
REPORT NO: 14 OF 2018/19
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"Allegations of maladministration regarding the improprieties in the sales and transfers of properties by the North West Housing Corporation and the City of Tshwane Metropolitan Municipality"

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Executive Summary</td>
</tr>
<tr>
<td>1.</td>
<td>Introduction</td>
</tr>
<tr>
<td>2.</td>
<td>The Complaint</td>
</tr>
<tr>
<td>3.</td>
<td>Powers and Jurisdiction of the Public Protector</td>
</tr>
<tr>
<td>4.</td>
<td>The Investigation</td>
</tr>
<tr>
<td>5.</td>
<td>The determination of the issues in relation to the evidence obtained and conclusions made with regard to the applicable law and prescripts</td>
</tr>
<tr>
<td>6.</td>
<td>Findings</td>
</tr>
<tr>
<td>7.</td>
<td>Remedial Action</td>
</tr>
<tr>
<td>8.</td>
<td>Monitoring</td>
</tr>
<tr>
<td></td>
<td>PAGE NO</td>
</tr>
<tr>
<td></td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>28</td>
</tr>
<tr>
<td></td>
<td>29</td>
</tr>
<tr>
<td></td>
<td>33</td>
</tr>
<tr>
<td></td>
<td>40</td>
</tr>
<tr>
<td></td>
<td>92</td>
</tr>
<tr>
<td></td>
<td>96</td>
</tr>
<tr>
<td></td>
<td>101</td>
</tr>
</tbody>
</table>
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 hereby published in terms of section 8(1) of the Public Protector Act, 1994.

(ii) The report relates to investigations into the alleged maladministration by the North West Housing Corporation (NWHC) and the City of Tshwane Metropolitan Municipality (CTMM), regarding the improprieties relating to the sales and transfers of the houses that belonged to the NWHC, falling within the municipal boundaries of the CTMM, that were purchased by the Complainants from the NWHC. The complaints were lodged by: Mr Michael Mere; Ms Bongo Sepeng; Mr Ernest Kgaseoe; and Ms W Ledingwane (Complainants) between the period 2011 and 2013, respectively.

(iii) The Complainants are average african families who, suffered prejudice as a result of the consequential eviction from the houses due to the failure and/or undue delays by the CTMM and the NWHC, a state owned entity or public entity, to effect transfer of or ensure the registration and transfer of the houses, or to secure ownership of the said properties for the Complainants. The properties are situated within the boundaries of the CTMM and were legally purchased by the Complainants from the NWHC. Mr Mere, who despite retaining his property (land), suffered economic prejudice for the loss of potential lucrative business relating to the unsuccessful proposed leases, due to the lack of a title deed and a right or consent to use the property from the CTMM.

(iv) The CTMM was established in 2000. Despite the agreement between the then MEC for the North West Local Government and Human Settlements, Public Safety and Liaison Department, the MEC for Gauteng Department of Human Settlements and
the MMC for Human Settlements in the CTMM to cooperate in an effort to timely resolve the NWHC properties impasse more than 13 years have elapsed without a conclusive resolution of the complaints relating to the NWHC properties raised by various complainants during or about 2005.

(v) Moreover, despite the CTMM and the NWHC raising the outstanding issue of the requirement of the opening of township registers prior to the registration and transfer of the properties into the names of the beneficiaries, certain properties had already been transferred into certain people’s names by the official(s) of the CTMM’s Human Settlement or Legal Department.

(vi) In essence the complaints are that:

1) Mr Michael Mere could not make use of the property, stand number 2827 Zone 2 Ga-Rankuwa purchased on account number 20060025 from the NWHC. As a result of the alleged failure by the CTMM and the NWHC to assist him in the registration and transfer of ownership of the property concerned into his name; the CTMM allegedly could not provide him with the right or consent to use it,

2) The alleged failure by the CTMM and the NWHC to assist Ms W Ledingwane with the registration and transfer of ownership of the property or to secure her ownership of house number 309 Block X Mabopane, that she and Mr Ledingwane purchased from the NWHC on account number 20051263;

3) The alleged failure by the CTMM and the NWHC to assist Ms Sepeng with the registration and transfer of ownership of the property or to secure her ownership of the house number 992 Unit 7 Ga-Rankuwa, purchased by Mr and Ms Sepeng from the NWHC on account number 3220070160; and

4) The alleged failure by the CTMM and the NWHC to assist Mr Ernest Kgaseoe with the registration and transfer of property or secure ownership of house number 2281 Unit 8, Ga-Rankuwa, that he purchased from the NWHC on account number: 96888002;
5) Further to that, the CTMM allegedly failed to implement its report of Audit and Risk Management Solutions, dated 24 February 2013 (dated February 2014 on covering page), relating, amongst others, to the investigations commissioned by the CTMM into the irregularities identified in the registration and transfers of ownership of properties of the NWHC by certain officials of the CTMM’s Human Settlement Department.

(vii) On analysis of the complaints the following four (4) four issues or conducts were considered and investigated:

(a) Whether the CTMM and the NWHC improperly failed to assist Mr Mere in the registration and transfer of ownership of stand number 2827 Zone 2 Ga-Rankuwa purchased from the NWHC, and if so, whether such conduct constitutes maladministration as contemplated by section 6(4) and (5) of the Public Protector Act?

(b) Whether the CTMM and the NWHC improperly failed to assist Ms W Ledingwane with the registration and transfer of ownership of house number 309 Block X Mabopane purchased from the NWHC, and if so, whether such conduct constitutes maladministration as contemplated by section 6(4) and (5) of the Public Protector Act?

(c) Whether the CTMM and the NWHC improperly failed to assist Ms LB Sepeng with the registration and transfer of ownership of house number 992 Unit 7 Ga-Rankuwa purchased from the NWHC, and if so, whether such conduct constitutes maladministration as contemplated by section 6(4) and (5) of the Public Protector Act?

(d) Whether the CTMM and the NWHC improperly failed to assist Mr Ernest Kgaso with the registration and transfer of ownership of house number 2281 Unit 8. Ga-Rankuwa purchased from the NWHC, and if so, whether such conduct constitutes maladministration as contemplated by section 6(4) and (5) of the Public Protector Act?
(e) Whether CTMM failed to implement the Audit and Risk Management Solutions' report commissioned by the CTMM, dated 24 February 2013 and relating to, amongst others, the investigations into the irregularities identified in the registration and transfers of ownership of properties of the NWHC by certain officials of the CTMM's Human Settlement Department.

(viii) The investigation process commenced with a preliminary investigation against the NWHC, followed by a formal investigation which was conducted through exchange of correspondence with the CTMM, NWHC and the former MEC for North West Local Government and Human Settlements Department, issuing of Notices in terms of section 7(9)(a) of the Public Protector Act, 1994 and responses thereto received from implicated parties, interviews with the Complainants and the relevant officials of the CTMM and the NWHC, including its Attorney, inspection and perusal of the relevant documents/correspondence received as well as the analysis and application of the relevant laws, policies and related prescripts.

(ix) The CTMM and the NWHC did not dispute that the properties that form part of this investigation were purchased by the Complainants from the NWHC and that the latter and the CTMM had the legal duty to transfer the properties concerned into the names of the Complainants when their accounts were settled in full and a bond discharge issued in their favour by the NWHC. However, despite the alleged fraudulent sales and transfers of the properties of the Complainants into the names of third parties, the NWHC and/or CTMM failed to institute action to recover the houses based on the alleged fraudulent misrepresentation, and also failed to refund the Complainants their monies paid in respect of the purchases of the houses concerned.

(x) Having considered the evidence received, I issued Notices in terms of section 7(9)(a) of the Public Protector, 1994 dated 31 January 2018, (Section 7(9)(a) Notice), informing the City Manager of the CTMM and the CEO of the NWHC about the impending adverse findings of improper conduct and maladministration that I intended to make and the joint liability of the CTMM and the NWHC for the prejudice
suffered by the Complainants, unless evidence to the contrary was submitted to my Office within the time stipulated in the Notices concerned.

(xi) However, in a response to the Section 7(9)(a) Notice, the CTMM disputed that it was liable for any prejudice suffered by the Complainants as a result of any improper conduct or maladministration occasioned by any failure or delays in the registration and transfers concerned. The NWHC, despite having received the Section 7(9)(a) Notice on 05 February 2018, which was also copied to Ms G F Gaolaolwe, MPL, the MEC for North West Local Government and Human Settlements Department (the affected department), did not respond by the deadline stipulated in the Notice concerned.

(xii) Pursuant to the response from the CTMM, I issued a Supplementary Section 7(9)(a) Notices, dated 24 April 2018, against the CTMM and the NWHC on 03 May 2018, to afford them a further opportunity to respond to my provisional findings. On 21 May 2018, a request for a meeting to clarify the intended response of the NWHC to the Section 7(9)(a) Notice was received from the Secretary of the NWHC Board, Adv Makinde, who was advised on 22 May 2018 that the deadline for the submission of the NWHC’s response to the Section 7(9)(a) Notice that I have issued, was 22 May 2018 and that upon receipt of such response, a request for a meeting would be considered. The NWHC furnished their responses on 22 May 2018, whereupon it was clearly explained, and against that background my Office indicated that no clarity regarding the response concerned was required as same was clearly stated. Subsequently, on 28 May 2018, the NWHC submitted their response to the Section 7(9)(a) Notice that I issued on 31 January 2018, without requesting condonation for such late submission after the expiry date in February 2018.

(xiii) On 23 May 2018, my Office advised the CTMM by email that the deadline for submission of the response lapsed on 22 May 2018. On 24 May 2018, the CTMM, through a letter dated 23 May 2018, requested an extension for submission of the response and was advised of the 10 days set in the Section 7(9)(a) Notice for
submission of their response, had lapsed. However, having considered the request concerned, as well as the relevant circumstances pertaining to the matter under investigation, an extension to submit the response by 30 May 2018 was granted to the CTMM. The CTMM argued that the period of the extension granted was unreasonable, however after clarifying the reasons for the decision regarding their request, CTMM did not proceed with the query concerned.

(xiv) Key laws and policies as well as case law taken into account to determine if there was maladministration by the CTMM and the NWHC, and prejudice suffered by the Complainants, were principally those imposing administrative standards and principles that should have been held by the CTMM and the NWHC or their officials in managing the process of and/or ensuring the registration and transfer of the properties in question into the names of the Complainants or securing Complainants' ownership of the properties as the rightful purchasers, and exercising due diligence by following a fair process to guard against the improprieties that resulted in the prejudice suffered by the Complainants.

(xv) Those laws and regulations concerned are the following:

(a) The issue relating to the consent use of land, the lodgment of the diagrams and plans as well as the establishment of township registers for purposes of registration of transfer of ownership with the Registry of Deeds within the area of jurisdiction of CTMM is regulated by the Deeds Registries Act, 47 of 1937, as amended, the Spatial Planning and Land Use Management Act, 16 of 2013, published on 5 August 2013, (the Spatial Planning and Land Use Management Act) as well as the CTMM Land Use Management By-law, 2016, promulgated on 02 March 2016 (the CTMM's By-law).

(b) Section 16(3)(b)(i) and (ii) of the CTMM's By-law provides for the granting of any consent, permission or relaxation and/or any other applications in terms of a Land Use Scheme on such conditions as it may determine.
(c) Section 16(8) of the CTMM’s By-law, provides that the applicant (in this case the CTMM) shall, within a period of 12 months or as it may allow, lodge with the Registrar of Deeds the plans and diagrams contemplated in subsection 16(6) as approved by the Surveyor-General, together with the relative title deeds, for endorsement or registration.

(d) In terms of section 16(9) of the CTMM’s By-law, the CTMM shall by notice in the Provincial Gazette, in terms of Schedule 33 of the Spatial Planning and Land Use Management Act, declare the township an approved township after the requirements for the establishment of a township have been complied with.

(e) In terms of section 18(1) of the Deeds Registries Act, the ownership of unalienated State land may be transferred from the State only by a deed of grant issued under proper authority and, having a diagram of the land annexed thereto. This section applies to the CTMM and or NWHC in respect of the property sold to Mr Mere. Section 18(2) requires that the ownership of land alienated from and reacquired by the State, be transferred from the State either by deed of grant or by deed of transfer issued or executed, under proper authority, containing a reference to the title deed by which the State held the land and to the title deed to which the diagram of the land is annexed. Accordingly, section 18(1) required the CTMM and NWHC to assist the Complainants with the deed of grant having a proper diagram of the land attached thereto, as well as the preceding title deed, to enable registration of ownership of the property into the name(s) of the relevant Complainant(s).

(f) Section 43(1) of the Deeds Registries Act, which provides that where defined portion of a piece of land has been surveyed, and a diagram thereof approved by the Surveyor-General, the Registrar may on written application by the owner of the land accompanied by the diagram of such portion, the title deed of the land, any bond thereon and the written consent of the holder of any such bond, issue a certificate of registered title in respect of such portion. The CTMM and
NWHC were required to comply with the above section in order to assist the relevant Complainant(s) in registering the property into their name(s).

(g) Section 46(1) of the Deeds Registries Act, provides that if land has been subdivided into lots or erven shown on a general plan, the owner of the land subdivided shall furnish a copy of the general plan to the registrar, who shall, subject to compliance with the requirements of this section and of any other law, register the plan and open a register in which all registerable transactions affecting the respective lots or erven shown on the plan shall be registered. Subsection 46(2) provides that for the purposes of registration of such a general plan, the title deed of the land which has been sub-divided shall be produced to the registrar together with the diagram thereof and any mortgage bond endorsed on the title deed and the mortgagee's consent to the endorsement of such bond to the effect that it attaches to the land described in the plan.

(h) The CTMM and/or NWHC, as the registered owner(s) of the properties in issue, were therefore required to lodge an application with the Registrar of Deeds, accompanied by an approved diagram, title deed and any bond thereon, if any, to have a certificate of registered title issued into the name(s) of the relevant Complainant(s), which they failed to do in certain instances.

(i) Section 7(2) of the Constitution provides that the State must respect, protect, promote and fulfil the rights in the Bill of Rights. Section 26(1) thereof provides that everyone has the right to have access to adequate housing. Section 195(1) of the Constitution requires public administration to be governed by the democratic values and principles enshrined in the Constitution which provide among others that a high standard of professional ethics must be maintained and the public administration must be accountable.

(xvi) The principle of case law applied relating to the requirement for a fair process to enhance the likelihood of efficiency and optimality in the outcome and to serve as a guardian against a process skewed by the corrupt influences, is the Constitutional Court Case of Allpay Consolidated Investment Holdings (PTY) Ltd v Chief
Executive Officer of the South African Social Security Agency (No 1) (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC), as far as it refers to administrative action.

(xvii) THE PUBLIC PROTECTOR’S OBSERVATIONS AND CONCLUSION

(a) The responses and submissions received from the CTMM and the NWHC were taken into consideration in arriving at the observations and conclusions stated below.

(b) Throughout the investigation, no tangible evidence was submitted to my Office to substantiate the alleged misrepresentation made by the syndicate and other individuals referred to by the CTMM or NWHC, except for the evidence pointing against each other by the parties concerned.

(c) It is clear from the evidence received that both the CTMM and NWHC are shifting the blame to each other, resulting in their respective denial to take the responsibility for the improprieties identified in this report.

(d) However, the evidence points to the respective responsibilities that existed between the CTMM and the NWHC, amongst others, to ensure cooperation amongst them in an effort of opening of township register, proper communication of the relevant information regarding the properties in issue, the process for ensuring the proper registration of the properties concerned in the names of the rightful beneficiaries, where possible, the issuing of title deeds and the ensuring of ownership of the rightful beneficiaries, guarding against the improper influences.

(e) The evidence received suggests that both the CTMM and the NWHC did not practice due diligence in managing the processes relating to the properties concerned and in ensuring that the ownership of the rightful beneficiaries was properly respected, promoted and protected against any improper influences.

(f) Both CTMM and NWHC respectively deviated from a fair process, which should have enhanced the likelihood of efficiency and sufficiency in the outcome of the
relevant process and served as a guardian against a process skewed by the corrupt influences, having reference to the remarks articulation by Justice Froneman, relating to deviations from a fair process, in the Constitutional Court Case of Allpay Consolidated Investment Holdings (PTY) Ltd v Chief Executive Officer of the South African Social Security Agency (No 1) (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC).

(g) The facts confirm a respective liabilities of the parties as a result of the omission or commission on their part relating to the sales and subsequent registration and transfer of the properties in issue.

(h) No documentary proof to suggest that the Complainants were party to the alleged fraudulent activities was given and the blame may as such not be apportioned to them.

(i) The facts further confirm the respective liability of the parties for securing the ownership of the properties in issue and the duty to have had them timely transferred to the rightful beneficiaries, the Complainants.

(j) Despite the alleged fraudulent sales and transfers of the properties of the Complainants into the names of third parties, the NWHC and/or CTMM failed to institute action to recover the houses based on fraudulent misrepresentation, and also failed to refund the Complainants their purchase monies or provide them with properties of similar market values in respect of the houses concerned.

(k) However, despite the NWHC and the CTMM assertively blaming each other in their responses for the maladministration referred to herein, it is encouraging to note that both parties welcome my Office’s actions in having the matters resolved and are committed to work together in resolving the issues and finding a lasting solution for the Complainants.

(l) The NWHC, as the original seller of the properties had the duty to transfer the properties into the names of the purchasers and CTMM as the municipality
within whose boundaries the properties in question were situated respectively, and the properties subsequently transferred to it, was obligated to ensure that a fair process leading to the registration and transfer of the properties into the rightful owners was followed throughout the process to its conclusion, thereby ensuring proper outcomes and guarding against corrupt influences that led to the consequential prejudice suffered by the Complainants as a result of the fraudulent sale of their properties to the third parties, as alleged.

(m) The CTMM, in unlawfully registering and transferring the properties of the rightful beneficiaries into the names of third parties, unlawfully deprived the Complainants of their properties and therefore violated sections 25(1) and 26(1) of the bill of rights so far as they relate to housing and is accordingly responsible to restore such rights.

(n) The current owners of the properties which were fraudulently sold to them are also victims and therefore setting aside the sales would not be an appropriate remedy under the circumstances.

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

(a) Regarding whether the CTMM and the NWHC improperly failed to assist Mr Mere in the registration and transfer of ownership of stand number 2827 Zone 2 Ga-Rankuwa purchased from the NWHC, and if so, whether such conduct constitutes maladministration?

(aa) The allegation that the CTMM and NWHC improperly failed to assist Mr Mere in the registration and transfer of stand number 2827 Zone 2 Ga-Rankuwa into his name, is substantiated.

(bb) The CTMM’s failure to, timely or at all, establish a township and act in terms of sections 18(1) or (2) or 43(1) and/or 46(1) or (2) of the Deeds Registries Act and/or section 16(3)(b)(i) and (ii) of the CTMM’s By-law in so far as Mr Mere is concerned, and to assist him, with the required
general plan, deed of grant, title deed and the diagram which is required to be lodged with the Registrar of Deeds to enable the registration and transfer of the property into his name or to timely give him right or consent to use the property, was improper.

(cc) The conduct of the CTMM in the above regard constitutes maladministration envisaged in section 6(4) of the Public Protector Act and improper conduct envisaged in section 182(1) of the Constitution.

(dd) The NWHC’s failure to ensure the registration and transfer of the property into the name of Mr Mere after the settlement of his account, was improper.

(ee) The conduct of the NWHC in the above regard constitutes maladministration envisaged in section 6(5) of the Public Protector Act and improper conduct envisaged in section 182(1) of the Constitution.

(b) Whether the CTMM and the NWHC improperly failed to assist Ms W Ledingwane with the registration and transfer of ownership of house number 309 Block X Mabopane purchased from the NWHC, and if so, whether such conduct constitutes maladministration?

(aa) The allegation that the CTMM and NWHC improperly failed to assist Ms Ledingwane with the registration and transfer of stand number 2827 Zone 2 Ga-Rankuwa into her name, is substantiated.

(bb) The CTMM’s failure to, timely or at all, assist Ms Ledingwane, with a general plan, deed of grant, title deed and the diagram which were required to be lodged with the Registrar of Deeds to enable the registration and transfer of the property into her name prior to its alleged fraudulent sale to a third party, or its failure to secure her ownership of the property concerned, was improper.
(cc) Failure by the CTMM to refund the purchase price to Ms Ledingwane or to provide her with alternative property of similar value when her property was fraudulently sold as alleged, and subsequently unlawfully transferred to a third party by the CTMM, was also improper.

(dd) The failure by the CTMM to effectively and fully implement its Audit Report of 24 February 2013, which found that Ms Ledingwane was a victim of fraudulent sale and the subsequent unlawful transfer of her property to a third party, was also improper.

(ee) The conduct of the CTMM in the above regard constitutes maladministration envisaged in section 6(4) of the Public Protector Act and improper conduct envisaged in section 182(1) of the Constitution.

(ff) The NWHC’s failure to ensure the registration and transfer of the property into the name of Ms Ledingwane prior to its alleged fraudulent sale, and the subsequent unlawful transfer to a third party by the CTMM, was improper.

(gg) The conduct of the NWHC in the above regard constitutes maladministration envisaged in section 6(5) of the Public Protector Act and improper conduct envisaged in section 182(1) of the Constitution.

(c) Whether the CTMM and the NWHC improperly failed to assist Ms LB Sepeng with the registration and transfer of ownership of house number 992 Unit 7 Ga-Rankuwa purchased from the NWHC, and if so, whether such conduct constitutes maladministration?

(aa) The allegation that the CTMM and NWHC improperly failed to assist Ms Sepeng with the registration and transfer of stand number 2827 Zone 2 Ga-Rankuwa into her name, is substantiated.
(bb) The CTMM’s failure to, timely or at all, act to assist Ms Sepeng with a general plan, deed of grant, title deed and the diagram which was required to be lodged with the Registrar of Deeds, to enable the registration and transfer of the property into her name prior to its alleged fraudulent sale to a third party or its failure to secure her ownership of the property concerned, was improper.

(cc) Failure by the CTMM to refund the purchase price to Ms Sepeng or to provide her with alternative property of similar value when her property was fraudulently sold as alleged, and subsequently unlawfully transferred to another person by the CTMM, was also improper.

(dd) The conduct of the CTMM in the above regard constitutes maladministration envisaged in section 6(4) of the Public Protector Act and improper conduct envisaged in section 182(1) of the Constitution.

(ee) The NWHC’s failure to ensure the registration and transfer of the property into the name of Ms Sepeng prior to its alleged fraudulent sale, and the subsequent unlawful transfer to a third party by the CTMM, was improper.

(ff) The conduct of the NWHC in the above regard constitutes maladministration envisaged in section 6(5) of the Public Protector Act and improper conduct envisaged in section 182(1) of the Constitution.

(d) Whether the CTMM and/or the NWHC failed to assist Mr Ernest Kgasoe with the registration and transfer of ownership of house number 2281 Unit 8, Ga-Rankuwa into his name, and if so, whether such conduct constitutes maladministration?

(aa) The allegation that the CTMM and NWHC improperly failed to assist Mr Kgasoe with the registration and transfer of stand number 2827 Zone 2 Ga-Rankuwa into his name, is substantiated.
(bb) The CTMM’s failure to, timely or at all, act to assist Mr Kgasoe with the required general plan, deed of grant, title deed and the diagram required to be lodged with the Registrar of Deeds, to enable the registration and transfer of the property into his name prior to its alleged fraudulent sale and the subsequent unlawful transfer to a third party by the CTMM, or its failure to secure his ownership of the property concerned, was improper.

(cc) Failure by the CTMM to refund the purchase price to Mr Kgasoe or provide him with alternative property of similar value when his property was fraudulently sold as alleged, and subsequently unlawfully transferred to another person by CTMM, was also improper.

(dd) Failure by the CTMM to effectively and fully implement its Audit Report of 24 February 2013, which found that Mr Kgasoe was the rightful beneficiary of Erf 2281 Unit 8, Ga-Rankuwa, was also improper.

(ee) The conduct of the CTMM constitutes maladministration envisaged in section 6(4) of the Public Protector Act and improper conduct envisaged in section 182(1) of the Constitution.

(ff) The NWHC’s failure to ensure the registration and transfer of the property into the name of Mr Kgasoe prior to its alleged fraudulent sale, and the subsequent unlawful transfer to a third party by the CTMM, was improper.

(gg) The conduct of the NWHC in the above regard constitutes maladministration envisaged in section 6(5) of the Public Protector Act and improper conduct envisaged in section 182(1) of the Constitution.
(xix) The appropriate remedial actions I am taking as envisaged in section 182(1)(c) of the Constitution are the following:

(a) The MEC for Gauteng Department of Human Settlements to:

(aa) Take cognizance of the findings regarding the maladministration by the CTMM relating to the improprieties mentioned in this report.

(bb) Within thirty (30) days from the date of the issuing of this report, appoint an audit firm to investigate if there are any other person(s) who may have been deprived of their property, and within thirty (30) days of the finalisation of the investigation, submit the report to the Executive Mayor of the CTMM for implementation in accordance with my remedial action taken in paragraph 7.2.3 of this report.

(cc) Include in his/her oversight role with the housing and human settlement activities, the monitoring of implementation of the remedial action taken in pursuit of the findings in terms of the powers conferred to the Public Protector under section 182(1)(c) of the Constitution.

(b) The Executive Mayor of the CTMM to:

(aa) Take cognizance of the findings regarding the maladministration by the CTMM relating to the improprieties mentioned in the report.

(bb) Ensure that the City Manager of the CTMM, within ninety (90) days from the date of the issuing of this report, provides alternative houses having all the necessary basic services such as water, electricity and sewage system to all the beneficiaries who were dispossessed of their housing rights through the alleged fraudulent and unlawful transfer of their properties or compensate the complainants with the current market value of the properties that were fraudulently and unlawfully transferred to the third parties; and
Within ninety (90) days of receipt of the report from the MEC for the Gauteng Department of Human Settlements, ensure that the City Manager provides alternative houses having all the necessary basic services such as water, electricity and sewage system to all other beneficiaries who were dispossessed of their housing rights through the alleged fraudulent and unlawful transfer of their properties or compensate them with the current market value of the properties that were fraudulently and unlawfully transferred to the third parties.

Ensure that the City Manager of the CTMM, within ninety (90) days from the date of the issuing of this report, establishes a township at the area where stand number 2827 Zone 2 Ga-Rankuwa is situated and register and transfer the relevant property into Mr Mere.

Ensure that the City Manager of the CTMM, within thirty (30) days from the date of the issuing of this report, implements CTMM's Investigation Report dated 24 February 2013.

Ensure that the City Manager of the CTMM and the Chairman of the Board of the NWHC (Chairman of the NWHC), within thirty (30) days from the date of the issuing of this report, provide him with all the information regarding any other person(s) who may have been deprived of their property to be considered in the implementation of the remedial action mentioned in paragraph 7.2.3 of this report.

The MEC for North West Housing and Human Settlements and the Chairman of the NWHC to:

Take cognizance of the findings regarding the maladministration by the NWHC relating to the improprieties mentioned in the report.

Ensure that, within thirty (30) days from the date of the issuing of this report, the Chairman of the NWHC consider reimbursing ex-gratia
payments to the affected complainants for the embarrassment, frustration, pains and pecuniary loss suffered as a result of loss of their houses for the last 13 years.

(cc) Ensure that the CEO of the NWHC, within thirty (30) days from the date of the issuing of this report, identify and refer to the Executive Mayor of the CTMM and the Chairman of the NWHC any other person(s) who may have been deprived of their property to be considered in the implementation of the remedial actions mentioned in paragraphs 7.2.3 and 7.3.2 of this report.

(dd) The MEC for North West Housing and Human Settlements to include in his/her oversight role with the housing and human settlement activities, the monitoring of implementation of the remedial action taken in pursuit of the findings in terms of the powers conferred to the Public Protector under section 182(1)(c) of the Constitution.

(d) The City Manager of the CTMM to:

(aa) Render an apology to each of the Complainants, within a period of thirty (30) days from the date of the issuing of this final report, for the improper failure by the CTMM to ensure or assist them with the registration and transfer of their properties into their names or to secure ownership of their respective properties as well as for the unlawful registration and transfer of their properties to third parties which resulted in their prejudice.

(bb) Within thirty (30) days from the date of the issuing of this report, assist Mr Mere with the necessary consent to use the property, stand number 2827 Zone 2 Ga-Rankuwa, to enable him to derive the projected
financial benefit, pending the registration and transfer of the property concerned into Mr Mere’s name in the Register of Deeds.

(cc) Within ninety (90) days from the date of the issuing of this report, establish a township in the area where stand number 2827 Zone 2 Ga-Rankuwa is situated and to register and transfer the relevant property into Mr Mere’s name.

(dd) Within ninety (90) days from the date of the issuing of this report, provide alternative houses having all the necessary basic services such as water, electricity and sewage system to all the beneficiaries who were dispossessed of their housing rights through the fraudulent and unlawful transfer of their properties or compensate the complainants with the current market value of the properties that were fraudulently and unlawfully transferred to the third parties.

(ee) Within thirty (30) days from the date of the issuing of this report, implement CTMM’s Investigation Report dated 24 February 2013.

(ff) Within thirty (30) days from the date of the issuing of this report, identify and refer any other person(s) who may have been deprived of their property to the Executive Mayor of the CTMM and the Chairman of the NWHC to be considered in the implementation of the remedial actions mentioned in paragraphs 7.2.3 and 7.3.2 of this report.

(gg) CTMM should institute civil proceedings to recoup the money from all their officials who were identified as being responsible for the malfeasance uncovered and reported in the Public Protector’s investigation.
(e) The Chief Executive Officer of the NWHC to:

(aa) Render an apology to each of the Complainants, within a period of thirty (30) days from the date of the issuing of this report, for the improper failure by the CTMM to ensure or assist them in the registration and transfer of their properties or to secure their ownership of the properties concerned which resulted in their prejudice.

(bb) Within thirty (30) days from the date of the issuing of this report and in consultation with the Chairman of the NWHC, consider reimbursing ex-gratia payments to the affected complainants for the embarrassment, frustration, pains and pecuniary loss suffered as a result of loss of their houses for the last 13 years.

(cc) Within thirty (30) days from the date of the issuing of this report, identify and refer any other person(s) who may have been deprived of their property to the Executive Mayor of the CTMM and the Chairman of the NWHC to be considered in the implementation of the remedial actions mentioned in paragraphs 7.2.3 and 7.3.2 of this report.

(xx) Public Protector refers the report in terms of section 6(4) of the Public Protector Act, 1994 to the National Commissioner of the South African Police Service (DPCI Head), to investigate criminal conduct by CTMM and NWHC's officials in the fraudulent registration of houses as uncovered during the Public Protector's investigation.

1. INTRODUCTION

1.1 This is my final report 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 It is submitted to:

1.2.1 The MEC for North West Local Government and Human Settlements;

1.2.2 The MEC for Gauteng Department of Human Settlements;

1.2.3 The Executive Mayor of City of Tshwane Metropolitan Municipality;

1.2.4 The City Manager of City of Tshwane Metropolitan Municipality;

1.2.5 The Chairman of the Board of the North West Housing Corporation;

1.2.6 The Chief Executive Officer of the North West Housing Corporation;

1.3 Copies of the report are also made available to the following persons (Complainants) in terms of section 8(3) of the Public Protector Act:

1.3.1 Mr Michael Mere;
1.3.2 Mr Ernest Kgosoe;

1.3.3 Ms Bongo Sepeng; and

1.3.4 Ms W Ledingwane.

1.4 The report relates to investigations into the alleged maladministration by the North West Housing Corporation (NWHC) and the City of Tshwane Metropolitan Municipality (CTMM), in connection with the improprieties relating to the sales and transfers of the houses that belonged to the NWHC, which are situated within the municipal boundaries of the CTMM.

1.5 The background regarding the NWHC's and CTMM's immovable properties debacle:

1.5.1 The Pretoria News of 05 January 2009, reported, amongst others, through Patrick Hlahla, titled “Help at hand for struggling residents north of the city” (sic), that long suffering residents in some township north of Pretoria could soon receive assistance in connection with their housing problems.

1.5.2 It was further reported that most of the poor residents have lost houses they had bought from the then Bophuthatswana government, which were administered by the NWHC in a number of townships, including Ga-Rankuwa, Mabopane, Winterveldt and Hamanskraal.

1.5.3 The NWHC was quoted having said it was probing the allegations that some estate agents and government officials were illegally selling properties.

1.5.4 Both the NWHC and the Tshwane Metro Council were reported as having said that legal action would be taken against the culprits.
1.5.5 It was further reported that Mr Absalom Ditshoke, then mayoral committee member for housing, said "it is important to point out that no one has raised these matters other than ourselves ... We have been addressing them as part of our mandate" and that "urgent action to resolve the problem was needed. Failure could lead to loss of lives".

1.5.6 The article concluded by stating that the Tshwane Metro Council and the North West Provincial Government would hopefully find a lasting solution for the housing crisis in Ga-Rankuwa, Mabopane and Winterveldt.

1.5.7 The NWHC was established through the North West Housing Corporation Act, 24 of 1982, as amended. Accordingly, NWHC is an organ of state, as defined in section 239 of the constitution and a public entity as defined in terms of section 1 of the PFMA. It operates as a housing parastatal of the North West Provincial Government within the Department of Local Government and Housing and had ownership of the properties consisting of rental stock, flats, vacant stands and instalment sale houses in various provinces, amongst others, the Gauteng Province.

1.5.8 It also inherited properties from the former Bophuthatswana Republic, which were not registered in the township registers, amongst others, those falling within the boundaries of the CTMM.

1.5.9 The information from the CTMM Housing and Human Settlements Department submitted to my Office, dated 05 February 2014, provides that after the establishment of the CTMM in 2000, all provincial property within the area of jurisdiction of the newly established CTMM, were registered under the CTMM.

1.5.10 Several properties which had been allocated to the new owners at the time of the devolution by Gauteng/North West Province were not transferred to the occupants and as a result, the properties concerned were legally owned by the CTMM.
1.5.11 With a view to resolve the impasse, CTMM agreed to register the properties formerly owned by the NWHC after the successful opening of the township register(s) to enable the NWHC to effect the registration and transfer of all remaining rental properties to the occupiers or buyers, subject to the terms and conditions set out by the CTMM.

1.5.12 Meetings were held between the Office of the MEC for North West Local Government and Human Settlements, Public Safety and Liaison and the Office of the MEC for Gauteng Department of Human Settlements, to address the issues regarding the NWHC project within the area of the CTMM and the subsequent transfers of the properties concerned to qualifying beneficiaries.

1.5.13 It was resolved that a task team under the stewardship of the MMC for Housing and Human Settlements of the CTMM be established to address the diverse challenges related to the NWHC residential and development stock, and to assist in the cross boundary migration process.

1.5.14 The Gauteng Department of Human Settlements had appointed consultants to conduct a occupancy survey on all the former NWHC properties and as a result 73 properties in Ga-Rankuwa were registered and title deeds were being awaited from the conveyancers to be awarded to the rightful beneficiaries. However, no specific mention is made regarding the Complainants.

1.5.15 CTMM submitted that its Legal Services Division confirmed that the township registers for former NWHC properties had not been opened at the time when the complaints were lodged with the Public Protector as the land in Ga-Rankuwa Unit 2 belonged to the Public Works Department, Unit 6 belonged to Medunsa and Mabopane Block A and B (portions 5 and 7 of the Farm Mabopane 702JR) was registered in the name of the NWHC and required the establishment of townships and land availability agreement between the CTMM and the NWHC which was in a
process of being concluded to enable the CTMM to open township registers for Mabopane A and B.

1.5.16 The remainder of the townships were referred to the Special Mayoral Task Team in an effort to expedite the process of opening township registers, in order to enable the registration and transfer of ownership to be properly effected.

1.5.17 CTMM further stated that the service provider, Falkia, and the Legal Services Division of the CTMM established a sub-committee to investigate and apply urgent remedial action on the speedy opening of the township registers.

1.5.18 The then MEC for North West Human Settlements, Public Safety and Liaison Department, the MEC for Gauteng Department of Human Settlements and the MMC for Human Settlements in the CTMM agreed to cooperate in an effort to resolve the NWHC properties impasse.

1.5.19 I have observed that since the establishment of the CTMM in 2000, more than 13 years have elapsed since the problems were brought to the fore without conclusive resolution of the complaints relating to the NWHC properties raised by various complainants in 2005.

1.5.20 It has also been noted that, despite the CTMM and the NWHC raising the requirement of the opening of township registers prior to the registration and transfer of properties into the names of the beneficiaries, certain properties had already been transferred into other people’s names by the official(s) of the CTMM’s Human Settlement Department.

1.5.21 Due to the issues raised with the NWHC and CTMM remaining unresolved, the Complainants reported the complaints to my Office for investigation.
2. **THE COMPLAINT**

2.1 The complaints were lodged by the Complainants during the period between 2011 and 2013, in which it is alleged that:

2.1.1 Mr Michael Mere could not make use of the property, stand number 2827 Zone 2 Ga-Rankuwa purchased on account number 20060025 from the NWHC, as the CTMM allegedly could not provide him with the right or consent to use it due to the alleged failure by the CTMM to open a township register and the NWHC to transfer ownership of the property concerned into his name;

2.1.2 The CTMM and the NWHC failed to assist Ms W Ledingwane with the registration and transfer of ownership of the property, or secure his ownership of house number 309 Block X Mabopane, purchased from the NWHC on account number 20051263;

2.1.3 The CTMM and the NWHC failed to assist with the registration and transfer of ownership of the property, or secure ownership of house number 992 Unit 7 Ga-Rankuwa, purchased by Ms LB Sepeng from the NWHC on account number 3220070160;

2.1.4 The CTMM and the NWHC failed to assist Mr Ernest Kgaseo with the registration and transfer of property, or secure his ownership of house number 2281 Unit 8, Ga-Rankuwa, purchased from the NWHC on account number: 96888002; and

2.1.5 The CTMM failed to implement its report of 24 February 2013, relating, amongst others, to irregularities identified in the registration and transfer of ownership of properties of the NWHC by certain officials of the CTMM’s Human Settlement Department.

2.2 The properties relating to Ms Ledingwane, Ms Sepeng and Mr Kgaseo were sold, registered and transferred to third parties without any compensation.
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:

"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 and Others: Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11; 2016 (3) SA 580 (CC) and (5) BCLR 618*, the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect [at para 76]. 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 In the above-mentioned matter of the *Economic Freedom Fighters v Speaker of the National Assembly and Others*, the Chief Justice Mogoeng stated the following, when confirming the powers of the Public Protector:
3.4.1 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (para 65);

3.4.2 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. (para 67);

3.4.3 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints is the most the Public Protector could do in terms of the Interim 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 (para 68);

3.4.4 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. (para 69);

3.4.5 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. (para 70);

3.4.6 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. (para 71);

3.4.7 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; (para 71);

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

3.4.9 “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 (para 71(e));

3.4.10 In the matter of the President of the Republic of South Africa v Office of the Public Protector and Others (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP); [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017), the court held as follows, when confirming the powers of the Public Protector:-

3.4.10.1 The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the constitution (paragraph 71 of the judgment)

3.4.10.2 The Public Protector has power to take remedial action, which include instructing the President to exercise powers entrusted on them under the constitution if that is required to remedy the harm in question. (paragraph 82 of the judgment);

3.4.10.3 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. (paragraph 85 and 152 of the judgment)

3.4.10.4 There is nothing in the Public Protector act or Ethics Act that prohibit 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 (paragraph 91 and 92 of the judgment)

3.4.10.5 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 (paragraph 100 and 101 of the judgment):

a) Conduct an investigation;
b) Report on that conduct; and
c) To take remedial action.

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

3.4.10.7 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 of the report). This was a finding on NEF judgment as well.

3.4.10.8 The fact that there is no firm findings on the wrong doing, this does not prohibit the public protector form taking remedial action. The Public Protector’s observations constitute prima facie findings that point to serious misconduct (paragraph 107 and 108 of the Judgment)

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

3.4.11 Section 182(2) of the Constitution directs that the Public Protector has the additional powers and functions prescribed by national legislation.
3.4.12 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and abuse or unjustifiable exercise of power in the conduct of state affairs.

3.4.13 Section 6(5)(a) and (b) of the Public Protector Act specifically empowers the Public Protector to investigate any maladministration in connection with the affairs of any public entity as defined in section 1 of the Public Finance Management Act, 1999 (PFMA).

3.4.14 NWHC is a provincial public state-owned entity and its conduct falls within the ambit of the Public Protector.

3.4.15 The Public Protector's powers and jurisdiction to investigate and take appropriate remedial action was not disputed by the NWHC and CTMM.

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 7 of the Public Protector Act gives the Public Protector the authority to conduct a preliminary investigation for the purpose of determining the merits of the complaint, allegation or information.
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 he/she 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 the NWHC and CTMM acted improperly in relation to:-

4.2.2.1 Failure to register and transfer the property to the complainants; and

4.2.2.2 Sales and transfers of properties of the NWHC to certain individuals.

4.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been complied with by the NWHC and CTMM to prevent any maladministration and prejudice.

4.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct or maladministration. Where the
Complainant has suffered any prejudice, the idea is to place him as close as possible to where he would have been had the NWHC and/or CTMM complied with the regulatory framework setting the applicable standards for good administration.

4.2.5 Jurisprudence and touchstones from previous Public Protector Reports were also considered and applied.

4.3 On analysis of the complaints, the following issues or conducts were identified, considered and investigated:

4.3.1 Whether the CTMM and the NWHC improperly failed to assist Mr Mere in the registration and transfer of ownership of stand number 2827 Zone 2 Ga-Rankuwa purchased from the NWHC, and if so, whether such conduct constitutes maladministration as contemplated by section 6(4) and (5) of the Public Protector Act?

4.3.2 Whether the CTMM improperly and the NWHC improperly failed to assist Ms W Ledingwane with the registration and transfer of ownership of house number 309 Block X Mabopane purchased from the NWHC, and if so, whether such conduct constitutes maladministration as contemplated by section 6(4) and (5) of the Public Protector Act?

4.3.3 Whether the CTMM and the NWHC improperly failed to assist Ms LB Sepeng with the registration and transfer of ownership of house number 992 Unit 7 Ga-Rankuwa purchased from the NWHC, and if so, whether such conduct constitutes maladministration as contemplated by section 6(4) and (5) of the Public Protector Act?

4.3.4 Whether the CTMM and the NWHC improperly failed to assist Mr Ernest Kgasoe with the registration and transfer of ownership of house number 2281 Unit 8, Ga-Rankuwa purchased from the NWHC, and if so, whether such conduct constitutes
maladministration as contemplated by section 6(4) and (5) of the Public Protector Act?

4.4 The key sources of information:

4.4.1 Documents received and considered:

4.4.1.1 The Certificate of Occupation and the Memorandum of Lease for house number 992 Unit 7 Ga-Rankuwa, dated 21 April 1989, between Mr and Ms Sepeng and the NWHC;

4.4.1.2 The Deed of Sale and the Application for a Deed of Grant, signed at Ga-Rankuwa with the Department of Local Government and Housing, dated 19 August 1999;

4.4.1.3 A copy of the cancellation of bond letter dated 03 March 2006 from the NWHC to Mr Kgasoe;

4.4.1.4 Copy of confirmation of ownership of house no. 2281 Unit 8 Ga-Rankuwa, from the NWHC dated 29 May 2003;

4.4.1.5 Copy of clearance certificate issued by CTMM in respect of house 2281 Unit 8, Ga-Rankuwa, dated 23 January 2003;

4.4.1.6 Copy of a letter from Acting Deputy Director-General: Departmental Local Government and Housing, dated 28 May 2001;

4.4.1.7 Copy of Affidavit of Pholoso Samuel Monale dated 25 June 2003;

4.4.1.8 Copy of Deed of Transfer: T033050 03 dated 20 December 2002;

4.4.1.9 A Copy of the Memorandum from Ga-Rankuwa Town Council dated 05 May 1999;

4.4.1.10 A Copy of the cancellation of bond, dated 16 June 2007 from the NWHC to Mr Mere;

4.4.1.11 Certificate of Township Title: T155991/02, dated 06 December 2002;
4.4.1.12 A copy of the cancellation of bond dated 08 May 2008 from the NWHC to Mr Ledingwane;

4.4.1.13 Memo from Mabopane Town Clerk dated 15 November 1996;

4.4.1.14 A copy of a statement from NWHC to Ms Ledingwane, dated 22 November 2007;

4.4.1.15 Copy of a letter addressed to Mr Ledingwane from CTMM, dated 04 May 2010;

4.4.1.16 Copy of the Certificate of Occupation with a date of 03 June 1986;

4.4.1.17 A statement of account from the NWHC, dated 10 July 2009;

4.4.1.18 WinDeed Report, dated 14 November 2007;

4.4.1.19 Copy of Deed of Transfer of property number 309 Block X Mabopane to the Chaanes, dated 26 September 2007;

4.4.1.20 Copy of Founding Affidavit of Mr Kokomane David Chaane, dated 05 January 2010;

4.4.1.21 Copy of Pretoria News article of 05 January 2009, titled "Help at hand for struggling residents north of the city";

4.4.1.22 Audit and Risk Management Solutions Report, dated 24 February 2013 and February 2014 respectively;

4.4.1.23 Legal Opinion from Adv Mervyn M RIP SC, dated 28 February 2018;

4.4.1.24 Letter from CTMM to NWHC regarding Erf 2827 Zone 2 Ga-Rankuwa, dated 20 July 2017;

4.4.1.25 Letter from NWHC to CTMM regarding Erf 2827 Zone 2 Ga-Rankuwa, dated 17 August 2017

4.4.2 Meetings, Consultations and Interviews conducted:

4.4.2.1 Telephonic consultation with Ms Jane Motshegwa on 11 November 2011;
4.4.2.2 A Meeting held between the NWHC, represented by Mr Nakampe Makoti of Bezuidt Attorneys, the CTMM represented by Adv Daphne Mokhele and Mr Robert Nguluvhe and the Public Protector Investigation Team on 08 July 2016.

4.4.3 **Correspondence sent and received:**

4.4.3.1 Letter from the Public Protector to former MEC for Human Settlements, Public Safety and Liaison, Mr Nono Maloyi, MPL, dated 23 July 2013;

4.4.3.2 Letter (response) from Mr Nono Maloyi, former MEC for Human Settlements, Public Safety and Liaison to the Public Protector, dated 13 August 2013;

4.4.3.3 Letter from Public Protector to Mr Nono Maloyi, former MEC for Human Settlements, Public Safety and Liaison, dated 13 September 2013;

4.4.3.4 Letter (response) from CTMM Housing and Human Settlements Department to the Public Protector, dated 05 February 2014;

4.4.3.5 Letter from the Public Protector to Mr Collin Maine, former MEC for North West Local Government and Human Settlements, dated 15 June 2015;

4.4.3.6 Letter from NWHC to the Public Protector, dated 26 May 2016;

4.4.3.7 Letter from the Public Protector to City Manager of the CTMM, dated 30 August 2017;

4.4.3.8 Letter from Public Protector to Ms Galaletsang Gaolaolwe, MEC for North West Local Government and Human Settlements Department, dated 30 August 2017;

4.4.3.9 Letter from Ms Galaletsang Gaolaolwe, MEC for North West Local Government and Human Settlements Department to Public Protector, dated 14 September 2017;
4.4.3.10 Draft letter from CTMM to Public Protector, dated 24 May 2018; and

4.4.3.11 Email correspondence between the Public Protector and NWHC as well as CTMM between the period 2012 and 2018.

4.4.4 Notices issued and responses received:

4.4.4.1 Notice issued in terms of section 7(9)(a) of the Public Protector Act to the CTMM, dated 31 January 2018;

4.4.4.2 Notice issued in terms of section 7(9)(a) of the Public Protector Act to the NWHC, dated 31 January 2018;

4.4.4.3 Response to section 7(9)(a) Notice from CTMM, dated 27 March 2018;

4.4.4.4 Supplementary Section 7(9)(a) Notice dated 24 April 2018;

4.4.4.5 Responses to section 7(9)(a) Notice from NWHC, dated 22 May 2018;

4.4.4.6 CTMM's request for extension of time to submit the response to the supplementary Section 7(9)(a) Notice, dated 23 May 2018; and

4.4.4.7 Public Protector's response dated 28 May 2018 to CTMM's request for extension stated above, dated 23 May 2018.

4.4.5 Legislation and other prescripts:

4.4.5.1 The Constitution of the Republic of South Africa;
4.4.5.2 The Public Protector Act No 23 of 1994;
4.4.5.3 The Public Finance Management Act No 1 of 1999;
4.4.5.4 The North West Housing Corporation Act, 24 of 1982;
4.4.5.5 The Deeds Registries Act, 47 of 1937;
4.4.5.6 The Spatial Planning and Land Use Management Act, 16 of 2013;
4.4.5.7 The CTMM Land Use Management By-law, 2016;

4.4.6 Case law

4.4.6.1 Allpay Consolidated Investment Holdings (PTY) Ltd v Chief Executive Officer of the South African Social Security Agency (No 1) (CCT 48/13[2013] ZACC 42; 2014 (1) SA 604 (CC).

4.4.6.2 Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11; 2016 (3) SA 580 (CC) and (5) BCLR 618.

4.4.6.3 President of the Republic of South Africa v Office of the Public Protector and Others (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP) ; [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017)

4.4.7 Public Protector's Touchstone

4.4.7.1 Report No: 3 of 2015/16: Report of the Public Protector on investigation into allegations of maladministration relating to financial mismanagement, tender irregularities and appointment irregularities against PRASA.

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 CTMM and the NWHC improperly failed to assist Mr Mere with the registration and transfer of ownership of stand number 2827
Zone 2 Ga-Rankuwa purchased from the NWHC, and if so, whether such conduct constitutes maladministration?

Common cause facts

5.1.1 Mr Michael Mere purchased stand number 2827 Zone 2 Ga-Rankuwa from the NWHC on 08 March 2006 for the amount of R30 072.00.

5.1.2 A copy of the cancellation of bond letter dated 16 June 2007 from the NWHC confirmed the settlement of the account by Mr Mere.

5.1.3 During June 2007, Maenetja Attorneys confirmed with the NWHC that the relevant property could not be registered in Mr Mere’s name as the township register had not been opened by the CTMM.

5.1.4 In 2009, CTMM confirmed to Maenetja Attorneys that Maponya Attorneys were appointed by the MEC for Developmental Local Government and Housing in the North West Province to open a township register for various townships, including Ga-Rankuwa Zone 2.

5.1.5 When the property was incorporated into the CTMM, the latter was required to proclaim the property to assist with the registration and transfer of ownership process.

5.1.6 During 2011, the properties in Zone 2 Ga-Rankuwa were proclaimed. However, CTMM had not yet established a township register in respect of the property in issue.

5.1.7 By September 2017, the Office of the MEC for North West Local Government and Human Settlements, Ms G F Gaolaolwe, MPL confirmed to my Office that CTMM had not yet proclaimed Zone 2 Ga-Rankuwa as a Township.
5.1.8 CTMM is the registered owner of the parent Township Register regarding the properties within its area of jurisdiction.

*Issues in dispute*

5.1.9 The issue for my determination was whether CTMM and/or NWHC acted improperly regarding the alleged failure to assist with the registration and transfer of the property in issue into the name of Mr Mere.

5.1.10 Mr Mere alleged that CTMM/NWHC has failed to establish a township register to enable him to transfer ownership of property number 2827 Zone 2 Ga-Rankuwa into his name and CTMM has also failed or delayed to provide him with the necessary consent or right to use the property concerned.

5.1.11 According to the information from the Deeds Registry received from the Office of the MEC for North West Local Government and Human Settlements during September 2017, the registration of the title deed for the property concerned could not be finalised as a stand-alone unit, as the main property needed to be subdivided in line with the general plan and diagram.

5.1.12 Mr Mere alleged to have suffered loss of income from a proposed lucrative contract with the Tshwane University of Technology (TUT) for student accommodation, as he could not be financed by the banks to erect a building structure without being in possession of the title deed.

*Application of the relevant legal framework*

5.1.13 The issue relating to the consent use of land, the lodgment of the diagrams and plans as well as the establishment of township registers for purposes of registration of transfer of ownership with the Registry of Deeds within the area of jurisdiction of CTMM is regulated by the Deeds Registries Act, 47 of 1937, as amended, the Spatial Planning and Land Use Management Act, 16 of 2013, published on 5 August 2013, (the Spatial Planning and Land Use Management Act) as well as the CTMM Land
Use Management By-law, 2016, promulgated on 02 March 2016 (the CTMM’s By-law).

5.1.14 Section 16(3)(b)(i) and (ii) of the CTMM’s By-law provides for the CTMM’s granting of any consent, permission or relaxation and/or any other applications in terms of a Land Use Scheme on such conditions as it may determine.

5.1.15 According to Section 16(8) of the CTMM’s By-law, the applicant (in this case the CTMM) shall lodge with the Registrar of Deeds the plans and diagrams contemplated in subsection 16(6) as approved by the Surveyor-General, together with the relative title deeds, for endorsement or registration.

5.1.16 The plans, diagrams and title deeds contemplated in the subsection above shall be lodged within a period of 12 (twelve) months from the date of the approval of such plans and diagrams, or such further period as the CTMM may allow.

5.1.17 Section 16(9) of the CTMM’s By-law provides that the CTMM shall by notice in the Provincial Gazette, in terms of Schedule 33 of the Spatial Planning and Land Use Management Act, declare the township an approved township after the requirements for the establishment of a township have been complied with.

5.1.18 In terms of section 18(1) of the Deeds Registries Act, the ownership of unalienated State land may be transferred from the State only by a deed of grant issued under proper authority and, having a diagram of the land annexed thereto. This section applies to the CTMM and or NWHC in respect of the property sold to Mr Mere.

5.1.19 Section 18(2) requires that the ownership of land alienated from and reacquired by the State, be transferred from the State either by deed of grant or by deed of transfer issued or executed, under proper authority, containing a reference to the title deed by which the State held the land and to the title deed to which the diagram of the land is annexed.
5.1.20 The section applies to the property in issue, which was apparently transferred from the NWHC as original owner to CTMM on whose boundary the property is situated.

5.1.21 Accordingly, section 18(1) required the CTMM to assist Mr Mere with the deed of grant having a proper diagram of the land attached thereto, as well as the preceding title deed from the NWHC, to enable registration of ownership of the property into Mr Mere’s name.

5.1.22 According to Section 43(1) of the Deeds Registries Act, where defined portion of a piece of land has been surveyed, and a diagram thereof approved by the Surveyor-General, the Registrar may on written application by the owner of the land accompanied by the diagram of such portion, the title deed of the land, any bond thereon and the written consent of the holder of any such bond, issue a certificate of registered title in respect of such portion.

5.1.23 The CTMM and NWHC were required to cooperate as outlined in paragraph 5.1.21 above in order to assist Mr Mere in registering the property into his name.

5.1.24 Section 46(1) of the Deeds Registries Act provides that if land has been sub-divided into lots or erven shown on a general plan, the owner of the land sub-divided shall furnish a copy of the general plan to the registrar, who shall, subject to compliance with the requirements of this section and of any other law, register the plan and open a register in which all registerable transactions affecting the respective lots or erven shown on the plan shall be registered.

5.1.25 Subsection 46(2) provides that for the purposes of registration of such a general plan, the title deed of the land which has been sub-divided shall be produced to the registrar together with the diagram thereof and any mortgage bond endorsed on the title deed and the mortgagee’s consent to the endorsement of such bond to the effect that it attaches to the land described in the plan.
5.1.26 The CTMM, as the registered owner of the property in issue, was therefore required to lodge an application with the Registrar of Deeds, accompanied by an approved diagram, title deed and any bond thereon, if any, to have a certificate of registered title issued in Mr Mere's name, which it failed to do.

5.1.27 The CTMM however submitted that the issue is being prioritised and being addressed at various levels, that Mr Mere is the rightful owner of stand no. 2827 Zone 2 Ga-Rankuwa and that his ownership and rights remained unaffected, and that as soon as the relevant township registers have been opened and/or relevant townships established, the properties will be transferred by CTMM to their rightful owners, including the property of Mr Mere.

Conclusion

5.1.28 The CTMM has improperly failed to comply with the requirements of sections 18(1) or (2) or 43(1) of the Deeds Registries Act, and/or section 16(3)(b)(i) and (ii) or 16(8) of the CTMM's By-law as far as Mr Mere is concerned, and/or to enable the facilitation of the registration and transfer of ownership of the property into the name of Mr Mere and as a result the CTMM failed to assist Mr Mere with the registration and transfer of the property.

5.1.29 Mr Mere was therefore improperly prejudiced by such conduct.

5.1.30 Both the CTMM and the NWHC have not disputed the legal position articulated herein above.

5.2 Whether the CTMM and the NWHC improperly failed to assist Ms W Ledingwane with the registration and transfer of ownership of house number 309 Block X Mabopane purchased from the NWHC, and if so, whether such conduct constitutes maladministration?
Common cause facts

5.2.1 The complaint relates to the registration and transfer of ownership of house number 309 Block X Mabopane, which despite having received a cancellation of bond letter dated 8 May 2008 from the NWHC, Ms Ledingwane has been unable to secure the registration and transfer of the said property into her name due to the fact that the property concerned was registered in the names of Mr and Mrs Chaane, since on or about 26 September 2006.

5.2.2 The complaint formed part of the investigation by Audit and Risk Management Solutions commissioned by CTMM, which did highlight that the beneficiary to the property was indeed Ms Ledingwane and recommended that CTMM and NWHC take joint action to set aside the registration and transfer of the property and have it registered in the name of Ms Ledingwane.

5.2.3 Ms W Ledingwane and the NWHC signed a Deed of Sale of House number 309 Block X Mabopane, dated 26 July 2005. Ms Ledingwane was a tenant on the property for the rental amount of R632.62 and subsequently bought the property from the NWHC for the amount of R50 000.00.

5.2.4 A copy of the cancellation of bond letter dated 08 May 2008 from the NWHC confirmed the settlement of the account by Ms Ledingwane.

5.2.5 However, records show that house number 309 Block X Mabopane was registered in the names of Kokame David and Onicca Matshuko Chaane, since 26 September 2007.

5.2.6 The CTMM and the NWHC did not reimburse the purchase price of the house to Ms Ledingwane when ownership of the property concerned was transferred by the CTMM’s Human Settlement Department Official(s) into the names of Mr and Mrs Chaane.
5.2.7 CTMM noted that Ms Ledingwane was the victim of a fraudulent sale and subsequent transfer of house number 309 Block X, Mabopane and that CTMM was fraudulently induced into transferring this property to Mr and Mrs Chaane.

5.2.8 The history of the property on the deeds search WinDeed Report dated 14 November 2007, prior to its transfer to the Chaanes, indicates the following: Document T155991/2002; Description on: Transfer; owner: CTMM; Price: T/T.

5.2.9 Copy of the Deed of Transfer: T32036/07 dated 26 September 2007, indicates that Mr Mokate Victor Noko, the Conveyancer who was acting on the Power of Attorney granted by the CTMM, appeared before the Registrar of Deeds, for the registration and transfer of property number 309 into the names of the Chaanes, declaring that: his principal (CTMM) had truly and legally sold and that in his capacity aforesaid, did, by these presents, cede and transfer and on behalf of Mr and Mrs Chaane.

Issues in dispute

5.2.10 The issue for my determination was whether CTMM and/or NWHC acted improperly regarding the alleged failure to assist with the registration and transfer of the property in issue into the name of Mr/Ms Ledingwane.

5.2.11 The WinDeed Report referred to above indicates that the Chaanes bought the property on 16 May 2007. The sale therefore took place during the time when CTMM was aware of the problems and fraudulent activities that prevailed regarding the properties of the NWHC.

5.2.12 CTMM provided a copy of the Deed Search Report by Lexis Nexis, dated 30 April 2008, indicates the history of ownership of property, Erf number 11836 Mabopane X, as of Mr and Mrs Ledingoane (sic), purchased on 26 June 2005 and registered on 07 February 2007 under Title Deed number: T13696/2006. The CTMM held it prior to transfer under Title Deed number: T140826/2000 from Mabopane Transitional
Representative Council. However, this property was not in issue and has not been referred to any further in this report, as it was deemed irrelevant for the facts in issue.

The Copy of Affidavit of Kokame David Chaane, dated 05 January 2010:

5.2.13 Mr Chaane alleged in his Affidavit in support of a Notice of Motion issued on 12 March 2010 in the North Gauteng High Court under case number: 15394/10, that he and his wife, the second applicant, bought house number 309 Bock X, Mabopane, which was part of the housing stock, from the CTMM, which was using Tshwaelo Consulting (PTY) Ltd as its agents.

5.2.14 The CTMM noted in its response to the Section 7(9)(a) Notice that the property in use was transferred into the names of the Chaanes after entering into a sale agreement on 16 May 2007 that was facilitated by Tshwaelo Consulting and that no official of the CTMM or NWHC dealt with the Chaanes. This is in direct conflict with the note in the Copy of the Deed of Transfer: T32036/07 dated 26 September 2007 referred to herein above at 5.2.9.

5.2.15 The issue, regardless of the alleged misrepresentations made to the CTMM, prove of which was not openly supported by documentary evidence, is that CTMM facilitated the registration and transfer of the property concerned into the names of the Chaanes.

5.2.16 The observation made is the apparent failure by the CTMM and/or NWHC to exercise proper due diligence in ensuring that the property sold by the NWHC which is located in the area of the CTMM, was transferred into the names of the original rightful beneficiary, Ms Ledingwane, as per the agreement of sale with the NWHC.

5.2.17 CTMM argued in its response to my Office, dated 05 February 2014, that the Gauteng Department of Human Settlements had appointed consultants to conduct occupancy survey on all the former NWHC properties and 73 properties in Ga-Rankuwa were
registered and title deeds were awaited from the conveyancers to be awarded to the rightful beneficiaries.

5.2.18 The argument however, does not give a proper perspective for a remedy regarding the property of Ms Ledingwane in relation to the duty of ensuring transfer of the property to Ms Ledingwane once the account that existed between the NWHC as the original owner of the property and the CTMM as the municipality within whose jurisdiction the property is situated, was settled with the NWHC.

5.2.19 The MEC for North West Local Government and Human Settlements Department, stated in her response to my Office, dated 14 September 2017, that as per the records from deeds search, the CTMM sold and effected the relevant transfer of the property concerned, without informing the NWHC. This point indicates a serious ambiguity in the registration and transfer process followed by the CTMM.

5.2.20 The NWHC argued in this regard that CTMM should be approached for a possible settlement of the matter concerned, the point which the NWHC disputed in its response to my Office dated 22 May 2018.

5.2.21 In an effort to address the irregularities regarding the NWHC properties, CTMM commissioned an investigation by Audit and Risk Management Solutions, to investigate allegations regarding possible irregularities in the registration and transfer of houses formerly owned by the NWHC in the Winterveldt and Mabopane areas, to provide CTMM with findings, conclusions and recommendations.

5.2.22 Audit and Risk Management Solutions submitted a report on the investigation to CTMM, dated 24 February 2013, but dated February 2014 on the covering page.

5.2.23 The investigation related to properties which were alleged to have been fraudulently transferred by the CTMM into certain people’s names, who were allegedly not the rightful beneficiaries.
5.2.24 Audit and Risk Management Solutions’ investigation found that Ms Ledingwane was the rightful beneficiary of Erf 309 Unit X in Mabopane and that the registration and transfer of the property into the names of Mr and Mrs Chaane was irregular, and recommended that the CTMM and NWHC take joint action to set aside the registration and transfer of the property and have it registered in the name of Ms Ledingwane.

5.2.25 The CTMM noted that former Chief Executive of the NWHC, Mr Lekalakala, who represented Tshwaelo Consulting during the relevant transfers, informed CTMM that he was provided with a mandate to sell properties on behalf of the NWHC which provided the Power of Attorney to transfer the properties that he sold.

5.2.26 The CTMM submitted that the NWHC, which sold the property to Ms Ledingwane, and also provided the mandate to its CEO to sell the properties, has the primary responsibility to take the lead and facilitate any possible remedial action and/or restitution in this instance.

5.2.27 However, the NWHC argues the opposite point, returning the blame to the CTMM. Nevertheless the CTMM was responsible for the impropriety in this regard.

A copy of a letter from the Director: Housing Sales, Transfers and Beneficiary Administration of the CTMM, dated 04 May 2010:

5.2.28 A copy of a letter from M K Marima, the Director: Housing Sales, Transfers and Beneficiary Administration of the CTMM dated 04 May 2010, in response to Ms Ledingwane’s enquiry regarding ownership of the property no 309 Unit X, Mabopane, provides that the property concerned was a rented property of the NWHC and Ms W Ledingwane was the lessee.

5.2.29 The evidence referred to in this report however indicates that the property concerned was registered in the names of the Chaanes since 26 September 2007.
Application of the relevant legal framework

5.2.30 The issue regarding whether CTMM and the NWHC improperly failed to assist Ms Ledingwane with the registration and transfer of ownership of the property into his name, is regulated by the Deeds Registries Act and other related prescripts discussed in the paragraphs that follow herein below.

5.2.31 In terms of section 18(1) of the Deeds Registries Act, the ownership of unalienated State land may be transferred from the State only by a deed of grant issued under proper authority and having a diagram of the land annexed thereto.

5.2.32 Section 18(1) of the Deeds Registry Act therefore also applies to the CTMM and NWHC in respect of the property sold to Ms Ledingwane.

5.2.33 Section 18(2) requires that the ownership of land alienated from and reacquired by the State, be to transferred from the State either by deed of grant or by deed of transfer issued or executed, under proper authority, containing a reference to the title deed by which the State held the land and to the title deed to which the diagram of the land is annexed.

5.2.34 The section applies to the property in issue, which was apparently transferred from the NWHC as original owner to CTMM, prior to its registration into the names of the Chaanes.

5.2.35 According to Section 43(1) of the Deeds Registries Act, where defined portion of a piece of land has been surveyed, and a diagram thereof approved by the surveyor-general, the registrar may on written application by the owner of the land accompanied by the diagram of such portion, the title deed of the land, any bond thereon and the written consent of the holder of any such bond, issue a certificate of registered title in respect of such portion.
5.2.36 The CTMM was therefore required to comply with this section to enable the NWHC to assist Ms Ledingwane in registering the property into her name. It is inconceivable, how CTMM transferred the property into the names of the Chaanes, without establishing who the rightful beneficiary of the property was at the time of the relevant transfer, taking into account the fact the there was an outcry of fraudulent sale of houses by the Complainants which was known to CTMM.

5.2.37 Section 46(1) of the Deeds Registries Act provides that if land has been sub-divided into lots or erven shown on a general plan, the owner of the land sub-divided shall furnish a copy of the general plan to the registrar, who shall, subject to compliance with the requirements of this section and of any other law, register the plan and open a register in which all registerable transactions affecting the respective lots or erven shown on the plan shall be registered.

5.2.38 Subsection 46(2) provides that for the purposes of registration of such a general plan, the title deed of the land which has been sub-divided shall be produced to the registrar together with the diagram thereof and any mortgage bond endorsed on the title deed and the mortgagee's consent to the endorsement of such bond to the effect that it attaches to the land described in the plan.

5.2.39 The NWHC, as original registered owner of the property in issue prior to its transfer to CTMM, was therefore required to lodge an application with the Registrar of Deeds, accompanied by an approved diagram, title deed and any bond thereon, to have a certificate of registered title issued in Ms Ledingwane's name, which was not done, and the CTMM, as the subsequent registered owner, was also responsible after the registration and transfer of the property to its name, which was also not done.

5.2.40 It has been established from the evidence received during the investigations that the property in question was registered in the names of the Chaanes. This goes without saying that the legal requirements for transfer of property were therefore met, however following a skewed process.
5.2.41 It is however disconcerting to note that during its response to my Office, dated 05 February 2014 referred to herein above, CTMM had not clearly indicated that it had transferred the property in question to the Chaanes.

*Conclusion*

5.2.42 The CTMM and NWHC were obliged to cooperate and communicate regarding who the rightful beneficiary of the property was and to facilitate its transfer accordingly.

5.2.43 The NWHC has improperly omitted to enable the facilitation of the registration and transfer of ownership of the property into the name of Ms Ledingwane, from the time of purchase of the property up to date of transfer of the property to CTMM, or to secure ownership of the property concerned for Ms Ledingwane, and the CTMM improperly omitted to enable the facilitation of the registration and transfer of ownership of the property into the name of Ms Ledingwane after its transfer into its name and by omission or commission, allowed or facilitated the improper transfer of the property concerned into the names of the Chaanes.

5.2.44 Ms Ledingwane was therefore improperly prejudiced by such conduct.

5.2.45 The CTMM and NWHC have not disputed the legal position as articulated herein above.

5.2.46 The NWHC, as the seller of the property to Ms Ledingwane, by virtue of being the original owner of the property, and CTMM on whom ownership of the property was subsequently transferred prior to its expected transfer to Ms Ledingwane, which never happened, had the legal obligation to ensure that the property concerned was registered and transferred into the name of the rightful beneficiary, Ms Ledingwane. CTMM has the obligation to restore her right of ownership of the property, which was violated when the property was transferred to a third party.
5.2.47 Both CTMM and NWHC had the legal obligation to avoid the property being registered in the names of third parties, based on the fraudulent misrepresentation as alleged by the CTMM.

5.3 Whether the CTMM and the NWHC improperly failed to assist Mrs LB Sepeng with the registration and transfer of ownership of house number 992 Unit 7 Ga-Rankuwa purchased from the NWHC, and if so, whether such conduct constitutes maladministration?

Common cause facts

5.3.1 The CTMM noted in its response to the Section 7(9)(a) Notice, that the complaint relates to the registration and transfer of ownership of house number 992 Unit 7, Ga-Rankuwa, that it is based on an Application to Purchase as well as a Deed of Sale dated 19 August 1999 made to the NWHC. It further submitted that a statement dated 10 July 2009 indicates that there was a duplicate sale of the said property to Mr/Ms Sanyane, who was however refunded the purchase price during 2008.

5.3.2 Copies of the Application to Purchase property and the Deed of Sale dated 19 August 1999 indicate that Mr Bushy Albert and Mrs Lydia Bongo Sepeng offered to purchase property, house number 992 Unit 7, Ga-Rankuwa, to the North West Department of Local Government and Housing for the amount of R27 944.00.

5.3.3 The statement from the NWHC dated 10 July 2009 indicates that Mr Sanyane paid the purchase price of R 45 000.00 for stand number 992 Unit 7 Ga-Rankuwa during 2006/2007 and that he was refunded the amount during 2008.

5.3.4 The CTMM and the NWHC did not reimburse the purchase price of the house to Ms Sepeng when ownership of the property concerned was transferred by the CTMM's Human Settlement Department Officials into the names of Mr and Mrs Phuruswane.
5.3.5 The Certificate of Occupation and the Memorandum of Lease for house number 992 Unit 7 Ga-Rankuwa, dated 21 April 1989, entered with the NWHC, indicates that Mr B A Sepeng and Mrs L B Sepeng were granted permission to occupy the property since 21 April 1989.

5.3.6 The Deed of Sale and the Application for a Deed of Grant, signed at Ga-Rankuwa with the Department of Local Government and Housing, was dated 19 August 1999. The purchase price is indicated as the amount of R27 944.00, inclusive of arrears amounting to R 2 783.00. A discount amount of R 7 500.00, was subtracted from the capital amount and a cash deposit was indicated as apparently R2 078.00 (not clearly visible) paid at the Ga-Rankuwa offices, with a monthly instalments of R (unclear, but apparently R485.00) indicated.

*Issues in dispute*

5.3.7 The issue for my determination was whether CTMM and/or NWHC acted improperly regarding the alleged failure to assist with the registration and transfer of the property in issue into the name of Ms Sepeng.

5.3.8 The CTMM denied the allegation that it sold the property to Mr and Mrs Phuruswane, whether directly or indirectly and asserted that it was only a temporary keeper of certain properties pending the finalisation and fulfilment of the transactional arrangements and contractual obligations between the NWHC and certain rights holders in respect of the sale of properties concerned.

5.3.9 CTMM argued that as per the practical arrangement and due to the authority that existed, the NWHC retained ownership and/or administrative management mandates with regard to vacant stands and instalment sale houses which were now situated in Gauteng and transferred to and/or registered into the names of the CTMM.
5.3.10 The CTMM argued that nothing on their file supports the proposition that the CTMM sold the property to Mr and Mrs Phuruswane on 30 March 2007, and that the logical conclusion is that this was also a duplicate sale by the NWHC, similar to the one referred to herein-above.

5.3.11 To this end, CTMM argues that the assertion is supported by the fact noted during the Inter-Provincial Forum meeting held on 24 November 2017, that the NWHC owed 634 properties a total of R 2.8 million due to overpayments which should be refunded to individual property owners, the debt which upon settling, properties should be transferred into the names of rightful owners.

5.3.12 The MEC for North West Local Government and Human Settlements Department, Ms G F Gaolaolwe, MPL, however, stated in her response to my Office, dated 14 September 2017, that, as per the records from the deeds search, the CTMM had the property in their name and had sold it to the Phuruswanes on 30 March 2007.

5.3.13 The MEC, Ms Gaolaolwe further stated that they did not have the records regarding the sale of the house to Ms L B Sepeng. However, the Complainant provided my Office with supporting documents to substantiate her allegations.

5.3.14 The CTMM argued that any maladministration in the above regard lies with the NWHC alone.

5.3.15 CTMM further argued in its response to my Office, dated 05 February 2014, that the Gauteng Department of Human Settlements had appointed consultants to conduct occupancy survey on all the former NWHC properties and 73 properties in Ga-Rankuwa were registered and title deeds were awaited from the conveyancers to be awarded to the rightful beneficiaries. However, this does not give a clear perspective regarding the resolution of Ms Sepeng’s complaint.
5.3.16 The response received by my Office from the former MEC for Human Settlements, Public Safety and Liaison, Mr PDN Maloyi, MPL, dated 13 August 2013, provides, amongst others, that the generally poor record keeping by the NWHC affected the speedy resolution of the problems, and the fact that some of the records were permanently displaced and/or lost, made matters worse.

5.3.17 Ms Sepeng alleged that when Mr Sanyane realised during 2008, that the property he bought was the subject of fraud and irregularities, and that it belonged to the Sepengs, he apologised to them and reclaimed the purchase price from the NWHC. She alleged that she lost her other records, including the bond discharge letter from the NWHC when she was illegally evicted from the house, after it was improperly sold by the CTMM/NWHC during or about 2007.

5.3.18 Ms Sepeng further alleged to have taken her matter of the illegal sale of her property with the NWHC on 10 July 2009 and 06 October 2009, and alleged that she was requested by certain Mr Kgomotso Moumakwa, Manager in Mr Tshepiso Letselela’s office of the NWHC, to fax her supporting documents at the time to fax number 018 3811925, which she allegedly did.

5.3.19 The Pretoria Newspaper of 22 January 2009 reported under the heading, “Call to probe evictions as city residents lose houses” that a number of tenants have complained of having been kicked out of their houses in Units 7 and 8 by property developers who claimed to have bought the properties at an auction.

5.3.20 It further reported that “Bongo Sepeng, who lost her house, said she and her husband, Albert, made an offer to purchase the house in Unit 7 for R27 944 to the North West’s department of local government and housing in 1999... according to the agreement, a deposit was to be made towards the purchase with the balance being paid in instalments of R485 per month.”
5.3.21 The issue regarding whether CTMM and the NWHC improperly failed to assist Ms Sepeng with the registration and transfer of ownership of the property into her name, or to reimburse her the purchase price when it was clear that the property concerned was transferred into the names of Mr and Mrs Phuruswane, is regulated by the Deeds Registries Act and other related prescripts discussed in the paragraphs herein above, and below.

5.3.22 In terms of section 18(1) of the Deeds Registries Act, the ownership of unalienated State land may be transferred from the State only by a deed of grant issued under proper authority and having a diagram of the land annexed thereto. This section applies to the CTMM and or NWHC in respect of the property sold to Ms Sepeng.

5.3.23 Section 18(2) requires that the ownership of land alienated from and reacquired by the State, be transferred from the State either by deed of grant or by deed of transfer issued or executed, under proper authority, containing a reference to the title deed by which the State held the land and to the title deed to which the diagram of the land is annexed.

5.3.24 The section applies to the property in issue, which was apparently transferred from the NWHC as original owner to CTMM, prior to its registration into the names of the Phuruswanes.

5.3.25 According to Section 43(1) of the Deeds Registries Act, where defined portion of a piece of land has been surveyed, and a diagram thereof approved by the surveyor-general, the registrar may on written application by the owner of the land accompanied by the diagram of such portion, the title deed of the land, any bond thereon and the written consent of the holder of any such bond, issue a certificate of registered title in respect of such portion.
5.3.26 The CTMM and NWHC were required to comply with this section and assist Ms Sepeng in registering the property into her name, taking into account the legal obligations that existed between the CTMM and NWHC, of ensuring that the registration and transfer of the property was effected into the rightful beneficiaries of the property.

5.3.27 Section 46(1) of the Deeds Registries Act provides that if land has been sub-divided into lots or erven shown on a general plan, the owner of the land sub-divided shall furnish a copy of the general plan to the registrar, who shall, subject to compliance with the requirements of this section and of any other law, register the plan and open a register in which all registerable transactions affecting the respective lots or erven shown on the plan shall be registered.

5.3.28 Subsection 46(2) provides that for the purposes of registration of such a general plan, the title deed of the land which has been sub-divided shall be produced to the registrar together with the diagram thereof and any mortgage bond endorsed on the title deed and the mortgagee's consent to the endorsement of such bond to the effect that it attaches to the land described in the plan.

5.3.29 The NWHC, as the original registered owner of the property in issue prior to its transfer to the CTMM, and the CTMM after the registration and transfer of the property into its name, was required to lodge an application with the Registrar of Deeds, accompanied by an approved diagram, title deed and any bond thereon, to have a certificate of registered title issued in Ms Sepeng's name, which was not done by either of them.

5.3.30 CTMM however submitted in its response to the Section 7(9)(a) Notice, that in the event there is any maladministration and/or misconduct in the above regard, such maladministration and/or misconduct lies with the NWHC alone. This argument cannot be sustained.
Conclusion

5.3.31 House number 992 Unit 7 Ga-Rankuwa was sold by the NWHC to Ms Sepeng without effecting transfer of ownership into her name, and later on sold and transferred by CTMM to Mr Thomas Phuruswane and Selina Phuruswane on 30 March 2007, and the property is currently registered in the name of Mr P M Tshabalala.

5.3.32 The CTMM and/or NWHC has improperly failed to enable the facilitation of the registration and transfer of ownership of the property into the name of Ms Sepeng, from the time of purchase of the property up to date, or to secure her ownership of the property in issue, but instead, by omission or commission, allowed or facilitated the improper transfer of the property concerned into the names of the Phuruswanes.

5.3.33 Ms Sepeng was therefore improperly prejudiced by the failure of the NWHC to assist her in the registration and transfer of the property into her name after its purchase, and failure by the CTMM after the registration and transfer of the property into its name, to lodge an application with the Registrar of Deeds, accompanied by an approved diagram, title deed and any bond thereon, to have a certificate of registered title issued into her name, as well as its subsequent transferring of the property to the Phuruswanes.

5.3.34 The CTMM and NWHC have not disputed the legal position as articulated herein above.

5.3.35 The NWHC, as the seller of the property to Ms Sepeng, by virtue of being the original owner of the property had the initial obligation to transfer ownership to Ms Sepeng, and CTMM on whom ownership of the property was subsequently transferred prior to its expected transfer to Ms Sepeng, which never happened, had the legal obligation to ensure that the property concerned was transferred into the name of the rightful beneficiary, Ms Sepeng or to secure her ownership of the property concerned.
5.4 Whether the CTMM and the NWHC improperly failed to assist Mr Ernest Kgaseoe with the registration and transfer of ownership of house number 2281 Unit 8 Ga-Rankuwa, and if so, whether such conduct constitutes maladministration?

Common cause facts

5.4.1 The CTMM noted in its response to the Section 7(9)(a) Notice that Mr Kgaseoe’s complaint pertains to Erf number 2281 Unit 8 Ga-Rankuwa, which is also a subject of a duplicate sale. CTMM noted that the property was initially issued to Mr and Mrs Molokomme in or about April 1999 and transferred into their names on or about 01 October 2003, when CTMM was misled, as alleged.

5.4.2 The CTMM further noted that the property concerned was also sold to Mr Kgaseoe in or about September 1999, the rightful beneficiary, and a Cancellation of Bond letter was issued on or about 03 March 2006.

5.4.3 It was not in dispute that Mr and Mrs Molokomme were the original Lease Holders of the property Erf number 2281 Unit 8, Ga-Rankuwa based on the agreement with the former Bophuthatswana Government, prior to its sale to Mr Kgaseoe by the NWHC.

5.4.4 A copy of the Cancellation of Bond letter dated 03 March 2006 from the NWHC confirmed the settlement of the account by Mr Kgaseoe.

5.4.5 Copy of the Memorandum from Ga-Rankuwa Town Council dated 05 May 1999 addressed to Mr Kgaseoe provides that the Council resolved at a meeting held on 21 April 1999 that the property be transferred to Mr Kgaseoe as he had been occupying it for the past ten (10) years.

5.4.6 CTMM sold and transferred ownership of house number 2281 Unit 8 Ga-Rankuwa into the names of Mr and Mrs Molokomme on 01 October 2003. The Molokommes
sold the property to Ms Elsie Makopi Huma on 30 July 2007, who became the registered owner of the house.

5.4.7 The NWHC sold the property concerned to Mr Kgaseoe during 1999 and according to a copy of the statement from the NWHC dated 28 January 2008, Mr Kgaseoe's final payment for the purchase of the house was made on 30 April 2005.

5.4.8 The CTMM and the NWHC did not reimburse the purchase price of the house to Mr Kgaseoe when ownership of the property concerned was transferred by the CTMM's Human Settlement Department Officials into the names of Mr and Mrs Molokomme and subsequently to Ms Huma.

*Issues in dispute*

5.4.9 The issue for my determination was whether CTMM and/or NWHC acted improperly by failure to assist with the registration and transfer of the property in issue into the name of Mr Kgaseoe, after the issuing of the Cancellation of Bond letter by the NWHC from 03 March 2006.

5.4.10 The CTMM argued in their response to the Section 7(9)(a) Notice that there was no direct evidence of fraudulent wrongdoing by its officials, as they only effected transfers of the properties based on the documents and information placed before them.

5.4.11 On the other side, the MEC for North West Local Government and Human Settlements Department, Ms G F Gaolaolwe, MPL stated in her response to my Office, dated 14 September 2017 that CTMM did a double sale and must therefore be approached on how to settle the matter with Mr Kgaseoe.

5.4.12 However, the logical approach would have been for the NWHC as the seller of the property to assist Mr Kgaseoe in the above regard, by engaging the CTMM to resolve
the problem. Both parties had to ensure that Mr Kgase as the purchaser of the property was properly assisted with the registration and transfer of ownership of the property.

5.4.13 Audit and Risk Management Solutions' investigation found in the CTMM's Report dated 24 February 2013, that Mr Kgasee was the rightful beneficiary of Erf 2281 Unit 8, Ga-Rankuwa and that the registration and transfer of the property into the names of Mr and Mrs Molokomme was irregular, and recommended the CTMM to assist Mr Kgasee to set aside the registration and transfer of Erf 2281 Unit 8, Ga-Rankuwa into the names of the Molokommes.

5.4.14 The CTMM however asserted in its response referred to herein above that CTMM acted in good faith and in the interest of the affected individuals and despite its attempt to set aside the relevant improper transfers, its Senior Counsel concluded in his legal opinion that "Should Tshwane persist with such application, it would be acting contrary to its powers and would not be in a position to resist any challenge to its locus standi".

5.4.15 The CTMM submitted that despite the apparent lack of locus standi, it continued through Senior Counsel and other interventions, including the Inter-Provincial Forum Meetings, to work towards the resolution of the matters in question.

5.4.16 The CTMM however, argued that the NWHC, as the seller of the property, must assist Mr Kgasee in the settlement and/or resolution of the matter, as noted in the meeting of the Inter-Provincial Forum on 24 November 2017 referred to hereinabove. This assertion cannot be sustained as CTMM official unlawfully registered and transferred the property into the third party.

5.4.17 Copy of Affidavit dated 25 June 2003 from Mr Pholoso Samuel Monale, former Chairman of the NWHC confirmed that according to their records, house number 2281 Unit 8, Ga-Rankuwa was transferred to Mr Kgasee and that the NWHC was in
the course to process an application for the title deed. CTMM is therefore legally responsible for the illegal transfer of the property concerned into the names of the Molokommes.

Application of the relevant legal framework

5.4.18 The issue regarding whether CTMM and the NWHC improperly failed to assist Mr Ernest Kgasoae with the registration and transfer of ownership of the property, is regulated by the Deeds Registries Act and other related prescripts discussed in the paragraphs herein above, and below.

5.4.19 In terms of section 18(1) of the Deeds Registries Act, the ownership of unalienated State land may be transferred from the State only by a deed of grant issued under proper authority and having a diagram of the land annexed thereto. This section applies to the CTMM and/or NWHC in respect of the property sold to Mr Kgasoae.

5.4.20 Section 18(2) requires that the ownership of land alienated from and reacquired by the State, be transferred from the State either by deed of grant or by deed of transfer issued or executed, under proper authority, containing a reference to the title deed by which the State held the land and to the title deed to which the diagram of the land is annexed.

5.4.21 The section applies to the property in issue, which was apparently transferred from the NWHC as original owner to CTMM, prior to its registration in the names of the Molokommes.

5.4.22 According to Section 43(1) of the Deeds Registries Act, where defined portion of a piece of land has been surveyed, and a diagram thereof approved by the surveyor-general, the registrar may on written application by the owner of the land accompanied by the diagram of such portion, the title deed of the land, any bond
thereon and the written consent of the holder of any such bond, issue a certificate of registered title in respect of such portion.

5.4.23 The CTMM was required to comply with this section to assist Mr Kgasoe in registering the property into his name after the settlement of his account for the sale of the relevant house by the NWHC.

5.4.24 Section 46(1) of the Deeds Registries Act provides that if land has been sub-divided into lots or erven shown on a general plan, the owner of the land sub-divided (CTMM) shall furnish a copy of the general plan to the registrar, who shall, subject to compliance with the requirements of this section and of any other law, register the plan and open a register in which all registerable transactions affecting the respective lots or erven shown on the plan shall be registered.

5.4.25 Subsection 46(2) provides that for the purposes of registration of such a general plan, the title deed of the land which has been sub-divided shall be produced to the registrar together with the diagram thereof and any mortgage bond endorsed on the title deed and the mortgagee’s consent to the endorsement of such bond to the effect that it attaches to the land described in the plan.

5.4.26 The CTMM as the registered owner of the property in issue, was therefore required to lodge an application with the Registrar of Deeds, accompanied by an approved diagram, title deed and any bond thereon, to have a certificate of registered title issued in Mr Kgasoe’s name, which was not done.

5.4.27 According to the response from the MEC for North West Local Government and Human Settlements to my Office, dated 14 September 2017 and referred to herein above, CTMM did a double sale of the property purchased by Mr Kgasoe from the NWHC, who in terms of the Audit and Risk Management Solutions’ investigation Report dated 24 February 2013 (CTMM’s Investigation Report dated 24 February
2013), was the rightful beneficiary of Erf 2281 Unit 8, Ga-Rankuwa which was allegedly improperly transferred into the names of Mr and Mrs Molokomme.

5.4.28 The CTMM however argued that notwithstanding that CTMM was also a victim, it was prepared to provide the necessary support to the NWHC in order to assist Mr Kgasoe. CTMM submitted that it acted in a bona fide manner and that in the event there could be found to have been maladministration and/or improper conduct in this matter, such lies with the NWHC alone.

5.4.29 The above argument is incorrect as the evidence points to a double sale of the property which, when objectively viewed, reasonably apportions the blame to both parties under the circumstances, as the double sale would not have ensued had they cooperated and transparently communicated regarding the matter.

5.4.30 However, NWHC denied any liability, arguing that CTMM made a double sale of the property concerned.

Conclusion

5.4.31 The NWHC, as the seller of the property to Mr Kgasoe, by virtue of being the original owner of the property had the initial obligation to transfer ownership to Mr Kgasoe, and CTMM on whom ownership of the property was subsequently transferred prior to its expected transfer to Mr Kgasoe, which never happened, had the legal obligation to ensure that the property concerned was transferred into the name of the rightful beneficiary, Mr Kgasoe, or to secure his ownership of the property concerned.

5.4.32 Mr Kgasoe was therefore improperly prejudiced by the CTMM’s conduct.

5.4.33 The CTMM and NWHC have not disputed the legal position as articulated herein above.
5.5 CTMM’s pertinent response to the Section 7 (9)(a) Notice:

5.5.1 CTMM noted the contents of the Section 7(9)(a) Notice. However, it submitted that there was no maladministration on the side of the CTMM in the establishment and/or opening of the township registers for reason that it had taken numerous measures to date, with a view of assisting the affected individuals.

5.5.2 CTMM asserted further that, based on its submissions, adverse findings should be made against the NWHC and not against it, as it at all times acted properly and in a bona fide manner pursuant to the applicable processes.

5.5.3 I have however observed that the above submission by CTMM is not convincing, taking into account the delay in resolving the impasse, the role played by CTMM as well as the resultant prejudice suffered by the Complainants.

5.5.4 CTMM noted that a commitment was made to provide my Office with a report and/or information by September 2016, which was never provided, but requested that a negative inference not be made against CTMM in that regard, as the its response to the Section 7(9)(a) Notice provides a holistic overview of the processes and various ongoing attempts made to date by CTMM to resolve the matter which despite its multidimensional nature, is high on the agenda for urgent resolution.

5.5.5 The CTMM asserted that the responsibility of opening the township registers rested with, or fell within the administrative mandate of the North West Provincial Government. However, this assertion cannot be correct, as the relevant properties were transferred and fell within the jurisdictional area of the CTMM.

5.5.6 The CTMM has the responsibility to ensure township registers were opened, as a result of the ownership of the properties and the municipal jurisdictional boundary within which they fall.
5.5.7 Again, on the same note, it would appear that CTMM is giving me the impression that township registers had not been opened. This raises questions how the properties in question were transferred to other parties without compliance with the relevant legal provisions articulated herein above.

5.5.8 The CTMM submitted that the NWHC was supposed to register or effect the registration and transfer of the relevant properties into the names of the new owners, once the principal debt was settled with the NWHC and that the NWHC and not the CTMM should take the responsibility of any maladministration or misconduct, if any, herein. This submission is incorrect as the CTMM is responsible to restore the properties it illegally transferred.

5.5.9 The CTMM further argued that the NWHC was directly and/or indirectly responsible for the numerous duplicate sales which include the properties of Ms Ledingwane, Ms Sepeng and Mr Kgasoe and through its conduct, the NWHC acted improperly as the seller with the responsibility to take the lead and facilitate any possible remedial action and/or restitution in this instance, including refunding the affected individuals’ purchase prices.

5.5.10 However, according to my observations, the evidence received indicates that the CTMM was involved in the registration and transfer of the properties concerned, and not the NWHC. According to the evidence received, the NWHC initially sold the properties concerned to the Ms Ledingwane, Ms Sepeng and Mr Kgasoe respectively.

5.5.11 Whilst I am mindful of the assertion made by the CTMM above, I am not oblivious of the fact that both the NWHC and CTMM had the responsibility to ensure that the registration and transfer of ownership of the relevant properties into the rightful owners should have taken place within the required lawful, but not skewed processes. In this regard both parties had the duty to exercise due diligence and
reasonable care in protecting the rights of the lawful owners and guarding against any improper or fraudulent influences regarding the houses concerned.

5.5.12 According to the CTMM, its officials met with representatives of the NWHC and Koikanyang Incorporated during March 2018, who confirmed that the process in respect of opening of the township register at Kudube Units 1 and 2, Winterveldt extensions 1 and 2, Ga-Rankuwa Units 1, 2 and 6 and Mabopane A and B was underway.

_The relevant excerpts from the CTMM's response to the Public Protector's Section 7(9)(a) Notice, regarding the registration and transfer of properties into the name(s) of the rightful owners_

5.5.13 On 31 March 1992, through Proclamation No. R.28 of 1992, published in in Regulation Gazette No. 4852, Government Gazette No. 13906, all land within the self-governing territories was transferred to the governments of the territories concerned and the remaining land in South Africa vested under the control of the Minister of Regional and Land Affairs, and transfer thereof was subject to any existing right "charge" or obligation on or over such land.

5.5.14 From 27 April 1994, former homelands and self-governing territories including the territory of Bophuthatswana were abolished and provincial boundaries were redrawn. The NWHC is the successor in title to the Bophuthatswana Housing Corporation and certain areas of the former Bophuthatswana fell under the municipal boundaries of the CTMM after the passing of the North West Housing Corporation Amendment Act, 9 of 1994, read with the North West Housing Corporation Act and the conditions set out in the Proclamation No. 293 of 1962.

5.5.15 The so called new ownership by the CTMM was temporary in nature in respect of numerous properties as a result of the authority that vested in the NWHC, which in practical terms retained ownership and/or the administrative and/or management
mandate(s) with regard to numerous rental stock units, flats, vacant stands, and also instalment sale houses which were now situated in Gauteng and transferred to and/or registered into the name of the CTMM.

5.5.16 The CTMM conceded that it was duty bound to transfer the residential houses such as instalment and/or similar sale houses once the outstanding monies owed to the NWHC was paid in full.

5.5.17 During or about 2005, the "NHC" experienced cash flow problems and took a decision to transfer all provincial residential properties to the Corporation to let or sell in order to generate its own income.

5.5.18 At the time of the repeal of proclamation R293, townships inherited from the former Bophuthatswana were not registered in the township register nor formed part of the Surveyor-General's plan and therefore, the selling and transferring of the residential properties to the legal occupants or prospective buyers was impossible.

5.5.19 The above position is unfortunate as I have observed during the investigations that properties belonging to the Complainants were indeed sold and transferred to the wrongful individuals. The assertion that the selling and transfer of residential properties to the legal occupants or prospective buyers was impossible, therefore seems to be misrepresented.

5.5.20 An offer to purchase, from the prospective buyer of the property to the NWHC would constitute a Deed of Sale in respect of the particular property, according to the CTMM.

5.5.21 Once the principal debt was settled, the NWHC would issue a Cancellation of Bonds and "Charge" letter in respect of a particular property in favour of the purchaser and upon receipt of the said letter, the CTMM became duty bound to cancel and release
all bonds against the Title Deed and register and/or effect the registration and transfer of the relevant property into the new owner's name.

5.5.22 The CTMM at all the relevant time acted in a *bona fide* manner, in a transparent process and facilitated accountability. My observation however, based on the information at hand, raised sceptical questions about this remark by the CTMM.

5.5.23 CTMM asserts that it experienced certain problems as certain townships inherited from the former Bophuthatswana were not registered in the township register or formed part of the Surveyor-General's plan, thereby hampering the transferring of the residential properties into the names of the legal occupants or prospective buyers or rightful owners. This argument was addressed herein above, as to how then the properties in issue were transferred to certain individuals if this requirement was not met.

5.5.24 The impossibility of transferring residential properties into the names of the rightful owners remained until such time that the relevant townships are registered in accordance with the applicable law.

5.5.25 The allegations of illegal transfer of properties into the names of people other than the lawful lease holders leading to a number of eviction orders in respect of legitimate lease holders were reported to CTMM during 2005/6. The allegations were brought to the fore in or about 2009 as a result of media intervention.

5.5.26 I have observed the assertion made above during my investigations.

5.5.27 The CTMM asserted further that a syndicate targeted houses which were being handled by the NWHC in the area of Mabopane, Ga-Rankuwa, Kudube and Winterveldt, and fraudulently misled certain occupiers of properties in believing that they would be securing loans for them to settle the debt with the NWHC, while the documentation signed in actual fact constituted a Deed of Sale.
5.5.28 I have observed that the above assertion by CTMM was not corroborated by evidence as no proof of any of the Complainants signing a document as alleged was submitted to my Office.

5.5.29 The CTMM stated that CTMM and NWHC committed to the establishment of a task team comprising of, amongst others, MEC for Gauteng Housing and Local Government, MEC for North West Human Settlements and MMC for CTMM Housing and Sustainable Development. It was proposed that the cases be dealt with collectively by the CTMM and the North West Provincial Government (NWPG), as the CTMM was then the owner of the land and the NWPG had administrative responsibilities to transfer the properties into individuals. It was also proposed that the allegations be reported to the Hawks for investigation.

5.5.30 The CTMM alleged that complaints were unnecessarily duplicated with various institutions, as the alleged victims whose complaints were also investigated, approached the office of the Deputy City Manager, claiming that their numerous previous requests for assistance were ignored and that they were at risk of being evicted from the properties they lawfully occupied.

5.5.31 I have observed that the above admission by CTMM, taking into account the time period that had passed without resolution of the complaints, negates the impression created that CTMM and the NWPG/NWHC were committed to assisting the Complainants, or at least timely.

5.5.32 According to the CTMM, the task team met on a monthly basis during its term from about 2011 to March 2017 when its functions were replaced by another task team, due to the petition from Ga-Rankuwa Unit 7 that was submitted to the former Premier of Gauteng. However, in my observations, this begs the question whether the task team prioritised the matter or not, taking into account the time spent without final resolution of the matters.
5.5.33 The CTMM asserted that the new task team was tasked with the facilitation and finalisation of the transfers of the outstanding properties, which was still ongoing at the time of the response by the CTMM to the Section 7(9)(a) Notice. However, I observed that the assertion does not address the question how the Complainants’ matters are being resolved.

5.5.34 The main question is whether the fraudulent transfers of the relevant properties could have taken place without the NWHC and/or CTMM's involvement or assistance, establishment of township registers and the inclusion of the relevant properties in the Surveyor-General’s plan?

5.5.35 Based on the complaints, the CTMM allegedly decided to take the necessary action to investigate the allegations and take remedial action if so required. CTMM's Internal Department contracted an independent company, Audit and Risk Management Solutions (Reg. 2006/096507/23) to investigate the alleged irregularities relating to the transfer of ownership, focusing on Erven: 309, Block X Mabopane; 2184 Ga-Rankuwa Unit 8; 1875 Ga-Rankuwa Unit 8 and 2281 Ga-Rankuwa Unit 8.

5.5.36 The investigation, which was finalised in 2014, included a review of policies, procedures and documents and other relevant persons and/or stakeholders, also verifying the authenticity and validity of documentation that formed part of the investigation.

5.5.37 I have observed that according to CTMM, it became aware of the complaints but only decided to commission an investigation in 2014, after the Complainants had reported the complaints to the Public Protector.

5.5.38 The CTMM asserted that the responsibility for opening the relevant township registers and/or administering the relevant township establishment was originally the responsibility of the NWPG, which appointed the law firm, Koikanyang Incorporated, which failed during its term, to adequately respond to any queries that the CTMM had
in respect of the opening of the township establishment. The CTMM in certain instances had to wait for more than a year for a response that was anyway unsatisfactory. However, the assertion was disputed by the NWHC

5.5.39 The CTMM further argued that the problems referred to herein above resulted in a lengthy process being delayed further. According to the CTMM, the NWPG's failure to open the relevant township registers and/or establish the relevant townships resulted in the Gauteng Department of Housing and Local Government assuming the responsibility concerned, and the process was ongoing at the time of the issuing of its response to my Office.

5.5.40 The CTMM's Legal Advisor, Mr Kagiso Mahapa, concluded that in all cases referred to in the investigation report, none of CTMM's official were implicated. This argument cannot be sustained, as according to the evidence received, CTMM facilitated the registration and transfer of certain properties, for example, Mr Kgase's property.

5.5.41 In an effort to assist the affected individuals, the CTMM allegedly instructed Kunene Ramapala Incorporated to commence with the necessary application to set aside the registration and transfer of Erven 2281, 2184, 1875 and 2243 Ga-Rankuwa, Unit 8.

5.5.42 The CTMM asserted that Senior Council was briefed to set aside the "fraudulent" transfers of the relevant properties. However, Senior Counsel concluded that:

(a) Individuals in Ga-Rankuwa and Mabopane have been victims of fraudulent transfers of their properties into the names of others;

(b) There seems to have been an elaborate scheme involving not only the officials of the NWHC and some estate agents but also possibly some banks and included conveyancers and other individuals that led to the number of individuals losing their houses in a fraudulent manner;
(c) There is nothing in the report that points to any fraudulent wrong doing by the officials of the CTMM; and

(d) The CTMM officials only effected transfers based on the documents and information placed before them.

(e) Senior Counsel however, concluded that CTMM did not have the *locus standi* to act on behalf of the affected individuals, which opinion the CTMM accepted. It was proposed that the Lawyers for Human Rights would be given the necessary support by the CTMM to bring such application.

5.5.43 The CTMM alleged to have acted in good faith and also in the interest of the affected individuals, on the advice of its legal representatives. A second legal opinion was sought in February 2018, which concurred with the previous legal opinion. Whilst CTMM may not have *locus standi*, it is legally liable for the illegal registration and transfer of the property, as it apparently also benefited financially, during the sale process.

5.5.44 The CTMM asserted further that on 24 November 2017, the Gauteng and North West Provinces held an Inter-Provincial Forum Meeting, in an effort to give effect to the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005) (Relations Frame Work Act) relating to the principles of co-operative governance.

5.5.45 Section 22 thereof stipulates that Premiers of two or more provinces may establish an Inter-Provincial Forum which is a consultative forum for the participating provinces to discuss and consult on matters of mutual interest, as asserted by the CTMM.

5.5.46 The discussions were allegedly focussed around the registration and transfer of land and properties, including a presentation of a report on interventions undertaken by Gauteng-North West Technical Task Team on:
(a) The resolution of matters related to the issue of title deeds from the NWHC regarding Mabopane, Winterveldt, Kudube and Ga-Rankuwa communities;

(b) The confirmation and finalisation of land ownership and proclamations;

(c) The investigation of land ownership as precursor to the opening of township registers;

(d) The assessment of whether land claims were registered for the affected land portions;

5.5.47 The Inter-Provincial Forum allegedly resolved, inter alia, that:

(a) The process to resolve all matters related to land ownership between the NWPG/NWHC and CTMM be supported;

(b) The Task Team to prioritise the matter to conclude the transfer of land by end of 2017/2018 financial year; and that

(c) The Premiers of both North West and Gauteng Provinces to advise the Minister of Rural Development and Land Reform on the process being undertaken.

5.5.48 The CTMM asserted that another key point of discussion was the challenges relating to transfer and issuing of Title Deeds to affected property owners in Mabopane, Winterveldt, Kudube, Ga-Rankuwa and surrounding communities. It further asserted that it was noted that “the North West Housing Corporation owed 634 properties a total of approximately R2.8 million due to overpayments which should be refunded to individual property owners. That upon settling this debt the properties should be transferred to the rightful owners.”
(a) According to my observation, the above assertion gives an impression of the apparent lack of political will that prevailed between the two provinces to resolve the disputes earlier when they surfaced, which unfortunately directly or indirectly led to the prejudice suffered by the Complainants as well as other rightful owners of the properties.

5.5.49 The CTMM argued that it was submitted as common cause during the discussions that the above pointed to gross irregularities on the part of the NWHC in the manner it administered the process, which included the sale of properties in the relevant areas.

5.5.50 In the above regard, the Inter-Provincial Forum Meeting, *inter alia*, allegedly resolved that:

(a) A team be constituted to provide options on dealing with rental stock and bonded houses, related financial and commercial implication, and Title Deeds;

(b) The debt owed by each of the 11 690 properties that is below R100 be written off and CTMM to transfer properties into the rightful owners;

(c) Gauteng Department of Human Settlements should provide R23 964 500.00 to fund the verification of ownership and transfer of costs of the 11 690 properties;

(d) The verification of ownership and the transfer of 11690 properties should be concluded before the end of 2017/18 financial year;

(e) A report for the handing over of Title Deeds be prepared, to be incorporated into the Premier’s State of the Province Address;

(f) A verification and profiling process should be undertaken to determine whether the occupants of approximately 7 000 houses who must settle the R130 million
debt owed, qualify for a special dispensation from the National Department of Human Settlements; and that

(g) The Members of the Executive Councils for Human Settlements should develop a motivation seeking a special dispensation on the pre and post 1994 government owned housing stock that will be presented to the Minister of Human Settlements by the Premiers.

(h) From the above, it is clear that the matter is high on the political agenda of the provinces and that the Gauteng and North West Provinces are committed to finding a solution to, and addressing the status quo.

5.5.51 The CTMM argued in its response that none of the complaints are substantiated as far as it pertains to it and any and/or all evidence of possible impropriety and misconduct points to the NWHC, which failed to fulfil its mandate to open township registers and/or establish the relevant townships in a timely manner.

5.5.52 However, the above assertion that the NWHC failed to open township registers and establish townships timely also points to the CTMM, which since its establishment in 2000, up to date has not done so in certain instances, and had facilitated the registration and transfer of certain properties of the Complainants, into the names of other individuals.

5.5.53 The CTMM further argued that the NWHC was directly and/or indirectly responsible for the numerous duplicate sales which include the duplicate sales of the houses of Ms Ledingwane, Ms Sepeng and Mr Kgasoe, and through its conduct, the NWHC acted improperly and has the primary responsibility to take the lead and facilitate any possible remedial action and/or restitution in this instance, which will include refunding the affected individuals purchase prices.

5.5.54 However, in the contrary, the NWHC argues the same about the CTMM.
5.5.55 The CTMM reassured its commitment to resolve the issue of transfer of properties to the rightful owners and that the CTMM is willing to consider and provide reasonable and necessary support to both the NWHC and adversely affected individuals in order to find an amicable and expeditious resolution to the matter.

Supplementary Section 7(9)(a) Notice, dated 24 April 2018

5.5.56 On 03 May 2018, pursuant to the response from the CTMM, I issued Supplementary Section 7(9)(a) Notices to the CTMM and the NWHC, to request clarity on certain issues raised by the CTMM, and further to respond to the issues that could adversely affect them, respectively. The deadline for submission of the responses was 22 May 2018, which was confirmed by email from the CTMM on 03 May 2018, that “Office of the City Manager confirms the ten working days to submit report to clarify matters raised in this supplementary notice”.

5.5.57 The CTMM failed to honor the deadline and on 23 May 2018, my Office advised the CTMM by email that the deadline for submission of the response lapsed on 22 May 2018. On 24 May 2018, the CTMM through a letter dated 23 May 2018, requested an extension for submission of the response and was advised of the 10 days set in the Section 7(9)(a) Notice for submission of their response, which had lapsed.

5.5.58 However, having considered the request concerned, which appeared rhetoric to the earlier request for postponement and commitment made by the CTMM in its earlier response referred to herein above, also weighing it against the nature and urgency of matter in issue as well as the public interest it holds, I granted the extension of the deadline, for the CTMM to submit the response by 30 May 2018. The CTMM argued that the period of the extension granted was unreasonable, however after clarifying the reasons for the decision regarding their request, CTMM did not pursue the query concerned. However, it failed to submit the response concerned on 30 May 2018.
5.5.59 What had been stated in the responses from the NWHC on 22 and 28 May respectively was to a greater extent a direct opposite of what the CTMM stated in their responses and earlier correspondence to my Office, and rhetoric attempts to shift the blame to the CTMM as is the case with the CTMM.

5.6 **NWHC’s pertinent responses to the Section 7(9)(a) Notice(s):**

5.6.1 A request for a meeting to clarify the intended response of the NWHC to the Section 7(9)(a) Notice was received from the Secretary of the NWHC Board, Adv Makinde, who was advised on 22 May 2018 that the deadline for the submission of the NWHC’s response to the Section 7(9)(a) Notice was 22 May 2018, and that upon receipt of such response, a request for a meeting would be considered.

5.6.2 The NWHC furnished their responses on 22 May 2018 which was clearly explained, and against that background, my Office indicated that no clarity regarding the response was required as same was clearly stated.

5.6.3 Another response from the NWHC to the Section 7(9)(a) Notice that I issued on 31 January 2018, was submitted on 28 May 2018, however without requesting condonation for such late submission after the expiry date in February 2018.

5.6.4 The NWHC argued in its response to the Section 7(9)(a) Notice, dated 24 April 2018, from Mr Frans Boshielo, Acting Chief Executive Officer (ACEO), dated 22 May 2018, that Koikanyang Incorporated was appointed to facilitate the process of registration of title deeds and not to open a township register, as alleged by the CTMM.

5.6.5 The NWHC asserted that the responsibility to open township register lies with the CTMM. However, in my view, this argument does not absolve the NWHC from its responsibilities to assist the purchasers of its properties regarding the process to obtain title deeds or to secure their ownership of the properties concerned.

5.6.6 The NWHC also argued that when the conveyancers wanted to transfer some of the properties, they were unable to do so as the municipality (CTMM) had not opened the township register.
5.6.7 The NWHC also asserted that the engagement between the parties took place to enable the CTMM to open township register and it is not correct that Koikanyang Incorporated was appointed to administer or open a township register.

5.6.8 The NWHC further argued that it was not clear which questions were raised with Koikanyang Incorporated and that what they know was that it was appointed to assist the CTMM to execute its mandate to open a township register and that all the required information available to Koikanyang Incorporated was provided to the CTMM.

5.6.9 The NWHC denied the allegation by the CTMM that the latter had to wait for a year or more from Koikanyang Incorporated to receive unsatisfactory responses and argued that such a assertion was not supported by any evidence. The NWHC further indicated that it could not comment on its contractual relationship with Koikanyang Incorporation and its implications for the CTMM.

5.6.10 It was argued that the conveyancing mandate of Koikanyang Incorporated was discontinued due to internal provincial reasons relating to how the power of attorney to register a property that belongs to the province was obtained and handled.

5.6.11 Regarding the assertion by the CTMM, among others, that the NWHC sold the property of Ms Ledingwane and that it must take the lead to facilitate any possible remedial action and/or resolution, the NWHC argued that the municipalities held the properties under their care so that they could open the township register and return the properties to the NWHC so that the title deeds in the subdivided units could be registerable.

5.6.12 The NWHC argued in the above regard that it is impossible to allege that it had the primary responsibility to take the lead to facilitate any possible remedial action for Ms Ledingwane, if the CTMM has failed to open township register.

5.6.13 The NWHC declined to comment on the issue of Ms Sepeng relating to a duplicate sale of the property, where it was alleged that the NWHC was supposed to register the title deed.
5.6.14 However, in its second response, dated 22 May 2018 which was received on 28 May 2018, pertinent to the first Section 7(9)(a) Notice dated 31 January 2018, the NWHC stated that:

5.6.14.1 When the properties were sold, the purchasers were granted the right to use and build on the land once a Deed of Grant or Deed of Sale was signed. However, the purchasers at that time do not have a registerable right over the property, but the right of use and occupation.

5.6.14.2 After 1994, it became possible to register the right to properties in the names of the purchasers. However, a number of properties, though sold, were not subdivided in such a way that the Survey-General’s map could be obtained.

5.6.14.3 Mr Mere could not claim loss of income as he had to apply to the municipality to convert land use to suit his need for hostel accommodation. As the NWHC, the land was meant for his residential use and has and can build on it.

(f) Evidence indicates that the Complainant did apply for the land use to the CTMM and the application was referred to the NWHC on 20 July 2017, which did grant the CTMM Power of Attorney to grant the consent use the property to Mr Mere on 17 August 2017.

5.6.14.4 The establishment of the Township Register is entirely the mandate of the Municipality (CTMM) and that when a property is not established as a Township, the NWHC could not obtain a map.

5.6.14.5 The NWHC argued that it is impossible to comply with section 18(1), 43(1) and 46(2) where there are no approved Surveyor-General’s maps.

5.6.14.6 The NWHC submitted that it hoped the CTMM would cooperate with it in the process established by the National Government, in which the Township Register issue can be addressed, and that CTMM must facilitate the process.
5.6.14.7 With regard to Ms Ledingwane's complaint, the NWHC argued that the property in question is registered in the name of the Chaanes and therefore outside the control of government, and that Ms/Mr Ledingwane must take action to reverse the registration of the property concerned and re-register it in her name, or alternatively, the CTMM must refund Ms Ledingwane's purchase amount.

5.6.14.8 The above assertion by the NWHC is in direct opposite with the assertion by Koikanyang Incorporated outlined in paragraph 5.11.1 herein below, in which it is confirmed that Ms Ledingwane bought the property from the NWHC for R50 000.00 and that the NWHC was committed to bring an application in terms of section 6 of the Deeds Registry Act to have the property deregistered from the name of the Chaanes and have it registered in favour of Ms Ledingwane.

5.6.14.9 It is however my concerted view that both the CTMM and the NWHC are jointly and/or severally liable as they failed to assist in securing the right of ownership of the property of Ms Ledingwane. The NWHC cannot arbitrarily shift its joint responsibility with the CTMM to Ms Ledingwane.

5.6.14.10 With regard to Ms Sepeng's matter, the NWHC noted that she occupied the property as a tenants and that should it be proved that she bought the property, house number 992, Unit 7, Ga-Rankuwa, the possible remedy available is for the recipient to refund the purchase price or alternatively, the NWHC in cooperation with the CTMM would find an alternative property that can be offered to Ms Sepeng, if possible.

5.6.14.11 The NWHC noted the various recommendations that I have proposed in my Section 7(9) Notices and stated as follows in its response:

(a) All the cases in question happened under the old administration and the parties do not have to register ownership to be a beneficial owner, and is unfortunate that the CTMM was able to transact on the properties concerned without respecting the ownership of the Province of the North West, which led to the double sale on the same properties.
(b) The sale of the properties concerned by the NWHC was not for profit purposes but as social responsibility and support to the people.

(c) The MEC for North West Local Government and Human Settlements will support possible steps to work with the CTMM to open Township Registers, so that the Surveyor-General's map can be obtained to enable registration of the properties where this can be facilitated.

(d) Where it is possible to transfer ownership to beneficiaries that have rightfully paid for the properties, effort will be made to accelerate the process.

(e) The purchase price paid by the complainant may be refunded where possible.

(f) The NWHC noted the broad recommendations that I have made and urged me to note the comments in this memorandum as well in finalising its recommendations.

(g) The NWHC is committed to assisting the people in the provisions of housing and will liaise with my Office in taking the matters forward.

5.7 Minutes of the CTMM Sub-Committee Meeting for Litigation dated 22 July 2010:

5.7.1 According to the minutes concerned, it was resolved during the meeting that it would be appropriate that individual cases be withdrawn and be handled as an individual matter by both the CTMM and NWHC.

5.7.2 Both the CTMM and the NWHC promised the resident representatives that the matter would be referred to the Task Team of the MEC for Gauteng Department of Housing, MEC for North West Human Settlement and MMC for CTMM Housing and Sustainable Development.

5.7.3 It was however observed that about seven years have already passed and the Task Team has not resolved the impasse regarding the NWHC houses.
5.8 Minutes of the 19th Task Team Meeting on the challenges related to Cross-Boundary Migration Project, dated 24 October 2012:

5.8.1 According to the minutes concerned, the chairperson highlighted that some of the alleged victims of fraudulent transfer of former NWHC properties approached the office of the Deputy City Manager regarding numerous requests for assistance made to the NWHC and/or Legal Services Division of the CTMM.

5.8.2 However, their actions did not yield the desired results and/or no feedback was given on the progress of the matters concerned, which left them destitute and at the risk of being evicted at any time from the properties they have been occupying for more than twenty (20) years.

5.8.3 The Chairperson requested the Task Team and the Legal Services Division of the CTMM to submit progress report on all such cases reported to them as well as their recommendation on the way forward as a matter of urgency.

5.8.4 The above information implicates the CTMM in the delays and failure in resolving the matters concerned timely. It has been noted that over five years have passed without any meaningful resolution of the complaints.

5.9 Minutes of the 20th Task Team Meeting, dated 21 November 2012:

5.9.1 It was resolved that intensive public participation meeting be held under the leadership of political heads of the stakeholders and the Task Team to for part of the introductory meetings with the councillors, to highlight the Task Team project's legitimacy.

5.10 Minutes of the 21st Task Team Meeting, dated 25 January 2013:

5.10.1 Adv Moller of the NWHC informed during the meeting that an investigation on the alleged fraudulent transfers of the NWHC properties was underway by the Directorate for Priority Crime Investigation (DPCI), the HAWKS. The Chairperson recommended that the item be removed from the agenda due to its sensitive nature, pending outcome of the investigation concerned.
5.10.2 It has been noted that almost five years have passed without any meaningful resolution of the complaints.

5.11 Letter from Koikanyang Inc to B Mothlanthe, dated 11 October 2013:

5.11.1 The letter addressed to Mr Boreka Mothlanthe, titled Alleged Irregular Transfer of Properties in Ga-Rankuwa and Mabopane Townships, provides amongst others, as follows:

(g) Erf 309 Mabopane Unit X, was sold by the NWHC to Ms Ledingwane for the amount of R 50 000.00 and a letter was issued by the NWHC directing the Department of Local Government and Housing to issue a Title Deed in favour of Ms Ledingwane in respect of the said property.

(h) The said property was illegally registered in the names of the Mr Kokomane David Chaane and Mrs Onica Mashuko Chaane, which led to an investigation that led to the opening of a case, under CAS number: 13906/12 at Mabopane.

(i) NWHC at no stage entered into the sale of the property concerned with the current registered owner.

(j) However, that the NWHC was intending to bring an application in terms of section 6 of the Deeds Registry Act to set aside the transfer of property under Deed of Transfer T1320036/2006 into the Chaanes, and register it in favour of the legitimate purchaser, Ms Ledingwane.

5.11.2 It has however been noted that almost five years have passed without any meaningful resolution of the complaint concerned.

5.12 Memo from the Town Clerk, Mabopane, North West Province, dated 15 November 1996

5.12.1 The Memo was sent to Ms Ledingwane as an invitation to purchase the house, 309 Block X, Mabopane from Mabopane Town Clerk.
5.13  Letter from the Office of the Director-General of the North West Department of Local Government, Housing, Planning & Development dated 28 May 2001:

5.13.1 The letter from Mr M K Mahlobo, Acting Director-General, which was addressed to Mr Sokhela, the Administrative Unit Manager of CTMM at Ga-Rankuwa, relating to the dispute regarding house number 2281 Unit 8 Ga-Rankuwa of Mr Kgasoe, provides amongst others, that where the land had been transferred to the municipality, both the land and any fixed structures or improvements upon the land vested in the owners of the land and where the municipality is both the owner and the landlord in respect of the property concerned, it is the council of the property and any application regarding the property concerned must be made to the municipality for consideration.

5.13.2 This correspondence is proof that the CTMM was aware of the problems pertaining the properties of the NWHC and that it was the responsible Municipality to manage the transfers of the properties in issue.

5.14  Clearance Certificate from CTMM, dated 23 January 2003:

5.14.1 The clearance certificate was issued in the names of E J M Molokomme by the CTMM on 23 January 2003, despite it having known of the matter, as indicated in the above mentioned letter from Mr M K Mahlobo, Acting Director-General, which was addressed to Mr Sokhela, the Administrative Unit Manager of CTMM at Ga-Rankuwa, relating to the dispute regarding house number 2281 Unit 8 Ga-Rankuwa.

5.14.2 The above fact, as well as the undue delay displayed in the attention given to this and other related matters, creates doubt in the CTMM’s alleged bona fides in dealing with the problems relating to the properties in issue.

5.15  Deed of Transfer number T033050 03, dated 20 December 2002:

5.15.1 The Deed of Transfer: T033050 03, dated 20 December 2002, indicates that Ms Yvonne Dibetso Bodibe, as General Manager, Legal Services of the CTMM, facilitated the transfer of house number 2281 Ga-Rankuwa Unit 8, into the names of
the Molokomes from the CTMM, subject to conditions imposed by, and in favour of the CTMM.

5.15.2 The Deed of Transfer concerned further provides that CTMM sold the property to Molokomes on 12 April 1999. This proves a double sale by CTMM, as alleged in the NWHC responses, as the property was already sold to Mr Kgasoe.

5.16 Certificate of Township Title: T 155991/02, dated 06 December 2002:

5.16.1 The Certificate of Township Title: T 155991/02 issued by the Registrar of Deeds, dated 06 December 2002 provides that CTMM was the registered owner of certain portion then known as Mabopane X of the farm Mabopane 702, Registration Division J.R North West Province. This certificate indicates that a CTMM had apparently established a township by end of 2002, and assumed the responsibilities under section 46(4) of the Deeds Registry Act, which provides that if the land sub-divided as shown on the general plan forms a portion only of any registered piece of land held by the title deed the registrar shall, on written application by the owner of the land, issue a certificate of township or settlement title in his favour in respect of the said portion as nearly as practicable in the prescribed form and in accordance with a diagram thereof.

5.17 Legal Opinion from Adv Mervyn M RIP SC dated 28 February 2018:

5.17.1 Adv Mervyn M RIP SC stated in a Legal Opinion to CTMM dated 28 February 2018 regarding the matter under investigation, amongst others, that it appears that the Municipality was fraudulently induced to transfer ownership of certain properties from the Municipality to other parties whom were not the persons who were lawfully entitled to receive ownership and transfer of the properties.

5.17.2 Adv Mervyn SC further stated that he agreed with Adv Motepe SC that the Municipality does not have the required *locus standi* to bring an application in its name on behalf of the other parties.
5.17.3 However, Adv Mervyn SC stated that a possible solution would have been that the Municipality itself probably would have had a claim as against the individuals whom had defrauded the Municipality on the basis of a *rei vindicatio* against the individuals to whom the properties were transferred on the basis of fraudulent activity. (emphasis)

5.18 The touchstone considered and applied from the previous Public Protector Report on an investigation into allegations relating to maladministration, financial mismanagement, tender irregularities and appointment irregularities against the Passenger Rail Agency of South Africa (PRASA), Report No: 3 of 2015/6 relates to the principles espoused in section 195 of the Constitution regarding the requirement of accountability by Public Administration.

5.19 On the duty of state functionaries to comply with and uphold the rule of law regarding fair administrative action, the judgment of the Constitutional Court in *Allpay Consolidated Investment Holdings (PTY) Ltd v Chief Executive Officer of the South African Social Security Agency (No 1) (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC)* was considered, in which Justice Froneman remarked that in challenging the validity of administrative action an aggrieved party may rely on any number of alleged irregularities in the administrative process [par.27], and regarding nonconformity with a fair process, though the matter relates to a review regarding tender irregularities, amongst others, remarked that:

“...deviations from fair process may themselves all too often be symptoms of corruption or malfeasance in the process. In other words, an unfair process may betoken a deliberate skewed process. Hence insistence on compliance with process formalities....: (a)... (b) it enhances the likelihood of efficiency and optimality in the outcome; and (c) it serves as a guardian against a process skewed by corrupt influences.”

5.20 The fair process referred to in the above case refer to administrative action, which may also be relevant to the matter under investigation.
5.21 The Public Protector’s observations and conclusion

5.21.1 The responses and submissions received from the CTMM and the NWHC were taken into consideration in arriving at the observations and conclusions stated below.

5.21.2 Throughout the investigation, no tangible evidence was submitted to my Office to substantiate the alleged misrepresentation made by the syndicate and other individuals referred to by the CTMM or NWHC, except for the evidence pointing against each other by the parties concerned.

5.21.3 It is clear from the evidence received that both the CTMM and NWHC are shifting the blame on each other, resulting in their respective denial to take the responsibility for the improprieties identified in this report.

5.21.4 However, the evidence points to the respective responsibilities that existed between the CTMM and the NWHC, amongst others, to ensure cooperation amongst them in an effort of opening of township register, proper communication of the relevant information regarding the properties in issue, the process for ensuring the proper registration of the properties concerned in the names of the rightful beneficiaries, where possible, the issuing of title deeds and the ensuring of ownership of the rightful beneficiaries, guarding against the improper influences.

5.21.5 The evidence received suggests that both the CTMM and the NWHC did not practice due diligence in managing the processes relating to the properties concerned and in ensuring that the ownership of the rightful beneficiaries was properly respected, promoted and protected against any improper influences.

5.21.6 Both CTMM and NWHC respectively deviated from a fair process, which should have enhanced the likelihood of efficiency and sufficiency in the outcome of the relevant process and served as a guardian against a process skewed by the corrupt influences, having reference to the remarks articulation by Justice Froneinan, relating to deviations from a fair process, in the Constitutional Court Case of Allpay Consolidated Investment Holdings (PTY) Ltd v Chief Executive Officer of the

5.21.7 The facts confirm a respective liabilities of the parties as a result of the omission or commission on their part relating to the sales and subsequent registration and transfer of the properties in issue.

5.21.8 No documentary proof to suggest that the Complainants were party to the alleged fraudulent activities was given and the blame may as such not be apportioned to them.

5.21.9 The facts further confirm the respective liability of the parties for securing the ownership of the properties in issue and the duty to have had them timely transferred into the rightful beneficiaries, the Complainants.

5.21.10 Despite the alleged fraudulent sales and transfers of the properties of the Complainants into the names of third parties, the NWHC and/or CTMM failed to institute action to recover the houses based on fraudulent misrepresentation, and also failed to refund the Complainants their purchase monies or provide them with properties of similar market values in respect of the houses concerned.

5.21.11 However, despite the NWHC and the CTMM actively blaming each other in their responses for the maladministration referred to herein, it is encouraging to note that both parties welcome my Office’s actions in having the matters resolved and are committed to work together in resolving the issues and finding a lasting solution for the Complainants.

5.21.12 The CTMM, in unlawfully transferring the properties of the rightful beneficiaries into the names of third parties, violated sections 25(1) and 26(1) of the bill of rights so far as they relate to housing and is responsible to restore such rights.

5.21.13 The NWHC, as the original seller of the properties had the duty to transfer the properties into the names of the purchasers and CTMM as the municipality within whose boundaries the properties in question were situated respectively, and the properties subsequently transferred to it, was obligated to ensure that a fair process
leading to the registration and transfer of the properties into the rightful owners was followed throughout the process to its conclusion, thereby ensuring proper outcomes and guarding against corrupt influences that led to the consequential prejudice suffered by the Complainants as a result of the fraudulent sale of their properties to the third parties, as alleged.

5.21.14 The CTMM, in unlawfully registering and transferring the properties of the rightful beneficiaries into the names of third parties, deprived the Complainants of their properties and therefore violated sections 25(1) and 26(1) of the bill of rights so far as they relate to housing and is accordingly responsible to restore such rights.

6. FINDINGS

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

6.1 Regarding whether the CTMM and the NWHC improperly failed to assist Mr Mere in the registration and transfer of ownership of stand number 2827 Zone 2 Ga-Rankuwa purchased from the NWHC, and if so, whether such conduct constitutes maladministration?

6.1.1 The allegation that the CTMM and NWHC improperly failed to assist Mr Mere in the registration and transfer of stand number 2827 Zone 2 Ga-Rankuwa into his name, is substantiated.

6.1.2 The CTMM’s failure to, timely or at all, establish a township and act in terms of sections 18(1) or (2) or 43(1) and/or 46(1) or (2) of the Deeds Registries Act and/or section 16(3)(b)(i) and (ii) of the CTMM’s By-law in so far as Mr Mere is concerned, and to assist him, with the required general plan, deed of grant, title deed and the diagram which is required to be lodged with the Registrar of Deeds to enable the registration and transfer of the property into his name or to timely give him right or consent to use the property, was improper.
6.1.3 The conduct of the CTMM in the above regard constitutes maladministration envisaged in section 6(4) of the Public Protector Act and improper conduct envisaged in section 182(1) of the Constitution.

6.1.4 The NWHC’s failure to ensure the registration and transfer of the property into the name of Mr Mere after the settlement of his account, was improper.

6.1.5 The conduct of the NWHC in the above regard constitutes maladministration envisaged in section 6(5) of the Public Protector Act and improper conduct envisaged in section 182(1) of the Constitution.

6.2 Whether the CTMM and the NWHC improperly failed to assist Mrs W Ledingwane with the registration and transfer of ownership of house number 309 Block X Mabopane purchased from the NWHC, and if so, whether such conduct constitutes maladministration?

6.2.1 The allegation that the CTMM and NWHC improperly failed to assist Ms Ledingwane with the registration and transfer of stand number 2827 Zone 2 Ga-Rankuwa into her name, is substantiated.

6.2.2 The CTMM’s failure to, timely or at all, assist Ms Ledingwane, with a general plan, deed of grant, title deed and the diagram which were required to be lodged with the Registrar of Deeds to enable the registration and transfer of the property into her name prior to its alleged fraudulent sale to a third party, or its failure to secure her ownership of the property concerned, was improper.

6.2.3 Failure by the CTMM to refund the purchase price to Ms Ledingwane or to provide her with alternative property of similar value when her property was fraudulently sold as alleged, and subsequently unlawfully transferred to a third party by the CTMM, was also improper.
6.2.4 The failure by the CTMM to effectively and fully implement its Audit Report of 24 February 2013, which found that Ms Ledingwane was a victim of fraudulent sale and the subsequent unlawful transfer of her property to a third party, was also improper.

6.2.5 The conduct of the CTMM in the above regard constitutes maladministration envisaged in section 6(4) of the Public Protector Act and improper conduct envisaged in section 182(1) of the Constitution.

6.2.6 The NWHC’s failure to ensure the registration and transfer of the property into the name of Ms Ledingwane prior to its alleged fraudulent sale, and the subsequent unlawful transfer to a third party by the CTMM, was improper.

6.2.7 The conduct of the NWHC in the above regard constitutes maladministration envisaged in section 6(5) of the Public Protector Act and improper conduct envisaged in section 182(1) of the Constitution.

6.3 Whether the CTMM and the NWHC improperly failed to assist Ms LB Sepeng with the registration and transfer of ownership of house number 992 Unit 7 Ga-Rankuwa purchased from the NWHC, and if so, whether such conduct constitutes maladministration?

6.3.1 The allegation that the CTMM and NWHC improperly failed to assist Ms Sepeng with the registration and transfer of stand number 2827 Zone 2 Ga-Rankuwa into her name, is substantiated.

6.3.2 The CTMM’s failure to, timely or at all, act to assist Ms Sepeng with a general plan, deed of grant, title deed and the diagram which was required to be lodged with the Registrar of Deeds, to enable the registration and transfer of the property into her name prior to its alleged fraudulent sale to a third party or its failure to secure her ownership of the property concerned, was improper.
6.3.3 Failure by the CTMM to refund the purchase price to Ms Sepeng or to provide her with alternative property of similar value when her property was fraudulently sold as alleged, and subsequently unlawfully transferred to another person by the CTMM, was also improper.

6.3.4 The conduct of the CTMM in the above regard constitutes maladministration envisaged in section 6(4) of the Public Protector Act and improper conduct envisaged in section 182(1) of the Constitution.

6.3.5 The NWHC’s failure to ensure the registration and transfer of the property into the name of Ms Sepeng prior to its alleged fraudulent sale, and the subsequent unlawful transfer to a third party by the CTMM, was improper.

6.3.6 The conduct of the NWHC in the above regard constitutes maladministration envisaged in section 6(5) of the Public Protector Act and improper conduct envisaged in section 182(1) of the Constitution.

6.4 Whether the CTMM and the NWHC failed to assist Mr Ernest Kgasoé with the registration and transfer of ownership of house number 2281 Unit 8, Ga-Rankuwa into his name, and if so, whether such conduct constitutes maladministration?

6.4.1 The allegation that the CTMM and NWHC improperly failed to assist Mr Kgasoé with the registration and transfer of stand number 2827 Zone 2 Ga-Rankuwa into his name, is substantiated.

6.4.2 The CTMM’s failure to, timely or at all, act to assist Mr Kgasoé with the required general plan, deed of grant, title deed and the diagram required to be lodged with the Registrar of Deeds, to enable the registration and transfer of the property into his name prior to its alleged fraudulent sale and the subsequent unlawful transfer to a
third party by the CTMM, or its failure to secure his ownership of the property concerned, was improper.

6.4.3 Failure by the CTMM to refund the purchase price to Mr Kgasoe or provide him with alternative property of similar value when his property was fraudulently sold as alleged, and subsequently unlawfully transferred to another person by CTMM, was also improper.

6.4.4 Failure by the CTMM to effectively and fully implement its Audit Report of 24 February 2013, which found that Mr Kgasoe was the rightful beneficiary of Erf 2281 Unit 8, Ga-Rankuwa, was also improper.

6.4.5 The conduct of the CTMM constitutes maladministration envisaged in section 6(4) of the Public Protector Act and improper conduct envisaged in section 182(1) of the Constitution.

6.4.6 The NWHC’s failure to ensure the registration and transfer of the property into the name of Mr Kgasoe prior to its alleged fraudulent sale, and the subsequent unlawful transfer to a third party by the CTMM, was improper.

6.4.7 The conduct of the NWHC in the above regard constitutes maladministration envisaged in section 6(5) of the Public Protector Act and improper conduct envisaged in section 182(1) of the Constitution.

7. REMEDIAL ACTION

Appropriate remedial actions that I have taken as envisaged in section 182(1) (c) of the Constitution is the following:

7.1 The MEC for Gauteng Department of Human Settlements to:
7.1.1 Take cognizance of the findings regarding the maladministration by the CTMM relating to the improprieties mentioned in this report.

7.1.2 Within thirty (30) days from the date of the issuing of this report, appoint an audit firm to investigate if there are any other person(s) who may have been deprived of their property, and within thirty (30) days of the finalisation of the investigation, submit the report to the Executive Mayor of the CTMM for implementation in accordance with my remedial action taken in paragraph 7.2.3 of this report.

7.1.3 Include in his/her oversight role with the housing and human settlement activities, the monitoring of implementation of the remedial action taken in pursuit of the findings in terms of the powers conferred to the Public Protector under section 182(1)(c) of the Constitution.

7.2 The Executive Mayor of the CTMM to:

7.2.1 Take cognizance of the findings regarding the maladministration by the CTMM relating to the improprieties mentioned in the report.

7.2.2 Ensure that the City Manager of the CTMM, within ninety (90) days from the date of the issuing of this report, provides alternative houses having all the necessary basic services such as water, electricity and sewage system to all the beneficiaries who were dispossessed of their housing rights through the alleged fraudulent and unlawful transfer of their properties or compensate the complainants with the current market value of the properties that were fraudulently and unlawfully transferred to the third parties; and

7.2.3 Within ninety (90) days of receipt of the report from the MEC for the Gauteng Department of Human Settlements, ensure that the City Manager provides alternative houses having all the necessary basic services such as water, electricity and sewage system to all other beneficiaries who were dispossessed of their housing
rights through the alleged fraudulent and unlawful transfer of their properties or compensate them with the current market value of the properties that were fraudulently and unlawfully transferred to the third parties.

7.2.4 Ensure that the City Manager of the CTMM, within ninety (90) days from the date of the issuing of this report, establishes a township at the area where stand number 2827 Zone 2 Ga-Rankuwa is situated and register and transfer the relevant property into Mr Mere.

7.2.5 Ensure that the City Manager of the CTMM, within thirty (30) days from the date of the issuing of this report, implements CTMM’s Investigation Report dated 24 February 2013.

7.2.6 Ensure that the City Manager of the CTMM and the Chairman of the NWHC, within thirty (30) days from the date of the issuing of this report, provide him with all the information regarding any other person(s) who may have been deprived of their property to be considered in the implementation of the remedial action mentioned in paragraph 7.2.3 of this report.

7.2.7 CTMM should institute civil proceedings to recoup the money from all their officials who were identified as being responsible for the malfeasance uncovered and reported in the Public Protector’s investigation.

7.3 The MEC for North West Housing and Human Settlements and the Chairman of the NWHC to:

7.3.1 Take cognizance of the findings regarding the maladministration by the NWHC relating to the improprieties mentioned in the report.

7.3.2 Ensure that, within thirty (30) days from the date of the issuing of this report, the Chairman of the NWHC consider compensating ex-gratia payments to the affected
complainants for the embarrassment, frustration, pains and pecuniary loss suffered as a result of loss of their houses for the last 13 years.

7.3.3 Ensure that the CEO of the NWHC, within thirty (30) days from the date of the issuing of this report, identify and refer to the Executive Mayor of the CTMM and the Chairman of the NWHC any other person(s) who may have been deprived of their property to be considered in the implementation of the remedial actions mentioned in paragraphs 7.2.3 and 7.3.2 of this report.

7.3.4 The MEC for North West Housing and Human Settlements to include in his/her oversight role with the housing and human settlement activities, the monitoring of implementation of the remedial action taken in pursuit of the findings in terms of the powers conferred to the Public Protector under section 182(1)(c) of the Constitution.

7.4 The City Manager of the CTMM to:

7.4.1 Render an apology to each of the Complainants, within a period of thirty (30) days from the date of the issuing of this final report, for the improper failure by the CTMM to ensure or assist them with the registration and transfer of their properties into their names or to secure ownership of their respective properties as well as for the unlawful registration and transfer of their properties to third parties which resulted in their prejudice.

7.4.2 Within thirty (30) days from the date of the issuing of this report, assist Mr Mere with the necessary consent to use the property, stand number 2827 Zone 2 Ga-Rankuwa, to enable him to derive the projected financial benefit, pending the registration and transfer of the property concerned into Mr Mere’s name in the Register of Deeds.

7.4.3 Within ninety (90) days from the date of the issuing of this report, establish a township at the area where stand number 2827 Zone 2 Ga-Rankuwa is situated and to register and transfer the relevant property into Mr Mere’s name.
7.4.3 Within ninety (90) days from the date of the issuing of this report, establish a township at the area where stand number 2827 Zone 2 Ga-Rankuwa is situated and to register and transfer the relevant property into Mr Mere’s name.

7.4.4 Within ninety (90) days from the date of the issuing of this report, provide alternative houses having all the necessary basic services such as water, electricity and sewage system to all the beneficiaries who were dispossessed of their housing rights through the fraudulent and unlawful transfer of their properties or compensate the complainants with the current market value of the properties that were fraudulently and unlawfully transferred to the third parties.

7.4.5 Within thirty (30) days from the date of the issuing of this report, implement CTMM’s Investigation Report dated 24 February 2013.

7.4.6 Within thirty (30) days from the date of the issuing of this report, identify and refer any other person(s) who may have been deprived of their property to the Executive Mayor of the CTMM and the Chairman of the NWHC to be considered in the implementation of the remedial actions mentioned in paragraphs 7.2.3 and 7.3.2 of this report.

7.5 The Chief Executive Officer of the NWHC to:

7.5.1 Render an apology to each of the Complainants, within a period of thirty (30) days from the date of the issuing of this report, for the improper failure by the CTMM to ensure or assist them in the registration and transfer of their properties or to secure their ownership of the properties concerned which resulted in their prejudice.

7.5.2 Within thirty (30) days from the date of the issuing of this report and in consultation with the Chairman of the NWHC, consider compensating ex-gratia payments to the affected complainants for the embarrassment, frustration, pains and pecuniary loss suffered as a result of loss of their houses for the last 13 years.
7.5.3 Within thirty (30) days from the date of the issuing of this report, identify and refer any other person(s) who may have been deprived of their property to the Executive Mayor of the CTMM and the Chairman of the NWHC to be considered in the implementation of the remedial actions mentioned in paragraphs 7.2.3 and 7.3.2 of this report.

8. MONITORING

8.1 The MEC for Gauteng Human Settlements and the Executive Mayor of the CTMM to, within thirty (30) working days from the date of the issuing of this report, submit their implementation plans indicating how the respective remedial action referred to in paragraphs 7.1 and 7.2 of this report will be implemented.

8.2 The MEC for Housing and Human Settlements in the North West Province and the Chairman of the NWHC to, within thirty (30) working days from the date of the issuing of this report, submit an implementation plan indicating how the respective remedial action referred to in paragraph 7.3 of this report will be implemented.

8.3 The City Manager of the CTMM to, within thirty (30) working days from the date of the issuing of this report, submit an implementation plan indicating how the remedial action referred to in paragraph 7.4 of this report will be implemented.

8.4 The Chief Executive Officer of the NWHC to, within thirty (30) working days from the date of this report, submit an implementation plan indicating how the remedial action referred to in paragraph 7.5 of this report will be implemented.

8.5 All actions requested in this report as part of the remedial action taken in terms of the Public Protector’s powers under section 182(1) (c) of the Constitution to be finalised within six months and a final report be presented to my Office.
8.6 Each remedial action listed in paragraph 7 above is legally binding on the person directed to implement, unless it has been reviewed and set aside by the Court or an appropriate interim Court Order to stay the implementation of the remedial action is obtained within the period stated therein.

"The principle of legality is applicable in all exercise of public power and not only in administrative action as defined in PAJA. It requires that all exercise of public power are, at minimum, lawful and rational."

Justice Skweyiya in Khumalo and Others v Member of the Executive Council for Education: Kwa-Zulu Natal (CCT 10/13) [2013] ZACC 49

ADV BUSISWE MKHWEBANE
PUBLIC PROTECTOR OF
THE REPUBLIC OF SOUTH AFRICA
DATE: 10/08/2018

Assisted by the Good Governance and Integrity Branch