant (11111,2) that it would be wrong of the Authority, if it was not positively satisfied that the Applicant is not going to act efficiently, honestly and fairly, to refuse its application as a guise for giving the Applicant a quick short sharp shock, having in mind all the time that the Applicant could fix it all up and come back and apply later. We repeat that we must grant a licence unless we are positively satisfied that the Applicant will not act efficiently, honestly and fairly.

The Authority considers that the evidence establishes that prior to August 1987 when HFC received the objections made to its application, it and its subsidiary insurance companies had engaged in practices which were variously dishonest, unfair and to the serious detriment of its borrowers. In this regard the Authority particularly has in mind the following practices -

- (i) the use of grossly improper collection practices and the existence of unwritten instructions which directed the use of such practices;
- (ii) the practice of adjusting cover until 31 December, 1985 when insurance premiums had been incorrectly assessed;
- (iii) the failure to refund excess premiums where charged after 31 December, 1985;
- (iv) the failure to adjust rebates of credit insurance where rebates had initially been underpaid;
- (v) the failure to make any rebates of insurance where loans were not refinanced, unless borrowers specifically sought such rebates;
- (vi) the practice of inducing borrowers to continue credit insurance policies in force after loans had been discharged;
- (vii) engaging in practices which caused borrowers to believe that the taking of insurance was a condition of loans being granted;
- (viii) the conscious failures to undertake adequate training of staff, to maintain an effective system of supervision of staff and to employ accounting systems to ensure that

monies obtained from borrowers for third party purposes were duly applied;

- (ix) failing to inform prospective borrowers at the appropriate times of the features of balloon loans that were fundamentally different from HFC's other fixed term loans; and
- (x) continuing to sign up co-borrowers solely to provide security after the undesirability of that practice had been brought to its notice by the Australian Finance Conference and its own Corporate Attorney

The Authority finds that by engaging in those practices, either directly or through its subsidiary insurance companies, HFC demonstrated that it was a corporation for which dishonesty, unfairness and sharp practice were accepted standards of behaviour.

In addition to those matters, there were the other deficiencies in HFC's conduct which have been set out in Part 11 and which, though not in themselves intentional, were to a substantial extent the consequence of neglect by HFC of its responsibilities for the proper training and supervision of staff.

With few exceptions, HFC had done nothing to remedy these matters or to compensate the persons affected by them until objections were made to its application for a licence.

In June, 1988, some ten months after the objections had been made, HFC brought forward a proposal, the AC2 proposal, and informed the Authority that when the changes outlined therein had been made, the result would be that HFC would be "providing credit at a level in the Consumer Credit business substantially higher than any other provider of credit in the commercial world is presently now maintaining" (2090). Two months after that statement was made, and thus shortly before the expiration of the time by which all of those changes were to have been implemented, a senior Household executive inspected HFC's Australian operations and concluded that the state of affairs in HFC was far from that predicted in the AC2 proposal and that very substantial further changes were required.

It is abundantly clear that it was not until after Household's intervention, in the person of Mr. Miller, that there was any willingness on the part of HFC to acknowledge, let alone remedy, its most fundamental problems. It is clear also that there was never any prospect that the changes outlined in the AC2 proposal would bring about an acceptable standard of conduct in HFC, let alone the state of industry pre-eminence which had been forecast.

The Authority has reviewed the changes in management structure, business systems and controls, training and supervision and practices generally that HFC has made or committed itself to making, as well as the remedies it has provided and proposed to provide to individual borrowers. We consider that these changes are capable, if persevered with, of achieving a state of affairs within HFC which will enable it to conduct its business efficiently, honestly and fairly, but only when HFC has demonstrated to its staff that the principles of honesty and

fairness are an essential part of the corporate philosophy and, further, has obtained from its staff a sincere and unqualified commitment to those principles. It is our belief that by its past conduct, HFC has made these objectives no simple matters to attain.

In our opinion, the extent of the dishonest and unfair conduct engaged in by HFC must have instilled in the minds of HFC staff a clear understanding that such conduct was not merely acceptable but expected. The Authority, therefore, considers that the new management of HFC, supported by a now concerned Household, faces an enormous task in eliminating the culture of dishonesty and sharp practice that has pervaded HFC for so long.

The matters examined in Part 10 involving Mr. Swinbourn, Mr. Doig and others illustrate the size and difficulty of that task. These matters demonstrate that as late as December, 1988, very senior executives deemed it appropriate to engage in the most serious and dishonest conduct and to enlist other staff for that purpose. These matters also illustrate the difficulty that the new management will have in detecting and eliminating such conduct, for no-one within HFC volunteered any information as to those matters to Mr. Miller. He learned of them only as a result of action taken by former employees.

It is the Authority's view that it will take some considerable time for the new management in HFC to secure acceptance and commitment by all its staff who deal with the public, and all those whose actions guide or affect staff dealing with the public, to honesty and fairness in all aspects of the selling of insurance, the selling of credit and the collection of accounts. For those reasons the Authority has formed]

the belief that HFC would not, if granted a licence, carry on its business honestly and fairly, at least in the short term.

There is a further reason of a quite different nature for which the Authority believes that HFC is not yet in a position to conduct its business efficiently, honestly and fairly.

It is clear from the evidence of Mr. Miller, principally, and of Mr. Shafferman and Mr. Vona, that it will be some time yet before HFC's much improved training capacity and methods will have been in place for sufficient time to ensure a thorough understanding on the part of branch staff and managers and district managers of their full responsibilities. It was only at the end of 1988 that the restructuring of the training system commenced with the appointment of a specialist training manager who then had to learn the complex regulatory regime within which HFC operates. The position of compliance officer, on which much reliance is placed by HFC for the timely detection and correction of unlawful or unauthorised conduct in branches, had yet to be permanently filled as at early April 1989. The re-writing of the manuals which are a pre-requisite to efficient training programmes and to adequate supervision, is not scheduled for completion before November, 1989. Finally, it was not until March, 1989 that Mr. Wilson's resignation was sought on the grounds that HFC was unlikely to change sufficiently under his management.

In essence, the cause of HFC's present problems associated with deficient training and supervision is that it was not until very late in 1988 that the true extent of its past failings began to be recognised.

It is not the Authority's view, however, that these impediments to the conduct of efficient, honest and fair business need remain with HFC indefinitely. As indicated, the Authority believes that the actions taken by HFC with the strong support of Household, are capable of achieving in time the changes necessary to produce a satisfactory standard of conduct and a commitment to fair and honest dealing throughout the company. But even that is dependent upon Household persisting with its recent acceptance of proper responsibility for the affairs of its subsidiary in Australia.

If the Authority's decision had been different, there would have been a number of matters to be raised with the Applicant as matters in connection with which conditions might be necessary, but for reasons which are obvious there is no need to expand on those matters.

The decision of the Authority is that the application made by HFC Financial Services Limited for a credit provider's licence shall be refused.

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R. T. VINEY
Chairman

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J.L. TREVENEN
Member

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P. CARRIGAN
Member

"I certify that this is a true copy of the reasons for the determination herein of the Credit Licensing Authority.


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