
PUBLIC PROTECTOR
SOUTH AFRICA

REPORT NO. 3 OF 2017/2018

"Allegations of maladministration in the matter between Mr DA Burnett and the South African Airways (Transnet)"

REPORT ON AN INVESTIGATION INTO THE ALLEGED MALADMINISTRATION BY TRANSNET IN RESPECT OF BONUS PAYMENTS ON THE PENSION BENEFITS OF MR D A BURNETT
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Executive Summary

(i) This is a report of 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 relates to an investigation into the alleged maladministration by Transnet to ensure bonus payments on the pension benefits accrued to Mr D A Burnett (the Complainant) for the full period of his pensionable service with the South African Airways (SAA.)

(iii) The Complainant was employed as a pilot in the SAA until July 2000. In 1997, the retirement age of pilots was extended from the age of 58 to 60 in terms of an agreement between labour representatives of the pilots and flight engineers and the SAA as employer (the SAA Pilots’ Association and – Flight Engineers’ Association Regulating Agreements). In July 1998, the Complainant turned 58 and the SAA retained his services in terms of the SAA Pilots’ Association and -Flight Engineers’ Association Regulating Agreements. At that time he was a member of the Transnet Pension Fund. The Complainant alleged that since 2007, the Transnet Second Defined Benefit Fund (TSDBF) started to pay annual bonuses to its retired members but he only received bonuses on the portion of his pension benefits accrued to the age of 58 and not on his full pension benefits until the end of his pensionable service at the age of 60.

(iv) Transnet disputed that it was obliged to pay bonuses on the Top Management portion of the Complainant’s pension gratuity as —

a) It entered into a “Top Management Agreement” with the Complainant which regulated his pension entitlements after the age of 58 in terms of a “top-up” pension payable by Transnet instead of the TSDBF.
b) No provision was made at the time (when the Complainant’s services were extended) for TSDBF to pay bonuses to its members and the TSDBF Rules only changed several years later (in 2007) to authorise the payment of such bonuses; and

c) Bonuses are paid by the TSDBF from actuarial surpluses, and since the Top Management Pension is funded by Transnet, there are no assets from which ad hoc bonus payments could be funded.

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

a) Did Transnet improperly fail to ensure that the Complainant’s full pension entitlement (for the extended term of employment) was secured when it extended his service from July 1998 to July 2000 in terms of the SAA Pilots’ Association and –Flight Engineers’ Association Regulating Agreements?; and

b) Was the Complainant prejudiced by the conduct of Transnet in the circumstances?

vi) The investigation process was conducted through meetings in terms of section 6(4)(b)(i) of the Public Protector Act, 1994 with the Complainant and representatives of Transnet and the TSDBF with the view to endeavour to resolve the complaint through mediation, conciliation and negotiation, as well as analysis and application of all relevant laws, policies and related prescripts.

vii) Key laws and policies taken into account to determine if there had been maladministration by Transnet and prejudice to the Complainant, were principally those imposing administrative standards that should have been complied with by Transnet and the TSDBF when the Complainant’s membership of the TSDBF was terminated, when his services were extended in terms of the collective agreement, because the TSDBF Rules had not yet been amended to reflect the extended retirement date.
viii) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, the Public Protector makes the following findings:

(a) Regarding whether Transnet improperly failed to ensure that the Complainant’s full pension entitlement for the extended term of employment was secured when it extended his service from July 1998 to July 2000 in terms of the SAA Pilots’ Association and – Flight Engineers’ Association Regulating Agreements:

aa) The allegation by the Complainant that Transnet failed to consult with him on the impact of the implementation of the SAA Pilots’ regulating Agreement, 1997 (prior to the anticipated Rule change of the TSDBF) on his continued membership of the TSDBF and resultant pension entitlements, is substantiated.

bb) Neither the collective SAA Pilots and Flight Engineers’ agreement, the Income Tax Act nor the conditions of service of the Complainant provided for the termination of the Complainant’s membership of the TSDBF while remaining in service by virtue of the extension of his retirement age from 58 to 60.

cc) There is no substantive proof that the Complainant had agreed to a variation of his conditions of service, and even if the Complainant had entered into a Top Management Agreement with Transnet, there is no indication of any terms that suggest that the parties had reached consensus on the substitution of his pension entitlements with a contractual entitlement to a post retirement remuneration from Transnet.

dd) If an agreement existed that facilitated the termination of the Complainant’s membership of the TSDBF, Transnet was in breach thereof by continuing to deduct monthly pension contributions for the duration of the Complainant’s extended service and for failing to facilitate the Complainant’s exit from the TSDBF to enable the payment of his withdrawal benefits in terms of its Rules.
ee) The Complainant had a vested right to membership of a retirement fund for the duration of his service. The actions taken by Transnet to circumvent a shortfall in the Complainant’s pension income due to the extension of his services prior to the relevant Rule changes at the TSDBF, failed to reasonably and sufficiently protect the Complainant’s vested right to membership of a retirement fund for the duration of his period of employment as envisaged in section 33 of the Constitution.

ff) The contractual entitlement to a “top-up Pension” implemented by Transnet failed to meet the Complainant’s reasonable pension benefit expectation under the Rules of the TSDBF based on his extended period of service and his contributions to the TSDBF, including future growth accrued to such his assets in the TSDBF after retirement.

gg) The manner in which Transnet extended the Complainant’s service after he reached the initial retirement age of 58, was unreasonable, unfair and contrary to public policy and in violation of section 23 of the Constitution and section 186(2) of the LRA.

hh) This amounts to improper conduct and maladministration as envisaged by section 182(1)(a) of the Constitution and section 6 of the Public Protector Act, 1994.

c) Whether the conduct of the SAA/ Transnet caused the Complainant to suffer prejudice:

aa) The Complainant’s allegations that he is receiving a lower pension benefit compared to what was expected in terms of his conditions of service and what other employees (pilots) received when their retirement age was increased from 58 to 60 in terms of the SAA Pilots’ Association and – Flight Engineers’ Association Regulating Agreements, is substantiated.
bb) The conduct by Transnet to substitute the Complainant’s pension entitlement and reasonable pension expectation with a contractual entitlement to post retirement remuneration ("to-up pension") failed to place the Complainant in the position that he would have been in if he was able to continue his membership with TSDBF for the duration of his extended service, depriving him of the benefit of the accrued growth of further contributions – in the form of bonus payments to the members of the TSDBF.

c) The conduct by Transnet and the TSDBF by failing to facilitate his exit from the TSDBF when his membership was terminated in July 1998 and withholding his withdrawal benefit for two years until July 2000, caused the Complainant to suffer financial prejudice as he was deprived of any benefit that might have accrued from the use or investment of such withdrawal benefits.

d) The conduct of Transnet and the TSDBF was unfair and unreasonable in violation of section 33 of the Constitution and amount to maladministration as envisaged by section 182(1)(a) of the Constitution and section 6 of the Public Protector Act, 1994.

ix) In the light of the above findings the Public Protector is taking the following remedial action as contemplated in section 182(1)(c) of the Constitution:

a) That the Group Chief Executive of Transnet take the necessary steps to recover from the TSDBF, on the Complainant’s behalf, in lieu of past and future bonuses on the excluded portion of his pension emoluments, the actuarial value of the amount that would presently be standing to his credit for the period that the Complainant’s contributions had been received and invested by the TSDBF from July 1998 to July 2000 in terms of the Rules of the TSDBF; and

b) That the Group Chief Executive of Transnet take the necessary steps to recover from the TSDBF, on the Complainant’s behalf interest at a rate prescribed in terms
of the Prescribed Rate of Interest Act No 55 of 1975, on the withdrawal benefit owed to the Complainant (gratuity and annuity) when his membership with the TSDBF was terminated, for the period July 1998 to the date when the benefit was paid by the TSDBF.
1. INTRODUCTION

1.1. This is a report of 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, 1994 (the Public Protector Act).

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

1.2.1. The Group Chief Executive Transnet SOC (Transnet).

1.3. A copy of the report is also provided in terms of section 8(3) to Mr DA Burnett, the Complainant, to inform him about the outcome of my investigation.

1.4. Transnet was provided with a notice in terms of section 7(9) of the Public Protector Act No 23 of 1994 (the Public Protector Act) to afford it the opportunity to respond to potential adverse findings against the South African Airways (SAA)/ Transnet.

1.5. The report relates to an investigation into alleged maladministration by the Transnet to ensure bonus payments on the pension benefits accrued to Mr DA Burnett for the full period of his pensionable service with the SAA.

2. THE COMPLAINT

2.1. The Complainant alleged that he was employed as a pilot in the SAA until July 2000. In 1997, the retirement age of pilots were extended from the age of 58 to 60 in terms of an agreement between labour representatives of the pilots and flight engineers and
the SAA as employer (the SAA Pilots' Association and – Flight Engineers' Association Regulating Agreements).

2.2 In July 1998 the Complainant turned 58 and the SAA retained his services in terms of the Pilots' Association and -Flight Engineers' Association Regulating Agreements. At the time he was a member of the Transnet Pension Fund, a pension fund established in terms of the Transnet Pension Fund Act No 62 of 1990, and later transferred to the Transnet Second Defined Benefit Fund (TSDBF).

2.3 The Complainant alleged that since 2007, the TSDBF started to pay annual bonuses to its retired members but he only received bonuses on the portion of his pension benefits accrued up to the age of 58 and not on his full pension benefits until the end of his pensionable service at the age of 60.

2.4 The Complainant further alleged that the exclusion of a portion of his pension benefits from the calculation of such bonuses is contrary to the conditions of service in terms of which his services were extended in 1998, and that it is unfair.

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 and support 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 as regulated by national legislation –

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

3.3 In the Economic Freedom Fighters v Speaker of the National Assembly & Others; Democratic Alliance v Speaker of the National Assembly & Others (CCT 143/15) & (CCT171/15) [2016] ZACC 11 (31 March 2016) 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."

3.4 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by legislation.

3.5 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 is also given power to resolve disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.6 Transnet is an organ of state and its conduct amounts to conduct in state affairs, as a result the matter falls within the ambit of the Public Protector’s mandate.

3.7 The Public Protector’s power and jurisdiction to investigate and take appropriate remedial action was not disputed by any of the parties.
4. THE INVESTIGATION

4.1. Methodology

4.1.1. The investigation was conducted in terms of section 182 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. Section 6 of the Public Protector Act gives the Public Protector the authority to resolve a matter without conducting an investigation and resolve a complaint through appropriate dispute resolution (ADR) measures such as conciliation, mediation and negotiation.

4.1.3. The complaint was initially classified as an Early Resolution matter capable of resolution by way of a conciliation process or mediation in line with section 6(4)(b) of the Public Protector Act. However, after several attempts to conciliate the matter failed, it was escalated into an investigation.

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. In this particular case, the factual enquiry principally focused on whether or not Transnet improperly failed to ensure that the Complainant’s full pension entitlement (for the extended term of employment) was secured when it extended the Complainant’s services from July 1998 to July 2000 in terms of the SAA Pilots’ Association and – Flight Engineers’ Association Regulating Agreements;

4.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Department or organ of state to prevent maladministration and 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 Department or organ of state complied with the regulatory framework setting the applicable standards for good administration.

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

4.3.1 Did Transnet improperly fail to ensure the Complainant’s full pension entitlement for the extended term of employment was secured when it extended his service from July 1998 to July 2000 in terms of the SAA Pilots’ Association and – Flight Engineers’ Association Regulating Agreements?; and
4.3.2 Was the Complainant prejudiced by the conduct of Transnet in the circumstances?

4.4 The Key Sources of information

4.4.1 Documents

4.4.1.1 Documentation and the information provided by the Complainant;
4.4.1.2 Correspondence with the Principal Officer of the TSDBF, the Chief Executive Officer (CEO) of the SAA and the Chief Executive Officer of Transnet; and

4.4.2 Interviews conducted

4.4.2.1 Meeting with the Complainant on 10 April 2013 and 23 March 2017;
4.4.2.2 Alternative Dispute Resolution (ADR) sessions with the Complainant and Ms H Walsh (General Manager: Group Taxation – Transnet), Mr P Maritz (Principal Officer TSDBF), and Mr N Silinga, General Manager Group legal Services - Transnet on 26 May and 4 August 2014.
4.4.2.3 Meeting with Ms H Walsh (), Mr N Silinga, and Ms S Mtwana (Principal Legal Advisor: Transnet) on 24 February 2017.

4.4.3 Correspondence sent and received

4.4.3.1 Copies of e-mail correspondence between Mr J Harty (Chairperson: South African Airways Pilots Association), the Complainant, Mr J Kotze and Mr F Beeslaar (Operations Manager: Employee Benefits, Metropolitan Retirement Administrators (Pty) Ltd) between 13 March 2012 and 1 July 2012;
4.4.3.2 A copy of a letter from Mr A Singh, Chief Financial Officer of Transnet, to Mr Harty dated 7 August 2012;
4.4.3.3 A copy of a letter from Mr J Harty to the Executive manager: Flight Operations of the SAA, dated 16 April 1998;
4.4.3.4 A copy of the SAA Pilots' Association and — Flight Engineers' Association Regulating Agreement dated 20 May 1997;

4.4.3.5 A copy of a "Management agreement" between a certain Mr B (a Manager) and the then South African Transport Services, dated 30 September 1987;

4.4.3.6 A copy of an agreement between a certain Mr M (a Manager) and Transnet dated 4 January 1991;

4.4.3.7 Correspondence by the Public Protector to Mr P Maritz, Principal Officer: TSDBF dated 11 June 2013;

4.4.3.8 Response to the Public Protector from Mr P Maritz dated 21 June 2013;

4.4.3.9 Correspondence by the Public Protector SA to Mr M Kalawe, CEO: SAA dated 14 August 2013;

4.4.3.10 Response to the Public Protector from Mr T Mbathe from SAA dated 24 October 2013;

4.4.3.11 Correspondence by the Public Protector SA to Mr S Gama, CEO: Transnet dated 28 October 2013;

4.4.3.12 Response to the Public Protector from Mr A Singh, Acting Group CEO: Transnet, dated 17 December 2013;

4.4.3.13 Notice by the Public Protector in terms of section 7(4) and 5 of the Public Protector Act to Messrs Maritz and Gama, dated 12 March 2014;

4.4.3.14 Notice by the Public Protector in terms of section 7(4) and 5 of the Public Protector Act to Mr B Molefe, Group CEO: Transnet dated 6 May 2014;

4.4.3.15 Notice by the Public Protector in terms of section 7(4) and 5 of the Public Protector Act to Mr P Maritz Transnet dated 6 May 2014;

4.4.3.16 Correspondence from Mr P Maritz to the Public Protector dated 28 May 2014;

4.4.3.17 Correspondence from Mr N Silinga to the Public Protector dated 4 June 2014;

4.4.3.18 A Notice by the Public Protector in terms of section 7(9) of the Public Protector Act to Mr S Gama, dated 14 October 2016;

4.4.3.19 Response to the section 7(9) notice from Mr Gama to the Public Protector dated 31 October 2016; and
4.4.3.20 Correspondence from Mr T Jiyane, Acting Group CEO: Transnet to the Public Protector dated 20 March 2017.

4.4.4 Legislation and other prescripts

4.4.4.1 The Constitution of the Republic of South Africa, 1996;
4.4.4.2 The Public Protector Act, 1994;
4.4.4.3 The Transnet Pension Fund Act, 1990, as amended;
4.4.4.4 The Transnet Second Defined Benefit Fund Rules;
4.4.4.5 The Basic Conditions of Service Act, 1997; and
4.4.4.6 The Labour Relations Act, 1995

4.4.5 Case law

4.4.5.1 Economic Freedom Fighters v Speaker of the National Assembly & Others; Democratic Alliance v Speaker of the National Assembly & Others (CCT 143/15) & (CCT 171/15) [2016] ZACC 11 (31 March 2016)
4.4.5.2 Apollo Tyres South Africa (Pty) Ltd v Commission for Conciliation Mediation and Arbitration and Others DA1/11) [2013] ZALAC 3; [2013] 5 BLLR 434 (LAC); (2013) 34 ILJ 1120 (LAC) (21 February 2013);
4.4.5.3 Coop and Others v SA Broadcasting Corporation and Others (2004) 25 ILJ 1933 (W);
4.4.5.4 South African Airways (Pty) Ltd v V and Another CA9/13, C420/2006) [2014] ZALAC 27; [2014] 8 BLLR 748 (LAC); (2014) 35 ILJ 2774 (LAC) (12 June 2014);
4.4.5.5 Tellumat (Pty) Ltd v Appeal Board of the Financial Services Board (221/2015) [2015] ZASCA 202; [2016] 1 All SA 704 (SCA) (2 December 2015);
4.4.5.6 Malatji v Gauteng Building Industry Provident Fund, Alexander Forbes Financial Services (Pty) Ltd And LR Civil (Pty) Ltd PFA/NP/9447/2011/LPM
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 Whether Transnet improperly failed to ensure that the Complainant’s full pension entitlement for the extended term of employment was secured when it extended his service from July 1998 to July 2000, in terms of the SAA Pilots’ Association and – Flight Engineers’ Association Regulating Agreements.

Common cause issues

5.1.1 It is common cause that the TSDBF is a defined benefit pension fund duly registered. The SAA is the Complainant’s former employer and a subsidiary of Transnet who is the participating employer in the fund.

5.1.2 At the time when the Complainant was employed by the SAA as a pilot, the terms and conditions of service which applied to him specified that his retirement age was 58 years.

5.1.3 In 1997 the SAA Pilots’ Association and – Flight Engineers’ Association Regulating Agreements were concluded between labour representatives of the pilots and flight engineers and the SAA as employer, which provided for the extension of the retirement age for pilots to 60.

5.1.4 The SAA and the TSDBF subsequently consulted with the Minister of Finance on the amendment of the Rules of the TSDBF to provide for the increased retirement age of members of the TSDBF in the affected job categories from 58 to 60.

5.1.5 In July 1998 the Complainant turned 58 years old and the SAA then retained his services in terms of the Pilots’ Association and -Flight Engineers’ Association Regulating Agreements until July 2000 when he finally retired at the age of 60.
5.1.6 Since (at least) November 2010 the Complainant started to receive annual bonus payments from the TSDBF on the monthly pension benefits (annuity) received from the TSDBF. He subsequently discovered that the bonuses paid to him were only calculated on 70% of his total annual gratuity amount, whereas his fellow pensioners received bonuses calculated on the whole amount (100%) of their total annual gratuity. He was unaware why approximately 30% of his total annual gratuity was excluded for the purpose of the calculation of bonuses on his pension benefits.

5.1.7 The Rules of the TSDBF had not yet been amended by the time when the Complainant’s services were extended after reaching the (then) retirement age of 58;

5.1.8 The Complainant’s membership with the TSDBF therefore ended in July 1998 when he reached the then retirement age of 58, resulting in the TSDBF only assuming responsibility for the payment of his pension benefits which accrued to him until the age of 58;

5.1.9 Accordingly, the liability for the pension entitlement which accrued to him for the period from the age of 58 to 60 fell upon Transnet as employer.

5.1.10 Transnet offered to pay a Top Management Pension to “top-up” the pension benefits payable to the Complainant by the TSDBF for the additional two years’ of service;

5.1.11 On his retirement the Complainant was paid as follows:

5.1.11.1 From the TSDBF a cash lump sum of R777 065, 92 and a monthly gratuity of R19 134, 05; and

5.1.11.2 From Transnet a cash lump sum of R383 669, 81 and a monthly annuity of R6 614, 99 (Top Management portion).
5.1.12 Since the date on which TSDBF had been authorised to pay bonuses to its members from its actuarial surpluses, the portion of the Complainant’s gratuity that represents the Top Management Pension amount, was excluded from the calculation of such bonuses.

Issues in dispute

5.1.13 The dispute between Transnet and the Complainant centres around Transnet’s submission that it had entered into an agreement with the Complainant prior to the extension of his services in terms of which it was liable for the Top Management pension only. Transnet disputed that it is obliged to pay bonuses on the Top Management portion of the Complainant’s pension gratuity as —

5.1.13.1 The terms and conditions of the Top Management pensions were agreed to with each employee, who signed a "Management Agreement" in acknowledgement thereof;

5.1.13.2 No provision was made at the time when the Complainant’s services were extended for TSDBF to pay bonuses to its members and the TSDBF Rules only changed several years later (in 2007) to authorise the payment of such bonuses; and

5.1.13.3 Bonuses are paid by the TSDBF from actuarial surpluses, and since the Top Management Pension is funded by Transnet, there are no assets from which ad hoc bonus payments could be funded.

5.1.14 The Complainant, in turn, disputed Transnet’s submissions that it had concluded an individual Top Management agreement with him to regulate his pension entitlements after the age of 58 in terms of a “top-up” pension payable by Transnet instead of the TSDBF.
5.1.15 The Complainant maintains that his services were extended in 1998 by the SAA in terms of a collective agreement which increased the retirement age of pilots from 58 to 60. At the time he was a member of the TSDBF as determined by his conditions of service, and he was not notified that the TSDBF Rules had not yet been amended to allow his continued membership of the TSDBF after the age of 58. To the contrary, Transnet continued to deduct the Complainant’s monthly contributions to the TSDBF from his salary under the heading “PA PENSION” for the whole period for which he remained in the service of the SAA until his eventual retirement in 2000 at the age of 60 years (totalling approximately R47 000, 00).

5.1.16 The Complainant’s claim for a full share of the bonuses issued by the TSDBF on pension emoluments, is based on his assertion that the very reason for agreeing to the extension of their services was to enable pilots to accrue additional pensionable service. This was with the view to improve their pension benefits and since he continued to contribute to the TSDBF for the two years with which his services were extended to the amended retirement age, an expectation was created that he would receive a return on these contributions together with any actual accrued and future growth thereon.

5.1.17 Transnet conceded that contributions to the TSDBF were deducted from the Complainant’s salary for the two years with which his services were extended, although he was no longer a member of the Fund. Transnet also confirmed that the monthly payment advices received by the Complainant from the Fund Administrators did not reflect that the pension income is derived from two different sources, but rather display the whole amount of his total monthly annuity as being paid from the TSDBF.

5.1.18 Transnet was unable to provide a copy of the Top Management Agreement signed with the Complainant. Instead, it could only provide copies of Management Agreements signed with other employees dated 1987 and 1991 respectively. In this
regard Transnet submitted in response to the section 7(9) notice issued by the Public Protector, that the statement by the Complainant that he did not conclude an "individual" Top Management Agreement with the employer to regulate his pension entitlements after the age of 58 in terms of a “top-up” pension payable by Transnet was opportunistic and misleading:

"The fact that Transnet could not provide your office with a copy of the Top Management Agreement signed with the Complainant does not, on its own, mean that such an Agreement never existed. It is therefore incorrect to conclude that the balance of probabilities favours the Complainant. In fact, such should favour Transnet as we have demonstrated, and you having accepted that the existence of the Agreement is not in dispute. The Public Protector should, at the least, acknowledge that such an Agreement was concluded in mid-1990 and a lot of employees who may have been assigned to keep company records have since resigned and or retired"

5.1.19 Transnet reiterated that the purpose of the Top Management Pensions is to top up pensions received to counteract the impact of any disadvantage resulting from the provisions of the Transnet Pension Fund Act and associated Rules, in relation to the calculation of pension benefit payments impacted by the retirement age, and applies to members of management appointed prior to 1 April 1999. Transnet and/or SAA never intended to contravene any laws and/or rob him of his pension benefits:

"On the contrary, Transnet performed and is continuing to perform its contractual obligations of paying him his pension benefits."

5.1.20 Transnet further submitted that it is “inconceivable” that the Complainant would have assumed that he could continue his employment with the SAA after reaching the age of 58 in terms of the same conditions of service which applied prior to July 1998.
5.1.21 The de facto position is that the Complainant's current pension emoluments are made up of an annuity paid by the TSDBF and a "top-up" portion paid by Transnet. In essence the Complainant is aggrieved by the fact that his "top-up" entitlement from Transnet does not operate on a defined contribution basis like the withdrawal benefit from the TSDBF.

5.1.22 According to Transnet it entered into agreements with members of management appointed prior to 1 April 1999 to change their conditions of service with the view of securing their pension benefits by providing for a Top Management Pension with the view "to counteract the impact of any disadvantage resulting from the provisions of the Transnet Pension Fund Act and associated Rules in relation to the calculation of pension benefit payments impacted by retirement age".

5.1.23 In terms of the Top Management Agreement allegedly entered into with the Complainant (and others), Transnet undertook to provide for the anticipated shortfall in the pension benefits payable by the TSDBF for the period for which the Complainant was in service - but was not allowed to remain a member of the TSDBF in terms of its Rules and to accrue any credits to his/ her pension entitlement - by means of a "top-up" pension.

5.1.24 Transnet submitted that it entered into agreements with members of management appointed prior to 1 April 1999 to change their conditions of service with the view of securing their pension benefits by providing for Top Management Pension with the view "to counteract the impact of any disadvantage resulting from the provisions of the Transnet Pension Fund Act and associated Rules in relation to the calculation of pension benefit payments impacted by retirement age."

5.1.25 The Public Protector is still, after consideration of the submissions of Transnet to the notice in terms of section 7(9) of the Public Protector Act, not convinced that the balance of probabilities favours the conclusion that the Complainant is misleading the Public Protector when he stated that he did not enter into a Top Management
Agreement with Transnet. The absence of any supporting records whatsoever, as well as the continued deduction of the Complainant’s contributions to the TSDBF makes it extremely difficult to agree with Transnet’s contention that it has demonstrated the existence of such an agreement with the Complainant.

5.1.26 Even from the sample generic agreements provided by Transnet, it is difficult to conclude that there was consensus between the parties that the Complainant’s conditions of service were to be amended to provide that the Complainant was not going to be, or be required to be a member of a retirement fund and that his pension entitlements for the extended two years were going to be substituted with a contractual entitlement payable by Transnet.

**Application of the relevant law**

5.1.27 South Africa is a State founded on the supremacy of the Constitution and the rule of law. This means that all authority must be exercised by virtue of, and in accordance with the provisions of the Constitution.¹

5.1.28 Transnet’s legal duties towards the Complainant, with particular reference to his pension entitlements originate from the provisions of section 23(1) of the Constitution, and national legislation in the form of Labour Relations Act 66 of 1995 (LRA) in terms of which everyone has a right to a fair labour practice.

5.1.29 An unfair labour practice is defined in section 186(2) of the LRA as any unfair act or omission that arises between an employer and employee involving, among others, unfair conduct by the employer relating to the promotion, demotion, probation or training of an employee or relating to the provision of benefits to an employee.

5.1.30 Section 33 of the Constitution provides that everyone has a right to administrative action that is lawful, reasonable and procedurally fair. While the common law standard was gross unreasonableness, the Constitution stipulates that administrative action should be reasonable. The same principles that apply to organs of state apply to exercise of power by persons other than organs of state. This would include management boards of pension funds and employers.

5.1.31 By virtue of the conditions of service of employees of SAA/Transnet, membership of one of the Transnet retirement funds was compulsory. Transnet is furthermore obliged by virtue of section 1 of the Income Tax Act of 1962, to require that membership of its retirement funds be compulsory throughout the period of employment in order to qualify for beneficial tax treatment (which is particularly relevant in this matter as Transnet continued to deduct pension fund contributions from the Complainant’s salary after he reached the age of 58).

5.1.32 However the TSDBF Rules were clear that a member “shall be obliged to retire at the Normal Retirement Date (then still 58) in which event the member’s pension benefit “shall become payable to such a Member as from such date”. The law and the rules of the TSDBF were paramount in this instance and the TSDBF could not be compelled to do something not allowed by its rules.

5.1.33 Because the Complainant was not allowed to remain a member of the TSDBF in terms of its Rules and to accrue any credits to his/her pension entitlements, Transnet allegedly entered into a Top Management Agreement with the Complainant to provide for the anticipated shortfall in the pension benefits payable by the TSDBF for the remaining 2 years that the Complainant was in service, by means of a “top-up” pension.

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2 Mafongosi and Others v United Democratic Movement 2002 (5) SA 557 (TK), at 574H
3 Rule 8.1
4 Tek Corporation Provident Fund and Others v Lorentz [2000] 3 BPLR 227 (SCA)
5.1.34 In terms of section 49 of the Basic Conditions of Services Act No 75 of 1997 (BCEA) any collective agreements and individual agreements may only replace or exclude basic conditions of employment to the extent permitted by the Act or a sectoral determination.

5.1.35 The validity of the change in conditions of service of the Complainant resulted in him not being a member of any retirement fund of Transnet since July 1998 until 2000 despite him being a bona fide full-time permanent employee of the Transnet, is therefore a concern. In addition, it is also an open question whether the individual agreement (Top Management Agreement) was intended to supersede the provisions of a collective agreement such as the SAA Pilots’ Association and – Flight Engineers’ Association Regulating Agreements.

5.1.36 There is no indication that the parties to the SAA Pilots’ Regulating Agreement, 1997 intended to change the conditions of employment of pilots as far as their continued membership of the TSDBF or related pension schemes were concerned. In the contrary, the very reason for agreeing to the extension of their services was to enable pilots to accrue additional pensionable years of service with the view to improve their pension benefits. It would have defeated the purpose of the agreement if pilots who reached the age of 58 would not have been able to accrue the additional pensionable service - as a member of a retirement fund - with a corresponding improvement in their pension entitlements for the period of their extended service until the amended retirement age of 60.

5.1.37 In terms of the test laid down by the Courts in Coop and Others v SA Broadcasting Corporation and Others it could even be argued that insofar as it was not an express term it was clearly a tacit term of the SAA Pilots’ Regulating Agreement, 1997 that pilots should have been able to continue membership of their respective pension schemes until they reached the revised retirement age of 60.

5.1.38 Furthermore, the fact that the SAA Pilots' Regulating Agreement, 1997 as a whole was a product of negotiation did not give Transnet a free hand to apply it to the Complainant in a manner that was not anticipated in the agreement. The Courts have noted in the matter of the South African Airways (Pty) Ltd v V and Another⁶ that employees such as the Complainant could legitimately anticipate that the “mechanics” (implementation measures) of a collective agreement (which similarly sought to extend the retirement age of employees), “would not undermine his constitutionally protected rights relating, in particular, to equality and dignity and his right not to be unfairly discriminated against in the workplace.”

5.1.39 Thus, Transnet had a legal duty to ensure that whatever pension dispensation was provided as an alternative to the Complainant’s membership of and benefits from the TSDBF, would protect his vested rights as well as his reasonable pension benefit expectation equivalent to or better than those he would have been entitled to under the rules of the TSDBF, including future benefits.

5.1.40 In this regard it should be noted that the “Top Management Pension” or “top-up” pension is in fact not a withdrawal benefit flowing from membership of a retirement fund, but more accurately resembles “post-retirement remuneration” flowing from and relating to the contractual employment relationship rather than to the administration, investments or rules of a retirement fund.⁷

5.1.41 The rules of a retirement fund provide “benefits” payable on the occurrence of specific events — retirement or death or physical incapacitation or retrenchment. In simple terms a “pension” is the amount paid to a member at retirement on an annual or monthly basis. According to Richard Nobles (1993)⁸ pension entitlements refer both to the benefits that employees have been promised (in terms of the rules of a pension fund) and the contributions which the employer makes to fund those benefits:

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"This is a double promise. The workforce expects to receive the promised benefits and its members expect all the money that is deducted from the payroll to be used in their interests."

5.1.41.1 A retirement fund operates on the basis of investment securities funded by contributions of members and participating employers. The accumulated fund assets (contributions) of a retirement fund are invested (and divested) into a range of asset classes permitted by pension fund regulations. Finally, the proceeds of the investment and were necessary, the fund assets, are returned to the retirement fund and its members to fund the exit of members from the fund.

5.1.41.2 The retirement fund trustees are legally empowered to make decisions for the funds they manage on behalf of its members. The roles, rights and responsibilities of the trustees are determined by the law and the rules of the fund and underpinned by the concept of fiduciary duty compelling the fiduciaries to act with due care, diligence and good faith towards the members and other stakeholders in the fund. The employer is not similarly burdened but owes at least a duty of good faith to the fund and its members and beneficiaries.

5.1.41.3 In a defined benefit fund such as the TSDBF, the withdrawal benefit of members (gratuity and annuity) is predetermined, calculated in accordance with specific formulae, and paid to the member when he/she exits the fund. However, the duties of the fiduciaries towards a member do not end when the member exits the fund, as a member may further benefit after exiting the fund if the value of the proportionate share of the assets of the fund exceeds its liabilities and the trustees resolve to distribute the surplus amongst members in the form of once-off bonuses.

5.1.42 As illustrated above, the major difference between a withdrawal benefit from a retirement fund and the entitlement gained from the Transnet "top management
pension" is that the "top-up" pension is not funded by assets (contributions) provided by the employer and members of the "top management pension" dispensation, but from the operational budget of the employer (Transnet). Transnet's contention that it is unable to fund further liabilities in respect of the "top-up" pensions because of the non-availability of assets, is not convincing as none of its obligations in terms of the "Top Management Pension" dispensation is dependent on the contributions of employees and the availability of plan assets.

5.1.43 Another disadvantage of the "Top Management Pension" dispensation compared to a (proper) pension, is that while Transnet as employer has a duty of good faith towards the members of the "Top Management Pension Dispensation", it does not translate to the same level of good faith to act primarily in the interests of the members, equal to the level of responsibilities of fiduciaries of a retirement fund.

Conclusion

5.1.44 The contract of employment with the employer, the Tax law (Income Tax Act) as well as the terms and "mechanics" for the implementation of the SAA Pilots' Association and – Flight Engineers' Association Regulating Agreements, obliged the employer to ensure that the Complainant remained a member of a retirement fund for the duration of his entire period of service with the SAA. Consequently, an employee would in such circumstances have a vested right to preserve the status quo in respect of a reasonable pension expectation and his membership of the TSDBF to authorise the extension of his services beyond the then mandatory retirement age of 58 in terms of the implementation of the SAA Pilots' Association and – Flight Engineers' Association Regulating Agreements.

5.1.45 Even if Transnet sought to amend the Complainant’s conditions of service in terms of a “Top Management Agreement”, there is no indication from the samples of such generic agreements provided by Transnet, what the terms were that would have regulated the termination of the manager’s membership of a retirement fund whilst still remaining in service.

5.1.46 In the circumstances the Public Protector cannot conclude that there must have been consensus between the parties that the extension of the Complainant’s services would imply termination of his membership with the TSDBF. In addition, any variation to the conditions of service of the Complainant would have had to pass the requirements of fairness and reasonability in terms of the Labour Relations Act.

5.1.47 In the particular circumstances of the Complainant, Transnet failed to ensure that the Complainant’s vested rights to belong and contribute towards a retirement fund during his service as an employee of the SAA was protected when his services were extended from 1998 to July 2000. Furthermore for Transnet to suggest that the Complainant had to accept any adverse consequences of the extension of his services because “he did not object”, does not reconcile with the good faith with which the Complainant extended his services at the instance of and benefit to the SAA.

5.1.48 As indicated above, membership of a retirement fund operates on the basis of the management and investment of contributions from both employee and employer (members’ assets) in order to provide income during retirement or other benefits. However, a critical function of the fiduciaries of a retirement fund includes the prudent investment of fund assets to ensure that these assets grow over time and that the members benefit from such growth, even after retirement.

5.1.49 In the matter at hand, the Complainant continued to contribute to the assets of the members of the TSDBF during the period of his extended service. Even if there is doubt about the lawfulness of the deductions, Transnet confirmed that the contributions were in fact paid over to the TSDBF, who has also acknowledged receipt.
5.1.50 Transnet confirmed that the Complainant did not benefit from these contributions (between age 58 to 60) as it could not be taken into account for the calculation of his withdrawal benefits or for the proportional calculation of the bonuses paid to members. The de facto position is that other members of the TSDBF who shared and continue to share in the bonuses declared, did benefit from the investment returns on these contributions made by the Complainant. To deny the Complainant the proportionate benefit of the actual accrued growth of his contributions during his period of extended service would be manifestly unfair.

5.1.51 The "Top Management Pension" dispensation, which substituted his membership of a retirement fund, did not yield or provide the Complainant with the reasonable pension benefit expectation\textsuperscript{12} equivalent to or better than those he would have been entitled to under the rules of the TSDBF, in particular additional benefits deriving from investment returns on his assets in the TSDFB.

5.2 Whether the Complainant was prejudiced by the conduct of Transnet in the circumstances:

5.2.1 The Complainant submitted evidence of his financial loss as a consequence of the fact that his last two years’ of service were not included as pensionable service with the TSDBF for the purpose of calculating bonus payments to its members since 2007. He also explained that Transnet continued to deduct pension contributions to the TSDBF from his monthly earnings during this period.

5.2.2 The Complainant’s evidence regarding his loss, including his calculation of that loss, was not challenged and Transnet produced no evidence to counter his version on those aspects. Transnet principally only disputed liability for additional funding

\textsuperscript{12} Tellurnet (Pty) Ltd v Appeal Board of the Financial Services Board (221/2015) [2015] ZASCA 202, [2016] 1 All SA 704 (SCA) (2 December 2015)
obligations on the purported Top Management Agreement to match the enhanced pension benefits paid by the TSDBF - because of the non-availability of assets.

5.2.3 Subsequent to the issuing of the notice to Transnet in terms of section 7(9) of the Public Protector Act, the Public Protector investigating team met with Transnet Management to explore certain options with the view to find an amicable solution. Transnet indicated that it was willing to recover the contributions paid over to the TSDBF and reimburse the amounts received from the Complainant as contributions to the TSDBF, which was not taken into account in calculating the pension benefit payable - as the Rules of the TSDBF did not provide for this.

5.2.4 However, Transnet reiterated that there are no plan assets to fund additional benefits (bonuses) on the “top-up” portion of the Complainant’s pension emoluments. Transnet submitted that if it would be compelled to consider payment of these “unfunded obligations” they could not be limited to the Complainant but would have to be applied to all pensioners in the Complainant’s position:

“This could result in a significant increase in the liability, especially if it is to be retrospectively implemented; and

Create an unfortunate precedence of settlement of certain complaints against Transnet and its defined benefit funds, while these parties are embroiled in various litigation proceedings, including a pensioners’ class action suit in which the Complainant is a one of the plaintiff’s by virtue of him not having opted out of the class.”

Application of the law

5.2.5 In terms of the TSDBF Rules that applied at the time, the Complainant’s membership was terminated when he reached the then retirement age of 58. Which means that unless there was an option in terms of the Rules that allowed the Trustees to transfer
the Complainant’s benefit to another approved retirement fund, the withdrawal pension benefit became due and payable to him at the end of July 1998.

5.2.6 The anomaly was that his services had by July 1998 not been terminated and the withdrawal process was not set in motion to allow him to exit the fund. In addition, the employer continued to deduct pension contributions from him and also paid it over to the TSDBF, which means that his status within the fund did not become dormant, but was that of an active contributing member.

5.2.7 The withdrawal benefit owed to the Complainant at the termination of his membership with the TSDBF did not however improve between July 1998 and July 2000, as the benefit in a defined benefit fund, whether it be a retirement benefit or a withdrawal benefit, is not arithmetically derived from the contributions made by or on behalf of a particular member.¹³ A defined benefit scheme fixes the benefit in advance – mostly determined by the member’s final salary at retirement, the years of service, and an accrual rate (which indicates how the pension benefits increase due to additional years of service). Since the Complainant’s period of service could in terms of the Rules of the TSDBF not be added to his pensionable service and his salary scale not be updated, the factors that determined the calculation of Complainant’s withdrawal benefits did not change from July 1998 and July 2000.

5.2.8 If however, the Complainant’s withdrawal benefit from the TSDBF was paid to him in terms of the Rules of the TSDBF, he would have been able to re-invest the benefits or (if it was possible) transfer it to another approved fund, and benefit from the further growth or returns on such an investment, instead of the funds lying dormant with the TSDBF.

Conclusion

5.2.9 Transnet’s conduct during the extension of the Complainant’s services resulted in:

5.2.9.1 The Complainant unfairly receiving a lower pension benefit compared to what was expected in terms of his conditions of service and what other employees (pilots) received when their retirement age was increased from 58 to 60 years in terms of the SAA Pilots’ Association and – Flight Engineers’ Association Regulating Agreements;

5.2.9.2 A delay in the payment of the withdrawal benefit from the TSDBF which became payable to the Complainant in July 1998 when his membership was terminated as a result of reaching the then retirement age of 58.

5.2.9.3 The appropriate relief is that which has the effect of placing the Complainant in the position where he would have experienced the growth of the contributions that he continued to make to the TSDBF (less the “top-up” amount). However, Transnet did not benefit from holding these assets and the Public Protector is not sure if it would be practical to oblige Transnet to pay past and future bonuses on the “top-up” amount equal to the value of the bonuses that would have accrued to the Complainant if his contributions to the TSDBF and extended period of service were taken into account.

5.2.10 It seems more reasonable that Transnet recover from the TSDBF, on the Complainant’s behalf the actuarial value of the amount that would presently be standing to his credit had the contributions been received and invested by the TSDBF from July 1998 to July 2000 in terms of the Rules of the TSDBF (see Orion Money Purchase Pension Fund (SA) v Pension Funds Adjudicator and Others [2002] 9 BPLR)
5.2.11 In addition, it would also be fair that Transnet recover from the TSDBF on the Complainant’s behalf, interest at a rate prescribed in terms of the Prescribed Rate of Interest Act, on the withdrawal benefit owed to the Complainant (gratuity and annuity) when his membership with the TSDBF was terminated, for the period July 1998 to the date when the benefit (excluded the “top up” amount) was actually paid.

6 FINDINGS

Having considered the evidence uncovered during the investigation against the relevant regulatory framework, the Public Protector makes the following findings:

6.1 Regarding whether Transnet improperly failed to ensure that the Complainant’s full pension entitlement for the extended term of employment was secured when it extended his service from July 1998 to July 2000 in terms of the SAA Pilots’ Association and – Flight Engineers’ Association Regulating Agreements:

6.1.1 The allegation by the Complainant that Transnet failed to consult with him on the impact of the implementation of the SAA Pilots’ regulating Agreement, 1997 (prior to the anticipated Rule change of the TSDBF) on his continued membership of the TSDBF and resultant pension entitlements, is substantiated.

6.1.2 Neither the collective SAA Pilots’ Association and – Flight Engineers’ Association Regulating Agreements, the Income Tax Act nor the conditions of service of the Complainant provided for the termination of the Complainant’s membership of the TSDBF while remaining in service by virtue of the extension of his retirement age from 58 to 60.

6.1.3 There is no substantive proof that the Complainant had agreed to a variation of his conditions of service, and even if the Complainant had entered into a Top Management Agreement with Transnet, there is no indication of any terms that suggest that the parties had reached consensus on the substitution of his pension
entitlements with a contractual entitlement to a post retirement remuneration from Transnet.

6.1.4 If an agreement existed that facilitated the termination of the Complainant's membership of the TSDBF, Transnet was in breach thereof by continuing to deduct monthly pension contributions for the duration of the Complainant's extended service and for failing to facilitate the Complainant's exit from the TSDBF to enable the payment of his withdrawal benefits in terms of its Rules.

6.1.5 The Complainant had a vested right to membership of a retirement fund for the duration of his service. The actions taken by Transnet to circumvent a shortfall in the Complainant's pension income due to the extension of his services prior to the relevant Rule changes at the TSDBF, failed to reasonably and sufficiently protect the Complainant's vested right to membership of a retirement fund for the duration of his period of employment as envisaged in section 33 of the Constitution.

6.1.6 The contractual entitlement to a "top-up Pension" implemented by Transnet failed to meet the Complainant's reasonable pension benefit expectation under the Rules of the TSDBF based on his extended period of service and his contributions to the TSDBF, including future growth accrued to such his assets in the TSDBF after retirement.

6.1.7 The manner in which Transnet extended the Complainant's service after he reached the initial retirement age of 58, was unreasonable, unfair and contrary to public policy and in violation of section 23 of the Constitution and section 186(2) of the LRA.

6.1.8 This amounts to improper conduct and maladministration as envisaged by section 182(1)(a) of the Constitution and section 6 of the Public Protector Act, 1994.
6.2 Whether the conduct of the SAA/Transnet caused the Complainant to suffer prejudice:

6.2.1 The Complainant’s allegations that he is receiving a lower pension benefit compared to what was expected in terms of his conditions of service and what other employees (pilots) received when their retirement age was increased from 58 to 60 in terms of the SAA Pilots’ Association and – Flight Engineers’ Association Regulating Agreements, is substantiated.

6.2.2 The conduct by Transnet to substitute the Complainant’s pension entitlement and reasonable pension expectation with a contractual entitlement to post retirement remuneration (“to-up pension”) failed to place the Complainant in the position that he would have been in if he was able to continue his membership with TSDBF for the duration of his extended service, depriving him of the benefit of the accrued growth of further contributions – in the form of bonus payments to the members of the TSDBF.

6.2.3 The conduct by Transnet and the TSDBF by failing to facilitate his exit from the TSDBF when his membership was terminated in July 1998 and withholding his withdrawal benefit for two years until July 2000, caused the Complainant to suffer financial prejudice as he was deprived of any benefit that might have accrued from the use or investment of such withdrawal benefits.

6.2.4 The conduct of Transnet and the TSDBF was unfair and unreasonable in violation of section 33 of the Constitution and amount to maladministration as envisaged by section 182(1)(a) of the Constitution and section 6 of the Public Protector Act, 1994.
7. REMEDIAL ACTION

7.1 In the light of the above findings the Public Protector is taking the following remedial action as contemplated in section 182(1)(c) of the Constitution:

7.1.1 That the Group Chief Executive of Transnet takes the necessary steps to recover from the TSDBF, on the Complainant’s behalf, in lieu of past and future bonuses on the excluded portion of his pension emoluments, the actuarial value of the amount that would presently be standing to his credit for the period that the Complainant’s contributions had been received and invested by the TSDBF from July 1998 to July 2000 in terms of the Rules of the TSDBF.

7.1.2 That the Group Chief Executive of Transnet takes the necessary steps to recover from the TSDBF, on the Complainant’s behalf interest at a rate prescribed in terms of the Prescribed Rate of Interest Act No 55 of 1975, on the withdrawal benefit owed to the Complainant (gratuity and annuity) when his membership with the TSDBF was terminated, for the period July 1998 to the date when the benefit was actually paid by the TSDBF.
8. MONITORING

8.1 The Public Protector will require:

8.1.1 An implementation plan within 30 days from the date of this report, indicating how the remedial action referred to in paragraphs 7.1.1 and 7.1.2 above will be implemented within 3 months of the date of the report;

8.1.2 Regular progress reports on the implementation of the remedial action above.

ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE: 12 May 2017