"Allegations of maladministration, improper conduct and abuse of power allegedly committed by Mr. Gengenzi Montgomery Mgidlana in his official capacity and during the course and scope of his employ as the Secretary to the Parliament (STP) of the Republic of South Africa."

Report no 21 of 2019/20
ISBN 978-1-928507-28-4
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Executive Summary

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

(ii) The report relates to allegations of maladministration, improper conduct and abuse of power allegedly committed by Mr. Gengenzi Mgidi on in his official capacity and during the course and scope of his employment as the Secretary to the Parliament (STP) of the Republic of South Africa.

(iii) The Public Protector received two complaints against Mr. Mgidi in his capacity as Secretary to Parliament (STP) and both complaints were factually similar in nature.

(iv) The first complaint was lodged with the Public Protector on 18 July 2016, by the former Deputy Head of Parliamentary Protection Services (PPS), Mr S.A. Mokgatla.

(v) The second complaint was lodged by Mr. DK Mocumi, the Deputy Chairperson of the National Education, Health and Allied Workers Union (NEHAWU) on 20 July 2016.

(vi) In his complaint, Mr. Mocumi alleged that the STP
   a. utilised public funds to pay for the travelling of his spouse to official functions,
   b. did not have Top Secret Security Clearance nor possess the qualifications that he claimed to have,
   c. irregularly allowed a junior official to authorise and approve officials of Parliament to attend a benchmarking study tour to Europe,
   d. irregularly paid himself an ex-gratia payment of R71 000 and
   e. irregularly procured the services of Expert Consultant, Mr. Mahlangu
(vii) In his complaint, dated 28 July 2016, Mr. Mokgatla alleged that the STP misused and abused state vehicles, unlawfully suspended the Head and Deputy Head of Parliamentary Protection Services, and irregularly appointed new South African Police Service (SAPS) officials to the Parliamentary Protection Services without following due processes.

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

(a) Whether the Secretary to Parliament abused his power in the performance of his duties and functions and if so, whether such conduct constitute maladministration, dishonesty or improper dealing with respect to public money as well as improper enrichment; and

(b) Whether the Secretary to Parliament (STP), allowed a junior official, Acting Executive Manager: Strategic Management and Governance, Ms. Sandisiwe Schalk to authorise and approve a benchmarking study tour to England, Scotland, Turkey and Switzerland without the proper delegation authority.

(ix) The investigation process was conducted by an analysis of the relevant documentation and correspondence with the Speaker of Parliament, Ms. Baleke Mbete and Mr. Mgidiama as well as consideration and application of the relevant laws, regulatory framework and prescripts.


a. In terms of section 5(2) of the Financial Management of Parliament and Provincial Legislatures Act (FMPPLA) 2009, the Executive Authority is accountable to Parliament for the sound financial management of Parliament and the Secretary to
Parliament, as the Accounting Officer, is accountable to the Executive Authority for the financial Management of Parliament.

b. Section 7(f) states that the Accounting Officer must ensure that disciplinary action is instituted against any employee of Parliament who has allegedly committed an act of financial misconduct.

c. In terms of section 67(1) of the FMPPLA, the Accounting Officer commits an act of financial misconduct if he or she deliberately or negligently fails to comply with a provision in the FMPPLA and/or inter alia permits another official of Parliament to make unauthorised, irregular or fruitless and wasteful expenditure.

d. Sub-section (2) compels the Executive Authority to investigate any financial misconduct against the Accounting Officer and institute disciplinary action if the investigation warrants such a step.

e. In terms of paragraph 8.12.1 of the Reviewed Policy on Travel, Accommodation and Subsistence and Travel Allowance (Travel Policy) an employee may be accompanied by his/her spouse/partner or companion at the expense of Parliament.

f. In terms of paragraph 8.1(a) of the Policy on Recruitment and Selection, 2006, “The entire recruitment and selection process – advertising, selection and appointment of successful candidates – must be completed within six (6) weeks.”

g. Paragraph 8.2(a) states that, “All posts must be adequately advertised to maximise participation unless the Secretary to Parliament decides to headhunt.”

h. Paragraph 7(a)-(d) of the Supply Chain Management (SCM) Regulations, 2015, outlines the procedure that must be followed when procuring goods and services by way of a formal written price quotation.
i. Section 176(3) of the National Road Traffic Act, 1996 states that, “no person shall operate a motor vehicle, fitted with, or in or on which displayed, a lamp or lamps emitting a blue light or capable of emitting a blue light.”

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

a) Whether the Secretary to Parliament abused his power in the performance of his duties and functions and if so, whether such conduct constitute maladministration, dishonesty or improper dealing with respect to public money as well as improper enrichment;

(aa) The allegation that the STP utilised public funds to pay for the travelling of his spouse to official functions, which was not regarded as necessary in the interest of Parliament as provided for in the Travel Policy is substantiated.

(bb) The allegation that the STP do not possess a Top secret Security Clearance, is not substantiated. Mr. Mgidlana confirmed his Top Secret Security Clearance under clearance no. 1254428. However note should be taken that the process of acquiring security clearance is dependent on the SSA.

(cc) The allegation that the STP paid himself an ex-gratia payment of R71 000 is not substantiated on the basis of the authorisation and approval being granted by the Executive Authority and not by the STP, albeit the STP made the submission.

(dd) The allegation that the services of Expert Consultant, Mr Mahlangu was procured without following Supply Chain Management processes is not substantiated and the allegation that it was paid for without rendering the service is unfounded.
(ee) The allegation that the STP misused and abused PPS vehicles is substantiated. By using the services of PPS for transportation when performing official duties in and around the Western Cape Province was in violation with the provisions of paragraph 8.1 of the Reviewed Policy on Travel, Accommodation and Subsistence and Travel Allowance, 2009.

(ff) The allegation that the STP made use of blue lights and sirens and used PPS to transport his family members is unsubstantiated on the basis of the Protection Officers distancing themselves from such allegations.

(gg) My finding on whether the appointment of SAPS officials to PPS was irregular, is withheld on the basis of the matter pending before the Labour Court and that the Court’s pronouncement in this regard would prevail.

b) With regard to whether the Secretary to Parliament (STP), allowed a junior official, Acting Executive Manager: Strategic Management and Governance, Ms Sandisiwe Schalk to authorise and approve a benchmarking study tour to England, Scotland, Turkey and Switzerland without the proper authority.

(aa) The allegation that the STP allowed a junior official, Acting Executive Manager: Strategic Management and Governance, Ms Sandisiwe Schalk to authorise and approve a benchmarking study tour to England, Scotland, Turkey and Switzerland without the proper authority is substantiated.

(bb) By allowing Ms. Schalk to incur irregular expenditure, the STP’s actions was an act of financial misconduct contrary to section 67(1) of the FMPPLA.

(cc) By tacitly condoning her conduct and allowing Ms. Schalk to exceed her delegated authority, the STP failed to comply with section 68(2) of the FMPPLA, which compels him to investigate possible financial misconduct against an official and take disciplinary action should the investigation warrants such a step.
(xii) In light of the above findings, I am taking the following appropriate remedial actions, as contemplated in section 182(1)(c) of the Constitution.

a) In light of the above adverse findings made against Mr. Mgidlana and Ms Schalk, any remedial action I may decide to take against them may not serve any judicious purpose, on account of both undergoing disciplinary hearings for findings made against them by the Audit Committee of Parliament on the same allegations.

b) The Reviewed Policy on Travel, Accommodation and Subsistence and Travel Allowance, 2009 must be reviewed to include inter alia provisions that regulate:

   (aa) The travelling of the Secretary to Parliament, nationally and/or internationally,

   (bb) The travelling of the Secretary to Parliament, nationally and/or internationally accompanied by his/her spouse/partner or companion at the expense of Parliament,

   (cc) Proper definition of terms, with limitations of the use of the words ‘occasion’ and ‘official business’ in the policy,

   (dd) Authorisation and approval on all international travel including the Secretary to Parliament,

c) A policy provision which regulates the mandatory acquisition of a Top Secret Security Clearance for the Secretary to Parliament and all executive level employees within the first three months of employment,

d) Moratorium on ex-gratia payments,
(xiii) The Executive Authority of Parliament must within 30 days of receipt of this report provide me with an action plan, indicating timelines, in respect of the abovementioned recommendations.

(xiv) The Public Protector will monitor the remedial action in terms of this report within 1 month of its signature, and thereafter, every three months.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION, IMPROPER CONDUCT AND ABUSE OF POWER BY THE SECRETARY OF PARLIAMENT, MR. GENGENZI MONTGOMERY MGIHLANA.

1. INTRODUCTION

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

1.2. The report is submitted in terms of section 8(3) of the Public Protector Act to the following people to note the outcome of my investigation:

1.3. The Speaker of Parliament, the Hon Baleka Mbete

1.4. The Chairperson of the National Council of Provinces, the Hon Thandi R Modise.

1.5. Copies of the report are also provided to Mr. DK Mocumi, Deputy Chairperson of the National Education, Health and Allied Workers Union (NEHAWU), Mr. S.A Mokgatl, former Deputy Head of Parliamentary Protection Services and the Secretary to Parliament (STP), Mr. Gengenzi Montgomery Mgidiabana MP (Mr. Mgidiabana), in terms of section 8(3) of the Public Protector Act, 1994.

1.6. The report relates to allegations of maladministration, improper conduct and abuse of power committed by Mr. Gengenzi Mgidiabana in his official capacity and during the course and scope of his employ as the Secretary to the Parliament (STP) of the Republic of South Africa.

2. THE COMPLAINT

2.1. The Public Protector received two complaints against Mr. Mgidiabana in his capacity as Secretary to Parliament (STP) and both complaints were factually similar in nature.
2.2. The first complaint was lodged with the Public Protector on 28 July 2016, by the former Deputy Head of Parliamentary Protection Services (PPS), Mr S.A. Mokgatlha.

2.3. The second complaint was lodged by Mr. DK Mocumi, the Deputy Chairperson of the National Education, Health and Allied Workers Union (NEHAWU) on 20 July 2016.

2.4. In his complaint, Mr. Mocumi alleges that;

2.4.1. The STP utilised public funds to pay for the travelling of his spouse to official functions, which were not regarded as necessary or in the interest of Parliament as provided for in paragraph 8.12 of the Reviewed Policy on Travel, Accommodation and Subsistence and Travel Allowance.

2.4.2. The STP continue to be gainfully employed by Parliament, despite not being accorded a Top Secret Security Clearance by a relevant vetting agency.

2.4.3. His (STP) qualifications should be verified, because there is reason to believe that he might not possess the qualifications that he claim to have.

2.4.4. The STP violated the provisions of the Financial Management of Parliament Act, 2009 in particular section 10 thereof which regulates the delegation of powers and duties by an Accounting Officer, in that he irregularly allowed a junior official who is the Acting Executive Manager responsible for Strategic Management and Governance, Ms S Schalk to authorise and approve that the Secretary to Parliament, Mr Mgidlana and an entourage of seven (7) other officials of parliament attend a benchmarking study tour to England, Scotland, Turkey and Switzerland despite the fact that she had no authority to make such approvals.

2.4.5. It is Mr. Mocumi’s argument that only the Executive Authority of Parliament had powers to approve the excursion. The Executive Authority of Parliament is comprised of the Speaker of the National Assembly and the Chairperson of the National Council of Provinces.
2.4.6. Within three (3) months of his appointment in December 2014, the STP paid himself an *ex-gratia* payment of R71 000. It is Mr Mocumi’s argument that the ex-gratia payment was intended to compensate Parliament’s staff who *inter alia* did not receive a 13th cheque, medical aid and/or housing allowance.

2.4.7. The services of a Consultant known only as Mr. Mahlangu were procured without following the Supply Chain Management processes. Allegedly the Consultant was paid without rendering any service to parliament thus deriving no value.

2.5. With regard to Mr. Mokgatla’s complaint, it is alleged that:

2.5.1. The STP misused and abused state vehicles;

2.5.2. Unlawfully suspended the Head and Deputy Head of Parliamentary Protection Services, and,

2.5.3. Irregularly appointed new South African Police Service (SAPS) officials to the Parliamentary Protection Services without following due processes. Neither were advertisements issued for the positions nor applications received and/or shortlisting and/or interviews done.

2.6. Both complainants requested me to investigate their complaints.

3. **POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

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

3.2. Section 182(1) of the Constitution provides that:

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

3.4. The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs.

3.5. The Public Protector is also bestowed with power to resolve disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.6. In the matter of the Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others 1 the Constitutional Court, per Mogoeng Thomas Reetsang Mogoeng (Chief Justice Mogoeng) CJ held that the remedial action taken by the Public Protector has a binding effect. The Constitutional Court further held that: "When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences."

3.7. In the above-mentioned judgment, Chief Justice Mogoeng stated the following, when confirming the powers the Public Protector:

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1 Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others (CCT 143/15; CCT 171/15) [2016] ZACC 11; 2016 (5) BCLR 616 (CC); 2016 (3) SA 580 (CC) (31 March 2016)
3.7.1. Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (para 65);

3.7.2. 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);

3.7.3. Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as was 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, the Public Protector 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);

3.7.4. 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);

3.7.5. 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);

3.7.6. 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);

3.7.7. Implicit in the words “take action” is that the Public Protector is 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 the Public Protector 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(a));

3.7.8. The Public Protector has the power to determine the appropriate remedy and prescribe the manner of its implementation (para 71(d));

3.7.9. "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));

3.8. In the matter of the President of the Republic of South Africa v Office of the Public Protector and Others, Case no 91139/2016 (13 December 2017), the Court held as follows:

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

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

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

3.8.3.1. Conduct an investigation;

3.8.3.2. Report on that conduct; and

3.8.3.3. To take remedial action.
3.8.4. *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)

3.8.5. *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 judgment).

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

3.8.7. *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).

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.

4.2. **Approach to the investigation**

4.2.1. The approach to the investigation included analysis of the relevant documentation and consideration and application of the relevant laws, regulatory framework and prescripts.

4.2.2. Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:
4.2.2.1. What happened?

4.2.2.2. What should have happened?

4.2.2.3. Is there a discrepancy between what happened and what should have happened and does that deviation amount to a violation of the Executive Ethics Code?

4.2.2.4. In the event of a violation, what action should be taken?

4.2.3. 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 alleged conduct of Mr. Mgidlana constitutes maladministration, improper conduct and abuse of power.

4.2.4. The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by Mr. Mgidlana to prevent maladministration, improper conduct and abuse of power.

4.2.5. On analysis of the complaints, the following issues were considered and investigated:

4.2.5.1. Whether the Secretary to Parliament abused his power in the performance of his duties and functions and if so, whether such conduct constitute maladministration, dishonesty or improper dealing with respect to public money as well as improper enrichment; and

4.2.5.2. Whether the Secretary to Parliament (STP), allowed a junior official, Acting Executive Manager: Strategic Management and Governance, Ms. Sandisiwe Schalk to authorise and approve a benchmarking study tour to England, Scotland, Turkey and Switzerland without the proper delegation authority.
4.3. The Key Sources of information

4.3.1. Documents

The relevant documents obtained and analysed were primarily:

4.3.1.1. An Anonymous complaint submitted to the Speaker of the National Assembly dated 25 April 2016 in connection with the ex gratia payment made to Mr. Mgidlana;

4.3.1.2. An Ex gratia Agreement dated 13 March 2015,

4.3.1.3. A copy of a programme for benchmarking in support of the implementation of the strategy for the fifth (5th) Parliament;

4.3.1.4. A memorandum in respect of approval of international travel expenses for certain parliamentary staff,

4.3.1.5. A memorandum in respect of travel arrangements for the Secretary to Parliament to Turkey for the IPU conference in Geneva,

4.3.1.6. A memorandum between Deputy Secretary: Support Services, relevant managers and officials, dated 20 July 2015,

4.3.1.7. A memorandum on driving duties, dated 20 July 2015, Memorandum on Authorisation for use of Non-Governmental consultant rates to appoint an expert dated 21 May 2015,

4.3.1.8. DA Mahlangu invoice dated 22-25 May 2015,

4.3.1.9. SAPS vetting reports, reference checks, STP qualification,

4.3.1.10. An email from Ms. S Schalk on Resolution meeting dated, 27 September 2016,

4.3.1.11. Approved Job Descriptions of Chamber Support Officers and Control Chamber Support Officers,
4.3.1.12. A memorandum on strengthening the capacity of the Parliamentary Protection Services dated 3 August 2015,

4.3.1.13. A memorandum on validation of the positions of Control Chamber Support Officers dated 3 August 2015,

4.3.1.14. A precautionary suspension letter addressed to Mr Mokgatla dated 30 July 2015,

4.3.1.15. The Investigation Report by Foresight Advisory Services (PTY) Ltd were considered.

4.3.2. **Correspondence sent and received**

4.3.2.1. Letter to the Speaker of Parliament, Ms. Baleke Mbete (the Speaker) from the Public Protector, dated 5 April 2017;

4.3.2.2. Response from the Speaker’s office dated 25 April 2017;

4.3.2.3. Letter to the Speaker from the Public Protector, dated 12 May 2017;

4.3.2.4. Response from the Speaker, dated 14 June 2017;

4.3.2.5. Letter to the Speaker from the Public Protector, dated 24 August 2017;

4.3.2.6. Response from the Speaker, dated 30 August 2017;

4.3.2.7. Letter to the Speaker from the Public Protector, dated 26 September 2017;

4.3.2.8. Response from the Speaker, dated 2 November 2017;

4.3.2.9. Letter to the Speaker from the Public Protector, dated 23 November 2017;

4.3.2.10. Letter to Mr. Mokgatla from the Office of the Public Protector, dated 7 June 2018;

4.3.2.11. Letter to Mr. Mocumi from the Office of the Public Protector, dated 11 June 2018;
4.3.2.12. Letter to the Speaker from the Public Protector, dated 23 November 2018;

4.3.2.13. Response from the Speaker, dated 3 December 2018;

4.3.2.14. Letter to the Speaker from the Public Protector, dated 11 December 2018;

4.3.2.15. Subpoena issued to Mr. Mgidlana on 23 November 2018;

4.3.2.16. Subpoena to Ms. Sandisiwe Schalk, Executive Director: Legislative Sector Support, Parliament on 23 November 2018;

4.3.2.17. Subpoena to Mr. Manenzhe Manenzhe, Chief Financial Officer, Parliament on 23 November 2018;

4.3.2.18. Subpoena to Ms. Zelda Holtzman, former Head of Parliament Protection Services on 23 November 2018.

4.3.2.19. A notice in terms of section 7(9)(a) of the Public Protector Act, 1994 issued on Mr. Mgidlana, dated 04 April 2019;

4.3.2.20. Undated response to notice in terms of section 7(9)(a) of the Public Protector Act, 1994, received on 24 April 2019.

4.3.3. **Interview conducted**

4.3.3.1. The Public Protector interviewed the following witnesses during the course of her investigation:

4.3.3.1.1. Mr. Gengenzi Montgomery Mgidlana, Secretary to Parliament on 11 December 2018;

4.3.3.1.2. Ms. Sandisiwe Schalk, Executive Director: Legislative Sector Support, Parliament on 25 January 2019;
4.3.3.1.3. Mr. Manenzhe Manenzhe, Chief Financial Officer, Parliament on 23 January 2019;

4.3.3.1.4. Ms. Zelda Holtzman, Former Head of Parliament Protection Services on 29 January 2019

4.3.4. **Websites consulted/ electronic sources**

4.3.4.1. [https://www.dailymaverick.co.za/article/2018-12-12-gengezi-mgidlana-suspended-secretary-to-parliament-objects-to-being-called-corrupt/](https://www.dailymaverick.co.za/article/2018-12-12-gengezi-mgidlana-suspended-secretary-to-parliament-objects-to-being-called-corrupt/); "Gengezi Mgidlana, suspended Secretary to Parliament, objects to being called ‘corrupt” by Moira Levy, dated 12 December 2018

4.3.4.2. [https://ewn.co.za/2017/11/09/mgidlana-given-7-days-to-explain-why-he-should-not-be-suspended/](https://ewn.co.za/2017/11/09/mgidlana-given-7-days-to-explain-why-he-should-not-be-suspended/); "Mgidlana given 7 days to explain why he should not be suspended” by Gaye Davis


4.3.5. **Legislation and other prescripts**


4.4.5.2 The Public Protector Act, No 23 of 1994.

4.4.5.3 Financial Management of Parliament and Provincial Legislatures Act, 10 of 2009,

4.4.5.4 Labour Relations Amendment Act 12 of 2002

4.4.5.5 The Supply Chain Management policy dated 17 March 2015,

4.4.5.6 Delegation of Authority, 2017,

4.4.5.7 Policy on Travel, Accommodation and Subsistence & Travel, 2006,
4.4.5.8 Reviewed Policy on Travel, Accommodation and Subsistence & Travel, 2009,

4.4.5.9 Reviewed Policy on the Code of Ethics and Conduct for Employees, 2009,

4.4.5.10 Reviewed Policy on International Participation by Employees, 2009,

4.4.5.11 National Road Traffic Act, 93 of 1996,

4.4.5.12 Policy on Recruitment and Selection, 2006,

4.4.5.13 Rules of the National Assembly "Rule 53A: Removal of member from Chamber",

4.4.5.14 Report on transport services provided to Secretary to Parliament by Parliament Protection Services, dated 2 July 2015,

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

5.1. Regarding whether the Secretary to Parliament abused his power in the performance of his duties and functions and if so, whether such conduct constitute maladministration, dishonesty or improper dealing with respect to public money as well as improper enrichment.

Issues that are Common Cause

It is not disputed that

5.1.1. The Secretary to Parliament (STP) was appointed on 1 December 2014 and that complaints were lodged against him with the Presiding Officers in connection with allegations of a failure to comply with the Financial Management of Parliament and Provincial Legislatures Act, 2009. Further allegations emerged from the National Education, Health and Allied Workers' Union (NEHAWU).
5.1.2. It is common cause that the Executive Authority decided to refer the matter to the Audit Committee for investigation in a letter given to the STP, dated 25 May 2017 and the next working day, on 28 May 2017, the STP requested the Executive Authority to be placed on special leave, on his own accord, in order to allow the investigation of the Audit Committee to be undertaken without hindrance. The Executive Authority agreed to this request on 8 June 2017. The STP was afforded seven (7) days to make representations on why he should not be placed on precautionary suspension.

5.1.3. The Audit Committee report was finalised in November 2017 and contained findings against the STP in his capacity as STP, which led to him being placed on precautionary suspension on 8 November 2017 pending a disciplinary hearing.

5.1.4. The date for the formal disciplinary hearing was set for 9 to 20 April 2018 but the STP filed an urgent application with the court to interdict the process. The interdict application was dismissed with costs.

**Issues that are in dispute**

5.1.5. The issues for my determination are whether in the performance of his duties and functions, the STP abused his power in that he:

5.1.5.1. Utilised public funds to pay for the travelling of his spouse to official functions, which were not regarded as necessary or in the interest of Parliament as provided for in paragraph 8.12 of the Reviewed Policy on Travel, Accommodation and Subsistence and Travel Allowance.

5.1.5.2. Continue to be gainfully employed by Parliament, despite not being accorded a Top Secret Security Clearance by a relevant vetting agency.

5.1.5.3. Is not qualified to be in the position of STP as there is reason to believe that he might not possess the qualifications that he claim to have.
5.1.5.4. Within three (3) months of his appointment in December 2014, he paid himself an ex gratia amount of R71 000. According to the complainant the ex-gratia payment was intended to compensate Parliament’s staff who inter alia did not receive a 13th cheque, medical aid and/or housing allowance.

5.1.5.5. Furthermore, that he procured the services of a consultant known only as Mr. Mahlangu without following Supply Chain Management processes and procedures of Parliament and that the consultant was allegedly paid without rendering any service to Parliament, and the institution thus deriving no value for money.

5.1.6. The allegation that the STP irregularly utilised public funds to pay for the travelling of his spouse to official functions, which were not regarded as necessary or in the interest of Parliament as provided for in paragraph 8.12 of the Reviewed Policy on Travel, Accommodation and Subsistence and Travel Allowance was investigated.

5.1.7. According to the Complainant, the STP have on numerous occasions been accompanied by his spouse to meetings in Johannesburg and other official trips around the country at Parliament’s expense.

5.1.8. He further stated that, Parliament covered costs for the spouse during the trips where she would fly business class, stay in five star accommodation and chauffer driven in an E Class Mercedes Benz. According to Mr Mocumi, these costs were extravagant and views Mr. Mgidlanza in his capacity as STP as not having utilised public resources efficiently and effectively.

5.1.9. Mr Mocumi stated in his complaint that, these trips that were undertaken by the STP accompanied by his spouse were not in the interest of Parliament and therefore contrary to the provisions of paragraph 8.12 of the Reviewed Policy on Travel, Accommodation and Subsistence and Travel Allowance.

5.1.10. The allegations were put to the Speaker of the National Assembly, Ms Baleka Mbete on 5 April 2017. She responded on 14 June 2017 with a request that the
inquiry be held in abeyance to allow Parliament’s internal probe on the matters complained about. Ostensibly there was an internal investigation by the Audit Committee of Parliament.

5.1.11. In the response received in March 2018 from the Office of the Secretary to Parliament, the foregoing allegation was presumed vague and not clear as the ‘accuser’ does not specify what was not in the interest of Parliament. Official travelling of the STP is done in line with policy.

5.1.12. In an interview with Mr. Mglinela on 11 December 2018, he stated that all trips undertaken by him, accompanied by his spouse to an occasion or business at the expense of Parliament was necessary in the interest of Parliament as provided for in the Travel Policy.

5.1.13. In the Audit Committee of Parliament report, it was found (paragraph 9.9.4.6) that, “...the STP travelled with his spouse to meetings related to Parliament business, funerals and events which cannot be justified on the basis of necessity and/or in the interest of Parliament. This included meetings that appear to be an integral part of the STP’s responsibility, if not his day to day activities. The provisions of paragraph 8.12 of Parliament’s travel policy appear to have been contravened, and the expenditure for STP’s spouse can be construed as fruitless and wasteful as defined in section 1 of the FMPPLA.”

5.1.14. The following table is an extract from the Audit Committee report illustrating trips undertaken by the STP accompanied by his spouse. All the memoranda of the travel arrangements together with travel warrants were provided in a letter from the Speaker on 14 January 2019. The illustration below corresponds with the information received.
<table>
<thead>
<tr>
<th>Warrant No</th>
<th>Date</th>
<th>Purpose of travel</th>
<th>Issued to</th>
<th>Invoice Amt</th>
</tr>
</thead>
<tbody>
<tr>
<td>28808</td>
<td>21/01/2016</td>
<td>NEC Lekgotta JHB State of the National Briefing with POs State of the Nation Briefing with the Diplomatic Core</td>
<td>Mr G &amp; Mrs L Mgijiana</td>
<td>8374.24</td>
</tr>
<tr>
<td>1888</td>
<td>9/12/2016</td>
<td>Funeral of Chairperson Modise’s husband</td>
<td>Mr G &amp; Mrs L Mgijiana</td>
<td>8258.92</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>8074.24</td>
</tr>
<tr>
<td>30109</td>
<td>2/10/2016</td>
<td>Meeting Prof Eddy Maloka from the APRM</td>
<td>Mrs Mgijiana Van Zyl and Teffo Mr Mgijiana</td>
<td>4199.31</td>
</tr>
<tr>
<td>30132</td>
<td>3/6/2017</td>
<td>Funeral : Mr Xaso Centani</td>
<td>Mr &amp; Mrs Mgijiana</td>
<td>6121</td>
</tr>
<tr>
<td>30117</td>
<td>16/12/2016</td>
<td>Wedding ceremony of Hon Ms Baleka Mbete</td>
<td>Mr &amp; Mrs Mgijiana</td>
<td>3377.11</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2588.03</td>
</tr>
<tr>
<td>28802</td>
<td>11/12/2015</td>
<td>Invitation from Speaker EC</td>
<td>Mr &amp; Mrs Mgijiana</td>
<td>6355.52</td>
</tr>
<tr>
<td>23177</td>
<td>20/05/2015</td>
<td>PAP Meeting attend a workshop relating to improving and coordinating work within the legislative Sector</td>
<td>G Mgijiana, R Hendricks &amp; I Mgijiana</td>
<td>7623</td>
</tr>
<tr>
<td>23183</td>
<td>18/06/2015</td>
<td>Meeting with Security Cluster in Pretoria Attend Exco meeting SALSA meeting in Johannesburg</td>
<td>Mr &amp; Mrs Mgijiana</td>
<td>8012.92</td>
</tr>
<tr>
<td>10141</td>
<td>No date</td>
<td>Accompanying STP – Official Business</td>
<td>Mrs L Mgijiana</td>
<td>8178.92</td>
</tr>
<tr>
<td>10143</td>
<td>29/10/2015</td>
<td>Meeting with Secretary to Mpumalanga Legislature and</td>
<td>Mr G &amp; Mrs L Mgijiana</td>
<td>4208.72</td>
</tr>
<tr>
<td>Reference</td>
<td>Date</td>
<td>Description</td>
<td>Attendees</td>
<td>Amount</td>
</tr>
<tr>
<td>-----------</td>
<td>------------</td>
<td>------------------------------------------------------------------------------</td>
<td>------------------------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>10145</td>
<td>20/11/2015</td>
<td>Attend a panel consultation arranged by the Speaker Meeting the Secretary of Defence</td>
<td>G &amp; L Mgidiana</td>
<td>4298.92</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>4223.8</td>
</tr>
<tr>
<td>28804</td>
<td>No date</td>
<td>Attend January 8th Statement</td>
<td>G &amp; L Mgidiana</td>
<td>8394.24</td>
</tr>
<tr>
<td>28806</td>
<td>20/04/2016</td>
<td>Attend UNDP Meeting Attend meeting with the Department of Monitoring and Evaluation</td>
<td>G Mgidiana &amp; T Mbadlanyana &amp; L Mgidiana</td>
<td>8285.94</td>
</tr>
<tr>
<td>28817</td>
<td>9/3/2016</td>
<td>SALSA Meeting</td>
<td>G Mgidiana &amp; T Mbadlanyana &amp; L Mgidiana</td>
<td>8380.92</td>
</tr>
<tr>
<td>28843</td>
<td>25/07/2016</td>
<td>Security Cluster Meeting</td>
<td>Mr G &amp; Mrs L Mgidiana</td>
<td>7617.54</td>
</tr>
<tr>
<td>28814</td>
<td>25/02/2016</td>
<td>A meeting with the SALSA Executive Attend a meeting with the Department of Public Works</td>
<td>G Mgidiana &amp; L Mgidiana</td>
<td>8386.92</td>
</tr>
<tr>
<td>28848</td>
<td>22/08/2016</td>
<td>UNDP Meeting Meeting with DPW Security Cluster Meeting National Women's Parliament</td>
<td>Mr &amp; Mrs Mgidiana</td>
<td>8157.94</td>
</tr>
</tbody>
</table>

Table 1
5.1.15. Most of the trips listed above were business trips which is a reflection of Mr. Mgidičana’s duties and responsibilities as the Secretary to Parliament. The presence of his spouse on these business trips, served no purpose and not necessary or in the interest of Parliament. The STP is accountable to the Executive Authority for the financial management of Parliament and as such he must ensure *inter alia* that Parliament’s resources are used effectively, efficiently and economically.

5.1.16. The allegation that the STP irregularly paid himself an ex-gratia amount of R 71 000 was investigated. According to the Complainant, Mr. Mgidičana were appointed as Secretary to Parliament in December 2014 and in March 2015 he allegedly paid himself an ex gratia amount of R71 000.00.

5.1.17. It is the contention of the Complainant that, “The Ex-gratia payment was meant to compensate workers of Parliament who for a long period of time have been working without receiving 13th cheque, medical aid and housing allowance among other things. After an Industrial action a substantive agreement was entered into between Parliament and NEHAWU which resulted in an Ex-gratia payment for workers.” (sic)

5.1.18. The Office of the Secretary to Parliament responded to the foregoing allegation as follow:

“The ex-gratia payment that Parliament paid to all staff members was not as a result of NEHAWU’s industrial action and subsequent settlement.

On the assumption of duty, the Executive Authority directed Mr. Mgidičana that the prevailing atmosphere at the time, where the two parties had deadlocked and were not engaging with each other, was not conducive to a productive, efficient and effective running of the institution and therefore directed that the engagements between the two parties resume with immediate effect. (sic)

The STP led the Management Team in opening a dialogue with the Union on outstanding issues with a view to find a lasting solution in December 2014. (sic)
In reviewing the employment practices applicable in the institution and policies that applied to all staff, whether old or new, management recommended to the EA to offer, as a token of good faith acknowledging bad policy environment as it applied to all staff, a once off ex-gratia payment to all staff

The ex-gratia was paid on a sliding scale to all employees
...it is not clear how the STP could have paid himself R71 000 without the approval and authorisation of the Executive Authority.”

5.1.19. In a Memorandum, addressed to both members of the Executive Authority, dated 3 March 2015, the STP stated that upon assumption of his duties as Secretary to Parliament, Mr. Mgidlana opened a dialogue with the Union to discuss longstanding deferred matters which could not be resolved, with the view to finding solutions. He indicated that some of these matters dated back to over a period of more than twenty years.

5.1.20. The issues were explained as human resource practices which adversely disadvantaged employees and were inter alia the following:

   a) Proposal of a 13th cheque,
   b) The total cost of employment that is not transparent where there is a portion of the cash component that was not accounted for,
   c) No recognition of improved qualifications and long service,
   d) Huge wage gap between management and employees,
   e) Gross violation of workers’ rights (S&T), overtime and unfair labour practices,
   f) Majority of workers are on the entry notch for long years (no progression).

5.1.21. He asserted that the purpose of the memorandum was to seek approval for a once-off ex-gratia payment to all affected staff for 2014/2015, instead of paying a 13th cheque and to move those who have been in the minimum notch for a period of three years and above. The objective was:
a) To present a proposal on the ex-gratia payment to staff as an acknowledgement that certain human resources practices adversely disadvantaged employees;

b) To present options on sourcing resources to fund the ex-gratia payment;

c) To determine the approach of payment of the ex-gratia to employees; and

d) Payment of notches to staff in the A to C bands”

5.1.22. The following table is an extract from the summary of the calculation of the once off ex-gratia payments contained in the abovementioned memorandum which represents the approach of payment.

<table>
<thead>
<tr>
<th>BAND</th>
<th>STAFF NUMBERS PER BAND</th>
<th>% INCREASE</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>136</td>
<td>8%</td>
</tr>
<tr>
<td>B</td>
<td>279</td>
<td>7%</td>
</tr>
<tr>
<td>C</td>
<td>698</td>
<td>6%</td>
</tr>
<tr>
<td>D</td>
<td>213</td>
<td>3%</td>
</tr>
<tr>
<td>E</td>
<td>16</td>
<td>3%</td>
</tr>
<tr>
<td>F</td>
<td>2</td>
<td>3%</td>
</tr>
<tr>
<td>Grand Total</td>
<td>1344</td>
<td></td>
</tr>
</tbody>
</table>

5.1.23. In a report from the Human Resources Executive and Specialist on Organisational Development, Mr M Mokonyana, submitted to the STP on 1 August 2016, it was stated that, “Out of the total approved list of one thousand three hundred and forty four (1344) employees who received the ex-gratia payments, forty four (44) of them were employed by Parliament between 1 April 2014 and 31 March 2015 from across different divisions and levels. The total cost for the ex-gratia payments came to R34 983.092.00.”

5.1.24. The aforesaid report and table 2 above reflect an approach of payment that is inclusive of all staff members, whether skilled, semi-skilled or unskilled; from employees on band A to the Secretary to Parliament on band F. It is evident that this approach involves both affected and unaffected employees, which seems to
contradict the initial purpose of the approval sought, which was to benefit only the affected staff members.

5.1.25. It was established in the investigation conducted by Parliament’s Internal Audit Committee in 2018, that, “Due care and diligence was not exercised in determining and approving the ex-gratia for the employees who were affected by aforesaid injustices. Consequently eighty two employees never acted nor received a performance bonus, were paid a performance bonus, were paid an ex-gratia of R2 313 667.71. Forty-four of these were new, twelve of whom (including the STP who was paid R71 484.00) were less than 3 months in the employ of Parliament.”

5.1.26. An anonymous complaint was received by the Executive Authority on 25 April 2016, entitled “Contravention or failure to comply with the FMPPLA by the Secretary to Parliament.” The allegation was inter alia that it could not be justified that the Secretary to Parliament received an ex-gratia payment of R71 000 when he was in the employ of Parliament for only three (3) months. It was the contention of the anonymous complainant that the STP violated section 7(e) of the FMPPLA by permitting and accepting the ex gratia payment while he did not qualify.

5.1.27. In his response, dated 1 August 2016, the STP stated that the foregoing allegation presupposes that the ex-gratia payment was decided upon by him, but that in reality, “This policy decision was discussed firstly with the Executive Authority and the decision did not make or offer any qualification.”

5.1.28. In an interview with the Public Protector on 11 December 2018, the STP stated inter alia that the approval by the Executive Authority was inclusive of all employees and that all staff members were disadvantaged irrespective of the employment period.

5.1.29. In his response received on 23 April 2019 to the section 7(9) notice in terms of the Public Protector Act, 2019, Mr. Mgidlana argued that the decision to pay ex gratia was done without any legal obligation or future liability for the institution. Therefore, he stated, to allege that ex gratia was paid in lieu of the 13th cheque, medical aid
and housing allowance amongst other things after an industrial action and a substantive agreement, is wrong. Further, that medical aid, housing allowance and all the matters mentioned as ‘wrong’ reasons for payment of the ex gratia were provided for in the cost to company package in 2006.

5.1.30. Contrary to the foregoing, the STP stated in a memorandum addressed to the Executive Authority, dated 3 March 2015 that the objective of the ex gratia payment was inter alia to present a proposal on the ex-gratia payment to staff as an acknowledgement that certain human resources practices adversely disadvantaged employees.

5.1.31. In his complaint, the Complainant alleged that “the Secretary to Parliament continues to be gainfully employed by Parliament, despite not getting a Top Secret Security Clearance by the relevant vetting agency.”

5.1.32. In the response received in March 2018 from the Office of the Secretary to Parliament, the above allegation was contested on the basis of Mr. Mgidlana being vetted whilst working at NEPAD in the Presidency as Deputy Director-General and that a new vetting process was being conducted by the State Security Agency (SSA). The process of acquiring a security clearance was therefore still ongoing.

5.1.33. Contrary to the foregoing assertion, the Audit Committee report stated in their findings that the STP were independently vetted and security-cleared by the SSA. No evidence in this regard was provided. The only evidence provided was an internal memorandum, dated 30 October 2014 from Mr. M. Mokonyana, Acting Human Resources Executive in Parliament, directing the Head of Security, Ms. Z Holtzman, to process the STP's Security Clearance.

5.1.34. In his response received on 23 April 2019 to the section 7(9) notice in terms of the Public Protector Act, 1994, Mr. Mgidlana stated that, “...this allegation should have fallen away as Parliament is in possession of the Top-Secret Security Clearance Certificate that it should have provided to the Public Protector like other documents
that were tabled subsequently. For ease of reference of the Public Protector, if Parliament cannot provide this document, herewith is the reference to check with the Department of State Security, clearance no. 1254428.”

5.1.35. The allegation that the services of Expert Consultant, Mr. Mahlangu was procured without following Supply Chain Management processes and that he was paid without rendering the service, was investigated.

5.1.36. According to the Complainant, the Supply Chain Management processes were not complied with and a payment of R89 328.00 was made to Mr. Mahlangu whereas the service was not rendered.

5.1.37. The office of the Secretary to Parliament stated in their response, that “The services of a consultant were duly procured using supply chain management (sic). The work done with the consultant resulted to a completion of a report and led to a series of activities in the institution including the ultimate establishment of the High Level Panel by Parliament, working with the Speaker’s Forum.”(sic)

5.1.38. In a memorandum from the Executive Director: Legislative Sector Support, Ms. Schalk, dated 21 May 2015, a request was made to the STP for authorization to procure expert consultant, Mr. Mahlangu in terms of procurement processes relating to exceptional circumstances as per section 6(11)(a)(ii) and in addition to use non-governmental rates for professional fees of an expert as prescribed by the Department of Public Service and Administration (DPSA).

5.1.39. Ms. Schalk recommended in the above submission that Expert Consultant, Mr. Mahlangu be appointed to provide guidance to the workshop in view of the fact that “Mr. Mahlangu is a strategist and possesses the required political orientation and experience in transformation programmes and processes. He has experience in transformation programmes and Project Management and Leadership, Change Management & Transformation, Organization Design, Organizational Effectiveness, Organizational Development, Change Management and Transformation. He has also worked with a number of political organisations which provides the required
understanding of political environment to be scrutinized at the workshop on 22-25 May 2015. He has worked with Eskom, Pricewaterhouse Coopers, South African Airways, Caltex Oil (SA) Ltd on transformation and managing change."

5.1.40. Mr. Mahlangu was required to conduct a workshop and write a report on improving coordination and alignment of the South African Legislative Sector. The proposed fee for the workshop and report writing, totaled to an amount of R89 328.00. The invoice was provided on 19 June 2015.

5.1.41. During the interview with Ms. Schalk on 25 January 2019, she indicated that the process of appointing Mr. Mahlangu was a political process and that he was a preferred service provider. The office of the Speaker/Political Office requested the Secretary to Parliament to process the procurement Mr. Mahlangu. The procurement process was undertaken through the office of the Chief Financial Officer, Mr. Manenzhe and the Head of Supply Chain Management: Ms. Ruby November. According to Ms. Schalk both signed off on the procurement of the services of Mr. Mahlangu by way of a deviation. Ms. Schalk argued that, "I did not ask to appoint Mr. Mahlangu, the office of the Speaker asked for Mahlangu."

5.1.42. In his response received on 23 April 2019, Mr. Mgidiwana contended that, "The Speaker of the NA is working on her political programme in her office that she is duly entitled to do as planned and budgeted for. What is the service that the service provider provided goods and services that were very specific and particular to what the Speaker of the NA required as per her specification? (sic) The information provided about the individual concerned met the criteria and satisfied the client, the Speaker of the NA. Therefore, certain services required that are political in nature or service the political orientation are understood to be normal and common. It is not for the administration or any official assigned to support the public representatives and office bearers to dictate what product or service they required to achieve their constitutional and political objectives."
5.1.43. Various emails were provided which capture communication between participants of the workshop and other role players in the finalisation of the report by Mr. Mahlangu. The finalised report was attached to the documentation and information provided. The foregoing evidence proves that the workshop has taken place and that a report was produced as required.

5.1.44. In his complaint, Mr. Mokgatla made the following allegations on the conduct of the STP concerning the use of vehicles under the custodianship of Parliament Protection Services (PPS):

"\n\n\begin{itemize}
  \item Demand by the STP to be driven in official vehicles with the blue lights & sirens.
  \item To be driven by a PO [Protection Officer] whilst on his local trips.
  \item The directive by the STP that his wife be driven in unofficial by a Protection Officer to & from Cape Town Int Airport but not limited to. (sic)
  \item The STP directing us (Head & Dep Head PPS) to alter the factual report compiled from PO s' complains who drove him.
  \item After complaints of the Blue Lights & sirens instructing us to remove the said security feature gadgets."
\end{itemize}\n
5.1.45. In their response the Office of the Secretary to Parliament stated that,

"On the allegation on paragraph 4.1, [in my letter dated 5 April 2017] it should be noted that no unreasonable requests were made. It would be good if it can be indicated where such an unreasonable request was made. All requests made were in line with work and parliamentary practises.

Before, bookings for transportation used to be done internally and as such, STP’s bookings for transportation to and from the airport were also done internally. None of the requests for transportation by OSTP included requests for blue lights."
Transporting the Accounting Officer to and from airport on official business is not unreasonable. No family member of the STP is transported to their personal engagements.”

5.1.46. In a memorandum from the Head of Parliament Protection Services (PPS), Ms Holtzman to the STP dated 2 July 2015, Ms Holtzman informed the STP of the process followed in providing transport to him specifically and highlighted the concerns of PPS.

5.1.47. On 25 February 2014 the former Secretary to Parliament, Mr. MB Coetzee instructed the former Head of PPS, Ms. Holtzman, in a memorandum, to take ownership of and responsibility for the vehicles of the former Presiding Officers. In the aforesaid memorandum the former STP granted approval to Security Services to utilise the vehicles for special events by the International Relations and Protocol Division.

5.1.48. Ms. Holtzman, stated in the above memorandum of 2 July 2015, that soon after the STP took office, he requested PPS to provide him with transport and a driver for official business. This arrangement was accepted by Ms. Holtzman on the basis of the security concerns he raised in respect of the shuttle service that was ordinarily provided in this regard. Ms Holtzman indicated that, “…communication concerning your travelling should be done through an email request”. Several email communications were provided in this regard.

5.1.49. In her memorandum, Ms Holtzman also communicated her concern in respect of requests made by the STP or his office directly to the Protection Officials for travelling arrangements without her knowledge. Ms Holtzman referred to a particular incident where Protection Officer, Mr Beevans Hlungwane was instructed by the STP on 29 June 2015 to transport him to Parliament from his home. When Ms Holtzman summoned Mr Hlungwane to give account of the foregoing arrangement, he confirmed same and informed her that the vehicle was involved in an accident that morning. Mr Hlungwane also reported that at times, the STP’s wife and children were also being transported by PPS and on several occasions drivers were instructed to use blue lights and sirens.
5.1.50. In the minutes of a meeting held on 30 June 2015, PPS personnel reported the following concerns to Ms. Holtzman;

"- Apart from the Secretary to Parliament, staff must also drive his wife and child.

- She was informed by drivers that the Secretary to Parliament insisted that staff switch on the blue emergency sirens when he is late for an appointment.

- The Secretary to Parliament has preference on who must drive him and continuously insist on Protection Officer, Raymond Hendricks to do so. He reported that when the Secretary to Parliament asked Protection Officer, Mr. Cyril Rhode, to switch on the blue emergency lights because he was late, but Mr Rhode refused to do so. Mr Hlungwane reported that the Secretary to Parliament asked him once to switch on the blue emergency lights because he thought he will be late. Mr. Hlungwane first had to pick up the Secretary’s wife from their residence to the airport.

Mr Moodley reported that he had an incident where the Secretary to Parliament was late, he asked Mr. Moodley to switch on the blue emergency lights and to drive over a red robot, which Mr. Moodley abided to”. (sic)

5.1.51. The abovementioned evidence was provided under oath by Ms Holtzman during a meeting held with the Office of the Public Protector in the Western Cape Provincial Office on 29 January 2019.

5.1.52. The STP indicated in a memorandum to Ms. Holtzman, her Deputy Head, Mr. Mokgatia and the Executive Authority, dated 23 July 2015, that during a meeting held with Protection Officers and Ms. Holtzman, the Protection Officers refuted the “malicious assertions” made by Ms. Holtzman.

5.1.53. In his response received on 23 April 2019 to the section 7(9) notice in terms the Public Protector Act, 1994, Mr. Mgldlana indicated that the PPS provides a service to the office of the STP, as a client, as it does to other parts of the organisation, as and when
necessary. Providing that service would never include the STP requesting that service directly. All communication that I have subsequently had sight of between the office of the STP and PPS occurred via emails at the relevant and appropriate levels. It is Mr. Mgidlana’s contention therefore, that the account of Mr. Mokgatla and Ms Holtzman in this complaint was not correct and in respect of Ms. Holtzman who made a statement under oath to the Public Protector, amounts to perjury. Further, that the assertion by Ms Holtzman, under oath that I asked to be transported soon after I took office is grossly inappropriate and false.

5.1.54. Mr. Mgidlana stated that he, “...never issued any instruction to drivers in PPS on what to, if there is any request it would be handled by the person responsible dealing the appropriate official.” Mr. Mgidlana held that in a meeting, dated 29 June 2015, the PPS officials distanced themselves from Ms Holtzman and Mr Mokgatla’s claims and this sentiment was echoed in a further meeting held with PPS on 27 July 2015, where drivers once again distanced themselves from Ms Holtzman and Mr Mokgatla’s malicious claim.”

5.1.55. Regarding the allegation that the STP irregularly appointed new SAPS officials to the PPS without following due process, the former Deputy Head of PPS, Mr Mokgatla stated:

“
- The contact person to the Secretary from Security Services office previously mentioned of who reports to the C [Complainant], assisted with the hand picking the new SAPS officials without following due process. (sic)

- Payment for these officials was requested from Zelda and the Complainant who in turn refused while in service at the time on the basis of their irregular appointment. (sic)

- The Deputy Secretary signed off payment for these SAPS officials on their line budget. (sic)
- Zelda and Complainant have challenged the Secretary on the basis of following protocol and not approving anything which comes from the Secretary's office.” (sic)

5.1.56. In a memorandum from the STP dated 3 August 2015, addressed to the Executive Authority, the STP apprised the Executive Authority of the need to strengthen the capacity of the PPS. He outlined the steps already undertaken in this regard;

“A unit within the Protection Service Section has been established to focus on the provision of support to the chambers of the two houses.

The job descriptions for the new positions in the Unit have been developed and evaluated.

This Unit will be resourced by 66 employees.

A headhunting process, in terms of Parliament’s recruitment policy, was activated, and a total of 41 volunteers from the South African Police Service were invited for training, evaluation and screening to assess their suitability for the new positions in Parliament. A screening and interview process took place, led by the Parliamentary Protection Services Management, and supported by the South African Police Service as well as Parliament’s Human Resources Division, on Friday 31st July 2015. Out of the initial 41 volunteers, 37 were found to be suitable and 4 were declined for failing to meet the strict requirements of the new roles.”

5.1.57. The steps to followed was:

“The external candidates will be expected to resign from their current positions in order to take up the positions in Parliament.

The other 29 positions will be filled by internal employees after the screening, training and evaluation has taken place.”
5.1.58. Furthermore, that the establishment of the new unit and the filling of these new positions within PPS were not budgeted for in the current financial year’s budget and that an adjustment is required to cater for the recruitment costs, as well as other related operational costs. The total cost was estimated at R 18 655 356.00.

5.1.59. An amount of R 18 655 356.00 was approved by the Executive Authority as funding towards strengthening the capacity of Parliamentary Protection Services.

5.1.60. In the meeting with the Public Protector of 11 December 2018, the STP indicated that the appointment of SAPS officials to PPS was done in accordance with the Policy on Recruitment and Selection.

Mr. Mgildana’s response to a notice issued in terms of the provisions of section 7(9)(a) of the Public Protector Act, 1994;

5.1.61. The Public Protector issued a section 7(9) notice to Mr. Mgildana on 4 March 2019. Mr. Mgildana responded on 8 April 2019 via email, requesting an extension of his response due on Monday 15 April 2019. Mr. Mgildana stated that he was undergoing a disciplinary hearing in Parliament on the same allegations and that he requires more time to obtain the necessary legal advice on the section 7(9) notice received. Mr. Mgildana also communicated his desire to question the witnesses that appeared before the Public Protector during the course of her investigation. The Public Protector considered the request and accordingly granted an extension until 23 April 2019.

5.1.62. The Public Protector received an extensive and detailed response on 23 April 2019 from R Masilo Attorneys on behalf of Mr. Mgildana.

5.1.63. In the response Mr. Mgildana indicated that when NEHAWU, Parliament lodged their complaints, on various platforms, against the STP, their actions were not benign as their complaints were primarily aimed at dislodging the STP and management so that they can obtain approvals for their demands unhindered by the person they considered to be the stumbling block.
5.1.64. Further, that the STP was advised by the PPS of threats against him which was tabled before the Executive Authority on the 15 and 30 June 2015 respectively. Ostensibly, SAPS made the recommendation that the STP be offered protection and support on 14 June 2015, which the Executive Authority allegedly approved. However, the foregoing letter containing such was not attached to the response and therefore unsubstantiated.

5.1.65. Mr. Mgigidana confirmed that on 25 May 2017, the Executive Authority referred the matter for investigation by the Audit Committee and he requested special leave so that this process can be conducted unhindered. When the investigation was concluded in November 2017 the Executive Authority placed him on precautionary suspension pending the hearing. The hearing was still ongoing.

5.1.66. Further, that the report of the Audit Committee needed to be tested in the hearing and therefore could not be used, "as if it is a finding". Mr. Mgigidana submitted that it is "trite law that all reference made by the Public Protector using the Audit Committee report as a source of confirmation for allegations contained therein are fact and true cannot by be sustained." He stated that if the Public Protector use information in the report as a source, then the same process followed by Parliament must be adopted by the Public Protector; "...to determine the veracity of the allegations and it must comply with rules of natural justice, fair administrative justice and afford me due process that gives me appropriate chance to defend myself against my accusers."

5.1.67. The Public Protector merely referred to the findings in the Audit Committee report, but has not used it as basis for her own findings. The findings in the Public Protector report is based on the evidence collected during the investigation, weighed up against the legislative prescripts and/or policy.

5.1.68. Mr. Mgigidana submitted that the list of witnesses interviewed by the Public Protector were most likely biased as their views largely constitute the perspective of the union and Executive Authority and that some do not have direct knowledge of the complaints referred to and may rely on hearsay. Mr. Mgigidana submitted that the Public Protector
extend the list of witnesses and open the process to ensure fair and just administrative process that does not prejudice him.

5.1.69. The abovementioned list of witnesses referred to by Mr. Mgidlanana were chosen based on the complaint and the issues identified for determination. Even though their testimony is under oath, it is not the only source of information and its reliability is tested against other sources of information obtained.

5.1.70. Regarding the issues in dispute, Mr. Mgidlanana commented inter alia that all these issues are a subject of deliberations and consideration in the hearing and an outcome will be presented based on weighing the evidence of parties by an independent adjudicator. However, a hearing is an internal process followed by Parliament in terms of policy and procedure, albeit the Public Protector’s process in this regard is guided in terms of the provisions of the Public Protector Act, 1994, which is simply to investigate, report and take remedial action.

5.1.71. Further, that paragraph 12.1.15 of the section 7(9) notice of the Public Protector confirms indeed that the trips noted in paragraph 12.1.14 are business trips, however, submitted that the trips were in line with the provisions of the Travel Policy and the Supply Chain Management processes.

5.1.72. According to the STP, “Section 5 of the Policy [Travel, Accommodation, Subsistence and Travel Allowance Policy (2009)] indicates clearly that scope of application of this policy is to all employees.(sic) Therefore, the assertion or articulation in paragraph 12.1.75 is actually a precursor for wrong interpretation as it creates a category of a person or official that does not exist outside of formal employment, it is a position that can only be occupied by employee of Parliament and the STP is not Member of Parliament or an employee appointing by political party.(sic) The STP is a manager and he is on a fixed contract fulfilling the elements of an employee under this policy.” (sic).
5.1.73. Regarding the appointment of Expert Consultant, Mr. Mahlangu, Mr. Mgidiina responded as follows, "The Speaker of the NA is working on her political programme in her office that she is duly entitled to do as planned and budgeted for. What is the service that the service provider provided goods and services that were very specific and particular to what the Speaker of the NA required as per her specification? The information provided about the individual concerned met the criteria and satisfied the client, the Speaker of the NA. Therefore, certain services required that are political in nature or service the political orientation are understood to be normal and common. It is not for the administration or any official assigned to support the public representatives and office bearers to dictate what product or service they required to achieve their constitutional and political objectives." (sic).

5.1.74. Any actions taken, be it administrative and/or political in nature, which has financial or other implications for Parliament should be guided by policy and procedure and/or legislative provisions. Any actions taken outside the foregoing framework is regarded as irregular.

Application of the relevant legal prescripts

5.1.75. With regard to whether such conduct constitutes maladministration, dishonesty or improper dealing with respect to public money as well as improper enrichment, the issue for determination by the Public Protector is whether applicable laws and prescripts were complied with and if not, whether the STP abused his powers in the performance of his duties and functions. The applicable legislations and prescripts with regard hereto are the following:


5.1.76. In terms of section 5(2) of the Financial Management of Parliament and Provincial Legislatures Act (FMPPLA) 2009, the Executive Authority is accountable to Parliament for the sound financial management of Parliament and the Secretary to Parliament,
as the Accounting Officer, is accountable to the Executive Authority for the financial Management of Parliament.

5.1.77. Section 7(f) states that the Accounting Officer must ensure that disciplinary action is instituted against any employee of Parliament who has allegedly committed an act of financial misconduct.

5.1.78. Section 11(1)(b) and (c)(i) states *inter alia* that every official who exercises financial management responsibilities must comply with the terms of any delegation and take all reasonable steps to ensure that Parliament’s system of financial management and internal control is implemented diligently and that irregular expenditures are prevented and reported to the Accounting Officer.

5.1.79. No person having any responsibility under the FMPPLA, “*may act in a way that is inconsistent with the act.*” (section 12(3)(a)).

5.1.80. In terms of section 33(1) and (2)(a) of the FFPPLA, the Accounting Officer is responsible for managing the expenditure of Parliament and must ensure that Parliament has an effective system of expenditure control which includes procedures for approval and authorisation of the withdrawal and payment of funds.

5.1.81. In terms of section 67(1) of the FMPPLA, the Accounting Officer commits an act of financial misconduct if he or she deliberately or negligently fails to comply with a provision in the FMPPLA. and/or *inter alia* permits another official of Parliament to make unauthorised, *irregular* or fruitless and wasteful expenditure.

5.1.82. Sub-section (2) compels the Executive Authority to investigate any financial misconduct against the Accounting Officer and institute disciplinary action if the investigation warrants such a step.

5.1.83. Section 68(1) of the FMPPLA states that an official of Parliament to whom a power was delegated in terms of section 10, commits an act of financial misconduct if that
official deliberately or negligently fails to comply with a condition of that delegated power or duty.

5.1.84. Sub-section (2) compels the Accounting Officer to investigate any financial misconduct against an official and institute disciplinary action if the investigation warrants such a step.

5.1.85. In terms of section 41 of the FMPPLA the Accounting Officer must:

a) implement the supply chain management policy;
b) take all reasonable steps to ensure that proper mechanisms are in place to minimise dishonesty, favouritism and unfair and irregular practices;
e) regularly report to the Executive Authority on—
i. the management of contracts and the performance of contractors;
ii. the implementation of the policy.

5.1.86. Section 40(b), (d)(ii) and (e) of the FMPPLA, states that the Executive Authority must prescribe in accordance with section 65, a supply chain management policy which *inter alia* promotes high ethical standards and prohibits fraud, corruption, favouritism and unfair and irregular practices. Establishes appropriate supply chain management processes and procedures, including *inter alia* acquisition management and complies with other applicable legislation

**The National Road Traffic Act, 1996**

5.1.87. Section 176(3) of the National Road Traffic Act, 1996 states that, "*no person shall operate a motor vehicle, fitted with, or in or on which displayed, a lamp or lamps emitting a blue light or capable of emitting a blue light.*"
The Reviewed Policy on Travel, Accommodation and Subsistence and Travel Allowance (Travel Policy), 2009

5.1.88. In terms of the ‘Definition of Terms’, an ‘Employee’ is, “A person employed, including a manager, to a permanent position, temporary and/or fixed-term employment contract in the Parliamentary Service of Parliament.” and ‘Secretary’ is a “Secretary to Parliament.”

5.1.89. Paragraph 8.1(a) states that an employee who receives a motor vehicle allowance must have their vehicle or a substitute vehicle available for official journeys in and around the Western Cape.

5.1.90. Sub-paragraph (b) states that notwithstanding sub-paragraph (a) above, the Secretary to Parliament and/or the Presiding Officers may on good cause shown, approve the use a vehicle at the expense of Parliament.

5.1.91. In terms of paragraph 8.12.1 of the Reviewed Policy on Travel, Accommodation and Subsistence and Travel Allowance (Travel Policy), “An employee may be accompanied by his/her spouse/partner or companion at the expense of Parliament when:

a) An employee directly represents Parliament at an occasion in an official capacity.

b) An employee is invited in his/her official capacity to an occasion in which it is regarded necessary in the interests of Parliament that he/she be accompanied by his/her spouse/partner or companion.”

5.1.92. Furthermore, the policy states that, “When a spouse/partner or companion of an employee accompanies him/her on official business, the provisions of paragraphs 8.4 to 8.12 which apply to employees also apply to the spouse/partner or companion.”
Policy on Recruitment and Selection, 2006

5.1.93. In terms of paragraph 8.1(a), "The entire recruitment and selection process – advertising, selection and appointment of successful candidates – must be completed within six (6) weeks."

5.1.94. Paragraph 8.2(a) states that, "All posts must be adequately advertised to maximise participation unless the Secretary to Parliament decides to headhunt."

Reviewed policy on Code of Ethics for Employees, 2009

5.1.95. Paragraph 8.2(f) states that an employee must act in good faith and in the interest of Parliament.

5.1.96. Paragraph 8.2(p) states that an employee must strive to achieve the objectives of Parliament in a cost-effective manner and in the best interest of Parliament.

5.1.97. Paragraph 8.2(s) states that an employee must not engage in any transaction or action that is in conflict with or infringes on the execution of his duties.

5.1.98. Paragraph 8.2(v) of the policy states that an employee must be honest and accountable when dealing with public funds.

Supply Chain Management Regulations

5.1.99. The table below illustrates the procurement of goods and services in terms of the Procurement Delegation of Authority, 2006 which prescribes the delegated authority to procure goods and services to the values indicated;

<table>
<thead>
<tr>
<th>Authority</th>
<th>Delegation</th>
<th>Limitation</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unit Manager</td>
<td>Up to the value of R30 000.00 with at least 3 quotes</td>
<td>No formal contracts</td>
<td>Preferred or recommended supplier must be selected by using evaluation criteria such as Price and/or BEE and/or Quality</td>
</tr>
<tr>
<td>Role</td>
<td>Maximum Value</td>
<td>Contract Type</td>
<td>Additional Requirements</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>--------------------------------</td>
<td>----------------------------------------</td>
<td>------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Section Manager</td>
<td>Up to the value of R50 000.00 with at least 3 quotes</td>
<td>No formal contracts</td>
<td>Preferred or recommended supplier must be selected by using evaluation criteria such as Price and/or BEE and/or Quality of Service and/or Delivery times, etc.</td>
</tr>
<tr>
<td>Division Managers/Deputy Secretary/Chief Operations Officer</td>
<td>Up to the value of R250 000.00 with at least 3 quotes</td>
<td>Formal contract can be entered into for a maximum period of 6 months and not exceed R250 000.00</td>
<td>Division managers/Deputy Secretary/Chief Operations Officer should submit a motivation for approval to the STP &gt; R250 000.00 &gt; R500 000.00</td>
</tr>
<tr>
<td>Procurement Committee</td>
<td>Above R500 000.00 with formal tender process</td>
<td>Formal contracts with a period of more than 12 months and &gt; R500 000.00</td>
<td>The preferred or recommended supplier must be evaluated by an evaluation panel, based on the evaluation criteria which should include a preference point system</td>
</tr>
</tbody>
</table>

Table 3

5.1.100. Paragraph 6(7)(a)-(d) of the Supply Chain Management (SCM) Regulations, 2015, outlines the procedure that must be followed when procuring goods and services by way of a formal written price quotation.

5.1.101. In terms of paragraph 6(11)(a)(ii) of the SCM Regulations, the Accounting Officer may procure goods or services through any other means, which may include direct negotiations, but only if such goods or services are produced or available from a limited supplier or sole provider only as is defined in paragraph (e).

5.1.102. Paragraph (e) provides a guideline to assist in determining whether a supplier is a limited supplier or sole provider. Sub-paragraph (iii) states that a supplier is a limited or sole provider if the supplier is a preferred supplier due to the nature of the goods.
and services they provide and has met the criteria for exceptional circumstances as stated in paragraph (f).

5.1.103. Paragraph (f) also serves as a guideline to assist in determining whether exceptional circumstances exist. The Accounting Officer must determine whether the circumstances contained in sub-paragraph (i) and (ii) are present and exceptional in that specific instance and if so, approve the procurement in terms of paragraph (a).

5.1.104. Sub-paragraph (i) refers to any purchase on behalf of Parliament at a public auction sale; or in terms of sub-paragraph (ii):

aa) Non routine legal services;
bb) Masters of ceremonies and motivational speakers;
cc) Gifts for foreign dignitaries, guests of Presiding Officers at official Parliamentary events, and matters relating to State protocol; or
dd) Where there are limited suppliers for goods and services within a specific location, and where the intention is to invest in that local community in addition to the allocation of points for locality in terms of the Preferential Procurement Policy Framework Act;
ee) Praise singers;
ff) Venues for official events hosted by Parliament which are:

A. International and reflect on the reputation of Parliament within the international community, or

B. Institutional public participation Parliamentary events, limited to:
   i. People’s Assembly
   ii. Youth Parliament
   iii. Women’s Parliament
   iv. State of the Nation Address;
   v. Taking Parliament to the People; or
   vi. The establishment of a new Parliament

gg) Conferences and specialised training;
hh) Bursaries;
ii) Subscription for the following:
A. Where Parliament is a member of associations relating to the business of Parliament; or
B. Professional bodies where staff are required to maintain their professional qualifications; or
jj) Specialist medical practitioners for the purpose of boarding staff

The Conclusions that could be made based on the application of the law to the facts

5.1.105. Based on the information and evidence obtained during the investigation and the application of the legal framework to the facts of the matter, it can be concluded that:

5.1.104.1 Regarding the allegation that the STP utilised public funds to pay for the travelling of his spouse to official functions, which was not regarded as necessary in the interest of Parliament as provided, it was established that the policy does not clearly define the word ‘occasion’ nor ‘official business’ and therefore the interpretation of the policy in this regard is given a very broad scope and can refer to any occasion or business.

5.1.104.2 However, the policy does define ‘Employee’ and ‘Secretary’ and by this definition the Secretary to Parliament is not an employee as such; an ‘Employee’ is defined as a person employed, including a manager, to a permanent position, temporary and/or fixed-term employment contract in the Parliamentary Service of Parliament and ‘Secretary’ as a “Secretary to Parliament.

5.1.104.3 According to the policy an ‘employee’ may be accompanied by his/her spouse/partner or companion at the expense of Parliament when at an occasion in an official capacity in which inter alia it is regarded necessary in the interests of Parliament that he/she be accompanied by his/her spouse/partner or companion. By implication and according to the Definition of Terms in the policy,
the STP does not fall under the definition of an ‘employee’ and therefore not provided for in terms of this provision. A clear distinction is drawn between an employee and the STP in the Policy, considering their different roles, responsibilities and benefits.

5.1.104.4 Therefore, the costs incurred for the travelling and accommodation of his spouse on any occasion or business trip can be regarded as unauthorised expenditure, simply because the Travel Policy does not provide for it.

5.1.104.5 Regarding the allegation that the STP does not possess a Top secret Security Clearance, it was established that the STP do indeed possess security clearance. Further, that the function of granting a Security Clearance Certificate, falls entirely within the ambit and control of the SSA.

5.1.104.6 The SSA can be regarded as a ‘relevant vetting agency.’

5.1.104.7 It was established that the STP could not have paid himself an ex-gratia payment of R71 000, because the authorisation for the ex-gratia payments were granted by the Executive Authority and not by him.

5.1.104.8 The rationale behind the ex-gratia payments was premised on an expedient temporary measure to address long standing, unresolved human resource issues that adversely disadvantaged employees. By incorporating a qualifications criteria as a means to determine those who were affected against those who were not affected and compensating them accordingly would have been the just and ethical approach.

5.1.104.9 The Accounting Officer of Parliament is accountable to the Executive Authority for the financial Management of Parliament and in this regard a submission was made to the Executive Authority requesting authorisation and approval of an ex-gratia payment to 1344 employees across all levels, inclusive of management and the Secretary to Parliament, which was granted. As the
Accounting Authority, accountable to the Oversight Mechanism of Parliament, in terms of section 5(2) of the FMPPLA, the Executive Authority failed to make a sound (thorough) financial decision when approving and authorising the ex-gratia payments to all employees on a ‘sliding scale’ as it lacked a qualifications criteria.

5.1.104.10 The services of Mr. Mahlangu does not fit easily within the criteria of exceptional circumstances as provided for in paragraph 6(11)(f)(i) and (ii) of the Supply Chain Management Regulations above. However, sub paragraphs (f)(i) and (ii) serves only as a guideline for the Accounting Officer to determine whether the potential service is exceptional in that specific instance and if so, approve the procurement in terms of paragraph (a). However, note should be taken of the word ‘guideline’ and by definition, following a guideline is never mandatory.

5.1.104.11 In terms of section 41(a) and (b) of the FMPPLA the Accounting Officer must implement the supply chain management policy and take all reasonable steps to ensure that proper mechanisms are in place to minimise dishonesty, favouritism and unfair and irregular practices.

5.1.104.12 Expert Consultant, Mr. Mahlangu was appointed to provide guidance to a workshop, in view of the fact that he was an experienced strategist and possessed the required political orientation and experience in transformation programmes and processes. He was a preferred supplier due to the nature of his service and it can be regarded as exceptional in this specific instance and therefore qualifies in terms of paragraph 6(11)(a)(ii) of the Supply Chain Management Regulations, 2015.

5.1.104.13 It was established that by using the services of PPS for transportation when performing official duties in and around the Western Cape Province was in violation with the provisions of paragraph 8.1 of the Reviewed Policy on Travel, Accommodation and Subsistence and Travel Allowance, 2009 (Travel Policy).
5.1.104.14 The Travel Policy makes provision for motor vehicle transport when performing official business in and around the Western Cape Province, in paragraph 8.1.

5.1.104.15 In terms of sub-paragraph 8.1(b) the Secretary and/or the Presiding Officer may on good cause shown, approve the use of a vehicle at the expense of Parliament. By implication, the STP may use a vehicle at the expense of Parliament, if he shows good cause. ‘Good cause’ in this regard would refer ostensibly to the security concerns in respect of confidential matters dealt with by the STP in transit.

5.1.104.16 In the meeting with the Public Protector House on 11 December 2018, the STP stated under oath, that he required the services of PPS because, he believed at the time that his life was in danger. Contrary to this assertion the former Head of PPS, Ms. Holtzman, stated in a meeting held on 29 January 2019, that she had no knowledge of this or whether a risk assessment was conducted in this regard and that the STP’s motivation for using PPS was on the basis of confidentiality. She stated further that the STP, “instructed PPS to provide such a service since the shuttle service used to transport staff, employed private personnel who could not be held accountable for breaches in security and that you (STP) dealt with a lot of confidential matters when travelling”.

5.1.104.17 Paragraph 8.1(b) of the Travel Policy does not specify the use of a driver as in the case of paragraph 8.3(c), where the STP may be provided with a driver when performing official business outside the Western Cape, instead it refers to the use of a vehicle only. Furthermore, PPS provides a protection service with specialised, trained Protection Officers. Paragraph 8.1(b) does not require the use of a protection service, but the use of a vehicle only. Therefore, the use of PPS by the STP for transportation when performing official duties in and around the Western Cape Province is not provided for in the Travel Policy.
5.1.104.18 Further, it was also established that the allegation against the STP concerning his instruction to PPS officials to make use of blue lights and sirens when transporting him and his family members was based on the testimony of Protection Officers, who distanced themselves from such allegations.

5.1.104.19 It was established that the appointment of SAPS officials to PPS was subject to a litigation process between the NEHAWU and Parliament before the Labour Court.

5.2. **Whether the Secretary to Parliament (STP), allowed a junior official, Acting Executive Manager: Strategic Management and Governance, Ms. Sandisiwe Schalk to authorise and approve a benchmarking study tour to England, Scotland, Turkey and Switzerland without the proper authority.**

**Issues that are Common Cause**

It is not disputed that:

5.2.1. The STP undertook a benchmarking study tour to England, Scotland, Turkey and Switzerland in 2015. The first leg of the study visit covered two countries, London and Scotland from 26 September 2015 to 5 October 2015. The second leg of the tour covered Turkey from 12 October 2015 to 17 October 2015. From 19 October 2015 to 24 October 2015 the delegation was scheduled to attend an Inter-Parliamentary Union (IPU) Conference in Geneva, Switzerland.

5.2.2. It is also common cause that on the first leg of the tour, the STP were accompanied by Ms. NP Tyawa, Adv. ME Phindela, Mr. MM Mokonyana and Ms. Ntshinga and on the second leg of the tour by Ms. NP Tyawa, Mr. R Poliah, Ms. T Xaso and Ms. R Thomas.

**Issues that are in dispute**

5.2.3. The issue for determination by the Public Protector is whether the STP, in his capacity as Secretary to Parliament, allowed a junior official, Acting Executive Manager:
Strategic Management and Governance, M: Sandisiwe Schalk to authorise and approve the benchmarking study tours to England, Scotland, Turkey and Switzerland without the proper authority.

5.2.4. According to the Complainant, "With regard to the authorisation and approval of the benchmarking trips, it is our submission that the Accounting Officer [STP] flouted the provisions of the act when he allowed a junior official to authorise and approve the said trips. It is our understanding that the trips should have been authorised and approved by the Executive Authority. It is our understanding that the initial Memorandum to the Executive Authority would have been a first step in the process that should have culminated in an approval and authorisation by the Executive Authority in the form of an executive directive. We are mindful of the practical reality that the Secretary to Parliament or his junior managers cannot authorise and approve his own trips" (sic).

5.2.5. The Office of the Secretary to Parliament stated inter alia that, "On the trips in question, approval was granted by the Executive Authority and the then Acting Head of SMG [Strategic Management and Governance] implemented the decision (see the attached delegation of authority document).

In the case of the Office of the Secretary to Parliament (OSTP), authority is delegated to the Head of Strategy Management and Governance (SMG), whose responsibilities also include co-ordination of the STP's official travelling.

The official referred to was Acting as the Executive Manager for Strategic Management and Governance and as Office Manager in the Office of the Secretary to Parliament (see the attached documents)".

5.2.6. Ms. Schalk, Executive: Legislative Sector Support in Parliament, was appointed Acting Executive Manager: Strategic Management and Governance on 1 February 2015. A date of expiry was not provided for in the Delegation of Authority.
5.2.7. In a memorandum to the STP, dated 16 May 2017, Ms. Schalk stated that the benchmarking study tours to Europe was discussed between himself and the Executive Authority. In the aforesaid discussion, so stated by Ms. Schalk, the Executive Authority indicated their approval in principle and a formal memorandum followed this 'in principle approval' and was subsequently signed on 16 September 2015."

5.2.8. Ms. Schalk asserted that, "The memo that I signed [15 September 2015] in my capacity as Acting Executive in the Office of the Secretary to Parliament and Programme Manager for Strategy Management and Governance was meant to formally activate sourcing of flights, accommodation and related costs for travel. It was based on the principle approval of the EA".

5.2.9. The foregoing assertion by Ms. Schalk was echoed in an unsigned memorandum, sent by STP on 14 April 2016 to the Executive Authority, stating that the international travel was already approved by the Executive Authority and that Ms. Schalk only authorised the expenditure for the trip.

5.2.10. The following table illustrates the authorisations / approvals in connection with the benchmarking study tour to England, Scotland, Turkey and Switzerland;

<table>
<thead>
<tr>
<th>Memorandum</th>
<th>Date of Memorandum</th>
<th>From</th>
<th>Approve and authorized</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Travel arrangements for STP to London and Scotland 26 September to 5 October</td>
<td>15 September 2015</td>
<td>T. Xaso, Acting Forum Coordinator</td>
<td>Ms. S Schalk, Acting Executive Manager: Strategic and Governance</td>
<td>R940 622.04</td>
</tr>
<tr>
<td>Travel arrangements for STP to Turkey 12-17 October 2015 IPU Conference Geneva 17-23 October 2015</td>
<td>15 September 2015</td>
<td>T. Xaso, Acting Forum Coordinator</td>
<td>Ms. S Schalk, Acting Executive Manager: Strategic and Governance</td>
<td>R879 816.59</td>
</tr>
<tr>
<td>Programme for benchmarking and relation building in support of the</td>
<td>16 September 2015</td>
<td>STP</td>
<td>Executive Authority</td>
<td>none</td>
</tr>
<tr>
<td>Implementation of the strategy for the 5th parliament</td>
<td>Approval of international travel expenses for Adv. ME Phindela, Ms PN Tyawa, Mr. Mokonyana and Ms L Ntsinga to London and Scotland</td>
<td>17 September 2015</td>
<td>Ms. S Schalk, Acting Executive Manager: Strategic and Governance</td>
<td>STP</td>
</tr>
<tr>
<td>Approval of international travel expenses for Adv. ME Phindela, Ms PN Tyawa, Mr. R Poliathi and Ms. Xaso to Turkey</td>
<td>17 September 2015</td>
<td>Ms. S Schalk, Acting Executive Manager: Strategic and Governance</td>
<td>STP</td>
<td>R505 992.96</td>
</tr>
</tbody>
</table>

**Table 4**

5.2.11. Upon analysis of the STP’s memorandum to the Executive Authority in Table 4 above, dated 16 September 2015, the purpose thereof sought, “To appraise the Executive Authority of Parliament of the strategies developed in support of the 5th Parliament” and recommended, “…that the Executive Authority, the Speaker of the National assembly and the Chairperson of the National Council of Provinces note the proposal.”

5.2.12. The Executive Authority approved the above memorandum in which the STP recommended that the Executive Authority only note the proposal made. The approved memorandum did not contain the financial implications associated with the trip, nor did it contain the specifics of the traveler. On the face of it the memorandum sought the approval of the Executive Authority in respect of the concept of realigning the way Parliament conducts its business and not approval of the traveller *per se*.

5.2.13. In the Memorandum of 15 September 2015, Ms Schalk also approved and/or authorised the travel expenses of the officials who accompanied the STP to London, Scotland, Turkey and Geneva. This approval was done two days before the approval was granted by the STP on 17 September 2015.
5.2.14. In Table 4 above, it is noted that Ms Schalk also authorised and/or approved the travel expenses of the STP a day before the questionable approval was granted by the Executive Authority.

5.2.15. Table 4 also illustrates that on 15 September 2015, Ms Schalk approved and/or authorised travel expenses for the entire delegation to London, Scotland, Turkey and Geneva to the value of R940 622.04 and R879 816.59 respectively.

5.2.16. In an interview with the Chief Financial Officer (CFO) of Parliament, Mr. Manenzhe Manenzhe on 23 January 2019, he was of the view that in terms of the Procurement Delegation of Authority, Ms Schalk as an Acting Executive Manager: Strategic Management may only authorise expenditure to the value of R80 000.00, contrary to the assertion held by Ms Schalk and the STP, that her level as Division Head afforded her authority to approve expenditure of up to the value of R250 000.00.

5.2.17. In an email from a Parliament official within the Office of the Acting Secretary to Parliament, known only as Sushie, the explanation was that the Executive Manager: Strategic Management and Governance post was neither a Section nor Divisional Head. It was above the Section Manager level (D2) and below the Division Manager level (E2). Furthermore, that Ms. Schalk acted in the post from 01 February 2015 until 30 November 2016.

5.2.18. In an unsigned memorandum dated 14 April 2016, the STP stated that “the benchmarking programme was already approved by the Executive Authority and the Programme Manager in the office [Ms. Schalk] authorised expenditure for travel.” By implication the foregoing is a tacit condonation by the STP of Ms Schalk’s conduct of already authorising the expenditure for travel.

5.2.19. Further thereto, in the meeting with the Public Protector of 11 December 2018, the STP stated that Ms Schalk was a Division Head and as such, was a budget holder responsible for her programme areas.
5.2.20. In the Audit Committee report received on 7 November 2017 it is stated in paragraph 9.9.3.6 of the findings that, "it seems the STP supports Ms Schalk's view during the interview that, in approving the STP's travel expenditure, she acted within her delegated authority."

Mr. Mgijiana's response to a notice issued in terms of the provisions of section 7(9)(a) of the Public Protector Act, 1994

5.2.21. Mr. Mgijiana stated that Ms. Schalk is dealing with travel arrangement and not dealing with any approval and that the assertions by the Complainants was either a misinterpretation or deliberately misleading. He asserted that he had discussed these matters with the Executive Authority and obtained approval and that this verbal approval was communicated to the Ms. Schalk and the team.

5.2.22. Further, that the Acting Manager: Strategy and Governance was part of senior management who had the privilege to attend previous governance structures in support of the STP. Additionally, the Acting Manager Strategy and Governance was the budget holder upon whom any expenditure of this kind must be incurred. So, in fact this is the most relevant person without whom that kind of expenditure in that budget would not be effected.

5.2.23. He argued that he undertook the trips with the full authority of the Executive Authority returned and gave the Executive Authority reports of these trips which they accepted.

5.2.24. Mr. Mgijiana held that the discussion he had with the Executive Authority about the trip and the memorandum did not refer to an 'in principle' memorandum but rather requested political approval to travel. Therefore, this memorandum was never written as an, 'in principle' approval as alluded to by Ms. Schalk.

5.2.25. Further, that the SCM regulations promulgated by the Executive Authority prohibit the involvement of the Executive Authority in matters related to supply chain and place the Accounting Officer in line with section 41 of the Act as the overall
implementer. Therefore, once the Executive Authority have given the political approval of an international trip then the rest is for the administration and the budget holders to implement.

5.2.26. Mr. Mgidiama stated that, by including financial implications and noting of the travelers in the memorandum addressed to the Executive Authority, it suggests that, “...the Executive Authority need to make approvals of financials and that they also approve the travel of the other colleagues. The Public Protector must be guided by the Policy in International Relations and the SCM regulation which both do make it a requirement for the Executive Authority to approve financials. The Executive Authority has not had the practice of approving the financial that are specifically classified as expenditure management under section 33 of the Act. This function is not reserved for the Executive Authority and cannot be delegated up to the Executive Authority by the Accounting Officer.”

5.2.27. Regarding the “...approval by Ms Schalk before the STP. This is incorrect as I had constant communication with Ms Schalk on the matter and I advised her much earlier of the verbal approval by the EA. The acting Executive Manager only signed those memorandums after I had indicated approval by the Executive Authority. The important thing to note is that the institution was committed through a process of warrants that was only done on 23 September 2015. If the institution was committed and the goods procured before the event, then that transaction would have fallen into the ex post facto category.”

5.2.28. Mr. Mgidiama stated that the Public Protector, “…ignores that Ms Schalk wrote and requested authorisation to spend from the Accounting Officer that was granted.(sic) Secondly, this is how approval of the many international travels are done in the institution, namely international relations that requests the approvals for delegations that travel on parliamentary business. Therefore, this argument is not the issue and cannot hold because this is how all trips are approved in Parliament and it is commonly understood that this is not the actual expenditure but a request to spend.”
5.2.29. Mr. Mgislana stated that, "I would expect that the CFO would produce the delegations referred that indicate that a person acting as Divisional Manager can only authorise up to R 80 000. In the absence of that I can only say that view is wrong and malicious. There is an easier way to deal with this rather than dealing with views, the Public Protector can request the copy of the delegations. Secondly, Ms Schalk has acted and exercise her acting role that was provided an assurance by internal audit and external audit. Additionally, I have not had a report, complain and advise from CFO from the time that Ms Schalk started acting in 2015 to the time when I went on special leave in 2017 any communication from the CFO in this regard. I can only say that his views are not principled but situational. Nevertheless, the custodian of posts and titles is not the CFO but HR."

**Application of the relevant legal prescripts**

5.2.30. With regard to whether such conduct constitutes maladministration, dishonesty or improper dealing with respect to public money as well as improper enrichment, the issue for determination by the Public Protector is whether applicable laws and prescripts were complied with and if not, whether the STP abused his powers in the performance of his duties and functions. The applicable legislations and prescripts with regard hereto are the following:

**Policy on International Participation by employees**

5.2.31. Paragraph 8(a) of the Policy on International Participation by employees states that, "International participation by an employee must be authorised by the Secretary"

5.2.32. In terms of paragraph 10, "Any breach of this policy may lead to a disciplinary action in terms of the Disciplinary Procedures of Parliament."

5.2.33. In terms of section 5(2) of the Financial Management of Parliament and Provincial Legislatures Act (FMPPLA) 2009, the Executive Authority is accountable to Parliament for the sound financial management of Parliament and the Secretary to Parliament, as the Accounting Officer, is accountable to the Executive Authority for the financial Management of Parliament.

5.2.34. In terms of section 33(1) and (2)(a) of the FFPPLA, the Accounting Officer is responsible for managing the expenditure of Parliament and must ensure that Parliament has an effective system of expenditure control which includes procedures for approval and authorisation of the withdrawal and payment of funds.

5.2.35. In terms of section 10(1) of the FMPPLA the Accounting Officer may delegate any powers or duties to an official of Parliament in accordance with a system of delegation. The system of delegation must be developed by the Accounting Officer in consultation with the Executive Authority, that provides adequate checks and balances.

5.2.36. Section 11(1)(b) and (c)(i) states inter alia that every official who exercises financial management responsibilities must comply with the terms of any delegation and take all reasonable steps to ensure that Parliament’s system of financial management and internal control is implemented diligently and that irregular expenditure are prevented and reported to the Accounting Officer.

5.2.37. No person having any responsibility under the FMPPLA, “may act in a way that is inconsistent with the act.” (section 12(3)(a))

5.2.38. In terms of section 67(1) of the FMPPLA, the Accounting Officer commits an act of financial misconduct if he or she deliberately or negligently fails to comply with a provision in the FMPPLA, and/or inter alia permits another official of Parliament to make unauthorised, irregular or fruitless and wasteful expenditure.
5.2.39. Sub-section (2) compels the Executive Authority to investigate any financial misconduct against the Accounting Officer and institute disciplinary action if the investigation warrants such a step.

5.2.40. Section 7(f) states that the Accounting Officer must ensure that disciplinary action is instituted against any employee of Parliament who has allegedly committed an act of financial misconduct.

5.2.41. Section 68(1) of the FMPPLA states that an official of Parliament to whom a power was delegated in terms of section 10, commits an act of financial misconduct if that official deliberately or negligently fails to comply with a condition of that delegated power or duty.

5.2.42. Sub-section (2) compels the Accounting Officer to investigate any financial misconduct against an official and institute disciplinary action if the investigation warrants such a step.

**Parliament’s Procurement Delegation of Authority, 2006**

5.2.43. In terms of Parliament’s Procurement Delegation of Authority, 2006, Unit Managers can procure goods and services up to the value of R30 000.00, Section Managers, R80 000.00 and Division Managers/Chief Operations Officers/Deputy Secretary to Parliament can procure up to the value of R250 000.00. Division Managers/Chief Operations Officers/Deputy Secretary to Parliament should submit a motivation for approval to the Secretary to Parliament for procurement above R250 000.00 and under R500 000.00.
The Conclusions that could be made based on the application of the law to the facts

Regarding whether the Secretary to Parliament (STP), allowed a junior official, Acting Executive Manager: Strategic Management and Governance, Ms. Sandisiwe Schalk to authorise and approve a benchmarking study tour to England, Scotland, Turkey and Switzerland without the proper authority.

5.2.44. Based on the information and evidence obtained during the investigation and the application of the legal framework to the facts of the matter, it can be concluded that:

5.2.44.1 Ms. Schaik was neither a Section nor Divisional Head. Her acting position was above the Section Manager level (D2) and below the Division Manager level (E2). Therefore, her authority in terms of Parliament’s Procurement Delegation of Authority, 2006 was below R250 000.

5.2.44.2 Table 4 above illustrates that on 15 September 2015, Ms Schalk approved and/or authorised travel expenses for the entire delegation to London, Scotland, Turkey and Geneva to the value of R940 622.04 and R879 816.59 respectively.

5.2.44.3 The STP condened the aforesaid authorisations by Ms. Schalk, therefore tacitly allowed her to authorise and approve a benchmarking study tour to England, Scotland, Turkey and Switzerland without the proper authority.

5.2.44.4 Travel expenditure above R250 000.00 should have been escalated to the STP as the Accounting Officer for approval and authorisation. However, being part of the delegation to undertake the trip, the STP, accountable to the Executive Authority in terms of section 5(2) of the FMPPLA, should escalate authorisation and approval thereof as well as the estimated financial implications to the Executive Authority. Segregation of Powers dictate that the STP as the Accounting Officer cannot approve his own travel.
5.2.44.5 In terms of Parliament’s policy on Delegation of Authority, 30 January 2017, “it is critical for Parliamentary Services to follow the principle of segregation of duties as a core internal control. Segregation of duties is a top contributor in mitigation of conflict of interest and is a key part of achieving compliance to applicable laws and regulations in Parliament”.

6 FINDINGS

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

6.1 With regard to whether the Secretary to Parliament abused his power in the performance of his duties and functions and if so, whether such conduct constitute maladministration, dishonesty or improper dealing with respect to public money as well as improper enrichment:

6.1.1 The allegation that the STP utilised public funds to pay for the travelling of his spouse to official functions, which was not regarded as necessary in the interest of Parliament as provided for in the Travel Policy is substantiated.

6.1.2 The allegation that the STP do not possess a Top secret Security Clearance, is not substantiated. Mr. Mgidlana confirmed his Top Secret Security Clearance under clearance no. 1254428. However note should be taken that the process of acquiring security clearance is the function of the SSA.

6.1.3 The allegation that the STP paid himself an ex-gratia payment of R71 000 is not substantiated on the basis of the authorisation and approval being granted by the Executive Authority and not by the STP, albeit the STP made the submission.

6.1.4 The allegation that the services of Expert Consultant, Mr Mahlangu was procured without following Supply Chain Management processes is not substantiated and the allegation that it was paid for without rendering the service, was unfounded.
6.1.5 The allegation that the STP misused and abused PPS vehicles is substantiated. By using the services of PPS for transportation when performing official duties in and around the Western Cape Province was in violation with the provisions of paragraph 8.1 of the Reviewed Policy on Travel, Accommodation and Subsistence and Travel Allowance, 2009.

6.1.6 The allegation that the STP made use of blue lights and sirens and used PPS to transport his family members is unsubstantiated on the basis of Protection Officers distancing themselves from such allegations.

6.1.7 My finding on whether the appointment of SAPS officials to PPS was irregular, is withheld on the basis of the matter pending before the Labour Court and that the Court’s pronouncement in this regard would prevail.

6.2 With regard to whether the Secretary to Parliament (STP), allowed a junior official, Acting Executive Manager: Strategic Management and Governance, Ms. Sandisiwe Schalk to authorise and approve a benchmarking study tour to England, Scotland, Turkey and Switzerland without the proper authority.

6.2.1 The allegation that the STP allowed a junior official, Acting Executive Manager: Strategic Management and Governance, Ms. Sandisiwe Schalk to authorise and approve a benchmarking study tour to England, Scotland, Turkey and Switzerland without the proper authority is substantiated.

6.2.2 By allowing Ms. Schalk to incur irregular expenditure, the STP’s actions was an act of financial misconduct contrary to section 67(1) of the FMPPLA.

6.2.3 By tacitly condoning her conduct and allowing Ms. Schalk to exceed her delegated authority, the STP failed to comply with section 68(2) of the FMPPLA, which compels him to investigate possible financial misconduct against an official and take disciplinary action should the investigation warrants such a step.
7 REMEDIAL ACTION

7.1 The appropriate remedial action I am taking as contemplated in section 182(c) of the Constitution, with a view to remedying the improper conduct and maladministration referred to in this report, is the following:

7.1.1 In light of the disciplinary action currently undertaken by Parliament against Mr. Mgidiama and Ms Schalk for findings made against them by the Audit Committee of Parliament on the same allegations, any remedial action I may decide to take against them may not serve any judicious purpose.

7.1.2 The Reviewed Policy on Travel, Accommodation and Subsistence and Travel Allowance, 2009 must be reviewed to include *inter alia* provisions that regulate;

7.1.2.1 The travelling of the Secretary to Parliament, nationally and/or internationally,

7.1.2.2 The travelling of the Secretary to Parliament, nationally and/or internationally accompanied by his/her spouse/partner or companion at the expense of Parliament,

7.1.2.3 Proper definition of terms, with limitations of the use of the words ‘occasion’ and ‘official business’ in the policy,

7.1.2.4 Authorisation and approval on all international travel including the Secretary to Parliament,

7.1.3 A policy provision which regulates the mandatory acquisition of a Top Secret Security Clearance for the Secretary to Parliament and all executive level employees within the first three month of employment,

7.1.4 Moratorium on *ex-gratia* payments,
8 MONITORING

8.1 The Executive Authority of Parliament must within 30 days of receipt of this report provide me with an action plan, indicating timelines, in respect of the abovementioned recommendation.

8.2 The Public Protector will monitor the remedial action in terms of this report within 1 month of its signature, and thereafter, every three months.

ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 10 05 2019

Assisted by: Good Governance and Integrity