
PUBLIC PROTECTOR
SOUTH AFRICA

REPORT No. 17 of 2018/19
ISBN No 978-1-928366-73-7

"Allegations of improper conduct and victimisation towards the alleged whistle-blower in the matter between Mr Thuso Bloem and Greater Taung Local Municipality, North West Province"

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND VICTIMISATION OF ALLEGED WHISTLE-BLOWER, MR THUSO BLOEM, BY THE GREATER TAUNG LOCAL MUNICIPALITY RESULTING IN HIS UNFAIR SUSPENSION AND CONSEQUENT DISMISSAL
INDEX

Executive Summary

1. INTRODUCTION

2. THE COMPLAINT

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

4. THE INVESTIGATION

5. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

6. FINDINGS

7. REMEDIAL ACTION

8. MONITORING

3
8
9
12
19
23
39
40
41
Executive Summary

(i) This is my report 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 the outcomes of an investigation into allegations of unfair treatment and victimisation of alleged whistle-blower, Mr Thuso Bloem (the Complainant), by the Greater Taung Local Municipality (the Municipality) resulting in his unfair suspension and consequent dismissal.

(iii) In the main the Complainant alleged that the former Acting Municipal Manager, Mr Mpho Mofokeng, improperly and unlawfully suspended and dismissed him following him making a protected disclosure to the then Mayor, Councillor Makgalemele, regarding what he considered to be irregular procurement activities. These allegedly involved Mr Mofokeng’s payment and signing of his own travelling claims before he could travel which was against the Municipal Supply Chain Management Policy and repairing his own personal car at the expense of the Municipality. Mr Mofokeng subjected him to occupational detriment by unduly suspending and later dismissing him based on false charges, whereas the real reason for his dismissal was his whistle-blowing.

(iv) The Municipality disputed that the Complainant was ever subjected to occupational detriment.

(v) On analysis of the complaint, the following issues were identified and investigated:

(a) Whether the Municipality improperly suspended and later dismissed the Complainant in retaliation against his protected disclosure regarding suspected corruption, conflict of interest, maladministration and related procurement irregularities within the Municipality by the former Municipal Manager of the
Greater Taung Local Municipality, Mr Mpho Mofokeng, amounting to an occupational detriment as envisaged in the Protected Disclosures Act, 2000 (PDA); and

(b) Whether the actions of the Municipality in the circumstances caused the Complainant to suffer any prejudice.

(vi) Key laws and policies taken into account to determine if there had been maladministration by the Municipality and prejudice to the Complainant were principally those imposing administrative standards that should have been complied with by the Municipality or its officials when dealing with this complaint. These are the following:

(a) The PDA provides for procedures in terms of which employees in both the private and public sector may disclose information regarding unlawful and irregular conduct of their employers or other employees in the employ of their employers and to provide for protection of employees who make a disclosure which is protected in terms of this Act.

(vii) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:

(a) Regarding whether the Municipality improperly suspended and later dismissed the Complainant in retaliation against his protected disclosure regarding suspected corruption, conflict of interest, maladministration and related procurement irregularities within the Municipality by the former Municipal Manager of the Greater Taung Local Municipality, Mr Mpho Mofokeng, amounting to an occupational detriment as envisaged in the Protected Disclosures Act, 2000:

(aa) The allegation that the Municipality improperly suspended and later dismissed the Complainant in retaliation against his protected disclosure regarding suspected corruption, conflict of interest, maladministration and related
procurement irregularities by the former Municipal Manager, Mr Mpho Mofokeng, amounting to an occupational detriment as envisaged in the PDA is substantiated.

(bb) The Complainant reported a protected disclosure to the Municipality which led to him being subjected to an occupational detriment when he was unlawfully suspended and later dismissed by Mr Mofokeng, the former Municipal Manager.

(cc) The conduct of the Municipality amounts to a contravention of section 3 of the PDA, which provides that “no employee may be subjected to any occupational detriment by his or her employer on account, or partly on account of having made a protected disclosure.”

(dd) The PDA is not intended to correct or reverse occupational detriment, but its objectives are to prevent an employee to be subjected to such occupational detriment.

(ee) Accordingly, the conduct of Cllr Makgalemele and Mr Mofokeng constitutes improper conduct as envisaged in section 182(1) of the Constitution, maladministration and abuse of power as envisaged in section 6(4)(a)(i) and (ii) of the Public Protector Act.

(b) Whether the actions of the Municipality in the circumstances caused the Complainant to suffer any prejudice:

(aa) The allegation that the Complainant was prejudiced as a result of the Municipality's conduct is substantiated.

(bb) The Complainant lost his employment as a result of his unlawful suspension and subsequent dismissal by the Municipality. He suffered immense financial, emotional and social prejudice mainly, loss of remuneration over the past five years and eight months, financial expenses relating to fighting his intended
discharge and dismissal mainly in the form of legal fees, transport and communication costs.

(cc) The Municipality is found to have breached section 3 of the PDA and therefore section 4 remedies referred to in the PDA are applicable.

(viii) In the light of the above findings, I am taking the following remedial actions as contemplated in section 182(1)(c) of the Constitution:

**The Municipal Manager**

(a) The Municipal Manager must, within 30 working days from the date of this report, ensure that the Complainant is reinstated to the same position or a similar position he held prior to his dismissal.

(b) The Municipal Manager must, within 60 working days from date of the report, ensure that the Complainant is paid all remuneration that would have accrued to him had he not been dismissed, having taken into account the annual increase together with interest calculated at the applicable rate as prescribed by the Minister of Justice and Constitutional Development in terms of section 1 (2) of the Prescribed Rate of Interest Act No. 55 of 1975.

(c) The Municipal Manager must, within 30 working days from the date of this report; write a letter of apology to the Complainant for the prejudice caused to him and his family.

(d) The Municipal Manager must, within 15 working days from the date of publication of this report, ensure that this report is tabled before the Municipal Council.
The Greater Taung Local Municipal Council

(e) Municipal Council must, within 90 working days of publication of this report, ensure that it has measures in place to deal with employees' disclosures. These procedures should be set out in a Municipal policy which should be made available to all its employees. The purpose of the said whistleblowing policy should ultimately be to create a culture of openness and accountability without fear of reprisals or occupational detriment to ensure that employees report knowledge of any irregularities so that management can take the necessary steps to investigate and/or deal with those irregularities identified.

(f) The Municipal Council must, within 60 working days of publication of this report, institute civil action against all municipal officials, whether still in the employ of the Municipality or not, to claim this wasteful expenditure to be incurred by the State in reimbursing the Complainant.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND VICTIMISATION OF ALLEGED WHISTLE-BLOWER, MR THUSO BLOEM, BY THE GREATER TAUNG LOCAL MUNICIPALITY RESULTING IN HIS UNFAIR SUSPENSION AND CONSEQUENT DISMISSAL

1. INTRODUCTION

1.1 This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and published in terms of section 8(1) of the Public Protector Act, 23 of 1994 (the Public Protector Act).

1.2 The report is submitted in terms of section 8(3) of the Public Protector Act to the following:

1.2.1 The Member of the Executive Council (MEC) for Local Government and Human Settlements, Honourable FG Gaolaolwe;

1.2.2 The Director-General of the North West Provincial Government, Dr L Sebego;

1.2.3 The Head of Department of Local Government and Human Settlements, Mr E Motoko (HOD);

1.2.4 The Speaker of the Greater Taung Municipal Council, Councillor (Cllr) EH Tladi;

1.2.5 The Greater Taung Municipal Mayor, Cllr Kgosi NC Motlhabane; and

1.2.6 The Greater Taung Municipal Manager: Mr KT Gabanakgosi.
1.3 A copy of the report is also submitted to Mr Thuso Bloem to inform him of the outcome of the investigation.

1.4 The report communicates the outcome of an investigation into allegations of improper conduct and victimisation of alleged whistle-blower, Mr Thuso Bloem (Complainant), by the Greater Taung Local Municipality (Municipality) resulting in his unfair and unlawful suspension and dismissal.

2. THE COMPLAINT

Background to the complaint

2.1 On 02 January 2003 the Complainant was employed as a Legal Clerk by the Municipality. A post of Administration Officer was advertised and he applied for it and was appointed. Later, he was appointed as a Senior Admin Officer.

2.2 During his employment at the Municipality he was elected as South African Municipal Workers Union (SAMWU) shop-steward. During the course of 2008 he received a complaint of fraud and corruption against Ms Matuba, the then Municipal Manager. After conducting his investigation he reported the case to Taung Police Station (CAS 155/12/2008). The Municipal Council resolved to suspend Ms Matuba due to criminal charges laid against her.

2.3 Subsequently, the then Minister for Cooperative Governance and Traditional Affairs (COGTA), the late Mr Sicelo Shiceka, in consultation with the Municipal Council, resolved to appoint Mr Mofokeng as the acting Municipal Manager for a period of six months, from 01 October 2009 until 31 April 2010. Mr Mofokeng’s paramount responsibility, as outlined by both Council and the Minister, was to investigate allegations of all corrupt activities committed at the Municipality, compile a report and stabilise the Municipality.

2.4 At the end of the six months contract in April 2010, Mr Mofokeng requested the Municipality to extend his contract with an additional two years which the
Municipal Council endorsed. Subsequently, he allegedly committed a number of irregular activities including the following:

2.4.1 Signed and paid his own travelling claims before he could travel which was against the Municipal Supply Chain Management Policy;

2.4.2 Awarded a tender to someone bearing the same name as himself in the amount of R188 000.00 and ignored a bid which was less; and

2.4.3 Used an amount of R56 000.00 belonging to the Municipality to repair his personal car and stated that the car belonged to the Municipality.

2.5 The latter information was confirmed in the Auditor General’s reports for both 2010/2011 and 2011/2012 financial years. The reports further confirmed that payments amounting to more than R36 856 058.00 were made in contravention of the Municipal Supply Chain Management requirements.

2.6 These irregularities were brought to the attention of the then Mayor, Cllr Makgalemele, by the Complainant who elevated them to the Municipal Council. Consequently, the Municipal Council, at its meeting of 24 March 2011, resolved to suspend Mr Mofokeng. The latter refused to be suspended and instead approached the Labour Court in an attempt to persuade it to put aside the decision to suspend him (Case No. J536/2011).

2.7 The then Mayor, in turn, approached the Labour Court to seek an eviction order to remove Mr Mofokeng from Municipal Offices and it was granted. In Case Number J536/11 dated 15 April 2011, Judge Basson ordered that the Sheriff, with the assistance of the South African Police Service, must remove Mr Mofokeng from the Municipal Offices, but they failed.

2.8 The Municipal Council re-convened on 10 May 2011 and again resolved at its meeting to suspend Mr Mofokeng with benefits pending the outcome of an
investigation. Mr Mofokeng was served with a precautionary suspension letter on 17 May 2011 after all internal processes were finalised.

2.9 Mr Mofokeng filed an urgent application with the Mafikeng High Court, Case Number 830/2011, seeking relief to set aside the Municipal Council Resolution to suspend him. The application was dismissed. Mr Mofokeng kept refusing to vacate the Municipal premises.

2.10 On the evening of 17 May 2011 at around 21h00, the Municipal Council Messenger, Mr Mothusi Mocweng, delivered a suspension letter to the Complainant at his home, under-signed by Mr Mofokeng, despite the fact that Mr Mofokeng was suspended earlier that day. The Complainant indicated that the letter was not well prepared for the following reasons:

2.10.1 The letter was prepared and delivered to the Complainant on 17 May 2011 and it stated that suspension was retrospectively from 14 January 2011. It was in conflict with provisions of Paragraph 6.3. of the Local Government Collective Bargaining Agreement in that 3 months had ended; and

2.10.2 The letter alleged that the Complainant committed irregularities between March 2011 and May 2011 and the suspension was effective from 14 January 2011.

2.11 After the inception of a new Council and whilst still under suspension, the Complainant approached the new Municipal Mayor, Cllr Kaone Lobelo and briefed and presented the Court judgements relating to his complaint to him. He further approached the office of the MEC for Local Government for assistance. Later a team consisting of 6 officials from Department of Local Government and Traditional Affairs (DLGTA), one from the South African Local Government Association (SALGA) and two from Provincial Audit was sent to the Municipality to conduct an enquiry relating to this matter. The team released its preliminary investigation report on 31 August 2011 with recommendations, amongst others, that Mr Mofokeng be suspended with immediate effect. For unknown reasons, the former MEC absolved himself from the report and stated
that the letter appointing the team was signed by the Acting Head of Department instead of having been signed by him;

2.12 On 09 November 2012 the Complainant's contract of employment was terminated by Mr Mofokeng;

2.13 On March 2014, the Complainant approached the then MEC for Local Government and Human Settlements, Mr Collen Maine, and relayed his frustrations and other whistle-blowers at the Municipality. Mr Maine commissioned an investigation led by Mr Koeo against the Municipality. After completion of the investigation Mr Maine's office informally informed him that it was recommended that he should be reinstated with effect from 01 July 2014, but this did not happen.

The complaint

2.14 In the main, the Complainant alleged that Mr Mofokeng unlawfully and improperly suspended and dismissed him following him making a protected disclosure to the then Mayor Makgalemele.

2.15 The Complainant approached me for relief on the basis that he was subjected to an occupational detriment, after he made a protected disclosure in terms of the Protected Disclosures Act\(^1\) (PDA).

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector is an independent constitutional body 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:

\(^{1}\) 26 of 2000
"The Public Protector has the power, as regulated by 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."

3.3 The Public Protector has additional powers and functions prescribed by national legislation as per the provisions of section 182(2).

3.4 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector has additional power to resolve disputes involving conduct in state affairs through conciliation, mediation, negotiation or any other mechanism he or she deems appropriate.

3.5 The Municipality is an organ of state and its conduct and the conduct of its officials constitute conduct in state affairs, as a result this matter falls within the ambit of the Public Protector’s mandate.

3.6 The Public Protector is authorised by section 8(1)(a) of the PDA to accept a protected disclosure complaint.

3.7 The power and jurisdiction of the Public Protector to investigate and take appropriate remedial action were disputed by the Municipality in that in the response of the Municipal Manager, Mr K Gabanakgos, dated 12 October 2017 to my notice in terms of section 7(9)(a) of the Public Protector Act it was stated as follows:

"We submit that it is only the Court of law that he did not tell that he was charged for whistle-blowing because that piece of evidence would have to be tested by cross-examination."
The Labour Court would have been the most relevant forum and one of the first instance where the applicant would have unfolded his alleged mishaps, as this matter is purely a labour matter and this court is the most competent forum to deal with such."

3.8 On perusal of the court judgement, I noted that the matter was dismissed on the basis of jurisdictional issues. The court did not deal with the merits of the case. The court judgement is reflected below:
IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

CASE NO: JS 171/15

Honourable Acting Justice Golden ORDERED on the 17 November 2016

In the matter between:

SAMWU obo THUSO BLOEM Applicant
And
GREATER TAUNG LOCAL MUNICIPALITY Respondent

ORDER

Having read the documents and having considered the matter:

IT IS ORDERED THAT:

1. The labour court does not have jurisdiction to determine the matter.

2. The case is accordingly dismissed.

3. The applicant to pay the respondent’s costs.
3.9 I am thus unable to find a reasonable basis for the contention offered by the Municipality that the Complainant should have raised the matter with the court of law and not with my office.

3.10 *In re* Economic Freedom Fighters *v* Speaker of the National Assembly and Others; *Democratic Alliance v Speaker of the National Assembly and Others*\(^2\) the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect. The Constitutional Court further held that: "When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences."\(^3\) The Court further confirmed the Public Protector’s powers as follows:

3.10.1 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (paragraph 65);

3.10.2 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced. (paragraph 67);

3.10.3 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the Public Protector could do in terms of the Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint (paragraph 68);

---

\(^2\) [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].

\(^3\) at para [73].
3.10.4 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow. (paragraph 69);

3.10.5 Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to. (paragraph 70);

3.10.6 The Public Protector's power to take appropriate remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made. (paragraph 71);

3.10.7 Implicit in the words “take action” is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And “action” presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence; (paragraph 71(a);

3.10.8 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (paragraph 71(d)); and

3.10.9 “Appropriate” means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (paragraph 71(e)).
3.11 In the matter of the President of the Republic of South Africa v Office of the Public Protector and Others, Case no 91139/2016 (13 December 2017), the Court held as follows:

a) "The Public Protector, in appropriate circumstances, have the power to direct the president to appoint a commission of enquiry and to direct the manner of its implementation. Any contrary interpretation will be unconstitutional as it will render the power to take remedial action meaningless or ineffective. (paragraphs 85 and 152)

b) There is nothing in the Public Protector Act that prohibits the Public Protector from instructing another entity to conduct further investigation, as she is empowered by section 6(4) (c) (ii) of the Public Protector Act (paragraphs 91 and 92)

c) Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers (paragraphs 100 and 101):

   I. Conduct an investigation;
   II. Report on that conduct; and
   III. To take remedial action.

d) The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or prima facie findings. (paragraph 104);

e) The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court. (paragraph 105).

f) The fact that there is no firm findings on the wrong doing, does not prohibit the Public Protector from taking remedial action. The Public Protector's
observations constitute prima facie findings that point to serious misconduct (paragraphs 107 and 108);

g) Prima facie evidence which point to serious misconduct is a sufficient and appropriate basis for the Public protector to take remedial action (paragraph 112)."

4 THE INVESTIGATION

4.1 Methodology

4.1.1 The investigation was conducted in terms of section 182(1)(a) of the Constitution and sections 6 and 7 of the Public Protector Act.

4.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.1.3 The process involved sourcing and analysing documents, correspondence, interviews and examination of regulatory instruments, including constitutional provisions, legislation, regulations, relevant court decisions and applicable previous Public Protector Decisions or Touchstones.

4.2 Approach to the investigation

4.2.1 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

4.2.1.1 What happened?
4.2.1.2 What should have happened?
4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration?
4.2.1.4 In the event of maladministration what would it take to remedy the wrong or to place the Complainant as close as possible to where they would have been but for the maladministration or improper conduct?

4.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation.

4.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standards that should have been met by the Municipality to prevent improper conduct and/or maladministration as well as prejudice.

4.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration. Where a Complainant has suffered prejudice the idea is to place him or her as close as possible to where they would have been had the state institution complied with the regulatory framework setting the applicable standards for good administration.

4.3 On analysis of the complaint and available information, the following were issues considered and investigated:

4.3.1 Whether the Municipality improperly suspended and later dismissed the Complainant in retaliation against his protected disclosure regarding suspected corruption, conflict of interest, maladministration and related procurement irregularities within the Municipality by the former Municipal Manager of the Greater Taung Local Municipality, Mr Mpho Mofokeng, amounting to an occupational detriment as envisaged in the Protected Disclosures Act, 2000.

4.3.2 Whether the Complainant suffered prejudice as a result of the conduct of the Municipality in the circumstances.
4.4 Key sources of information

4.4.1 Documents

4.4.1.1 A statement giving full particulars of the complaint and chronology of events dated 13 April 2015;
4.4.1.2 A letter of appointment of the Complainant dated 16 August 2010;
4.4.1.3 A copy of the Municipal Council Resolution dated 10 May 2011;
4.4.1.4 A notice of precautionary suspension to Mr Mofokeng, per letter dated 17 May 2011;
4.4.1.5 A notice of suspension to the Complainant dated 17 May 2011;
4.4.1.6 A letter from SAMWU dated 20 December 2011;
4.4.1.7 A letter from SAMWU dated 30 January 2012;
4.4.1.8 Disciplinary hearing outcome: held on 03 September 2012;
4.4.1.9 A letter from the Municipality dated 27 September 2012; and
4.4.1.10 A report of the Auditor General South Africa dated 30 November 2012.

4.4.2 Correspondence sent and received

4.4.2.1 A response letter from Mr Mofokeng to the Complainant, dated 13 April 2015;
4.4.2.2 A notice in terms of Section 7(9)(a) of the Public Protector Act dated 29 September 2017; and
4.4.2.3 A response to my notice from the Municipality dated 12 October 2017.

4.4.3 Meetings and Interviews

4.4.3.1 A meeting with the Complainant on 07 April 2014 regarding issues raised;
4.4.3.2 A follow up meeting with the Complainant on 26 September 2014 to clarify issues raised by him;
4.4.3.3 A meeting with Municipal officials on 27 August 2014; and
4.4.3.4 An Alternative Dispute Resolution (ADR) session held on 31 August 2015.
4.4.4 Legal and Regulatory Framework

4.4.4.1 The Constitution;
4.4.4.2 The Public Protector Act; and
4.4.4.3 The PDA

4.4.5 Public Protector Touchstone

4.4.5.1 Public Protector’s Report No. 4 of 2016/17—“Rocking the Boat”

4.4.6 Case Law

4.4.6.1 *Tshishonga v Minister of Justice and Constitutional Development and another* [2007] (4) SA 135 (LC); [2007] 28 ILJ 195 (LC);
4.4.6.2 *Grieve v Denel* [2003] 4 BLLR366 (LC);
4.4.6.3 *CWU v Mobile Telephone Networks (Pty) Ltd* [2003] BLLR 741 (LC);
4.4.6.4 *Van Alphen v Rheinmetall Denel Munition (Pty) Ltd* (2013) 34 ILJ 3314 (LC);
4.4.6.5 *Donne Gunn v Bidvest Prestige Cleaning Services (Pty) Ltd* (JS 830/2012) [2015] ZALCJHB 166;
4.4.6.6 *Independent Municipal & Allied Trade Union & another v City of Matlosana Local Municipality & another* (2014) 35 ILJ 2459 (LC);
4.4.6.7 *City of Tshwane Metropolitan Municipality v Engineering Council of South Africa and Another* (532/08) [2009] SCA 151; and
4.4.6.8 *Guja v Moldova*, the European Court of Human Rights Application no. 14277/04.
5 THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

5.1 Regarding whether the Municipality improperly suspended and later dismissed the Complainant in retaliation against his protected disclosure regarding suspected corruption, conflict of interest, maladministration and related procurement irregularities within the Municipality by the former Municipal Manager of the Greater Taung Local Municipality, Mr Mpho Mofokeng, amounting to an occupational detriment as envisaged in the Protected Disclosures Act, 2000:

Common cause issues

5.1.1 It is common cause that the Complainant was employed by the Municipality on 02 January 2003.

5.1.2 During his period as an employee of the Municipality and SAMWU shop-steward, he brought to the attention of the then Municipal Mayor, Cllr Makgalemele, allegations of fraudulent activities committed by Mr Mofokeng. The then Mayor presented such allegations to the Municipal Council. The allegations included, amongst others, (i) spending R56 000.00 of municipal monies to repair his damaged car; (ii) irregularly awarding a tender to someone bearing the same name as himself in the amount of R188 000.00; and (iii) hiring a car whilst receiving a travelling allowance.

5.1.2 Based on this information the Municipal Council, at its meeting of 24 March 2011, resolved to suspend Mr Mofokeng. The resolution read as follows:

"Item 6.5
RESOLUTION ON ALLEGATIONS LEVELLED AGAINST THE ACTING MUNICIPAL MANAGER (MPHO MOFOKENG) BY SAMWU (SOUTH AFRICAN MUNICIPAL WORKERS UNION)
1. The Council takes note of the matter
2. The Council regards the allegations as serious and as disturbing
3. That Council resolved to suspend the Acting Municipal Manager
4. That Council resolved to mandate the Mayor to handle this matter, exhaust all legal process and report to Council
5. That Council resolved to appoint Mr. G Human (Director: Community Services) to act on the position with all benefits and powers including signing powers"

5.1.3 On 17 May 2011, Mr Mofokeng was ordered to vacate the Municipal Office on or before 13h00, 17 May 2011, as a result of a precautionary suspension issued by Cllr Makgalemele stating as follows:

"Re: Notice of a precautionary suspension: M. Mofokeng

Our notice to suspend dated 11 May 2011 and follow up letter entitled notice of suspension dated 13th May 2011 bear reference and however I wish to state the following:

1. You were afforded a reasonable time to give reasons as to why you are not supposed to be suspended and you did not respond as required. You have misused the opportunity to state your reasons. We are therefore left with no option but to place you on Pre-Cautionary Suspension with effect not later than 13h00 on the 17th May 2011.

2. It remains the view of Greater Taung Local Municipal Council that the allegations levelled against you by SAMWU in the position of the Acting Municipal Manager (Accounting Officer) are very serious."
3. We therefore wish to advise you that your continued presence in the workplace might jeopardise any investigations into the alleged misconduct and further endanger the wellbeing of Persons or Municipal properties.

4. ....

5. ....

6. A condition(s) of your suspension include that you must not communicate with and or intimidate any employee, official, vendor or supplier of the Municipality on matters relating to the investigations during the period of your suspension. You may only communicate with Municipal Employees through the Office of the Mayor.

7. ....

You are therefore ordered to vacate Municipal Offices on or before 13h00 on 17th May 2011."

5.1.4 On the evening of 17 May 2011 at around 2100 the Council Messenger, Mr Mocweng, delivered a suspension letter to the Complainant at his home, undersigned by Mr Mofokeng which read as follows:

"...

RE: NOTICE OF SUSPENSION

You are hereby given notice of suspension in accordance with the provisions of the Collective Bargaining Agreement.

The allegations levelled against you are that you have inter alia contravened clause 1.2.5 that you failed to conduct yourself with honesty and integrity; it is alleged that you have abused the Municipal Vehicle in or during the
month of April 2011 clause 1.2.7 in that you were absent from duty without leave or permission. It is alleged that you were absent from duty and campaigned at Dryharts during working hours on the 11th, 12th, and 13th of April 2011.

It is also alleged that you have contravened clause 2.7.2 in that you have unauthorized possession of or malicious damage to the employer’s property. It is alleged that you are in possession of a stolen Municipal computer and information which was obtained illegally.

Contravention of clause 1.2.11 in that you participated, either individually or with others, in any form of action, which have the effect of disrupting the operations of the employer, other than actions contemplated by the Labour Relations Act, you were disruptive and disturbing the meeting that was held on 3rd May 2011 by the Acting Municipal Manager.

Contravention of clause 1.2.12 that you wrongfully disclosed privileged information. It is alleged that you went to the local community radio station and made false statements and revealed privileged information.

You are therefore suspended with full benefits with effect from the 14th of January 2011 until such time that you have been formally charged and your internal disciplinary hearing has been concluded.” [sic with Public Protector’s emphasis added]

5.1.5 The Complainant was put on suspension, retrospectively from 14 January 2011 and subsequently dismissed on 09 November 2012 by Mr Mofokeng.

Issues in dispute

5.1.6 The Complainant argued that he was improperly and unlawfully suspended and subsequently dismissed by Mr Mofokeng on false charges in retaliation for whistle-blowing and in violation of the PDA.
In the matter between Thuso Bloem and Greater Taung Local Municipality

Alleged disclosure of Mr Mofokeng's unlawful conduct in terms of the PDA

5.1.7 The Complainant, a SAMWU shop steward, indicated that he reported the unlawful activities of Mr Mofokeng to Cllr Makgalemele around March 2011 who reported them to the Municipal Council.

5.1.8 He reported further that Cllr Makgalemele issued an intention to suspend notice to Mr Mofokeng dated 11 May 2011 which, amongst others, stated that:

"...Council is in receipt of information received from SAMWU (South African Municipal Workers Union) with allegations of serious offences committed by you.

Council has the intention to precautionary suspend you as per the resolution of its Special Council Meeting on the 10th May 2011."

5.1.9 The Complainant argued that the information about Mr Mofokeng’s unlawful and irregular conduct was brought to the Municipal’s attention before any action was taken against him by Mr Mofokeng. Such information was therefore disclosed to the employer in good faith. Furthermore, Mr Mofokeng became aware of the disclosure of the information upon receipt of the intention to suspend notice dated 11 May 2011.

5.1.10 According to the Complainant, Mr Mofokeng’s decision to suspend and subsequently dismiss him amounted to occupational detriment in terms of the PDA. He argued that the charges levelled against him by Mr Mofokeng emanated from his precautionary suspension notice by the Municipal Council in which it was indicated that the information was reported by SAMWU, to which the Complainant was a shop steward.
Alleged unlawfulness of the Complainant’s suspension and subsequent dismissal by Mr Mofokeng

5.1.11 The Complainant argued that his suspension by Mr Mofokeng was unlawful because he (Mr Mofokeng) was already suspended by the Municipal Council when he suspended him (Complainant).

5.1.12 He indicated that the Municipal Council suspended Mr Mofokeng with effect from 17 May 2011 as per a letter dated 17 May 2011 signed by Cllr Makgalemele. The letter provided that:

“…
You are therefore placed on Precautionary Suspension…from duty on full pay without loss of benefits with effect from 17th May 2011.

You are therefore ordered to vacate Municipal Offices on or before 13h00 on 17th May 2011…”

5.1.13 The Complainant reported that subsequent to Mr Mofokeng’s suspension, Mr Mocweng delivered his suspension letter from Mr Mofokeng at his home in the evening of 17 May 2011 at around 21h00. He therefore could not have authority to suspend him after his earlier suspension.

5.1.14 He further argued that his suspension was unlawful because the notice dated 17 May 2011 indicated the suspension to be effective retrospectively from 14 January 2011.

5.1.15 In a response to my notice in terms of section 7(9)(a) of the Public Protector Act regarding the preliminary findings, the Municipality responded as follows, through Mr Gabanakgosi as per a letter dated 12 October 2017:
"It is common cause that the issue in question is not the alleged fraudulent acts of Mr Mpho Mofokeng but the dismissal of Mr Thuso Bloem which is allegedly not legitimate.

Self-explanatory documents will be attached so as not to labor the matter.

The picture painted by Mr Thuso Bloem is that he was dismissed for whistle-blowing whilst we hold a completely different view. To this extent it is also common cause that Mr Thuso Bloem was dismissed. Naturally, he was dismissed following a disciplinary hearing...

It is very important to mention that besides the several other institutions that Mr Thuso Bloem engaged challenging his dismissal, he approached the Labour Court...

....

Nowhere in his statement of case does he challenge the substantiveness of his dismissal nor does he alternatively mention the fact that he was dismissed for whistle-blowing.

We submit that it is only the Court of law that he did not tell that he was charged for whistle-blowing because that piece of evidence would have to be tested by cross-examination.

The Labour Court would have been the most relevant forum and one of the first instance where the applicant would have unfolded his alleged mishaps, as this matter is purely a labour matter and this court is that most competent forum to deal with such."

5.1.16 Albeit Mr Gabanakgosi indicated that the Municipality perused and fully understood the contents of my notice, the response exhibited otherwise. The response mainly dealt with failure by the Complainant to raise the matter with the Labour Court "being the most relevant forum and one of the first instance where the applicant would have unfolded his alleged mishaps, as this matter
is purely a labour matter and this court is that most competent forum to deal with such."

5.1.17 The Municipality, in essence, never disputed that the Complainant made a protected disclosure, but that he should have raised the issue of whistleblowing with a court of law. Nowhere in the response does the Municipality touch on the alleged corrupt activities by Mr Mofokeng in his former capacity as the Acting Municipal Manager. The Municipality was aware of the allegations levelled against Mr Mofokeng and nothing seems to have been done about that.

Application of the relevant law

5.1.18 The PDA provides for procedures in terms of which employees in both the private and public sector may disclose information regarding unlawful and irregular conduct of their employers or other employees in the employ of their employers and to provide for protection of employees who make a disclosure which is protected in terms of this Act.

5.1.19 For the Complainant’s conduct to be dealt with and be considered worthy of the protection afforded to employees under the PDA, it must comply with the definition of a protected disclosure under the PDA.


5.1.20.1 The Labour Court was called upon to pronounce on the provisions of the PDA in the case of *Grieve v Denel [2003] 4 BLLR366 (LC)*. In this case the employee, who was employed as a Safety and Security Manager at a division of Denel was suspended with a view towards conducting a disciplinary hearing against him. This was after he had forwarded a report of alleged misconduct by a senior director in his division. The employee had been a spokesperson for a group within the division which had compiled information relating to improper management and misconduct by their
general manager. This information had then been handed to the employee's immediate superior who forwarded it to the board of directors. The idea behind the information gathering had been to try and have the general manager removed from his position. Disciplinary proceedings were then instituted against the employee.

5.1.20.2 Before his disciplinary hearing, the employee made an urgent application to the Court to stop the employer from subjecting him to the disciplinary action. The employee brought the case on the grounds that he was entitled to protection in terms of the PDA.

5.1.20.3 The Court considered the PDA, analysing the provisions relating to protected disclosures as well as occupational detriment. The Court concluded that the disciplinary hearing was disciplinary action as contemplated by the Act and therefore constituted an occupational detriment. It accordingly stopped the employer from instituting disciplinary proceedings.

5.1.21 In the matter of *CWU v Mobile Telephone Networks (Pty) Ltd [2003] BLLR 741 (LC)*, the Court agreed with the judgement in the *Grieve v Denel* matter that the PDA seeks to protect whistle-blowers. The Court did, however, add that this protection is not unconditional, in that in order to be a protected disclosure the disclosure had to meet the requirements provided for in the Act.

5.1.21.1 The Court further held that an employee who makes a disclosure in order to embarrass or harass an employer could not be a disclosure made in good faith. In short, a disclosure which is not based on fact cannot be protected by the Courts.

5.1.22 The most cited case in terms of the PDA is the decision of *Tshishonga v Minister of Justice & Constitutional Development 2007 4 BLLR 327 (LC)*, in which the Labour Court introduced a four-stage approach to ascertain whether or not the requirements of the PDA are met:
5.1.22.1 Was there a disclosure?

5.1.22.2 Was it a protected disclosure? The disclosure will be protected if it was in good faith, if it was subjectively believed to be substantially true and if there was no ulterior motive. In Van Alphen v Rheinmetall Denel Munition (Pty) Ltd (2013) 34 ILJ 3314 (LC), the Labour Court stated that protection requires an impropriety from the employer. Further, the company's protected disclosure procedure must be followed by the employee.

5.1.22.3 Was the employee subject to an occupational detriment? There must be a causal link between the disclosure and the occupational detriment. In the matter of Donne Gunn v Bidvest Prestige Cleaning Services (Pty) Ltd (JS 830/2012) [2015] ZALCJHB 166, the Applicant instituted proceedings against the Respondent because she believed that the protected disclosure she made was the reason for her dismissal. This was the case the Respondent had to answer. The Respondent however held the view that the matter should have been referred to the CCMA as the reason for dismissal was misconduct. The Court found that “In her evidence before this Court, the Applicant was able to show that the disclosure she made was a protected disclosure for purposes of the PDA. She was however unable to show the nexus between the disclosure and her dismissal”. As a result of the above, the Court held that the Applicant’s dismissal was not automatically unfair as provided in section 187(1)(h) of the Labour Relations Act. However, in Independent Municipal & Allied Trade Union & another v City of Matlosana Local Municipality & another (2014) 35 ILJ 2459 (LC), the Labour Court gave practical pointers to determine if there is a link between the occupational detriment (in this case a disciplinary enquiry) and the disclosure namely:

5.1.22.4 the timing of the institution of the charges or the occupational detriment;

5.1.22.5 the reasons given by the employer;
5.1.22.6 the nature of the disclosure; and

5.1.22.7 the person responsible for taking the decision to institute the charges.

5.1.22.8 What remedies are available?

5.1.23 The fostering of a culture of disclosure is a constitutional imperative as it is at the heart of the fundamental principles aimed at the achievement of a just society based on democratic values. This constitutional imperative is in compliance with South Africa’s international obligations. Article 33 of the United Nations Convention against Corruption (UNCAC) enjoins party states to put appropriate measures in place “to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences” established in accordance with that Convention.

5.1.24 In the case of Guja v Moldova, the European Court of Human Rights Application no. 14277/04 confirmed that whistleblowing constitutes an exercise of an individual’s internationally protected right of freedom of expression as contemplated in article 10 of UNCAC, which is inclusive of the right to impart information. The court recognised that this right extends to the workplace, where it may be curtailed only to the extent necessary in a democratic society. In the preamble to the PDA the relevance of the Bill of Rights is acknowledged. It is also clear from this preamble that the PDA is aimed at overcoming criminal and irregular conduct in organisations.

5.1.25 In City of Tshwane Metropolitan Municipality v Engineering Council of South Africa and Another (532/08) [2009] SCA 151, the Court stated that the PDA “seeks to encourage whistle-blowers in the interests of accountable and transparent governance in both the public and the private sector. That engages an important constitutional value and it is by now well-established in our jurisprudence that such values must be given full weight in interpreting legislation.”
5.1.26 In terms of section 1 of the PDA "disclosure" means "any disclosure of information regarding any conduct of an employer, or an employee of that employer, made by any employee who has reason to believe that the information concerned shows or tends to show one or more of inter alia that a criminal offence has been committed, is being committed or is likely to be committed, that a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject, or that a miscarriage of justice has occurred, is occurring or is likely to occur".

5.1.27 The Complainant submitted to my office that he disclosed information relating to fraudulent activities by Mr Mofokeng to Cllr Makgalemele, who in turn presented such allegations to the Municipal Council. The allegations included, amongst others, the following

5.1.27.1 using the amount of R56 000.00 of the Municipality to repair his damaged car;

5.1.27.2 awarding a tender to a person with a name similar to his in the amount of R188 000.00 and ignoring a bid which was less; and

5.1.27.3 hiring a car whilst receiving a travelling allowance.

5.1.28 The Municipality acknowledged receipt of this information in its notice of intention to suspend Mr Mofokeng dated 11 May 2011 which read:

"Kindly take note that Council is in receipt of information received from SAMWU (the Complainant was the SAMWU Shop steward) with allegations of serious offenses [sic] committed by you."

5.1.29 As a result of the above, having taken into account the timing of the institution of the charges or the occupational detriment, the reasons given by the employer, the nature of the disclosure and the person responsible for taking the
decision to institute the charges, it is evident that the Complainant's disclosure of such information to the Council falls under the definition of a protected disclosure as envisaged in section 1 of the PDA.

5.1.30 The next step is whether the Complainant's disclosure constituted a protected disclosure as defined in the PDA. Protected disclosure means a disclosure made in good faith to:

(a) …;
(b) An employer in accordance with section 6;
(c) …;
(d) A person or body (e.g. the Public Protector) in accordance with section 8;
…”

5.1.31 The Complainant disclosed Mr Mofokeng's alleged unlawful activities to the employer, Cllr Makgalemele, prior to any action being taken against him by Mr Mofokeng. The information was therefore disclosed in good faith and constituted a protected disclosure in compliance with the provisions of the PDA.

5.1.32 The next step of dealing with a protected disclosure is regulated by section 3 of the PDA which provides that:

“No employee may be subjected to any occupational detriment by his or her employer on account, or partly on account, of having made a protected disclosure.”

5.1.33 The PDA defines "occupational detriment" as

“… in relation to the working environment of an employee,

(a) Being subjected to any disciplinary action;"
(b) Being dismissed, suspended, demoted, harassed or intimidated;
(c) ..."

5.1.34 The Municipality was expected to ensure that the Complainant did not suffer any occupational detriment. However, Mr Mofokeng who found out about the protected disclosure when Cllr Makgalemele issued him with an intention to suspend notice dated 11 May 2011, decided to unlawfully suspend the Complainant on 17 May 2011, 5 days after being given notice of intention to suspend as a result of the allegations disclosed by the Complainant, in violation of the objectives of the PDA, specifically section 3 thereof.

5.1.35 The Municipality was required to comply with the provisions of the PDA upon receipt of the protected disclosure from the Complainant, by ensuring that the Complainant was not subjected to any occupational detriment by his or her employer on account of having made a protected disclosure.

5.1.36 By subjecting the Complainant to an occupational detriment, the Municipality's conduct was not only in violation of section 3 of the PDA, but an unfair labour practice and subsequently an unfair dismissal.

5.1.37 The PDA is not intended to correct or reverse the occupational detriment, but its objectives are to prevent an employer to subject an employee to occupational detriment.

5.1.38 The PDA introduced provisions for employees to report unlawful or irregular conduct by employers and fellow employees, while providing for the protection of employees who blow the whistle.

5.1.39 The Labour Relations Act 66 of 1995 (LRA) gives effect to the right to fair labour practices in that employees have the right not to be unfairly dismissed or subjected to unfair labour practices. Section 193 of the LRA provides for remedies when an employee is unfairly dismissed. Reinstatement or re-employment is the primary remedy in cases of unfair dismissal except where
the provisions of section 192(3) of the LRA apply, in which case reinstatement cannot be ordered by the labour court or an arbitrator.

**Conclusion**

5.1.40 Based on the evidence gathered, it can be concluded that the Complainant made a protected disclosure in line with the PDA and the Municipality acted in conflict with the PDA by subjecting him to occupational detriment by unlawfully suspending and subsequently dismissing him.

5.1.41 It can also be concluded that the suspension was unlawful in that Mr Mofokeng was already on suspension when he served a suspension notice to the Complainant.

5.2 Regarding whether the Complainant suffered prejudice as a result of the conduct of the Municipality in the circumstances:

**Issues in dispute**

5.2.1 The Complainant argued that his unlawful suspension and subsequent dismissal resulted in him suffering immense financial, emotional and social prejudice mainly, loss of remuneration over the past five years and eight months, financial expenses relating to fighting his intended discharge and dismissal mainly in the form of legal fees, transport and communication costs.

5.2.2 In response to my section 7(9)(a) notice, Mr Gabanakgosi indicated that the Complainant's dismissal was procedurally and substantively fair and the Municipality was prepared to argue the issue in court.

**Application of the relevant law**

5.2.3 Section 4 of the PDA provides for remedies of employees who have been subjected to any occupational detriment. It provides that:
(3) Any employee who has made a protected disclosure and who reasonably believes that he or she may be adversely affected on account of having made that disclosure must, at his or her request and if reasonable possible or practicable, be transferred from the post or position occupied by him or her at the time of the disclosure to another post or position in the same division or another division of his or her employer or, where the person making the disclosure is employed by an organ of state, to another organ of state.

(4) The terms and conditions of employment of a person transferred in terms of subsection (2) may not, without his or her written consent, be less favourable than the terms and conditions applicable to him or her immediately before his or her transfer."

5.2.4 Cllr Makgalemele was expected to address the Complainant's protected disclosure in line with the PDA. Failure to do so would amount to a breach of the provisions of the PDA which would lead to implementation of section 4.

Conclusion

5.2.5 Based on the evidence obtained, it can be concluded that the Municipality did not comply with the provisions of the PDA by subjecting the Complainant to occupational detriment which caused prejudice to him.
6 FINDINGS

6.1 Regarding whether the Municipality improperly suspended and later dismissed the Complainant in retaliation against his protected disclosure regarding suspected corruption, conflict of interest, maladministration and related procurement irregularities within the Municipality by the former Municipal Manager of the Greater Taung Local Municipality, Mr Mpho Mofokeng, amounting to an occupational detriment as envisaged in the Protected Disclosures Act, 2000:

6.1.1 The allegation that the Municipality improperly suspended and later dismissed the Complainant in retaliation against his protected disclosure regarding suspected corruption, conflict of interest, maladministration and related procurement irregularities by the former Municipal Manager, Mr Mpho Mofokeng, amounting to an occupational detriment as envisaged in the PDA is substantiated.

6.1.2 The Complainant reported a protected disclosure to the Municipality which led to him being subjected to an occupational detriment when he was unlawfully suspended and later dismissed by Mr Mofokeng, the former Municipal Manager, against who the disclosure was made.

6.1.3 The conduct of the Municipality amounts to a contravention of section 3 of the PDA, which provides that "no employee may be subjected to any occupational detriment by his or her employer on account, or partly on account of having made a protected disclosure."

6.1.4 The PDA is not intended to correct or reverse occupational detriment, but its objectives is to prevent an employee to be subjected to such occupational detriment.

6.1.5 The conduct of Cllr Makgalemele and Mr Mofokeng constitutes improper conduct as envisaged in section 182(1) of the Constitution, maladministration
and abuse of power as envisaged in section 6(4)(a)(i) and (ii) of the Public Protector Act.

6.2 Regarding whether the Complainant suffered prejudice as a result of the conduct of the Municipality in the circumstances:

6.2.1 The allegation that the Complainant was prejudiced as a result of the Municipality's conduct is substantiated.

6.2.2 The Complainant lost his employment as a result of his unlawful suspension and subsequent dismissal by the Municipality. He suffered immense financial, emotional and social prejudice mainly, loss of remuneration over the past five years and eight months, financial expenses relating to fighting his intended discharge and dismissal mainly in the form of legal fees, transport and communication costs.

6.2.3 The Municipality is found to have breached section 3 of the PDA and therefore section 4 remedies referred to in the PDA are applicable.

7 REMEDIAL ACTION

In light of the above findings I am taking the following remedial action as contemplated in section 182(1)(c) of the Constitution:

7.1 The Municipal Manager

7.1.1 The Municipal Manager must, within 30 working days from the date of this report, ensure that the Complainant is reinstated to the same position or a similar position he held prior to his dismissal.

7.1.2 The Municipal Manager must, within 60 working days from date of the report, ensure that the Complainant is paid all remuneration that would have accrued to him had he not been dismissed, having taken into account the annual
increase together with interest calculated at the applicable rate as prescribed by the Minister of Justice and Constitutional Development in terms of section 1 (2) of the Prescribed Rate of Interest Act No. 55 of 1975.

7.1.3 The Municipal Manager must, within 30 working days from the date of this report; write a letter of apology to the Complainant for the prejudice caused to him and his family.

7.1.4 The Municipal Manager must, within 15 working days from the date of publication of this report, ensure that this report is tabled before the Municipal Council.

7.2 The Greater Taung Local Municipal Council

7.2.1 The Municipal Council must, within 90 working days of publication of this report, ensure that it has measures in place to deal with employees' disclosures. These procedures should be set out in a Municipal policy which should be made available to all its employees. The purpose of the said whistleblowing policy should ultimately be to create a culture of openness and accountability without fear of reprisals or occupational detriment to ensure that employees report knowledge of any irregularities so that management can take the necessary steps to investigate and/or deal with those irregularities identified.

7.2.2 The Municipal Council must, within 60 working days of publication of this report, institute civil action against all municipal officials, whether still in the employ of the Municipality or not, to claim this wasteful expenditure to be incurred by the State in reimbursing the Complainant.

8 MONITORING

The Municipal Manager must, within 15 working days of the report, submit an Action Plan to my office indicating how the remedial action will be implemented.
8.2 The submission of the implementation plan and the implementation of my remedial action shall, in the absence of a court order directing otherwise, be complied with within the period prescribed in my report.

ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 21/09/2018

Assisted by:
Mr Sechele Keebine (NW: Provincial Representative) and
Adv. Odireleng Sebogodi (NW: Investigator Administrative Justice and Service Delivery Unit)