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CONTENTS

GENERAL NOTICES

NOTICE 1817 OF 2000

DEPARTMENT OF TRADE AND INDUSTRY

CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, do hereby, in terms of section 10(3) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), publish the report of the Consumer Affairs Committee on the result of an investigation made by the Committee pursuant to General Notice 517 of 1999 as published in Government Gazette No. 19896 dated 1 April 1999, as set out in the Schedule.

A ERWIN

MINISTER OF TRADE AND INDUSTRY

SCHEDULE

CONSUMER AFFAIRS COMMITTEE

REPORT IN TERMS OF SECTION 10(1) OF THE CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988 (ACT No. 71 OF 1988)

Report No. 78

A further investigation in terms of section 8(1)(b) of the Consumer Affairs (Unfair Business Practices) Act, 71 of 1988, into the business practices of interest recalculators

Contents:

1. Press release during December 1996 by the Registrar: Usury Act

The Registrar: Usury Act issued the following press release during December 1996:

> "It has come to the attention of the Department of Trade and Industry that certain interest recalculation organisations are alleging that the Department of Trade and Industry has employed them to do investigations and recalculations regarding overcharging of interest. The Department expressly states that it has not employed any agents to conduct investigations or recalculations on its behalf. Any person who is approached by such an organisation should immediately report to the Department".

2. A summary of Report 58: Interest Recalculators[1]

During July 1997 the Business Practices Committee (BPC) received a complaint from a consumer who was approached by a firm of interest recalculators[2] (hereafter called recalculators). The firm proposed to calculate the "exact" interest that she should have paid on her mortgages. She agreed to the recalculation and was required to pay in advance for the service. Then despite many enquiries, the firm did not conclude the calculation. It said that she had not yet supplied the necessary information in terms of the contract agreed between herself and the firm.

During October 1997 the Chairman of the BPC issued a press release in which it was stated that the BPC had given notice in the Government Gazette that it intended undertaking an investigation in terms of the Harmful Business Practices Act, 71 of 1988[3] into the business practice whereby recalculators, require payment in advance (an up-front consideration) for services to be rendered. Consumers were also advised to be "... very careful in concluding contracts with such entities" until such time that the BPC had published its report.

Notice of the investigation resulted in the BPC receiving written submissions from 47 clients of calculators. Many clients also called officials and told them of their

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(1) See Report 58 of the Business Practices Committee: Investigation in terms of section 8(1)(b) of the Harmful Business Practices Act, 71 of 1988, into business practices concerning the receipt of consideration in respect of interest recalculators, published under Notice 1763 in Government Gazette No 18443 dated 21 November 1997.

(2) Recalculators include any business or person who provided a service in return for money or any other valuable consideration for the express or implied purpose of investigating fees, charges, and/or interest charged on any debtor's account(s), including accounts held at financial institutions. The recalculators do not necessarily call themselves as such. Their names often include words such as financial services, research foundations, business consultants, interest corporations, settlement corporations, computational experts, bureaus for interest investigations, financial projects or the like. Some recalculators, apart from doing interest recalculations, offer other services, such as brokers and business consultants.

(3) Amendments to the Harmful Business Practices Act, 71 of 1988, brought about that the Act is now known as the Consumer Affairs (Unfair Business Practices) Act, 71 of 1988. What was formerly known as the Business Practices Committee, is now the Consumer Affairs Committee.

experiences with calculators. The entities mentioned by consumers in their complaints were, in alphabetical order, Bankrente Ondersoekburo, Calculus Mora-dienste, Cawood Financial Services, Financial Research Foundation, CM Finance, E & J Finansiële Bemarking CC trading as SA Bureau for Interest Investigations, FCF, Interest Investigations (Pty) Ltd, Finsol Business Consultants, International Computational Experts, International Interest Corporation, Interest Settlement Corporation, Karel Geevers, Kontra Rente Sisteme, Martin Lemmer CC trading as Duxbury and Co, Senator and Stellenryk Financial Projects (later acquired by Infomak) .

On 2 October 1997 officials of the BPC held discussions with the owner of a close corporation who conducted business as a recalculator. A "consultant" of this business claimed that the business enjoyed the support of the Department of Trade and Industry. During these discussions it was put to the owner that in many cases there was no question of the interest being calculated incorrectly by the banks, but that claims arose because of disputes in the interest rates charged. He agreed and added that, should the Minister of Trade and Industry (the Minister) prohibit the payment in advance for the recalculation of interest, he would simply advertise that he would, for the interpretation of contracts, accept payment in advance. This particular close corporation had been in operation for five months. It had, at the time of the meeting, not recovered any overpaid interest for any of its approximately 400 clients, although it was alleged that court cases which would result in repayments of interest were instituted.

The BPC took note of the various amounts the recalculators alleged that financial institutions, mostly banks, overcharged on interest. Estimates of between R60 million and R200 million had been made. For want of exhaustive assumptions on which these estimates were based, it was pure speculation. The fact that it ranged between R60 and R200 million was already an indication that very rough assessments were made. Various unsubstantiated figures were also quoted about the amounts recovered from financial institutions and paid over to clients. No estimates were available on the monies lost by consumers in the endeavours of recalculators to recover these unknown amounts.

Allegations were also made that financial institutions were the real culprits. A policy to deliberately overcharge clients on the interest payable, would in all probability have been regarded as a harmful business practice. The BPC obviously would have investigated such cases, should it have been presented with facts[4]. General statements such as "...all banks overcharge on mortgages and overdraft accounts" were clearly too vague to investigate.

The BPC expressed the opinion that the market for buyers of the services of recalculators appear to have been dwindled while the number of suppliers (recalculators) appears, for various reasons, to be on the increase. Officials were told by a representative of a recalculator that many existing recalculators previously worked

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(4) Most recalculators alleged that banks contravened the provisions of the Usury Act. Contraventions of this Act should have been directed to the Registrar: Usury Act, and not what was formerly called the BPC or now the Consumers Affairs Committee.

for other recalculators and that the number of recalculators has mushroomed. It appears that some recalculators have very bad reputations, even among their associates.

The fee structure on overdraft current accounts is now printed by most commercial banks on the monthly bank statements. The same applies to statements reflecting deposits held at the banks. The chances for disputes about the interest rate under the present dispensation are diminishing.

The sales pitches presented to prospective clients by some or all telemarketers of the recalculators were unsatisfactory. Potential consumers were cold canvassed and brought under the impression that especially banks, as a matter of policy, debit their clients with overcharged interest. This raised the expectations of the potential clients that they would be refunded. The expectations were based on perceptions, and not on facts. Prospective clients were approached indiscriminately and not because the recalculators were of the opinion that the prospective client was being overcharged.

There was and is always a risk for consumers when they pay for services yet to be rendered. The BPC investigated two other areas where payments were required for services "... to be rendered". In the first area the BPC investigated the practice by which entities or individuals allegedly would "arrange for loans" for their clients. Invariably the "loans" did not materialise and the unsuspecting clients were financially worse off than before. The Minister declared unlawful the business practice by which an intermediary, directly or indirectly, in respect of a money lending transaction or an application by any person to borrow an amount of money, demands, receives or recovers any valuable consideration from the borrower or from any person so applying, whether on his own account or on the behalf of any person other than the moneylender[5].

In the second area services for "... removing your judgement, adverse, slow payer from bureaus legally" were advertised and many consumers turned to these "credit repair entities" for help. Some of the entities required an up-front fee for their services before the name was "removed" from the so-called black list. The BPC was, however, aware of complaints that although a fee had been paid (in advance) the "name disappearing" did not materialise. This worked a financial hardship upon particularly consumers who have limited economic means and are inexperienced in credit matters. The Minister gave notice that he intended to declare harmful the business practice by which credit repair entities accept up front payments[6].

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(5) See Notice 777 of 1995 in Government Gazette No 16609, dated 18 August 1995.

(6) See Notice 338 of 1997 in Government Gazette 17809, dated 28 February 1997. The Minister, under Notice 169 in Government Gazette No 18646 of 6 February 1998, declared unlawful the business practice of accepting up-front monies to remove a person's name from a so-called "blacklist".

The harmful nature of the business practice of recalculators occurrs when the recalculator accepts money in advance to recover "overcharged" interest, not knowing what the chance of such occurrences are. This could be equated with the practice of debt intermediaries and credit repair entities who accepts money in advance for services that they can not deliver or do not know whether they can deliver. Many debt intermediaries, credit repair entities and recalculators have worked and were working a financial hardship upon consumers and are responsible for extra financial hardship for consumers already struggling.

The BPC received evidence that, although a fee had been paid, in advance, the recovering of the alleged interest overpaid did not materialise. The mere fact that a recalculator accepted money from a client did not necessarily mean that an investigation into the client's account would have been conducted by the recalculator. The offer to facilitate the repayment of interest was often no more than a pretext to relieve consumers of their money. The scale of abuse in South Africa among calculators was such that in the view of the BPC it was clear that the practice of taking money in advance could not be justified in the public interest.

There were cases and there will probably be other cases where creditors (banks) have indeed overcharged debtors with interest. The BPC is of the opinion that debtors should be allowed to use the services of recalculators should the debtors suspect that they have been overcharged by the creditor. On the other hand, consumers should be protected from unscrupulous recalculators. These operators should not be allowed to require payment in advance, or up-front fees, for their services to recalculate clients' financial accounts. This should also apply to operators who try to bypass the order of the Minister by calling themselves "interpreters of contracts" or any other name where this interpretation or service revolves round a dispute on the interest payable by a creditor to a debtor. Where they do undertake to recalculate interest for a client, they may retain a negotiated percentage of whatever amounts they successfully recover and if the claim is successful may also recover a fee that is negotiated beforehand.

The Minister has already placed restrictions on the acceptance of advance payments by debt intermediaries and credit repair entities. The BPC thus resolved to recommend to the Minister that, in terms of section 12(6) of the Harmful Business Practices Act, 71 of 1988, he declare unlawful[7] the business practice by which any person or business entity or recalculator offers or provides a service of investigating fees, charges or interest payable by a debtor to a creditor in terms of an agreement between such a debtor and creditor and in terms of which such interest calculator, any of its employees, agents, or other person on its behalf receives payment or money or any financial consideration before the rendering of such service in full. "Service fully performed" meant that the recalculator has fulfilled all the services offered to the debtor, and the creditor has agreed to or rejected any claim for disbursement in writing. The creditor must agree to or reject the claim within 90 days after receiving the claim, failing which service is presumed to have been fully performed.

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(7) See Notice 2422 in Government Gazette 19353 dated 23 October 1998.

The BPC was of the opinion that the order of the Minister would effectively put an end to the wrongs in the recalculation industry. This later turned out to be an optimistic assumption.

3. Further complaints and resolutions

Notwithstanding the order by the Minister, the BPC unfortunately continued to receive a steady flow of complaints against various recalculators[8]. It would appear that there were recalculators who eluded the order of the Minister. The following are two examples:

(a) A proprietary company performing recalculations, required that its clients sign a document stating *inter alia*: "I accept to pay the costs in respect of the recalculation of interest on the statements amounting Rx". After the Minister prohibited the taking of monies in advance to do recalculations, this particular propriety company was replaced by a close corporation ("X") with a name similar to that of the (Pty) Ltd. Now clients were required to sign a document which stated *inter alia*: "I the undersigned herewith purchase the necessary software package from 'X' to enable myself to manage my loans, as referred to above for the amount of R2 500". "X" undertook to capture the data in respect of the client's bond for a certain period "free of charge". This approach, that is, selling software packages to clients to do their "... own interest calculations", is apparently followed by other "former" calculators.

(b) Another approach followed by "former" recalculators is to conduct an "audit" of the clients' financial information. These "auditors" do not take up-front payments, but demand payment when the results of the "audit" are made available to clients. The clients could then approach their banks to recoup the interest "overcharged" or they could request the "auditing" form to recover the amounts for them. The "... rendering of such service in full" in the prohibition by the Minister, according to these calculators, is thus not applicable to them. These "former" calculators argue that, after presenting a client with the results of the "audit", the service has been rendered in full. Obviously, only a court of law is in a position to comment on the question whether Notice 2422 dated 23 October 1998 applies to a particular recalculator. The Committee is not in a position to comment on this question.

It further appeared that consumers continued to be misled by statements, or the lack of statements about the real facts, made by the recalculators, the sellers of software packages to calculate interest and "auditors" of bank statements. The BPC thus resolved on 23 March 1999 to:

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(8) It appears that there are no firms involved in *inter alia* interest recalculations who call themselves "interest recalculators". A particular recalculator was adamant that he should not be called as such. It would seem that recalculators resent being called "interest recalculators". Apparently they wish to disassociate themselves from the wrongs in the industry.

(i) undertake *ad hoc* section 8(1)(a)[9] investigations into the business practices of:

(a) Financial Research Foundation (Pty) Ltd (96/17090//07), a division of Financial Research Corporation (Pty) Ltd (94/07073/07), AL Friedman, FJL Friedman, L P Friedman, Michelle Friedman, Fritz Friedman and any director, employee, agent and/or representative of any of the aforementioned in respect of the activities of Financial Research Foundation (Pty) Ltd and Financial Research Corporation (Pty) Ltd. Notice of this section 8(1)(a) investigation was published in the Government Gazette of 23 April 1999.

(b) Entity "A"[10] and any of its directors, employees, agents and/or representatives.

(c) Entity "B" and any of its directors, employees, agents and/or representatives.

(d) Entity "C" and any of its directors, employees, agents and/or representatives.

(ii) revisit the business practices of recalculators by undertaking a further section 8(1)(b)[11] investigation into their business practices.

3. Notice of the section 8(1)(a) investigation

On 1 April 1999 the BPC published Notice 517 of 1999 in Government Gazette No 19896. This notice read as follows:

"On 12 September 1997 Notice 1325 of 1997 was published in Government Gazette 18263. The notice stated *inter alia*:

'In terms of the provisions of section 8(4) of the Harmful Business Practices Act, 1988 (Act No 71 of 1988), notice is herewith given that the Business Practices Committee intends undertaking an investigation in

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(9) A section 8(1)(a) investigation in terms of the Act enables the Committee to undertake an investigation into any unfair business practice which it or the Minister has reason to believe exists or may come into existence. The target of this type of investigation is a specific person or business.

(10) The notices of the section 8(1)(a) investigations into this entity and the entities in (c) and (d) below have, for various reasons, not yet been published in the Government Gazette. The entities will be referred to as entity "A", "B" and "C" respectively.

(11) A section 8(1)(b) investigation in terms of the Act enables the Committee to undertake an investigation into any business practice in general, which, in the opinion of the Committee or the Minister, is commonly applied for the purposes of or in connection with the creation or maintenance of unfair business practices. The target of this general type of investigation is a specific business practice.

4. Complaints received

The BPC received many complaints from clients of recalculators after publication of the notice of the section 8(1)(b) investigation and the article in the Business Times. The complaints were primarily against Financial Research Foundation, entity "A", entity "B" and entity "C".

Excerpts from the complaints against recalculators follow. The surnames of the complainants[12], in bold, are followed by the dates of their complaints and short synopses of the complaints. They serve to illustrate the various calculators' handling of their clients as well as the nature of the recalculators' clients.

4.1 Financial Research Foundation

Ada (letter dated 21 May 1999) "I signed a contract on 25 November 1997 and paid R1 500 in full to the consultant, Mr Agenbacht. The first correspondence received was on 22 January 1998. The company requested bank statements and certain documents that I have obtained from the bank. I arranged with the bank to get the relevant documents. I received them within one month and advised FRF to collect. The rep only picked up the documents on 8 June 1998 after several telephone calls. I then tried to contact FRF's management to report back but in vain. Nobody bothered to call me. After several attempts to contact FRF in 1999 and now Im turning to you to please check up on this company".

Bur (letter dated 18 June 1999) "During 1997 I gave FRF instructions to do an interest audit on my account with the bank. I paid them R1 500 in advance. In spite of numerous calls and correspondence, and notwithstanding the fact that I obtained all the information required by them, none of their promises materialised".

Dup (letter dated 24 May 1999) "On 5 September 1997, after making a telephone appointment, I was visited at my house by Mr Chris Bam who told me that he represented FRF who examines financial records on behalf of clients in order to obtain refunds made by the relevant financial institutions as it was proven the financial frequently overcharge on interest. I paid R1 500 when signing the contract and was told that although the documents I signed state that a result should be forthcoming after 60 days, due to the amount of word the company has, the investigation would take approximately three months, after which I would be informed of the result. When hearing nothing, I phoned Mr Bam on 19 January 1998 who informed me that he could not handle enquiries and I must phone the company directly. When I phoned the number, a lady informed me that I must phone another number. I phoned at various times but every time only received an engaged tone".

Far (letter dated 25 May 1999) "Attached please find correspondence relating to attempts to recover funds paid to FRF. This was as a result of my signing with this firm

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(12) Their anonymity is ensured by only mentioning the first three letters of their surnames.

terms of section 8(1)(b) of the said Act into the business practice whereby "interest recalculators", as defined in the Schedule, require payment in advance (an up-front consideration) for services to be rendered'.

The end result of this investigation was that the Minister declared unlawful the business practice of recalculators whereby they receive money for the performance of any service that an interest recalculator has agreed to perform for a consumer before such service is fully performed. Service fully performed was defined as fulfilment of all the services offered to the debtor, and the creditor has agreed to or rejected any claim for reimbursement in writing. The creditor must have agreed to or rejected the claim within 90 days after receipt thereof, failing which the service was presumed to have been fully performed.

In spite of the order by the Minister, the Committee unfortunately still receives a steady flow of complaints against recalculators. It would appear that there are interest recalculators who elude the order of the Minister. It further appears that consumers could be misled by statements made by these recalculators. The Committee thus resolved to revisit the business practices of recalculators, hence the following notice.

'In terms of the provisions of section 8(4) of the Harmful Business Practices Act, 1988 (Act No 71 of 1988), notice is herewith given that the Business Practices Committee intends undertaking a further investigation in terms of section 8(1)(b) of the said Act into the business practices of interest recalculators. This would include a reconsideration of payment in advance for services to be rendered as well as other possible harmful business practices.

Any person may within a period of 14 days from the date of this notice make written representations regarding the above-mentioned investigation to:

The Secretary, Business Practices Committee, Private Bag X84, PRETORIA, 0001. Tel: 012-310-9562 Fax: 012-320-0579 Ms L van Zyl Ref. H101/20/10/10(99)'".

The following entities were informed by letter or fax on 8 April 1999 of the impending section 8(1)(b) investigation: AHI, ATOP Rente Ondersoekburo, Beder-Friedland Inc, Consumer Institute, Council of South African Banks, Farmers' Weekly, Mr EC van Zyl, secretary of Finansiële Konsultante van Suid-Afrika, Mr JL Krause (attorney of Fin-Cure), WN Reyneke Inc (attorney of Financial Research Foundation), Mr JT Muller (managing director of International Interest Corporation, Interest Settlement Corporation and Bankbusters at P O Box 50803, Waterfront), Landbouweekblad, Leander Wiid Attorneys, Lemmer & Associates, MLX Beleggings t/a TradeFirst, NAFCOC and StarLine.

On 23 May 1999 the Business Times published an article with the heading "Don't let interest recalculators tempt you".

to investigate my bond with the Standard Bank and statements that they could recover substantial amounts from the bank. After no action on the part of this company I have attempted to recover my funds without success".

Gam and three acquaintances (undated letter) "We paid R7 200 to FRF on May 1997. We had, on numerous occasions, requested them for a refund, without success. They last communicated with us in November 1998. The present situation is that we are unable to trace them and I have been told they recently sold their property which includes a Hotel "Keerom Case" in Villiersdorp".

Gre, on behalf of Ngc (letter dated 13 October 1996) "The client paid R3 000 to FRF. Unfortunately, despite numerous letters and threats of legal action, no response whatsoever has ever been received".

Hen (letter dated 26 May 1999) "I paid R1 200 on 28 January 1997 to FRF. The whole affair is very clear to me now:

(1) Promises based on bogus (?) letters from clients
(2) Regular meaningless correspondence as a delaying tactic.
(3) Requests for info they already have
(4) Suggest a visit to some far-off location
(5) On visiting their "office" at Villiersdorp I was shocked at the chaos and unprofessional state - their wooden racks were full of brown manilla folders in dusty conditions
(6) They must have made millions of rands out of this scam - I would take great pleasure to see they get their just deserts".

How (letter dated 4 June 1999) "I received an evening phone call from a Chris Long. This man was phoning people at random canvassing business for Financial Research Foundation. I demanded that he give me a contact name so that I could phone them the next day. I phoned the contact, Vollaria, explained the facts and asked her to follow up my contract. This lady stated that they are not an interest recalculation company, instead they are a firm of forensic auditors. Needless to say that was the last I heard from that lady".

Ket (letter dated 31 May 1999) "They have in the recent past been the topic of a presentation on SABC Radio Monitor. I myself have fallen victim, having paid R4 000 deposit and nearly 26 months later had no results. My personal experiences:

Deposits are taken and work, if any, is either delayed or does not take place. When questioned about delays, one is informed that relevant information on the account was requested from the bank, but had not been received or was received late.

At a personal visit to FRF's offices I requested to inspect their correspondence with my bank, but was told that this was stored in another office and the person with the key had gone on holiday.

I was further informed that my claim had actually been sent to my bank's head office and received a copy of their letter to my bank, where an acknowledgement or receipt was requested from my bank.

I was requested to pay my outstanding balance of R5 900 for their interest research.

I commented that I was a little cautious, based on the radio presentation and certain other adverse news on their firm and their industry in general, but was prepared to settle upon acknowledgement of receipt of their claim by my bank.

I emphasized that I was at that stage only interested in receipt of claim and not even any assurance that their claim was valid.

I was threatened with summonses and received a highly abusive telephone call from their director. Needless to say, today - nearly four months later, I have received neither summons nor any confirmation that my claim had been received by my bank.

My own belief, together with views of other ex-clients on Radio Monitor, is that deposits are invested for interest gain and, if at all retuned, only to those shouting the loudest.

With this particular firm there are literally thousands of customers involved, with millions of Rand having been handed over in total, most of whom we assume have written their deposits off, due to the high costs of litigation".

Kim (undated letter) "I entered into a contract with FRF on 30 June 1997 and paid them R1 500. I have this far not had any response from them and this has even led to a strain on my marriage as well as I being the laughing stock of my family and friends. I have since on numerous times tried to make contact with this company by fax and telephonically - but to no avail".

Kri (fax dated 8 July 1999) "I feel that no progress is being made as this has now been going on from 4 April 1997. I would like to have my R1 500 refunded back to me".

Lab (fax dated 13 July 1999) "During the afternoon of 1 May 1997 Mr Meintjes, a financial consultant of FRF knocked on our door. He explained to us that banks charged their clients too much interest, in other words, we are being done in. He also told us that we could easily expect R15 000 as a refund and that the investigation would be completed within a month. He said that the investigation would cost R1 500. We told him that we could not afford that amount but he said we could pay it by credit card. Should the investigation be unsuccessful, he said, the company would refund us the R1 500 at an interest rate of 15.5 per cent per annum. He later convinced us to have them undertake the investigation. He looked honest and even sang the Lord's Prayer during our discussion. This convinced us that he was a Christian and that he would not defraud us. Everything looked so promising and at that stage we suffered financially".

From June 1997 to January 1999 this FRF client tried to contact FRF to get a refund on the money paid to the "consultant". He said that it was surprising that the employee at FRF that he spoke to on a previous occasion was never available on the next occasion. The usual explanation to him was that the employee to whom he wanted to speak "... had left the company". FRF employees he spoke to were *inter alia* Nola, Michelle Friedman, Janine, Gaynor and Charmaine.

"We, as husband and wife, already had heated arguments because of FRF. There were accusations because of the R1 500 plus interest "... that unnecessarily left the house" and because we suffer hardship and could have bought clothes and food for our three children".

Lau (letter dated 19 May 1999) "On 13 May 1997 I paid them R4 875. They would have kept this in trust and I would have received 15.5 per cent annually. Is the company a deposit taking institution? I learned that FRF found that the bank owes me R8 000. I am prepared to cede the R8 000 together with the 15.5% to FRF on the condition that they refund my deposit".

Lou, Bri and Mul (letter dated 4 June 1999) These three FRF clients worked for the same institution. Each of them paid R1 500 to FRF towards the middle of 1997. They have since then not heard from FRF.

Mat (letter dated 16 June 1999) "The amount is too small to justify a private person and a pensioner going to court or even to accrue legal costs. The attached correspondence and other documents cover all of the details of my experience with the FRF but I would add that I had a number of telephone calls to the company as well".

The documentation the consumers made available to the Committee included registered letters to FRF. He stated that he furnished FRF with the original bank statements, but it as again requested by FRF at a later stage. He asked for cancellation of the contact because of non-performance by FRF. The client paid R250 on 3 January 1996.

Rei (undated letter received on 10 June 1999) "I hereby submit copies of documents relating to my own dealings with Financial Research Foundation (Pty) Ltd. I was given a sweet verbal assurance that, because of the promising returns on my claim, the term of recalculation would be extended to 25 years. The whole affair stank like ten skunks but, in the hope that I could get a couple of bob back from the bank, I met all payments and terms of the contract. In attempts to follow up progress on my account I was faced with the frustrations of a bandy man trying to catch a greased pig in a passage. Wet soap is as slippery as sandpaper compared to these operators. Suffice to say that I had not success in contacting FRF and had written of any further developments".

Rid (letter dated 24 May 1999) "I signed a contract with FRF on 22 January 1997, when I was informed that the matter should be concluded after a few months. Needless to say, this has not happened. I only received a reply once after requests for information as could be seen from the enclosed documentation".

Roe (undated letter) "I appointed FRF two years ago to recalculate the interest on my bond. Up to date I have heard very little from them. I paid R1 500. What is now going to happen to my money?"
Sny (letter dated 9 June 1999) "The co-operative and the bank threatened to have us liquidated because we could not pay our debt because or poor crops. We were then approached by FRF. The appointed attorneys EB and WN Reyneke and adv DMDEL to handle our case. We incurred heavy losses because of court cases. The involvement of FRF cost us another ±R200 000 in legal fees. We never heard from the Friedmans again. They refused to talk to us. The end of the story is that we mediated with the bank and the co-operative to pay our debt over three years".

Sty (letter dated 1 June 1999) Styles paid R1 500 to FRF on 5 May 1997. He said: "After several letters I learned they had gone into liquidation". Yet, on 6 February 1999 he again signed an agreement with another interest recalculator. He paid R2 500 and was promised that he would receive a report back within 8 weeks. "On 24 April 99 I faxed a letter and phoned their Cape Town office. At no time have I received any written acknowledgement from them".

Wak (undated letter received on 1 July 1999) "I have tried unsuccessfully to contact them, by phone and mail (as well as fax) and am getting nowhere. I have a pile of 'bumph'." (paperwork).

Wei (letter dated 25 May 1999) "During November 1997 I paid R1 500 to FRF who promised that the investigation would be completed within six weeks. Nothing happened".

Wil (letter dated 21 May 1999) "I paid R1 500 to FRF during 1997. Up to date I received no reaction from the firm and they cannot be traced anywhere. It would seem that they committed fraud on a grand scale".

4.2 Entity "A"

Arm, though attorney X (undated letter) "He paid R5 530 to entity "A" during February 1995. The client reverted to our offices requesting that legal action proceedings be instituted against entity "A". See case No 28446/1996 of the Magistrates Court, Cape Town. Shortly before legal action so instituted having been scheduled to proceed to trial, "A" in its plea, alleged the contract so concluded by Mr Arm therewith, had not been concluded with such company, but rather with another company. Under cover of correspondence dated 12 November 1998, Messrs ABC, acting on the behalf of "A" advised our correspondents in Cape town that "... our clients intends to apply for liquidation."

Bea (letter dated 25 May 1999) "On 24 September 1998 I was approached by Mr Kevin Nel and Mr Rob Nel of entity "A" to investigate my bank account. I paid them a deposit of R4 560. To date I have never heard from them again. I believe their *modus operandi* to be sophisticated and a fraudulently criminal manner of theft".

Bek (letter dated 21 May 1999) "This firm (entity "A") was paid R5 480 by my father and he received no services in return. A lot of other people were also defrauded in this manner. We believe that they received money from ±2 000 individuals without them receiving anything in return. At an average amount of R3 000 per client this amounts to R6 000 000".

Bez (letter dated 20 May 1999) "The amount of R3 920 was paid to entity "A" plus a further R750 to take the case further. After many calls to entity "A" it could not be traced".

Bur (letter dated 23 April 1999) "I paid a deposit of R1 500 on 6 May 1997. I told the marketer that my bond was already fully paid and that I would not be able to furnish them with statement from the date that the bond was registered in 1972. He told that was not a problem because with the "money-back guarantee" I would in any case get my money back should it not be possible to do the investigation. The end result was that I was required to pay another R3 200 to the bank to obtain the statements. I elected not to pay this amount".

Buy (letter dated 25 May 1999). "She (a marketer for entity "A") showed me a file containing a list of people and companies who had received large refunds due to incorrect interest calculations by the banks, and also the bank where my account was held. ABC Bank was the main culprit amongst the banks and therefore guaranteed me a substantial refund. I gave her a cheque to the amount of R8 010 on 3 September 1998 as a deposit which would be fully paid back after their calculations. When I phoned them during November 1998, I was told that everything was still on track. During January 1999 I contacted "A" again, but this time no one answered the telephone. After contacting the caretaker of Musgrave Centre, where their Durban office was located, I was told that they had suddenly vacated their offices and there was no forwarding contact number or address".

Dev (fax dated 13 August 1999) "I was also a victim when I paid R5 000 on 28 January 1999 to entity "A" to investigate two accounts for me. They said it will take three weeks but the work is not finished yet. In May 1999 they sent me a report to say that on the one account the bank owes me R65.85 plus interest and ask for an order to go ahead. I was not worried about the R65.86 but they said that I will loose my R2 500 if they do not summons the bank. I then signed the document to give them the right. I have not heard from them since and they do not answer my calls".

Dob (letter dated 5 July 1999) "I paid R1 500 to entity "A" on 22 September 1998. I have received no information in return and am not able to contact entity "A" at any of the telephone numbers printed on the documents".

Dut (letter dated 28 July 1999) "On 13 May 1998 we entered into an agreement with them to check the interest payments on a number of accounts and hire purchase contracts. We paid an upfront fee of R5 040 on the same day. They basically did nothing and we never got any satisfaction from them and they never returned our bank statements and other documents. By November 1998 we gave up trying to get anything back from them".

Gab (undated letter) "I paid them R7 500 during May 1998. No contact since".

Gov (letter dated 25 May 1999). "The only mistake they have found is R7.48. They have guaranteed to refund my money if they are unable to claim it from the bank. I have paid an upfront fee of R5 880 to them. The only reply I got from them that they have not reached consensus with the bank since November 1998. I have tried on numerous occasions to contact them in Johannesburg and there was no reply".

Hil (fax dated 19 August 1999) "I paid them a deposit of R5 250 on 17 April 1998 to have my bond checked and was promised an answer within 6 to 8 weeks. During May to October 1998 I made numerous calls to their Johannesburg and Cape Town branches with no positive results. During October 1998 I was advised that the recalculation on my bond had been done and that the bank overcharged me in the amount of R22 071.12. On 7 December 1998 I went to their offices in Vorna Valley in person. I was informed that all the calculations had been submitted to the bank and that they had a "gentleman's" agreement which gave the bank concerned three months to review their calculations. I waited till the end of February 1999 and started phoning them again to find out about my claim. Their phones just rang, Cape Town and Johannesburg. I again went to their offices in Vorna Valley. The offices were open, files lying on the floor, no furniture and nobody in the office. Other tenants informed me that they had moved in February 1999".

Hol (undated letter) "I paid them R10 800 on 29 May 1998".

Ket (letter dated 26 may 1999) "I wish to advise you that I too have fallen victim to the services of entity "A". I paid over a deposit for re-calculation if interest on two Stannic accounts. After taking up this issue with the banks themselves, I was informed that "A"'s recalculation was totally incorrect anyway. This company no longer operates from their premises in Waterfall Park, Midrand. On trying to trace them I was informed by the landlord that they haven't even paid rent. I hope these con-artists can be bought to book".

Mus (letter dated 26 May 1999) "I paid them an upfront fee of R1 400 on 4 November 1997. I received one letter from them thereafter. I last talked to someone once in plus minus September 1998. No response since".

Qua CC (letter dated 26 May 1999) The attorneys of this close corporation stated: "On 3 August 1998 our client paid R3 330 to entity "A". Our client received a document from them where calculations were allegedly carried out and a variance of R737.80 was calculated. It was furthermore agreed in writing between the parties that should the amount paid out by the bank was less than the deposit, "A" would refund the difference. Our client has made a number of enquiries to obtain payment of the amount allegedly overpaid of R737.80 from "A" and payment of the difference between that amount and the amount of R3 330. It would appear that entity "A" no longer operates and that the entire operation is fraudulent".

Raf (letter dated 24 May 1999). "I would like to submit documentation of recalculators that I fell victim to. I paid R2 020".

She (letter dated 2 June 1999) "I paid them R3 780 on 15 September 1998. I was informed that it should take about six weeks for the investigation to be completed. After seven weeks I phoned their Cape Town office to no avail and eventually got through to a number in Johannesburg only to be informed that "A" was in liquidation. I know of another 2 persons in this area that gave cheques to "A". I feel the managing director is conning us and making good money at the same time".

Smi (letter dated 26 May 1999) "I paid R2 500 on 30 October 1998. Have not yet heard from them".

Smi (letter dated 25 May 1999) "We made a payment of R5 400 on 11 June 1998 and to date have had no services rendered and are unable to make any contact with them"

Smi (letter dated 24 May 1999) "I was contacted telephonically and hounded by the agents of the company for about a year to enter into a contract with them to recalculate my bond interest. I became unemployed at the beginning of 1997, and after receiving my provident fund pay out in September 1998, used part of this pay out to take out two contracts with "A" as the agent was still hounding me, was very convincing and all appeared above board. I paid a total of R8 760. This company was exposed on both MNets' Carte Blanche and the Isabel Jones Consumer show in October 1998. I immediately contacted the Durban office and the agent I dealt with as was told that the exposure was a ploy by the banking institutions to discredit them. I was told not to worry as everything was under control and business was as usual. I requested a written response as to the state if my contracts. Nothing was forthcoming. I then phoned regularly and never received any replies or answers to the status of my query. On 9 November 1998 I was informed that "A" was in liquidation and that was all the information available".

Tiz (letter dated 5 June 1999)

"1. Agreement signed with "A" on 28 August 1997.
2. Their acknowledgement of the assignment dated 8 September 1997.
3. My letter to them asking as to their progress dated 1 November 1997 which was sent by fax. This brought a telephonic response, taken by my wife, that they were very busy but the matter was now being dealt with by their Cape Town office.
4. Copy of my attorney's letter dated 19 January 1998 to them asking for a refund of my R1 400 or the work to be performed. This brought no response.
5. Copy of my attorney's letter to me dated 6 February 1998 advising of their lack of progress and recommending that I go to the Small Claims Court.
6. Letter of Demand, obtained from the Small Claims Court, sent registered post by me on 17 April 1998. This brought no response. Regrettably, overseas family commitments, extensive business absence from South Africa, and a general tardiness have resulted in the matter not having gone any further than the Letter of Demand.

Vin (letter dated 1 June 1999) "They took R3 440 from me more than a year and a half

ago and now have apparently disappeared. I would be glad to see the managing director's activities curtailed whenever he may surface next or similar dishonest practitioners".

Vip (letter dated 31 may 1999) "On 16 February 1998 I paid them an amount of R1 600. At first, until approximately August 1998, my phone calls to the Midrand office and later to the Cape Town number were met with promises to complete the work contracted for. Eventually the phone numbers were discontinued. To date I have had no correspondence with the company and I have accepted that I had been conned".

Vis (letter dated 26 May 1999) "Last week a Mostert of "A" of Lower Long Street, spoke to me ... when he heard that I have a housing loan he became very persistent. He stated that my bank is one of the biggest culprits and that he could virtually guarantee that I would get a refund from the bank. He required R3 000 upfront with no guarantee".

4.3 Entity "B"

Please note that entity "B" took over the files of two former interest recalculators, called Sen and Rin, and obviously had no legal obligation towards the clients of these two erstwhile entities. It will be clear from reading the excerpts that clients of Rin and Sen regarded "B" as their successor.

An engineer (fax dated 4 August 1999) I hereby attach my complaints against entity "B". I have a desire to help prevent this issue impacting on others, so I have also attached some suggestions and an offer for help. I am a gullible engineer, so I might have some skills that could be of use to the broader public.

On 26 February 1999 I paid R2 850 to Ms Godfrey of entity "B" for services relating to an audit of an old housing bond that I had with a bank. The account with the bank was terminated round about 1992. I transferred the bond to another bank. Godfrey indicated that the bond calculation would require two separate audits, one for each bank. Shortly after paying the R2 850 for the first bank's, I was given a copy of a Starline article by a friend that indicated that the recalculation industry was dubious.

I visited entity "B" and confronted them with the article. I told them to wait with the second bank's work until there was progress on the first banks' work as commissioned. Mr de Bruyn of "B" accepted this. I also provided additional statements of the first bank that I had been able to find at home, for inclusion in the audit. I was promised that they would recalculate the amount owing to me and then fax a copy of the Saambou letter of demand to me.

Despite many telephone calls and many excuses (I kept a log of the dates and the dialogue if it is required), no fax was forthcoming. I faxed them a letter of complaint on 1999/04/24 stating that I had been promised a copy of their letter to the first bank and that nothing was happening. They did respond via fax, attaching a copy of a letter of demand to the first bank, their letter's date was 12/03/1999. The amount they claimed was the original value they calculated, i.e. without any changes due to the extra statements I had given Mr de Bruyn on 2 March 1999.

After another sequence of about 20 telephonic contacts (I have a second log as well), I received a fax from "B", the second page of a demand letter addressed to the first bank, but with a different claim amount. I also received a third letter copy via post (with the same 12 March date) with the same text, but with a third amount on page two of their letter to the first bank. I thus have three letters in hand, each with a different claim amount. Note that two of the letters have the same date, but different claim amounts. All of them do not reflect the information that I expect, there should be three audit periods, A, C and D (from the conventions that they are using in their own documentation). Period B as calculated by them for the first bank, reflect a credit, so I was told that specific period would be disregarded.

I received a letter of demand from "B" on 1999/07/01 (dated 18/06/1999) in the post, stating that I owed entity "B" R2 850. I refuted the claim via fax, enclosing a copy of the one cheque I paid and a declaration that the second audit on the second bank was stopped by me and agreed to by "B".

I generated a letter of demand on 1999/07/19 to "B", stating that I wanted the following from them. I expected to see additional audit periods in their report to me due to the additional statements submitted. I wanted a copy of the newly updated demand letter to the first bank. I wanted the name and telephone number of the person at the first bank handling this matter. I gave them until 1999/07/26 to respond.

I have heard nothing from "B" since. I have contacted the first bank, they say a claim was submitted by "B" and rejected due to a difference of legal opinion on daily balances versus monthly in advance.

Complaints

(a) I was given incorrect information by "B". I was told that they would send a letter of demand to the first bank and I would be given a copy at the same time. I was told that entity "B"'s lawyers were sharp and took no nonsense, that the banks had made calculation errors, especially in the 1980s (a period where the first bank's bond was active). They told me that claims get sorted out quickly, that the banks (except for ABC Bank) pay up smartly. They also told me that the R2 850 audit fee plus interest (as well as any interest I lost by borrowing the R2 850) would accrue to me. (Subsequently I hear from the Banking Council that this letter statement is not true, there are no cases on record where the audit fee was reimbursed.)

(b) I have also subsequently found that there is a difference in legal opinion between "B" and the first bank in terms of the interpretation of the Usury Act, and until this is sorted out by (costly) litigation, the bank will reject the claim. This was not made visible to me by "B". I am sure "B" had claims against the first bank before mine, so they must have known. In my perception, "B" will not go for litigation due to the costs involved, the claim amount in my case is too small.

(c) They told me they had 'contacts' inside the banks and that they would get copies of statements from the first bank. (Subsequently they said there was a 'spot' on the first bank's microfiche, they would to use my statements but that they would be able to extrapolate some data.) They never did get any extra data from the first bank.

(d) Having 'contacts' in a bank and obtaining records of who has a bond so that they can be telephoned, does not strike me as being ethical, in retrospect.

(e) I have received a report for which I paid R2 850 that I cannot use, this was not what I envisaged. To generate the report cost "B" very little. (I estimate R50, R200 maximum.) "B" is using the excuse of a report to obtain money up front for little work, as a manner to bypass Gazette notice 19353.

(f) "B"'s documentation is designed to mislead one. The agreement one signs refer to 'form A3'. When you look at a one page document marked A3, one side is entitled 'Newsletter' and the fifth point on the reverse states that the 'initial fee payable is for the investigation and audit of the financial information as supplied by you'. Why is paragraph five, not on the agreement? The form also states that in "B"'s experience, 'clients have no problem in settling the claim directly with their financial institution'. This latter point is clearly not correct, how can a client that doesn't have recourse to their spreadsheet information, justify "B"'s figures, if the banks currently reject their claims?

The matter of detail as supplied by one versus them getting it from the Bank, is another concern. Verbally they state they will get statements, yet the A3 document states you must supply the statements. I know of someone that paid his money and could not provide statements, so he heard nothing further.

They speak of a 'panel of expert lawyers who can, at payment of I5% of the settled amount, finalize the claim on your behalf'. This looks very reasonable, but the misleading part is that entity "B" would not be able to fund the litigation at 15% of the claim, so they will never go to litigation.

(g) I contend that the report they gave me, was incomplete and as such was incorrect. Additional statements as supplied by me, were not properly incorporated, so as far as I am concerned, the service provided was shoddy, the 'initial Investigation' was not correctly done.

(h) "B" altered page two of the letter to the first bank, I contend for purposes of satisfying me, while leaving the date on the letter as is. I think it is fraudulent to alter a letter after it has been sent.

(i) "B" made several promised on die phone and then kept applying excuses (my two logs refer, I can supply those if required, they cover several pages). This is not conducive with a going concern that displays customer focus. This indicates to me that the whole process to a scam carefully designed to defraud the public. The operatives are trained to play on the public's fears and concerns while playing down the legal issues.

(j) Entity "B" makes ample reference to the Usury Act, but neglects to mention the Government Gazette notice 19353 dated 23 October 1998 relating to recalculators. (I obtained a copy of this notice recently.) A firm that is fair, would declare such matters.

(k) Entity "B" sent a letter of demand via a debt collector, this is seen as a subtle way to get me to go away, it is a tactic designed to frighten one off. Any reasonable company, once shown proof of concerns where a customer indicates potential fraud and then accepts to wait with an action in process, would first contact the customer with a claim or reminder, before submitting the claim to a debt collector. The whole tone of the way business is done, is suspicious".

App: (letter dated 19 July 1999) "I paid R1 188 to Sen on 23 January 1997. They have since been liquidated and it would seem that entity "B" does not make any progress with the case. Please help".

Bez: (letter dated 19 April 1999) "I paid R1 200 to "B" in ±1997 and they still struggle to conclude the investigation. According to van Jaarsveldt the case against the bank is now with the attorneys. It is a disgrace that the State cannot solve the problem. I talked to van Jaarsveldt on 10 April 1999 and he told me that a date of the trial is still awaited. I cannot believe that the case can take this long. It would be appreciated if you could expedite the court case".

Bra: (letter dated 3 June 1999) "I paid Sen R1 490 during May 1997. No response".

Cra: (letter dated 17 June 1999) "I paid R2 600 to "B" during August 1998 after they had told me that I had overpaid R12 119.29. After not hearing from them for ±6 months I contacted them to hear what was happening and was told that they needed information from the bank. The representative from "B" fetched the information from me personally. I have still not received any response, despite many calls. They always promise to get back to me with an answer but never do. The response of "B" during July 1999 was that they sent a letter of demand to the bank.

Cro: (undated letter received in June 1999) "I paid R1 188 to Sen on 19 November 1996. I won a case in the Small Claims Court against Mr van Zyl of Sen, but he could not be traced. The consultant of Sen told me that the results of the investigation would be available within two months. I made 10 calls to van Zyl but he did not return any of the calls".

Els: (letter dated 15 April 1999) "On 24 July 1997 we signed 20 contract with Sen and paid an advance fee of R28 581.21 to them. From thereon virtually nothing happened. All efforts to follow up progress, to make contact or to make appointments with any responsible representatives were fruitless".

Eva: (letter dated 24 May 1999) "I am one of the victims of "B", one of these recalculators, which you might have come across, as they are situated in Pretoria. I am from Brackenfell in the Cape and if it was not so far from these SHARKS I would have done some serious damage to them. In February 1998 after they did the (NAME) POLICE STATION and also their captain I thought it will be safe to trust them (I'm only

an electrician). I never fall for such schemes, but as some of the police's bonds were done, I believed them to be honest. So they asked me to pay them R2 600 for the services they were going to render. They said I will get my money in three months time, which are now 16 months already. I spoke to their financial advisor, v Jaarsveld and their man Matting and everyone working for those criminals but to no effect".

Gan: (letter dated 8 June 1999) He paid Sen an unknown amount and was informed by Sen on 9 October 1997 that the "variance overcharged according to our calculations" amounted to R219.45

Mun: (letter dated 10 June 1999) "It would appear in the surface that "B" have duped me into believing they were able to effect a recovery on my erstwhile bond holder. To date nothing has materialised and I am being told that the matter is with the Courts and I should be receiving payment shortly".

Oma: (letter dated 10 June 1999) "I paid an amount of R4 500 upfront, and repeated phone calls to entity "B" (Messrs van Jaarsveld, Hattingh and Koekemoer) have proved totally unsatisfactory. At the last call - about a month ago - we were informed that all three of these gentlemen had left the company. Not only do I want a refund of my money, but also the return of the bank statements so that I can, if I still want to, take them to a genuine and reputable company for recalculation".

Ric: (undated letter during June 1999) "On 19 April 1997 I paid Rin to do a recalculation on the interest paid by me. Rin was followed up by Sen and then "B". The matter has not yet been resolved".

Smi: (letter dated 26 May 1999) "In mid January 1998 a Mr Carstens representing "B" approached me and offered to do a recalculation of my two practice loan accounts with ABC Bank. Two weeks later he returned with the so-called proof that I had been overcharged to the value of almost R11 000. He quoted the reasons for this as: 1. interest was illegally calculated on the protector plan policy taken with the loan 2. dated for interest calculations were done so as to create a "longer month" hence the double payment non interest for 2 or 3 days a month which accrued over the term into this large sum. He also stated that almost 90 per cent of the ABC Bank clients whom they've investigated had been overcharged in this manner. As I was duly upset, I signed a contract with "B" and paid the initial deposit of R2 600. As you can see in the copy provided the money would be refunded in full should there be no evidence of overcharging. They also promised resolution within 3 to 6 months. After 6 months I had not heard anything. I then started to make calls. Van Jaarsveld contacted me and said that ABC Bank was disputing the claim and that I should go and see by bank manager and demand my money back. I went to the bank and the bank manager contacted me some days later and said that "B"'s allegations were unfounded. According to their recalculation my account was 100 per cent correct. When I confronted van Jaarsveld about this he said that they would take the matter to court, but he needed a letter of authority from me. I signed one and sent it back. I heard nothing from them and called them again. I explained to them that they were in breach of contract and that I wanted my R2 600 back as per agreement. I also commented on the fact that I had heard about "shady operators" doing recalculations on the Isabel Jones Show. The operator got very defensive and said that it was unfair to label them

as dishonest if there were other dishonest operators and then went on to accuse me of being a dishonest dentist because he had heard about a dishonest doctor in Bloem on Carte Blanche. He also went on to say that the Isabel Jones Show is sponsored by the banks and thus the report was done as the banks are afraid the general public would catch onto them. After much unpleasantness I threw the phone down on him".

Van: (letter dated 19 April 1999) "I concluded an agreement with Sen on 17 July 1996. On 19 January 1999 I was informed that entity "B" took over the business of Sen and Rin".

Tho: (undated letter received on 15 June 1999) "In July 1997 I signed a contract with Sen. The fee was R1 200. I was lead to believe that this would take about three months with virtually guaranteed results. To date I have received very little feedback despite numerous queries and a visit to "B" office.

4.4 Entity "C"

And: (letter dated 24 May 1999) "I paid them R3 900 on 12 August 1997. They simply do not respond to telephone messages. Since the day of signing the contract they have changed address and telephone number at least once without notifying me. The intentions of these people are clear. They play for time and in the end both parties simply forget about the contract. The complaint of And was referred to "C" and their attorney informed the Committee that they are negotiating with the complainant.

Bur :(letter dated 23 April 1999) "I paid "C" R1 500 on 6 May 1997. As I already redeemed my bond I told the marketer that I would have difficulty in supplying the bank statements as from 1972. He told me that should be no problem because with the money back guarantee I would receive a refund on my money if it was not possible to do the calculation. At the end I could not obtain the statements s from ABC Bank without paying them (ABC) R3 200. I did not see my way open to do this and I verbally and in writing requested a refund of my money from "C", without success. The complaint of Burger was also referred to "C" and their attorney informed the Committee *inter alia* that "... this again is a case where a written contract is ignored and verbal agreements put forward which should, with respect, be tested and cross-examined to establish exactly what was said".

Kil: (letter dated 19 September 1999) "On 27 January 1998 I closed a contract with "C". I paid an amount of R3 000. In October 1998 I was informed (on my insistence) that all the statements of my accounts were received and that the recalculation would commence. After I had not received any feedback from the company for a number of months, I contacted them on 14 January 1999 and on 23 February 1999 to inquire about the status of the investigation. On 4 March 1999 I received a fax indicating that urgent attention will be given to my request. Since then I have not received any feedback from them".

4.5 Others

Blo: (undated letter received in June 1999) I paid Patel R750 upfront for the recalculations alone and R1 000 to proceed with the claim. After eight months nothing has been forthcoming and every time I contacted him, he had a better excuse why my claim cannot be submitted to the bank. The complaint of Blo was submitted to Patel. Patel denied the allegations made by Blo and wrote that he kept the complainant informed of the progress of the investigation.

Bri: (letter dated 1 June 1999) On 6 November 1998 I paid R3 000 upfront to "Forensic Audit Services". During May 1999 I did some enquiries and heard that the owner, Ms XYZ must appear in Court on charges of fraud. Officials of the Committee tried to make contact with "Forensic Audit Services". It appeared that this entity and the persons involved vacated their offices and it was rumoured by another tenant in the building that they have moved to Cape Town.

Buy: (letter dated 23 May 1999) "I have it seems also fallen in the trap and paid this interest recalculator R1 710 up front to do a recalc on bond repayments. After numerous telephone calls and letters no result as yet. Their reply - we'll phone back - or we await your statements from the bank etc. This is going on since August 1998. How can you assist me to get my R1 950 back!".

The Committee furnished this recalculator with a copy of this consumer's complaint and the recalculator responded by saying that the client failed to furnish it with the original "power of attorney". On 17 February 1999 the recalculator called the complainant and informed him that the original power of attorney was outstanding. He did so twice on other occasions and received the required document on 21 May 1999. On the same day the recalculator also informed the complainant that: "... we have requested the necessary documentation from the bank. On receipt of any documentation we will send you a letter to keep you updated". According to the recalculator the complainant was also advised about a declaratory order against Absa Bank (Case 13771/98). On 17 June 1999 the recalculator sent a circular sent to his clients informing them of the Court case between NBS Boland Bank vs One Berg River Drive. Attached to this circular was a copy of an article that appeared in the May 1999 edition of "Noseweek" with the title "Dancing on Dullah's Eggs". The recalculator stated in his letter to the Committee that it wished to bring under the attention of the Committee that it was still waiting for bank statements from the ABC Bank.

Van: (letter dated 5 May 1999). "I paid the interest recalculator R1 710 on 20 July 1998. Have not yet heard from them".

The Committee furnished this recalculator with a copy of the client's complaint and the recalculator responded by referring the Committee to a copy of the agreement between itself and the client. Just above the client's signature were the words, written in ink, "... calculation 4-6 weeks after statements received". On17 August 1998 the statements were requested from the relevant bank and the client was informed accordingly. Notes were made in the client's file that the matter about the outstanding statements was taken up with the bank on 27 October 1998, 14 November 1998, 27 November 1998 and 27 January 1999. The recalculator also informed the Committee that in terms of

the Usury Act, 73 of 1968, as amended, bank statements should be made available to a client within 7 days of such a written request by the client or his representative. The statements were received from the bank on 8 April 1999 and the client was informed accordingly. The calculation was completed on 12 May 1999. This is, as per agreement, four weeks after the date of the agreement. On 17 June 1999 the circular, mentioned under Buy above, was also sent to this client. The interest recalculator concluded its letter by stating that the biggest problem that it experiences is the delay in the provision of bank statements from the banks. It does not appear that the clients were informed about this problem.

Wil: (letter dated 19 May 1999) "On 29 October 1998 I paid the company R1 500 for audit and legal fees. I phoned them several times about progress but never received any joy. I really will appreciate a refund".

5. Submission received from banks

5.1 "ABC" Bank

"ABC" Bank submitted the following to the Committee:

> "The article 'Don't let interest recalculators tempt you', published in the Business Times of 23 May 1999, invited written submissions on experiences involving recalculators.
>
> As the article correctly points out, banks are put to considerable time and trouble in dealing with claims from interest recalculators, purporting to represent the banks' own clients, usually borrowers. The recalculation and verification of, for example, a client's mortgage loan account, which often dates back many years, is a lengthy, time-consuming exercise. Worse still, and as the article also records, banks feel constrained to do the recalculations despite the fact that 99% of recalculators' claims are rejected. This is certainly our own experience. This fruitless exercise is very often attributable to the fact that the recalculators have simply used their own computer programmes in carrying out their own calculations, which bear little or no resemblance to the contractual basis governing those done by the bank. The use of incorrect dates, rates and/or interest cycles are the norm. This results in a massive, unnecessary expense for the banks.
>
> By way of example, I enclose a copy of a letter dated 14 April 1999 in which (recalculator's name) concede having done their calculations without being in possession of a copy of the relevant bond (or Letter of Grant, which is the loan agreement) and "solely based on the information established from the given bank statements'. Our client's name and other details have been deleted for purposes of confidentiality.
>
> Satisfied in the knowledge that our calculations are almost certainly correct, and to avoid becoming embroiled in unnecessary litigation, we provide these interest recalculators with copies of all relevant documents (beyond those which we are

obliged to furnish our clients by law) and verify our own calculations. I am sure other banks do the same.

Some recalculators are more persistent than others and, through their own attorneys, have instituted legal proceedings against the banks in the name of the various account holders. Our experience is that, once these actions are defended, they are seldom pursued. We are even aware of a case where an interest recalculator:

- took cession of 32 borrowers"claims";
- recalculated their loan accounts, contending that, with mora interest, these borrowers had collectively been 'over charged' by an amount in excess of RI,I million;
- subsequently ceded and sold (for an equivalent purchase price) these claims to another borrower, by then already in arrear with her own loan, thereby purporting to provide such borrower with a claim which was later pleaded as a counter claim against the bank in foreclosure proceedings;
- structured the sale so that, apart from a nominal deposit of R2 500, the purchaser would pay the balance of the purchase price (interest free over 60 months) by way of instalments similar in amount to those which the purchaser should have been paying under the bond;
- provided that all payments would be forfeited if the purchaser at any time failed to pay her agreed monthly instalments (of approximately R9 700).

We are in possession of a copy of the relevant agreement.

Over the years, we have had numerous claims from several interest recalculators. Our policy remains unchanged in that we will immediately rectify any error which we discover. To date this has not been necessary.

We support the Committee's investigation and would be willing to provide you with such further assistance or documentation as you may require for this purpose".

A representative of the "ABC" Bank told an official of the Committee that a client of the bank, at the request of his interest recalculator, required copies of the client's bank statements from 1984 to date. To recover the statements occupied three bank employees for four months. This was brought about by *inter alia* amalgamations in the banking sector, the closure of some branches and the opening of others.

5.2 The Council of Banks (now called the Banking Council)

The Council of Banks (the Council) stated that it is a matter of fact and public record that, on occasion, banks do make mistakes and incorrect data is captured on the computer system. The Council furnished the Committee with the value of claims received and paid out via interest recalculators over the past few years. The summary in the table below is for cheque accounts, home loans and hire purchases. The Council stated that very little interest has been repaid in relation to home loans or hire purchase.

Item	1998	1997	1996	1995	1994
Value of interest claims received	20.1	49.7	65.3	211.5	237.7
Value of interest claims paid out	0	0	6.8	26.5	187.9
Total interest received on loans	96 000	78 408	66 029	51 467	38 013

The figures in the table were qualified by the Council. It stated that it was aware that there were counter views, frequently supported by "evidence" of specific bank actions. It is these actions, often at branch level, which made it difficult to determine an accurate picture of exactly what has happened in the banking sector. Examples were where:

banks and clients settled claims subject to legal action out-of-court;

branches settled claims outside the context of banks' centralised claims recalculation departments (thereby bypassing the "official" statistics),

claims were settled in error by the wrong department;

banks made mistakes, for example, inputting 20 instead of 10 years, or failing to change an indicator when a client is upgraded from one type of special package deal to another and better one; and

banks settled claims to preserve the client relationship, rather than as an acknowledgement of any wrongdoing.

The Council stated that it was because of these reasons that it was difficult for it to comment emphatically on the behalf of the banking industry. There are obviously many variables beyond the control of the centralised departments officially responsible for dealing with recalculation issues.

Nevertheless, the table shows that since banks started communicating cheque interest rates to clients in 1992, the incidence of successful interest claims has decreased dramatically. This confirms the opinion of the BPC that the market for interest recalculators is getting smaller.

6. Conclusion

6.1 Harmful business practices

An individual calculator glaringly misled potential clients when it purported to be an auditor. ("This lady stated that they are not an interest recalculation company, instead they are forensic auditors".) The other complaints which were received from consumers against recalculators clearly indicate common factors in their deception. This deception came about because facts were deliberately withheld from, and lies told, to prospective clients. Most, if not all clients of recalculators, were *inter alia* led to believe that:

(a) banks, *as a matter of policy*, deliberately overcharge their clients interest whenever possible, for example:

"He stated that my bank is one of the biggest culprits and that he could virtually guarantee that I would get a refund from the bank" and

An interest recalculator gave a written and useless guarantee stating "... you could expect a minimum claim of R10 000 on the above claim. This figure depends on the final calculation which would include 'moratore' (sic) interest, which would mean that the final claim could be more that the amount mentioned".

"She showed me a file containing a list of people and companies who had received large refunds due to incorrect interest calculations by the banks, and also the bank where my account was held".

The fact is that there is no evidence to support this allegation. The Committee did not receive any submissions from recalculators to substantiate this allegation.

(b) the investigation and receipt of the "overcharged" interest would be concluded after a few months.

The fact is that the Committee received no submissions from recalculators or their clients that an investigation and receipt of the "overcharged" interest were concluded after "... a few months". Furthermore, banks apparently seldom agree with the calculations of recalculators and are prepared, in most cases, to take the matter to the courts. This procedure is expensive and time consuming. This information was withheld from prospective clients.

(c) it would be easy to obtain the required banks statements for the periods that the clients required the interest to be recalculated.

The fact is that the banks' statements were either not forthcoming or the banks, for various reasons, took a considerable time in supplying the required information. This was not conveyed to the

prospective clients. The allegation was made by an interest recalculator that some banks charged excessive fees for bank statements. The prospective clients only became aware of these practical problems after they signed the contracts and the recalculators banked their monies.

After signing the contracts:

(a) Calculations were delayed by recalculators or perhaps did not take place at all. A convenient escape from irate clients was to blame the banks for not making available the required bank statements. In other cases recalculators engaged in regular meaningless correspondence as a delaying tactic. The complainant who wrote: "The intentions of these people are clear. Play for time and in the end both parties simply forget about the contract" was probably correct.

(b) Clients were sent for pillar to post after they paid in advance for services to be rendered. "I have tried on numerous occasions to contact them but there was no reply", "No contact since I paid them", "To date I have never heard from them again" and "They simply do not respond to telephone messages".

(c) Some recalculators simply "disappeared", only to surface at a later stage under new trading names. "I was told that they had suddenly vacated their offices and there was no forwarding contact number or address" and "Since the day of signing the contract they have changed address and telephone number at least once without notifying me".

(d) The guarantees of some recalculators were worthless. "The only mistake they have found is R7.48. They have guaranteed to refund my money if they are unable to claim it from the bank. I have paid an upfront fee of R5 880. The only reply I got from them is that they have not reached a consensus with the bank since November 1998" and "I was told that it was not a problem because with the 'money-back guarantee'. I would in any case get my money back should it not be possible to do the investigation".

6.2 The rights of consumers

In a brochure issued by the Department of Trade and Industry[13] it is stated that there are eight internationally recognised consumer rights. There are the right to: satisfaction of basic needs, safety, information, choice, representation, redress, consumer education and a healthy environment. Two of these consumer rights, within the context of interest recalculators, are discussed briefly, namely, to choose and to be informed.

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(13) National Consumer Affairs Office, "Your Rights as a Consumer!".

Consumers, however, do not only have rights. They have the responsibility to be more alert and questioning about the price, quality and safety of products and services[14] they buy. Before making any buying decisions, it is necessary for consumers to obtain information on products and services and they should also ask about the terms and conditions of contracts. Many complaints could be avoided if consumers assumed this responsibility. There are cases, however, where consumers are not in a position to exercise their responsibilities because they are unfamiliar with the products or services. In such cases it is the responsibility of the supplier of the product or services to fully inform the consumer.

6.1.1 The right to choose

The Consumer Affairs Committee's sole function is to afford some protection to consumers from exploitation in the form of harmful business practices by undertaking investigations into such practices and recommending to the Minister that he prohibits or regulates such practices. Protecting consumers by a total ban on recalculators would be inappropriate. There probably are recalculators who render acceptable services. A total ban would deprive the consumers of their right to choose. This right of consumers to choose is based on the assumption that they are provided with the facts and make informed decisions to purchase the services of recalculators.

6.1.2 The right to be informed

Many consumers reasonably assume that recalculators are capable and will provide the services they sell. Consumers are uninformed and prejudiced when, first, recalculators fail to disclose to them that they (the interest calculators) are not always capable, even through no fault of their own, to provide the services promised. The effect on consumers of this non-disclosure is that they are misled into believing that they enjoy the commercial and contractual support of the interest recalculator. Consumers' expectations may then be disappointed when the services are not rendered, even though services of comparable quality may be available.

No seller of products or services may make any misrepresentation to a prospective purchaser, either expressly or by implication. **No sincere entrepreneur could argue the opposite. No moral recalculator could object should the Minister introduce measures to ensure that consumers are informed about the facts in the recalculation industry**. Such misrepresentations would include purporting to be able to deliver a service if this were not the case. The purchase habits of consumers are such that the mere prospect of "refunds" from their banks is often sufficient enough to create an impression that the recalculator could supply the service. To ensure that any such possible misunderstanding is timeously corrected, it is incumbent upon the supplier to inform consumers that they (the consumers) would perhaps not obtain the services paid for.

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(14) National Consumer Affairs Office, "Know Your Responsibilities as a Consumer".

All the evidence at the disposal of the Committee points to the undeniable fact that the clients of recalculators have in the past been misled, whether on purpose or by accident. There is also evidence that shows that clients have at times been misled by design. This is obviously not in the public interest. It is a harmful business practice not to inform the buyers of recalculation services or buyers of computer software packages which is specifically programmed to calculate fees, charges, and/or interest charged on any debtor's account(s), including accounts held at financial institutions, about the facts regarding recalculations and claims against financial institutions such as banks.

The Committee is consequently of the opinion that consumers have the right to be informed by recalculators of the problems that could be encountered in a "recalculation". The Committee regards it as the responsibility of recalculators to ensure that their clients are explicitly informed of the conditions attached to the recalculation prior to the clients paying for the service.

7. Recommendation

7.1 Consumers should be informed

It was stated above that entities involved in the recalculation of interest go under various descriptive names, such as auditors, business consultants, corporations, financial services and foundations. An interest recalculator, for purposes of this recommendation, are:

(a) that part of an entity's or an individual's business, which, in return for money or any other valuable consideration, is directed towards investigating fees, charges, and/or interest charged on any debtor's account(s), including accounts held at financial institutions.

(b) sellers of computer software packages originating from South Africa, which, in return for money or any other valuable consideration, are specifically programmed to calculate fees, charges, and/or interest charged on any debtor's account(s), including accounts held at financial institutions.

Interest calculators must, in their sales contracts, include the following (not to be amended) phrases and/or words. These phrases and/or words must be in bold print, no smaller than the print in the contract and are not to be printed on the reverse side of the contract.

"I, the undersigned (on the behalf of myself or company or close corporation or partnership or sole proprietorship - delete what is not applicable), hereby confirm that it was explained to me and I understand that:

1. there is no evidence to suggest that financial institutions, *as a matter of policy*, deliberately overcharge their clients interest;

2. there is no guarantee as to the time period that the investigation will be concluded;

3. the responsibility to obtain the necessary financial statements, such as bank statements, rests with (company, close corporation, partnership, sole proprietorship), trading as (trading name of recalculator or whatever the recalculator wishes to call itself) and the investigation will not commence until such time that the necessary statements have been received by (trading name of recalculator);

4. financial institutions, such as banks, will not necessarily agree with the calculations of the (trading name of recalculator) and these institutions are in most cases prepared to dispute any claim in a court of law; and

5. it could be time consuming and expensive should (trading name of recalculator) find, according to its calculations, that I do have a claim against a financial institution and this claim is disputed by the financial institution.

(Signed) .....
Date .....

The sellers of computer software packages originating from South Africa, and which is specifically programmed to calculate fees, charges, and/or interest charged on any debtor's account(s), including accounts held at financial institutions, must print the following on the cover of the compact disc(s)/stiffy(ies)/floppy disk(s):

"Take note:

1. there is no evidence to suggest that financial institutions, *as a matter of policy*, deliberately overcharge their clients interest;

2. to undertake a recalculation one requires all the relevant financial statements, such as bank statements, for a certain period, and this may take some time;

3. financial institutions, such as banks, will not necessarily agree with your calculations and these institutions are in most cases prepared to dispute any claim in a court of law; and

4. it could be time consuming and expensive should you find that you were "overcharged" and your claim is disputed by the financial institution.

The sellers of computer software packages as described above, must, should they sell the packages by way of sales contracts, also include the (not to be amended) phrases and/or words in the contracts as required of interest calculators and which was set out above.

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Prof T A Woker
VICE-CHAIRPERSON: CONSUMER AFFAIRS COMMITTEE
Date: 17. March 2000

NOTICE 1818 OF 2000

DEPARTMENT OF TRADE AND INDUSTRY

CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, in terms of section 12 (6) (a) (iii) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), hereby give notice that I intend publishing the following notice in the *Government Gazette*. Interested parties are hereby invited to comment on the proposed notice. These comments must be directed to the address which appears at the end of the proposed notice.

NOTICE IN TERMS OF SECTION 12 (6) (a) (iii) OF THE CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, by virtue of the powers vested in me by section 12 (6) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), and after having considered a report by the Consumer Affairs Committee in relation to an investigation of which notice was given in Notice 517 of 1999 in *Government Gazette No.* 19896, dated 1 April 1999, which report was published in Notice 1817 of 12 May 2000 in *Government Gazette* 21162, promulgate in the public interest the notice in the Schedule.

SCHEDULE

In this notice, unless the context indicates otherwise-

"interest recalculator" means:

(a) any business or person or any other provider of a service that revolves round a dispute on the interest payable by a debtor to a creditor, who provides any service in return for money or any other valuable consideration for the express or implied purpose of investigating fees, charges, and/or interest charged on any debtor's account(s), including accounts held at financial institutions; and

(b) sellers of computer software packages originating from South Africa, which, in return for money or any other valuable consideration, are specifically programmed to calculate fees, charges, and/or interest charged on any debtor's account(s), including accounts held at financial institutions.

"harmful business practice" means:

(a) the exclusion by interest recalculators in their sales contracts, of the following (not to be amended) phrases and/or words. These phrases and/or words must be in bold print, no smaller than the print in the

contract and are not to be printed on the reverse side of the contract.

"I, the undersigned (on the behalf of myself or company or close corporation or partnership or sole proprietorship - delete what is not applicable), hereby confirm that it was explained to me and I understand that:

1. there is no evidence to suggest that financial institutions, *as a matter of policy*, deliberately overcharge their clients interest;

2. there is no guarantee as to the time period that the investigation will be concluded;

3. the responsibility to obtain the necessary financial statements, such as bank statements, rests with (company, close corporation, partnership, sole proprietorship), trading as (trading name of recalculator or whatever the recalculator wishes to call itself) and the investigation will not commence until such time that the necessary statements have been received by (trading name of recalculator);

4. financial institutions, such as banks, will not necessarily agree with the calculations of the (trading name of recalculator) and these institutions are in most cases prepared to dispute any claim in a court of law; and

5. it could be time consuming and expensive should (trading name of recalculator) find, according to its calculations, that I do have a claim against a financial institution and this claim is disputed by the financial institution.

(Signed) .....
Date .....

(b) failing to print the following on the cover of the compact disc(s)/stiffy(ies)/floppy disk(s) by interest recalculators who sell computer software packages originating from South Africa, and which are specifically programmed to calculate fees, charges, and/or interest charged on any debtor's account(s), including accounts held at financial institutions:

"Take note:

1. there is no evidence to suggest that financial institutions, *as a matter of policy*, deliberately overcharge their clients interest;

2. to undertake a recalculation one requires all the relevant financial statements, such as bank statements, for a certain period, and this may take some time;

3. financial institutions, such as banks, will not necessarily agree with your calculations and these institutions are in most cases prepared to dispute any claim in a court of law; and

4. it could be time consuming and expensive should you find that you were "overcharged" and your claim is disputed by the financial institution.

(c) the exclusion by the sellers of computer software packages, as described above, and should they sell the packages by way of sales contracts, the exclusion of the (not to be amended) phrases and/or words in the contracts as required of interest calculators and which was set under (a) above.

"the parties" means interest recalculators.

1 . The harmful business practice is hereby declared unlawful in respect of the parties.

2. The parties are hereby directed to-

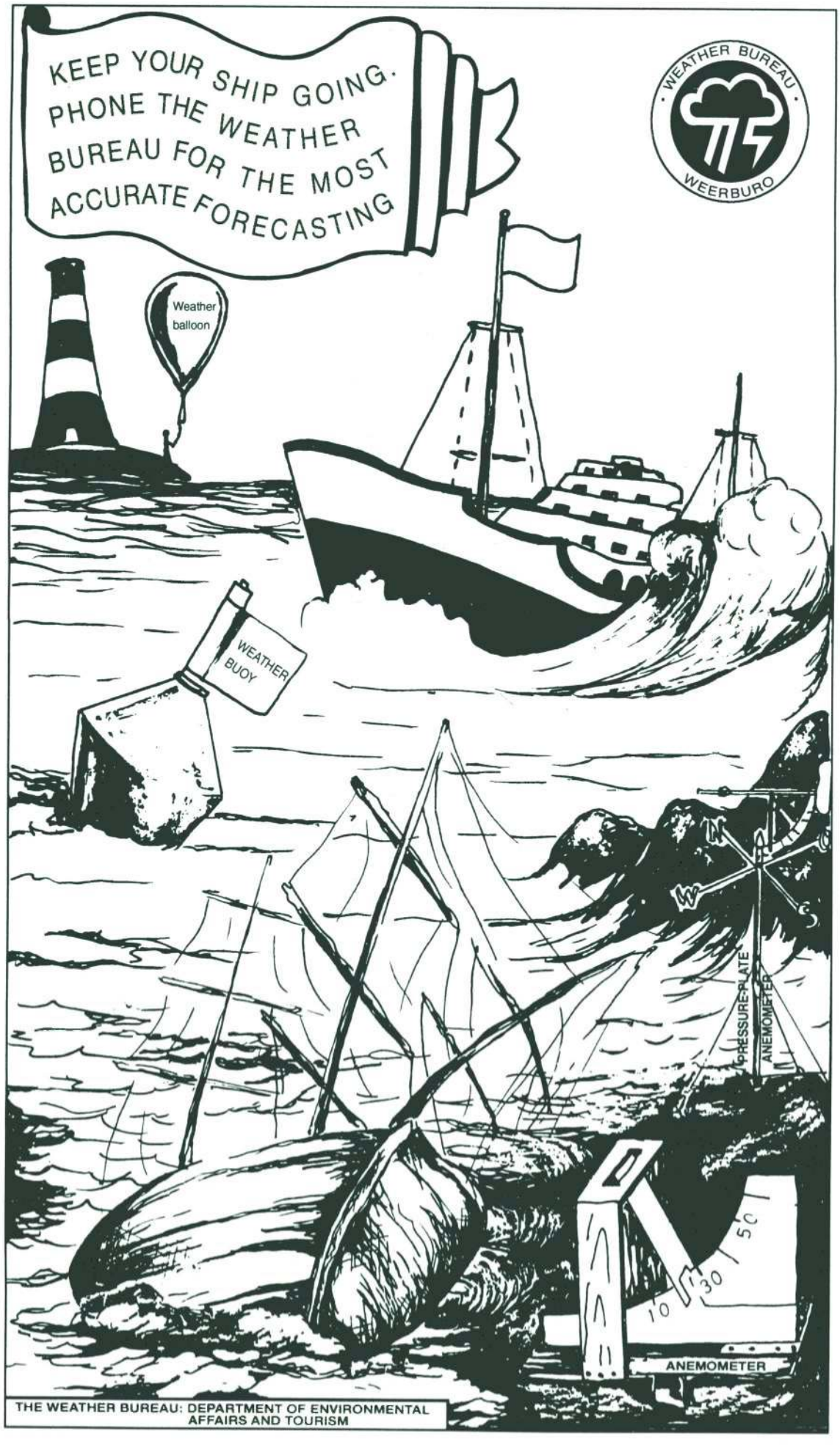
(a) refrain from applying the harmful business practice;

(b) refrain at any time from applying the harmful business practice.

On the recommendation of the Consumer Affairs Committee I may, in a particular case, in terms of section 12 (6) (c) of the Act in writing, grant exemption from a prohibition contemplated in this notice to such extent and for such period and subject to such conditions as may be specified in the exemption. Such applications for exemption must be directed to:

The Secretary, Consumer Affairs Committee, Private Bag X84, PRETORIA, 0001
(For attention: Ms Lana van Zyl)
[Fax: (012) 320-0579]

A. ERWIN
MINISTER OF TRADE AND INDUSTRY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