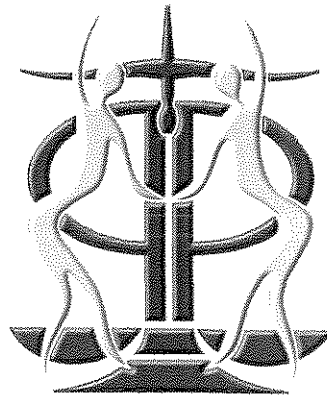


**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION
182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH
AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR
ACT, 1994**



**PUBLIC PROTECTOR
SOUTH AFRICA**

REPORT NO. 38 OF 2009/10

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF UNDUE DELAY
IN PROCESSING PAYMENT FOR RELIEF TEACHING SERVICES
RENDERED BY MS G V MOOKETSI TO THE DEPARTMENT OF EDUCATION
IN THE NORTH WEST PROVINCE**



INDEX

| | |
|--|----------|
| Executive Summary | 3 |
| 1. INTRODUCTION | 5 |
| 2. BACKGROUND | 5 |
| 3. THE COMPLAINT | 6 |
| 4. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT | 6 |
| 5. THE INVESTIGATION | 7 |
| 6. INFORMATION OBTAINED FROM THE NORTH WEST DEPARTMENT OF EDUCATION ON THE ALLEGATIONS RAISED BY THE COMPLAINANT | 8 |
| 7. LEGISLATIVE FRAMEWORK | 10 |
| 8. FINDINGS | 10 |
| 9. REMEDIAL ACTION TO BE TAKEN | 11 |

Executive Summary

- (i) The Public Protector received a complaint from Ms G V Mooketsi (the Complainant), who alleged that she worked as a relief educator for the Department of Education in the North West Province (the Department). From time to time whenever there was a vacant post, or when educators were on special or maternity leave, the Department would approach her to assist with teaching services.
- (ii) On 25 July 2007 the Complainant was approached by the Principal of the Mayaeyane Primary School (the School) and an official of the Department to render relief teaching services at the School, upon which the Complainant signed a service level agreement with the Department covering the period 26 July 2007 to 13 September 2007.
- (iii) From the investigation it was found that:
 - (a) The Department failed to pay the Complainant any remuneration for services rendered as a relief teacher for the period 26 July 2007 to 13 September 2007 and that the Department should pay interest on the amount due, calculated at the rate prescribed (at the time) by the Minister of Justice and Constitutional Development in terms of section 1(2) of the Prescribed Rate of Interest Act, 1975.
- (iv) The following action is required to remedy improper prejudice suffered by the Complainant:
 - (a) The Superintendent-General must, as a matter of urgency, ensure that the Complainant is paid accordingly for the services rendered by her for the period 26 July 2007 to 13 September 2007, with interest on the amount due, calculated at the rate prescribed (at the



time) by the Minister of Justice and Constitutional Development in terms of section 1(2) of the Prescribed Rate of Interest Act, 1975.

- (b) The Superintendent-General must, within 6 months of the date of this report, report to the Public Protector about the implementation of the remedial action referred to in paragraph (ii)(a) above.

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF UNDUE DELAY
IN PROCESSING PAYMENT FOR RELIEF TEACHING SERVICES
RENDERED BY MS G V MOOKETSI TO THE DEPARTMENT OF EDUCATION
IN THE NORTH WEST PROVINCE**

1. INTRODUCTION

- 1.1 This report is submitted to Ms G V Mooketsi (the Complainant), The Member of the Executive Council of the North West Provincial Government responsible for Education (the MEC) and the Superintendent General for the Department of Education in the North West Province (Superintendent General) in terms of section 182(1)(b) of the Constitution of the Republic of South African, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).
- 1.2 It relates to an investigation into the alleged undue delay by officials of the Department of Education in the North West Province (the Department) to process and pay the Complainant, for services rendered as a relief educator at the Mayaeyane Primary School (the School) for the period 26 July 2007 to 13 September 2007.

2. BACKGROUND

- 2.1 The Complainant is employed as a relief educator for the Department, whenever there is a vacant post or where educators would be on special or maternity leave at various schools in the Central Region of the North West Province.

2.2 The Complainant was assigned Persal Number 90817893/PG34 as her employee number, and would from time to time sign a service level agreement with the Department whenever requested to render services as a relief educator on a temporary basis.

3. THE COMPLAINT

3.1 The Complainant approached the Public Protector in November 2007, and alleged the following:

3.1.1 She was employed at the School, in the Setlakgobi Area Project Office (A.P.O) of the North West Province by the Department, as a relief educator for the period 26 July 2007 to 13 September 2007. At the time, one of the permanent educators was on maternity leave;

3.1.2 She avers that she rendered teaching services at the School for the period in question, but that the Department has failed to pay her accordingly; and

3.1.3 The Department allegedly turned down her claim stating that, there were no funds to pay relief educators who rendered services beyond May 2007 and also, that the Department's Central Region had informed her that there was no vacant post at the School at the time of her rendering services there.

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

4.1 The Public Protector was established in terms of Chapter 9 of the Constitution as one of a number of bodies that support constitutional democracy. The operational requirements of the Public Protector are provided for by the Public Protector Act.

4.2 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 an impropriety or prejudice;

(b) to report on that conduct; and

(c) to take appropriate remedial action”

4.3 The Public Protector may at any time prior to, during or after an investigation make any appropriate recommendation that he/she deems expedient to the public body or authority affected by it.

4.4 The allegations of undue delay and maladministration made against the Department of Education falls within the powers and jurisdiction of the Public Protector to investigate.

5. THE INVESTIGATION

The investigation was conducted in terms of sections 6 and 7 of the Public Protector Act, and comprised the following:

5.1 Telephone and written enquiries to the Department;

5.2 Discussions with the Department and Complainant;

5.3 Consideration of the following legislation:

5.3.1 Employment of Educators Act, 1998.

6. INFORMATION OBTAINED FROM THE NORTH WEST DEPARTMENT OF EDUCATION ON THE ALLEGATIONS RAISED BY THE COMPLAINANT

6.1 The Acting-Superintendent General, Mr. M.A Seakamela in response¹ to an enquiry by the Public Protector informed that:

"I confirm receipt of your letter regarding the above matter. The content is noted and while I do not wish to speculate on the specific matter of Ms. Mooketsi, I would like to indicate that the general principle regarding employment of temporary educators is that for one to be employed, the school has to complete Annexure D for the filing of a vacant post which has not been advertised. Temporary educators have a fixed contract and should a need arise to extend such the Department will react accordingly.

It does happen though, under very rare instances that the school should hold on to an Educator even after expiry of the term of contract to obviate a situation where classes are without educators. Under these very rare circumstances the department will honor (sic) its obligations towards the Educator for the length of time that the Educator rendered a service, with he (sic) understanding that the formal contract has expired.

The matter of Ms. Mooketsi will be thoroughly investigated and a substantive report forwarded to your good office".

¹ Letter dated 14 July 2008.

6.2 Upon receiving no further progress reports from the Department, and despite several reminders to the Department², the Public Protector liaised telephonically with the office of the Superintendent General and was subsequently informed³ that:

“Regarding this specific employee, her contract of employment expired on the 30th June 2008, whereupon same was renewed for a further one month until 31 July 2008. All along the department fulfilled its obligation in terms of paying the salary of the employee. She was paid R17 198.51 for the period April 2008 to 1 July 2008, when her services was finally terminated. On the 11th August 2008 she was paid for her July 2008 services an amount of R8 278.

It is our consideration (sic) view that the Department of Education has no further obligation towards Ms. Mooketsi, whether in respect of a condition of service, outstanding salary or duty to employ her”.

6.2.1 The School Principal of the Mayaeyane Primary School, Mr Nthwane, supplied the Public Protector with a copy of the School attendance register where it is indicated that the Complainant signed the register for the period covering the dates between 26 July 2007 and 23 November 2007.

6.2.2 The School Principal and the Complainant confirmed that the service rendered by her for the period 14 September 2007 to 26 November 2007, was voluntary and was not covered by any service level agreement.

6.2.3 The Complainant further informed the Public Protector that, the Department employed her again between April 2008 to July 2008, to

² Letters dated 27 August 2008, 22 January 2009 and 30 April 2009.

³ Letter dated 07 July 2009.

render teaching services at the Nottingham Primary School and she was paid accordingly.

7. LEGISLATIVE FRAMEWORK

7.1 Employment of Educators Act, 1998;

Section 7(2) of the Employment of Educators Act, 1998 provides that:

“(a)

(b) *a person may be appointed in a temporary capacity for a fixed period, whether in a full-time, in a part-time or in a shared capacity”.*

8. FINDINGS

The following findings were made from the investigation:

8.1 In terms of the service level agreement signed between the Complainant and the Department she was duly employed as a relief educator at the School from 26 July 2007 to 13 September 2007. In this regard an “*Application for a Teaching Post⁴*” form was recommended and signed by the Circuit Education Officer for Makgobistadt Cluster on 3 August 2007;

8.2 According to the attendance register kept at the School the Complainant reported for work as from 26 July 2007 until she left on 26 November 2007. The service rendered for the period 14 September 2007 to 26 November 2007, being voluntary services, is included in this period;

⁴ Department of Education Application for a Teaching Post signed form bearing the Department date stamp, dated 03 August 2007 was received from the Complainant refers.

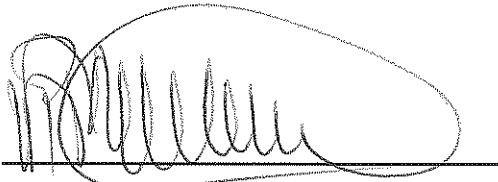
- 8.3 The response received from the Department and mentioned in paragraph 6.2 above refers to the period between April 2008 and July 2008 when the Complainant was temporarily employed by the Department at the Nottingham Primary School and paid for such services;
- 8.4 No reference and/or indication could be found that the Complainant was remunerated for the services she rendered at the Mayaeyane Primary School from 26 July 2007 to 13 September 2007; and
- 8.5 The Department failed to pay the Complainant any remuneration for services rendered as a relief teacher for the period 26 July 2007 to 13 September 2007 and accordingly the Department should pay the amount owed for the period plus interest on the amount due, calculated at the rate prescribed (at the time) by the Minister of Justice and Constitutional Development in terms of section 1(2) of the Prescribed Rate of Interest Act, 1975.

9. REMEDIAL ACTION TO BE TAKEN

In terms of Section 182(1)(b) of the Constitution, and section 6(4)(c)(ii) of the Public Protector Act, the following action is required to remedy the improper prejudice suffered by the Complainant:

- 9.1 The Superintendent-General must, as a matter of urgency, ensure that the Complainant is paid accordingly for the services rendered by her for the period 26 July 2007 to 13 September 2007, with interest on the amount due, calculated at the rate prescribed (at the time) by the Minister of Justice and Constitutional Development in terms of section 1(2) of the Prescribed Rate of Interest Act, 1975; and

9.2 The Superintendent-General must, within 6 months of the date of this report, report to the Public Protector about the implementation of the remedial action referred to in paragraph 9.1.



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

DATE: 25/02/2010

Assisted by: Mr. D Mothoagae, Investigator, Mafikeng