

Credit Licensing Hearing for HFC Financial Services Limited (Household Finance) in Victoria, Australia – 1988

Some key terms – HFC Financial Services, Household Finance, consumer credit insurance, Heritage Life, insurance commissions, consumer lending, fair honest and efficient, balloon loans, credit licensing.

Background

The Credit (Administration) Act 1984 (Victoria, Australia) required all businesses providing credit to consumers (apart from deposit taking institutions such as banks and credit unions) to apply for a credit provider's licence.

If an objection was lodged to an application for a licence, the applicants held a temporary licence until after a hearing which would decide whether they should be granted a licence. Section 59(1) of the Consumer (Administration) Act 1984 provided the terms on which an objection to a licensee holding a licence could be made, and s59(3) provided for what the Authority could do should the person be found of not carrying on their business 'efficiently, honestly and fairly'. They could refuse to grant a licence if the applicant did not yet have one. If the provider in question already had a licence, the Authority's options included a fine of up to \$500, suspension of the licence for up to one year or cancellation of the licence.

[Part 14](#) of the Licensing Authority's decision refers directly to this requirement that a business must carry on "efficiently, honestly and fairly".

Who was HFC Finance?

From the decision: "HFC is incorporated in New South Wales and is a wholly owned subsidiary of HFC of Australia Limited. Household Group Australia, Inc, which is incorporated in Delaware in the United States of America, is the holding company of HFC of Australia Limited and is part of the Household group of companies which the ultimate holding company is Household International Inc."

While we understand that the Household Group operates in other countries, we do not believe that it currently operates in Australia and should not be confused with any Australian businesses with a similar name.

The Hearing and Decision

In late 1987, objections were lodged by Consumer Credit Legal Service (which has since become part of Consumer Action Law Centre) and Consumer Affairs Victoria, in relation to an application for a credit provider's licence by HFC Financial Services Limited (HFC). HFC had been operating in Australia for some years. This was HFC's initial application under the new regime– and like all businesses that had lodged applications, HFC had been entitled to operate until (and unless) a hearing found that they were not fit to hold a licence.

The hearing commenced in May 1988, and took place over a period of approximately 12 months. In 1989 the Credit Licensing Authority handed down its decision – HFC was denied a licence.

Some excerpts from the conclusion illustrate the impact of company culture on difficulties a company may face in changing its practices:

“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 penalize 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. (14-1)”

“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 [unfair and dishonest] 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.

[Certain matters arising during the hearing] 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.”

The Appeal

HFC lodged an appeal in the Supreme Court (Victoria). The appeal would have involved a de novo hearing – that is, it would have reheard the matter in its entirety.

Negotiations commenced between HFC and the objectors. An agreement was eventually struck where the objectors would not oppose HFC in its Supreme Court appeal. HFC committed to changing a range of practices and agreed to pay various amounts of compensation to some of its borrowers. Various amounts were identified as being refundable to a large number of consumers (the amount depending on the type of practice involved and damages suffered).

Consumers who had suffered detriment could be identified in relation to most of the practices, however those affected by the mis-selling of insurance were different. Mis-selling of insurance generally involved conduct that led consumers to believe that purchase of the insurance was compulsory (when it wasn't) or where the consumer was unaware that they had purchased insurance. The proportion of those who had purchased consumer credit insurance who were likely to have been mis-sold the product were identified (based on the proportion of consumers who would usually choose to purchase this product in the absence of misleading conduct) but it was not possible to identify the particular individuals.

In relation to this amount of compensation, HFC agreed to advertise for consumers who believed they had been mis-sold insurance, and some consumers came forward and received compensation. However, an estimated \$2.4 million remained undistributed, and the settlement of the appeal included payment of this amount into a trust fund, which it was agreed would be used to establish the Consumer Law Centre.¹

¹ The Consumer Law Centre operated a consumer policy and casework practice with these initial funds and a range of project funding. Consumer Law Centre merged with the Consumer Credit Legal Service in 2006, to form the Consumer Action Law Centre.