
PUBLIC PROTECTOR
SOUTH AFRICA

REPORT NO. 28 OF 2019/2020

"Allegation of undue delay by the Department of International Relations and Cooperation"

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF AN UNDUE DELAY BY THE DEPARTMENT OF INTERNATIONAL RELATIONS AND COOPERATION IN THE IMPLEMENTATION OF A REPORT BY CHEADLE THOMPSON & HAYSOM INC. ATTORNEYS
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Executive Summary

(i) This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa (the Constitution), 1996, and section 8(2A)(a) of the Public Protector Act 23 of 1994 (the Public Protector Act).

(ii) The report communicates my findings and the appropriate remedial action taken following an investigation into a complaint of the alleged undue delay in the implementation of a report by Cheadle Thompson & Haysom Inc. Attorneys (the report) by the Department of International Relations and Cooperation (the Department).

(iii) The complaint was lodged with my office on 24 June 2013 by Mr Duncan Sebefelo, representing the National Education, Health and Allied Workers Union (NEHAWU), (the Complainant).

(iv) The Complainant alleged that:

(a) NEHAWU requests my intervention with regard to maladministration, corruption and many violations of public prescripts mentioned in the report, as well as the immediate implementation of the recommendations contained therein;

(b) Since the release of the report in May 2011, the Department has not taken appropriate steps to implement the recommendations or to follow-up on the corrective actions recommended against senior officials of the Department found to have violated the public service prescripts; and

(c) The tax-payers' money was utilised to conduct the investigation, but no action has been taken to correct the wrongs identified by the investigators. If no action is taken against the implicated individuals, as well as institutional measures to deal with
systemic challenges referred to in the report, NEHAWU will regard this as fruitless expenditure.

(v) This complaint was initially monitored by my office. Following an Alternative Dispute Resolution (ADR) meeting, held on 19 November 2018, which did not yield any positive results. I decided to proceed with an investigation into the matter.

(vi) On analysis of the complaint, the following issue was considered and investigated:

(a) Whether the Department unduly delayed in the implementation of the Cheadle Thompson & Haysom Inc. Attorneys report dated 17 May 2011.

(vii) Key laws and policies taken into account to determine if there had been maladministration by the organ of state and prejudice to the Complainant were principally those imposing administrative standards that should have been complied with by the Department or its officials. Those are the following:

(a) The Constitution; and

(b) The Public Protector Act.

(x) A notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Department which conceded that the Report was partially implemented.

(xi) Having considered the evidence uncovered during the investigation against the applicable law and related prescripts, I make the following findings:
(a) Regarding whether the Department unduly delayed in the implementation of the Cheadle Thompson & Haysom Inc. Attorneys report dated 17 May 2011:

(aa) The allegation that the Department unduly delayed in the implementation of the Cheadle Thompson & Haysom Inc. Attorneys report dated 17 May 2011 is partially substantiated;

(bb) The Department, in light of the evidence submitted, did not implement all the recommendations in the report;

(cc) The Department conceded that the implementation of the report took several years;

(dd) The Department failed to adhere to the constitutional demand of professionalism as envisaged in terms of section 195 of the Constitution in implementing the recommendations. Furthermore, the Department did not adhere to the constitutional obligation laid out in section 237 relating to promptness; and

(ee) Such failure constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

(xii) The remedial action that I am taking in pursuit of section 182(1)(c) of the Constitution is the following:

The Director-General must take effective and appropriate steps to ensure that:

(a) Disciplinary action against implicated employees: Once a transgression by an employee of the Department is reported, immediately investigate the reported
transgression and take appropriate corrective action against the implicated employee in accordance with policies of the Department;

(b) *Flouting of Public Service Regulations:* A fair process for the identified officials should immediately be undertaken to place them in a position that they should have been had the prejudice not have happened;

(c) *Ms Abigail Magoqwana:* Even though the matter was disposed of through litigation, the Department should, within thirty (30) working days from the date of this report, apologise to Ms Magoqwana for failing to assist her;

(d) *Transfer of monies into personal accounts:* The Department should, within thirty (30) working days from the date of this report, make a follow up with the SAPS into the matter;

(e) *Ambassador P Jana:* The Department should endeavour in all circumstances to recover debt and/or damages from all employees in terms of the Department’s Debt Management Policy in circumstances that warrant such. The Department should, within thirty (30) working days from the date of the report; take appropriate steps against the officials who failed to recover the loss incurred by former Ambassador Jana;

(f) *ICT Restructuring:* The Department should meaningfully engage with the Complainant in respect of this matter; and

(g) *Management Complaints:* The Department should, within sixty (60) working days from the date of this report, develop a communication policy and a code of good behaviour that regulates interaction between management and unions.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF AN UNDUE DELAY BY THE DEPARTMENT OF INTERNATIONAL RELATIONS AND COOPERATION IN THE IMPLEMENTATION OF A REPORT BY CHEADLE THOMPSON & HAYSOM INC.

1. INTRODUCTION

1.1 This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and published in terms of section 8(2A)(a) of the Public Protector Act, 1994 (the Public Protector Act).

1.2 The report is submitted to the following persons to inform them of the outcome of the investigation and implementation of the remedial action:

1.2.1 The Minister of International Relations and Cooperation, Dr N Pandor; and

1.2.2 The Director-General of the Department of International Relations and Cooperation, Mr K E Mohoi.

1.3 A copy of my report is also provided to the National Education, Health and Allied Workers Union (NEHAWU) (the Complainant), represented by Mr Duncan Sebefelo, to inform it on the outcome of the investigation.

1.4 The report relates to an investigation into allegations of an undue delay by the Department of International Relations and Cooperation (Department) to implement the Cheadle Thompson & Haysom Inc. Attorneys' report (the report).

2. THE COMPLAINT

2.1 On 24 June 2013, I received a complaint from the Complainant requesting that I intervene and investigate an undue delay by the Department in implementation of
the recommendations in the report. It is alleged that:

2.1.1 Since the report was released in May 2011, the Department has not taken appropriate steps to implement the recommendations or to follow-up on the corrective actions recommended against senior officials of the Department found to have violated the public service prescripts; and

2.1.2 The taxpayers' money was utilised to conduct the investigation, but no action has been taken to correct the wrongs identified by the investigators. If no action is taken against the implicated individuals, as well as institutional measures to deal with systemic challenges referred to in the report, NEHAWU will regard this as fruitless expenditure.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 Mandate of the Public Protector

3.1.1 The Public Protector is an independent constitutional institution established in terms of section 18(1)(a) of the Constitution to support and strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.1.2 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”.

3.1.3 Section 182(2) directs that the Public Protector has additional powers prescribed in legislation.

3.1.4 The Public Protector’s powers are regulated and amplified by the Public Protector Act, which states, among others, that the Public Protector has the power to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector Act also confers power to resolve the disputes through conciliation, mediation, negotiation or any other appropriate dispute resolution mechanism as well as subpoena persons and information from any person in the Republic for the purpose of an investigation.

3.1.5 In the Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect.¹ 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.”²

3.1.6 The complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (paragraph 65).

¹ [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].
² Supra at para [73].
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3.1.7 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced (paragraph 67).

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

3.1.9 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow (paragraph 69).

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

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

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

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

3.1.14 "Appropriate" means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (paragraph 71(e)).

3.1.15 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:

3.1.15.1 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);

3.1.15.2 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);

3.1.15.3 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):

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

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

3.1.15.5 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).

3.1.16 To this end, the Public Protector would like to emphasise that adjudicative functions and pure litigation which relates to a claim for special or general damages are lawsuits which are judicial in nature. A court of law is best suited to hear and adjudicate on such matters. Accordingly, the Public Protector is not inclined to recommend remedial action ordering payment of civil damages or sorry money given its adjudicative and judicial nature. The office of the Public Protector is an office modelled on an institution of an ombudsman whose function is to ensure that government officials carry out their tasks effectively, fairly and without corruption, maladministration and prejudice. It is therefore trite that the decisions of the Public Protector are administrative actions.

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

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3 Sudumo et al vs Rustenburg Platinum Mines Limited et al 2008(2) SA 24 (CC) at 235.
5 Minister of Home Affairs et al vs Public Protector et al 2017(2) SA 597 (GP).
3.1.18 Prima facie evidence which point to serious misconduct is a sufficient and appropriate basis for the Public protector to take remedial action (paragraph 112);

3.1.19 The Department is an organ of state and its conduct amounts to conduct in state affairs, as a result of this, this matter falls squarely within the ambit of the Public Protector’s mandate.

3.1.20 The jurisdiction of the Public Protector was not disputed by any of the parties in this matter.

4. THE INVESTIGATION

4.1 Methodology

4.1.1 My investigation of the complaint was conducted in terms of section 182(1) of the Constitution which gives me the power to investigate alleged or suspected improper or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action; and in terms of section 6(5) of the Public Protector Act, regulating the manner in which the power conferred by section 182 of the Constitution may be exercised in respect of public entities.

4.1.2 The Public Protector Act confers on me the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration. Section 6 of the Public Protector Act gives the Public Protector the authority to resolve a matter without conducting an investigation and resolve a complaint through Appropriate Dispute Resolution (ADR) measures such as conciliation, mediation and negotiation.
4.2 Approach to the investigation

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

4.2.1.1 What happened?
4.2.1.2 What should have happened?
4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration or other improper conduct?
4.2.1.4 In the event of maladministration or improper conduct, what would it take to remedy the wrong or to right the wrong occasioned by the said maladministration or improper conduct?

4.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. Evidence was evaluated and a determination made on what happened based on a balance of probabilities. The Supreme Court of Appeal⁶ (SCA) made it clear that it is the Public Protector’s duty to actively search for the truth and not to wait for parties to provide all of the evidence as judicial officers do.

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

4.2.4 This office (Public Protector’s) own institutional touchstones, being principles from previous reports, are always, and were also taken into account.

⁶ Public Protector versus Mail and Guardian, 2011(4) SA 420 (SCA),
4.2.5 The enquiry regarding remedial or corrective action seeks to explore options for redressing the consequences of maladministration or improper conduct. Where a Complainant has suffered prejudice, the idea is to place him or her as close as possible to where they would have been had the Department complied with the regulatory framework setting the applicable standards for good administration.

4.2.6 The substantive scope of the investigation focused on compliance with the law and prescripts regarding the complaint and allegations.

4.3 The Investigation Process

4.3.1 The investigation process commenced with the monitoring of the matter for compliance, meeting with the Department, analysis of the relevant documentations; conducting research; consideration and application of the relevant laws, regulatory framework and jurisprudence. It also included an ADR meeting.

4.4 On analysis of the matter, the following issue was considered and investigated:

4.4.1 Whether the Department unduly delayed in the implementation of the Cheadle Thompson and Haysom Inc. Attorneys report dated 17 May 2011.

4.5 Key Sources of information

4.5.1 Correspondences and interviews

4.5.1.1 The complaint letter and information provided by NEHAWU dated 18 June 2013;
4.5.1.2 A letter from my office to the Complainant dated 28 June 2013;

4.5.1.3 A letter from my office to the Complainant dated 18 July 2013;

4.5.1.4 A letter from my office to the Department dated 21 July 2013;

4.5.1.5 An email from my office to the Department dated 14 August 2013;

4.5.1.6 Emails from the Department to my office dated 16 August 2013;

4.5.1.7 An email from my office to the Department dated 23 August 2013;

4.5.1.8 A letter from the Department to my office dated 29 August 2013;

4.5.1.9 A letter from my office to the Department dated 14 October 2013;

4.5.1.10 An email from my office to the Complainant dated 16 October 2013;

4.5.1.11 An email from the Complainant to my office dated 17 October 2013;

4.5.1.12 An email from the Department to my office dated 18 October 2013;

4.5.1.13 A letter from my office to the Department dated 18 October 2013;

4.5.1.14 A letter from the Department to my office dated 6 November 2013;

4.5.1.15 A letter from my office to the Department dated 8 November 2013;

4.5.1.16 A letter from the Complainant to my office dated 26 January 2014;
4.5.1.17 A letter from my office to the Department dated 7 March 2014;

4.5.1.18 An email from my office to the Department dated 1 April 2014;

4.5.1.19 A letter from the Complainant to my office dated 9 May 2014;

4.5.1.20 A letter from my office to the Department dated 15 August 2014;

4.5.1.21 An email from my office to the Department dated 11 September 2014;

4.5.1.22 A letter from Frans F Erasmus Attorneys to my office dated 13 February 2017;

4.5.1.23 A Letter from my office to the Department dated 17 March 2017;

4.5.1.24 An email from the Department to my office dated 17 March 2017;

4.5.1.25 An mail from my office to the Department dated 10 April 2017;

4.5.1.26 An email from my office to the Department dated 2 June 2017;

4.5.1.27 An email from my office to the Department dated 24 August 2017;

4.5.1.28 A letter from my office to the Department dated 24 August 2017;

4.5.1.29 A letter from my office to the Department dated 10 October 2017;

4.5.1.30 An email from my office to the Complainant dated 24 October 2017;

4.5.1.31 A letter from the Department to my office dated 3 November 2017;
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4.5.1.32 Emails from the Department to my office dated 7 November 2017;

4.5.1.33 Emails from my office to the Department dated 7 November 2017;

4.5.1.34 A subpoena notice to the Department dated 25 October 2017;

4.5.1.35 An email from the Department to my office dated 8 November 2017;

4.5.1.36 An email from my office to the Department dated 9 November 2017;

4.5.1.37 An email from the Department to my office dated 10 November 2017;

4.5.1.38 An email from my office to the department dated 10 November 2017;

4.5.1.39 A letter from my office to the Department dated 10 November 2017;

4.5.1.40 A letter from my office to Cheadle Thompson & Haysom Inc. Attorneys dated 20 November 2017;

4.5.1.41 An email from Cheadle Thompson & Haysom Inc. Attorneys dated 20 November 2017;

4.5.1.42 An email from the Department to my office dated 21 November 2017;

4.5.1.43 An email from my office to the Department dated 21 November 2017;

4.5.1.44 A letter from my office to the Department dated 23 November 2017;

4.5.1.45 A letter from my office to the Department dated 27 November 2017;
4.5.1.46 A letter from the Department to my office dated 27 November 2017;

4.5.1.47 Emails from the Department to my office dated 27 November 2017;

4.5.1.48 An email from my office to the Department dated 27 November 2017;

4.5.1.49 An email from the Department to my office dated 1 December 2017;

4.5.1.50 An email from the Department to my office dated 5 December 2017;

4.5.1.51 An email from my office to the Department dated 5 December 2017;

4.5.1.52 A letter with information from the Complainant to my office dated 9 February 2018;

4.5.1.53 A letter from my office to the Department dated 9 April 2018;

4.5.1.54 An email from the Department to my office dated 10 April 2018;

4.5.1.55 An email from my office to the Department dated 4 June 2018;

4.5.1.56 A letter from my office to Frans F Erasmus Attorneys dated 6 June 2018;

4.5.1.57 A letter with information from the Department to my office dated 11 June 2018;

4.5.1.58 An email from my office to the Department dated 11 June 2018;

4.5.1.59 An email from the Department to my office dated 11 June 2018;

4.5.1.60 A letter from my office to the Department dated 28 June 2018;
4.5.1.61 Emails from the Department to my office dated 6 July 2018;

4.5.1.62 A letter with information from the Department to my office dated 6 July 2018;

4.5.1.63 Emails from the Department to my office dated 18 September 2018;

4.5.1.64 An Email from my office to the Department dated 18 September 2018;

4.5.1.65 A letter from my office to the Complainant dated 10 October 2018;

4.5.1.66 A letter from my office to the Department dated 10 October 2018;

4.5.1.67 An email from the Department to my office dated 15 October 2018;

4.5.1.68 An email from my office to the Department dated 19 October 2018;

4.5.1.69 An email from my office to the Department dated 30 October 2018;

4.5.1.70 An email from the Department to my office dated 5 November 2018;

4.5.1.71 An email from my office to the Complainant dated 9 November 2018;

4.5.1.72 An Email from my office to the Department and to the Complainant dated 14 November 2018;

4.5.1.73 An email from the Department to my office dated 19 November 2018;

4.5.1.74 A letter from my office to the Department dated 20 December 2018;

4.5.1.75 A letter from my office to the Complainant dated 20 December 2018;
4.5.1.76 A letter from the Complainant to my office dated 25 January 2019;

4.5.1.77 A letter from my office to the Complainant dated 1 March 2019;

4.5.1.78 A letter from my office to the Complainant dated 14 March 2019;

4.5.1.79 A letter from my office to the Department dated 14 March 2019;

4.5.1.80 A section 7(9)(a) Notice to the Minister dated 26 March 2019;

4.5.1.81 A section 7(9)(a) Notice to the Director-General of the Department dated 26 March 2019;

4.5.1.82 A letter from the Minister to my office dated 28 March 2019;

4.5.1.83 An email from the Department to my office dated 8 April 2019; and

4.5.1.84 An email from my office to the Department dated 9 April 2019.

4.5.2 Meetings

4.5.2.1 A meeting between my office and the Department on 9 April 2018;

4.5.2.2 An ADR meeting facilitated by my office between the Complainant and Department on 19 November 2018; and

4.5.2.3 A meeting between my office and the Director-General of the Department on 12 April 2019.
4.5.3 Legislation and other prescripts

4.5.3.1 The Constitution; and

4.5.3.2 The Public Protector Act.

4.5.4 Case Law

4.5.4.1 Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC);

4.5.4.2 Ex Parte Chairperson of the Constitutional Assembly; In re: Certification of the Constitution of the Republic of South Africa 1996(4) SA744 (CC) at 161;

4.5.4.3 Minister of Home Affairs et al vs Public Protector et al 2017(2) SA 597 (GP);

4.5.4.4 President of the Republic of South Africa v Office of the Public Protector and Others Case no 91139/2016 [2017] ZAGPPHC 747; and

4.5.4.5 Public Protector v Mail and Guardian 2011(4) SA 420 (SCA).
5. THE DETERMINATION OF ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

5.1 Regarding whether the Department unduly delayed in the implementation of the Cheadle Thompson and Haysom Inc. Attorneys report dated 17 May 2011:

Common cause issues

5.1.1. In 2011, the Department commissioned an investigation into certain allegations by NEHAWU related to corruption and maladministration by the Department’s management. The services of Cheadle Thompson and Haysom Inc. Attorneys were procured by the Department to conduct the investigation.

5.1.2. Cheadle Thompson and Haysom Inc. Attorneys investigated the allegations and a report dated 17 May 2011, with recommendations to the Department was produced.

5.1.3. A summary of the recommendations is as follows:

5.1.3.1. Supply Chain Management

(a) There were allegations that supply chain processes were not followed by the Department in the appointment of certain service providers.

(b) The report recommended that the Department should consider centralising the responsibility for keeping records of instances of deviations from the procurement rules and procedures, especially the reasons that must be given for deviation from existing procurement rules and procedures.

(c) In instances where the deviation is not justified, the procurement rules and procedures should be followed. Supply Chain Management should ensure that
all employees at the Department who are involved in procurement, obtain regular training on the existing procurement rules and procedures and the importance of keeping proper records.

5.1.3.2. Nepotism

(a) The alleged nepotism concerned the appointment of contract workers. The practice of appointing contract workers from an internal database was open to abuse and reasonable perceptions of nepotism.

(b) A recommendation was made that corrective action be taken against Ms T F Fadane and others who placed Mr Sipho Fadane on the list to be interviewed for the contract post to which he was appointed. These persons include Ms Mkoroana and Ms Zanele Nkosi.

5.1.3.3. Conflict of Interest

(a) It was alleged that Ms Joyini and Ms Nkadimeng approved the submission for the appointment of contract workers in which Ms Joyini and Ms Nkadimeng were part thereof. They should have recused themselves from the process of appointing their relatives as that constitutes a conflict of interest.

(b) It was recommended that Ms Joyini and Ms Nkadimeng be subjected to corrective action for playing a part in the appointment of Ms Amanda Joyini and Ms Evodia Nkadimeng, the act of signing the submission approving the latter’s appointment. That they ought to have recused themselves, giving adequate reasons, allowing other officials of the Department to sign the approval of the submission for their appointments.

5.1.3.4. The practice of not advertising contract posts generally
(a) The recommendation therein was that the Department should consider putting on its website a clear notice to the public that job seekers who would like to be considered by the Department for short term contract work should submit their curriculum vitae as and when such a need arises within the Department. The Department should communicate the same message in other forms of communication that it uses to communicate with the public.

(b) The measure may reasonably ameliorate perceptions of bias in instances where the Department genuinely recruits people on short term contracts without advertising because there are genuine reasons to do so on a fairly urgent basis.

5.1.3.5. *DIP Training – Ms Irene Gqamane and daughter, Ms Pumza Gqamane*

(a) This issue related to a practice in the Department, that every employee is required to spend a period of two years at a ‘desk’ before he or she could be eligible to go for DIP training for purposes of diplomatic posting. There has been instances where there has been deviations from the practice.

(b) It was recommended that the Department should formulate and adopt a clear policy on the issue of DIP training. It would be useful for the Complainant and other unions in the Department to be involved in the formulation of such a policy.

5.1.3.6. *Trade Union Participation in Recruitment Processes*

(a) It was alleged that the Department does not involve unions in the process of recruiting employees, even as observers. The Complainant had requested permission to participate in the process of recruiting employees and the Department had refused.

(b) A recommendation was made that the Department should consider involving unions as observers in the recruitment processes. This would ensure
transparency and engender confidence in the recruitment processes. There was clear evidence that the exclusion of the unions altogether from participation in any form from recruitment processes has created suspicion of bias, favouritism and/or nepotism.

5.1.3.7. Flouting of Public Service Regulations

(a) The complaint in this regard was that the Department advertised posts at certain specific levels, but offered successful candidates' positions lower than those advertised and for which the candidates were interviewed.

(b) It was recommended that the Department should review the position of the affected employees and determine whether or not they ought to be upgraded to the next level of Assistant Director. If an upgrade to the position of Assistant Director is not a possible option, then the Department could consider other ways of ensuring fairness to the affected employees.

5.1.3.8. Transfer of Monies into Personal Accounts

(a) The allegation that an amount of R113 678.58 was deposited into a personal Standard Bank account of an employee was not supported by evidence. The other allegation was that Mr Ndlovu transferred an amount of R2 million that belonged to the Department into his personal account.

(b) It was recommended that the Department must follow up with the South African Police Service (the SAPS) to find out if there has been any progress in investigating the allegation and that the Complainant should be informed of any progress in the investigations.

5.1.3.9. Ghost Posts

(a) A complaint was raised that there were non-existing employees who are paid salaries by the Department.
(b) The report recommended that the matter be referred to the Special Investigations Unit (the SIU) for investigations or that the Department follows up with the Sunnyside Police Station to ascertain the status of the complaint or investigation.

5.1.3.10. Mr Steven Dawson Malatji

(a) The complaint related to allegations of false charges against Mr Malatji for misconduct and unfair dismissal.

(b) It was recommended that the Department should await the outcome of the Labour Court review before taking any action. Should the Labour Court dismiss the review application, the Department should consider taking corrective action against Ms Joyini and Mr Tsengiwe who played a role in trying to get Mr Malatji to resign when he had been cleared by the Chairperson of the disciplinary hearing.

(c) The report recommended that similar corrective action against the former Director General, Mr Jeffrey Matthews Matjila, should be taken if he is still in the employ of the Department.

(d) It was further recommended that corrective action be taken against Mr Bungane for allegations by Mr Malatji that he sought to instruct or request him to take a predetermined decision to dismiss Ambassador Thabethe even before the latter was subjected to a fair disciplinary hearing.

(e) The alternative to the above recommendation was that the Department should review the application to the Labour Court and to make a decision, subject to legal advice, whether it is advisable to pursue the review application. If the decision is made to withdraw the review application, it is recommended that corrective action referred to above be taken against Ms Joyini and Mr Tsengiwe and that corrective action against Mr Bungane is not dependent on this.
5.1.3.11. *Mr Amos Letsholo*

(a) The complaint herein was that, Mr Amos Letsholo, the former driver of the late Goodwill Ambassador, Ms Mirriam Makeba, was not paid overtime, allowances (paid to other drivers) or salary for a period of three years whilst working as a driver for the late Ms Makeba.

(b) It was recommended that Human Resources deal with Mr Letsholo's complaints and resolve them fairly and urgently and that the Department should arrange counselling to Mr Letsholo.

5.1.3.12. *Mr Babini Vantyu*

(a) This complaint related to an unfair dismissal as a result of the absence from work by Mr Vantyu.

(b) It was recommended that should the Complainant have additional evidence that it did not present and wish the Department to review the matter, it could present such to management which should then review the matter.

5.1.3.13. *Ambassador P Jana*

(a) The complaint was that Ambassador Jana allowed her child and a friend to drive a vehicle bearing the South African flag. The vehicle was involved in an accident which resulted in damage to it. No action was taken against Ambassador Jana.

(b) The report recommended that the Department should consider whether or not to proceed against Ambassador Jana to recover the damages suffered. Consideration should be made in regard to the amount of the damages and the cost that would be incurred in a court action to recover the damages.

(c) Should the costs exceed the damages suffered, as is likely to be the case, it would be prudent for the Department to simply send a letter of demand to
Ambassador Jana for her to make good the loss and then write the amount of damages off if she does not respond favourably, instead of instituting legal action.

5.1.3.14. Mr Prince Mudzungwana

(a) The issue related to the unfair dismissal of Mr Mudzungwana whilst he was absent from work due to illness.

(b) It was recommended that Human Resource should meet with Mr Mudzungwana to resolve his claim. If he is entitled to some payment, such payment should be made to him. If not, he should be informed of this and the reasons thereof.

5.1.3.15. Mr Mukondi Ronald Siebane

(a) The complaint related to abuse of power which led to Mr Siebane's constructive dismissal.

(b) The report recommended that the Department should engage with Ms Joyini and Mr Apleni to find out the reasons for their failure to deal with Mr Siebane's problems. Should there be no reasonable explanation offered, corrective action should be taken against them.

(c) Furthermore, the Department should contact Mr Siebane and find a way to assist him, for example, whether there is any possibility of re-employing him in a suitable position.

5.1.3.16. Translation of Ranks and Job Evaluation – DPSA Resolutions

(a) The Complainant reported that the Department translated posts of General Assistants to House Aids without conducting any job evaluation to determine
the appropriate salary levels for affected posts. The Department only upgraded
the cleaners at the guest house to salary levels four and five.

(b) The report recommended that the Department’s Human Resources section
should conduct job evaluation so as to deal with the complaint fairly. The job
evaluations must include that of Ms Nomasono Esther Skhosana who was
employed by the Department as a cleaner for a period of about fifteen (15)
years, as well as others in similar positions.

5.1.3.17. Ms Abigail Magoqwana

(a) Ms Magoqwana was posted at the South African mission in the United States
of America. At the end of her posting, she returned home to South Africa. At
some point she was informed that her property, including a car, were held at
the Durban harbor. The reason given to her at the time was that left-handed
cars were not allowed in South Africa. The Department failed to assist her in
getting her possessions, including the car.

(b) It was recommended that the Department should assist Ms Magoqwana to
trace her belongings, including her car, and offer her assistance to obtain the
delivery of those belongings that still existed and which by law she was entitled
to keep in South Africa.

5.1.3.18. Mrs T Sobazile

(a) Mrs Sobazile was employed as a Records Clerk since 1991 at the then
Transkei Government. After 1994, she was transferred to Head Office. In 1997,
she was made a Senior Foreign Affairs Administrator following the translation
of posts within the Department. She was unhappy because she was not posted
as an officer. According to a circular all employees with matric had to be made
officers. She complained that after obtaining matric she was not made an
officer.
It was recommended that the Department's Human Resources be instructed to investigate the facts regarding Ms Sobazile's complaint and rectify the position if she is correct, and in line with the arbitration award. Ms Magoqwana's similar complaint should be dealt with in the same way.

5.1.3.19. *ICT Restructuring*

(a) The Complainant alleged that in 2006, the Department's ICT management engaged in the restructuring of the unit. The contention was that the restructuring was unilateral as there was no consultation with the union until the union complained in March 2007. The Department's management had not yet implemented the restructuring at the time when the complaint was lodged in March 2007. Subsequently, the Department's management agreed to take the issue to the bargaining chamber for deliberation with the unions. According to the Complainant, none of their inputs were taken into consideration.

(b) The report recommended that the Department's management should consider setting up a structure comprising of management and the union representatives within the Department, including NEHAWU, in order to complete the process of restructuring, or placement, in line with governing bargaining council resolutions and the agreements concluded by management at the bargaining chamber with the other unions (excluding NEHAWU).

5.1.3.20. *Mr Mathikge*

(a) The complaint related to a dispute regarding recruitment and selection of a vacancy within the Department wherein Mr Mathikge was excluded from the process.

(b) The report recommended that the Department's Human Resources section should be instructed to review the position of Mr Mathikge with a view to letting him undergo a competency assessment for any position similar to that which
he had applied for, provided there was such a vacant position in the Department. If there was no such position, he should be invited to apply for a suitable vacant post.

(c) The Department’s management must be instructed to consider corrective action against Ms Du Plessis, Ms Chetty and Mr Mbulungeni for their role in the treatment that was meted out to Mr Mathikge.

5.1.3.21. Management Complaints

(a) It was recommended that the Department’s management and the unions should work together to produce:

(i) A suitable communication policy to regulate communication and set out what is undesirable;

(ii) An email or other policy to regulate the use of the Department’s facilities by the union and other activities within the Department; and

(iii) A general code of good behavior that would regulate interactions between management and the unions within the Department.

Issues in dispute

5.1.4 The issue in dispute is whether the Department unduly delayed in the implementation of the Report.

5.1.5 The Complainant argued that the recommendations referred to in the Report have to date not been implemented.

5.1.6 My office raised the matter with the Department and as per a letter dated 29 August 2013 from the former Director-General, Ambassador J M Matjila, the following response was provided:
"...The complaint emanates from a report prepared by Cheadle Thompson & Haysom Inc. Attorneys...The report was tabled at the Departmental Bargaining Chamber (DBC) by Organised Labour for further engagement. The Departmental management proposed at the Chamber that the parties should establish an Implementation Task Team...to deal with the recommendations that contain mutual interest matters...Organised Labour, however, could not accede to the management proposals and submitted to the Departmental Bargaining Chamber that they will refer this matter to Chapter 9 Institutions.

The Department is therefore of the view that the matter has been prematurely referred to your office, given the fact that some of the recommendations have been clarified and implemented. Furthermore, management is still prepared to follow due process with regard to recommendations pertaining to individual matters in line with the Promotion of Administrative Justice Act.

It is my humble submission that the Department is more than willing to engage your office regarding this matter...”

5.1.7 In response to the abovementioned letter, my office sent correspondence to the Department dated 14 October 2013 and advised that:

"...I advise that the following steps be considered:

- That the recommendations of the report should be implemented promptly as the delay has been unreasonable in the circumstances.
- The Department carries the ultimate responsibility in ensuring that the recommendations in the report are implemented.
- That an action plan regarding the implementation of the recommendations be forwarded to my office within five working days of receipt of this letter."
• That you are afforded sixty (60) days, from receipt of this correspondence, to implement all recommendations in the Cheadle Thompson & Haysom Inc. Attorneys report.
• That there should be meaningful engagement between the Department and NEHAWU-DIRCO in achieving implementation of the recommendations.
• That the Department should report developments as and when they occur.

Kindly note, that my office will be monitoring the matter henceforth.”

5.1.8 An email dated 18 October 2013 was received from Ms Tliego Gillian Motlamme, on behalf of the Director-General, which provided the following:

“...the Director-General has agreed to duly submit to the Office of the Public Protector a draft Action Plan for the implementation of the recommendations in the Cheadle Thompson & Haysom Inc. Attorneys report. The draft action plan was completed and presented to the Labour Unions within the Department. Subsequent to the presentation of the Action Plan to the Unions, the document had to be revised and redesigned as the initial proposal was rejected by the latter parties...Upon completion of the revision process, the Action Plan will be approved and submitted to the Office of the Public Protector...”

5.1.9 The Complainant submitted in a letter dated 26 January 2014 that:

“NEHAWU wish to state unambiguously that DIRCO Management has been playing delaying tactics since the report was released in early 2011.

...there was no task team proposed together with the terms of reference to facilitate implementation of the recommendations of the report...
Allegations of undue delay by the Department of International Relations and Cooperation

Thus far no single recommendation in the report has ever been clarified and implemented, unless Management can prove otherwise. Since the Public Protector requested DIRCO Management to draft an action plan and share it with NEHAWU, nothing of such nature has ever happened...

It is our considered view that two and half years of non-implementation of the recommendations of the report constitute an injustice to the affected parties.

5.1.10 In a letter dated 9 May 2014, the Complainant submitted that:

"DIRCO Management has done nothing substantive despite having on several occasions promised to work towards the implementation of the recommendations. The available record clearly proofs not only lack of commitment on their part but attempt to obfuscate the messages communicated to the Office of the Public Protector.

Furthermore, DIRCO Management had gone ahead to unilaterally and arbitrarily without the involvement of NEHAWU to implement some of the Cheadle and Thompson recommendations…"

5.1.11 The Department submitted a letter dated 3 November 2017 from the Director-General, Mr K E Mahoai, which stated that:

"…We wish to apologise for not responding to your previous communications…You will understand that the Director-General is inundated with email and due to the fact that he frequently travelled abroad since his appointment as Director-General, was not able to attend to all matters received via email.

The Department can confirm that it has taken steps to implement the recommendations of the Cheadle Thompson & Haysom Inc. report."
5.1.12 The Department submitted in a letter dated 1 November 2017 and received on 10 November 2017, from Mr K E Mahoai and a detailed report on how the Department implemented the recommendations in the Report. The Department stated in the letter that:

"...I can confirm that the Department has indeed implemented the recommendations of the Cheadle Thompson & Haysom Inc Report ("the Cheadle Thomson Report"). Since the issuance of the Cheadle Thompson Report in 2012, the Management of the Department was seized with this matter. A Task Team consisting of Deputy Directors-General was established to manage the matter and to ensure that steps were taken to implement the recommendations in the Cheadle Thompson Report.

...It is true that the implementation of the recommendations could not be achieved over night and in fact it has taken a number of years. This was a result of many time consuming factors such as investigations being done, etc and should not be seen as a deliberate delay on the part of the Department. What is true is that the department has not communicated well on what it has done to implement the recommendations. This will be corrected."

5.1.13 The Department further submitted in a letter dated 27 November 2017, from Mr K E Mahoai, that:

"...It therefore appears from the original 21 recommendations, 11 matters remained of concern to the Public Protector...the Department hereby submits a further Report on the Implementation of the recommendations of the Cheadle Thompson Report, containing the additional information in respect of the 11 matters."
The Department is confident that through the various processes, corrective measures and interventions that were made, including putting in place policies and procedures, the problems that were identified, and in respect of which recommendations were made in the Cheadle Thompson Report have been addressed."

5.1.14 In a letter dated 9 February 2018, the Complainant contended that:

"...It is our contention that the report has not been implemented, there is complete refusal on the part of DIRCO Management to implement the report."

5.1.15 After receiving my notice issued in terms of section 7(9)(a) of the Public Protector Act, the Department in a letter dated 12 April 2019 submitted that:

"...
8...the Department wishes to place on record again that most of the issues on which recommendations were made in the Report originated from systemic inadequacies that had to be addressed comprehensively through policy intervention. Such comprehensive policy interventions could not be created overnight. The Department realised that the issues raised in the Report could not be dealt with sufficiently and permanently in a piecemeal fashion, but that a thorough consultative negotiation process with organised labour had to be undertaken in order to adopt appropriate policies...

9...the Department has on the basis of the recommendations in the report, put in place numerous policies that had been negotiated with organised labour as party to the Departmental Bargaining Chamber and that have been signed and implemented since..."
10. Policies, such as the Recruitment and Selection Policy, effectively address the specific issues of nepotism, conflict of interest, flouting of Public Service Regulations and the practice of non-advertising of posts that were sharply raised by the Report. The recruitment and selection process includes the participation of organised labour as observers during advertisement formulation, shortlisting and interviews.

11. Policies, such as the Placement Policy, have also taken into account the issues raised in the Report and have been applied effectively. Similarly, the adherence to Supply Chain Management processes and procedures, including the Regulatory Framework for Supply Chain Management, have been implemented effectively and have proven to address the concerns, especially the root causes, raised in the Report.

12. The route of policy development, where negotiations with organised labour are required, by its very nature, is not a process that can be finalised within a short period of time. Although the Department acknowledged that the full implementation of the recommendations took several years, the Department is of the view that most of the provisions of the policies developed since the 2011 Report were already applied as early as 2011, although some of the policies were only signed later in 2015. The policies developed in respect of diplomatic training of employees, namely the Trainee Assessment and Moderation Policy and the Admissions Policy were, for instance, already signed on 7 July 2011, a few months after the May 2011 Report.

13. The fact that numerous policies had to be developed to address the systemic issues raised in the Report also contributed to the time period in which the recommendations were addressed. Having regard to the public service governance processes, the Department is of the view that the time spent on
the development of these policies could not be regarded as unduly delayed intervention...

15. The Department is on the view that...it has implemented to the largest extent possible the recommendations made in the Report.

16. Although this implementation took some time to complete, the governance process to be followed to put the necessary processes in place to address the systemic problems and inadequacies that led to various incidents, are indeed time consuming and should not be regarded an intentional undue delay on the part of the Department”.

5.1.16 On analysis of the submission made by the Department with regard to the implementation of the report, the following is apparent:

5.1.16.1 Supply Chain Management

(a) In its response to the section 7(9)(a) notice dated 12 April 2019, the Department indicated that the Financial Misconduct Management Framework Policy is dated 30 May 2016 and the Department is of the view that this intervention cannot be regarded as an unduly delayed intervention.

(b) The Department complied with the recommendation that they should consider centralising records of instances of deviations and the reasons thereof. An extract of the deviation register was provided. The Department also furnished an undated Financial Misconduct Management Framework policy in this regard.

(c) It must be noted that the extract from the register shows entries only made in 2018.
5.1.16.2 Nepotism

(a) On 12 April 2019, the Department submitted that implicated managers were transferred from the posts they occupied, where and when the incidents occurred, to other posts where they were no longer responsible for human resource matters. In addition, it would be unfair and improper to take corrective action at this late stage.

(b) From the submission of the Department, no corrective action has been taken against Ms Fadane, Ms Mkoarana and Ms Nkosi.

5.1.16.3 Conflict of Interest

(a) The Department submitted in the letter dated 12 April 2019, that the identified officials were transferred from their positions where and when these issues occurred to other units within DIRCO, since it may be a challenge to comply with the rules of natural justice in considering corrective action against the identified officials at this stage.

(b) In addition the Department submitted that any conflict of interest in the future will be addressed through a Declaration of Vested Interest, which will require every official to sign.

(c) No corrective action was taken against the implicated officials namely, Ms Joyini and Ms Nkadimeng.

5.1.16.4 The Practice of not advertising contract posts generally

(a) The Department did comply with the recommendation herein as contract positions are being advertised and the Department’s recruitment policy caters for union involvement in the policy.
(b) The Department provided advertisements dated as early as 2012 up to 2016. It should be noted that the policy submitted by the Department is dated 13 April 2015.

5.1.16.5 *DIP Training – Ms Irene Gqamane and daughter, Ms Pumza Gqamane*

(a) The Department complied with the recommendation by submitting a clear policy in respect of this aspect.

(b) Two policies were submitted by the Department namely, the Trainee Assessment and Moderation Policy dated 7 July 2011 and the Admissions Policy dated 7 July 2011.

5.1.16.6 *Trade Union participation in recruitment processes*

(a) As stated above, the Department provided a recruitment policy dated 13 April 2015 which includes union participation in the recruitment of employees.

5.1.16.7 *Flouting of Public Service Regulations*

(a) The Department did not implement the recommendation of the Report herein. The Department submitted that they instructed the relevant unit to urgently conduct job evaluation on the posts.

(b) In addition, the Department in a letter dated 12 April 2019 submitted that the five officials who were identified in the Report as affected by appointments to posts that are lower levels compared to what they applied for, the Department instructed the relevant unit to immediately attend to this matter and to ensure that their situation was rectified without further delays.
5.1.16.8 *Transfer of monies into personal accounts*

(a) The Department did not comply with the recommendation herein, more especially in respect to making a follow-up with the SAPS.

5.1.16.9 *Ghost Posts*

(a) The Department did not refer the matter to the SIU nor the Sunnyside Police Station, instead they submit that an internal audit was conducted.

(b) In the Department's letter dated 12 April 2019, it was indicated that they found no evidence of non-existing employees that were paid salaries and therefore did not report to the SAPS or the SIU. Furthermore, the Department provided that they regularly conduct payroll audits of employees to determine and prove if there are any ghost employees. According to the Department, the results of the payroll audits revealed that adequate measures are in place to ensure that there are no ghost employees.

5.1.16.10 *Mr Steven Dawson Malatji*

(a) This matter remains unresolved as it still lies with the courts. The Department has not taken corrective action against Ms Joyini, Mr Tsengiwe and Mr Bungane.

(b) The Department stated in a letter dated 12 April 2019, that since the matter was pending before the courts, there were no grounds to take corrective action against the identified officials.
5.1.16.11 Mr Amos Letsholo

(a) The Department submitted that Mr Letsholo was upgraded from Level 4 to Level 5 from 1 April 2011 and was paid overtime. Furthermore, meetings were held with Mr Letsholo to address the matter.

(b) The documents submitted by the Department in support of its submission precede the date of the Report. The supporting documents from the Department do not show any action after the issuance of the Report.

(c) The Department submitted in a response dated 12 April 2019, that Mr Letsholo was referred to the in-house Employee Health and Wellness unit where he received counselling from a Clinical Psychologist.

5.1.16.12 Mr Babini Vanyu

(a) It was recommended that NEHAWU should bring more evidence in respect to this issue. No further evidence was submitted by NEHAWU.

5.1.16.13 Ambassador Jana

(a) No steps were taken by the Department in the recovery of the damages from Ambassador Jana.

5.1.16.14 Mr Prince Mudzungwana

(a) The Department implemented the recommendation herein. Documents submitted showed that in September 2011, the parties agreed on the payments which were due to Mr Mudzungwana. The evidence revealed that the Department paid Mr Mudzungwana’s salary on 26 August 2010 for the period 1 May 2008 to 27 March 2009. In addition, the evidence revealed that Mr Mudzungwana was paid a 13th cheque, paid in full, for the year 2008 and pro
rata for the year 2009. This was paid on 26 August 2010. The Department further paid Mr Mudzungwana his medical aid benefits on 30 August 2010.

5.1.16.15 Mr Mukondi Ronald Siebane

(a) From the submission received, the Department failed to take corrective action against Ms Joyini and Mr Apleni.

5.1.16.16 Translation of ranks and job evaluation – DPSA Resolution

(a) There is compliance with the recommendation as a job evaluation submission was made in March 2011 and Ms Skhosana has since been upgraded to level 5 in a different position.

5.1.16.17 Ms Abigail Magoqwana

(a) The Department did not assist Ms Magoqwana in respect of her belongings as per the recommendations of the Report.

(b) The matter was disposed of through litigation where a court order against Ms Magoqwana was issued in 2009.

5.1.16.18 Mrs T Sobazile

(a) Mrs Sobazile was upgraded by the Department during 2011 from the documents submitted by the Department.

5.1.16.19 ICT Restructuring

(a) A collective agreement with other unions within the Department, excluding NEHAWU, was implemented in respect of ICT Migration.
(b) There is no documentary proof that a structure was set up which also included NEHAWU with regard to the process of restructuring.

(c) The Department, in a letter dated 12 April 2019, indicated that they shared information with NEHAWU on the review of the Department structure, a process was followed in the financial year 2014/2015 where, through the Departmental Bargaining Chamber, organised labour was provided with information and inputs were received from them which were considered.

5.1.16.20 Mr Mathikge

(a) The Department did not take any corrective action, as per the recommendation, against Ms Du Plessis, Ms Chetty and Mr Mbulungeni.

5.1.16.21 Management Complaints

(a) There is no evidence that the Department formulated a communication policy nor a code of good behaviour that regulates interaction between management and the unions, in line with the recommendation herein.

(b) The Department, in a letter dated 12 April 2019, indicated that the Departmental Bargaining Chamber is the forum where collective bargaining on issues of mutual interest are dealt with.

Application of the relevant legal prescripts

5.1.17 Section 195(1) of the Constitution provides for the principles of good administration in all spheres of government. The section provides:

"(1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:
(a) A high standard of professional ethics must be promoted and maintained.

... 

(f) Public administration must be accountable."

5.1.18 The Department was expected to exercise a high level of professionalism and ethics, including accountability in the performance of their duties. It was expected from the Department to also maintain these standards in the implementation of the Report.

5.1.19 Section 237 of the Constitution also provides that all constitutional obligations must be performed diligently and without delay.

5.1.20 In terms of section 237, the Department was expected to carry out its duties without delay by implementing the Report in time.

Conclusion

5.1.21 The Report was published in 2011, the complaint was lodged with my office in 2013. Even though the Department partially implemented the recommendations in the Report, there are still issues which are still outstanding.

5.1.22 It must be further noted that even after seven years, the Department has not yet fully implemented the recommendations in the Report.

5.1.23 The Department conceded that the implementation of the Report took several years.
6 FINDINGS

6.1 Regarding whether the Department unduly delayed in the implementation of the Cheadle Thompson and Haysom Inc. Attorneys report dated 17 May 2011:

6.1.1 The allegation that the Department unduly delayed in the implementation of the Cheadle Thompson & Haysom Inc. Attorneys report dated 17 May 2011 is partially substantiated.

6.1.2 The Department, in light of the evidence submitted, did not implement all the recommendations in the report.

6.1.3 The Department conceded that the implementation of the report took several years.

6.1.4 The Department failed to adhere the constitutional demand of professionalism as envisaged in terms of section 195 of the Constitution in implementing the recommendations. Furthermore the Department did not adhere to the constitutional obligation laid out in section 237 relating to promptness.

6.1.5 Such failure constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

7. REMEDIAL ACTION

The remedial action that I am taking in pursuit of section 182(1)(c) of the Constitution is the following:
The Director-General must take effective and appropriate steps to ensure:

7.1 *Disciplinary Action Against Implicated Employees:* Once a transgression by an employee of the Department is reported, immediately investigate the reported transgression and take appropriate corrective action against the implicated employee in accordance with policies of the Department;

7.2 *Flouting of Public Service Regulations:* A fair process for the identified officials should immediately be undertaken to place them in a position that they should have been had the prejudice not have happened;

7.3 *Ms Abigail Magoqwa:* Even though the matter was disposed of through litigation, the Department should, within 30 working days from the date of this report, apologise to Ms Magoqwa for failing to assist her;

7.4 *Transfer of monies into personal accounts:* The Department should, within 30 working days from the date of this report, make a follow up with the SAPS into the matter;

7.5 *Ambassador P Jana:* The Department should endeavour in all circumstances to recover debt and/or damages from all employees in terms of the Department’s Debt Management Policy in circumstances that warrant such. The Department should, within 30 working days from the date of the report; take appropriate steps against the officials who failed to recover the loss incurred former Ambassador Jana;

7.6 *ICT Restructuring:* The Department should meaningfully engage with the Complainant in respect of this matter; and
7.7 *Management Complaints*: The Department should, within 60 working days from the date of this report, develop a communication policy and a code of good behaviour that regulates interaction between management and unions.

8. **MONITORING**

8.1 The Director-General of the Department must submit an Implementation Plan to my office within 30 (thirty) working days from the date of receipt of the report indicating how the remedial action referred to in paragraph 7 above will be implemented.

8.2 The submission of the Action Plan and the implementation of my remedial action shall, in the absence of a Court Order directing otherwise, be complied with within the period prescribed in my report.

ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 01/07/2019