

Episode 46: Case note

Episode name: Behind Closed Doors: The Insidious Challenge of Financial Abuse

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Redfern Legal Centre's Financial Abuse Service NSW Case Study

*This is a fictional story based on various cases and any similarity to a real experience is coincidental.

When Laila* met Adrian*, they fell in love and their relationship progressed quickly. They were building a life together so Laila wasn't too concerned when their lease and utility bills were put in her name or when Adrian wanted to be added to her bank account.

After the birth of their first child, Adrian's behaviour escalated. He was demanding and if she didn't comply he would have outbursts of rage which became more aggressive and emotionally manipulative over time. At first it was subtle but it progressively rendered her powerless and under his control. Laila was afraid of saying or doing anything that would set him off. She described it like walking on eggshells in her own home in order to protect herself.

Adrian wanted an expensive luxury car but the lender said he would struggle to get a loan due to his poor credit history so Adrian told them to put the loan in Laila's name instead. Adrian returned with Laila to sign the loan documents. Adrian told Laila to stay quiet and allow him to answer any questions. Laila was not given an opportunity to speak to anyone alone, she was simply told where to sign and, with Adrian standing beside her, she was too afraid to say no.

At this time, Laila was unemployed and caring for their two young children. She did not want or need a two-seater convertible car worth almost \$70,000, and certainly could not afford one. Laila already had a car when she met Adrian and this was suitable for her and the children. Adrian had exclusive use of the convertible and used the loan to further control Laila. He would threaten to stop making repayments if she challenged him and told her she'd be financially ruined if she tried to leave him. Laila felt trapped.

Eventually, Laila managed to get help from a domestic abuse support service who assisted her to obtain a protection order to remove Adrian from the home. When he left, Adrian abandoned the car and stopped making repayments on the loan, resulting in Laila being chased for almost \$55,000 outstanding on the loan.

Laila also discovered that her driver license was suspended for \$700 in unpaid traffic fines that Adrian had accrued in her name as she was the registered owner of the convertible. Laila didn't have enough money to pay off the fines to regain her license. Unable to drive and with limited access to public transport in her area, Laila and her children were isolated from their support systems, including Laila's DV social worker.

When Laila sought legal advice about the car loan and fines, she discovered that Adrian had provided false pay slips in order to secure the loan in her name and had been hiding the fines notices from her.

Notes on resolution

Car loan

Internal dispute resolution complaint on the basis that the lender failed to comply with their responsible lending obligations under the *National Consumer Credit Protection Act 2009* (Cth) and ASIC Regulatory Guide 209, specifically:

1. Not making reasonable inquiries about Laila's requirements and objectives in circumstances where there were indicators that Laila may be experiencing financial abuse and may not receive a substantial benefit from the loan, for example:
 - a. Laila was the sole borrower, but Adrian picked the vehicle, negotiated the loan and handled all the communication

- b. Laila was seen to be taking instructions from Adrian when signing the documents
- c. Laila was not spoken to independently, away from Adrian
- d. Adrian did all the talking, Laila was mostly silent

AND

- 2. Not verifying the reliability of Laila's payslips in circumstances where payslips are known to be easily falsified and were provided via Adrian who had been refused a loan the week before and in circumstances where there were indicators of financial abuse.

Remedy sought:

- Laila sells the convertible or surrenders it to the lender for auction with any profit being credited toward the outstanding debt; and
- Lender agrees to waive the remaining debt

Fines

Contact Revenue NSW to request a hold on collections activity and reinstate Laila's licence while dealing with fines.

If safe to do so, nominate Adrian as the driver as per the *Fines Act 1996* (NSW). This must be done within 12 months due to the statute of limitations for Revenue NSW to collect from the other driver. Prior to 1 July 2020, you had to nominate the other driver within 28 days of the penalty reminder notice due date which was difficult if the financial abuse delayed the victim survivor from knowing or dealing with the fine.

In cases where the victim survivor does not feel safe to nominate the driver there are inadequate options for removing their liability for the fines. If there are no demerit points that flow from the fine and/or if the victim survivor is not concerned with having a traffic record, the victim survivor may choose to seek a write off of the fines debt but this doesn't remove their liability.

The Economic Abuse Reference Group NSW has identified this as an issue for reform and is working on seeking better outcomes for people who have experienced financial abuse in the context of fines. RLC coordinates the work of EARG NSW.