

CHAPTER 28

MICRO-LENDING SCHEME

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CHAPTER 28

MICRO-LENDING SCHEME

1. INTRODUCTION

Government departments worldwide are a major consumer of goods and services. The large number of employees working in government departments also presents huge economic opportunities for members of the business community. The Department of Correctional Services is no different in this regard as it enters into hundreds of contracts annually with the suppliers for such goods and services. It is also the employer of thousands of staff.

Officials occupying certain positions in the Department are clearly often perfectly positioned to take personal advantage of the numerous economic opportunities that flow from the contracts entered into. Others have recognised the opportunities presented by the large workforce of the Department. Those officials who have access to employee's salary records are particularly in a favourable position to enter into business arrangements with fellow employees as payment for any service is virtually guaranteed.

The potential of such state officials abusing their positions has been recognised by the State which has legislated to address the problem.

Section 30 of the Public Service Act provides that:

Unless it is otherwise provided for in his or her conditions of employment-

- (a) every officer and employee shall place the whole of his or her time at the disposal of the State;*
- (b) no officer or employee shall perform or engage himself or herself to perform remunerative work outside his or her employment in*

*the public service, without permission granted by executing authority or an officer authorised by the said authority.*¹

These provisions have been specifically implemented to ensure that state officials, whose salaries are paid for by the South African taxpayer, are fully engaged in the activity for which they are paid for. The provisions also ensure that state officials do not use the power of the position they occupy for personal enrichment.

It is against this background that the Commission in this Chapter deals with the following related allegations against members of the Department:

- 1.1 that Mr Jakobus Johannes (Jappie) Muller and Mr Abraham (Olaf) Breytenbach ran a micro-lending scheme without authority and abused their positions at the Persal office at the Pretoria Head Office for personal gain;
- 1.2 that Mr Nicholas Jacobus Hofmeyer, the Area Manager: Head Office Pretoria, approved a flawed application by Mr Muller to do outside work, including for a company owned by Mr Hofmeyer but which he did not have permission to operate;
- 1.3 that Mr Leon Gerhardus Strydom approved Mr Breytenbach's application to do private work in similar circumstances; and
- 1.4 the improper approval of applications to do remunerative work outside the Public Service.

¹ Act No. 103 of 1994.

2. MESSRS MULLER & BREYTENBACH

The specific allegations against Mr Muller and Mr Breytenbach are briefly that they:

- a) were involved in micro-lending schemes for Cellenium 204 cc, Cash Providers cc and D & U Finance cc without authority.
- b) misused their positions at the Department of Correctional Service's Head Office in Pretoria by processing Z56 changes on Persal for members who had taken loans from the above companies to the benefit of their second and private employer and for personal gain.
- c) ran their businesses or carried out their private work during working hours, using the Department's equipment and premises.
- d) both submitted applications for doing private work that did not comply with the provisions of the Public Service Act and Departmental Directives.

2.1 Mr David Tebogo Sebokeng

It is common knowledge that Mr Breytenbach and Mr Muller are running a money-lending scheme within the Department. During December 2003, Mr Sebokeng experienced financial difficulties and approached Mr Breytenbach to borrow one thousand five hundred rand (R1 500-00). The transaction took place at Mr Breytenbach's office during working hours. He charged Mr Sebokeng interest of seven hundred rand (R700) and advised him that the loan would be repayable within four (4) months in four (4) instalments. He defaulted on his first payment but told Mr Breytenbach that instead of paying his instalment on 1 December, 2003 he would pay it on 7 January 2004, which he did. The next instalment was payable on 15 January 2004 but he also had difficulty paying that instalment.

On 15 February he found that his money had been withdrawn by Mr Breytenbach. He was told by Mr Chauke who works at the Persal section that

according to computer records his salary was deposited into a Saambou bank account from which deductions were made.

He conceded that in addition to the loan agreement documents, he also signed a document authorising Mr Breytenbach to pay the money into an interim account. He also conceded in cross-examination that he gave Mr Breytenbach the right to withdraw money from his bank account if he was unable to pay. He did not know, however, how they would withdraw the money from his Absa bank account.

2.2 Mr Stanley Andrew Chauke

Mr Chauke is employed by the Department as a Persal Controller at the Pretoria Head Office. He confirmed that Mr Sebokeng complained to him that he did not receive his money from his bank account. He checked for him on the computer and discovered that his salary had been directed into a Saambou bank account and assisted him to have it changed back to Absa bank. He had initially asked him if he had borrowed money from somewhere because members often come to him to complain that their salaries have been directed to a Saambou account without their knowledge. This normally happened when they had taken a loan from a moneylender.

2.3 Mr Mandlenkosi Mkhathshwa

Mr Mkhathshwa is a former member of the Department who also took a loan of five hundred rand (R500) from a micro-lender and discovered that his Nedbank account had been changed to Saambou without his knowledge. He conceded that he had signed certain documents when he obtained the loan.

2.4 Mr Alpheus Makiletsi Masela

Mr Masela also borrowed five hundred rand (R500-00) from Mr Muller during January 2003 when there was death in his family. Mr Muller required him to sign certain forms and said he would charge interest of 25% and that the full

amount of six hundred and fifty rand (R650-00), inclusive of interest, would be payable on 16th of the following month. Mr Muller then gave him the five hundred rand (R500-00) that he collected from his house. On 25th of the following month he went to Mr Muller's workplace and paid him six hundred and fifty rand (R650-00).

A day later he realised that six hundred and fifty rand (R650-00) had been withdrawn from his bank account at the Pretoria Nedbank branch. He confronted Mr Muller who agreed that six hundred and fifty rand (R650-00) was deducted from his account but he refunded him in full.

He then borrowed one thousand rand (R1 000-00) from Mr Muller during August 2003 at 25% interest. He signed forms agreeing that the one thousand rand (R1 000-00) would be payable in three (3) instalments to be deducted from his bank account.

2.5 Ms Sonja Antoinette Sprout

Ms Sprout conducts business as Cash Providers cc operating at 284 Zambezi Drive, Sinoville. Mr Muller is her agent but he has no shareholding in the company. He is contracted as an agent to distribute loan application forms to the Department's members at Head Office. She started using Mr Muller's services in 1998 when she started her business.

Before the year 2000 repayments were made by debit order using a Departmental code. During 2000 the Department cancelled the stop order code and they had to switch over to a new system.

According to the new system each client has an interim account with Saambou bank. Each month officials of Cash Providers cc. take the Z56 forms signed by the debtor to Mr Muller to capture them on the system. This is to facilitate creating an interim account held by the company to recover money from a member's salary, which is paid into this account. The balance goes back into the member's own account.

The purpose of the new system was to get around the cancelled debit order policy.

Previously the borrowers paid Mr Muller 5% per approved application but they now pay him R10 for each application he approves. Sometimes they deposit his money into his Absa bank account or at other times they give him a cheque.

Mr Muller normally processes application forms during working hours.

Two amounts of two thousand five hundred (R2 500) and two thousand four hundred and fifty (R2 450) were deposited into Mr Muller's bank account on 23 December 2002 and 11 April 2003, respectively. These figures are recorded in Mr J.J. Muller's Absa bank statements.² She confirmed that they still pay Mr Muller for his services.

Two affidavits deposed by Mr Balakrishan Sadhan Perumal³ confirm the changes on Persal which were effected by Mr Breytenbach and Mr Muller on Mr Mkhathshwa and Mr Sebokeng's accounts. Further transactions⁴ also confirm that Mr Muller and Mr Breytenbach made changes on Persal to transfer members' salaries to interim accounts held with Saambou bank.

2.6 Mr Jakobus Johannes Muller

Mr Muller is a senior correctional officer employed by the Department at its Head Office, Pretoria. He is also an agent for two cash loan companies: D & U Finance cc and Cash Providers cc. In January 2001, he also started to do work as an agent for Cellenium 204 cc. All three (3) close corporations pay him two-and-a-half percent of their takings and money is deposited into his account.

² See pages 81 and 89 of Exhibit "GGG."

³ See Exhibits "HHH8 and "HHH9."

⁴ See pages 15 – 28 of Exhibit "GGG."

He did not apply to do extra work for these close corporations because he already had permission to do extra work. He keeps the loan application forms in his office, which he gives to officers to complete when they need money. He also takes the forms back to the relevant companies although sometimes officials fax these forms themselves.

He also does marketing for Perel Sport Company, which pays him monthly. Perel manufactures and supplies the Department's sporting clothes, and he advertises its products to Department officials. He began working for them two to two-and-a-half years ago after they had obtained a contract from the Department. In 2002 they paid him R900 when he did marketing for them. He does not have a contract and is not aware of how they calculate his interest when he has done work for them.

He also does data capturing for them on his computer at work outside working hours. The data capturing should be done at the Benefits Section of the Department but he took it over and is getting paid for it. Data capturing has to be done daily and the documents to be used are faxed to him. He does not have permission to use the Department's computer for extra work.

He confirmed that Mr Olef Breytenbach is an agent for Cellenium 204 cc. Cash Providers cc deposited his payments into his bank account. Other deposits reflected in his bank statement were cash loans he took from Cash Providers cc at 1% interest.

Mr Hofmeyer also helps with the administration at D & U Finance cc at his home. He is a bank contact for the business and was paid six hundred rand (R600) per case for services rendered at D & U Finance cc.

He was recruited in January 2004 by Mr Breytenbach to be an agent for Cellenium 204 cc. They work in the same office but he heard for the first time during the Jali Commission proceedings that Mr Breytenbach holds a 50% members' interest in Cellenium 204 cc.

D & U Finance deducts repayments from borrowers' bank accounts electronically.

Cash Providers deducts it through interim accounts. The whole salary would first go into an interim account that is held with Saambou bank. Cash Providers then takes its money and the balance goes to the member's original bank account.

The bank account of an official who borrows money gets changed into an interim account in the following manner:

Cash Providers and Cellenium would bring a signed application from the borrower authorising the Department to pay the money into the interim bank account. Cash Providers makes these officials sign a loan agreement form as well as form Z56 authorising the change of banking account.

2.7 Mr Abraham Breytenbach

Shareholding in any company or close corporation has to be declared to the Department by all employees at the level of a director or higher but Mr Breytenbach did not see any reason to declare that he owns a shareholding in a close corporation. He did not furnish all the relevant information when he was interviewed by an investigator of the Jali Commission. He said he was an agent for Cellenium 204 but did not disclose that he was a shareholder. He started the business in April 2002 and applied for permission on 24 March 2003. He did not have permission to perform private work before that. Mr Muller works for him but he did not tell him that he was his boss because that was not important. He admitted that he does his private work during working hours.

He also processes loan application forms for Cash Providers cc.

He admitted that he should have applied for permission but he delayed his application to do private work. He admitted that some of the transactions were done in his office and that the Department could have incurred costs as a result.

The office of his close corporation is at his home. Mr Jordaan is his partner and works at the Defence Force.

The relationship between Cellenium and D & U Finance is that D & U Finance cc recovers the money on behalf of Cellenium 204 cc through the debit order system. Mr Breytenbach said he knew Mr Hofmeyer but he did not know that he had an interest in D & U Finance cc.

They asked him to change the old system of repayments to the use of the ApliTec system, which involved the signing of the Z56 form. They had previously used debit orders to recover repayments from members who obtained loans but had encountered problems with this system.

3. MR NICHOLAS JAKOBUS HOFMEYER

The specific allegations against Mr Hofmeyer are as follows:

- (a) He is a de facto owner of D & U Finance cc, a business wholly owned by his wife. He did not have any permission to operate this business;
- (b) He approved Mr Muller's application to do private work, which application did not disclose the nature of the work intended to be done;
- (c) In his own application to do private work, he did not disclose the nature of the work to be done.

3.1 Evidence against Mr N.J. Hofmeyer

The evidence against Mr Hofmeyer is set out as follows:

Mr Hofmeyer's wife is the registered sole owner of D & U Finance cc but it transpired that Mr Hofmeyer is the de facto owner. He did not have any permission to operate the business.

He holds the rank of a Deputy Director and is an Area Manager of the Head Office. One of his duties is to approve applications for extra work.

He referred to the circular dated 13 December 1999 dealing with control measures regarding remunerative work outside the Public Service.⁵ This document describes the criteria by which permission is granted for such work, the manner in which application can be made, the conditions attached to such permission and the penalties imposed if permission is not sought. Among the key considerations are that outside work should not compromise the employee's work with the Department or compromise the Department.

He emphasised that there should be no conflict between work done by a member outside the Public Service and a member's official duties.

The nature of the work was never relevant for the purposes of approving an application, and he merely compiled a list of people who did such work for administrative purposes. Members who applied to him were never required to disclose the kind of work they intended doing. This was, however, contrary to the guidelines.

In the past, the nature of the work to be undertaken by a member was never considered. As proof of this he referred to the applications of Mr Breytenbach and Mr Muller to render additional work after hours.⁶ Neither application

⁵ See Exhibit "GGG" Pretoria Management Area at pages 75-76.

⁶ See Exhibits "HHH10" and "HHH11" Pretoria Management Area.

complies with the Departmental policy in that the nature of the work to be undertaken is not disclosed. He stated, however, that he approved these applications conditionally until all the requirements were met.

He admitted that the policy dealing with such applications is dated the 13 of December, 1999 and that it requires that the nature of the work is disclosed in the application. The two applications were approved on 24 March 2003 and 8 August 2000, respectively.

He admitted that he did not know the nature of the work to be done by Mr Muller when he approved the application. He, however, reiterated that he approved the application on condition that the policy was adhered to.

He himself does additional work outside working hours and he is busy doing a project with Clientel Life. He had applied for a pottery business and general sales a few years back but he stopped pottery two years ago and three weeks before the date of his evidence he started a project with Clientel Life, for which he made no application.

When he made his application to do remunerative work he did not specify the type of work he intended to do as he thought it was not necessary to do so. He confirmed that D & U Finance belongs to his wife and is a cash loan finance business. He is also aware that Mr Muller had been working as an agent for the company for the past two years.

Mr Hofmeyer administers the borrowing of the money from this business and performs his duties at his office in the Department. He is, however, not aware that Mr Muller processes forms for loan applications in his office. All he knows is that Mr Muller facilitated the collection of monies. Mr Muller is a family friend and he helps him and his wife after business hours.

His wife's business flourished because of the Z56 system, which made it easy to collect monies from clients. He admitted that the Z56 system was aimed at circumventing the treasury rules.

The CK1 form for D & U Finance cc clearly indicates that Hannelie Hofmeyer, Mr Hofmeyer's wife, is the sole member of the close corporation.⁷

He and Mr Muller dealt with administrative and managerial duties for D & U Finance. He does not do any internet transactions or banking at work. He is not the signatory to the business account and his wife signs all cheques for payment.

He has, however, not informed the Department that he is involved or that he has an interest in a money-lending scheme.

The Department deposited two amounts of two thousand one hundred and eighty five rand and thirty two cents (R2 185,32) and nine hundred and eight rand and seventeen cents (R908,17) to D & U Finance on 14 November 2000 and 15 January 2004, respectively. He could not recall what those payments were for. He never received his salary through this account.

The box number appearing on the CK1⁸ is in the name of Mr Scheepers who also works at Head Office. Mr Scheepers is his friend and has no relationship with the close corporation.

According to him the A-Orders dealing with private work have not been published by the Department as a policy document and the old A-Orders should still be applicable.

He had applied to his Director for permission to do private work six (6) or seven (7) years before. During 2003 members were requested to reapply, which he did and was granted permission by his Director, Mr Mahoje, to do remunerative work outside working hours. Even when he reapplied he did not disclose the nature of the work.

⁷ See Exhibit "HHH12" Pretoria Management Area.

⁸ See Exhibit "HHH12" Pretoria hearings Management Area.

He is not being remunerated at this stage for the work he does for D & U Finance.

He invested money in the business in his private capacity. The business has a current deficit of ninety thousand rand (R90 000-00) as it is paying back monies to the investors.

The founding statement of D & U Finance describes the principle business as providing cash loans to the community. He invested money into this business as part of the management team. His wife has not put any money in the business and only has an interest registered in her name.

The Close Corporation Act of 1984 stipulates that only members may do the administration of the business. He could not provide an explanation as to why, although he is not a member of the cc, he does administration for the business.

Mr Scheepers invested more than twelve thousand rand (R12 000-00), Mr Hofmeyer one hundred thousand rand (R100 000-00) and Mr De Wet about thirty thousand (R30 000-00) into the business.

Initially he was paid five hundred and fifty rand (R550-00) per month for doing administration for the business. They decided to stop paying him in January 2004 because of its negative growth.

Mr Muller received six hundred rand (R600-00) per month but since they stopped paying him they have increased Mr Muller's salary to one thousand rand (R1 000-00) per month.

He now does work for this business for free.

3.2 Mrs Hannelie Hofmeyer

Mrs Hofmeyer is married to Mr Hofmeyer. She works for doctors C. M Pienaar and J. M Cilliers as a receptionist and does accounts for their practice. She confirmed the nature of the business conducted by D & U Finance cc as set out in its founding statement. She started this business because she had no pension fund. The core business of the close corporation is to lend money to people and charge them interest at 25% per annum, a rate set by Mr Muller and Mr Hofmeyer. She does no work for the business as Mr Hofmeyer and Mr Muller do all the work.

Three or four times a year she gets information from the auditors about this business. She was told by Mr Hofmeyer that the three investors deposited their investments into this business account. She does not know how these investors are paid back their investments. If the bank has a query about the business account she refers the bank to Mr Muller.

For all practical purposes the business does not belong to her. It has not been her business from the beginning, although it belongs to her and her husband.

There was no resolution, only a verbal agreement, that Mr Hofmeyer and Mr Muller would do administrative work for this company.

4. IMPROPER APPROVAL OF APPLICATIONS

Evidence of the improper approval of applications to do remunerative work outside the Public Service is set out as follows.

4.1 Mrs Thea Blackburn

Mrs Blackburn is an Assistant Director: Remuneration Control in the Department. Officials are required to obtain permission to do extra work, which must not be done during working hours or on Department premises.

Mr Hofmeyer made two such applications, one on 31 October 1999 and the other on 2 June 2000.

The work to be done has to be described in the application form but neither Mr Muller's or Mr Breytenbach's application forms to do private/remunerative work did so.

Clause 1.9 of the Departmental policy, dated the 13 of December, 1999, deals with remunerative work and requires that a register must be kept for a record of all officials who have applied for remunerative work outside Public Service. This Department has no such register.

Mr Hofmeyer approved Mr Muller's application and Mr Breytenbach's was approved by Mr Strydom, the then Acting Area Manager.

4.2 Mr Leon Gerhardus Strydom

The specific allegation against Mr Strydom is that he approved Mr Breytenbach's application to do private work after hours when Mr Breytenbach had not disclosed the nature of the work to be performed.

The evidence indicates that Mr Strydom has been Head of Personnel at Head Office since October 2002 and has held the rank of an Assistant Director since January 2001.

There was no register of applications for remunerative work done outside the Public Service. Such applications do come to his office but he does not deal with them.

When he was an Acting Area Manager he dealt with Mr Breytenbach's application. In dealing with this application he applied the same principle as Mr Hofmeyer had applied, which he now knows were wrong. He is now aware of the problems.

When approving the application he was not aware of the nature of the work that was intended to be done but as time moved on he became aware of it.

He then undertook to introduce a register as required by the policy.

4.3 Mr Johan David De Beer

Mr De Beer works for Applied Technologies Limited (ApliTech), which specialises in the development of smart card base and payment systems (through its subsidiary Millpay Systems (PTY) Ltd) and retains payment systems and salary invoice payment systems.

They carry out comprehensive monthly cash budget management, reducing the need for costly staff and/or micro-loans. Employees who choose to join the system retain the designated transfer bank account number for life. The employer simply pays the employee's salary or wage into his/her designated Saambou transfer bank account, from where all specified payments are made and the balance transferred to any bank account nominated by the employee. This account can be closed at the request of the consumer or client. The account is opened in the name of the employee who has no access to withdraw or deposit money into it, because it is an interim account. A mandate is required for any deduction on the interim account. Upon requesting a loan the borrower normally signs a form authorising the Department to open this interim account. There are two forms required: one for opening the interim account and the second to make deductions from this account.

4.4 Mrs Blackburn Recalled

Mrs Blackburn confirmed the corruptness of the schedule containing twenty eight (28) names of officials who applied for approval for external work.⁹ Of these, 25 applications were approved by Mr Hofmeyer, one Mr J.C. de Klerk,

⁹ See Exhibit "HHH27" Management Area.

one by Mr R. P. Mahoje and the other by Mr L.G. Strydom. The two applications approved by Mr Hofmeyer on 31 October 1996 and 2 June 2000, respectively were both for buying and selling goods. The application by Mr O.A Breytenbach approved by Mr L.G. Strydom does not specify the nature of the work intended to be done. The application by Mr J.J. Muller approved on 11 August 2000 does not specify the nature of the work intended to be done. This schedule also contains a number of other applications that were approved, which do not specify the nature of the work to be done.

The application by Mr C.J. Groenewald approved on 27 June 2000 includes permission to capture stop orders on Persal for Solo Sport. This would certainly entail the use of the Department's equipment.

She confirmed that there are no checks and balances to verify if a person who applied to do specific work is indeed doing that work.

Mr C.J. Groenewald, for example, was given permission to use the Department premises to perform work for another employer.

4.5 Mr Mullet Mthokozeli Manqoba Ngubo

Mr Ngubo has been a Deputy Commissioner: Human Resources since November 1999. He compiled the policy document dated 13 December 1999 dealing with control measures relating to remunerative work outside the Public Service. This document was distributed to various Management Areas.

He referred to a file prepared by Mrs Blackburn, dealing with approvals of applications for external work and stated that some of the applications in it do not comply with the policy.¹⁰ The policy clearly stipulates that the applicant should indicate the nature of the work intended to be performed. He said applications in Exhibit HHH27, which did not indicate the nature of the work, should have been referred back to applicants.

¹⁰ See also Exhibit "HHH27" referred to above.

4.6 Mr Kueben Naidoo

Mr Naidoo is employed by the National Treasury Office as a Chief Director. The collections by micro-lenders by way of deductions from members' salaries in the public service were stopped in terms of chapter 23 of the Treasury Regulations towards the end of 2002 or early 2003.

During May 2001, he was required by the Director-General of National Treasury, Ms Ramos to investigate why civil servants generally take very little money home after deductions. He found that 1.1 million employees had to repay micro-lenders by way of deductions from their salaries. There were sixteen (16) micro-lenders operating in the public service at the time. He found that about thirteen thousand (13 000) people in the employ of the public service were taking home less than one hundred rand (R100,00) per month, as a result of these deductions.

People who had high rates of micro-loans deducted from their salaries were in the Department of Correctional Services, South African Police Service and Teachers in the Department of Education and Culture.

Late in 2001, the Minister of Finance decided to stop all new deductions by micro-lenders from the payroll.

The South African Banking Council and various associations made representations to the Minister as they were not happy with the Minister's decision. The "virtual" account, which is a normal bank account created by micro-lenders for the purposes of deducting their collections, is not accessible to a member and a member cannot withdraw money from that account. The civil servants had to go to the persal section to change their banking details. Their salaries then go directly to this virtual account, which enables the money-lender to deduct all his collections from it.

This arrangement is illegal and contrary to the spirit of the Treasury Regulations. The Banking Council negotiated with the parties involved and promised to stop this practice. Saambou was the bank that used these virtual accounts but it had problems and the bank was liquidated. Officials from the Department of Finance had thought that this problem had gone and were not aware that it was still going on in the Department.

Mr Naidoo is, however, aware that Saambou Bank is still using the virtual account system. The virtual account system was not declared illegal but they accepted an undertaking that the Banking Council and its members would stop this practice. Now that he is aware that it is still going on, he will request the government to deal with it.

5. CONCLUSION

It is apparent from the evidence that many employees in the Department of Correctional Services borrow money from micro-lenders. The evidence has also established that this is a flourishing business within the Department. The impact of this business can be seen from the fact that a number of employees in the Department took home approximately only one hundred rand (R100,00) of their monthly salaries after deductions by these micro-lenders.

The peculiar feature of these businesses is the manner in which the micro-lenders recover their repayments from members. The practice is that members of the Department provide the micro-lenders with accounts into which the members' salaries are deposited. When a member has taken a loan, these micro-lenders then bring an application to the Department signed by the member who borrowed money, authorising the Department to pay the money into the interim bank account with Saambou set up by the micro-lenders and not into the members' personal banking account

Even more unusual is the fact that the interim Saambou account is opened without the knowledge of the member who has no access to or control over this account. He cannot withdraw or deposit money from the account.

It is clear to the Commission that these micro-lenders also used Department officials to sign loan agreement forms as well as Z56 forms, authorising the change of the members banking details. Most of the members sign these loan agreements and the Z56 forms without any understanding of the contents of these applications and forms as can be seen from the fact that most of these members who had borrowed money from micro-lenders normally confronted the Department enquiring about the deductions made from their salaries;

Although the Banking Council and its associates made an undertaking to the Government to stop the use of the virtual accounts, it is, however, clear that the Banking Council and their associates have not honoured this undertaking, as Saambou continues to use this interim account system of collecting monies from members of the Department.

It is also clear from the evidence that a high number of applications to do private work or to do remunerative work outside the public service were approved by Departmental officials without such applications complying with Departmental policy. In most of these applications, the nature of the work to be done by applicants, as required by Departmental policy, was not defined in the applications.

6. FINDINGS

Regarding the matters dealt with in this Chapter, the Commission makes the following findings:

- 6.1 Messrs J.J. Muller, A. Breytenbach and N.J. Hofmeyer operated micro-lending schemes within the Department without authority and abused their positions for personal gain.
- 6.2 Mr Hofmeyer, the Area Manager: Head Office, Pretoria, approved a fraudulent application by Mr Muller to do outside work, which did not comply with Departmental policy.
- 6.3 Mr L.G. Strydom approved Mr Breytenbach's application to do private work, which application did not comply with Departmental policy.
- 6.4 Mr Hofmeyer is the de facto owner of D & U Finance CC, which is a micro-lending scheme, which he operates without permission.
- 6.5 Messrs Muller and Breytenbach misused their positions at the Department of Correctional Service's Head Office in Pretoria by processing Z56 forms to effect changes on persal for members who had taken loans from the micro-lenders to the benefit of their second and private employer and for personal gain.
- 6.6 Messrs Muller and Breytenbach ran their businesses carrying out their private work during working hours, using the Department's equipment and premises. Messrs Muller and Breytenbach both submitted application forms for doing private work, which did not comply with the provisions of the Public service Act and Departmental policy.
- 6.7 Evidence also established that Mr Muller was receiving an average of six hundred rand (R600,00) as remuneration from the company called Perel Sport. In his own evidence, he admitted that he performed some advertising work for this company but did not know the basis of how his remuneration was calculated. Mr Breytenbach was also implicated in the same regard by the evidence of Mr Pirie Schoeman on affidavit.

6.8 It is the Commission's view that income earned using the Department of Correctional Services property under the circumstances outlined in paragraph 6.7 above amounts to a contravention of the Corruption Act 94 of 1992.

7. RECOMMENDATIONS AGAINST INDIVIDUALS

7.1 Mr Jakobus Johannes Muller

7.1.1 The conduct of Mr Muller operating a micro-lending scheme without authority amounts to a contravention of section 30 of the Public Service Act, the Corruption Act No. 94 of 1992, the Disciplinary Code and the Department's Policy Directives.

7.1.2 Accordingly, the Commission makes the following recommendations:

- (a) That Mr Muller be charged with contravening Column A, clause 5.10 of the Department's Disciplinary Code – Misuse of position for personal gain to the disadvantage of the employer;
- (b) Contravening Column B, clause 5.17 of the Department's Disciplinary Code – Operating a money lending scheme without permission for his own benefit during working hours or from the Department's premises;
- (c) Contravening clause 8.3 Column B of the Department's Disciplinary Code – Unauthorised use of Departmental/government property for person gain;
- (d) Contravening clause 5.14 Column B of the Department's Disciplinary Code – Performing work during office hours for compensation without written approval in a private capacity for another person or organization.
- (e) Contravening section 30 of the Public Service Act 1994 – Performing work during working hours for compensation in a

private capacity for another person without approval from the executing authority;

- (f) Contravening section 1(b) (i) of the Corruption Act No. 94 of 1992;
- (g) That he be suspended immediately pending the finalisation of his disciplinary inquiry.
- (h) That the record of the proceedings in this regard be made available to the Director of Public Prosecutions: Gauteng, for his decision.

7.2 Mr Abraham Breytenbach

7.2.1 The conduct of Mr Breytenbach in running a micro-lending scheme without authority and abusing his position at the persal office, Pretoria Head Office, amounts to contravening section 30 of the Public Service Act, the Disciplinary Code and Departmental policy.

7.2.2 Accordingly, the Commission makes the following recommendations:

- (a) Mr Breytenbach be charged with contravening clause 5.10 Column B of the Department's Disciplinary Code – Misuse of position for personal gain to the disadvantage of the employer;
- (b) That he be charged with contravening clause 5.17 Column B of the Department's Disciplinary Code – Operating a money lending scheme without permission for his own benefit during working hours or from the Department's premises;
- (c) Contravening clause 8.3 Column B of the Department's Disciplinary Code – Unauthorised use of Departmental/government property for person gain;
- (d) Contravening clause 5.14 Column B of the Department's Disciplinary Code – Performing work during office hours for compensation without written approval in a private capacity for another person or organization.

- (e) Contravening section 30 of the Public Service Act 1994 – Performing work during working hours for compensation in a private capacity for another person without approval from the executing authority;
- (f) Contravening section 1(b) (i) of the Corruption Act No 94 of 1992;
- (g) That he be suspended immediately pending the finalisation of his disciplinary inquiry.
- (h) That the record of the proceedings in this regard be made to the Director of Public Prosecutions: Gauteng, for his decision.

7.3 Mr Nicholas Jakobus Hofmeyer

7.3.1 The conduct of Mr Hofmeyer in running a money lending scheme under the name D & U Finance CC, without authority, amounts to contravention of section 30 of the Public Service Act, the Disciplinary Code and Departmental policy.

7.3.2 His conduct in approving Mr Muller's application to do remunerative work outside the public service, which did not comply with Departmental policy, also amounts to gross negligence.

7.3.3 The Commission accordingly makes the following recommendations:

- (a) That Mr Hofmeyer be charged with contravening Column B, clause 5.10 of the Department's Disciplinary Code – Misuse of position for personal gain to the disadvantage of the employer;
- (b) That he be charged with contravening Column B, clause 5.17 of the Disciplinary Code - Operating a money lending scheme or any other business without authority, for his own benefit during working hours or from the Department's premises;
- (c) That he be charged with contravening Column A, clause 2.1 of the Department's Disciplinary Code – Gross negligence in the execution of duties;

- (d) That he be suspended immediately pending the finalisation of his disciplinary inquiry.
- (e) Criminally contravening section 30 of the Public Service Act 1994 – Performing work during working hours for compensation in a private capacity for another person without the written authority of the executing official;
- (f) That Mr Nick Hofmeyer be suspended immediately pending the finalisation of his disciplinary inquiry;
- (g) That the record of proceedings relating to Mr Nick Hofmeyer be sent to the Director of Public Prosecutions: Gauteng, for his decision.

7.4 Mr Leon Gerhardus Strydom

7.4.1 The conduct of Mr Strydom in approving Mr Breytenbach's application to do private work, when his application did not comply with Departmental policy, amounts to misconduct in terms of the Department's Disciplinary Code.

7.4.2 Accordingly, the Commission makes the following recommendation:

- (a) That he be charged with contravening Column A, clause 2.1 of the Department's Disciplinary Code – Gross negligence in the execution of duties;

Alternatively,

- (b) Contravening Column B, clause 2.1 of the Department's Disciplinary Code – Unsatisfactory work performance;
- (c) That Mr Strydom be suspended immediately pending the finalisation of his disciplinary inquiry.

8. GENERAL RECOMMENDATIONS

8.1 Z56 Forms

The signing of the Z56 forms by members authorising the change of members' banking details for the purposes of allowing micro-lenders to deduct their collections from members' salaries should be stopped immediately.

8.2 Applications to do Remunerative Work.

8.2.1 There was sufficient proof that the A Order and the Directive dealing with applications for requests to do remunerative work outside public service are constantly breached. A number of such applications were handed in by Mrs Thea Blackburn and reference was made to the application of Mr C.J. Groenewald who applied to capture stop orders on personal after hours on behalf of Solo Sport and the application was approved. There are areas of conflict between work performed on behalf of the Department and the work performed privately but despite such conflict, a number of such applications were approved.

8.2.2 Evidence has established that there are no proper controls regarding these applications. Evidence also established that there are no proper registers kept by the Department regarding these applications.

8.2.3 Accordingly, the Commission makes the following recommendations:

- (a) That the Department exercises proper control over such applications and that all approved applications to do remunerative work outside public service be reviewed and all those applications that do not comply with Departmental policy in any respect be cancelled with immediate effect;
- (b) That only officers of the rank of Director or above be tasked with this responsibility of approving applications by members to do

remunerative work outside public service and that such power or authority should not be delegated to officers below that rank;

- (c) That the Department keeps a proper register of approved applications as required by the policy;
- (d) That the Department should stop deducting monies from employees' salaries for the purposes of paying these monies to money lending schemes, with immediate effect. The Department acts as debt collectors for these money lending schemes, which is contrary to the objectives of the Department.

8.3 Virtual Accounts

8.3.1 The manner in which these virtual/interim accounts are created appears to be illegal and neither the employer nor a member has access to this account save for the micro-lender. Evidence has established that the Banking Council and its members undertook to stop this practice. However, evidence has suggested that this practice has not stopped and the micro-lenders are continuing to recover payment of their loans through this system.

8.3.2 In the light of the evidence led in this regard, the Commission will recommend that this system of collecting payments of loan by micro-lenders be declared illegal and unlawful by the Department.

8.3.3 Accordingly, the Commission makes the following recommendations :

- (a) that the system of recovering money from employees by micro-lenders, namely, virtual accounts, be declared illegal by the Department;
- (b) that the penalty provision be attached to such declaration.

9. RECOMMENDATIONS : DISCIPLINARY INQUIRIES

For the reasons set out in the First Interim Report and several other reports already filed by the Commission, it is recommended that the disciplinary inquiries against the members referred to in this Chapter be dealt with by a Special Task Team contemplated by the Commission.