



PUBLIC PROTECTOR
MOSIRELETSI WA BATHO • MOSIRELETSI WA BATHO
MUSIRHELELI WA VANU • MUTSIRELEDZI WA VHATHU
OPENBARE BESKERMER • UMKHUSELI WABANTU • UMWIKELI WABANTU

NATIONAL OFFICE
PRIVATE BAG X677 PRETORIA 0001 • HILLCREST OFFICE PARK, 175 LUNNON STREET, HILLCREST, 0083
TEL: (012) 366 7000 FAX: (012) 362 3473

Please quote this reference in your reply: **Report No.8 of 20010/11**

21 June 2010

Ms P N Khumalo
9259 Madadeni Section 5
PO MADADENI
2951

Dear Ms Khumalo

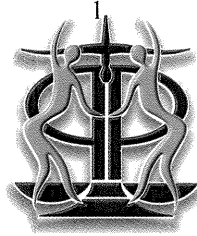
**INVESTIGATION BY THE PUBLIC PROTECTOR COMPLAINT: DELAY IN
SUBMISSION OF PENSION DOCUMENTS LATE: B R KHUMALO**

Please be advised that the investigation into your complaint has been concluded.

A report on the matter is attached hereto for your information.

Best wishes

**ADV T N MADONSELA
PUBLIC PROTECTOR
OF THE REPUBLIC OF SOUTH AFRICA**



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Please quote this reference in your reply: **Report No.8 of 2010/11**

Enquiries: M J Fourie
Tel 012 366 7065
Fax 012 366 7109

21 June 2010

Ms N P Nkonyeni
The Speaker of the KwaZulu Natal Provincial Legislature
Parliament Building
239 Lanagalibalele Street
Pietermarigburg
3200

Dear Ms Nkonyeni

REPORT NO. 8 of 2010/11: REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR ACT, 1994

Attached hereto is my report on an investigation into allegations of maladministration and undue delay relating to the submission of pension documents of an ex employee of the KwaZulu Natal Provincial Department of Education Mr B R Khumalo to the GEPF, for your information.

Best wishes

ADV T N MADONSELA
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Please quote this reference in your reply: Report No.8 of 2010/11

21 June 2010

Mr S E Mchunu
The MEC for Education
KwaZulu Natal Provincial Government
Third Floor
Anton Lembede Building
247 Burger Street
Pietermaritzburg
3200

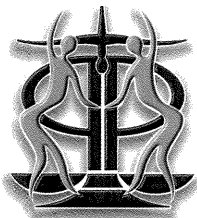
Dear Mr Mchunu

REPORT NO.8 of 2010/11: REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR ACT, 1994

Attached hereto is my report on an investigation into allegations of maladministration and undue delay relating to the submission of pension documents of an ex employee of the North West Provincial Department of Education, late Mr B R Khumalo, to the GEPF, for your information.

Best wishes

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Please quote this reference in your reply: Report No.8 of 2010/11

Enquiries: M J Fourie
Tel 012 366 7065
Fax 012 366 7109

21 June 2010

Dr R C Lubisi
Superintendent –General: Department of Education
KwaZulu Natal Provincial Government
Third Floor, Anton Lembede Building
247 Burger Street
Pietermaritzburg
3200

Dear Dr Lubisi

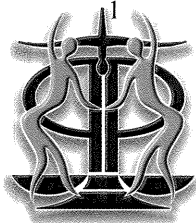
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Attached hereto is my report on an investigation into allegations of maladministration and undue delay relating to the submission of pension documents of an ex employee of the KwaZulu Natal Provincial Department of Education late Mr B R Khumalo, to the GEPP, for your information.

Your attention is directed to our recommendations in paragraph 12. Please keep us informed of the progress made with regard to the implementation of remedial action.

Best wishes

ADV T N MADONSELA
PUBLIC PROTECTOR
OF THE REPUBLIC OF SOUTH AFRICA



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Please quote this reference in your reply: Report No.8 of 2010/11

Enquiries: M J Fourie
Tel 012 366 7065
Fax 012 366 7109

21 June 2010

Mr. P Tjie
Chief Executive Officer
Government Employees Pension Fund
Hamilton Street
PRETORIA
0001

Dear Mr. Tjie

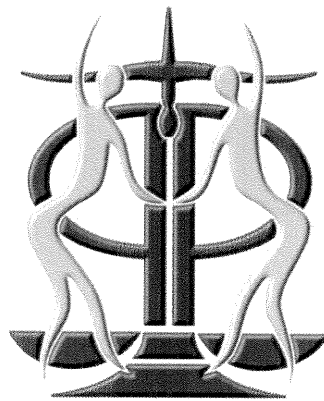
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Attached hereto is my report on an investigation into allegations of maladministration and undue delay relating to the submission of pension documents of an ex employee of the KwaZulu Natal Provincial Department of Education, late Mr B R Khumalo to the GEPF, for your information.

Best wishes

ADV T N MADONSELA
PUBLIC PROTECTOR
OF THE REPUBLIC OF SOUTH AFRICA

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION
182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH
AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR
ACT, 1994**



**PUBLIC PROTECTOR
SOUTH AFRICA**

REPORT NO. 8 OF 2010/11

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF UNDUE DELAY
RELATING TO THE SUBMISSION OF PENSION DOCUMENTS TO THE
GOVERNMENT EMPLOYEES PENSION FUND AND PAYMENT OF PENSION
BENEFITS TO THE BENEFICIARIES OF A FORMER EMPLOYEE OF THE
DEPARTMENT OF EDUCATION OF THE KWAZULU-NATAL PROVINCIAL
GOVERNMENT, THE LATE BR KHUMALO**

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Executive Summary

- (i) The Public Protector investigated a complaint received from Ms P N Khumalo (the Complainant), relating to allegations of undue delay by the Kwazulu-Natal Provincial Department of Education (the Department) in connection with the processing and submission of pension documents to the Government Employees Pension Fund (the GEPF) and the delayed payment of pension benefits to the beneficiaries of an ex employee, the late Mr B R Khumalo (the deceased).
- (ii) From the investigation it was found that:
 - (a) The Department unduly and without justification failed to submit the pension documents of the deceased timeously and thus delayed payment of pension benefits to the Complainant;
 - (b) The Department had been aware of the delay for a considerable period and failed to resolve the matter;
 - (c) The failure of officials to attend to the matter resulted in an additional financial obligation to the GEPF, as interest in the amount of R37 707.99 was paid to the Complainant;
 - (d) The payment of interest could have been avoided if documents were submitted to the GEPF timeously;
 - (e) The action of the Department, specifically the undue delay constituted maladministration; and
 - (f) The Complainant was treated unjustly and was prejudiced by the failure of the Department.

(iii) The remedial action to be taken is as follows:

The HOD has to

- (a) Consider whether disciplinary action should be taken against the officials responsible for the undue delay in the processing of the pension documents of the deceased;
- (b) Take steps to ensure that time lines are stipulated and enforced for the processing of pension applications; and
- (c) Report to the Public Protector on the implementation of the remedial action referred to in paragraphs (a) above within 3 months of the date of this report.

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF UNDUE DELAY RELATING TO THE SUBMISSION OF PENSION DOCUMENTS TO THE GOVERNMENT EMPLOYEES PENSION FUND AND PAYMENT OF PENSION BENEFITS TO THE BENEFICIARIES OF A FORMER EMPLOYEE OF THE DEPARTMENT OF EDUCATION OF THE KWAZULU-NATAL PROVINCIAL GOVERNMENT, THE LATE BR KHUMALO

1. INTRODUCTION

- 1.1 This is a report in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act). It is submitted to:
- 1.1.1 Ms P N Khumalo, who lodged the complaint in this matter;
- 1.1.2 The Kwazulu-Natal Provincial Legislature;
- 1.1.3 The Member of the Executive Council responsible for Education of the Kwazulu-Natal Provincial Government (the MEC);
- 1.1.4 The Head of the KwaZulu-Natal Provincial Department of Education (the HOD); and
- 1.1.5 The Chief Executive Officer of the Government Employees Pension Fund.
- 1.2 It relates to an investigation into allegations of undue delay by the Kwazulu-Natal Provincial Department of Education (the Department) to submit pension documents to the Government Employees Pension Fund (the GEPF) and the delayed payment of pension benefits to the beneficiaries of an ex employee, the late B R Khumalo (the deceased).

2. BACKGROUND

- 2.1 The deceased was employed by the Department from 1 February 2002 to 22 July 2007.
- 2.2 He passed away on 22 July 2007.
- 2.3 His mother, Ms P N Khumalo (the Complainant) and beneficiary of his pension benefits, submitted the pension claim documents to the Department during July 2007.
- 2.4 During August 2007, the Complainant inquired into progress of the matter at the Zululand Service Centre of the Department in Ulundi and was informed that the Department was claiming a departmental debt from the pension benefits of the deceased representing an overpayment of his salary for the period August 2007 to September 2007.
- 2.5 The Complainant declared a dispute with the Department and submitted proof that the bank account of the late Mr Khumalo was closed on 10 August 2007 and that no salary payment was received into the account for the two months in question.
- 2.6 The Department subsequently refused to process and submit the pension documents to the GEPF for payment of pension benefits, unless the Complainant acknowledged the departmental debt.
- 2.7 The Complainant continually contacted the Department but was constantly sent from pillar to post by the various officials for more than two years.
- 2.8 She then approached the Public Protector, who intervened during October 2009.

- 2.9 The Department submitted the pension documents to the GEPF on 18 November 2009.
- 2.10 Benefits were paid out to the Complainant on 4 December 2009.
- 2.11 Interest in the amount of R37 707.99 was paid to the Complainant on 31 December 2009.

3. THE COMPLAINT

The Complainant lodged her complaint in connection with the failure of the Department to process and submit the pension documents to the GEPF with the Public Protector on 9 October 2009.

4. THE POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT

- 4.1 Section 182(1) of the Constitution provides that:

“The Public Protector has the power, as regulated by national legislation-

- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*
- (b) to report on that conduct; and*
- (c) to take appropriate remedial action.”*

- 4.2 In terms of section 6(4)(a) of the Public Protector Act, the Public Protector is competent to investigate, on his or her own initiative or on receipt of a complaint, any alleged maladministration in connection with the affairs of government, abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function.
- 4.3 In terms of section 6(4)(c) of the Act, the Public Protector may at any time prior to, during or after an investigation, *inter alia*, make any appropriate recommendation that he/she deems expedient to the public body or authority affected by it.
- 4.4 The allegations of maladministration and undue delay referred to above fall within the powers and jurisdiction of the Public Protector.

5. THE INVESTIGATION

- 5.1 The investigation was conducted in terms of sections 6 and 7 of the Public Protector Act and comprised:
- 5.1.1 Consideration of the documentation submitted by the Complainant;
 - 5.1.2 Consultation with the Complainant;
 - 5.1.3 Consultation with officials of the GEPPF;
 - 5.1.4 Consultation and correspondence with officials of the Department; and
 - 5.1.5 Consultation and correspondence with the Head of Human Resources Support Services of the Department.

6. THE GOVERNMENT EMPLOYEES PENSION LAW, 1996

- 6.1 In terms of Section 26(1) of the Government Employees Pension Law, 1996 (Proclamation 21 of 1966)(the Act), pension benefits shall be paid to a beneficiary **within a period of 60 days**, after the date on which the benefit becomes **payable** to the member, i.e. the last day of service of the member or the date of death of the member.
- 6.2 Section 26(2) of the Act provides that if a member is not paid within the period referred to in subsection (1), interest shall be paid by the GEPF to the beneficiary, at the rate prescribed.
- 6.3 Section 17(4) read with Rule 20 of the GEPF Rules, provides that:

*“If **any action** taken by the employer or if any legislation adopted by Parliament places any additional financial obligation on the Fund, the employer or the Government or the employer and the Government, as the case may be **shall pay to the Fund an amount which is required to meet such obligation.**”* (emphasis added)

7. COMMON CAUSE

- 7.1 From the investigation it appeared that the following is common cause:
- 7.1.1 The deceased was employed by the Department for the period 1 February 2002 to 22 July 2007, when he passed away.
- 7.1.2 The Complainant (the deceased’s mother) submitted the pension documents to the Department during July 2007.
- 7.1.3 The Department claimed a departmental debt for overpayment of salary for two months, which was disputed by the Complainant.

- 7.1.4 The Department refused to process and submit the documents, when the Complainant did not acknowledge the departmental debt.
- 7.1.5 The Complainant constantly inquired into the lack of progress, but was only sent from pillar to post.
- 7.1.6 The documents were only submitted to the GEPP on 18 November 2009, after the intervention of the Public Protector.
- 7.1.7 Benefits were paid to the Complainant on 4 December 2009.
- 7.1.8 Interest of R37 707.99 on the delayed payment of benefits was calculated for the period 22 September 2007 to 4 December 2009 and was paid to the Complainant by the GEPP on 31 December 2009.

8. RESPONSE FROM THE DEPARTMENT

- 8.1 The Public Protector brought the complaint of Ms Khumalo to the attention of the Head of the Human Resources Support Services of the Department, Ms M E Dlamini.
- 8.2 In terms of section 7(9) of the Public Protector Act, she was informed that the Public Protector might make an adverse finding against the officials who were supposed to process and submit the pension documents to the GEPP and that the Department might be directed to refund the GEPP the interest paid to the Complainant.
- 8.3 On 25 November 2009 Ms Dlamini informed the Public Protector that the outstanding documents were obtained and submitted to National Treasury in the Kwazulu-Natal Province.

8.4 The reasons for the delay were explained as follows:

“The delay in the submission of pension documents by our office is regretted. This delay was as a result of the misinterpretation of the policy, by Departmental officials, regarding the submission of pension documents where the employee has a liability against the Department. Officials incorrectly thought that beneficiaries should acknowledge the debt before the pension documents could be forwarded to GEPF.

This is a common error as previously this used to be the practice where employees’ pension documents would not be submitted, timeously, as a result of their refusal to acknowledge liabilities. A Clarification Document nullifying such conduct has since been released by the Chief Executive Officer of the GEPF, which you attached to your correspondence to us dated 11 November 2009. (The clarification became effective from 1 April 2009)

The Manager at the Service centre had previously handed the Clarification Document to all her Management with the specific instruction that such document was to be cascaded down to all relevant staff members and that they must comply with the contents thereof, to which she was informed that this had been done. However, despite the manager’s instruction in this regard the documents were incorrectly withheld.

To avoid the occurrence of such delays in the future, the following interventions were affected:

- ❖ *All personnel in the Pension Component have undergone a workshop on the Clarification Document regarding how Departmental Debt should be handled.*

- ❖ *Correspondence from your office regarding your investigation pertaining to the late B R Khumalo was read out to them and the negative implications of delaying the submission of documents was explained to them.*
- ❖ *It was emphasized that pension documents where clients have liabilities should never be withheld even if client refused to acknowledge debt procedures as clearly articulated in the abovementioned clarification document should be followed.*
- ❖ *Problematic cases should be reported to management for assistance within a week of receipt.*
- ❖ *Only liabilities cleared by the Finance Management should be considered by HR (this was meant to address incorrect liabilities).*

We shall abide by the decision of the Office of the Public Protector with regard to the reimbursement of the interest paid by GEPPF.

It must be emphasized that the delay and the inconvenience suffered by the Khumalo family is regretted and an apology will be communicated to them in this regard.”

9. POLICY ON SERVICE DELIVERY: BATHO PELE PRINCIPLES

- 9.1 In 1997 the Department of Public Service and Administration (DPSA) published a White Paper on Transforming Public Service Delivery (General Notice 1459 of 1997, published on 1 October 1997 in Government Gazette No 18340). The purpose of the White Paper was to provide a policy framework and a practical implementation strategy for the transformation of public service delivery. The White Paper is also known as the Batho Pele White Paper. Batho Pele can be translated as “People First”.

9.2 The White Paper identified eight Batho Pele Principles for transforming public service delivery. At least three of these principles are relevant to the present matter, namely:

9.2.1 Courtesy:

Citizens should be treated with courtesy and consideration;

9.2.2 Redress:

If the promised standard of service is not delivered, citizens should be offered an apology, a full explanation and a speedy and effective remedy; and when complaints are made, citizens should receive a sympathetic, positive response; and

9.2.3 Value for money:

Public services should be provided economically and efficiently in order to give citizens the best possible value for money.

10. OBSERVATIONS

10.1 In terms of the time frames stipulated in section 26(1) of the Act (see paragraph 6.1 above) the Complainant should have received payment of benefits within 60 days after the death of her son i.e. 22 September 2007. As a result of the delay, benefits were only paid on 4 December 2009.

10.2 The Complainant was faced with government autocracy for more than two years, as officials attempted to force her to acknowledge a departmental debt, and constantly refused to assist her when she declined to do so.

10.3 With reference to the Batho Pele Principles, it is clear that the Complainant was treated without consideration and that the Department carelessly failed in their service delivery in this specific case.

10.4 Following the intervention of the Public Protector the Department immediately took steps to avoid an occurrence of similar delays.

11. FINDINGS

11.1 From the investigation the following key findings were made:

11.1.1 The Department failed to submit the pension documents of the deceased timeously and thus delayed payment of pension benefits to the Complainant for more than two years;

11.1.2 The Department had been aware of the delay for a considerable period and failed to resolve the matter;

11.1.3 The failure of officials to attend to the matter resulted in an additional financial obligation to the GEPF, as interest in the amount of R37 707.99 was paid to the Complainant;

11.1.4 The payment of interest could have been avoided if documents were submitted to the GEPF timeously;

11.16 The action of the Department, specifically the undue delay, constituted maladministration; and

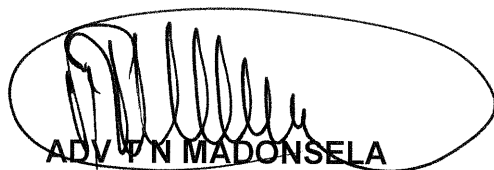
11.1.5 The Complainant was treated unjustly and was prejudiced by the failure of the Department.

12. REMEDIAL ACTION TO BE TAKEN

In terms of the provisions of section 182(1)(c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, the remedial action to be taken is as follows:

The HOD has to

- 12.1 Consider whether disciplinary action should be taken against the officials responsible for the undue delay in the processing of the pension documents of the deceased;
- 12.2 Take steps to ensure that time lines are stipulated and enforced for the processing of pension applications; and
- 12.3 Report to the Public Protector on the implementation of the remedial action referred to in paragraphs 12.1 above within 3 months of the date of this report.



ADV P N MADONSELA

**PUBLIC PROTECTOR
OF THE REPUBLIC OF SOUTH AFRICA**

Date: 18/06/2010

Assisted by: Mrs. M J Fourie (Senior Investigator)