

PART I

GROUND'S OF OBJECTION BY CCLS

Pursuant to Section 43 of the Credit (Administration) Act 1984, the Consumer Credit Legal Service Co-operative Limited hereby objects to the granting of a licence under Section 45 of the Credit (Administration) Act 1984, to H.F.C. Financial Services Limited.

In this Objection, objection is taken to the conduct of H.F.C. Financial Services Limited ("H.F.C."); to conduct common to H.F.C. and B.F.C. Finance Limited ("B.F.C.") and to H.F.C.'s dealing with the affairs of B.F.C. after H.F.C.'s purchase of B.F.C.'s shares.

This objection is made on the following grounds:

1. (a) H.F.C. collected B.F.C.'s debts and sued and enforced securities and threatened to sue or enforce securities in respect of B.F.C.'s debts in breach of or without complying with Section 134 of the Property Law Act 1958, Section 84 of the Instruments Act 1958 or Section 31 of the Money Lenders Act 1958.
2. (a) Both B.F.C. and H.F.C. wrongly calculated the interest on unpaid principal balances from time to time outstanding in respect of all loan contracts regulated under the Money Lenders Act 1958.

2. (b) Both B.F.C. and H.F.C. collected monies; sued and threatened to enforce securities in respect of monies not owing or balances miscalculated as set out in 2(a) hereof.
2. (c) Both B.F.C. and H.F.C. credit monies to customers accounts on dates later than monies were actually paid.
3. (a) H.F.C. wrongly calculated the net balance due under Section 11 and Schedule 1 of the Credit Act 1984 between March 1985 and June 1987.

(b) H.F.C. has taken no steps to remedy the miscalculations and continued to miscalculate the net balance due since June 1987.
4. H.F.C. gave no credit for prepayments of principal or interest; amount financed or credit charge.
5. H.F.C. charged 'close out fees' in certain loans secured by mortgages over land in breach of the general law, the Money Lenders Act 1958 or the Credit Act 1984.
6. H.F.C. hawked its credit in a manner which is misleading or unfair or in breach of Section 122 of the Credit Act 1984.
7. Both B.F.C. and H.F.C. promoted the extension of credit to the marginally creditworthy and the uncreditworthy at high or excessive rates of interest and relied on the techniques referred to in paragraph 9, 10, 11 and 21 to assure repayment.

8. (a) H.F.C. failed to properly train its officers to comply with its legal and ethical obligations bearing in mind staff turnover ratios.

(b) H.F.C. trained its officers to promote the extension of credit to the marginally creditworthy and uncreditworthy at high or excessive rates of interest and to rely on the techniques referred to in Paragraphs 8, 9 and 10 to assure repayment.
9. (a) B.F.C. and H.F.C. promoted the refinancing of existing credit commitments. Where relevant they failed to comply with Section 69 of the Credit Act 1984. This resulted in disadvantages to borrowers including those of additional insurance, interest and legal costs.

(b) H.F.C. encouraged its officers through its training and its commission and bonus structure to promote the refinancing of existing credit commitments.
10. Both B.F.C. and H.F.C. required all guarantors to sign as co-borrowers in breach of Part V111 of the Credit Act 1984, Section 19 of the Hire-Purchase Act 1959 and in a manner which infringed the common law and equitable rights of those guarantors.
11. (a) Both B.F.C. and H.F.C. breached Section 47(b) of the Trade Practices Act 1974 or Section 127(3) of the Credit Act 1984 in that it offered to provide credit on condition that debtors purchase particular insurances or insurance from a particular

insurer. In the alternative, B.F.C. H.F.C. failed adequately to inform debtors of their right to purchase insurance elsewhere or not purchase insurance. In the alternative the B.F.C. and H.F.C. had a policy of encouraging debtors to effect particular insurances or to effect insurance with a particular insurer with a view to maximizing its profit.

- (b) Both B.F.C. and H.F.C. encourages and encouraged its debtors to purchase consumer credit insurance or life insurance which covers only the 'first borrower'.
 - (c) Both B.F.C. and H.F.C. encouraged debtors to purchase excessive insurance, or insurance with an excessive premium.
 - (d) H.F.C. failed properly to rebate insurances when appropriate.
 - (e) H.F.C. failed to inform debtors of rights to claim under insurance policies.
 - (f) Both B.F.C. and H.F.C. failed to inform debtors of the terms and conditions of consumer credit insurance; those conditions are unfair and the premium excessive having regard to the benefits.
- 12 (a) An officer of B.F.C. stole monies purportedly disbursed to borrowers or owing to borrowers.

- (b) Both B.F.C. and H.F.C. failed to take satisfactory steps to remedy the theft and dealt harshly with the affected borrowers.
- (c) Despite B.F.C. entering a binding agreement to reduce "indebtedness" in respect of stolen monies, both B.F.C. and H.F.C. continued to demand monies not owing, accepted monies not owed and refused to repay the monies had and received until the hearing of a legal action.
13. H.F.C. breached Section 23 of the Moneylenders Act 1958 and made a loan without the assent of the borrower.
14. H.F.C. breached Section 24 of the Moneylending Act, 1941 (N.S.W.) and failed to satisfactorily remedy the breaches.
15. H.F.C. breached Section 36(1)(b), Schedule 4(i)(a) and Regulation 27(f) of the Credit Act 1984 and Regulations by including an excessive statutory charge. In addition, Section 75 was breached. In addition, Section 11(1)(a), Section 36(1)(c) and where appropriate Section 150B were breached.
16. H.F.C. used a standard form unsecured loan contract which does not comply with Section 36(i)(b) of the Credit Act 1984 and which is likely to mislead debtors into believing they have entered a credit sale contract.

17. H.F.C. Contracts are illegible in that they do not comply with Section 151(1), Section 151(2)(b) of the Credit Act 1984 and Regulation 24(1).

18. (a) B.F.C. failed to comply with Section 30 of the Money Lenders Act 1958 and H.F.C. failed to comply with Section 104 of the Credit Act 1984.

(b) H.F.C. failed to comply with Section 32(3), Section 33 or Section 34 of the Credit Act 1984.

19. H.F.C. failed to comply with Section 60 and Section 64 of the Credit Act 1984.

20. H.F.C. failed to comply with Section 36(1)(b) of the Credit Act 1984.

21. Both B.F.C. and H.F.C. harassed its debtors to procure repayment.

The Objector reserves its right to delete or give other or further or substitute case examples.

PART 11

GROUNDS OF OBJECTION BY DIRECTOR OF CONSUMER AFFAIRS

TAKE NOTICE that I, JOHN DAVID HALL, Director of Consumer Affairs appointed for the purposes of the Ministry of Consumer Affairs Act 1973, OBJECT, pursuant to Section 43(1) of the Credit (Administration) Act 1984 ("the Act") to the granting of a licence in accordance with the application under Section 39 of the Act by HFC FINANCIAL SERVICES LIMITED ("the Applicant") >

A. The reasons for my objections are:

1. The Applicant has wrongly calculated the net balance due under contracts regulated by the Credit Act 1984.
2. The Applicant has included "administration costs" in determining the net balance due under contracts regulated by the Money Lenders Act 1958.
3. The Applicant has failed to cancel its security interest pursuant to the provisions of the Chattel Securities Act 1981.
4. The Applicant has made improper threats to its debtors in order to procure payment.
5. The Applicant has failed to account properly for payments made by borrowers to it.

6. The Applicant has improperly collected debts of BFC Finance Limited.
7. The Applicant has offered to provide credit on condition that debtors purchase particular insurances or that they insure with a particular insurer in contravention of Section 127 of the Credit Act 1984.
8. The Applicant has entered into mortgages securing regulated credit contracts where the annual percentage rates under the contracts have exceeded 30% pa in breach of Section 150B of the Credit Act 1984.
9. The Applicant has required guarantors to sign credit contracts as co-borrowers.
10. The Applicant has entered into regulated credit sale contracts which failed to include a notice in the form prescribed by the regulations to the Credit Act 1984.
11. The Applicant has entered into loan contracts which did not include a statement of the amount financed in accordance with Schedule 4 of the Credit Act 1984.
12. The Applicant has breached Section 24 of the Money Lending Act 1941 in the State of NSW.

13. The Applicant has a policy of charging "close out fees" on loans secured by mortgages over land providing the principal under the contract is greater than \$20,000.

PART IIIFINAL FORM OF OBJECTION

Pursuant to Section 43 of the Credit (Administration) Act 1984, the Consumer Credit Legal Service Co-operative Limited hereby objects to the granting of a licence under Section 45 of the Credit (Administration) Act 1984, to H.F.C. Financial Services Limited.

In this Objection, objection is taken to the conduct of H.F.C. Financial Services Limited ("H.F.C."); to conduct of BFC Financial Services ("BFC") which HFC failed to remedy and of which HFC took the benefit; and to HFC's dealings with the affairs of BFC and HFC's purchase of BFC's shares.

This objection is made on the following grounds:

- 1(a) In February 1985, HFC purchased all the shares in BFC. BFC is a currently subsisting company. Since February 1985, HFC has collected monies owing to BFC, and threatened to sue in respect of monies owing to BFC and HFC, threatened to enforce securities in respect of debts owed to BFC. BFC did not assign its debts or securities to HFC and Section 134 of the Property Law Act 1958, Section 84 of the Instruments Act 1958 and Section 31 of the Money Lenders Act 1958 have not been complied with.

2(a) HFC wrongly calculated the interest on unpaid principal balances from time to time outstanding in respect of all loan contracts regulated under the Money Lenders Act 1958. HFC knew or should have known that BFC had made the same wrong calculations but failed to remedy and took the benefit of those wrong calculations. The Applicant knew that BFC had made the wrong calculations from the judgment of the Credit Division of the Small Claims Tribunal 26th June 1986 in the matter of Dougherty (CR860002) and from the officer or officers of the Applicant with care and control of the account of the said Dougherty. In the alternative a fair honest and efficient creditor provider would have confirmed the accuracy of calculations by BFC.

2(b) HFC collected monies demanded on balances including interest wrongly calculated and sued and threatened to enforce securities in respect of balances including interest wrongly calculated as set out in 2(a) hereof. BFC also collected monies demanded, sued and threatened to enforce securities, and refinanced in respect of balances including interest wrongly calculated as set out in 2(a) hereof and HFC failed to remedy the said actions and took the benefit of the said actions.

2(c) HFC credited monies to customers accounts on dates later than monies were actually paid. BFC credited monies to customers accounts on dates later than monies were actually paid and HFC failed to repay the extra interest charged in both instances.

- 3(a) HFC wrongly calculated the net balance due under Section 11 and Schedule I of the Credit Act 1984 between March 1985 and June 1987.
- 3(b) HFC has taken no steps to remedy the miscalculations.
- 3(c) HFC has continued to miscalculate the net balance due since June 1987.
- 4(a) HFC have a policy of using Schedule 1 to the Credit Act 1984 to calculate the accrued credit charge when a debtor discharges his obligations under a regulated contract early pursuant to Section 105. HFC do not include a term to this effect in their standard form contract or otherwise inform debtors of this fact. HFC's practice in failing to so inform is unfair. Further, HFC have a policy of applying Schedule 1 in preference to the method set out in Section 11(2)(a) ("the actuarial method") when debtors prepay instalments or make lump sum payments in excess of their obligations from time to time without discharging their obligations under the regulated contract. The effect of the application of this policy is that debtors obtain no diminution of credit charge from such early payment and lose the use of the monies so prepaid. This effect is unfair to debtors. Further, HFC fail to inform debtors of the said policy or the effect of its application and this failure to inform is

unfair to debtors." A similar policy applied under contracts regulated by the Money Lenders Act 1958.

- 5(a) HFC charged 'close out fees' (penalties for early payment) of \$35 or one month's interest in relation to loans regulated by the Money Lenders Act 1958, in breach of the provisions of the contracts.
- 5(b) HFC charged 'close out' fees in loans secured by a mortgage over land in breach of the provisions of the mortgage.
- 5(c) HFC has the policy of charging a 'close out' fee (being three months interest) in some loans regulated by the Credit Act 1984.
- 6(a) HFC hawked its credit in a manner which is misleading or unfair or in breach of Section 122 of the Credit Act 1984.
- 6(b) HFC has the policy of canvassing at the place of residence or business of other persons with a view to inducing those other persons to apply for or obtain credit under a regulated contract. Such canvassing is effected by telephone, by mail, and at the employment of those other persons.
- 7(a) HFC promoted the extension of regulated credit to the marginally creditworthy and uncreditworthy.
- 7(b) HFC promoted and granted credit as set out in (a) hereof at high or excessive rates of interest.

- 8(a) HFC failed to properly train its officers
- 8(a) (i) In the legal obligations of credit providers under the Credit Act 1984.
- 8(a) (ii) In the proper calculations of amounts financed and amounts owed by debtors.
- 8(a) (iii) In the assessment of application by potential debtors for credit.
- 8(a) (iv) In the ethical obligations of credit providers to act fairly towards debtors by, for example, offering creditors the lowest annual percentage rate possible; including insurance rebates in Section 104 statements and refraining from overcommitting and harassing borrowers._
- 8(b) HFC trained or encouraged its officers:
- 8(b) (i) To encourage borrowers to refinance their commitments.
- 8(b) (ii) To extend credit at the highest annual percentage rate possible.
- 8(b) (iii) To engage in the indiscriminate promotion of credit and credit hawking.

- 8(b) (iv) To sell to borrowers the greatest number of Heritage Insurance Policies possible.
- 8(b) (v) To sign guarantors as co-borrowers.
- 8(b) (vi) To harass defaulting borrowers.
- 8(b) (vii) To engage in the other practices set out herein.
- 8(c) HFC failed to provide proper supervision of its officers to avoid the objectionable practices referred to herein.
- 9(a) HFC promoted the refinancing of existing credit commitments.

In no case was Section 69 of the Credit Act 1984 complied with.

Such refinancing resulted in disadvantages to borrowers such as the following:

- 9(a) (a) Failure to properly calculate the net balance due or the rebate of insurance in respect of the contract refinanced.
- 9(a) (b) Payment of additional credit charge by borrowers to HFC as a result of the use of Schedule I (even when properly calculated) by HFC.

- 9(a) (c) Additional costs of establishing and paying commissions in respect of new insurance policies in respect of the new credit contract.
- 9(a) (d) Additional legal costs and financial institutions duty where applicable.
- 9(a) (e) Additional credit charge in respect of the lengthening of the term.
- 9(b) HFC encouraged its officers through its training and its commission and bonus structure to promote the refinancing of existing credit commitments.
- 10(a) In cases in which HFC required the obligations of debtors to be guaranteed, HFC required those guarantors to sign the offer to enter into a regulated contract as a "Co-borrower" in breach of the Credit Act 1984.
- 10(b) HFC failed to release guarantors of debts to BFC, which guarantees were void by virtue of the provisions of Section 19 of the Hire-Purchase Act 1959.
- 10(c) In cases in which HFC required the obligations of debtors under contracts regulated by the Money Lenders Act 1958 to be guaranteed, HFC required those guarantors to sign the offer to borrow money as 'co-borrower'.

- 10(d) In the cases referred to in 10(a), 10(b) and 10(c) hereof, HFC did not accord to guarantors the legal and equitable rights accruing to guarantors; these being inter alia the sureties equities against the creditor; the sureties remedies against the principal debtor; right to quia timet action, the right to securities held by the creditor and rights of subrogation and contribution.
- 10(e) In the alternative, in the cases referred to in 10(a) and 10(b) hereof, HFC engaged in misrepresentation or misleading or deceptive conduct in representing to persons that their obligation under the relevant contract was secondary and not primary. In each of the cases referred to, the Applicant through its employees, orally, or part oral and part implied, represented to the customers that their obligations under the contract were secondary rather than primary.
- 10(f) HFC officers are ignorant of the difference between a borrower and a guarantor.
- 11(a) HFC breached Section 47 of the Trade Practices Act 1974 or Section 127(3) of the Credit Act 1984 in that it offered to provide credit (including regulated credit) on condition that debtors purchase particular insurances; further that it offered to provide credit (including regulated credit) on condition that debtors purchase insurance from Heritage Life Insurance Limited and/or Heritage General Insurance Limited (both companies referred to herein after as ("Heritage") , or on separate occasions, Western Underwriters. In the

alternative HFC failed to adequately inform debtors of their right to purchase insurance elsewhere or not purchase insurance. In the alternative HFC had a policy of encouraging debtors to purchase particular insurances and to purchase insurance from Heritage.

- 11(b) HFC required or encouraged debtors to purchase excessive insurance or insurance with an excessive premium.
- 11(c) In relation to regulated credit, HFC was not in the circumstances permitted pursuant to Section 127(2) or Section 128(1) of the Credit Act 1984 to require debtors to enter into contracts of insurance other than contracts of compulsory insurance in respect of goods subject to a regulated mortgage. HFC did so require as a condition (as defined in Section 127(1) of its providing credit under regulated contracts and regulated mortgages. The said condition was both direct and indirect and the existence of the said condition were inferred by debtors from the conduct of HFC and was stated or implied in the oral communications of HFC and from other relevant circumstances, being the completion of offers containing the insurances by HFC and the availability of the said insurances through the agency of HFC.
- 11(d) HFC encourage its debtors to purchase consumer credit or life insurance which covered only the "first borrower" thus denying cover to the second borrower.
- 11(e) HFC failed to properly rebate insurances when appropriate.

- 11(f) HFC failed to inform debtors of rights to claim under insurance policies.
- 11(g) HFC included in the amount financed under a large number of regulated contracts amounts payable by debtors in respect of risks under a contract of insurance other than a risk specified in Clause 1(b) of Schedule 4.
Further, HFC did not remedy all instances in which it believed the Credit Act had been breached.
12. Despite BFC entering a binding agreement to reduce "indebtedness" in respect of stolen monies, both BFC and HFC continued to demand monies not owing, accepted monies not owed and HFC refused to repay the monies had and received until the hearing of a legal action.
13. This number has been withdrawn.
- 14(a) HFC breached Section 24 of the Moneylending Act, 1941 (N.S.W) and failed to satisfactorily remedy the breaches.
- 14(b) HFC had a policy of representing to debtors that HFC had security over or was legally able to repossess goods purchased with loans or credit provided by HFC despite HFC legally having no security over such goods. HFC had a policy of taking possession of such goods when debtors in reliance on representations as aforesaid agreed to vacate possession.

- 15(a) HFC breached Section 36(1)(b), Schedule 4(i)(a) and Regulation 27(f) of the Credit Act 1984 and Regulations by including an excessive statutory charge. In addition, Section 75 was breached. In addition, Section 11(1)(a), Section 36(1)(c) and where appropriate Section 150B were breached.
- 15(b) No HFC regulated credit contract in respect of which a commission is payable contains a statement of the person to whom and the person by whom the commission charge is payable, and the fact that the commission charge is payable as required by Section 35(1)(i) and Section 36(1)(h).
16. HFC used a standard form unsecured loan contract which does not comply with Section 36(i)(b) of the Credit Act 1984 and which is likely to mislead debtors into believing they have entered a credit sale contract or that the contract is secured.
17. HFC contracts and mortgages are illegible in that they do not comply with Section 151(1), Section 151(2)(b) of the Credit Act 1984 and Regulation 24(1).
- 18(a) HFC failed to comply with Section 104 of the Credit Act 1984.
- 18(b) HFC failed to comply with Section 32(3), Section 33 or Section 34 of the Credit Act 1984.
- 18(c) HFC failed to calculate properly the net balance due and failed to repay monies over paid where appropriate.

19. HFC failed to comply with Section 60 and Section 64 of the Credit Act 1984.

20. HFC failed to comply with Section 36(1)(b) of the Credit Act 1984 and included unauthorised costs, fees or charges in the amount financed.

21. Both BFC and HFC harassed its debtors to procure repayment.