
PUBLIC PROTECTOR SOUTH AFRICA

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“Allegations of maladministration in the matter between Mr Landane and the Department of Education and Sport Development”

REPORT ON AN INVESTIGATION INTO THE ALLEGED FAILURE BY THE NORTH WEST PROVINCIAL DEPARTMENT OF EDUCATION AND SPORT DEVELOPMENT TO IMPLEMENT THE RECOMMENDATIONS OF AN INTERNAL AUDIT REPORT RELATING TO ALLEGATIONS OF FRAUD, CORRUPTION AND NEPOTISM AGAINST MR MBIPHA: DELAREYVILLE AREA MANAGER: REPORT NO. FR103/2011
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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 section 8(2A)(a) of the Public Protector Act, 1994.

(ii) The report relates to an investigation into the alleged failure by the North West Provincial Department of Education and Sport Development (Department) to implement the recommendations of Internal Audit Report number FR103/2011 (Audit Report) relating to allegations of fraud, corruption and nepotism against Mr Mbipha, the Delareyville Area Manager (Mr Mbipha).

(iii) The complaint was lodged with my office on 18 February 2014 as per letter dated 10 February 2013.

(iv) Mr Landane (Complainant), an adult male, is an educator by profession and served as a school principal at Mogawane Commercial High School (Mogawane) at Atamelang near Delareyville in North West Province.

(v) In the main, the Complainant alleged that (1) the Department improperly failed to consider and implement the recommendations of the Audit Report into allegations of fraud, corruption and nepotism against Mr Mbipha; and (2) his (the Complainant’s) transfer to the Moretele Area Office was irregular.

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

(a) Whether the Department improperly failed to implement the recommendations of the Internal Audit Report No. FR103/2011 into allegations of fraud, corruption and nepotism against Mr Mbipha, the Delareyville Area Manager; and

(b) Whether the Department irregularly transferred the Complainant to the Moretele Area Office; and
(c) Whether the Complainant was prejudiced by the conduct of the Department in the circumstances.

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

(a) In terms of section 195(1)(a) and (f) of the Constitution, the public administration must be governed by the democratic values and principles enshrined in the Constitution which include, *inter alia*, the promotion and maintenance of a high standard of professional ethics and an accountable public administration. These principles enjoin the Department and officials to exercise a high level of professionalism and ethics including accountability in the performance of their duties. The Department and officials should also strive to be above reproach;

(b) Chapter 3 of the Employment of Educators Act, 1998 which deals with appointments, promotions and transfers of educators. Section 8 of the Employment of Educators Act empowers the Head of the Department to transfer any educator in the Provincial Department to any post in that Department with the consent of the educator concerned. It follows therefore that, the transfer would only be possible if the educator can give his or her consent. In this matter, the Complainant initiated his transfer and the Head of the Department considered and approved his application accordingly;

(c) Section 2(2B) of the Public Service Act, 1994, which provide that the provisions of this Act regarding the conditions of service and other employment practices of a head of department only apply to a head of department appointed in terms of the Constitution to the extent that the subject-matter of such provisions are not provided for in any other law governing his or her employment or his or her contract of employment. This means section 14 of the Public Service Act is not
applicable to the transfer of an educator, as the Employment of Educators Act
govern the transfer of the educators; and

(d) The Protected Disclosures Act, 2000 which seeks to protect the whistle blowers in
both the private and public sectors.

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

(a) Regarding whether the Department improperly failed to implement the
recommendations of the Internal Audit Report No. FR103/2011 into
allegations of fraud, corruption and nepotism against Mr Mbipha,
Delareyville Area Manager:

(aa) The allegation that the Department improperly failed to implement the
recommendations of the Internal Audit Report No. FR103/2011 into allegations of
fraud, corruption and nepotism against Mr Mbipha is substantiated.

(bb) The reasons advanced by the Department that it could not implement the
recommendations of the report are unreasonable and improper. The
recommendations in the report provided, amongst others, that criminal cases be
opened with the South African Police Service where there was conduct of
criminality and disciplinary action be taken against the officials who are still
employed within the public administration.

(cc) The Department clearly failed to uphold the democratic values and principles
enshrined in the Constitution by failing to implement the recommendations of the
report, and thus acted contrary to the spirit espoused in section 195(1)(a), (f) and
(g) of the Constitution.
(dd) The conduct of the Department therefore constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration in section 6(4)(a)(i) of the Public Protector Act.

(b) Regarding whether the Department irregularly transferred the Complainant to the Moretele Area Office, I find that:

(aa) The allegation that the Complainant’s transfer to Moretele Area Office was irregular is not substantiated.

(bb) The Complainant initiated his application to be transferred to the Moretele Area office to be near his home. The Department processed and approved his application. He was accordingly transferred to the Moratwe High School in the Moretele area.

(cc) There was no evidence at my disposal pointing to a violation of the provisions of the Employment of Education Act relating to the transfer of educators since the Department acceded to the request by the Complainant to be placed nearer to his home.

(dd) I accordingly cannot find any irregularity on the part of the Department in transferring the Complainant nearer his home.

(ee) The conduct of the Department in this regard does not constitute improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration in section 6(4)(a)(i) of the Public Protector Act.
(c) Regarding whether the Complainant was prejudiced by the conduct of the Department in the circumstances:

(aa) The allegation that the Complainant was prejudiced by the conduct of the Department is not substantiated.

(bb) There is no evidence at my disposal that suggests that the Complainant was unfairly dismissed or his transfer was irregular, neither was there a link between his reporting of the fraud, corruption and nepotism case to my office and the subsequent termination of his service.

(cc) Therefore, the Complainant was neither subjected to occupational detriment nor unfairly dismissed.

(ix) In the light of the above findings, I am directing the following appropriate remedial actions as contemplated in section 182(1)(c) of the Constitution:

(aa) The Administrator must, within 30 working days from the date of this report, implement the recommendations of the Internal Audit Report No. FR103/2011, by laying criminal charges against those individuals implicated in acts of fraud and corruption as cited therein and, to further institute civil action against all the implicated officials, whether still in the employ of the Department or not, to recover any monies that were unlawfully claimed and/or paid over for services not rendered; and

(bb) The Administrator must further take disciplinary action against the implicated officials within the Department who failed to implement the Audit Report.
REPORT ON AN INVESTIGATION INTO THE ALLEGED FAILURE BY THE NORTH WEST PROVINCIAL DEPARTMENT OF EDUCATION AND SPORT DEVELOPMENT TO IMPLEMENT THE RECOMMENDATIONS OF AN INTERNAL AUDIT REPORT RELATING TO ALLEGATIONS OF FRAUD, CORRUPTION AND NEPOTISM AGAINST MR MBIPHA: DELAREYVILLE AREA MANAGER: REPORT NO. FR103/2011

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 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:

1.2.1. The Member of the Executive Council for Education and Sport Development, Honourable Sello Lehari (MEC);

1.2.2. The Administrator for Education and Sport Development, Mr Johannes Nkhono Tshepo Mohlala;

1.2.3. The Superintendent General Education and Sport Development, Mrs Stephina Semaswe;

1.2.4. The Administrator for the North West Provincial Government, Mr Sibusiso Mpanza;

1.2.5. The former Head of the Department, Dr Abe Seakamela, and

1.2.6. The then Superintendent General, Dr Itumeleng Molale.
1.3. A copy of the report is also provided to Mr HP Landane (Complainant) to inform him about the outcome of my investigation.

1.4. The report relates to an investigation into the alleged failure by the North West Provincial Department of Education and Sport Development (Department) to implement the recommendations of Internal Audit no. FR103/2011 (Audit Report) relating to allegations of fraud, corruption and nepotism against Mr Mbipha, the Delareyville Area Manager (Mr Mbipha).

2. **THE COMPLAINT**

2.1 The complaint was lodged with my office by Mr HP Landane (the Complainant) on 18 February 2014 as per a letter dated 10 February 2013.

2.2 **Background of the complaint**

2.2.1 The Complainant, an adult male, is a teacher by profession and served as a school principal at Mogawane Commercial High School (Mogawane School) at Atamelang near Delareyville in North West Province.

2.2.2 He also served as the Chairperson of the South African Democratic Teachers’ Union (SADTU), Atamelang Branch, until his suspension from his position in the trade union on 15 January 2014. In terms of a letter dated 15 January 2014 titled “Re: Precautionary Suspension of Cde P.H. Landane/ Atamelang Branch Chairperson” the Acting Provincial Secretary of the SADTU in North West, wrote that [sic]: “… The Provincial Office wishes to notify you, Cde P.H. Landane, that the recent 12 to 13 December 2013 PEC has, after a lengthy deliberations, resolved as follows: that your conduct with respect to causing SADTU members to embark on an illegal, unprotected and un-mandated strike without following the legal prescripts and union constitution as well as without informing the upper structures; speaking and appearing on media without being mandated duly …you
will be placed on precautionary suspension with immediate effect pending the finalisation of the instituted Provincial Disciplinary Committee processes…"

2.2.3 Mogawane School was identified for purposes of integration with another school in the area.

2.2.4 On 31 January 2014 the then Superintendent General, Dr IS Molale, issued a letter to the Complainant titled "NOTICE OF INTENTION TO SUSPEND IN TERMS OF CLAUSE 6(1) OF SCHEDULE (2) OF THE EMPLOYMENT OF EDUCATORS ACT, 76 OF 1998 AS AMENDED". The Complainant acknowledged receipt of the letter on 31 January 2014.

2.2.5 The Complainant approached various institutions to lodge complaints relating to allegations of fraud, corruption, nepotism and abuse of power against the Department’s officials who were based at the Delareylville Area Office. He approached the following institutions:

2.2.5.1 The South African Council for Educators (SACE): An acknowledgement letter dated 13 March 2013 was sent to the Complainant advising that "...Please note that Council is attending to the matter and will keep you posted of any future developments..."

2.2.5.2 Corruption Watch: He lodged a complaint as per a letter dated 26 March 2013. The subject was: "REQUEST FOR INVESTIGATION". There was no evidence that an acknowledgement was received.

2.2.5.3 The South African Human Rights Commission (SAHRC): He lodged a complaint as per a letter dated 28 February 13. The subject was: "COMPLAINT ON HUMAN RIGHT". An acknowledgement letter dated 12 March 2013 was sent to him advising that "...The SAHRC will assess your complaint to determine:
• Whether it falls within the mandate of the SAHRC; or

• Whether it should be dealt with by another organisation, institution, statutory body or institution created by the Constitution or any applicable legislation. You will be contacted in due course...” There is no evidence as to whether a final response in respect of the foregoing undertaking to contact the Complainant was received from SAHRC.

2.3 The following essentially encapsulate the allegations presented by the Complainant:

2.3.1 Allegations of nepotism by Mr Mbipha

2.3.1.1 Mr Mbipha was involved in activities that smacked of nepotism in that he chaired an interview panel in which one Mrs Valteyn was appointed as the Senior Education Specialist (SES) for Delareyville Area Office.

2.3.1.2 On the other hand, Mr G Valteyn, the then acting Regional Director in the Dr Ruth Segomotsi Mompati District Office, chaired an interview panel that ensured the appointment of Mrs Mbipha as the General Education and Training (GET) Curriculum Coordinator for Delareyville Area Office.

2.3.1.3 Both officials were somewhat conflicted as they had vested interest in the appointment of their respective wives.

2.3.2 Allegations of corruption

2.3.2.1 According to the Complainant, state funds were deposited into different schools’ bank accounts under the pretext that the schools, namely George Madoda Primary; Phatsima High; and Rakgwedi Bokang High Schools,
provided catering for matric camps. Monies were deposited into these accounts because the principals of these schools were friends with Mr Mbpaha.

2.3.2.2 Mrs Mbpaha was paid for acting as a motivational Speaker whilst she initially offered to volunteer her services for free.

2.3.2.3 Mr and Mrs Mbpaha’s son was paid for providing music during matric camps.

2.3.3 Allegations of violation of School Governing Body’s powers

2.3.3.1 Messrs Mbpaha and Tsatsimpe meddled in the affairs of the School Governing Body (SGB) in that they took away its powers at Thusano Middle School by recommending Mrs Boboko who was not even recommended for a post.

2.3.3.2 One Mr Moncho was frustrated despite the fact that the SGB had recommended him for a post of a Deputy Principal.

2.3.3.3 The SGB of Moshoette Primary School was harassed by Messrs Mbpaha and Tshounyane.

2.3.4 Allegations of harassment of School Principals

2.3.4.1 Mr Mbpaha had a habit of harassing principals during meetings.

2.3.4.2 The Complainant and Mr Phologane were accused of participating in a radio interview whilst Mr Mokaleng of Ga-Khunwana High School was threatened through the use of Labour Relations Unit following charges of misuse of school funds, only to have these set aside after the intervention of a trade union.

2.3.4.3 The Complainant wrote a letter dated 28 February 2013 to the then Member of the Executive Council for Education, Honourable L Mabe (Honourable Mabe)
titled "URGENT ATTENTION SOUGHT". He gave Honourable Mab 14 working days to respond, but there is no indication of a response.

2.3.4.4 Another letter dated 28 February 2013 was written to the SADTU National Executive Committee for the attention of SADTU Secretary-General, Mr M Maluleke, titled "REQUEST FOR IMMEDIATE INTERVENTION". The Complainant requested response within 14 working days, but there was none.

2.3.5 Allegations of illegal merging of Schools

2.3.5.1 The Delareyville area witnessed schools being merged without following proper procedure where parents, trade union(s) and communities were not consulted.

2.3.5.2 The Molete Middle School was merged with Bakolobeng High School, Phatsima High School with Tlotlelo Middle School whilst Middleton Middle School was shut down and learners were sent to Geysdorp and Kopanelo High Schools.

2.3.6 Allegations of undue delay in releasing an Internal Audit Report

2.3.6.1 The SADTU Atamelang Branch and different parties requested an investigation into alleged acts of maladministration and impropriety by Mr Mbipha. An investigation team was appointed and headed by Mr TD Ramokotsi. Submissions were made by different parties to the investigation team.

2.3.6.2 The investigation report was finalised and handed over to the former Head of the Department, Dr A Sebakamela, who forwarded it to Dr Molale, but to date the report has not been considered or its recommendations implemented.
2.3.7 Allegations of irregular transfer of the Complainant to the Moretele Area

2.3.7.1 The Complainant alleged that he was irregularly transferred to Moretele area by the Department.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

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

3.2 Section 182(1) of the Constitution provides:

"The Public Protector has the power as regulated by national legislation –
(a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;
(b) to report on that conduct; and
(c) to take appropriate remedial action.

3.3 Section 182(2) provides that the Public Protector has additional powers and functions prescribed by national 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 effected 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 above-mentioned Constitutional matter, Mogoeng CJ, stated the following,
when confirming the powers of the Public Protector:

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

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

3.6.3 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 the effect, if it is the best attempt at curing the root cause of the
complaint (paragraph 68);

3.6.4 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);

1 [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].
2 Supra at para [73].
3.6.5 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);

3.6.6 The Public Protector’s power to take 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);

3.6.7 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 the words suggests that she has to leave the exercise of the power to take remedial action to other institutions or that it is the power that is by its nature of no consequence (paragraph 71(a));

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

3.6.9 “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)).

3.7 In the matter of the President of the Republic of South Africa v Office of the Public Protector and Others, Case no 91139/2016 (13 December 2013), the Court held as follows:

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

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

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

I. Conduct an investigation;

II. Report on that conduct; and

III. To take remedial action

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

e) The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court. (paragraph 105).

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

g) Prima facie evidence which point to serious misconduct is a sufficient and appropriate basis for the Public protector to take remedial action (paragraph 112).
3.8 The Department of Education and Sport Development is an organ of state and its
conduct amounts to conduct in state affairs, as a result the matter falls within the
ambit of the Public Protector's mandate.

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

4. THE INVESTIGATION

4.1 Methodology

4.1.1. The investigation was conducted in terms of section 182(1)(a) of the Constitution
and sections 6 and 7 of the Public Protector Act.

4.2. Approach to the investigation

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

4.2.1.1 What happened?
4.2.1.2 What should have happened?
4.2.1.3 Is there a discrepancy between what happened and what should have
happened and does that deviation amount to maladministration?
4.2.1.4 In the event of maladministration what would it take to remedy the wrong or
to place the Complainant as close as possible to where 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 Department failed to implement the recommendations of the
Audit Report relating to allegations of fraud, corruption and nepotism against Mr. Mbipha, Delareyville Area Manager and whether his transfer was irregular.

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 Department or organ of state to prevent maladministration and prejudice.

4.2.4. The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration.

4.3. On analysis of the complaint, the following were issues considered and investigated:

4.3.1 Whether the Department improperly failed to implement the recommendations of the internal Audit Report No. FR103/2011 into allegations of fraud, corruption and nepotism against Mr Mbipha, Delareyville Area Manager.

4.3.2 Whether the Department irregularly transferred the Complainant to the Moretele Area Office.

4.3.3 Whether the Complainant was prejudiced by the conduct of the Department in the circumstances.

4.4 The Key Sources of information

4.4.1 Documents

4.4.1.1 The Department’s Audit Report dated July 2012.

4.4.1.2 A letter dated 06 June 2015 from Dr IS Molale to the Complainant regarding the latter’s placement at Moratwe High School: Moretele Area Office.
4.4.1.3 A letter dated 17 August 2015 from the Complainant’s legal representatives, Bosman & Bosman Attorneys, to Molale regarding the Complainant’s redeployment/placement to Moratwe High School.

4.4.1.4 A letter dated 26 February 2018 from the Department’s Director: Legal Services, Mrs NM Phale to the District Director: Dr Ruth Segomotsi Mompati requesting “progress regarding opening possible fraud and corruption case…”

4.4.2 Interviews conducted

4.4.2.1 A meeting with the Complainant on 27 May 2014 to adduce evidence.

4.4.2.2 A meeting with the Complainant on 23 January 2015 during which he informed that he was on leave due depression.

4.4.2.3 A meeting with the Complainant on 25 February 2015 during which he highlighted his frustrations in securing a transfer to his home and/or promotion.

4.4.2.4 A telephone interview with the Complainant on 14 April 2015 during which he apprised my office of his intention to sue the Department for R1 million.

4.4.2.5 An Alternative Dispute Resolution session chaired by Deputy Public Protector, Adv Kevin Malunga (Deputy Public Protector), on 07 July 2015 with the Department officials and Complainant.

4.4.2.6 A meeting with the Complainant on 05 April 2016 during which he reported that the Department stopped paying his monthly salary.
4.4.3 Correspondence sent and received

4.4.3.1 A letter dated 17 July 2014 from my office to the Head of the Department requesting documentation relating to the matter.

4.4.3.2 A letter dated 27 August 2014 from my office to the Office of the Director: Legal Services requesting documentation relating to the matter.

4.4.3.3 A letter dated 15 December 2014 from my office to the Head of the Department acknowledging receipt of the Department’s Audit Report and also seeking a meeting with the HOD.

4.4.3.4 An email dated 04 May 2015 from the Complainant to my office wherein he advised that: "...I started to report for duty at Delareyville office since 28/04/15. This follows sudden termination of the leave by the department and withdrawal of a transfer to home. I'm not reporting at my school as directed by department. This because the advises [sic] from the Dr through medical report and the lawyer. I still find the latest decision of the department to be out of order."

4.4.3.5 Section 7(4) and (5) notice dated 18 June 2015 from the Deputy Public Protector Issued against the former MEC, Honourable W Matsemela, Dr Molale and the Department’s former Director Legal Services, Mr X Nyoka, including the Complainant.

4.4.3.6 A letter dated 10 July 2015 from my office to the Complainant, advising him of the letter from the Department relating to his transfer.

4.4.3.7 A letter dated 28 October 2015 from the Deputy Public Protector to Dr Molale.

4.4.3.8 A letter dated 19 July 2016 from the Deputy Public Protector to the MEC.
4.4.3.9 A reminder dated 05 December 2016 from the Deputy Public Protector to the MEC.

4.4.3.10 An acknowledgement letter dated 18 January 2017 from the office of the MEC to my office.

4.4.3.11 A subpoena in terms of section 7(4)(a) of the Public Protector Act dated 27 March 2017 from my office to the MEC and Departmental officials to appear before me on 24 April 2017.

4.4.3.12 A letter dated 07 July 2017 from the former Director General, Dr Sebego, to the MEC appealing for the latter’s intervention regarding the Head of the Department’s failure to co-operate with my office.

4.4.3.13 A subpoena in terms of section 7(4)(a) of the Public Protector Act dated 27 July March 2017 from my office to the MEC and Department officials to appear before me on 08 August 2017.

4.4.3.14 A letter dated 15 August 2017 from my office to the Department confirming resolutions taken at the subpoena hearing of 08 August 2017.

4.4.3.15 A letter dated 18 August 2017 from the Department to my office responding to issues raised at the subpoena hearings of 08 August 2017.

4.4.3.16 A letter dated 22 September 2017 from the Complainant responding to my letter of 15 September 2017 which requested his comments on the Departmental submissions.

4.4.3.17 A notice dated 27 July 2018 issued in terms of section 7(9)(a) of the Public Protector Act to the Department officials, Administrator, Dr A Seakamela and Dr Molale.
4.4.3.18 A letter dated 07 August 2018 from Dr Seakamela responding to the section 7(9)(a) notice.

4.4.3.19 A letter dated 18 August 2018 from Dr Molale to responding to the section 7(9)(a) notice.

4.4.4 Legislation and other legal prescripts

4.4.4.1 The Constitution.

4.4.4.2 The Public Protector Act.

4.4.4.3 The Employment of Educators Act.

4.4.4.4 The Protected Disclosures Act.

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 Department improperly failed to consider and implement the recommendations of the Internal Audit Report No. FR103/2011 into allegations of fraud, corruption and nepotism against Mr Mbiipha, the Delareyville Area Manager:

*Common cause issues*

5.1.1 On 01 November 2011, the Department's Directorate of Internal Audit received a directive from Dr Seakamela to investigate allegations of fraud, corruption and nepotism against Mr Mbiipha. This came as a result of a complaint lodged with Dr Seakamela by the teachers' unions, NAPTOSA and SADTU.
5.1.2 An investigation was conducted by the Department’s Directorate: Internal Audit into these allegations resulting in the report being issued under cover of a letter dated 08 August 2012. The report, which had specific findings and recommendations was submitted to the former MEC and further distributed to Dr Molale, the then Acting Superintendent General and Mr Tire, the Acting Executive Manager in the Dr Ruth Segomotsi Mompati District in 2012 for further handling.

5.1.3 My investigation team, after numerous attempts of accessing the report, received it from the Department on 12 December 2014.

5.1.4 My office facilitated an ADR session between the Department and Complainant on 7 July 2015. The session was chaired by the Deputy Public Protector. Messrs Nyoka and Motang, the Director: Human Resources, appeared on behalf of the Department. The session dealt extensively with the Complainant’s transfer application. The discussion on the report did not yield any desired results thus prompting my office to escalate the matter to the current MEC as per a letter dated 19 July 2016. The MEC, sadly, failed to acknowledge or respond to a communiqué from my investigation team by due date of 19 August 2016. However, in a telephonic follow up with the office of the MEC on 07 September 2016, it was revealed that the MEC had engaged the Director: Legal Services to prepare a response, which my office never received.

5.1.5 Internal Audit Report No. FR103/2011 -The following are excerpts from the report:

(a) The investigation by the Internal Audit focussed on allegations of non-compliance with tender procedure during the matric camps and appointments of Mrs Mbipha as the Deputy Chief Education Specialist and Mrs Valteyn as the Senior Education Specialist. In conclusion, the report stated that [sic]:

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"...an amount of R674, 176.24 were paid to three different schools and the process of procurement was not within the normal procurement procedure in terms our Constitutions section 217(1), Treasury Regulation 16.5.3(a)(b), Supply Chain Management System...

Investigation can conclude that the schools were used as pass through for the matric camps process of procuring services. Further investigation and investigation revealed that officials failed to withdraw themselves from the process after the conflict of interest arise in the appointment of Mrs Mbpaha.

Investigation further revealed that total amount of R2, 515,501.20 was paid to Breakthrough Solutions by Department for accommodation and transport during winter matric camps and the new scope for further investigation is needed to verify the payment."

(b) The report recommended, amongst others, as follows [sic]:

- "Recommend disciplinary hearing against Mr MS Mbpaha Delareyville Area Office Manager for the appointment of service providers and use of schools accounts to effect payments to service providers without following proper procurement systems.

- Recommend disciplinary hearing against Mr. Mbpaha for instructing payment of a fraudulent transaction to Nage Transport Enterprise an amounting of R47 000 in respect of order number 08H218867P.

- Departmental officials need to seek legal advice or opinion where it appears that the public trust and confidence would be compromised."
It should be discouraged at all cost for officials to be part of the interviewing panel which their involvement will result in perceived conflict of interest. The case of the appointment of Mrs. Mbipha and Mrs. Valtyn is the classic example.

Recommend disciplinary hearing against Mr Van Straden LAIP cost Centre Manager

Recommend disciplinary hearing against Leutiwetwetse SS requestor of service and Letimela B.J the chief user for all payment made to George Madoda Primary School;

Recommend disciplinary hearing against Mr Morakile requestor of service and Ms Botes chief user for payment made to George Madoda Primary catering for Setswana conference.

Recommend disciplinary action against Mr. H Mosone, the Principal of Phatsima High School for submitting the invoice to the department for services not rendered by the school.

Recommend disciplinary action against Mr. M R Meleloe, the Principal of Rakgwedi Bokang High School for submitting an invoice to the department for services not rendered by the school.

Recommend disciplinary action against Mr. M B Marumoloa, the Principal of George Madoda Primary School for submitting and invoice to the department for services not rendered by the school.

Further investigation to be conducted to other District Area Offices regarding the procurement of goods and services during matric camps.
New scope of investigation to be prepared for further investigation regarding the payment made to Break Travel Solutions.

Criminal case of fraud to be registered with South African Police Services in case where payments were claimed for service not rendered."

5.1.6 I issued a subpoena in terms of section 7(4)(a) of the Public Protector Act against the MEC and the Department officials to appear on 24 April 2017, but they failed to show up.

5.1.7 Another subpoena was issued on 02 August 2017. The MEC, Ms Semaswe and Mr Nyoka appeared before me on 08 August 2017 and the following directives were issued to them:

(a) The Department would provide my office with a detailed report on allegations raised by the Complainant against the Department; and

(b) The Department would provide my office with a detailed report on measures it took to ensure that the Complainant, subsequent to his transfer, was accordingly received by the Moretele Area Office.

5.1.8 In response to my directives, the Department submitted a letter dated 18 August 2017 to my office which stated as follows: [sic]

"1. Following the conclusion of the related investigation the then Superintendent General shared the investigation report with the Labour Relations Directorate for consideration of the recommendations with specific reference to determine which of the recommendations would be implementable or not.  
2. Whilst the implementation approach was still under review by the management one of the implicated officials was given the report even before management
had reached their final decision regarding possible charges to be laid and the approach to be adopted.

3. Leakage of the report weakened the Department’s position particularly in respect of the implementation of the investigation report. It was the considered view of the then Superintendent General that the leaking of the report “amounted to an act which defeated the ends of justice and compromised the entire case”.

4. In 2013 the then Superintendent General instituted disciplinary action against the official who had taken the report to the affected official. The sanctions imposed at the end of the disciplinary process included [i] a final written warning and [ii] the official was transferred out of Labour Relations.

5. We further place on record that according to the then Superintendent General the systems within the Department were weak throughout the Province due to lack of a policy regulating matric camps and the management thereof.

6. He further alluded to the fact that Mr. M.S Mbhipa rendered his resignation on 31 December 2016 and Mr D.W Tsatsimpe, who was also implicated, had passed away on 2 April 2016. The implementation of the investigation report had to once again be reviewed to determine its feasibility due to these factors.

7. As the current Acting Superintendent I am considering the merits of whether the Department should proceed with the implementation of the recommendations of the report.”

5.1.9 The Department had still not yet implemented the recommendations of the Audit Report at the time of the subpoena hearing on 08 August 2017. This was further confirmed in a letter dated 18 August 2017 from Ms Semaswe to my office which stated that she was still considering the merits of whether the Department should proceed with the implementation of the recommendations of the report.

5.1.10 The Department submitted to my investigation team under cover of a letter dated 05 March 2018 a memorandum dated 26 February 2018 which emanated from the office of Mrs Phale to the office of the District Director: Dr Ruth Segomotsi
Mompati. This correspondence sought to establish from the District, progress made with regard to opening a possible fraud and corruption case at the nearest police station. However, there was no indication if any criminal case was ever opened.

5.1.11 I issued notices dated 27 July 2018 in terms of section 7(9)(a) of the Public Protector Act to the Department, the Administrator, Dr Seakamela and Dr Molale.

5.1.12 At the time of writing this report, the Department had not responded to the notice. It was only Dr Seakamela and Dr Molale who made written submissions to my office.

5.1.13 In his response to my notice, Dr Seakamela stated in an email dated 07 August 2018 that [sic]:

"Once again thank you very much for allowing me the opportunity to respond to the report on the Complaint lodged by Mr Landane with your office. Please note that since this matter happened a few year ago, I only have vague recollections of the details of this matter. To that effect, I will confine my response to the issue raised under Paragraph 3.1.6.2. Even so, and without the benefit of relevant source documents, specific details will not be provided. Against this background, allow me to state the following:

1. I confirm that I initiated the investigation after receiving complaints as indicated in your report.

2. The concerns around non-compliance (irregular expenditure, unauthorized expenditure, supply chain prescripts and other related transgressions) were incessantly highlighted in the Auditor General's reports. When I was appointed as the acting HOD of the department, I prioritised the establishment of a Fraud and Corruption Committee to deal decisively with these transgressions. One of the main functions of this Committee was to audit all investigations in the department to ensure that each investigation is recorded and the necessary
steps are taken to implement the recommendations. The membership of the Committee consisted of all heads of the units that were also conducting various other investigations. Apart from the Internal Audit Unit, other units: Labour, Legal Services, MISS were also involved in other investigations. It therefore became imperative to establish a common register of all investigations in order to monitor their progress and to implement the recommendations flowing from the reports. In this way we would be able to effectively and promptly manage all investigations in the department. The Legal Services Unit of the department performed secretariat functions for the Committee and therefore kept all the records.

3. The cabinet reshuffle that happened during that time led to a change of political heads. Ms Mabe was then assigned the education portfolio. After her appointment to the department, she appointed Dr Molale as the Acting HOD who then took over the running of the department.

4. I am not privy to the developments beyond my acting responsibilities. The implementation of the recommendations of the report in question and all other related matters logically fell under the purview of my predecessor. I am equally uncertain as to whether the Fraud and Corruption Committee continued to sit after my departure.”

issues in dispute

5.1.14 The Complainant averred that none of the recommendations in the Audit Report were implemented.

5.1.15 In a letter dated 18 August 2017 from Ms Semaswe to my office, she argued that the implementation approach was thwarted by, amongst others, the following:

(a) One of the implicated officials was given the Audit Report before management had reached its final decision and the then Superintendent General held a view
that the leaking of the report "amounted to an act which defeated the ends of justice and compromised the entire case"; and

(b) The resignation of Mr Mbipha on 31 December 2016 and the death of Mr Tsatsimpe on 02 April 2016 both of whom were implicated in the report.

5.1.16 In his response to my notice, Dr Molale stated in a letter dated 18 August 2018 which he submitted by email on 21 August 2918 as follows [sic]:

"In response to your letter dated the 27 July 2018, I have consciously titled my response "accounting officer a nest of plots and intrigues" with the hope of capturing your attention and appreciation of the work of an accounting officer in the North-West Province.

...Throughout my entire service of thirty five years to the public service, I have never neglected my moral duty and the necessity to work to the best of my ability...

In the light of the above I deny an insinuations that may suggest that I failed to charge Mr S Mbipha. This is because when I took over as an accounting officer, Mr Mbipha’s case had been with the department for some times. I did what is humanely possible. I appointed Mr M Seshibe a labour relation director to handle Mr S Mbipha disciplinary cases. To my shock the said officer shared the confidential report with the accused. In this regard I took disciplinary steps against Mr Seshibe which culminated in his transfer out of the Labour Relation directorate. Of critical importance was the fact that I was unable to outsource Mr Mbipha case because the educator’s employment framework did not allow me to do that. Furthermore, it is critical to note that... the cases of Mbipha... involved high profile people who were politically connected.

As a classical case of maladministration and corruption Mr Seshibe was re-instated back into the labour Relations directorate despite the fact that he was
removed through a misconduct cases. Such re-instatement was done against my will by the current Mec of Education, Mr S.j Lehare.

In the light of the above, it is critical to note that I hold no briefs for either Mbipha or Kgonothi. But it is never late for the officer of the Public Protector to regain some trust and credibility by doing the following simple things:

a) Investigate the circumstances that led to the forced resignation of Dr I.S.Molale last year June 2017 and other heads of departments that refused to be captured by the power that be,

b) ....

c) Investigate why Mr Seshibe was re-instated back into the Labour Relations section despite the fact that he was found guilty of misconduct and abuse of power...,

Finally, the Office of the Public Protector is free to handle the case of Mr Mbipha in whatever manner.

This write-up is written without any prejudice and no legal advice was taken upon it...”

Application of the relevant law

5.1.17 Section 195(1)(a), (f) and (g) of the Constitution, provides for principles of good administration in all spheres of government. The Department's conduct thus needs to be tested against these administrative principles. The following are, amongst others, provisions of section 195:

“(1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(a) A high standard of professional ethics must be promoted and maintained.
(b) .....
(c) ..... 
(d) ..... 
(e) ..... 
(f) Public administration must be accountable. 
(g) Transparency must be fostered by providing the public with timely, accessible and accurate information...”

5.1.18 These principles enjoin the Department and its officials to exercise a high level of professionalism and ethics including accountability in the performance of their duties. It was therefore expected of the Department to ensure a high standard of professional conduct by implementing the Audit Report, particularly the recommended remedial action.

5.1.19 By implementing the Audit Report, the Department and its officials would be in compliance with the democratic principles and values of accountability and transparency.

5.1.20 The Department conceded that the recommendations of its internal investigation process were not implemented because one official resigned and the other passed on. This is despite the fact that it was also recommended that cases should be reported to the South African Police Service where there was conduct of criminality on anyone. Adverse findings were further made against other officials who are still employed by the Department.

5.2 Regarding whether the Department irregularly transferred the Complainant to the Moretele Area Office:

Common cause issues

5.2.1 During an ADR session that was facilitated by my office on 07 July 2015 between the Complainant and the Department, the Complainant indicated that he had
applied to be transferred to the Moretele Area Office to be nearer his home. The Department reported that the application was receiving attention and it undertook to provide my office with feedback on the matter.

5.2.2 On 09 July 2015 my office received a letter dated 06 June 2015 from the Superintendent General which was addressed to the Complainant and stated that [sic]:

"1. *Your request to be placed in the school nearer home is therefore granted as reflected below:

2. You are therefore placed as follows:

*Moratwe High School

*School Emis 600101375

*District: Bojanala

*Area Office: Moretele

*Cluster: Makapanstad North

3. The transfer is in line with chapter 3 of the Employment of Educators Act 76 of 1998 as amended, it is a horizontal transfer, ie Post Level and Post Class as well as school grading level is the same.

4. You are further directed to report to Mr MV Seshibe, District Director in Madibeng Area Offices on Monday (13/07/2015) at 08h00 in the morning.

5. Hope you will find this communiqué relevant to your request."

5.2.3 The Complainant confirmed in a letter dated 22 September 2017 that he was indeed transferred and he reported for duty at Moratwe Secondary School on 20 July 2015.
Issues in dispute

5.2.4 The Complainant argued that his transfer to the Moratwe High School was irregular because the Department failed to give him a vacancy list to identify a school of his own choice.

5.2.5 My office raised the matter with the Department and in its response as per a letter dated 18 August 2017 it stated that [sic]:

"...on 20 July 2015 Mr. H.M Letswalo, Circuit Manager of the Moretele Area Office visited the school to introduce Mr. Landane as the new Principal of the School. The introductions were made collectively to the Acting Principal and the Staff. It was further agreed that Mr. Landane would be introduced to the School Governing Body later in the week...on 21 July 20 15 Mr. Landane immediately assumed his duties as Principal and visited the Moretele Area Office to collect subject files and other work related documentation..."

5.2.6 The Department, in the same letter of 18 August 2017, alluded to the following:

"...the intervention of the District was subsequently solicited and it was evident from the time registers provided that Mr Landane had absented himself for a period exceeding fourteen [14] consecutive work days. The Directorate: Labour Relations in the District undertook an investigation which confirmed his absence for a period of fourteen [14] consecutive work days. Hence by operation of law Mr. Landane's services with the Department were terminated..."

5.2.7 The Department indicated that the termination of the Complainant's services was therefore as a result of his absence from work for a period of 14 days.

5.2.8 My office wrote a letter dated 15 September 2017 to the Complainant wherein he was asked to comment on the submissions by the Department. In his response
dated 22 September 2017, he stated that [sic]: "... the directive to instruct me to first report at the region was and still is saturated with injustice as transferred people report at affected workstation. I presented the transfer letter to the Area Manager Mrs K Mosala and Mr H.M Letswalo... I explained the irregular transfer letter to the two mentioned officials... to register deep seated displeasure for the transfer happened outside ELRC Resolution 1 of 2014. I was not given vacancy list suited for such to choose institution of my choice..."

Application of the relevant law

5.2.9 Chapter 3 of the Employment of Educators Act, 1998 which deals with appointments, promotions and transfers of educators, provides that:

"8(1) subject to the provisions of this Chapter-
(a) ... the Head of Department may transfer any educator in the service of the relevant department to any post or position in any other department of State with the prior approval of the person in that other department of State having the power to appoint or transfer and with the consent of that educator; and
(b) .......
(c) The Head of Department may transfer any educator in the service of the provincial department of education to any other post in that department.
(2) No transfer to any post on the educator establishment of the public school...shall be made unless the recommendation of the governing body of the public school...has been obtained."

5.2.10 The provision empowers the Head of the Department to transfer any educator in the provincial department to any post in that department with the consent of the educator concerned. It follows therefore that, the transfer would only be possible if the educator can give his or her consent.
5.2.11 In this matter the Complainant initiated his transfer and the Head of the Department considered and approved his application accordingly. The Complainant confirmed his transfer in his letter to my office dated 22 September 2017 and did not raise any irregular conduct on the part of the Department.

Conclusion

5.2.12 Based on the evidence gathered, it can be concluded that the Department processed the Complainant's transfer in terms of the applicable legislation and his termination of his services had no link to his transfer.

5.2.13 There was also no evidence at my disposal linking the Department's internal investigation into fraud, corruption and nepotism with the Complainant's transfer and termination of his service.

5.2.14 Evidence at hand actually indicates that the Complainant initiated the transfer process.

5.3 Regarding whether the Complainant was prejudiced by the conduct of the Department in the circumstances:

5.3.1 The Complainant has been referring to himself as "an unfairly dismissed whistle blower" as he is of the opinion that he was victimized for reporting the case of fraud, corruption and nepotism to my office.

Application of the relevant law

5.3.2 Section 23(1) of the Constitution guarantees a fundamental right in respect of labour relations by providing that "everyone has the right to fair labour practices."
5.3.3 The Labour Relations Act 66 of 1995 (LRA) gives effect to the right to fair labour practices in that employees have the right not to be unfairly dismissed or subjected to unfair labour practices.

5.3.4 The South African Government has demonstrated its support for the concept of whistle blowing and acknowledged the need to offer legal protection to whistle blowers with the introduction of the Protected Disclosures Act 26 of 2000 (PDA). The PDA introduced provisions for employees to report unlawful or irregular conduct by employers and fellow employees, while providing for the protection of employees who blow the whistle.

5.3.5 Section 2(1)(a) of the PDA provides that the objective of the PDA is:

5.3.5.1 To protect an employee, whether in the private or the public sector, from being subjected to an occupational detriment on account of having made a protected disclosure.

5.3.6 In terms of section 3 of the PDA, “No employee may be subjected to any occupational detriment by his or her employer on account, or partly on account, of having made a protected disclosure.”

5.3.7 Section 4(1)(b) of the PDA provides that:

“Any employee who has been subjected, is subject or may be subjected, to an occupational detriment in breach of section 3, may pursue any other process allowed or prescribed by any law.”

5.3.8 In terms of section 4(3) of the PDA, “any employee who has made a protected disclosure and who reasonably believes that he or she may be adversely affected on account of having made that disclosure, must, at his or her request and if reasonably possible or practicable, be transferred from the post or position
occupied by him or her at the time of the disclosure to another post or position in the same division or another division of his or her employer or, where the person making the disclosure is employed by an organ of state, to another organ of state."

5.3.9 The Complainant contended that since the termination of his services by the Department in 2016, he remains unemployed and is neither earning any income nor enjoying any employment benefits as it was the case prior to the termination of his services.

5.3.10 The Department argued that the Complainant’s dismissal was not unfair because he absconded as indicated in its letter to my office dated 18 August 2017.

5.3.11 In terms of section 14(1) of the Employment of Educators Act, 1998, an educator appointed in a permanent capacity who is absent from work for a period exceeding 14 consecutive days without permission of the employer shall, unless the employer directs otherwise, be deemed to have been discharged from service on account of misconduct, in the circumstances with effect from the day following immediately after the last day on which the educator was present at work.

Conclusion

5.3.12 There is no evidence at my disposal that suggests that the Complainant was unfairly dismissed or his transfer was irregular, neither was there a link between his reporting of the fraud, corruption and nepotism case to my office and the subsequent termination of his service.

5.3.13 The transfer of the Complainant took place after having made disclosure, which disclosure is protected in terms of the PDA. However, the dismissal of the Complainant was as a result of his misconduct and therefore he was not subjected to occupational detriment.
5.3.14 The Department submitted in a letter dated 18 August 2017 that the Directorate: Labour Relations at Bojanala District investigated allegations of absenteeism by the Complainant and found that he was absent from his work station for fourteen (14) consecutive work days. The Employment of Educators Act, clearly provides that an educator who absents him/herself from work for a period of 14 consecutive days, shall (my emphasis) be deemed to have been discharged from service on account of misconduct.

5.3.15 Accordingly, the allegations that he was unfairly dismissed for having made protected disclosure, are unfounded.

5.3.16 Therefore, any prejudice suffered by the complainant was not as a result of the improper conduct of the Department.

5.3.17 Lastly, whilst the South African Government has demonstrated its support for the concept of whistle blowing and acknowledged the need to offer legal protection to whistle blowers (employees) with the introduction of the PDA, employees should not abuse this wonderful legislation by using it to perpetuate their misconduct at the workplace.

6 FINDINGS

Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I now make the following findings:
6.1 Regarding whether the Department improperly failed to implement the recommendations of the Internal Audit Report No. FR103/2011 into allegations of fraud, corruption and nepotism against Mr Mbiпла, Delareyville Area Manager:

6.1.1 The allegation that the Department improperly failed to implement the recommendations of the Internal Audit Report No. FR103/2011 into allegations of fraud, corruption and nepotism against Mr Mbiпла is substantiated.

6.1.2 The reasons advanced by the Department that it could not implement the recommendations of the report are unreasonable and improper. The recommendations in the report provided, amongst others, that criminal cases be opened with the South African Police Service where there was conduct of criminality and disciplinary action be taken against the officials who are still employed within the public administration.

6.1.3 The Department clearly failed to uphold the democratic values and principles enshrined in the Constitution by failing to implement the recommendations of the report, and thus acted contrary to the spirit espoused in section 195(1)(a), (f) and (g) of the Constitution.

6.1.4 The conduct of the Department therefore constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration in section 6(4)(a)(i) of the Public Protector Act.

6.2 Regarding whether the Department irregularly transferred the Complainant to the Moretele Area Office:

6.2.1 The allegation that the Complainant’s transfer to Moretele Area Office was irregular is not substantiated.
6.2.2 The Complainant initiated his application to be transferred to the Moretele Area office to be near his home. The Department processed and approved his application. He was accordingly transferred to the Moratwe High School in the Moretele area.

6.2.3 There was no evidence at my disposal pointing to a violation of the provisions of the Employment of Education Act relating to the transfer of educators since the Department acceded to the request by the Complainant to be placed nearer his home.

6.2.4 I accordingly cannot find any irregularity on the part of the Department in transferring the Complainant nearer his home.

6.2.5 The conduct of the Department in this regard does not constitute improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration in section 6(4)(a)(i) of the Public Protector Act.

6.3 Regarding whether the Complainant was prejudiced by the conduct of the Department in the circumstances

6.3.1 The allegation that the Complainant was prejudiced by the conduct of the Department is not substantiated.

6.3.2 There is no evidence at my disposal that suggests that the Complainant was unfairly dismissed or his transfer was irregular, neither was there a link between his reporting of the fraud, corruption and nepotism case to my office and the subsequent termination of his service.

6.3.3 Therefore, the Complainant was neither subjected to occupational detriment nor unfairly dismissed.
7. REMEDIAL ACTION

7.1 In the light of the above findings I am directing the following appropriate remedial actions as contemplated in section 182(1)(c) of the Constitution:

7.1.1 The Administrator must, within 30 working days from the date of this report, implement the recommendations of the Internal Audit Report No. FR103/2011, by laying criminal charges against those individuals implicated in acts of fraud and corruption as cited therein and, to further institute civil action against all the implicated officials, whether still in the employ of the Department or not, to recover any monies that were unlawfully claimed and/or paid over for services not rendered; and

7.1.2 The Administrator must further take disciplinary action against the implicated officials within the Department who failed to implement the Audit Report.

8 MONITORING

8.1 The Administrator must within 15 working days of the report, submit an Action Plan to my office indicating how the remedial action at paragraph 7 will be implemented.

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

ADV BUSISIWE MKHWEBANE
PUBLIC PROCTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 07/12/2019
Assisted by:
Mr Sechele Keebine: Provincial Representative: PPSA: NW
Ms Tsholofelo Digoamaja: Senior Investigator: PPSA: NW