

## **SYNOPSIS OF CLIENT** Protect Commercial Interests

Client had purchased a vehicle from Cars 4 U (“C4U”) in South Auckland. Client lives in Hillcrest. Purchase was funded by Protect Commercial Interests a “well-known” financier of vehicles, particularly to those who struggle to get finance elsewhere. Client had been declined for finance by his bank.

### **Vehicle Purchase**

- Client provided some payslips and C4U got access to 3 months of bank statements to undertake its assessment.
- Within a couple of hours client was provided with a quote for a vehicle up to \$30,000 in value.
- The vehicle which the client indicated he was interested in (but had no price advertised) was “discounted” for him from \$38,000 (verbally) to \$30,000. Subsequent Trade Me searches showed that a similar vehicle would have cost him around half this amount.
- Various additional products and services (some mandatory, some optional) were added to the financing. These included annual services but funded for the 3 years of the finance contract. Also included a car disabling device which the client pays for but then gets charged a monthly fee.
- For most clients it is not evident what is mandatory and what is optional. See the attached Initial Disclosure Statement for the range of products and services which are typically “sold” to clients (who, in reality, have no idea what they are for despite being documented).
- At no time did the client talk to the finance company, with car yard personnel essentially being the finance company’s agent (including signing the finance documentation and attesting that they had gone through the products and services and documents with the client). However, it would seem that all they did was direct the client to initial a whole series of statements (including the recommendation to get legal advice).
- There could never have been enough time to go through any documents or explain the products/services and financial detail.
- Arguably a huge conflict of interest for C4U personnel as more interested in selling a vehicle than its financing.
- Upshot is that client bought a vehicle (arguably worth only \$15,000) for \$30,000 plus fees/add-ons taking total amount financed to \$36,051. The total of all repayments (including interest) over 3 years would be \$53,594.
- Client had verbally indicated he couldn’t afford the \$220 per week in the contract and could only afford \$150 per week “as he had others to look after” – even that was not possible as his budget revealed.
- Client picked up the vehicle (and documents) 10 days later as there were things on the vehicle that needed fixing.
- Upon return to the car yard to pick up the vehicle he said he didn’t want it – this, arguably (as he had not been given the documentation) triggered the “Right to Cancel” provisions of the contract (5 working days as a “cooling-off” period). We used this as one of our arguments when laying a complaint about (see below).
- Request to return the vehicle was rejected.

### **Budgeting Process**

- Client originally went to Birkenhead Citizens Advice Bureau and Waitemata Community Law Centre who then referred to NHBS;
- Met with client on 6 June 2021;

- Prepared a Budget and started putting together a Debt Schedule.
- Initial budget a deficit of \$284 per week (subsequently went through a more detailed analysis of payslips and bank statements to come up with a deficit of \$251 per week) – deficit was after car payments of \$220 per week and insurance (with Protect Commercial Interests ...of course) of \$35.90 per week.
- Client was not certain of what was owing on debts he was making regular payments on – bank, WINZ, a small finance company. Subsequently found these out by making the usual enquiries to those entities. A total of \$33,317 (not including Protect Commercial Interests never asked what the level of debts were, but had the repayment obligations via bank statements. Pointed this out in the letter of complaint.
- Also sought a Centrix Credit Report – still following up on a Baycorp credit default.

### **Interactions with** Protect Commercial Interests

- Emailed Protect Commercial Interests on 8 June 2021 stating that the budget we had prepared showed that the client could not afford the repayments and requested they provide us with their Affordability Assessment (which all financiers are obliged to do).
- Protect Commercial Interests responded on 18 June with the Affordability Assessment and the bank statements and payslips they had been provided with/given access to.
- Having then undertaken a considerable amount of analysis of payslips and bank statements over a 5-month period (including the 3 months of statements that Protect Commercial Interests had) a four-page letter was sent to Protect Commercial Interests on 24 June detailing, amongst other things, a number of flaws in its Affordability Assessment from both income and expenses perspectives. There were various other issues noted.
- Protect Commercial Interests responded on 2 July that it stood by its processes/procedures, its Affordability Assessment and the appropriateness of its products/services adding to the financing. It highlighted the recommendation in the contract to seek independent legal advice.
- After meeting with the client again and further analysis another two-page letter was sent to Protect Commercial Interests on 12 July with more detail about the flaws in the Affordability Assessment and seeking, as had been done in the first letter, for the contract to be cancelled.
- Protect Commercial Interests responded on 16 July along the same lines as their 2 July letter.

### **Formal Complaint**

- On 25 July, and after meeting with the client again (it was only possible to meet on Sundays due to his work commitments), a detailed five-page formal complaint was lodged with Financial Services Complaints Ltd (one of a number of complaint services companies – all financiers must have a dispute resolution company they are registered with). In addition to the letter of complaint a substantial number of documents and calculations were mailed to FSCL.
- Contended the financing and products/services were not adequately explained.
- Contended that the Right to Cancel was verbally activated by the client.
- Contended that insufficient analysis of income was undertaken.  
Contended that insufficient analysis of expenses was undertaken.
- Contended that client had advised both C4U and Protect Commercial Interests that he couldn't afford the repayments.
- In the event no resolution then likely the car would be "handed back" and payments ceased leading to a default.
- Complaint was cc'd to the Commerce Commission.

## **Resolution**

- FSCL forwarded the complaint to Protect Commercial Interests [REDACTED] FSCL's first steps are to see if the parties can resolve the complaint before FSCL needed to do an investigation and make a recommendation.
- On 29 July a letter was sent to FSCL, and copied to NHBS, that said that, whilst they did not necessarily agree with the allegations made, and that they were comfortable with the products/services and financing provided, they had arranged with C4U to have the vehicle returned and the contract cancelled.
- Client was refunded \$3,300 being all of the payments that had been made.
- Insurance was cancelled – we did not seek a refund of this as it provided cover whilst the client had ownership of the vehicle.

## **Ongoing Client Interaction**

- Counselling client that if he only wanted to work 5 days a week he could not afford a financed vehicle;
- If worked 6 days a week, could afford financing and insurance of \$110 per week at most;
- If worked 7 days a week he could have afforded the vehicle.
- Awaiting further information on Baycorp credit default.
- May look at Debt Repayment Order or Creditors Proposal for remaining debts however client is not being pressured over these.

## **Summary**

- A successful resolution for the client – car returned and payments refunded;
- 8 meetings held with the client and 31.5 hours logged to date.