



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 467

Pretoria, 3 May
Mei 2004

No. 26321



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

CONTENTS

No.		Page No.	Gazette No.
	GENERAL NOTICES		
	Trade and Industry, Department of		
	General Notices		
762	Consumer Affairs (Unfair Business Practices) Act (71/1988): Investigation Report 109.....	3	26321
763	do.: Notice in terms of section 12 (1) (b)	28	26321

GENERAL NOTICES

NOTICE 762 OF 2004

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 348 of 2002 as published in Government Gazette No.23223 dated 15 March 2002, 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. 109

Investigation in terms of section 8 (1)(a) of the Consumer Affairs (Unfair Business Practices) Act, 1988, into the business practices of Comprehensive Financial Services Newcastle cc t/a FlexiPay CC (Registration No 96/04871/23), FlexiPay CC (Registration No.97/01039/23), Jan Hendrik van Zyl (ID: 6112265059086), William George Alexander Scholtz (ID: 5612045076087), Lynette Denise Hitchinson (ID: 6212080050086), Frans Willem Andries van Zyl (ID : 6012185092086) Christopher Ivan Hitchinson

1. The Consumer Affairs Committee - a brief background

The Consumer Affairs (Unfair Business Practices) Act, 71 of 1988 (the Act) is administered by the Consumer Affairs Committee (the Committee), a statutory body in the Department of Trade and Industry that reports to the Minister of Trade and Industry (the Minister). The purpose of the Act is to provide for the prohibition or control of certain business practices.

An "unfair business practice" is defined in the Act⁽¹⁾ as any business practice which, directly or indirectly, has or is likely to have the effect of harming the relations between businesses and consumers, unreasonably prejudicing any consumer, deceiving any consumer or unfairly affecting any consumer.

The Committee has wide investigative powers. In broad terms the Committee is empowered to undertake investigations into:

- (a) the business practices of individuals and businesses that could be involved in unfair business practices⁽²⁾

and

- (b) any business practice in general which is commonly applied for the purposes of or in connection with the creation or maintenance of unfair business practices.⁽³⁾

A 4(1)(c) investigation enables the Committee to make a preliminary investigation in order to ascertain whether there is an unfair business practice in existence or whether there is a possibility that an unfair business practice may come into existence in the

(1) See s 1 the definition section

(2) In terms of sections 4(1)(c) and 8(1)(a). These are commonly referred to as 4(1)(c) and 8(1)(a) investigations. A 4(1)(c) investigation is an informal preliminary investigation whilst an investigation in terms of s 8 is a formal investigation and notice of the investigation is published in the *Government Gazette*. The Committee conducts an 8(1)(a) investigation when it is investigating specific businesses or individuals. Any order by the Minister would only apply to those businesses and/or individuals that are named in the notice.

(3) In terms of section 8(1)(b). This is commonly referred to as an 8(1)(b) investigation. The Committee conducts such an investigation when it is discovered that many businesses or individuals have adopted a particular business practice which appears to be unfair. In other words it is now a general business practice. Any order by the Minister would be applicable to any individual or business that is operating a similar business or that intends to operate such a business in the future regardless of the fact that they were not specifically investigated.

future. Notice of a 4(1)(c) investigation is not published in the *Government Gazette* but if the Committee is of the view that there is evidence of an unfair business practice and it decides to investigate the matter further, notice of the section 8 investigation is published in the *Government Gazette*. The purpose of a 4(1)(c) investigation is to enable the Committee to make a more informed decision as to whether there is a need for a formal investigation. The Minister is not empowered to make any decisions on the strength of a 4(1)(c) investigation but the Minister may do so following a section 8 investigation.

Should the Committee, after the conclusion of a section 8 investigation, resolve that an unfair business practice exists, or may come into existence, it recommends corrective action to the Minister.⁽⁴⁾ Orders of the Minister are published in the *Government Gazette*. A contravention of an order by the Minister is a criminal offence, punishable by a fine of R200 000 or five years imprisonment or both the fine and the imprisonment.

The Committee was preceded by the Business Practices Committee (BPC) which administered the Harmful Business Practices Act, 71 of 1988 (the former Act). The former Act was amended during 1999.⁽⁵⁾ As a result, the BPC was replaced by the Consumer Affairs Committee and the definition of a harmful business practice was amended and now refers to an unfair business practice. The investigations which can be undertaken by the Committee have remained the same and those sections of the Act and the former Act are identical

2. Events leading to the investigation

An official of a financial institution approached the Committee regarding the business practices of certain businesses which he believed might be misleading and harmful to consumers. The business practice of Comprehensive Financial Services Newcastle CC t/a FlexiPay (FlexiPay) who, in his opinion, is acting in contravention of Notice 777 of 1995 was brought to the attention of the Committee. It was also alleged that FlexiPay was franchising its operation and apparently had in excess of 2000 agents.

The Committee also received a complaint from Mr E M Sangweni in which he alleged that he entered into an agreement with FlexiPay to consolidate his debt and that despite FlexiPay having taken his money, but they did not pay any of his creditors. The same allegedly happened to Mr F Janse van Rensburg. The Committee has also received complaints via the Micro Finance Regulatory Council (MFRC), with similar allegations.

(4) The powers of the Minister are set out in s 12

(5) The Act was amended by the Harmful Business Practices Amendment Act 23 of 1999

3. Preliminary investigation

Modus Operandi

3.1. A request to the employer/paymaster.

FlexiPay enters into agreement with consumers and at the same time obtains a power of attorney from them. FlexiPay then forwards a written request to employers, requesting/insisting that the employer discontinues deductions that are made on behalf of micro lenders. These requests are allegedly sent in batches ranging from 20 to 200. FlexiPay also refers to legislation, normally Section 34 of the Basic Conditions of Employment Act as well as the latest Treasury Regulations. It is alleged that on the basis of the aforementioned the employee is entitled to request a discontinuation of deductions. The following is an extract of a request letter forwarded to "The Paymaster":

"As provided for by the MINISTER OF FINANCE in Section 23.5.1 of GOVERNMENT NOTICE 7048 of 2001, alternatively, Section 34 (1) of the Basic Conditions of Employment Act, Act 75 of 1997, kindly process the attached Stop Order cancellation instruction duly signed by our client.

Please note that our client's future financial position and social welfare will depend on your prompt action.

Our client's willingness to submit him/herself to a voluntary programme of financial rehabilitation is an indication of a more responsible attitude towards the management of personal finances, as it is our intention to endeavor (sic) to consolidate all client's debt into one single and more affordable repayment.

All necessary arrangements will be made by our Legal Dept. to obtain settlement balances from all creditors concerned with the view to consolidate and/or make alternative payment arrangements with the said creditors as suggested by the National Ministry of Finance recently."

3.2. A request to the creditor

A request similar to that in 3.1 above is also forwarded to their clients' creditor(s), (in this instance a request to a moneylender), informing them that they act on behalf of Mr/Ms X and that their client can hardly meet the most basic monthly expenses due to the many micro-loans granted by the micro-lending industry.

The request letter then continues with:

"Should our client not be assisted, the cumbersome, and often economically ineffectual assistance provided for by Section 74 of the Magistrate's Court Act, will inevitably have to be used, to place their client's estate under administration.

Our mandate is to assist our client to try and avoid this position, by arranging a revised repayment structure of the loan obligations that have already been incurred. Our proposal, which will be submitted after receipt of the under-mentioned information, will provide an effective alternative to the stop-order deductions previously made against our client's salary, and we believe, will be far more effective and economical, than any other legal means of recovering

monthly re-payments from our client.

In order to assess our client's position, and formulate our proposal, we require the following information from you:

1. The original capital amount loaned, and the interest rate charged thereon.
2. The date of the agreement, and the dates and amounts of all payments received from our client.
3. The amount outstanding, and full details of how such amount is arrived at.
4. The amount required to settle the loan.
5. If the amount is a consolidation of previous loans, the same details in respect of such previous loans.

In the interim, kindly be advised, that our client has been forced by his/her dire financial position to cancel all stop order instructions with his/her employer, and has instructed us, as we hereby do, to revoke, cancel and annul, all existing instructions to yourselves to collect monthly installments by the deduction of amounts directly from our client's salary and/or banking account, whether lawfully given or otherwise.

It is not our intention to assist our client to evade the fulfilment of obligations in respect of these loans, and any attempt by our clients to do so, will not be tolerated. However, due to our clients present position, until satisfactory arrangements have been made, any attempt to recover payments from our clients will be strongly resisted by all legal means available, whether in the interest of creditors or not.

Should your institution be part of the micro-lending industry which is presently using, or which seeks in the future to use blank documentation signed by our client prior to receiving the loan, for the purposes of recovering payments from our client by garnishee order, or otherwise, we will advise our client to make full use of the civil and criminal remedies available, to prevent such unlawful conduct."

- 3.3 FlexiPay allegedly also states that their practices have been approved by the Micro Finance Regulatory Council (MFRC) and National Treasury.
- 3.4 It appears that FlexiPay's clients are given the impression that their accounts will be frozen pending the resolution of the alleged dispute. Once the deductions have been discontinued, FlexiPay ("the mediator") approaches the lender in an effort to "force" the creditor/lender, who now has to revert to litigation to collect what is due, to consent to a reduction of the instalments. As can be seen in the letter to the creditor above, the creditors are also threatened that should they not comply, Section 74 of the Magistrate's Court Act will be resorted to, to place their client's estate under administration.
- 3.5 It is also alleged that FlexiPay initially informed clients that within 6 months from the "rescheduling" of their debt they will qualify for a loan from an associate company of FlexiPay, probably Flexiloan. (The Committee noted that although the original debts were far overdue and Flexipay had informed creditors that their clients were not in a position to afford basic necessities, FlexiPay was prepared to arrange further loans.)
- 3.6 FlexiPay charges a fee that is payable to them by the client for services rendered. The following are extracts from the "power of Attorney - Instruction and Indemnity" document signed by the clients (consumers) of FlexiPay and

Flexiloan's "Acknowledgement of Debt and Undertaking to pay" document:

Power of Attorney Instruction and Indemnity document:

... "3. I agree to pay the fees as explained to me, in the amount set out in the acknowledgment(sic) of debt signed separately, which amount will be paid in two installments, and will be deducted from my salary, in whatever manner acceptable to FlexiPay, including by way of debit order deduction from my present banking account, or such other bank account used by me from time to time.

4. The endeavours of FlexiPay to re-negotiate my monthly commitments may be considered to be an act of insolvency and in the event of creditors not being prepared to assist with my rehabilitation, I understand that it may be necessary for my estate to be placed under administration in terms of section 74 of the Magistrate's Court Act, act 32 of 1944 as amended.

5. The content of all documents signed by me, and the legal consequences attached thereto, and in particular the meaning and legal effect of "an act of insolvency", "offer of compromise" and "the administration procedure, provided by section 74 of the Magistrate's Court Act" have all been explained to me in a language that I understand.

6. The services to be rendered by FlexiPay on my behalf are clearly understood by me, and I understand that FlexiPay does not undertake to make payment on my behalf of any amount to my creditor, other than as provided for in terms of the scheme of arrangements concluded on my behalf, and only insofar as the relevant funds are received by FlexiPay, from me. I understand that creditors may decide to take steps against me, to protect their own interests, and for this I will not hold FlexiPay responsible".

Flexiloan's "Acknowledgement of Debt and Undertaking to pay" document:

..... "I hereby confirm that:
the capital of the amount that I have borrowed is R.....
the interest charged by Flexiloan is 20% (twenty per cent) per month, and amounts to R.....
Flexiloan may pay the capital sum to my agent, FlexiPay, as a deposit on fees that I owe them, for services that they have already rendered on my behalf, or will so render; I have not been forced to sign this agreement, which I do of my own free will;
a copy of the MFRC rules has been made available to me by FlexiLoan;"

Possible contravention of existing prohibition

3.7 Notice 777 of 1995

The *modus operandi* of FlexiPay appears to be prohibited by Notice 777 of 1995⁽⁶⁾. Notice 777 prohibits the payment, for reward, of amounts to creditors on behalf of a debtor, excluding bank charges or lawfully permissible interest. Notice 777 is discussed below.

(6) *Government Gazette* 16609 18 August 1995

4. Committee meeting of 16 January 2002

Discussion

On 16 January 2002, Messrs J H van Zyl and Mr C I Hitchinson (Mr Hitchinson), accompanied by their attorney, met with the Committee in order to explain the business practice of FlexiPay. Mr J H van Zyl (Mr Van Zyl) is also known as Henk van Zyl.

They explained that they were offering their clients a debt rehabilitation programme (DRP). Mr Hitchinson explained that, in his opinion, their clients have the right to breach their agreements and that certain consequences follow that breach. He said that this is the starting point for FlexiPay's legal division. He explained that creditors are informed that their clients can no longer afford to pay the amounts promised. Creditors have the option of, either enforcing the terms of the agreement and suing for the full outstanding amount or accepting the breach and claiming damages (which are the amounts outstanding). He confirmed that although it was never envisaged that FlexiPay would make payments on behalf of their clients, they had started doing this because the envisaged payment system never came into operation. Mr Hitchinson told the Committee that they are investigating an alternative because as a result of intervention or pressure exerted by Saambou Bank the payment system did not become operational.

The attorney, in answering a question from one of the Committee members, confirmed on behalf of his client that Flexiloan does not exist. Mr Van Zyl explained that they initially intended to negotiate a loan through another company (unrelated to FlexiPay) to put the client in a position to pay FlexiPay's fee. According to Mr Van Zyl it was important for them to have an acknowledgement of debt in order for them to recover the money from their clients should it become impossible for the loan company to recover the money and that this was why Flexiloan was created. Mr Van Zyl also explained that the loan company indicated that they too experienced problems with a conflict of interest and the scheme between FlexiPay and the loan company was shelved. Despite the shelving they decided to keep the Flexiloan acknowledgement of debt form in the package.

The Committee was told that FlexiPay's fee is based on the amount that the client pays every month on his loan installment and that the amount is then split over two months. Mr Van Zyl then explained that the fee is as per the payment schedule namely:

Plan no	Total loan installment	Total fee	First month deduction	Second month deduction
1	R0 - R500	R654.54	R327.27	R327.27
2	R501 -R750	R981.82	R490.91	R490.91
3	R751 - R1 000	R1 309.10	R654.55	R654.55
4	R1 001 - R1 250	R1 636.36	R818.18	R818.18
5	R1 251 - R1 500	R1 936.64	R981.82	R981.82

	The schedule continuous to plan no 31			
31	R7 751 - R8 000	R10 472.80	R5 236.40	R5 236.40

The attorney explained that Comprehensive Financial Service Newcastle CC no longer exists and has been liquidated. However, in the founding affidavit p93 a letter dated 14 June 2001 of FlexiPay appears. At the bottom of the letter the following words appear: "FLEXIPAY Comprehensive Financial Services Reg No. CK 96/04870/23".

The Committee was very concerned about a number of issues:

- FlexiPay appears to be contravening Notice 777 of 1995;
- FlexiPay does not have a trust account or customers' payments are not secure;
- FlexiPay is allegedly registered at the MFRC but is not in the micro-lending industry;
- Flexiloan is not registered nor have they applied for registration with the MFRC;
- the power of attorney that the clients are required to sign is very broad and
- FlexiPay is apparently assisting clients to breach agreements and to stop payments.

Documents laid before the Committee

The Committee noted the pending High Court Application of African Bank and Unibank as first and second applicants and FlexiPay CC (CK 97/010139/23), Jan Hendrik van Zyl, Chris Hutchinson and William George Alexander Scholtz as respondents one to four respectively. A set of documents comprising of, amongst others, the notice of motion, the first applicant's founding affidavit and the second respondent's answering affidavit were submitted to the Committee.

Mr Van Zyl in his answering affidavit (Mr Van Zyl's affidavit) sets out how the programme (DRP) operates. This is summarised as follows:

- The DRP is implemented by micro loan agents in terms of FlexiPay's instruction and guidelines.
- He explains that in his opinion to place a borrower under administration aggravates the problem, both to the debtor and the creditor.
- The DRP is aimed at borrowers of micro lenders and that most of the clients are referred to them after approaching agents for further loans. It is only after such application for a further loan (such a client typically will have pre-existing micro loans) has been turned down due to not meeting the criteria of the micro lender, that the agent would introduce the DRP to him or her.
- Sequence of events before a borrower joins the DRP upon approaching a micro lending agent is to establish the borrower's financial position and if a lender's criterion is satisfied the DRP does not come into the picture. If however the borrower does not meet the criteria, he or she becomes a prospective

candidate for the DRP or administration.

- If most of the discretionary deductions are in respect of micro loans, or if he has too many judgements against him or Court actions pending against him, he is referred to an attorney.
- If the borrower's main liabilities are micro loans and the total monthly repayments in respect of such loans equal more than 25% of his nett salary (i.e. gross salary less statutory deductions), or if the borrower's nett salary is less than R1 250, the DRP is proposed.
- It is also possible to join the DRP by merely approaching one of the agents. The same criteria will then apply.
- The main objective of the DRP is to have an agreement concluded between the borrower and the lender in order to restructure the repayment of loans in a manner which will be to the advantage of both the lender and the borrower. The lender would not have a defaulting borrower, the full capital plus the original interest will still be repaid to him, albeit over a longer period. It is also proposed that the borrower would have to pay additional interest for any extended period granted for repayment of the loan and that the Usury Act rates apply thereto. The lender will be able to afford basic necessities, without being taken to Court, and to conduct his future financial affairs in a responsible and structured manner.
- The first step in implementing the DRP is for the borrower to stop all discretionary deductions that take place by way of salary deductions, and to further cancel any debit order's from the client's bank account. The borrower hands a letter prepared by Flexipay to his paymaster in terms of which he revokes the consent he had previously granted for sc deductions.
- Thereafter, FlexiPay sends a letter to the loan creditor(s) in which the debtor's financial predicament is set out and the lender is invited to restructure the payments and requests certain information.
- FlexiPay charges its clients a fee for the services rendered. Such fee is based on the total of the monthly repayments due by the clients in respect of the micro loans, and is payable in two equal instalments over the first two months after joining the DRP. No payments by way of deductions are made to the micro lender(s) during the first two months. In the third month the borrower recommences payment to the micro lender(s), although only one half of his previous monthly instalment is paid to the micro lender(s).

5. Committee meeting of 14/15 February 2002

At this meeting, the complaint received from Mr Sangweni was brought to the Committee's attention. Mr Sangweni alleged that in October 2000 he entered into an agreement with FlexiPay Comprehensive that they would consolidate his debt. He alleges that from March 2001 his salary was deposited into FlexiPay's bank account and the balance after the monthly installment of R1 145 was deducted was paid into his own bank account. He was happy with the arrangement and only in August 2001 realised that FlexiPay had not paid any of his creditors and cancelled the arrangement. Mr Sangweni explained that he had to obtain another loan to settle the two unpaid creditors which were supposed to have been the subject of FlexiPay's DRP. He then

instructed his attorney to recover the money he had paid to FlexiPay, amounting to more than R8 000. Mr Sangweni's complaint included a letter dated 23 November 2001 from FlexiPay to his attorneys which confirms that FlexiPay was in the business of debt distribution. Paragraph three reads as follows "All monies received from the client prior to the cancellation will not be refunded to the client, but will be paid to creditors". It is not clear from the complaint whether FlexiPay was informed by Mr Sangweni's attorney that the debt had been settled and that Mr Sangweni himself must be reimbursed.

The Committee was of the view that Mr Sangweni's complaint contradicted the explanations that were offered to the Committee at the meeting of 16 January 2002. It appears that FlexiPay was indeed involved in consolidation of debt and the payment of amounts to creditors on behalf of a debtor. The Committee was of the view that this coupled with the factors mentioned above warranted a formal section 8(1)(a) investigation into the affairs of the FlexiPay and the persons involved with FlexiPay.

At this meeting the Committee accepted that the possibility does exist that certain lenders do not comply with the applicable legislation as alleged by FlexiPay. It however remains to be tested in Court and it is not the intention of the Committee to interfere with existing legislation. It was the Committee's view that the legal route should be followed and that to assist consumers in breaching agreements by stopping payments to the lenders is not in the best interests of consumers. There are existing authorities that are mandated to investigate such non compliance with legislation.

6. Publication of notice of investigation

FlexiPay's attorney was, in a letter faxed to him on 11 March 2002, informed by the Committee that in its view, people experiencing financial difficulties should follow the legal route and that, his client's operation appears to be an attempt to circumvent the legal route. The attorney was also informed that the Committee at its meeting 14/15 February 2002 resolved to institute a formal section 8(1)(a) investigation into the affairs of FlexiPay and the persons involved with Flexipay. He was further informed that the notice would appear in the *Government Gazette* on Friday 15 March 2002.

The following Notice was published in *Government Gazette* No. 23223 dated 15 March 2002:

NOTICE 348 of 2002
DEPARTMENT OF TRADE AND INDUSTRY
CONSUMER AFFAIRS (UNFAIR Business Practices) Act 1988

In terms of the provisions of section 8(4) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), notice is herewith given that the Consumers Affairs Committee intends undertaking an investigation in terms of section 8(1)(a) of the said Act into the business practices of -

Comprehensive Financial Services Newcastle CC t/a FlexiPay CC 96/04871/23, Jan Hendrik van Zyl (6112265059086), William George Alexander Scholtz (5612045076087), Lynette Denise Hitchinson (6212080050086), Frans Willem Andries van Zyl (6012185092086) Christopher Ivan Hitchinson and any other member, employee, agent, and/or representative of any of the aforementioned in respect of the activities of the aforementioned.

Any person may within a period of fourteen (14) days from the date of this notice make written representations regarding the above-mentioned investigation.

7. Further investigation

FlexiPay's web-site

FlexiPay's web-site was visited.

They refer to themselves as "Professional Advisors in Financial Rehabilitation and debt Restructuring". On one of the pages the following was found:

ARE YOU A LOAN VICTIM??

DO YOU FEEL THAT:

- YOU HAVE PAID MORE THAN YOU SHOULD ON A "PAID UP LOAN"?
- YOU ARE STILL PAYING ON A LOAN THAT YOU BELIEVE SHOULD HAVE BEEN PAID UP?
- YOU ARE PAYING HIGHER INSTALMENTS THAN WHAT YOU AGREED ON?
- YOU ARE SURPRISED BY A HIGHER INTEREST RATE THAN WHAT YOU THOUGHT IT WOULD BE?
- YOU ARE EXPERIENCING DOUBLE DEDUCTIONS?
- YOU STRUGGLE TO GET IMMEDIATE REFUNDS?
- YOU ARE PAYING FOR LOANS THAT YOU DID NOT RECEIVE?
- YOU HAVE UNAUTHORISED OR UNKNOWN LOAN DEDUCTIONS ON YOUR BANK ACCOUNT OR SALARY?
- YOU HAVE NOT RECEIVED A COPY OF YOUR LOAN AGREEMENT?
- YOU HAVE BEEN PREJUDICED BY SIGNING BLANK LOAN AGREEMENTS?
- YOU HAVE BEEN GARNISHED BY COURT ORDER WITHOUT YOUR KNOWLEDGE?
- YOU STRUGGLE TO SURVIVE DUE TO TOO MANY LOAN REPAYMENTS?
- YOU STRUGGLE TO GET STATEMENTS FROM THE COMPANIES?
- YOU FAIL TO GET ANSWERS OR ASSISTANCE ON THE ABOVE FROM THE LOAN COMPANIES?

IF YOUR ANSWER IS "YES" TO ANY OF THESE QUESTIONS,
THEN YOU ARE A POSSIBLE LOAN VICTIM.

TAKE ACTION NOW!!

Have one of our representatives contact you,
by clicking on this link below and filling in the form.

[I AM A LOAN VICTIM PLEASE HELP ME!!!](#)
[OR EMAIL US, with your contact information](#)

The web-site indicates that FlexiPay not only has branches in all the provinces but also a number of agents in these provinces.

The document - Information for the employer of the FlexiPay client

This document appears to be forwarded to clients' employers and sets out the DRP. In this document, under the section, "How do we benefit the client", the following is found:

- The loan agreements are obtained from the loan companies and checked to ensure that they legally comply with the requirements of the Usury Act, and that the micro-lender has complied therewith.
- The payouts of loans are checked against the terms of the contract signed, to ensure that the correct amount was received.
- The interest rate and calculations are checked to ensure conformity with the applicable law and regulations.
- The transaction is checked for unauthorized "hidden" costs.

- The morality of the transaction is checked.
- Once we are sure that the legal issues have been complied with, we re-negotiate the terms of repayments with the loan companies concerned, thus insuring substantially lower (up to 50% less) and more affordable monthly repayments.
- The loan companies then have the benefit of a deduction made directly from the client's salary, and the client has a lower installment."

Request for further information and response to complaints

In a letter dated 12 April 2002 addressed to the attorney a number of issues were raised and additional information was requested. An invitation to address the Committee at its meeting on 18 April 2002 was also extended to him and his clients. The Committee requested the following:

- Information regarding the branches and the agents;
- details regarding the flow of money between Flexipay's client and Flexipay and the creditor;
- a detailed list of all clients which must also indicate the benefit (reduction in monthly instalment) that was negotiated for these clients;
- detailed documentation of at least ten (10) instances where successful negotiated reductions of monthly installments were achieved and where the DRP was brought to conclusion and
- details regarding the average period of negotiation.

The complaints previously forwarded to Mr Hutchinson remained unanswered. During April 2002 both Mr Sangweni's and Mr Janse van Rensburg's complaints were forwarded to FlexiPay's attorney. The Committee did not receive any response to these complaints.

In a telephonic discussion with one of the investigating officials, FlexiPay's attorney indicated that they will not be able to provide the information as requested in the letter of 12 April 2002 at such short notice but undertook to provide the information by the 2nd or 3rd of May 2002. The requested information was not received by 3 May 2002 and the attorney was again contacted. He replied that he had not received instructions from his clients. He also stated that if he did not receive payment from them, he would have to withdraw from the matter.

Application for a Search Warrant

Because FlexiPay was not responding to the various requests for additional information two officials of the Committee on 13 May 2002 obtained a search warrant from the Magistrate in Newcastle to enter FlexiPay's head office situated at 301 Perm Plaza, Scott street, Newcastle. On arrival the offices were found to have been vacated. This was very strange as the address was telephonically confirmed on the Friday, 10 May 2002. The officials then phoned FlexiPay and spoke to a person identifying herself as Monica Vlok who confirmed the address as the one where the officials were actually at. After explaining their purpose to Ms Vlok she got Mr Van Zyl to contact the officials. Mr Van Zyl and Mr Pierre Kok met with the two officials and a meeting was held at 5 Albatros Avenue in Newcastle, Mr Van Zyl's home.

Mr Van Zyl explained that FlexiPay was in voluntary liquidation. He was requested to take the officials to where the documents were so that the issues as raised in the search warrant could be investigated and the necessary, documentary evidence retrieved. These issues related to the request sent to his attorney dated 12 April 2002. Mr Van Zyl alleged that he could not provide the information as he was concerned that the information would land up in the hands of African Bank with whom he had a legal dispute. The officials then explained to Mr Van Zyl that he must provide the information to exonerate FlexiPay and its members. Should he not avail himself of the opportunity the Committee will have no alternative than to recommend to the Minister to have the business practice of FlexiPay declared unlawful and to direct the people involved with FlexiPay to refrain from applying the unfair business practice.

Mr Van Zyl undertook to collate all the requested information and also to provide the officials with his response to the two complaints previously forwarded to Mr Hutchinson and to their attorney. Mr Van Zyl assured the officials that he would address the Committee at its next meeting scheduled for 16 May 2002 and at the same time also provide the requested information to the Committee.

Attorneys' withdrawal

In a letter dated 13 May 2002 the Committee was informed by the attorney that Mr Van Zyl telephonically advised him that morning that FlexiPay ceased trading on Friday the 10 May 03.

It is interesting to note that this happened whilst the two officials were in Newcastle and whilst the telephone of FlexiPay was still active, yet diverted from where the office used to be.

Committee meeting on 16 May 2002

The Committee was informed that Mr Van Zyl phoned one of the officials before the start of the meeting and confirmed that he will be addressing the Committee that afternoon at ± 14h00. Mr Van Zyl indicated that he may be a couple of minutes late as he would be meeting with his attorney at 13h00.

Later that day Mr Van Zyl left a message on one of the official's voice-mail that he will not, on the advice of his attorney, be addressing the Committee. The Committee was informed of Mr Van Zyl's decision and also that he, in a subsequent telephone discussion, promised to forward the requested information to the Committee.

At this meeting the Committee resolved to issue a press release informing the public of FlexiPay's demise and to warn the public to be extremely cautious in their dealings with FlexiPay and/or agents of FlexiPay. It was also resolved that all efforts must be made to make contact with the agents and to inform them of the Committee's investigation into the affairs of FlexiPay and its members.

Media release

CONSUMER AFFAIRS COMMITTEE

Statement by Prof Tanya Woker, Vice-chairperson of the Consumer Affairs Committee.

On 15 March 2002 the Committee gave notice in the Government Gazette that it intends to undertake a formal investigation into the business practices of Comprehensive Financial Services trading as FlexiPay, Messrs Henk van Zyl, William Scholtz, Frans van Zyl, Chris Hitchinson, Ms Lynette Hitchinson and any other member or agent of the aforementioned.

The Committee warns consumers to be extremely cautious in their dealings with FlexiPay. FlexiPay purports that they are in a position to solve problems through a debt rehabilitation programme. The Committee has received information that FlexiPay is in the process of applying for voluntary liquidation. It is in the best interest of consumers to contact all their creditors directly to ascertain if their debts are being paid.

The Committee is aware that FlexiPay contracted hundreds of agents. Consumers who have entered into agreements with persons who promote debt rehabilitation programmes are advised to contact their creditors to ascertain whether or not debts are being paid. It is possible that these persons may have been agents for FlexiPay.

Consumers are invited to forward any information they have on FlexiPay or any of its agents to the Committee.

Mr Van Zyl's failure to provide the requested information

During the initial investigation the attorney on a number of occasions declared his clients willingness to cooperate with the Committee and that all the requested information would be submitted. Then all of a sudden and quite out of "coincidence" the attorney informs the Committee on the same day that officials attempted by virtue of a search warrant to obtain the requested information, that his client has informed him that very morning that FlexiPay went into voluntary liquidation two days before that. He could not provide any details as to when the application was made and to which court.

Mr Van Zyl, despite having promised on several occasions to provide the Committee with the information requested, never provided any. He was on several occasions reminded that if he did not provide any evidence that FlexiPay was successful in any of the "DRP's" the Committee will have to assume that FlexiPay was not successful in any.

Agents

The Committee's letter to the agents is dealt with, in more detail in paragraph nine (9) below. One person, a previous agent of FlexiPay responded to the Committee's letter. He indicated that his involvement with Mr Van Zyl and FlexiPay started on 17 November 2000 when he entered into an agreement to become the agent for the Witbank and Middelburg area. His mandate was the marketing and sale of the DRP. A copy of his agreement was provided and it is interesting to note that paragraph 2.6 of the agreement reads as follows (especially in the light of the fact that the said close corporation's deregistration was already final on 27 August 1999 (see paragraph 9

below)):

"FLEXIPAY means Comprehensive Financial Services Newcastle cc a close corporation, duly registered with registration number CK: 96/04870/23, presently trading as FLEXIPAY at Suite no 1, 18 Terminus street, Newcastle, Kwa-Zulu-Natal, and duly represented by Jan Hendrik van Zyl, in his capacity as member, he being duly authorized thereto, by resolution dated 1st day of September, 2000, and includes it's nominees and/or assigns;"

As one of his duties he had to deliver the application within three (3) working days from date of receipt thereof to FlexiPay's office in Newcastle from where the administration of the DRP and the negotiations with the creditors would be handled.

After receiving more and more complaints from his clients that their creditors were not being paid and only receiving "empty" promises from FlexiPay he decided to terminate the agreement and also referred the clients to the SAPS.

An interesting point that he raises in his declaration is that if FlexiPay on a continuous base opened more and more agencies, the administration burden on the head office from where all administration and negotiations are supposed to happen, would be ever increasing. He alleges that it appeared to him that FlexiPay used pro-forma letters and that no "real" negotiations with any of the creditors took place.

FlexiPay in liquidation

Even after FlexiPay went in liquidation the Committee continued receiving complaints from consumers in regard to FlexiPay - they continued to take money and did not pay creditors. These consumers were referred to the liquidator, Tutor Trust. During a conversation with the trustee, the official was informed that creditors wishing to claim against the estate may be liable to contribute to the cost of the liquidation.

8. Existing prohibitions

Notice 777 of 1995

In Notice 750 of 1991⁽⁷⁾, the former Business Practices Committee⁽⁸⁾ (BPC) gave notice of its intention to conduct an investigation into business practices - (a) whereby finance is made available to debtors; or (b) involving the rendering or offering of assistance or advice to debtors; or (c) involving the payment of amounts to creditors on behalf of debtors; or (d) involving negotiation with creditors on behalf of debtors regarding debt.

(7) Notice 750 of 1991, *Government Gazette* 13457 16 August 1991. This was an 8 (1) (b) investigation

(8) The Business Practices Committee was the forerunner to the Consumer Affairs Committee. The Harmful Business Practices Act 71 of 1988 was amended in 1999. The Act was renamed the Consumer Affairs (Unfair Business Practices) Act and the Committee was renamed the Consumer Affairs Committee

This investigation resulted in the BPC's Report on Debt Mediation and Loan Assistance.⁽⁹⁾ This report dealt with a range of problems which consumers, who are unable to meet their financial obligations, may encounter. These included the offering of debt counselling and advice, debt adjustment (renegotiation of debts), substitution of creditors (debt take over), debt distribution, debt refinancing and assistance in obtaining loans. These activities have the common, purported aim, of improving the position of over committed debtors. These activities were, for the purpose of Report 30, referred to as "debt mediation". Notice 777 of 1995⁽¹⁰⁾ was a direct result of Report 30.

Notice 777 reads as follows:

- "3. Subject to the provisions of paragraph 6, the advertising by an intermediary, through any medium whatsoever, of the service whereby the payment, for reward, excluding bank charges or lawfully permissible interest, of amounts to creditors on behalf of a debtor is undertaken, is hereby declared unlawful.....
5. Subject to the provisions of paragraph 6, any person is herewith prohibited, directly or indirectly, from entering into an agreement with a debtor, involving the payment, for reward, of amounts to creditors on behalf of that debtor, excluding bank charges or lawfully permissible interest..."

It is apparent from the complaints received and by virtue of the persons involved with FlexiPay's own acknowledgement that FlexiPay is involved in debt distribution and that a fee is charged for the service. The business practice is therefore acting in contravention of the prohibitions contained in Notice 777.

Notice 2422 of 1998- Interest recalculator

In 1997 the BPC conducted an investigation into the business practices of so-called interest recalculators.⁽¹¹⁾ These recalculators alleged that consumers are regularly overcharged by financial institutions and they undertook, for an upfront fee, to investigate consumers' accounts. In many instances consumers found that, having paid the fee, no further action was taken by the recalculator. As pointed out by the Committee, there is always a great risk for consumers when they pay for services yet to be rendered.⁽¹²⁾ The Committee found that the harmful nature of the business practice of recalculators occurs when the recalculator accepts money in advance to recover "overcharged" interest without having investigated whether these allegations are in fact correct. The mere fact that the recalculator had accepted money from consumers did not necessarily mean that an investigation was conducted and the

(9) Report No 30 *Government Gazette* 15470 4 February 1994

(10) *Government Gazette* 16609 18 August 1995

(11) Report No 58 *Government Gazette* No18443, 21 November 1997

(12) Report No 58

Committee received numerous complaints from consumers who had paid upfront fees. The number of recalculators was mushrooming and the Committee was of the view that they were causing financial harm to consumers. The Committee found that the scale of abuse in South Africa was such that an upfront fee could not be justified in the public interest and recommended to the Minister that certain controls be put in place. In 1998, the Minister published, in the public interest, Notice 2422 which defines and outlaws the relevant harmful business practice.

In the Notice an **interest recalcuator** is defined as:

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.

The **harmful business practice** means:

the receiving of any money or other valuable consideration for the performance of any service that an interest recalcuator has agreed to perform for a consumer before such service is fully performed.

and **service fully performed** means that:

the recalcuator has fulfilled all the services offered to the debtor, and the creditor has agreed to or rejected any claim for reimbursement 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.

The Notice makes it clear that the receiving of any money or other valuable consideration for the performance of any service that an interest recalcuator has agreed to perform for a consumer before such service is fully performed, is outlawed. In other words, any person or business may act as an interest recalcuator but a fee may not be charged until the work has been done. From these definitions and the discussions under paragraph six (6) above it appears that FlexiPay's business practice could also be deemed to be performing the services of interest recalculators and by charging an upfront fee are acting in contravention of the Notice. FlexiPay alleges that they investigate loans. They obtained a copy of the loan and checked that it conformed to the applicable legislation and that interest is calculated correctly. Notwithstanding the fact that the Committee is aware that such problems are prevalent in the micro lending industry, the Committee is of the opinion that it is an unfair business practice for FlexiPay to accept money in advance in order to assist consumers without knowing whether their assessment of the situation will be accepted by the relevant financial institution. The Committee is further of the opinion that it is extremely irresponsible for FlexiPay to advise their clients to stop their monthly repayments as consumers might find that in a few months they have exorbitant repayments to make. This is particularly of concern with micro loans where interest rates are very high and debt can increase rapidly.

Note should also be taken of the recent Supreme Court of Appeal decision (SCA), Absa

Bank Bpk v Janse Van Rensburg 2002(3) SA 701. Van Rensburg was sued by the bank for the alleged debit balance of his overdrawn account. This money had accrued from 1992 when his bank balance was nil. He refused to pay the money because he alleged that he had been overcharged interest before 1992 when he had unknowingly paid too much to the bank. He therefore alleged that the amount owing from 1992 - 1997 must be set off against the interest which was overpaid on a loan obtained and repaid to the bank before 1992. In his counterclaim Mr Van Rensburg insisted that the bank deliver a statement of account which reflected every interest debit entered on his bank account, debatement of the delivered account and payment of any amount found due. The bank however, denied charging more than the interest agreed upon between the parties and did not comply with the request to supply the abovementioned information.

The SCA held that there is no duty on the bank to deliver any documents to the account holder other than the monthly statements of account. The SCA further stated that unless there was some kind of contract between the parties stipulating this or a statutory duty on the bank (which there is not), the bank does not have to provide the information requested. The SCA held that if the person has overpaid then he is entitled to reclaim the money based on unjust enrichment but there is no reason why the bank should be legally obliged to help determine the extent of the claim against it.

9. Other parties involved

Comprehensive Financial Services (CK 96/04870/23)

At the meeting of 16 January 03 the attorney told the Committee that Comprehensive Financial Service Newcastle CC no longer exists and had been liquidated. It needs however to be mentioned that in the founding affidavit p93, a letter dated 14 June 2001 of FlexiPay is found and at the bottom "FlexiPay Comprehensive Financial Services Reg No. CK 96/04870/23" appears. The CK number was checked with the Companies and Intellectual Property Registration Office and it was found that it belongs to Comprehensive Financial Services Newcastle and that its deregistration was already final on 27 August 1999. This letter was duly signed by Mr Van Zyl and it would appear that despite the entity's deregistration the name and also its registration number was still used at the time of the letter and that the only difference was that the word "FlexiPay" was added and "Newcastle" dropped.

FlexiPay CC (CK 97/010139/23)

During the investigation it was found that FlexiPay CC (CK 97/010139/23) was erroneously omitted in the publication of the Notice and that it should be added to the investigation.

Agents

In a report such as this one it would be unrealistic to name each and every agent involved with FlexiPay, especially in the light of there being at least 645 agents. The

Committee is in possession of a list of agents and resolved to forward the following letter by e-mail to each of the 645 agents on the list in an attempt to bring to their attention the investigation and the fact that they unknowingly may be involved in criminal conduct:

Letter to the agents

"The purpose of this letter is, *inter alia*, to bring to your attention Notice 348 of 2002 published in Government Gazette 23223 on 15 March 2002 which reads as follows:

"In terms of the provisions of section 8(4) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), notice is herewith given that the Consumer Affairs Committee intends undertaking an investigation in terms of section 8(1)(a) of the said Act into the business practices of -

Comprehensive Financial Services Newcastle CC t/a Flexipay CC 96/04871/23, Jan Hendrik van Zyl (6112265059086), William George Alexander Scholtz (5612045076087), Lynette Denise Hitchinson (6212080050086), Frans Willem Andries van Zyl (6012185092086) Christopher Ivan Hitchinson and any other member, employee, agent, and/or representative of any of the aforementioned in respect of the activities of the aforementioned.

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

The Secretary

Consumer Affairs Committee,...."

Information at the disposal of the Consumer Affairs Committee (the Committee) indicates that **you have been an agent for Flexipay and are thus included in the investigation**. You are requested to provide the Committee with information regarding your specific involvement with Flexipay. Kindly provide a detailed explanation of the exact nature of your relationship (including your rights and obligations) with Flexipay. This explanation must make it clear what was or still is expected of you as an agent. Kindly also include in the explanation information such as:

- when did you become an agent;
- what were told to clients as to the benefit that they will obtain by joining Flexipay;
- how many clients did you recruit;
- a complete list of all the names of your clients - please note this list must be as comprehensive as possible - name, address, employer name and address etc;
- if you have had any dealings with any of the clients' creditors directly, you are requested to provide the Committee with copies thereof.

If you, for whatever reason, had terminated your relationship with Flexipay, kindly provide documentary proof thereof as well as the reasons for terminating the relationship / agreement.

You are requested to forward your response to the Committee on or before 12 June 2002. You are furthermore requested to provide the requested information on your official letterhead. Should your letterhead not display your physical address and al your contacts numbers, kindly provide same in the replying letter.

Notice 777

The Committee also wishes to bring to your attention sections 3 and 5 of Notice 777 of 1995 issued by the Minister of Trade and Industry in Government Gazette 16609 of 18 August 1995:

"3. Subject to the provisions of paragraph 6, the advertising by an intermediary, through any medium whatsoever, of the service whereby the payment, for reward, excluding bank charges or lawfully permissible interest, of amounts to creditors on behalf of a debtor is undertaken, is hereby declared unlawful.

5. Subject to the provisions of paragraph 6, any person is herewith prohibited, directly or indirectly, from entering into an agreement with a debtor, involving the payment, for reward, of amounts to creditors on behalf of that debtor, excluding bank charges or lawfully permissible interest."

Section 6 of the Notice stipulates that the notice does not apply, *inter alia*, to persons who practice as attorneys, registered accountants or auditors, estate agents, money lenders as defined in the Usury Act and employees or owners of newspapers.

Your business practices may already be in contravention of this Notice and such contravention would be a criminal offence.

Media release

The Committee has received information that Flexipay is in the process of applying for voluntary liquidation. The following press statement by Prof Tanya Woker, Vice-chairperson of the Committee was forwarded to the media:

The media release discussed in paragraph 7 above was included here.

The Act

A short summary of the Consumer Affairs (Unfair Business Practices) Act, 71 of 1988 detailing the Committee and the Minister's powers in terms of the Act was included in the letter to the agent.

Conclusion

It is trusted that you, with the above explanation of the Act and the functions and the powers of the Committee and the Minister, understand the seriousness of the investigation and the obligation on you to provide the Committee with the requested information **on or before 12 June 2002**.

Kindly quote my reference no **H101/20/10/36/(2001)** in your correspondence.

You are welcome to contact any of the following officials should you have any enquiries:

.....

.....

27 MAY 2002"

One person responded and it is discussed under paragraph 7 above "agent".

10. Consideration

It is evident from the documentation, the presentation before the Committee, the website and Mr Van Zyl's affidavit that FlexiPay's business practice is directed at the loan industry. The Committee's concerns with the business practice of FlexiPay can be summarised as follows:

10.1 Creating an impression that financial institutions overcharge customers:

The Committee is of the view that FlexiPay adopted a similar approach as that adopted by Van Rensburg in the SCA action that was discussed in paragraph 8 above. They are creating the impression in their clients' minds that they have been overcharged even before they have the information which will prove

whether or not these allegations are correct and at the same time advises the clients to stop repaying their debts. The SCA has held that there is no duty on such institutions to assist clients with proving their claims.

There is no doubt that if FlexiPay's clients have been overcharged they are entitled to reclaim that money based on unjust enrichment. However, the Committee is of the view that it is an unfair business practice for FlexiPay to advise their clients to stop repaying their debts in order to "force" the financial institutions to supply information which should be obtained from their clients. Further, the Committee is concerned that consumers may find themselves in a position similar to that of Van Rensburg. In 2002 he was ordered to repay his debt including interest on the capital sum from 1997.

10.2 Agreement between the borrower and the lender:

In Mr Van Zyl's affidavit he explains that the main aim of the DRP is to have an agreement between the borrower and the lender in order to restructure the repayment of loans in a manner, advantages to both the borrower and the lender. No evidence of any successful conclusion of the DRP and/or agreement between the borrower and the lender was provided.

10.3 Advice to stop monthly payments:

The written request to the clients' employers in which they are instructed to cancel existing deductions appears to be done "automatically" and before alternative arrangements and/or negotiations with the client's creditors are made. This is also confirmed by Mr Van Zyl's affidavit. The Committee is of the view that advising consumers to stop payment to financial institutions constitutes an unfair business practice as clients might very well find themselves in a situation where after a few months they have exorbitant repayments to make. It is also the Committee's view that the practice of and advising consumers to stop payment to financial institutions and/or creditors in an effort to "force" them to supply information, can on no grounds be justified in the public interest.

10.4 Letter to loan creditor(s):

The letter to the loan creditor(s) is nothing less than a threat to place the client under administration should they not cooperate and also as an "afterthought" informing the loan creditor that the payment has been stopped.

10.5 Upfront payments:

They appear to be taking upfront payments from consumers before investigating the consumer's problem and/or negotiating with the consumer's creditor and/or taking money in advance before a service is fully performed and/or taking money from consumers for debt distribution. These are contraventions of existing ministerial notices which would mean that it is already illegal and criminal offences. Apart from the aforementioned it can only be concluded from Mr Van Zyl's affidavit that any payment due to FlexiPay for the so-called service rendered will only become due and payable after the successful implementation

of the DRP. If no successful DRPs were concluded then no payment to FlexiPay was due and such deductions would then be illegal.

10.6 Other issues:

A number of issues previously mentioned and contained in FlexiPay's documentation are also of concern to the Committee:

10.6.1 How does FlexiPay enforce the legal compliance to the requirements of the Usury Act? It may mislead consumers/clients into believing that all loan agreements do not comply with the legal requirements applicable to it.

10.6.2 It is stated as a fact that FlexiPay renegotiates all terms of repayments of the loans and negotiates a reduced monthly repayment of up to 50% and gives the impression that all creditors will agree thereto. It can also give the impression that the debt is "halved" not realising that it may only be the term that is extended and with interest the actual repayment is increased. Mr Van Zyl in his affidavit informs the Court that as one of the benefits to the client only..... "one half of the previous monthly instalment is paid to the micro lender/s".

10.6.3 The consumer may come under the impression that FlexiPay's contract "supersedes" the existing legal loan contracts with creditors by them being able to request creditors to stop deductions.

10.7 Wrongful impression:

Consumers may come under the impression that their accounts will be "frozen" pending the resolution of the alleged dispute/negotiation/restructuring of the debt.

10.8 Breaching of contracts:

The business practice of FlexiPay and/or its agents of enticing consumers/clients and employers to breach contracts/agreements. Where a client is overcharged, due to whatever reason, the lender/creditor shall have no option other than adjusting the account when this becomes apparent. The aforementioned does not change the fact that the client is indebted to the lender/creditor, it only affects the extent of the indebtedness. The consumer may be prejudiced in that he or she is enticed to breach an agreement on the premise that negotiations are taking place, whilst the breach will in all probability result in legal action, which worsens the financial position of the debtor. The discontinuation of the repayment arrangements may result in the initiation of collection measures by the lenders/creditors. In addition to the legal cost that will be now be debited to the clients account, the client shall also be liable for the repayment of interest that accrued on arrear amounts.

10.9 Continuity of service:

The continuity of the service may also be in jeopardy if no new clients are recruited and the fees are only charged "upfront". If one considers that the fee must also be shared with the agents (commission), it will place an additional

burden on cashflow should new recruits not be brought in which could impact negatively on FlexiPay's existence and could prejudice the consumers.

10.10 Debt distribution:

In the Committee's view FlexiPay's practice of taking a fee is in contravention of Notice 777 of 1995 and there are also no guarantees that payments received from the clients will be paid to the creditors.

The Committee is of the view that the business practices of Flexipay are unfair business practices and that there are no grounds justifying these practices in the public interest.

11. Recommendation

The Committee recommends that the Minister in terms of section 12(1) (b),

- (a) declare unlawful the business practices whereby the parties known as Comprehensive Financial Services Newcastle CC t/a FlexiPay CC (Registration No. 96/04871/23), FlexiPay CC (Registration No. 97/010139/23), Jan Hendrik van Zyl (ID:6112265059086), William George Alexander Scholtz (ID:5612045076087), Lynette Denise Hitchinson (ID:6212080050086), Frans Willem Andries van Zyl (ID:6012185092086) Christopher Ivan Hitchinson, directly or indirectly,
 - (i) receive any money or valuable consideration for the performance of any service they agree to perform for a consumer where the consumer might have a problem with a financial institution/creditor with the view to renegotiate an agreement between the consumer and the financial institution/creditor or obtain a settlement on behalf of the consumer before such service is fully performed where
"service fully performed" means that the parties have fulfilled all the services offered to the consumer, and the financial institution/creditor has agreed to or rejected any claim or request for a renegotiated agreement or settlement in writing. The financial institution/creditor must agree to or reject the claim/request within 90 days after receiving the claim/request, failing which service is presumed to have been fully performed and/or
 - (ii) advise consumers to stop payment to financial institutions/creditors but excluding instances where it is as a result of an agreement with the financial institution/creditor and/or
 - (iii) receive any money or valuable consideration for the performance of any service which could be deemed to be debt mediation
"debt mediation" includes offering assistance to debtors, renegotiation of debts, substitution of creditors, debt distribution

and debt refinancing where these activities have the common aim, or purported aim, of improving the position of debtors and/or

(iv) profess an authority to adjudge and ensure compliance with legislation.

(b) in terms of 12(1)(c) of the Act directs Jan Hendrik van Zyl (ID:6112265059086), William George Alexander Scholtz (ID:5612045076087), Lynette Denise Hitchinson (ID:6212080050086), Frans Willem Andries van Zyl (ID:6012185092086) Christopher Ivan Hitchinson to refrain from applying the unfair business practice.



PROF T A WOKER

VICE-CHAIRPERSON: CONSUMER AFFAIRS COMMITTEE

.....2003

NOTICE 763 OF 2004**DEPARTMENT OF TRADE AND INDUSTRY
CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988**

I, Alexander Erwin, Minister of Trade and Industry, after having considered a report by the Consumer Affairs Committee in relation to an investigation of which notice was given in Notice 348 of 2002 published in *Government Gazette* No. 23223 of 15 March 2002, which report was published in Notice 762 in *Government Gazette* No. 26321 of 3 May 2004, and being of the opinion that an unfair business practice exists which is not justified in the public interest, do hereby exercise my powers in terms of section 12 (1) (b) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), as set out in the Schedule.

A ERWIN

MINISTER OF TRADE AND INDUSTRY

SCHEDULE

In this notice, unless the context indicates otherwise -

"the parties" means Comprehensive Financial Services Newcastle CC t/a FlexiPay CC, FlexiPay CC, Jan Hendrik van Zyl, William George Alexander Scholtz, Lynette Denise Hitchinson, Frans Willem Andries van Zyl and Christopher Ivan Hitchinson,

"unfair business practice" means the business practice whereby the parties, directly or indirectly;

- (i) receive any money or valuable consideration for the performance of any service they agree to perform for a consumer where the consumer might have a problem with a financial institution/creditor with the view to renegotiate an agreement between the consumer and the financial institution/creditor or obtain a settlement on behalf of the consumer before such service is fully performed where "service fully performed" means that the parties have fulfilled all the services offered to the consumer, and the financial institution/creditor has agreed to or rejected any claim or request for a renegotiated agreement or settlement in writing. The financial institution/creditor must agree to or reject the claim/request within 90 days after receiving the claim/request, failing which service is presumed to have been fully performed and/or

- (ii) advise consumers to stop payment to financial

institutions/creditors but excluding instances where it is as a result of an agreement with the financial institution/creditor and/or

- (iii) receive any money or valuable consideration for the performance of any service which could be deemed to be debt mediation "debt mediation" includes offering assistance to debtors, renegotiation of debts, substitution of creditors, debt distribution and debt refinancing where these activities have the common aim, or purported aim, of improving the position of debtors and/or
 - (iv) profess an authority to adjudge and ensure compliance with legislation.
- (b) in terms of 12(1)(c) of the Act directs Jan Hendrik van Zyl, William George Alexander Scholtz, Lynette Denise Hitchinson, Frans Willem Andries van Zyl, Christopher Ivan Hitchinson to refrain from applying the unfair business practice.
1. The unfair business practice is hereby declared unlawful in respect of the parties.
 2. This notice shall come into operation upon the date of publication hereof.
-

Dog ate your Gazette? ... read it online



www.SA Gazettes.co.za
.....

A new information Portal keeping you up to date with news, legislation, the Parliamentary programme and which is the largest pool of SA Gazette information available on the Web.

- Easily accessible through the www!
 - Government Gazettes - from January 1994
 - Compilations of all Indexes pertaining to the past week's Government Gazettes
 - All Provincial Gazettes - from September 1995
 - Parliamentary Bills - as of January 1999
- Available in full-text, with keyword searching
- Sabinet Online scans, formats, edits and organize information for you. Diagrams and forms included as images.
- No stacks of printed gazettes - all on computer. Think of the storage space you save.
- Offers Bill Tracker - complementing the SA Gazettes products.

For easy electronic access to full-text gazette info, subscribe to the SA Gazettes from Sabinet Online. Please visit us at www.sagazettes.co.za

Sabinet
 *Online*

Looking for out of print issues of Government and Provincial Gazettes

We can provide photocopies

Contact

The National Library of South Africa,
Pretoria Campus
PO Box 397
0001 PRETORIA

Physical address

C/o Andries and Vermeulen Streets
Entrance in Andries Street

Contact details

Tel: (012) 321-8931

Fax: (012) 325-5984

E-mail: infodesk@nlsa.ac.za

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001

Publications: Tel: (012) 334-4508, 334-4509, 334-4510

Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504

Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737

Cape Town Branch: Tel: (021) 465-7531

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001

Publikasies: Tel: (012) 334-4508, 334-4509, 334-4510

Advertensies: Tel: (012) 334-4673, 334-4674, 334-4504

Subskripsies: Tel: (012) 334-4735, 334-4736, 334-4737

Kaapstad-tak: Tel: (021) 465-7531