
PUBLIC PROTECTOR
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"Allegations of maladministration in the matter between Mr J Nchupetsang and the North West Department of Rural, Environment and Agricultural Development”

REPORT ON AN INVESTIGATION INTO THE ALLEGED FAILURE BY THE NORTH WEST PROVINCIAL DEPARTMENT OF RURAL, ENVIRONMENT AND AGRICULTURAL DEVELOPMENT TO PROVIDE FINANCIAL ASSISTANCE TO MR J NCHUPETSANG AND OTHER AFFECTED FARMERS FOR THE 2003 COLD SPELL DISASTER
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Summary</td>
<td>3</td>
</tr>
<tr>
<td>1. INTRODUCTION</td>
<td>9</td>
</tr>
<tr>
<td>2. THE COMPLAINT</td>
<td>10</td>
</tr>
<tr>
<td>3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR</td>
<td>11</td>
</tr>
<tr>
<td>4. THE INVESTIGATION</td>
<td>13</td>
</tr>
<tr>
<td>5. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE</td>
<td>17</td>
</tr>
<tr>
<td>6. FINDINGS</td>
<td>28</td>
</tr>
<tr>
<td>7. REMEDIAL ACTION</td>
<td>30</td>
</tr>
<tr>
<td>8. MONITORING</td>
<td>31</td>
</tr>
</tbody>
</table>
Executive Summary

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

(ii) The report communicates the Public Protector’s findings and appropriate remedial action taken in terms of section 182(1) (b) of the Constitution, pursuant to an investigation into the alleged failure by the North West Provincial Department of Rural, Environment and Agricultural Development (Provincial Department) to provide financial assistance to Mr Nchupetsang (the Complainant) and other 371 affected farmers for the 2003 Cold Spell Disaster.

(iii) The Complainant is a 61 year old small scale farmer in the Molopo District, Mahikeng, North West Province. The Complainant alleged that he lost twelve (12) cattle and eight (8) sheep during the Cold Spell Disaster in 2003. He was assisted by officials from the Provincial Department to apply for disaster relief but, never received compensation whereas other farmers who suffered the same plight received some relief in the form of financial assistance from the Provincial Department. There were other farmers affected in a similar manner.

(iv) In the main, the complaint was that:

1) The Provincial Department failed to process his application for loss of livestock during the Cold Spell Disaster; and

2) The Provincial Department failed to provide the complainant with information regarding the outcome of his application for Disaster relief.

(v) The Provincial Department did not dispute that the Complainant’s claim was submitted and indicated that while the Complainant’s name appeared on the second
list that was not approved by the National Department of Agriculture, Forestry and Fisheries (National Department) it did not appear on the master copy which was the list that was budgeted and approved for compensating farmers that lost livestock in 2003. The Public Protector decided that this investigation would also cover the other 371 affected farmers.

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

(a) Whether the Provincial Department improperly failed to process the Complainant and other affected farmers’ applications for compensation for loss of livestock during the 2003 Cold Spell Disaster;

(b) Whether the Provincial Department improperly failed to provide Complainant with information regarding the status of his claim; and

(c) Whether the Complainant and other affected farmers suffered prejudice as a result of the Provincial Department’s conduct in the circumstances.

(vii) The investigation process was conducted through correspondence with Departmental officials at both the Provincial and National Departments of Agriculture. A mediation process was undertaken on 26 February 2014 in terms of section 6(4) (b) of the Public Protector Act, but no settlement was reached.

(viii) Key laws and policies taken into account to help the Public Protector determine if there had been improper conduct on the part of the Provincial Department and prejudice to the Complainant and others, were principally those imposing administrative standards that should have been upheld by the Provincial Department or its officials when managing the 2003 Cold Spell Disaster and included the following:
a) Disaster Management Act 57 of 2002 imposes a duty on the State to provide financial assistance to farmers who lost their livestock during the 2003 Cold Spell Disaster; Section 185(1) of the Constitution provides that the public administration must be governed by certain democratic values and principles; and

b) Section 3(1) of PAJA provides that administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.

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

1. Regarding whether the Provincial Department improperly failed to process the Complainant and others’ applications for compensation for loss of livestock during the 2003 Cold Spell Disaster:

(a) The allegation that the Provincial Department failed to process the Complainant and other affected farmers’ applications for compensation for loss of livestock is substantiated.

(b) In terms of the Framework for the 2003 Cold Spell Disaster Relief Scheme funds were made available by the National Government to the North West Province to assist farmers who lost their livestock during the Cold Spell of October 2003. In terms of the Framework for the 2003 Cold Spell Disaster Relief Scheme the Complainant and other affected farmers were supposed to receive assistance for loss of their livestock.

(c) The Provincial Department failed to properly coordinate the collection and submission of the second list, failed to provide motivation and supporting
documentation for the late submission of the second list and failed to source additional funds to address the second list.

(d) The Provincial Department’s conduct was in contravention of section 195(1) (a) of the Constitution, which requires that a high standard of professional ethics should be maintained in public administration. Non-compliance with the requirements of section 195(1) (a) amounts to maladministration envisaged in section 6(4) (i) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.

(e) The lack of co-ordination and negligence during the collection and submission of data does not meet the requirements of the definition of “Disaster management”, as envisaged in section 1 of the Disaster Management Act, 2002 which implicitly requires that officials of the Provincial Department were supposed to ensure that the application list of farmers requesting disaster assistance was properly coordinated and collected to reach the National Department. Failure by the Provincial Department to ensure the above happened amounts to maladministration as envisaged in section 6(4)(i) of the Public Protector Act and section 182(1) of the Constitution.

2. Regarding whether the Provincial Department improperly failed to provide the Complainant with information regarding the status of his claim:

(a) The allegation that the Provincial Department failed to provide information to the Complainant regarding the status of his application is substantiated.

(b) The Complainant visited the Molopo District Municipal Offices several times to enquire on the progress regarding possible assistance and was
not provided with any answers although he had seen a newspaper article reporting that an amount of R8 million was paid to the Provincial Department for the Cold Spell Disaster Relief Scheme.

(c) Failure by the Provincial Department to provide information to the Complainant regarding the status of his application for the Cold Spell Disaster as provided by Batho Pele Principle regarding information published in Government Gazette No. 18340 which requires that full and accurate information be provided to members of the public, constitutes maladministration as envisaged in section 6(4) (i) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.

3. Regarding whether the Complainant and other affected farmers suffered prejudice as a result of the Provincial Department’s conduct in the circumstances:

(a) The allegation that the Complainant and other affected farmers suffered prejudice as a result of the Provincial Department’s conduct is substantiated.

(b) The Complainant and other affected farmers suffered prejudice due to the acts and omissions of the Provincial Department’s officials in failing to submit a comprehensive list which included the Complainant and other affected farmers whose names did not appear in the first list submitted to the National Department; failing to provide substantial motivation for such failure when required to do so, and further failing to source own funding to address the second list.
(c) On a balance of probabilities, had it not been for the improper conduct of the Provincial Department on the three occasions it failed to act properly, the Complainant and other affected farmers could have received financial compensation for the 2003 Cold Spell Disaster Relief Scheme.

(x) The appropriate remedial action the Public Protector is taking in pursuit of section 182(1)(c) of the Constitution, with the view of placing the Complainant and other affected farmers as close as possible to where they would have been had the improper conduct or maladministration not occurred, is the following:

1. The Head of the Department (HOD) must consider each case of the 372 farmers, the Complainant included, appearing on the second list and compensate those who qualify within thirty (30) working days from the date of this report. The compensation must be calculated in terms of the new or revised Framework for the 2003 Cold Spell Relief Scheme.

2. The HOD must write apology letters to the Complainant and affected farmers for the prejudice caused within thirty (60) working days from the date this report; and

3. The HOD must advise the Public Protector of the implementation plan of the remedial action within 30 working days from the date of this report.
REPORT ON AN INVESTIGATION INTO THE ALLEGED FAILURE BY THE NORTH WEST PROVINCIAL DEPARTMENT OF RURAL, ENVIRONMENT AND AGRICULTURAL DEVELOPMENT TO PROVIDE FINANCIAL ASSISTANCE TO MR J NCHUPETSANG AND OTHER AFFECTED FARMERS FOR THE 2003 COLD SPELL DISASTER

1. INTRODUCTION

1.1. This is the Public Protector’s report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act 23 of 1994 (the Public Protector Act).

1.2. The report is submitted in terms of section 8(1) of the Public Protector Act to the Head of Department (HOD) of the North West Department of Rural, Environment and Agricultural Development (Provincial Department), Dr Poncho Mokaila.

1.3. To take cognisance of the report, further copies are circulated to:

1.3.1 Member of the Executive Council for Rural, Environment and Agricultural Development, Hon. Manketsi Tlhaope; and

1.3.2 Speaker of North West Provincial Legislature Honourable S R Dantjie.

1.4. A copy of the report is provided to the Complainant, Mr Nchupetsang, in terms of section 8(3) of the Public Protector Act.

1.5. The report relates to an investigation into the alleged failure by the Provincial Department to provide financial assistance to Mr Oduetse Justice Nchupetsang (the Complainant) and other affected farmers for the 2003 Cold Spell Disaster.
2. THE COMPLAINT

2.1. The Complainant, a communal farmer, lodged a complaint at the Public Protector’s North West Provincial office on 15 March 2011, alleging that he lost twelve (12) cattle and eight (8) sheep due to the cold spell disaster of 2003.

2.2. The Complainant alleged that:

2.2.1 The officials from the Provincial Department came to inspect the aftermath of the disaster and collected data of the dead livestock including photographs. He then enquired from the officials as to what would happen going forward and was advised that farmers who suffered losses due to the cold spell would be assisted by the Provincial Department;

2.2.2 He visited the Molopo District Municipal Offices several times to enquire on the progress regarding possible assistance and was not provided with any answers although he had seen a newspaper article reporting that an amount of R8 million was paid to the Provincial Department for the Cold Spell Disaster Relief Scheme; and

2.2.3 There were other farmers who confirmed having received assistance in the form of financial compensation from the Provincial Department. The Complainant then proceeded to the Provincial Department’s District offices to get clarity regarding possible compensation and was informed by an official (name unknown) that all the necessary documents were submitted to the Disaster Management Unit at the North West Provincial Office. The Complainant’s attempt to obtain a response from the Provincial Office regarding possible compensation yielded no results.
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, reporting 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 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. The Constitutional Court further held that: "When remedial action is binding, compliance is not optional, whatever
reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences.”

3.6 In the aforesaid Constitutional Court Judgment, the Chief Justice Mogoeng stated the following, when confirming the powers the Public Protector:

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

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

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 (para 68);

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

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

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

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

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

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

4. THE INVESTIGATION

4.1. Methodology

4.1.1. The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

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

4.1.3. The complaint was initially classified as an Early Resolution matter capable of
resolution by way of a conciliation process or mediation in line with section 6(4)(b)
of the Public Protector Act, 1994. However, after several attempts to conciliate
the matter, it was escalated into an investigation.

4.1.4. The Public Protector issued the section 7(9) notice dated 29 March 2016 to the
HOD, but no response was received. A reminder dated 12 October 2017 was
sent to the HOD.

4.1.5. The HOD’s written response of 20 October 2017 states that “The department
takes note of the intended actions by your esteemed Office and further agrees to
consider each case of the 372 farmers appearing on the second list, for possible
compensation to those who qualify as prescribed in the same report.”

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 discrepancy amount to maladministration?
4.2.1.4 In the event of maladministration what would it take to remedy the wrong or to place the Complainant and other affected farmers as close as possible to where they would have been but for the maladministration or improper conduct?

4.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether or not the Provincial Department acted improperly in its failure to submit the second list timeously to the National Department and the consequent failure to motivate the reasons for its late submission. The Public Protector also had to determine if the Provincial Department had acted improperly in its failure to source alternative funding to address the second list and to further provide information to the Complainant regarding his compensation status.

4.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Provincial Department or organ of state to prevent maladministration and improper prejudice to the Complainant and the other affected farmers.

4.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration or improper conduct. Where a complainant has suffered improper prejudice the idea is to place him or her as close as possible to where he or she would have been had the Provincial 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 Provincial Department improperly failed to process the Complainant and other affected farmers' applications for compensation for loss of livestock during the 2003 Cold Spell Disaster;

4.3.2 Whether the Provincial Department improperly failed to provide Complainant with information regarding the status of his claim; and

4.3.3 Whether the Complainant and other affected farmers suffered prejudice as a result of the Provincial Department's conduct in the circumstances.

4.4 The Key Sources of information

4.4.1 Correspondence sent and received

4.4.1.1 Correspondence from the Public Protector to the HOD dated 29 March 2016;
4.4.1.2 A response letter from the HOD dated 07 April 2011 and 19 March 2014;
4.4.1.3 A response letter from the Director General: Department of Agriculture Forestry and Fisheries (DAFF) dated 09 March 2011;
4.4.1.4 Copies of various correspondences received from DAFF; and

4.4.2 Meetings and Interviews

4.4.2.1 Meeting on 26 February 2014 between the Public Protector Provincial Representative North West, Mr Sechele Keebine (accompanied by Senior Investigator North West, Adv. Ike Motshegare and Investigator North West, Mr
Tempele Theo) and the Department represented by Parliamentary Liaison Officer (MEC office) Mr L J Dikane and Director: Disaster Management Unit, Mr Schalk Vorster.

4.4.3 Legislation and other prescripts

4.4.3.1 The Constitution;
4.4.3.2 Disaster Management Act, 2002;
4.4.3.3 Public Protector Act;
4.4.3.4 Batho-Pele Principles – Government Gazette No 18340; and
4.4.3.5 Promotion of Administrative Justice Act, 2000 (PAJA).

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 Provincial Department improperly failed to process the Complainant and other affected farmers’ applications for compensation for loss of livestock during the 2003 Cold Spell Disaster:

Common cause issues

5.1.1. There was a cold spell that occurred in 2003 and the Provincial Department declared a disaster in terms of the Disaster Management Act. The Complainant was one of the applicants who lodged a claim for disaster relief.

5.1.2 The Provincial Department applied for funding from National Department. A list was submitted for funding request in 2005 to assist the affected farmers and R8 million was approved by the National Treasury in 2007.
5.1.3 The second list was submitted in 2007 requesting assistance and it is the list that was not approved by the National Department of Agriculture. The name of the Complainant and other affected farmers appear on the second list.

5.1.4 The evidence obtained during investigation indicates that the reasons as to why the second list was not approved was due to the negligence of the Provincial Department officials and the lack of substantial motivation for the omission of the second list since it should have been submitted with the first list in 2005.

5.1.5 A motivation letter on the late submission of the second list from the Head of the Disaster Management Unit, Mr Mmono, and dated 14 March 2008 clearly shows that the Provincial Department lacked proper planning during the consolidation of data during the 2003 Cold Spell Disaster.

5.1.6 The second list that was not submitted was prepared by Mr Mmono, who was the main role player during the 2003 Cold Spell Disaster.

*Issues in dispute*

5.1.7 The Provincial Department indicated that the Complainant did not qualify for compensation because he did not appear on the first list that was approved and budgeted for by the National Department, but his name appeared on the second list that was not approved by the National Department. There were no reasons advanced by the Provincial Department as to why the second list was not approved.

5.1.8 The National Department shed more light as to what led to the second list not being approved. According to the National Department the second list was not approved due to the fact that it was submitted late by the Provincial Department. The Provincial Department was requested to provide substantial motivation as to why
the second list was submitted late and also why it had failed to provide supporting documents such as affidavits.

5.1.9 The National Department further advised the Provincial Department to utilise its own funding to address the second list, but failed to act on the advice given.

Conclusion

5.1.10 The explanation from the Provincial Department that the Complainant appeared on the second list that was not approved and therefore did not qualify for compensation cannot be accepted. The argument is incorrect because the evidence obtained indicates that it was negligence on the Provincial Department’s part during co-ordination and submission of the application lists which led to the second list not being approved ultimately resulting in the Complainant and other farmers not receiving financial compensation.

Application of the relevant law

5.1.11 Section 33 of the Constitution provides that:

“33. (1) everyone has the right to administrative action that is lawful, reasonable and procedurally fair”. (2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons”.

5.1.12 Section 195(1) of the Constitution provides as follows:

“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.
(b) ....
(c) ....
(d) Services must be provided impartially, fairly, equitably and without bias.
(f) Public administration must be accountable."

5.1.13 Section 3 of PAJA, 2000 section 3 provides as follows:

(1) "Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.
(2) (a) A fair administrative procedure depends on the circumstances of each case.
(b) In order to give effect to the right to procedurally fair administrative action, an administrator, subject to subsection (4), must give a person referred to in subsection (1)-
(a) adequate notice of the nature and purpose of the proposed administrative action;
(b) a reasonable opportunity to make representations;
(c) a clear statement of the administrative action;
(d) adequate notice of any right of review or internal appeal, where applicable; and
(e) adequate notice of the right to request reasons in terms of Section 5."

5.1.14 Section 3(1) of PAJA provides that administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.

5.1.15 The Constitution enjoins the Provincial Department and all other organs of the state to ensure a high standard of professional ethics must be promoted and maintained and services must be provided impartially, fairly, equitably and without bias in terms of accountable public administration.
5.1.16 The above standards of public administration would be measured against those of the officials involved in the management of the Cold Spell Disaster and test their conduct against the above values.

5.1.17 From the above, the Provincial Department violated the Complainant and other affected farmers' rights to administrative action that is lawful, reasonable and procedurally fair as guaranteed in section 33 of the Constitution and section 3 of PAJA, by failing to follow due process in informing them of the outcome of the application and the reasons for such an outcome.

5.1.18 Section 1 of the Disaster Management Act provides that “disaster management” means that a continuous integrated multi sectorial, multi-disciplinary process of planning and implementation of measures aimed at:

(a) ......

(b) mitigating the severity or consequence of disasters

(d) ......

(e) a rapid and effective response to disaster and

(f) Post-disaster recovery and rehabilitation”.

5.1.19 Disaster Management legislation indicates that planning is critical in the management of disasters and the conduct of the officials would be measured against this standard to ascertain if they planned properly for the Cold Spell based on the evidence obtained.

5.1.20 Section 56(2)(a) of the Disaster Management Act provides that “when a disaster occurs the following principles apply:

21
National, provincial and local organs of state may financially contribute to response efforts and post-disaster recovery and rehabilitation”.

5.1.21 According to the above Act, the Provincial Department had a duty to process the applications and to act accordingly based on their outcome.

5.1.22 The Disaster Management Act imposes a duty on the Provincial Department to provide financial assistance to farmers who lost their livestock during the 2003 Cold Spell Disaster.

Framework to manage the 2003 Cold Spell Disaster Relief Scheme for the Period ending 31 March 2009 (Framework)

5.1.23 Paragraph 1 of the Framework states as follows;

“1. Introduction.

National Government has made funds available to the North West Province for Cold Spell assistance for compensating farmers that lost their livestock. (i.e. cattle, sheep and goats).

Assistance for livestock losses: Assistance to be made available for a maximum of 10 Large Stock Units (LSU) per farmer. All farmers receive full compensation for the first five livestock and thereafter 90% compensation for communal farmers, 80% compensation for small scale farmers and 70% compensation for commercial (scale farmers).”

5.1.24 Paragraph 3.16 of the Framework provides that "Assistance for lost livestock will only be given to farmers who completed, submitted assessment documents to the PDA and meet criteria for assistance". In terms of the Framework and section 56
of the Disaster Management Act it was incumbent upon the officials to process the application.

Conclusion

5.1.24 From the above it can be concluded that the Provincial Department failed to meet the standard as expected of it in terms of the Constitution, PAJA, Disaster Management Act and the Framework to manage the Cold Spell Disaster Relief Scheme for the period ending 31 March 2009.

5.2 Regarding whether the Provincial Department improperly failed to provide the Complainant with information regarding the status of his claim:

Common Cause issues

5.2.1 The Complainant visited the Provincial Department’s District Offices to obtain information regarding the status of his claim and there was no information provided to him by officials on whether his claim was successful or not.

5.2.2 It is clear from the evidence obtained that as far back as 2008 the Provincial Department was aware that there were issues regarding the funding of the second list but failed to communicate the information to the complainant.

5.2.3 The Complainant only came to know about the status of his claim on 07 April 2011 through the Public Protector’s investigation that according to the Provincial Department he did not qualify for compensation because his name appeared on the second list that was not approved by National Treasury.

5.2.4 There is no documentary evidence provided by the Provincial Department that progress updates were provided to the Complainant regarding the 2003 Cold Spell
Disaster and the allegations by the Complainant that no information was provided to him was not refuted by the Provincial Department.

5.2.5 The Provincial Department did not dispute the allegations presented by the Complainant that he visited the its Molopo District Offices on several occasions, but could not obtain any response on the status of his application for the 2003 Cold Spell Disaster.

5.2.6 The Public Protector is inclined to accept the version by the Complainant that he visited the Provincial Department’s Molopo District Offices and did not receive any update regarding the status of his application for the 2003 Cold Spell Disaster Relief. In addition no rebuttal from the side of the Provincial Department was received.

Application of the relevant law

5.2.7 Section 195(1) (a) provides that public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(a) ....
(b) ....
(c) ....
(d) ....
(e) ....
(f) ....
(g) Transparency must be fostered by providing the public with timely, accessible and accurate information.

5.2.8 The Constitution enjoins the Provincial Department to provide the complainant with timely, accessible and accurate information which includes updating him regarding the outcome of his application.
5.2.9 The failure of the Provincial Department to update the complainant regarding the outcome of his application would be measured against the principle of transparency.

5.2.10 Section 32 of the Constitution provides that:

1. Everyone has the right of access to
   a. any information held by the state; and
   b. any information that is held by another person and that is required for the exercise or protection of any rights.

2. National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

5.2.11 The National Legislation referred to above is the Promotion of Access to Information Act, 2000 (PAIA). Section 11 thereof provides that:

(1) A requester must be given access to a record of a public body if-
   (a) That requester complies with all the procedural requirements in this Act relating to a request for access to that record; and

   (b) Access so that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.

(2) A request contemplated in subsection (1) includes a request for access to record Containing personal information about the requester.

(3) A requester's right of access contemplated in subsection (1) is, subject to this Act, not affected by-
   (a) Any reasons the requester gives for requesting access; or
(b) the information officer’s belief as to what the requester’s reasons are for requesting access.

5.2.12 The aggrieved person such as the Complainant is entitled to access information necessary to determine whether the administrative action or decision was justifiable in relation to the reasons given therefore; as well as whether his or her rights were negatively affected or threatened.

5.2.13 Batho Pele Principles

a) "The Eight Principles of Batho Pele.

1. 
2. 
3. 
4. 
5. Information: Citizens should be given full, accurate information about the public services they are entitled to receive.
6. 
7. 
8. 

b) The Batho Pele information principle imposes a duty on government officials and state organs to provide information that is complete and accurate regarding the service that they are entitled to receive.

c) The Batho Pele Information principle requires the Complainant to be provided with full and accurate information regarding the outcome of his application.

Conclusion
5.2.14 Under the circumstances the Provincial Department was obliged to provide the Complainant with accurate information on their failure to process his application and the reasons why the application was refused. The Constitution, PAIA and the Batho Pele Principles impose a duty on the state organ to be transparent, to provide full and accurate information to any administrative action taken and the reasons thereof, which the Provincial Department failed to uphold.

5.3 Regarding whether the Complainant and other affected farmers suffered prejudice as a result of the Provincial Department’s conduct in the circumstances:

5.3.1 It is common cause that the Complainant lost 12 cattle and 8 sheep from the Cold Spell Disaster.

5.3.2 The evidence obtained shows that the acts and omissions of the Provincial Department’s officials in failing to properly co-ordinate the submission of the lists to the National Department; failing to submit the second list timeously, failing to provide substantial motivation for such failure when required to do so, and further failing to source own funding to address the second list resulted in the failure to process the Complainant’s application and compensate him for the loss of his livestock.

5.3.3 It has been established in the evidence above that the Provincial Department failed to communicate the outcome of the Complainant’s application for relief.

5.3.4 It is further common cause that had the Provincial Department not failed to coordinate the submission of the list, had not failed to submit the second list on time, and/or failed to provide substantial motivation as requested by the National Department, and/or had sourced own funding to address their failures, the Complainant and other affected farmers would have, with the compensation so provided, replaced the lost stock.
6 FINDINGS

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

6.1 Regarding whether the Provincial Department improperly failed to process the Complainant and others’ applications for compensation for loss of livestock during the 2003 Cold Spell Disaster:

6.1.1 The allegation that the Provincial Department failed to process the Complainant and other affected farmers’ applications for compensation for loss of livestock is substantiated.

6.1.2 In terms of the Framework for the 2003 Cold Spell Disaster Relief Scheme funds were made available by the National Government to the North West Province to assist farmers who lost their livestock during the Cold Spell of October 2003. In terms of the Framework for the 2003 Cold Spell Disaster Relief Scheme the Complainant and other affected farmers were supposed to receive assistance for loss of their livestock.

6.1.3 The Provincial Department failed to properly coordinate the collection and submission of the second list, failed to submit the second list on time, failed to provide motivation and supporting documentation for the late submission of the second list and failed to source additional funds to address the second list.

6.1.4 The Provincial Department’s conduct was in contravention of section 195(1) (a) of the Constitution, which requires that a high standard of professional ethics should be maintained in public administration. Non-compliance with the requirements of section 195(1) (a) amounts to maladministration envisaged in section 6(4) (i) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the constitution.
6.1.5 The lack of co-ordination and negligence during the collection and submission of data does not meet the requirements of the definition of "Disaster management", as envisaged in section 1 of the Disaster Management Act which implicitly requires that officials of the Provincial Department were supposed to ensure that the applications list of farmers requesting disaster assistances was properly planned and co-ordinated to reach the National Department. The failure by the Provincial Department to do this amounts to maladministration as envisaged in section 6(4) (i) of the Public Protector Act and section 182(1) of the Constitution.

6.2 Regarding whether the Provincial Department improperly failed to provide the Complainant with information regarding the status of his claim:

6.2.1 The allegation that the Provincial Department failed to provide information to the Complainant regarding the status of his application is substantiated.

6.2.2 The Complainant visited the Molopo District Municipal Offices several times to enquire about the progress regarding possible assistance and was not provided with any answers although he had seen a newspaper article reporting that an amount of R8 million was paid to the Provincial Department for the Cold Spell Disaster Relief Scheme.

6.2.3 The failure by Provincial Department to provide information to the complainant regarding the status of his application for the Cold Spell Disaster as provided by Batho Pele Principle regarding information published in Government Gazette No. 18340 which requires that full and accurate information be provided to members of the public, constitutes maladministration as envisaged in section 6(4) (i) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.
6.3 Regarding whether the Complainant and other affected farmers suffered prejudice as a result of the Provincial Department's conduct in the circumstances:

6.3.1 The allegation that the Complainant and other affected farmers suffered prejudice as a result of the Provincial Department's conduct is substantiated.

6.3.2 The Complainant and other affected farmers suffered prejudice due to the acts and omissions of the Provincial Department's officials in failing to submit a comprehensive list which included the Complainant and other affected farmers whose names did not appear in the first list submitted to the National Department; failing to provide substantial motivation for such failure when required to do so, and further failing to source own funding to address the second list.

6.3.3 On a balance of probabilities, had it not been for the improper conduct of the Provincial Department on the three occasions it failed to act properly, the Complainant and other affected farmers could have received financial compensation for the 2003 Cold Spell Disaster Relief Scheme.

7. REMEDIAL ACTION

The appropriate remedial action the Public Protector is taking in pursuit of section 182(1)(c) of the Constitution, with the view of placing the Complainant and other affected farmers as close as possible to where they would have been had the improper conduct or maladministration not occurred, is the following:

7.1 The HOD must consider each case of the 372 farmers, the Complainant included, appearing on the second list and compensate those who qualify within thirty (30) working days from the date of this report. The compensation must be calculated in terms of the new or revised Framework for the 2003 Cold Spell Relief Scheme.
7.2 The HOD must write apology letters to the Complainant and affected farmers for the prejudice caused within thirty (30) working days from the date this report; and

7.3 The HOD must advise the Public Protector of the implementation plan of the remedial action within 30 working days from the date of this report.

8. MONITORING

8.1 The Public Protector will monitor the implementation of the remedial action taken in this report, in accordance with the approved implementation plan.

ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 02/11/2017

Assisted by: Provincial Representative: Mr S Kebeine and Investigator Adv O Sebogodi