
"Allegations of breach of the provisions of the Executive Members’ Ethics Act, Executive Ethics Code and Ministerial Handbook in the procurement of the Premier vehicles"

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REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IRREGULAR PROCUREMENT OF OFFICIAL VEHICLES FOR THE FORMER PREMIER OF MPUMALANGA PROVINCE, HONOURABLE DAVID MABUZA, BY THE MPUMALANGA OFFICE OF THE PREMIER
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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, 1996, and published in terms section 8(2A)(a) of the Public Protector Act, 1994.

(ii) The report relates to an investigation into allegations of irregular procurement of official vehicles for the former Premier of Mpumalanga Province, Mr David Mabuza (the former Premier), by the Mpumalanga Office of the Premier as well as allegations of a violation of the Executive Ethics Code (the Code) by the former Premier with regard thereto.

(iii) The complaint was lodged with my office on 23 January 2014 by the Provincial Convener of the Economic Freedom Fighters (EFF) in Mpumalanga, Ms Amanda Tshabalala.

(iv) The Complainant alleged that on 09 January 2014, the media reported that the Office of the Premier of Mpumalanga Province procured three (3) luxury vehicles worth R5 million for use by the former Premier, one of which was allegedly acquired a few weeks after the former Minister of Finance, Mr Pravin Gordhan, had presented a budget speech about austerity measures in government;

(v) According to the Complainant, the three (3) vehicles comprised of an Audi A8 (the Audi), a BMW X5 (the BMW) and a Range Rover Vogue (the Range Rover). In addition, a Lexus was also purchased to replace an earlier model that was used by the former Premier. The Range Rover cost in the region of R1.9 million, excluding extras, with the Audi, BMW and Lexus costing approximately R1 million each;

(vi) The purchase of these vehicles was inconsistent with the provisions of clauses 1.2.4 and 1.2.5 of the Ministerial Handbook in that the amount spent thereon exceeded 70% of the inclusive remuneration package of the former Premier at the time.
(vii) The allegations were ostensibly based on a 10 January 2014 media article published by a Ziwaphi tabloid size newspaper entitled, “Premier Mabuza’s office spends R5 million on cars” In the article, it was reported that:

“Mpumalanga Premier David Mabuza’s office has bought three luxury vehicles worth R5 million in one year for his use. At least one of these was purchased barely a few weeks after finance minister Pravin Gordhan announced cost curtailment measures to curb government spending. The vehicles include an Audi A8, a BMW X5 and the most recent acquisition, a 2013 Range Rover V85.0 S/C Petrol autobiography, which was delivered last month.

The Range Rover costs R1 912 525.00 without extras, such as bulletproof windows and other security features. Earlier last year, the office of the premier spent about R1 million to buy a BMW X5 for the premier’s use. That vehicle currently forms part of the premier’s convoy. In the same period, the office bought an Audi A8 for the premier’s use. The cost of an Audi A8 starts from R1 million”.

(viii) On the same day, the former Premier’s spokesperson, Mr Zibonu Mncwango, issued a media statement admitting the procurement of the vehicles. In the statement, Mr Mncwango explained that the vehicles had to be procured due to the former Premier’s official vehicles encountering mechanical faults thus hindering him from discharging his responsibilities. He also explained that the additional vehicles had to be purchased as back-up vehicles in the event that the former Premier’s main official vehicle encountered mechanical faults or was booked in for service.

(ix) Mr Mncwango emphasised that the procurement processes and procedures were followed in the acquisition of the vehicles in accordance with the applicable rules, regulations and Privileges and Entitlements pertinent to the former Premier and as envisaged in the Ministerial Handbook.

(x) On analysis of the complaint, the following issues were identified and investigated:
(a) Whether the Office of the Mpumalanga Premier irregularly procured the official vehicles, a BMW X5, Audi A8, Lexus and a Range Rover Vogue, for the former Premier of Mpumalanga Province, Mr David Mabuza; and

(b) Whether the former Premier of Mpumalanga Province, Mr David Mabuza was involved in the procurement of his official vehicles comprising of the BMW X5, Audi A8, Lexus and a Range Rover Vogue by the Office of the Premier and if so, whether such conduct constitutes a violation of the Executive Ethics Code.

(xi) The investigation process included an exchange of correspondence and conducting meetings and interviews with relevant officials of the Office of the Premier and officials of other relevant Provincial Departments as well as analysis of relevant documents and application of all relevant laws, policies and related prescripts.

(xii) Key laws and policies taken into account to determine if there had been maladministration and/or improper conduct by the Office of the Premier were principally those imposing administrative standards and procedures that should have been complied with when the Mpumalanga Provincial Government procured these vehicles for the former Premier.

(xiii) Having considered the evidence and information obtained during the investigation and the regulatory framework setting the standard that should have been upheld by the Office of the Premier, my findings are as follows:

(a) **Regarding whether the Mpumalanga Office of the Premier irregularly procured the official vehicles, a BMW X5, Audi A8, Lexus and a Range Rover Vogue, for the former Premier Mr David Mabuza:**

(aa) The allegation that the Mpumalanga Office of the Premier irregularly procured the official vehicles, a BMW X5, Audi A8, Lexus and a Range Rover Vogue, for the former Premier of Mpumalanga Province, Mr David Mabuza is substantiated.
(bb) The Office of the Premier was precluded from purchasing the BMW X5 in terms of the Ministerial Handbook as it was not an official vehicle of the Premier. The Office of the Premier therefore violated paragraph 1.1.3 of Chapter 5 of the Ministerial Handbook. It also failed to procure the BMW X5 in terms of paragraph 3.4.1 and 3.4.2 of the National Treasury Practice Note No. 8 of 2007/08.

(cc) Although the Audi A8 was purchased through the Ministerial Handbook, the Office of the Premier acted contrary to paragraph 1.2.6 of the Handbook which required it to procure vehicles in accordance with the PFMA and its prescripts. As found by the Auditor-General, the Office of the Premier failed to comply with section 16.A6.5 of the Treasury Regulations in the procurement of the Audi A8 as it had opted for the RT57 contract, but procured the vehicle outside the said contract.

(cc) The Office of the Premier purchased the Range Rover Vogue through a deviation from the normal procurement processes, but failed to record reasons for deviation from inviting competitive bids which is in violation of paragraph 3.4.3 of the Practice Note No. 8 of 2007/08 read with TR16.A6.4. The Auditor-General also found in this regard that the purchase of this vehicle was non-compliant with RT16.A6.5 as it was not done according to the RT57 contract. The Auditor-General further indicated that the deviation should have been approved by the National Treasury. The Auditor-General concluded that the expenditure of the vehicles amounted to an unauthorised and irregular expenditure.

(dd) Based on the above information, Dr Mkhize, as the accounting officer in the Office of the Premier, committed financial misconduct in terms of section 81(1)(b) of the PFMA during the procurement of the vehicles as the expenditure amounted to an unauthorised and irregular expenditure.

(ee) The conduct of the Office of the Premier, particularly Dr Mkhize, 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.
(b) Regarding whether the former Premier of Mpumalanga Province, Mr David Mabuza was involved in the procurement of his official vehicles comprising of the BMW X5, Audi A8, Lexus and a Range Rover Vogue by the Office of the Premier and if so, whether such conduct constitutes a violation of the Executive Ethics Code:

(aa) The allegation that the former Premier was involved in the procurement of his official vehicles is not substantiated.

(bb) The media statements, nature of the Complainant’s complaint and documentary evidence received by my office indicate that the allegation of irregular procurement of the former Premier’s vehicles was against the Office of the Premier and not the former Premier in his personal capacity. No evidence could be produced to indicate that the former Premier was involved in the procurement process of the vehicles.

(cc) There was therefore no violation of the Code by the former Premier in the procurement of the vehicles in this matter.

(xiv) The appropriate remedial action I am taking in terms of section 182(1)(c) of the Constitution is the following:

(a) The Premier of the Mpumalanga Provincial Government must

(aa) Within fourteen (14) working days from the date of this report, inform the Premier of the Kwazulu-Natal of the outcome of my investigation and request him to take appropriate action against Dr Mkhize; and

(bb) Within fourteen (14) working days from the date of this report, direct the Head of the Mpumalanga Provincial Treasury to further investigate the irregular and unauthorised expenditure in compliance with the Treasury Regulations.
(b) The Head of Department of the Mpumalanga Provincial Treasury must:

(aa) Within 60 working days from the date of this report, ensure that an investigation is conducted into the financial misconduct committed by Dr Mkhize referred to in this report in compliance with paragraph 4.1.3 of the Treasury Regulations; and

(bb) Within 60 working days from the date of this report, conduct a workshop with the Heads of Departments, Chief Financial Officers and Chiefs of staff on the provisions of the Ministerial Handbook, Treasury Regulations on the procurement of official vehicles to prevent recurrence of these matters and monitor throughout government.

(c) The Director General of the Mpumalanga Provincial Government must:

(aa) Within 30 working days from the date of this report, ensure that all the required documents are availed to the Head of the Mpumalanga Provincial Treasury to conduct an investigation into the financial misconduct committed by Dr Mkhize referred to in this report in compliance with paragraph 4.1.3 of the Treasury Regulations.
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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 in terms of section 8(3) of the Public Protector Act to the following people to note the outcome of my investigation and implement remedial actions:

1.2.1. The Premier of the Mpumalanga Province, Ms R Mtshweni;

1.2.2. The Premier of the KwaZulu Natal Province, Mr W Mchunu;

1.2.3. The Acting Director-General of the Mpumalanga Provincial Government, Mr KM Mohlasele; and

1.2.4. Acting Head of Department of the Mpumalanga Provincial Treasury, Ms Gugu Mashiteng.

1.3. A copy of the report is also provided to the Complainant, to inform her about the outcome of the investigation.

1.4. The report relates to an investigation into allegations of irregular procurement of official vehicles for the former Premier of Mpumalanga Province, Mr David Mabuza (the former Premier), by the Mpumalanga Office of the Premier as well as
allegations of a violation of the Executive Ethics Code (the Code) by the former Premier with regard thereto.

2. THE COMPLAINT

2.1 On 23 January 2014, my office received a complaint from the Provincial Convener of the Economic Freedom Fighters (EFF) in Mpumalanga, Ms Amanda Tshabalala (the Complainant).

2.2 The Complainant alleged that on 09 January 2014, the media reported that the Office of the Premier of Mpumalanga Province (Office of the Premier) procured three (3) luxury vehicles worth R5 million for use by the former Premier, one of which was allegedly acquired a few weeks after the former Minister of Finance, Mr Pravin Gordhan, had presented a budget speech about austerity measures in government.

2.3 According to the Complainant, the three (3) vehicles comprised of an Audi A8 (the Audi), a BMW X5 (the BMW) and a Range Rover Vogue (the Range Rover). In addition, a Lexus was also purchased to replace an earlier model that was used by the former Premier. The Range Rover costs in the region of R1.9 million, excluding extras, with the Audi, BMW and Lexus costing approximately R1 million each.

2.4 The purchase of these vehicles was inconsistent with the provisions of clauses 1.2.4 and 1.2.5 of the Ministerial Handbook in that the amount spent thereon exceeded 70% of the inclusive remuneration package of the former Premier at the time.

2.5 The allegations were ostensibly based on a 10 January 2014 media article published by a Ziwaphi tabloid size newspaper titled, “Premier Mabuza’s office spends R5 million on cars.” In the article, it was reported that:
“Mpumalanga Premier David Mabuza’s office has bought three luxury vehicles worth R5 million in one year for his use. At least one of these was purchased barely a few weeks after finance minister Pravin Gordhan announced cost curtailment measures to curb government spending. The vehicles include an Audi A8, a BMW X5 and the most recent acquisition, a 2013 Range Rover V85.0 S/C Petrol autobiography, which was delivered last month.

The Range Rover costs R1 912 525.00 without extras, such as bulletproof windows and other security features. Earlier last year, the office of the premier spent about R1 million to buy a BMW X5 for the premier’s use. That vehicle currently forms part of the premier’s convoy. In the same period, the office bought an Audi A8 for the premier’s use. The cost of an Audi A8 starts from R1 million”.

2.6 On the same day, the former Premier’s spokesperson, Mr Zibonele Mncwango, issued a media statement admitting the procurement of the vehicles. In the statement, Mr Mncwango explained that the vehicles had to be procured due to the former Premier’s official vehicles encountering mechanical faults thus hindering him from discharging his responsibilities. He also explained that the additional vehicles had to be purchased as back-up vehicles in the event that the former Premier’s main official vehicle encountered mechanical faults or was booked in for service.

2.7 Mr Mncwango emphasised that the procurement processes and procedures were followed in the acquisition of the vehicles in accordance with the applicable rules, regulations and Privileges and Entitlements pertinent to the former Premier and as envisaged in the Ministerial Handbook.

2.8 In her complaint, the Complainant made reference to the provisions of the Code and intimated that the former Premier and, in his capacity as a Member of the Executive, may have violated the provisions of the Code. She also made reference to the Ministerial Handbook and suggested that the Office of the
Premier may have violated the provisions of the Ministerial Handbook in respect of the procurement of the vehicles as well as the upper limits of a salary.

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

3.5 Section 3(1) of the Executive Members’ Ethics Act, 1998 (EMEA) bestows upon the Public Protector the authority to investigate any alleged breach of the Code and section 3(4) thereof provides that when conducting an investigation, the Public Protector has all the powers vested in her in terms of the Public Protector Ac
3.6 Section 4(1)(a) and (b) confers upon the Public Protector, the power to investigate any alleged breach of the Code. However, section 4(3) provides that nothing may prevent the Public Protector from investigating any complaint by a member of the public in accordance with the Public Protector Act.

3.7 In the constitutional court, (in the matter of 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(5); 2016(5) BCLR 618 (CC); 2016(3) SA 580 (CC) (31 March 2016), Chief Justice Mogoeng stated the following, when confirming the powers of the Public Protector:

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

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

3.7.3 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the Public Protector could do in terms of the 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);

3.7.4 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 (Paragraph 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 (Paragraph 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 (Paragraph 71);

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

3.7.8 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (Paragraph 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 (Paragraph 71(e));

3.8 The Constitutional Court further held that the remedial action taken by the Public Protector has a binding effect, "When remedial action is binding, compliance is not optional, and 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."
3.9 The Office of the Premier is an organ of state and its conduct amounts to conduct in state affairs, and, as a result the matter falls within the ambit of the Public Protector’s mandate to investigate.

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

3.11 Regarding the exercise of my discretion in terms of section 6(9) to entertain matters which arose more than two (2) years from the occurrence of the incident, and in deciding what constitute ‘special circumstances’, some of the special circumstances that I took into account to exercise my discretion favourably to accept this complaint, includes the nature of the complaint and the seriousness of the allegations; whether the outcome could rectify systemic problems in state administration; whether I would be able to successfully investigate the matter with due consideration to the availability of evidence and/or records relating to the incident(s); whether there are any competent alternative remedies available to the Complainants and the overall impact of the investigation; whether the prejudice suffered by the complainants persists; whether my refusal to investigate perpetuates the violation of section 195 of Constitution; whether my remedial action will redress the imbalances of the past. What constitute ‘special circumstances’ depends on the merits of each case.

4. THE INVESTIGATION

4.1. Methodology

4.1.1. The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.
4.1.2. The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.1.3. The investigation process included an exchange of correspondence with the former Director-General, Dr Nonhlanhla Mkhize, the former Chief of Staff, Ms Yasmeeen Ally, and officials in the Office of the Premier, analysis of relevant documentation, conducted research, and consideration and application of relevant laws, regulatory framework and jurisprudence.

4.1.4 Mr KM Mohlasedi, the Acting Director-General, Dr Mkhize and Ms Ally were interviewed during the investigation.

4.1.5 During the investigation process, notices in terms of section 7(9)(a) of the Public Protector Act (notice) dated 29 March 2019 were served on Dr Mkhize and Ms Ally, to afford them an opportunity to respond to my provisional findings. The notices were also served on the Premier of Mpumalanga Province, Ms Mtshweni and the Premier of KwaZulu Natal Province, Mr Mchunu, respectively, for their information.

4.1.6 Ms Ally responded to the section 7(9) notice on 05 April 2019 and Dr Mkhize responded on 10 April 2019. However, in their responses, they did not provide any additional evidence to counter the evidence that is already in my possession. However, the submissions that were received from them have been incorporated in this report.

4.2 Approach to the investigation

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

4.2.4.1 What happened?

4.2.4.2 What should have happened?
4.2.4.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration?

4.2.4.4 In the event of maladministration what would it take to remedy the wrong or to place the Complainant as close as possible to where they would have been but for the maladministration or improper conduct?

4.2.4.5 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 Office of the Premier acted improperly in the procurement of three (3) luxury vehicles worth R5 million during 2013 and whether or not the former Premier’s conduct is in breach of the provisions of the Executive Members’ Ethics Act, 1998 (EMEA), the Code and/or the Ministerial Handbook.

4.2.4.6 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Office of the Premier to prevent any improper conduct and maladministration.

4.2.4.7 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and maladministration. Where a complainant has suffered prejudice the idea is to place him or her as close as possible to where they would have been had a department or organ of state complied with the regulatory framework setting the applicable standards for good administration.
4.3 On analysis of the complaint, the following issues were considered and investigated:

4.3.1 Whether the Office of the Mpumalanga Premier irregularly procured the official vehicles, a BMW X5, Audi A8, Lexus and a Range Rover Vogue, for the former Premier of Mpumalanga Province, Mr David Mabuza; and

4.3.2 Whether the former Premier of Mpumalanga Province, Mr David Mabuza, was involved in the procurement of his official vehicles comprising of the BMW X5, Audi A8, Lexus and a Range Rover Vogue by the Office of the Premier and if so, whether such conduct constitutes a violation of the Executive Ethics Code.

4.4 The Key Sources of information

4.4.1. Documents

4.4.1.1 The initial complaint of the EFF dated 23 January 2014;
4.4.1.2 Chapter 5 of the Ministerial Handbook (official vehicles);
4.4.1.3 Service tax invoice from Westbank auto, dated 12 November 2012;
4.4.1.4 Service estimate from Westbank auto, dated 28 August 2012;
4.4.1.5 Service tax invoice from Westbank auto, dated 18 March 2013;
4.4.1.6 Volkswagen group SA vehicle history, dated 16 April 2014;
4.4.1.7 Motorplan CIA (vehicle information) BMW X5 (2012) FXF308MP, dated 28 September 2012;
4.4.1.8 Quotation on the Range Rover 2013;
4.4.1.9 Quotation on the Range Rover 2011;
4.4.1.10 Account tax invoice, dated 21 June 2011;
4.4.1.11 Certification of Registration in respect of motor vehicle, 05 October 2012;
4.4.1.12 A letter and quotation for E70 X5 xDrive5Oi SAV, dated 27 September 2012;
4.4.1.13 Office of the Premier – Procurement Request Form, dated 02 October 2012;
4.4.1.14 Government Order/ Services, dated 10 January 2012;
4.4.1.15 New Vehicle Tax Invoice from Eastview, dated 28 September 2012;
4.4.1.16 Creditor Payment Advice (Purchase of BMW X5), dated 28 September 2012;
4.4.1.17 Tax invoice from Autotec, dated 16 August 2013;
4.4.1.18 Offer to purchase a Range Rover 2013, dated 29 August 2013;
4.4.1.19 Proforma Invoice From Autotec, dated 16 August 2013;
4.4.1.20 Office of the Premier - Procurement Request Form, dated 04 September 2013;
4.4.1.21 Logis Procurement Integration, dated 09 May 2013;
4.4.1.22 Tax Invoice from Autotec, dated 16 August 2013;
4.4.1.23 Used Vehicle Appraisal, dated 25 July 2013;
4.4.1.24 Logistical Information System call center delivery, dated 05 September 2013;
4.4.1.25 Logistical Information System simultaneous receipt and issue voucher, dated 05 September 2013;
4.4.1.26 Government order/Services for Motor Vehicle, dated 05 September 2013;
4.4.1.27 Tax invoice from Autotec, dated 16 August 2013;
4.4.1.28 Logistical Information System, dated 20 September 2011;
4.4.1.29 Logistical information system simultaneous receipt and issue voucher, dated 12 October 2011;
4.4.1.30 Motor Transport (Official Vehicle);
4.4.1.31 Quotation from Autotec Motor Dealer Group, dated 14 July 2011;
4.4.1.32 Request to purchase government vehicle;
4.4.1.33 Office of the Premier - Procurement Request Form, Dated 12 September 2011;
4.4.1.34 Logistical Information System Procurement Advice, dated 20 September 2011;
4.4.1.35 Logis procurement Integration, dated 20 September 2011;
4.4.1.36 Government Order/Service 20 September 2011;
4.4.1.37 Tax Invoice from Autotec, dated 30 September 2011;
4.4.1.38 Creditor Payment Advice (Purchasing of Range Rover) 30 September 2011;
4.4.1.39 Logistical Information System Cost Centre Deliveries, dated 26 April 2013;
4.4.1.40 Logistical Information System Simultaneous Receipt And Issue Voucher, dated 26 April 2013;
4.4.1.41 Logis procurement Integration, dated 05 March 2013;
4.4.1.42 Quotation from Audi Special Markets Consultant, dated 20 February 2013;
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4.4.1.43 Procurement Request Form, dated 08 March 2013;
4.4.1.44 Logistical Information Procurement Advice, dated 26 April 2013;
4.4.1.45 Logis procurement Integration, dated 26 April 2013;
4.4.1.46 Government order/Service, dated 25 April 2013;
4.4.1.47 Vat Vendor Research, dated 13 May 2013;
4.4.1.48 Account Statement from Volkswagen of South Africa, dated 01 April 2013;
4.4.1.49 Tax Invoice from Volkswagen of South Africa, date 31 March 2013;
4.4.1.50 Creditor payment advice for Audi, dated 10 May 2013;
4.4.1.51 Delivery note to my office, dated 23 April 2014;
4.4.1.52 Logistical Information System Cost Centre Deliveries, dated 26 April 2013;
4.4.1.53 Logis procurement Integration, dated 05 March 2013;
4.4.1.54 Quotation from Audi Special Markets Consultants, date 20 February 2013;
4.4.1.55 Office of the Premier- Procurement Request Form, Dated 05 March 2013;
4.4.1.56 Logistical Information System Procurement Advice, dated 26 April 2013;
4.4.1.57 Logis procurement Integration, dated 26 April 2013;
4.4.1.58 Government order/Service, dated 03 May 2013;
4.4.1.59 Account Statement from Volkswagen, dated 07 May 2013;
4.4.1.60 Tax invoice from Volkswagen, dated 01 May 2013;
4.4.1.61 Creditor payment advice, dated 21 May 2013;
4.4.1.62 Report on the investigation;
4.4.1.63 Newspaper article on "Mpumalanga Premier defends R5m Spent on Cars" article, dated 10 January 2014;
4.4.1.64 City Press newspaper article, dated 14 March 2014;
4.4.1.65 City Press newspaper article, dated 23 January 2014;
4.4.1.66 Statement on the Cabinet meeting of 23 October 2013;
4.4.1.67 Media statement on the former Premier’s state vehicles, dated 10 January 2014;
4.4.1.68 Proclamation by the Acting President of the Republic of South Africa, dated 08 April 2014;
4.4.1.69 Handbook for Members of the Executive and Presiding Officers;
4.4.1.70 Vehicle Kilometer Readings as at 17 April 2014;
4.4.1.71 Request for information on utilised vehicles by the Premier for Mpumalanga, from Head of Protection and Security, dated 10 April 2014;

4.4.1.72 Request to purchase a backup car for executive authority by Ms Ally, dated 28 September 2012;

4.4.1.73 Request to utilise one of the pool cars as a backup car for the executive authority by Ms Ally, dated 11 July 2011;

4.4.1.74 Document on the replacement of vehicles: SAPS VIP protection services for the Premier from Director General JM Rabodiya, dated 20 June 2011;

4.4.1.75 Request letter for information on vehicles utilised by the Premier of Mpumalanga from NS Rasivhetshela, dated 10 April 2014;

4.4.1.76 Memorandum on the request to purchase a backup car for the authority from Ms Ally, dated 28 September 2012;

4.4.1.77 Request letter to Standard Bank for Credit Transfer, dated 10 September 2013;

4.4.1.78 A letter on the procurement of a pool vehicle for the Office of the Premier from Ms Nkamba, dated 24 August 2013;

4.4.1.79 A letter on the purchase of Range Rover Vogue Super Charge AB -1X2013 from Dr Mkhize, dated 29 August 2013;

4.4.1.80 Procurement of a pool vehicle for the office from Dr Mkhize, dated 23 August 2013;

4.4.1.81 A document from the SAPS to the Office of the Premier on the request for information on vehicles used by the Premier, dated 10 April 2014;

4.4.1.82 Memorandum on the request for deviation from RT57 contract in the procurement of MG vehicle from KJ Dlamini, dated 19 August 2013;

4.4.2. Meetings held

4.4.2.1 A meeting with the Acting Director-General in the Office of the Premier held on 08 October 2018; and

4.4.2.2 A meeting held between my office and Dr Mkhize on 27 September 2017;
4.4.3. Correspondence sent and received

4.4.3.1 A letter from my office to the Office of the Premier raising the matter and requesting all the necessary documents, dated 28 January 2014.

4.4.3.2 A letter from the Office of the Premier to my office, dated 06 February 2014;

4.4.3.3 A request to purchase a principal car for the executive authority from Dr Mkhize, dated 22 February 2013;

4.4.3.4 A letter requesting further information from the Office of the Premier, dated 08 April 2014;

4.4.3.5 A memorandum on vehicle for the executive authority from Ms Ally, dated 04 August 2011;

4.4.3.6 A response letter from the Office of the Premier, dated 21 April 2014;

4.4.3.7 A Response letter from the Office of the Premier, dated 08 October 2018;

4.4.3.8 A letter to request an extension to conclude an investigation from Adv Madonsela, dated 10 March 2014;

4.4.3.9 Document request sent to the former Premier, dated 10 March 2014;

4.4.3.10 A response letter from the Office of the Premier, dated 21 April 2014;

4.4.3.11 Confirmation emails from the Office of the Premier, dated 03 April 2014;

4.4.3.12 Response from the Office of the Premier on the requested documents dated 06 February 2014;

4.4.3.13 Document request letter dated 08 April 2014;

4.4.3.14 Confirmation letter from Dr Mkhize, dated 04 June 2015;

4.4.3.15 A letter of update from my office, dated 04 June 2015;

4.4.3.16 A letter requesting further information and particulars from the former Premier, dated 13 October 2017;

4.4.3.17 A letter to the Mpumalanga Premier from my investigation team, dated 31 October 2017;

4.4.3.18 A letter to the former Chief of Staff in the Office of the Premier, Mpumalanga, dated 26 August 2018;

4.4.3.19 An email correspondence between my investigation team and Ms Ally between 03 October and 13 November 2018;
A letter to Ms Ally, dated 18 September 2018;
A section 7(9)(a) notice sent to Dr Mkhize, dated 26 March 2019; and
A section 7(9)(a) notice sent to the Mpumalanga Premier, dated 26 March 2019.

4.4.4. Legislation and other prescripts

4.4.4.1 The Constitution;
4.4.4.2 The Public Finance Management Act, 1 of 1999 (PFMA);
4.4.4.3 The Code;
4.4.4.4 The EMEA;
4.4.4.5 The Preferential Procurement Policy Framework Act, 5 of 2000 (PPPFA);
4.4.4.6 The National Treasury Regulations, 2005 issued in terms of section 76(1) of the PFMA;
4.4.4.7 The National Treasury Practice Note 6 of 2007/08; and
4.4.4.8 The Supply Chain Management Policy of the Office of the Premier.

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

5.1 Regarding whether the Office of the Mpumalanga Premier irregularly procured the official vehicles, a BMW X5, Audi A8, Lexus and a Range Rover Vogue, for the former Premier of Mpumalanga Province, Mr David Mabuza:

Common causes issues

5.1.1 The Office of the Premier purchased a BMW X5 in 2012 which was allocated to SAPS VIP Security Detail for its utilization. This assertion is supported by an approved memorandum dated 28 September 2012, requesting the purchase of the vehicle, the letter from the Office of the Premier dated 21 April 2014, the credit payment advice and the tax invoice.
5.1.2 It is also common cause that the Office of the Premier purchased an Audi A8 which was one of the vehicles that were bought in 2013. This assertion is also supported by evidence of the approved memorandum dated 22 February 2013 prepared by Ms Ally and approved by Dr Mkhize, tax invoices and payment advices provided.

5.1.3 It is not disputed that the Range Rover Vogue was also purchased by the Office of the Premier during 2013. This is supported by evidence such as the approved deviation memorandum dated 19 August 2013, an offer to purchase dated 29 August 2013 from Dr Mkhize to Land Rover Nelspruit regarding the procurement of the vehicle, tax invoices and payment advices. The vehicle was received by the Office of the Premier on 05 September 2013.

5.1.4 It is also not in dispute that the Range Rover Sport purchased in 2011 was traded in for the Range Rover Vogue in 2013. As a result, the Audi A8 did not replace the 2011 Range Rover Sport as previously stated, but it was used as a trade-in for the Range Rover Vogue in 2013.

*Issues in dispute*

5.1.5 The Complainant alleged in her letter dated 23 January 2014 that the Office of the Premier purchased three (3) luxury vehicles worth R5 million for use by the former Premier as reported by the media on 09 January 2013. One of these vehicles was allegedly acquired a few weeks after the budget speech by the former Minister of Finance, Honourable Gordhan, regarding the austerity measures in government.

5.1.6 She further reported that the three (3) vehicles comprised of an Audi A8 (the Audi), a BMW X5 (the BMW) and a Range Rover Vogue (the Range Rover). In addition, a Lexus was also purchased to replace an earlier model that was used by the former Premier. The Range Rover Vogue is alleged to have cost in the region of R1.9 million, excluding extras, with the Audi, BMW and Lexus costing approximately R1 million each.
5.1.7 The Complainant further submitted that the purchase of these vehicles was inconsistent with the provisions of clauses 1.2.4 and 1.2.5 of the Ministerial Handbook in that the amount spent thereon exceeded 70% of the inclusive remuneration package of the former Premier at the time.

**The Office of the Premier’s response regarding the procurement of BMW X5**

5.1.8 When my office raised the matter with the Office of the Premier as per a letter dated 08 April 2014, it responded to my request for information on two occasions. The initial response dated 06 February 2014 related mainly to information surrounding the purchase of the Audi A8. A subsequent submission from the Office of the Premier dated 21 April 2014 in response to my request for additional information was received on 23 April 2014.

5.1.9 It was gathered from the information received that in 2011, the Office of the Premier, through Mr JM Rabodila, the former Director General, approached the SAPS VIP Protection Services regarding the inadequate state of the vehicles used by the Protectors in the Province. In his letter dated 20 June 2011 addressed to the SAPS VIP Protection Services, Mr Rabodila, stated that:

> "The Ministerial Handbook only provides for the procuring and insurance of the Premier’s official vehicle by the Office of the Premier. This point of view was also confirmed by the Provincial Treasury. Consequently, the Office of the Premier is precluded from purchasing an additional vehicle for the utilisation by the SAPS VIP Protection Services."

5.1.10 Ms Ally, submitted a request to Dr Mkhize in a form of a memorandum on 28 September 2012 for the purchase of a BMW X5 Drive 5.0i 4x4. The request was approved by Dr Mkhize on the same day and the Office of the Premier proceeded to purchase the 2012 BMW X5 as a back-up vehicle intended to replace another vehicle, also a BMW X5, purchased in 2010, due to its mechanical problems. This
was confirmed by Brigadier Rasivhetshela who stated in a letter dated 10 April 2014 that:

"[t]he Office of the Premier then procured a BMW X5 (FXF 308 MP) to be utilised for his protection detail by SAPS due to the fact that the SAPS did not have any vehicles to be utilised for his protection..."

5.1.11 In the section 7(9)(a) notice dated 26 March 2019 issued to Ms Ally where she was given an opportunity to respond to my intended adverse findings against her regarding her involvement in the alleged irregular purchase of the said vehicles, she responded in a letter dated 05 April 2019 and stated that “With regard to procurement of vehicles, my role was a central point of communication from the Private Office of the Premier to the Administration which is headed by the Accounting Officer. I communicated the state of the vehicles to the Accounting Officer and the difficulties the Executive Authority experienced with the vehicles as he was not able to attend to his programmes seamlessly.”

5.1.12 She added that, “All the letters were sent for approval to the Head of the Finance Unit, that being the Chief Financial Officer, within the Office of the Premier and the Accounting Officer respectively. Anything contrary to the PFMA should have been highlighted and revised letters would have duly been submitted”.

5.1.13 In her same response, Ms Ally agreed with my argument in the section 7(9)(a) notice that the BMW X5 purchased in 2012 should not have been purchased under the Ministerial Handbook and she further stated it should have been procured by the SAPS. She also stated that the 2013 Range Rover Vogue was procured outside the Ministerial Handbook after she sought clarity from the Accounting Officer on reasons for the purchase of the vehicle.

5.1.14 Although the BMW X5 was purchased for the Premier’s security detail, it was procured in terms of the Ministerial Handbook as motivated in the memorandum dated 28 February 2012 referred to above. Ms Ally stated in the said memorandum
that "As per the Ministerial Handbook, Chapter 5, 1.2.3 Departments may purchase official vehicles directly from manufacturers and/or dealerships only when the currently provided official vehicle for that office has reached 120 000km or 5 years, whichever comes first..." As such, Dr Mkhize approved the purchase of a vehicle to be procured in terms of the Ministerial Handbook when clearly the Handbook did not apply.

5.1.15 According to the tax invoices and payment advices provided by the Office of the Premier, the 2012 BMW X5 was purchased for the amount of R959 706.00 from Eastview BMW, and was received by the Office of the Premier on 02 October 2012.

5.1.16 An analysis of the documents received from the Office of the Premier revealed that at the time of purchasing the 2012 BMW X5 i.e. in October 2012, the former Premier's remuneration, in terms of Proclamation 56 published in the Government Gazettes of 03 and 18 September 2012, was determined at R1 888 315.00, which in turn equates to an official vehicle entitlement of R1 321 820.50. The purchase price of the vehicle was R959 706.00. At the same time, the former Premier already had the use of a Range Rover Sport, purchased in 2011, as his official vehicle. This vehicle i.e. the BMW X5, was not supposed to have been purchased by the Office of the Premier, but by the SAPS VIP Protection Services.

5.1.17 Clause 1.1.3 of Chapter 5 of the Ministerial Handbook determines that the SAPS is responsible for the financial implications in terms of the SAPS VIP Protectors/Drivers assigned to a Premier in terms of clause 1.1.1, except for the overtime beyond 80 hours and the cell phones, which are the responsibilities of the Office of the Premier, as stipulated in the last sentence of paragraph 1.1.3 of the Handbook. This was confirmed by Mr Rabodila in his letter dated 20 June 2011 addressed to the then Provincial Commissioner, Lieutenant-General TR Ntobela.

5.1.18 A section 7(9)(a) notice was also sent to Dr Mkhize affording her an opportunity to respond to my intended adverse findings with regard to her involvement in the alleged irregular procurement of the former Premier's vehicles. In her response,
Dr Mkhize stated in a letter dated 10 April 2019 that, "...my employment with the Office of the Premier, Mpumalanga Province only commenced in September 2012. By this time processes had commenced for the purchase of the first vehicle. I am therefore not in a position to provide any valuable information regarding the purchase of the first vehicle". However, I disagree with Dr Mkhize in that she approved the memorandum dated 22 September 2012 which led to the purchase of the first vehicle, the BMW X5.

5.1.19 Dr Mkhize stated further that "there was a necessity for the purchase of the BMW for the purposes of the protection detail by the South African Police Services which had to be provided by the South African Police Service at the time. It therefore served a dual purpose of being used as a back-up vehicle and for use by the Premier whenever his vehicle was taken for service or repairs". I am not denying the importance and necessity to acquire the said vehicle, however, the method of acquiring the vehicle was not correct.

5.1.20 It is not in dispute that the duty to provide security detail to the Premier solely rests with the SAPS. However, failure by the SAPS to provide a vehicle for the security detail of the Premier did not justify the action of the Office of the Premier to proceed with the procurement of the BMW X5 in 2012 using the Ministerial Handbook as the vehicle was not the former Premier’s official or principal vehicle.

The Premier Office’s response regarding procurement of Audi A8

5.1.21 According to the documents received from the Office of the Premier in April 2014, there was an internal memorandum dated 22 February 2013 prepared by Ms Ally directed to and approved by Dr Mkhize which indicated that the Office of the Premier had been facing some difficulty regarding the official vehicle of the former Premier. The memorandum did not make reference to the Ministerial Handbook in the purchase of the former Premier’s official vehicle, the Audi A8. It can therefore not be proper to procure the official vehicle without employing the Ministerial Handbook.
5.1.22 Evidence gathered indicated that the total purchase price of the Audi A8 was R1 123 965.36 which fell within the threshold determined by paragraph 1.2.4(a) of Chapter 5 of the Ministerial Handbook, and was consequently not in breach of any provisions therein.

5.1.23 It further became evident that at the time of purchasing the Audi A8, the former Premier already had the use of a Range Rover Sport, purchased in 2011, as his official vehicle and a BMW X5, purchased in 2012, initially purchased as a backup vehicle for security purposes, but later converted into his official vehicle. This was established in an internal memorandum dated 04 August 2011, as well as the media statement issued by the Office of the Premier released on the 10 January 2014.

5.1.24 As stated in Dr Mkhize’s response to the section 7(9)(a) notice, the fact that at the time of the purchase of the Audi A8 certain safety and security issues were not taken into consideration as well as some of the Mpumalanga terrain showed lack of planning. This lack of planning prompted the Office of the Premier to procure another vehicle, the Range Rover Vogue, and use it as a pool car.

5.1.25 Had reasonable care been exercised, it would have been clear that the Office of the Premier was not entitled to replace the former Premier’s official vehicle at the time of the purchase of the Audi A8 in 2013, particularly that the vehicle the former Premier was using which sought to be replaced by the Audi 8 had not reached 120 000 km or 5 years as stipulated in paragraph 1.2.3 of the Handbook. The purported mechanical report of the Range Rover Sport was just a statement of repaired or replaced items such as wind screen repairs, air-condition refill and mostly wheel alignments. My investigation team also observed that in actual fact, the 2011 Range Rover Sport was not replaced by the Audi A8; but by the Range Rover Vogue of 2013. This was also confirmed by the former Premier, in his response dated 21 April 2014. The former Premier also had access to the use of the 2012 BMW.
5.1.26 In her response to the section 7(9)(a) notice regarding the purchase of the Audi A8, Ms Ally stated that "the request to purchase the Audi A8 was sent through the relevant channels. The finance unit headed by the CFO would have had to refer to the RT57 to confirm if the vehicle requested was in line with the contract and advise whether the vehicle was available on the said contract or not". She stated further that her duty was to ensure that the Executive Authority was able to execute his duties and thus maintained that her role was to communicate the state of the vehicles and that its condition hindered the Executive Authority from executing his programme.

The Premier Office's response regarding the procurement of Range Rover Vogue

5.1.27 According to a response from the Office of the Premier, Dr Mkhize approved a request authored by the former Acting Chief Financial Officer, Mr K J Dlamini, to deviate from the RT57 transversal contract relating to the provision of motor vehicles to the state. The deviation allowed for the purchase of a vehicle without prescribing to the processes indicated in the RT57 contract and as a result, the Office of the Premier obtained a single quotation from Autotec for a 2013 Range Rover Vogue. However, the exact reason for deviation was not mentioned which is contrary to Treasury Regulation 16A 6.4.

5.1.28 It became evident that upon informing the Provincial Treasury of the deviation, the Office of the Premier was in turn informed by the Head of Department of Finance, Ms NZ Nkamba, that, in light of the costs of the purchase of the vehicle, the Office of the Premier ought to draw guidance from the applicable provisions governing procurement in the public sector when doing so.

5.1.29 Regardless of Ms Nkamba's advice, Dr Mkhize went ahead and informed Autotec in a letter dated 29 August 2013 that the Office of the Premier wished to procure a Range Rover Vogue and that Autotec was to proceed to arrange the necessary processes in order to secure the vehicle for the former Premier.
5.1.30 The quotes, purchase orders, requisitions and payments made in respect of the Range Rover Vogue appear to contradict each other. The various conflicting prices can be broken down as follows:

<table>
<thead>
<tr>
<th>Date</th>
<th>Item</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 September 2013</td>
<td>Payment Instruction to Standard Bank</td>
<td>R1 371 000.00</td>
</tr>
<tr>
<td>5 September 2013</td>
<td>LOGiS Documentation</td>
<td>R1 375 000.00</td>
</tr>
<tr>
<td>29 August 2013</td>
<td>Offer to Purchase</td>
<td>R1 500 000.00</td>
</tr>
<tr>
<td>16 August 2013</td>
<td>Tax Invoice</td>
<td>R1 496 000.00</td>
</tr>
<tr>
<td>16 August 2013</td>
<td>Pro forma Invoice</td>
<td>R1 821 009.73</td>
</tr>
<tr>
<td>16 August 2013</td>
<td>Tax Invoice</td>
<td>R1 821 009.73</td>
</tr>
<tr>
<td>16 August 2013</td>
<td>Tax Invoice</td>
<td>R1 821 009.73</td>
</tr>
<tr>
<td>Undated</td>
<td>Offer to Purchase</td>
<td>R1 821 009.00</td>
</tr>
</tbody>
</table>

5.1.31 Another concern for me was that the 2011 Range Rover Sport was traded-in with the purchase of the Range Rover Vogue, but the value of the vehicle differs. In two instances, the trade-in value for the 2011 Range Rover Sport was quoted at R125 000.00, which is significantly lower than the Used Vehicle Appraisal done by Autotec in July 2013, indicating that the vehicle was worth R450 000.00.

5.1.32 From examination of these documents, it would appear to me that the Office of the Premier and the dealership were negotiating the terms of the purchase even after the Purchase Orders etc. had been issued.

5.1.33 In several memoranda, the Office of the Premier requested that the older vehicles be disposed of in order to defray the costs of the new acquisitions. However, the only instance of any of the vehicles being disposed of, was the trade-in of the 2011 Range Rover Sport as part of the purchase of the Range Rover Vogue. However, no explanation could be provided whether the disposal of the 2011 Range Rover was in line with the disposal policy of the Office of the Premier.
5.1.34 In her response to my questions, Ms Ally stated in a letter dated 08 October 2018 that “The 2013 Range Rover Vogue was meant for pool car purposes, but of such a nature that it would service the Office of the Premier to avoid requesting pool cars from other Departments as was done before and to avoid renting vehicles when the principal vehicles were out of service. It was further to cater for high profile visitors to the Province.” From the paragraph above, it would seem that the catering for visitors was not the primary reason for the purchase of the vehicle.

5.1.35 Ms Ally stated in her response to the section 7(9)(a) notice dated 05 April 2019 that, with reference to the above paragraph, “since the vehicle was procured under the Office of the Premier outside of the Ministerial handbook, I sought clarity from Accounting Officer on the reasons for the purchase and this was the guidance provided.”

5.1.36 Evidence at my disposal indicated that the total purchase price of the Range Rover Vogue was R1 821 009.73 (excluding the trade-in value) and this amount fell outside the threshold determined by paragraph 1.2.4(a) of Chapter 5 of the Ministerial Handbook, which was R1 387 911.70. The estimate value of the 2011 Range Rover was R450 000.00. Accordingly, when trading-in a vehicle which is not financed, the trade-in value serves as a deposit towards the purchase price. As a result, the total amount paid for the Range Rover Vogue, inclusive of the trade-in deposit, was R1 821 009.73.

5.1.37 However, the Ministerial Handbook was not applicable as the vehicle was not purchased as a principal or official vehicle of the former Premier but a “pool car”. As a result, the deviation process was not done according to Treasury Regulation 16A 6.4 when the Range Rover Vogue was purchased. No reasons for the deviation could be provided by the Office of the Premier.

5.1.38 Evidence at my disposal also revealed that at the time of purchasing of the Range Rover Vogue in 2013, the former Premier already had the use of the Audi A8,
purchased in 2013, as his official vehicle. The response from the Office of the Premier, which the former Premier also confirmed, stated that the Range Rover Vogue was allocated to the said office as a pool car to be utilised for the transportation of dignitaries and VIP guests, however, the media statement from the same office stated that the purchase of the Range Rover Vogue was to “allow the honourable Premier to be able to do his work efficiently and effectively.”

5.1.39 Despite the fact that the Range Rover Vogue was described as a pool vehicle, the former Premier had continued access to use it in the same way he would use his official vehicle and there seems to be nothing in terms of policy that regulates the said access or utilisation or even govern the acquisition of such a pool car.

5.1.40 The only evidence of a disposal of any of the vehicles procured within the scope of this investigation was the trade-in of the 2011 Range Rover Sport as part of the purchase of the Range Rover Vogue in 2013.

5.1.41 At the time that the 2011 Range Rover Sport was disposed of by the Office of the Premier as a trade-in to the 2013 Range Rover Vogue, the Range Rover Sport had accumulated approximately 45 300 km, substantially less than the mileage envisaged by the Ministerial Handbook which is 120 000 km. Therefore, the trade-in or disposal of the 2011 Range Rover was not in line with the Ministerial Handbook. There was also no mechanical report as required by paragraph 1.4.2 of the Ministerial Handbook.

Application of the relevant legal prescripts

5.1.42 Chapter 5 of the Ministerial Handbook deals specifically with the provision of Motor Transport Benefits of a member of the Provincial or National Executive.

5.1.43 According to clauses 1.1.1 and 1.1.2 of the Ministerial Handbook, a Premier may be provided with an official vehicle and VIP Drivers/Protectors and it is the
responsibility of the Department, in this case the Office of the Premier, to procure and insure the said vehicle. The said vehicle must also be budgeted for.

5.1.44 However, in the case of the BMW X5, it was not classified as an official vehicle and as such it should not have been procured in terms of the Ministerial Handbook, but in terms of the normal procurement processes.

5.1.45 The Ministerial Handbook does not make provision for the procurement or purchase of an additional vehicle for the utilisation by the SAPS VIP Protection Services. In a letter dated 10 April 2014 addressed to Dr Mkhize, Brigadier Rasivhetshela acknowledged that it was the SAPS’s responsibility to avail vehicles to be used for the protection of the Premier. He mentioned that on 07 March 2013 his office “received two BMW X5 vehicles procured by the SAPS to be used for the protection of the Premier. And that the procurement of these vehicles was done in all provinces, not only in Mpumalanga.” These two vehicles were received after the Office of the Premier had already bought the 2012 BMW X5, and they remain the property of the SAPS and are maintained by the SAPS.

5.1.46 The former Premier was entitled to one official vehicle for use in terms of paragraph 1.2.2 and according to paragraph 1.2.3, the said vehicle could only be purchased when his official vehicle reached 120 000 km or 5 years whichever came first. Dr Mkhize and Ms Ally agreed that the Audi A8 replaced the Range Rover Sport. However, the former Premier correctly stated that the Range Rover Sport was replaced during August 2013 by the Range Rover Vogue. When it was replaced, the Range Rover Sport had less than 120 000 km and was only 2 years old as it was only purchased in 2011. Apparently it had mechanical problems which could not be ascertained.

5.1.47 The only other reason an official vehicle may be replaced and disposed of earlier (i.e. before it reached 120 000 km or 5 years) is where it experiences serious mechanical problems and is in poor condition, provided that a detailed mechanical
A Report of the Public Protector on the Mpumalanga Premier Vehicles

report is obtained from the vehicle manufacturer or an approved dealer. This is provided for in paragraph 1.4.1 and 2.4.2 of the Ministerial Handbook.

5.1.48 In this instance, the Office of the Premier failed to provide the mechanical report required in terms of paragraph 1.4.2, but only the statements on the repairs that were carried out on the vehicle such as the windscreen, wheel alignments, air-condition condenser and re-gas, etc.

5.1.49 Paragraph 1.2.4(a) makes provision for the total purchase price of a vehicle chosen by the former Premier not to exceed 70% of his inclusive annual remuneration package.

5.1.50 At the time of purchasing the Audi A8, the former Premier’s remuneration in terms of Proclamation 56 published in the Government Gazette of 18 September 2012 was determined at R1 888 315.00, which in turn equated to an official vehicle entitlement of R1 321 820.50. The Audi A8 was purchased at a total purchase price of R1 123 965.36. This amount fell within the threshold determined by paragraph 1.2.4a of Chapter 5 of the Ministerial Handbook.

5.1.51 Paragraph 1.2.6 of the Ministerial Handbook indicates that a Department, in this case the Office of the Premier, should procure and manage official vehicles in terms of the PFMA and its prescripts. Practice Note 8 of 2007/08 paragraph 3.3.1 provides that Accounting Officers or Authorities should invite competitive bids for all procurement above R 500 000.00. However, this was not done in the procurement of the BMW X5 and the Audi A8.

5.1.52 The procurement of the Range Rover Vogue was done through a deviation and the relevant paragraph of Practice Note 8 of 2007/08 is 3.4.3. It allows for deviation from the normal procurement processes should it be impractical to invite competitive bids for specific procurement, for instance, in emergency cases or in case of a sole supplier. However, this method of procurement did not take away the Office of the Premier’s responsibility to obtain quotations, especially in the
current matter where there was no emergency. The memorandum dated 19 August 2013 authored by Mr Dlamini, requesting approval for deviation from RT57 contract in the procurement of the Range Rover Vogue, did not contain reasons for deviation which was contrary to the provision of Treasury Regulation 16A6.4.

5.1.53 However, according to the Treasury Regulation 16A6.5, where an Accounting Officer or Accounting Authority has opted to participate in a transversal contract, in this case the RT57 contract, the Accounting Officer may not solicit bids for the same or similar product or service during the tenure of the transversal contract. None of the above mentioned vehicles, that is, the BMW X5, the Audi A8 and the Range Rover Vogue were procured through the transversal contract despite the fact that the Office of the Premier opted to participate in the RT57 contract to procure vehicles.

5.1.54 The Auditor-General South Africa audited the deviation from the RT57 contract by the Office of the Premier and his findings are contained in the Final Management Report (Office of the Premier) dated 31 March 2014. In his audit findings, he referred to Treasury Regulation 16A6.5 and indicated that the Office of the Premier opted to participate in the RT57 contract to procure vehicles through the transversal contract. He also found that the Range Rover and the Audi purchased at R1 496 000.00 and R1 123 965.36 respectively, were not purchased through the transversal contract.

5.1.55 The Auditor-General’s findings under internal control deficiency were that there was non-compliance with Treasury Regulation T16.A6.5 and he recommended that vehicles should be procured through the transversal contract. The management response was that:

(a) the procurement from the RSF Motors (for the Range Rover) was done through a deviation which was also submitted to the Auditor-General; and

(b) The credit transfer – Volkswagen SA was not a deviation, it is regulated in terms of the Ministerial Handbook, chapter 5.
5.1.56 The Auditor-General’s conclusion was that:

(a) Findings remained for reporting as the deviation should have been approved by the National Treasury;

(b) Paragraph 1.2.6 of chapter 5 of the Ministerial Handbook indicates that the procurement should be in terms of the Handbook. The R1 390 200 (70% x R1 986 000) should therefore be disclosed as irregular expenditure and R1 229 765.36 (R2 619 965.36 – R1 390 200) should be disclosed as unauthorised expenditure. (own emphasis)

5.1.57 Section 38 of the PFMA provides for the general responsibilities of the accounting officers of departments, the Office of the Premier included. It provides that:

“(1) The accounting officer for a department…

(c) Is responsible for the effective, efficient, economical and transparent use of the resources of the department…

(c) must take effective and appropriate steps to-

(ii) prevent any unauthorised, irregular and fruitless and wasteful expenditure…”

5.1.58 In terms of section 38(1)(a)(i)(iii) of the PFMA, Dr Mkhize, as the Accounting Officer, was expected to ensure that the Office of the Premier used the resources effectively, efficiently, economically and transparently during the procurement of the former Premier’s official vehicles. Failure to do so would be a violation of the PFMA provisions. It was also expected of Dr Mkhize to also take appropriate steps to prevent unauthorised, irregular and fruitless expenditure. The Auditor General’s findings in relation to the expenditure of the former Premier’s vehicles amounted to unauthorised and irregular expenditure.
5.1.59 Similarly, the responsibility of officials, other than the accounting officer, is provided for by section 45(b) and (c) of the PFMA. It provides, *inter alia*, that an official of a department, in this instance the Office of the Premier, is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official’s area of responsibility. An official must take effective and appropriate steps to prevent, within his/her area of responsibility any unauthorised, irregular and fruitless and wasteful expenditure. The relevant official affected by this provision is Ms Ally.

5.1.60 In her response to the section 7(9)(a) notice, Ms Ally noted the relevant prescripts that I have cited in the notice and stated that “As a responsibility manage, it was understood that the purchase of the official vehicle were above the approved threshold for responsibility managers and falls within the ambit of the Accounting Officer. All requests were therefore sent to the Accounting Officer for approval and due diligence. Each request was prompted by the need to provide the Executive Authority with the necessary transport services to allow him to execute his duties effectively”. [sic]

5.1.61 Chapter 10 of the PFMA regulates the financial misconduct committed by the officials in departments. Section 81(1)(b) of the PFMA states as follows:

“the accounting authority of a department commits an act of financial misconduct if that accounting officer wilfully or negligently-

makes or permits an unauthorised expenditure, an irregular expenditure or a fruitless and wasteful expenditure.”

5.1.62 Dr Mkhize who authorised and approved the purchase of all these vehicles was expected to ensure that the procurement was above board. Failure to do so would amount to financial misconduct.
5.1.63 Section 85 of the PFMA empowers the Minister of Finance to make regulations on financial misconduct procedures.

5.1.64 Paragraph 4.1.3 of the Treasury Regulations issued in terms of the PFMA provides that:

“If an accounting officer is alleged to have committed financial misconduct, the relevant treasury, as soon as it becomes aware of the alleged misconduct, must ensure that the relevant executive authority initiates an investigation into the matter and if the allegations are confirmed, holds a disciplinary hearing in accordance with the prescripts applicable and the agreements applicable in the public service."

Conclusion

5.1.6.5 Based on the evidence gathered, particularly the Auditor General’s report, it can be concluded that the decision to procure the BMW X5, Audi A8 and the Range Rover Vogue by the Office of the Premier was not in compliance with the applicable legal prescripts.

5.2 Regarding whether the former Premier of Mpumalanga Province, Mr David Mabuza, was involved in the procurement of his official vehicles comprising of the BMW X5, Audi A8, Lexus and a Range Rover Vogue, by the Office of the Premier and if so, whether such conduct constitutes a violation of the Executive Ethics Code:

5.2.1 It is common cause that all the vehicles mentioned in the complaint were procured by the Office of the Premier and for the use and benefit of the former Premier.
5.2.2 In her complaint, the Complainant made reference to the provisions of the Code and intimated that the former Premier, in his capacity as a Member of the Executive, may have violated the provisions of the Code.

5.2.3 When the alleged violation was raised with the former Premier in my predecessor’s letter dated 08 April 2014, he clarified in his written response of 21 April 2014 that the procurement process of the vehicles was prepared by Ms Ally and approved by the former Director-General, Dr Mkhize. The response is supported by the documentary evidence submitted to my investigation team.

5.2.4 Furthermore, on analysing the nature of the complaint as published in the Ziwaphi tabloid size newspaper of 10 January 2014, it provides as follows: “Mpumalanga Premier David Mabuza’s office [own emphasis] has bought three luxury vehicles worth R5 million in one year for his use. At least one of these was purchased barely a few weeks after finance minister Pravin Gordhan announced cost curtailment measures to curb government spending. The vehicles include an Audi A8, a BMW X5 and the most recent acquisition, a 2013 Range Rover V85.0 S/C Petrol autobiography, which was delivered last month.”

5.2.5 There is no indication from the media statement, the Complainant’s complaint submission and documentary evidence provided to my investigation team that the former Premier was directly or indirectly involved in the procurement process of the vehicles.

Application of the relevant legal prescripts

5.2.6 Section 136(1) of the Constitution deals with the conduct of members of Provincial Executive Councils. It states that:

“Members of the Executive Council of a province must act in accordance with a code of ethics prescribed by national legislation.”
5.2.7 The Executive Members Ethics Act (EMEA) provides for a code of ethics governing the conduct of members of the Cabinet, Deputy Ministers and members of provincial Executive Councils. This Code provides rules and standards that Premiers are obliged to comply with in performing their official responsibilities.

5.2.8 Section 2(1) of the EMEA states that "the President must, after consultation with Parliament, by proclamation in the Gazette, publish a code of ethics prescribing standards and rules aimed at promoting open, democratic and accountable government and with which Cabinet members, Deputy Ministers and MECs must comply in performing their official responsibilities." The Code was proclaimed in 2000.

5.2.9 Clause 2.1 of the Code provides that "Members of the Executive must to the satisfaction of the President…

"(a) perform their duties and exercise their powers and honestly
(d) ...
(c) act in good faith and in the best interest of good governance; and
(d) act in all respects in a manner that is consistent with the integrity of their office or the government."

5.2.10 According to clause 2.1(a), (c) and (d) of the Code, Members of the Executive, including Premiers, must perform their duties and exercise their powers diligently and honestly, act in good faith and in the best interest of good governance, and act in all respects in a manner that is consistent with the integrity of their office or the government. The Premier or any Member of the Executive may not act in any way inconsistent with their position (clause 2.3).

5.2.11 In the current matter there is no evidence to suggest that the former Premier was involved in the procurement of the vehicles nor that he acted contrary to the Code.
Conclusion

5.2.12 It can be concluded from the evidence gathered that the former Premier was not involved in the procurement of the vehicles and therefore the Code is not applicable in this matter.

6. FINDINGS

Having considered the evidence uncovered during the investigation against the relevant regulatory framework determining the standard the Office of the Premier should have complied with, I therefore make the following findings:

6.1 Regarding whether the Mpumalanga Office of the Premier irregularly procured the official vehicles, a BMW X5, Audi A8, Lexus and a Range Rover Vogue, for the former Premier Mr e David Mabuza:

6.1.1 The allegation that the Office of the Mpumalanga Premier irregularly procured the official vehicles, a BMW X5, Audi A8, Lexus and a Range Rover Vogue, for the former Premier of Mpumalanga Province, Mr e David Mabuza is substantiated.

6.1.2 The Office of the Premier was precluded from purchasing the BMW X5 in terms of the Ministerial Handbook as it was not an official vehicle of the Premier. The Office of the Premier therefore violated paragraph 1.1.3 of the Ministerial Handbook. It also failed to procure the BMW X5 in terms of paragraph 3.4.1 and 3.4.2 of the National Treasury Practice Note No. 8 of 2007/08.

6.1.3 Although the Audi A8 was purchased through the Ministerial Handbook, the Office of the Premier acted contrary to paragraph 1.2.6 of the Handbook which required it to procure vehicles in accordance with the PFMA and its prescripts. As found by the Auditor-General, the Office of the Premier failed to comply with section 16.A6.5
of the Treasury Regulations in the procurement of the Audi A8 as it had opted for the RT57 contract, but procured the vehicle outside the said contract.

6.1.4 Dr Mkhize, the Accounting Officer in the Office of the Premier approved the purchase of the Range Rover Vogue through a deviation from the normal procurement processes, but failed to record reasons for deviation from inviting competitive bids which is in violation of paragraph 3.4.3 of the Practice Note No. 8 of 2007/08 read with TR16.A6.4. The Auditor-General also found in this regard that the purchase of this vehicle was non-compliant with RT16.A6.5 as it was not done according to the RT57 contract. The Auditor-General further indicated that the deviation should have been approved by the National Treasury. The Auditor-General concluded that the expenditure of the vehicles amounted to an unauthorised and irregular expenditure.

6.1.5 Based on the above information, Dr Mkhize, as the accounting officer in the Office of the Premier, committed financial misconduct in terms of section 81(1)(b) of the PFMA during the procurement of the vehicles as the expenditure amounted to an unauthorised and irregular expenditure.

6.1.6 The conduct of the Office of the Premier, particularly Dr Mkhize, 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.

6.2 Regarding whether the former Premier of Mpumalanga Province, Mr David Mabuza was involved in the procurement of his official vehicles comprising of the BMW X5, Audi A8, Lexus and a Range Rover Vogue by the Office of the Premier and if so, whether such conduct constitutes a violation of the Executive Ethics Code:

6.2.1 The allegation that the former Premier, Mr David Mabuza was involved in the procurement of his official vehicles is not substantiated.
6.2.2 The media statements, nature of the Complainant’s complaint and documentary evidence received by my office indicate that the allegation of irregular procurement of the former Premier’s vehicles was against the Office of the Premier and not the former Premier in his personal capacity. No evidence could be produced to indicate that the former Premier was involved in the procurement process of the vehicles.

6.2.3 There was therefore no violation of the Code by the former Premier in the procurement of the vehicles in this matter.

7. REMEDIAL ACTION

In light of the above, and having taken into account evidence before me, the fact that honesty and integrity are paramount in the execution of duties by the Director-General of a Province and all the relevant facts before me, the appropriate remedial actions I am taking in terms of section 182(1)(c) of the Constitution are the following:

7.1 The Premier of the Mpumalanga Provincial Government must

7.1.1 Within fourteen (14) working days from the date of this report, inform the Premier of the Kwazulu-Natal of the outcome of my investigation and request him to take appropriate action against Dr Mkhize; and

7.1.2 Within fourteen (14) working days from the date of this report, direct the Head of the Mpumalanga Provincial Treasury to further investigate the irregular and unauthorised expenditure in compliance with the Treasury Regulations.
7.2 The Head of Department of the Mpumalanga Provincial Treasury must:

7.2.1 Within 60 working days from the date of this report, ensure that an investigation is conducted into the financial misconduct committed by Dr Mkhize referred to in this report in compliance with paragraph 4.1.3 of the Treasury Regulations; and

7.2.2 Within 60 working days from the date of this report, conduct a workshop with the Heads of Departments, Chief Financial Officers and Chiefs of staff on the provisions of the Ministerial Handbook, Treasury Regulations on the procurement of official vehicles to prevent recurrence of these matters and monitor throughout government.

7.3 The Director General of the Mpumalanga Provincial Government must:

7.3.1 Within 30 working days from the date of this report, ensure that all the required documents are availed to the Head of the Mpumalanga Provincial Treasury to conduct an investigation into the financial misconduct committed by Dr Mkhize referred to in this report in compliance with paragraph 4.1.3 of the Treasury Regulations.

8. MONITORING

8.1 The Head of Department of the Mpumalanga Provincial Treasury and the Director General of the Mpumalanga Provincial Government must, within 15 working days from the date of this Report, submit to my office their respective implementation plans indicating how the remedial actions referred to in paragraph 7 will be implemented.

8.2 I wish to bring to your attention that in line with the Constitutional Court judgement in the matter of Economic Freedom Fighters v Speaker of the National Assembly and Other; Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11, and in order to ensure the effectiveness
of the Office of the Public Protector, the remedial actions prescribed in this Report are legally binding on the Head of Department of Mpumalanga Provincial Treasury and Director General of Mpumalanga Provincial Government, unless they obtain a Court order directing otherwise.

ADV. BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 30/04/2019