A COSTLY MISTAKE

Report on an investigation into allegations of failure by Sol Plaatje Local Municipality to lodge a disability claim on behalf of its employee in accordance with the disability rules of the South African Local Authorities (SALA) Pension Fund master policy

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PUBLIC PROTECTOR SOUTH AFRICA

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“A Costly Mistake”

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF FAILURE BY SOL PLAATJE LOCAL MUNICIPALITY TO LODGE A DISABILITY CLAIM ON BEHALF OF ITS EMPLOYEE IN ACCORDANCE WITH THE DISABILITY RULES OF THE SOUTH AFRICAN LOCAL AUTHORITIES (SALA) PENSION FUND MASTER POLICY
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Executive Summary

(i) "A Costly Mistake" is my final report as the Public Protector issued 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.

(ii) The report communicates my findings and appropriate remedial action I am taking in terms of section 182(1)(c) of the Constitution, following an investigation into a complaint received on 16 February 2011, from Mrs Joyce Maria Holland (the Complainant), concerning her late husband, Mr Basil Freddy Holland (the Deceased)'s pension benefits. The deceased was an employee of the Sol Plaatje Local Municipality (the Municipality). The Deceased allegedly fell sick and his medical practitioner advised that as a result of his illness, he would not be able to work again. He was allegedly advised to claim for disability and he submitted a claim application to the Municipality for processing at the South African Local Authorities (SALA) Pension Fund. However, the Municipality allegedly submitted the claim late and consequently, the Deceased's claim was rejected by SOMA Initiative (the Pension Administrator). Subsequently, the Deceased was advised to claim for early retirement benefits, but he rejected the offer. In response to the investigation, the Municipality admitted that it indeed received the claim from the Deceased for submission to the SALA Pension Fund, but that it submitted the required documentation late.

(iii) On analysis of the complaint, the following issues were considered and investigated:

(a) Whether the Municipality failed to timely notify the South African Local Authorities Pension Fund of the Deceased's disability and
failed to submit his claim for disability within 3 months from the date of his disability as required by the South African Local Authorities Pension Fund Master Policy and the Rules, and if so, whether such failure amounted to maladministration on the part of the Municipality; and

(b) If the Municipality failed to submit the Deceased’s claim timely, did such failure result in any financial prejudice to the Deceased and the Complainant?

(iv) The investigation process included correspondence, interviews with the relevant parties, and the perusal of documentation received. Applicable legislation, policies and prescripts were also considered and applied.

(v) The standard used to determine whether there had been maladministration by the Municipality and prejudice to the Complainant with regard to the alleged failure to notify the SALA Pension Fund of the Deceased’s disability is provided for in the SALA Pension Fund Master Policy at paragraph 4.1. In terms of paragraph 4.1 the Municipality was required to notify the Administrator (SALA Pension Fund) in writing immediately that an incident occurs that is likely to give rise to a claim under the Policy. The Municipality was further required to submit the Deceased’s disability claim, including all the prescribed claim documents and medical evidence with the Administrator within 3 months from the date of his disability.

(vi) The issue in dispute was whether the obligation to submit claims and to do so timeously is that of the employee or the Municipality. The Municipal Manager contended that the obligation is that of the employee and that the Municipality only assists staff in preparing and submitting claims.
(vii) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:

1) Regarding the Municipality's alleged wrongful failure to timely notify the South African Local Authorities Pension Fund of the Deceased's disability and alleged failure to submit his claim for disability within 3 months from the date of his disability as required by the South African Local Authorities Pension Fund Master Policy and the Rules, I find that:

(a) The Municipality failed to immediately notify the Administrator (South African Local Authorities Pension Fund) of the Deceased's disability when he submitted a medical certificate in that regard to it on 28 August 2008;

(aa) The Municipality's failure to immediately notify the Administrator (South African Local Authority Pension Fund) of the Deceased's disability was in violation of paragraph 4.1 of the South African Local Authorities Pension Fund Master Policy. The Municipality's failure in this regard constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6 of the Public Protector Act;

(b) The Municipality submitted the Deceased's disability claim to the Pension Fund on 19 January 2009, more than three (3) months after being informed of the Deceased's disability on 28 August 2008;
(bb) The Municipality’s failure to submit the Deceased’s disability claim, including all the prescribed claim documents and medical evidence with the Administrator (South African Local Authorities Pension Fund) within three (3) months from the Date of his Disability was also in violation of paragraph 4.1 of the South African Local Authorities Pension Fund Master Policy and Rule 9.13 of the SALA Pension Fund Rules applicable when the Deceased’s claim arose in 2008. The Municipality’s failure in this regard constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6 of the Public Protector Act;

2) Regarding whether the conduct of the Municipality prejudiced the Deceased and the Complainant, I find that:

(a) The Municipality’s failure to submit the Deceased’s claim within three (3) months resulted in the Complainant suffering financial prejudice in that to date, she has not been paid the Deceased’s benefits because to accept the termination of the Deceased’s employment service as resignation or early retirement, would result in less benefits being paid out.

(viii) The appropriate remedial action I am taking in pursuit of section 182(1)(c), with the view of placing the Complainant as close as possible to where he would have been had the improper conduct or maladministration not occurred is the following:

(a) The Municipal Manager should request Dr Baard of the Administrator (SALA Pension Fund), to quantify the amount that the
Deceased would have been entitled to as a disability benefit at the expiry of the 3 months waiting period form the date of his disability until the date of his death on 15 November 2011;

(b) The amount calculated by the Pension Fund Administrator should be the amount that the Municipality should be liable to pay to the Complainant as a lump sum payment;

(c) The Municipal Manager should write a letter of apology to the Complainant and her family for the prejudice caused due to maladministration on the part of the Municipality; and

(d) The Municipal Manager should arrange training for the Municipality's officials responsible for processing pension and disability claims to sensitise them about the processes involved in claiming for pension and disability and provide the Public Protector with a report in that regard within 60 days from the date of this report.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF FAILURE BY
SOL PLAATJE LOCAL MUNICIPALITY TO LODGE A DISABILITY CLAIM ON
BEHALF OF ITS EMPLOYEE IN ACCORDANCE WITH THE DISABILITY
RULES OF THE SOUTH AFRICAN LOCAL AUTHORITIES (SALA) PENSION
FUND MASTER POLICY

1. INTRODUCTION

1.1 "A Costly Mistake" is my final report as the Public Protector issued 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 No. 23 of 1994 (the Public Protector Act).

1.2 The report is submitted in terms of section 8(1) of the Public Protector
Act to the following persons

1.2.1 The Executive Mayor of the Sol Plaatje Local Municipality, Councillor D
Molusi;

1.2.2 The Municipal Manager of the Sol Plaatje Local Municipality, Mr G
Akharwaray; and

1.2.3 The Managing Director of the Pension Administrator, Dr D Baard.

1.3 A copy of the report is also provided to the Complainant, Mrs Joyce
Maria Holland.

1.4 The report relates to an investigation into allegations of negligence and
maladministration relating to the failure by the Sol Plaatje Local
Municipality to process a disability claim in accordance with the SALA
Pension Fund Master Policy and Rules.
2. THE COMPLAINT

2.1 On 16 February 2011, the Complainant lodged a complaint in which she alleged that her late husband, Mr Basil Freddy Holland (the Deceased) was an employee of Sol Plaatje Municipality (the Municipality) from 1 August 1982 until he was medically boarded on 15 February 2010, effective from 30 September 2009.

2.2 The Complainant alleged that prior to her husband’s death, he had been informed by his medical practitioner that as a result of his illness, he would not be able to work again, and he had been advised to submit a disability claim to the Municipality for processing at the South African Local Authorities (SALA) Pension Fund.

2.3 She advised that the Deceased indeed submitted the claim to the Municipality, but the Municipality only forwarded the claim to the SALA Pension Fund after the required three months to submit claims had expired, and as a result, the claim was rejected by the Pension Administrator.

2.4 The Complainant alleged that the Municipality offered to pay 50% of the Deceased’s pension benefits in October 2009, but she and the Deceased rejected the offer. As an alternative, the Municipality recommended that the Deceased claim for resignation or early retirement benefits, but he rejected this offer too as this would have resulted in him being paid less money than he would have had his claim been approved and he would have lost the employer’s contribution. The Complainant has to date not claimed the benefits from the Municipality as she felt that it would be prejudicial to the Deceased’s beneficiaries.
2.5 The Complainant alleged that the failure of the Municipality to process the Deceased’s claim within the required period resulted in the Deceased losing the disability benefit from the SALA Pension Fund and thus suffering prejudice.

2.6 The Complainant also alleged that the Pension Administrator would have approved the Deceased’s disability claim had it been processed accordingly and the Deceased would have been paid a lump sum made up of the employer’s and his contribution, and 75% of his monthly salary, as monthly pension payment.

2.7 The Complainant informed the Public Protector that she had been to the Municipality to seek assistance but nothing had been done except for advising her to accept resignation or early retirement benefits, hence she had decided to seek the Public Protector’s assistance.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector was established under section 181(1) (a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2 Section 182(1) of the Constitution provides that the Public Protector has the power 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, to report on that conduct and take appropriate remedial action. Section 182(2) directs that the Public Protector has additional powers prescribed in legislation.

3.3 The Public Protector is given power by the Public Protector Act to investigate and redress maladministration and related improprieties in the
conduct of state affairs and to resolve the disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.4 The Sol Plaatje Local Municipality is an organ of state and its conduct amounts to conduct in state affairs, therefore the matter falls within the ambit of the Public Protector's mandate.

3.5 The Public Protector's power and jurisdiction to investigate and take appropriate remedial action was not disputed by any of the parties.

4. THE ISSUES CONSIDERED AND INVESTIGATED BY THE PUBLIC PROTECTOR

4.1 On analysis of the complaint, the following issues were considered and investigated:

(a) Whether the Municipality failed to timely notify the South African Local Authorities Pension Fund of the Deceased's disability and failed to submit his claim for disability within 3 months from the date of his disability as required by the South African Local Authorities Pension Fund Master Policy and the Rules; and

(b) If the Municipality failed to submit the Deceased's claim in time, did such failure result in any financial prejudice to the Deceased and the Complainant?

5. THE INVESTIGATION

5.1 Scope and methodology
5.1.1 The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act, 1994. The process included correspondence, interviews with the relevant parties, and the perusal of documentation received. Applicable legislation, policies and prescripts were also considered and applied. The following questions were asked:

5.1.2 *What happened?* This entails a reconstruction of probable events that led to the Complaint. All evidence, including oral accounts, correspondence and other documents is used to determine, on a balance of probabilities, what happened;

5.1.3 *What should have happened?* This focuses on the requirements of the Constitution, the law and good practice regarding administrative actions of the state;

5.1.4 *Is there a discrepancy between what happened and what should have happened and does such discrepancy constitute improper conduct or maladministration?* This compares the standard of conduct that was appropriate in the circumstances and the standard that actually obtained, which led to the Complaint.

5.1.5 If there was improper conduct or maladministration by the state, *did the Complainant suffer prejudice?*

5.1.6 If prejudice was suffered, what would it take to place the Complainant as close as possible to where she would have been had the state acted properly or without maladministration in the first instance?
5.2 Key sources of information

5.2.1 Interviews and Meetings

5.2.1.1 Telephone conference with Ms Celeste Schalit of House Risk Assessors (HRA) held on 07 April 2011;

5.2.1.2 Meeting with the Human Resources Manager, Mr A Van Niekerk and the Corporate Services Director, Ms L Fouche, on 27 July 2011;

5.2.1.3 Meeting with Mr Molaodi Kgatlane, from the SALA Pension Fund, on 3 June 2013; and

5.2.1.4 Meeting with the acting Human Resources Manager, Mr T E Phuti, on 15 August 2013.

5.2.2 Correspondence

5.2.2.1 Complaint letter dated 16 February 2011;

5.2.2.2 Email dated 15 March 2011 from the Public Protector to Ms Fouche;

5.2.2.3 Letter dated 31 March 2011, with attached documents, from Mr Van Niekerk to the Public Protector.

5.2.2.4 Letter dated 20 April 2011, from the Public Protector, to Mr Van Niekerk enquiring about the alleged failure to comply with the SALA Pension Fund Master Policy, and requesting proof of communication from the Municipality to the Pension Administrator between the Deceased’s last date of work and 21 May 2009;
5.2.2.5 Letter dated 25 October 2011, from the Public Protector to Dr Baard, outlining the background of the complaint and requesting his advice on the policy decision that ought to have been taken by the Pension Administrator under the circumstances;

5.2.2.6 Email dated 07 December 2011, from the Public Protector to Dr Baard;

5.2.2.7 Email dated 22 February 2012, from Dr Baard to the Public Protector;

5.2.2.8 Email dated 05 March 2012 from the Public Protector to Dr Baard, Mr Frikkie Van Zyl of Prosperity Management Africa and Ms Schalit, seeking clarity on certain issues;

5.2.2.9 Email dated 13 March 2012, from Mr Frikkie Van Zyl responding to the Public Protector’s email;

5.2.2.10 Email dated 29 May 2013, from the Public Protector to Mr Molaodi Kgatlane requesting a meeting to explain the role of the SALA Pension Fund in this matter.

5.2.2.11 Minutes of a meeting held on 15 August 2013, with Mr Phuti;

5.2.2.12 A letter from Discovery Life (Group Risk Life Plan-Funeral scheme ) dated 4 September 2009 confirming payment of an amount of R111 642, made in respect of the Complainant; and

5.2.2.13 A letter from Discovery Life (Group Life Benefit) dated 09 March 2012 confirming payment of an amount of R 131 496, to the Complainant.

5.2.2.14 A letter of response from the Municipality to our section 7(9) letter dated 22 May 2014.
5.2.3 Legislation and other prescripts

5.2.3.1 The Claim Notification and Recognition of Disability Rules of the SALA Pension Fund Master Policy

6. EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION

6.1 The Complainant's submission

6.1.1 The Complainant alleged that:

6.1.1.1 The Deceased was an employee of the Municipality when he fell sick and his medical practitioner advised him to claim for permanent disability from the Municipality as he would not be able to continue working.

6.1.1.2 The Deceased submitted the claim on 28 August 2008, but the Municipality only forwarded the claim to the SALA Pension Fund after the required three months to submit claims had expired, and subsequently, the Pension Administrator rejected the claim.

6.1.1.3 The Municipality offered to pay 50% of the Deceased's pension benefits, and recommended that alternatively, the Deceased could claim for resignation or early retirement benefits, but he rejected both offers too as this would have resulted in him being paid less money than he would have had his claim been approved.

6.1.1.4 The Deceased died on 15 November 2011 and since then, she had been to the Municipality to seek assistance but nothing had been
done except to advise her to accept resignation or early retirement benefits.

6.1.1.5 She has to date not claimed the benefits from the Municipality as she felt that it would be prejudicial to the Deceased’s beneficiaries.

6.2 The Municipality’s response

6.2.1 An e-mail dated 15 March 2011 was sent to Ms Fouche, to which Mr Van Niekerk responded on 31 March 2011, explaining that:

6.2.1.1 On 28 August 2008, the Deceased submitted to the Human Resources (HR) department of the Municipality, a sick leave form with a medical certificate from his medical practitioner recommending his boarding due to disability. The Maintenance Section, where the Deceased used to work, was informed of the process and the necessary forms that needed to be completed and returned to HR for the submission of the disability claim;

6.2.1.2 On 03 December 2008, the Municipality received the Deceased’s medical examination form completed by a specialist whose examination of the Deceased confirmed the diagnosis of Dr Van Wyk, the Deceased’s general practitioner;

6.2.1.3 At this point, the Municipality had not received a medical examination form from Dr Van Wyk, and on 17 December 2008, the Deceased informed the Municipality that Dr Van Wyk would be overseas for three months and he could only obtain the form when Dr Van Wyk returned.

6.2.2 In any event, as stated in the Municipality’s letter dated 31 March 2011, "at this point the documentation was already late as in accordance with
the rules of the fund, the application should reach the fund within 3 (three) months from the date of disability”.

6.2.3 Furthermore, the Employer Disability form was completed only on 15 January 2009 as the Deceased’s supervisor was on leave during December 2008, and he was the only one who knew the Deceased’s job specification.

6.2.4 On 19 January 2009, the Deceased insisted on collecting the documentation from the Municipality and posting them personally.

6.2.5 The Municipality submitted the following additional documentation:

(a) Claimant consent form;

(b) Claimant appeal form;

(c) Notification of impending disability form;

(d) Medical certificates; and

(e) Sick leave record.

6.2.6 The employer disability form was only completed on 15 January 2009 as the Deceased’s Supervisor was on leave during December 2008 and on 26 June 2009, the Pension Administrator declined the claim on the basis that it was submitted late.

6.2.7 On 12 February 2010, the Municipality received confirmation of the payment of R111 624 by Discovery Life Insurance which was for Capital Disability Benefit. Based on this, the Municipality stopped further
payment of the Deceased’s salary as no further contributions could be made. The Deceased then received a final payment of R3 847.92 from the Municipality for salary payments which were due to him.

6.2.8 On 09 March 2010, the Complainant and the Deceased requested the Municipality to contact the SALA Pension Fund for review of its decision. The Municipality wrote a letter to the Pension Administrator providing the reasons for the delay in submitting the necessary forms. Another similar letter dated 23 June 2010 followed, but the status of the claim remained repudiated.

6.2.9 Subsequently, the Municipality informed the Deceased that it had done all it could to assist in this matter, but its attempts had been unsuccessful.

6.2.10 On 20 April 2011, this Office wrote a letter to Mr Van Niekerk raising the issue of failure to comply with the SALA Pension Fund Master Policy and requesting proof of communication from the Municipality to the Pension Administrator between the Deceased’s last date of work and 21 May 2009.

6.2.11 On 27 July 2011, an investigator met with Ms Fouche and Mr Van Niekerk who confirmed that the Deceased’s last date of work was 03 June 2008. They stated however, that HR had only received the sick leave application form with the medical certificate from the Maintenance Section on 28 August 2008, a few days before the end of the three-month period. The medical certificate recommended total and permanent disability. Since HR knew the implications thereof, it immediately provided the Maintenance Section with the necessary forms to be completed. Notwithstanding the urgency, the Maintenance Section
delayed in returning the forms to HR, which delay was exacerbated by the unavailability of Dr Van Wyk and the Deceased's Supervisor.

6.2.12 The investigator advised the Municipality that despite the delay in completing the forms, a mere written notification would have been sufficient, as it would have interrupted the three-month period. The Municipality argued that no previous claim had ever been repudiated based on this prescription period. Furthermore, that the SALA Pension Fund had not trained municipal officials in dealing with these claims therefore the Municipality disputed liability on its part.

6.2.13 In response to the Provisional Report on this issue, the Municipal Manager Mr Ackharwaray contended that he found no failure on the part of the Municipality in that:

6.2.13.1 The obligation to submit claims and to do so timeously is that of the employee and that the Municipality only assist staff in preparing and submitting claims as the relationship between the employee and the Pension Fund is a direct and private one.

6.2.13.2 The deceased was declared unfit by Doctor Van Wyk on 11 August 2008. The applications for benefits are only considered when forms are submitted in full (i.e. properly completed). The Doctor's report outlining the medical condition was completed by Dr Mineur only on 3 December 2008. The deceased's attending doctor (Dr. Van Wyk) was apparently overseas and that the forms were only completed later on 17 December 2008. The application was already outside the time frames as it should have been lodged by 8 November 2008.
6.2.13.3 The claim was submitted on 19 January 2009 although the
documents were received by Sol Plaatje Municipality on 17
December 2008. No fault can be ascribed to Sol Plaatje
Municipality as the effective cause of the delay was the delayed
medical reports.

6.2.13.4 The report was only completed on 3 December 2008 and therefore
the three months only commenced then and expired in March 2009
and thus it could be said that the claim was submitted timeously.

6.2.13.5 The rejection of the claim by the fund on the basis of lateness could
not be justified as the fund was not prejudiced in any way. Mr
Ackharwaray suggested that the matter be referred to the relevant
Ombudsman for the Pension Fund Industry.

6.3 House Risk Assessors’ (HRA) response

6.3.1 Ms Schait of HRA was also interviewed on 07 April 2011. She stated that
the basic procedural rule was that the employer should notify HRA within
three months from the date of the possible disability claim. She advised
that there were no formalities regarding notification in that the employer
could do this by a simple letter disclosing the particulars of the employee
and the last date of work, and that the letter could be faxed before the
claim forms were completed in order to interrupt the three months. She
explained that since the Deceased’s last date of work was 3 June 2008,
the notification should have been received within three months of that
date.
6.4 The Pension Administrator's response

6.4.1 Dr Baard of the Pension Administrator disputed the Municipality's allegation of inconsistency as according to him, the Rules of the SALA Pension Fund were quite clear in respect of late submissions in that the employer must lodge a formal claim in writing in accordance with the period set out in the policy. According to Dr Baard the period set out in the policy is three (3) months.

6.4.2 Dr Baard further advised that extensive training documents and information communiqués including training CDs had been sent to all municipalities by Prosperity Management Africa years ago; thus the Municipality's contention that it was unaware of the procedure was baseless. He also stated that Prosperity Management Africa and the Pension Administrator had been handling the SALA Pension Fund disability cases for at least five years prior to the present case, and had dealt with numerous cases from the Municipality during this time.

6.4.3 Dr Baard further stated that in fact, there had been a number of cases where an application had been repudiated on the basis of late submission, although he could not confirm whether there had been such a case from the Municipality. He acknowledged that some leniency was exercised in some instances, but applications submitted 11 months late were unacceptable.

6.5 Further responses received

6.5.1 An e-mail dated 05 March 2012, was sent to Dr Baard, Mr Van Zyl of Prosperity Management Africa and Ms Schalit of HRA, to seek clarity on:
(a) The date of the training of the Municipality's officials and the attendance register;

(b) Examples of informative materials provided to the Municipality and proof of receipt;

(c) Whether there had been a similar case handled by the Municipality; and

(d) The difference between the resignation and early retirement benefits and the disability benefits had the claim for the disability benefit been approved.

6.5.2 On 13 March 2012, Mr Van Zyl responded that in terms of the insurance agreement with the SALA Pension Fund, Prosperity Management Africa was not required to train municipal officials, and when Prosperity Management Africa took over the insurance portfolio in July 2004, it had informed the municipalities accordingly by letter. When the agreement with the SALA Pension Fund was renewed in July 2005, a covering letter as well as a training CD was mailed to all municipal HR Managers.

6.5.3 On 15 August 2013, an investigator met with the acting HR Manager, Mr Phuti, and he confirmed that the Deceased was a member of the SALA Pension Fund and that he was a member of the Sol Plaatje Municipality Group Risk Life Plan (Funeral Scheme) as well as Sol Plaatje Group Life.

7. EVALUATION OF THE EVIDENCE OBTAINED DURING THE INVESTIGATION

7.1 Whether the Municipality failed to timely notify the South African Local Authorities Pension Fund of the Deceased's disability and
failed to submit his claim for disability within 3 months from the date of his disability as required by the South African Local Authorities Pension Fund Master Policy and the Rules

7.1.1 It is common cause that the Deceased was employed by the Municipality. It is also common cause that he was a member of the SALA Pension Fund. It is also common cause that the Deceased submitted a sick leave form with a medical certificate from his medical practitioner recommending his boarding due to disability to the Municipality's Human Resources (HR) department on 28 August 2008. It is further common cause that the Deceased's last day of work was on 3 June 2008.

7.1.2 In his response to the Provisional Report, the Municipal Manager conceded that the Municipality submitted the claim to the Pension Fund on 19 January 2009 although the documents were received by the Municipality on 17 December 2008. It is not disputed that the Deceased was declared disabled by his attending doctor.

7.1.3 Initially the Municipality did not dispute that it had an obligation to submit the Deceased's claim to SALA Pension Fund within 3 months from the date on which he submitted a medical certificate from his medical practitioner recommending his boarding due to disability. However, in his response to the Provisional Report the Municipal Manager contended that the obligation to submit claims and to do so timeously is that of the employee and that the Municipality only assists staff in preparing and submitting claims. I will deal with this issue in the legal and regulatory framework as it is a matter of law.

7.1.4 The Municipal Manager further contended that no fault can be ascribed to the Municipality as the effective cause of the delay was the delayed medical reports. However, the Municipal Manager has failed to explain
why the Municipality did not notify the Pension Fund within the stipulated 3 months about the anticipated delay to submit the medical reports. I will also deal with this issue in the legal and regulatory framework as it is also a matter of law.

7.1.5 Even though it is noted that the Municipality contended that the Deceased had submitted the sick leave application form with the medical certificate on 28 August 2008, which was a few days before the expiry of the 3 months prescription period, it has been established from HRA that the Municipality could have notified HRA by a simple faxed letter disclosing the particulars of the employee and the last date of work before the claim forms were completed in order to interrupt the three (3) months prescription period.

7.1.6 The contention by the Municipal Manager that applications for benefits are only considered when forms are submitted is contrary to the SALA Pension Fund Master Policy which only requires a notification. The documents could be provided at a later stage when the Fund has been notified.

7.1.7 The Municipality’s contention that it was waiting for all the documentation before submitting the application is rejected because the SALA Pension Fund Rules permit provisional notification of a claim in circumstances where “an incident occurs that is likely to give rise to a claim”. This notification does not require any accompanying medical specialist report or significant input from either the employer or the claimant.

7.1.8 Contrary to the Municipality’s contention that it was not aware of the procedure involved in disability claims, the evidence of Dr Baard indicates that the Municipality was indeed aware of the procedure involved in disability claims as extensive training documentation,
information communiqués including training CDs were provided to all municipalities by Prosperity Management Africa years ago. The evidence of Dr Baard further indicates that numerous municipalities including Sol Plaatje Local Municipality had previously submitted claims in accordance with the rules of SALA Pension Fund.

7.1.9 The Municipal Manager further contended that the relationship between the employee and the Pension Fund is a direct and private one. The contention by the Municipal Manager in this regard is misconstrued as the pension contributions from the deceased’s salary were deducted by the Municipality and paid to the Pension Fund. The Municipality was therefore part of the triangular relationship which included itself, the deceased and the Pension Fund as recognised by the SALA Pension Fund Master Policy.

7.1.10 Therefore the Municipality was under an obligation to notify the Pension Fund about the deceased’s disability and the likelihood of the medical reports being submitted late.

7.2 If the Municipality failed to submit the Deceased’s claim in time, did such failure result in any financial prejudice to the Deceased and the Complainant?

7.2.1 On 26 June 2009, the Pension Administrator declined the claim on the basis of late submission, and in the circumstances, the Deceased’s Pension benefits remain unpaid at this point.

7.2.2 The Municipal Manager contended that the rejection of the claim by the Fund on the basis of lateness could not be justified as the Fund was not prejudiced in any way and further suggested that the matter be referred to the relevant Ombudsman for the Pension Fund Industry.
7.2.3 The Municipal Manager's contention in this regard is rejected on the basis that the Municipality by being a member of the SALA Pension Fund committed itself to abide by its policy and rules. Therefore the Municipality cannot escape the consequences of its failure to act in accordance with that policy and rules simply because there is an Ombudsman in the Pension Fund Industry which deals with complaints against pension funds.

8 LEGAL AND REGULATORY FRAMEWORK

8.1 Regarding the Municipality's alleged wrongful failure to timely notify the South African Local Authorities Pension Fund of the Deceased's disability and alleged failure to submit his claim for disability within 3 months from the date of his disability as required by the South African Local Authorities Pension Fund Master Policy and the Rules

8.1.1 The issue regarding who should notify the SALA Pension Fund of the Deceased's disability and within what timelines is regulated by the Claim Notification and Recognition of Disability provisions of the SALA Pension Fund's Master Policy and the Rules applicable from 1 November 2006 until 1 October 2008 (the Rules were revised with effect from 1 October 2008 and the latest revised Rules are effective from 1 July 2010).

8.1.2 Paragraph 4.1 of the SALA Pension Fund's Master Policy provides that "the Policyholder, Employer and/or Life Insured (SALA Member) shall notify the Administrator in writing immediately that an incident occurs that is likely to give rise to a claim under this Policy. Formal written notification must also be provided to the Administrator within 3 (three) months in the event of-
4.1 (1) "a member being absent from work, unless on authorized holiday, for a period of at least 3 (three) weeks.

8.1.2.1 In this regard the employer is obliged to complete a Notification of Impending Disability Form (Ref No 200). The Form specifically states on its cover that it is "To be completed by the Employer". The Form further lists the circumstances under which it should be completed. One of the listed circumstances is "where a member wishes to apply for a disability benefit or has been 'boarded' by his attending medical practitioner, and the Employer is preparing the initial claim package for submission".

8.1.2.2 The Notification of Impending Disability Form (Ref No 200) provides for a check list of all available medical certificates, sick leave notes and medical reports. The Notification of Impending Disability Form (Ref No 200) specifically states that the submitted details referred to above serve to notify the Insurer and the Administrator of a potential or pending disability claim.

8.1.3 Paragraph 4.1 of the SALA Pension Fund's Master Policy further provides that "any disability claim, including all the prescribed claim documents and medical evidence shall be lodged with the Administrator within 3 months from the Date of Disability".

8.1.3.1 In this regard the employer is obliged to complete an Employer: Disability Claim Form (Ref No 201) and forward it to the Administrator. The Employer: Disability Claim Form (Ref No 201) has to be accompanied by the following documents:

(i) Disability Claim Form Ref No 202 – Completed by the Claimant;
(ii) Medical Specialist Examination Form Ref No 203 – Completed by the Claimant’s Specialist;

(iii) Consent Form Ref No 204 – Signed by the Claimant;

(iv) Certified copy of the Claimant’s Identity Document; and

(v) All available supporting Medical reports, X-rays, Special Investigations etc.

8.1.3.2 The Disability Claim Form Ref No 201, Disability Claim Form Ref No 202, Medical Specialist Examination Form Ref No 203 and Consent Form Ref No 204 specifically state on their covers that they have to be forwarded by the Employer via registered post to the Administrator.

8.1.4 Rule 9.13 of the SALA Pension Fund Rules applicable when the Deceased’s claim arose in 2008, provided that “the EMPLOYER must lodge a formal claim in writing with the UNDERWRITER in respect of disability and death claims in accordance with the period set out in the policy…”

8.1.5 Paragraph 4.2 provides that “a Life Insured shall be regarded as disabled and entitled to his benefit as from the expiry of his waiting period of 3 (three) months from the Date of Disability if, prior to the attainment of the Normal Retirement Age and in the reasonable opinion of the Insurer, injury or illness has rendered him totally incapable of engaging in his own occupation, provided that:

4.2 (4) “The Insurer was notified of the claim within 3 (three) months from the Date of Disability and such claim documents, other documentary evidence and/or information as the Insurer may require has been provided.
9. ANALYSIS AND CONCLUSION

9.1 Whether the Municipality failed to timely notify the South African Local Authorities Pension Fund of the Deceased’s disability and failed to submit his claim for disability within 3 months from the date of his disability as required by the South African Local Authorities Pension Fund Master Policy and the Rules

9.1.1 In terms of paragraph 4.1 of the SALA Pension Fund Master Policy, the Municipality (Employer) was obliged to notify the Administrator of the South African Local Authorities Pension Fund in writing immediately of the Deceased’s impending disability when he submitted a medical certificate declaring him unfit to perform his duties to it on 28 August 2008. The medical certificate was issued by Dr Van Wyk on 11 August 2008.

9.1.2 Paragraph 4.1 of the SALA Pension Fund Master Policy specifically required that the Policyholder, Employer and/or Life Insured (SALA Member) notify the Administrator in writing immediately that an incident occurs that is likely to give rise to a claim under the policy.

9.1.3 In terms of the SALA Pension Fund Rules, the Municipality was supposed to have completed a Notification of Impending Disability Form (Ref No 200) and forwarded it to the Administrator immediately when it received the Deceased’s medical certificate on 28 August 2008. Since the Notification of Impending Disability Form (Ref No 200) specifically states that the details relating to all available medical certificates, sick leave notes and medical reports serve to notify the Insurer and the Administrator of a potential or pending disability claim, the Municipality did not have to wait for the delayed medical reports as contended by the Municipal Manager before at least notifying the Administrator of the
Deceased's impending disability on the basis of the available medical certificate.

9.1.4 Although it is accepted that Paragraph 4.1 of the SALA Pension Fund Master Policy specifically imposes an obligation on the Policyholder, Employer and/or Life Insured to notify the Administrator in writing immediately that an incident occurs that is likely to give rise to a claim under the policy, the existence of the Notification of Impending Disability Form (Ref No 200) specifically marked "To be completed by Employer" places the ultimate obligation to notify the Administrator with the "Employer" in this case the Municipality.

9.1.5 It has been established in the evidence that the Municipality failed to immediately notify the Administrator of the Deceased's impending disability as required by paragraph 4.1 of the SALA Pension Fund Master Policy.

9.1.6 Paragraph 4.1 of the SALA Pension Fund Master Policy further provides that any disability claim, including all the prescribed claim documents and medical evidence shall be lodged with the Administrator within 3 months from the Date of Disability. On proper construction of this provision, the Municipality was also obliged to lodge the Deceased's disability claim, including all the prescribed claim documents and medical evidence with the Administrator within 3 months from the Date of the Deceased's Disability.

9.1.6.1 This interpretation is informed by the fact that the Disability Claim Form Ref No 201, Disability Claim Form Ref No 202, Medical Specialist Examination Form Ref No 203 and Consent Form Ref No 204 specifically state on its covers that they have to be forwarded by the Employer via registered post to the Administrator.
9.1.6.2 It then follows that the ultimate obligation to lodge the Deceased's disability claim, including all the prescribed claim documents and medical evidence with the Administrator within 3 months from the Date of the Deceased's Disability rested with the "Employer" in this case the Municipality.

9.1.7 Rule 9.13 of the SALA Pension Fund Rules applicable when the Deceased's claim arose in 2008, provided that "the EMPLOYER must lodge a formal claim in writing with the UNDERWRITER in respect of disability and death claims in accordance with the period set out in the policy..."

9.1.7.1 Therefore the unequivocal ultimate responsibility to submit the Deceased's disability claim with the Administrator within the stipulated 3 months from the date of his disability rested with the Municipality.

9.1.8 The Municipal Manager conceded that the Municipality submitted the Deceased's claim to the Pension Fund on 19 January 2009 although the documents were received by the Municipality on 17 December 2008. It is an inevitable consequence that the Municipality's failure to lodge the Deceased's disability claim with the Administrator within the stipulated three (3) months in terms of Paragraph 4.1 of the SALA Pension Fund Master Policy and Rule 9.13 of the SALA Pension Fund Rules applicable when the Deceased's claim arose in 2008, would result in the Insurer rejecting the claim. Regrettably nothing stopped the Municipality from lodging the Deceased's disability claim within the stipulated 3 months, and indicating to the Administrator that there were outstanding medical records which would be submitted upon receipt to interrupt prescription.
9.1.9 The Municipality's failure to immediately notify the Administrator about the Deceased's disability when he submitted a medical certificate in that regard on 28 August 2008 and the failure to submit his claim to the Administrator within 3 months from the Date of his Disability was improper.

9.2 If the Municipality failed to submit the Deceased's claim in time, did such failure result in any financial prejudice to the Deceased and the Complainant?

9.2.1 It follows from the above that failure to submit the notice of the Deceased's disability when he submitted a medical certificate in that regard on 28 August 2008 and the failure to submit his claim to the Administrator within 3 months from the Date of his Disability was the direct cause of the rejection of the Deceased's claim from the SALA Pension Fund. In the circumstances, this rejection has resulted in the possibility that the Deceased's beneficiaries would lose out on the full benefits they are entitled to due to the Deceased's disability and subsequent death.

9.2.2 The Municipality as a member of the SALA Pension Fund had an obligation to abide by the SALA Pension Fund Master Policy and Rules. The Municipality's failure to abide by the SALA Pension Fund Master Policy and Rules has resulted in potential prejudice to the Deceased's beneficiaries.

10. FINDINGS

Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:
10.1 Regarding the Municipality's alleged wrongful failure to timely notify the SALA Pension Fund of the Deceased's disability and alleged failure to submit his claim for disability within 3 months from the date of his disability as required by the SALA Pension Fund Master Policy and the Rules, I find that:

10.1.1 The Municipality failed to immediately notify the Administrator (SALA Pension Fund) of the Deceased's disability when he submitted a medical certificate in that regard to it on 28 August 2008;

10.1.1.1 The Municipality's failure to immediately notify the Administrator (SALA Pension Fund) of the Deceased's disability was in violation of paragraph 4.1 of the SALA Pension Fund Master Policy. The Municipality's failure in this regard constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6 of the Public Protector Act;

10.1.2 The Municipality submitted the Deceased's disability claim to the Pension Fund on 19 January 2009, more than three (3) months after being informed of the Deceased's disability on 28 August 2008;

10.1.2.1 The Municipality's failure to submit the Deceased's disability claim, including all the prescribed claim documents and medical evidence with the Administrator (SALA Pension Fund) within three (3) months from the Date of his Disability was also in violation of paragraph 4.1 of the SALA Pension Fund Master Policy and Rule 9.13 of the SALA Pension Fund Rules applicable when the Deceased's claim arose in 2008. The Municipality's failure in this regard constitutes improper conduct as envisaged in section 182(1) of the Constitution.
and maladministration as envisaged in section 6 of the Public Protector Act;

10.2 Regarding whether the conduct of the Municipality prejudiced the Deceased and the Complainant, I find that:

10.2.1 The Municipality's failure to submit the Deceased's claim within three (3) months resulted in the Complainant suffering financial prejudice in that to date, she has not been paid the Deceased's benefits because to accept the termination of the Deceased's employment service as resignation or early retirement, would result in less benefits being paid out.

11. REMEDIAL ACTION

11.1 The appropriate remedial action I am taking in pursuit of section 182(1)(c), with the view of placing the Complainant as close as possible to where he would have been had the improper conduct or maladministration not occurred is the following:

11.1.1 The Municipal Manager should request Dr Baard of the Administrator (SALA Pension Fund), to quantify the amount that the Deceased would have been entitled to as a disability benefit at the expiry of the 3 months waiting period form the date of his disability until the date of his death on 15 November 2011;

11.1.2 The amount calculated by the Pension Fund Administrator should be the amount that the Municipality should be liable to pay to the Complainant as a lump sum payment; and
11.1.3 The Municipal Manager should write a letter of apology to the Complainant and her family for the prejudice caused due to maladministration on the part of the Municipality.

12. MONITORING

I will require:

12.1 An implementation plan from the Municipal Manager indicating how the remedial action referred to in paragraph 11 above will be implemented within 30 days from the date of this report;

12.2 A progress report from the Municipal Manager within 30 days of submission of the implementation plan referred to above; and

12.3 The Public Protector will monitor the implementation of the remedial action taken in paragraph 11 above at regular intervals.

ADV. T. N. MADONSELA
PUBLIC PROTECTOR OF THE REPUBLIC OF SOUTH AFRICA
DATE: 11/07/2014
Assisted by:
M.J. Seitsang, Senior Investigator and Adv. B. Mkumatele, Investigator
Northern Cape