
"Allegations of failure by the Road Accident Fund to reimburse Mr Zah Ndlovu for expenses incurred in burying victims of road accidents”

REPORT NO. 36 of 2018/19
ISBN No 978-1-928366-94-2

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF FAILURE BY THE ROAD ACCIDENT FUND TO REIMBURSE MR ZAH NDLOVU FOR EXPENSES INCURRED IN BURYING VICTIMS OF ROAD ACCIDENTS
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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 (the Constitution) and published in terms of section 8(2A)(a) of the Public Protector Act 23 of 1994 (the Public Protector Act).

(ii) The report communicates my findings and remedial action in terms of section 182(1)(c) of the Constitution following an investigation into allegations of an undue delay or failure by the Road Accident Fund (the RAF) to reimburse Mr Zah Ndlovu for expenses relating to the burial of victims of motor vehicle accidents.

(iii) Mr Zah Ndlovu (the Complainant) is the proprietor of Ikhaya Funeral Home and he lodged a complaint with my office on 13 January 2017 alleging that the RAF was unduly delaying or failing to reimburse him for costs incurred regarding the burial of victims of motor vehicle accidents.

(iv) In the main, the Complainant alleged that:

(a) He conducted funerals for victims of motor vehicle accidents;

(b) He entered into cession agreements with the relatives of victims of motor vehicle accidents in terms of which he, at his own cost, buried such victims, and the bereaved families as beneficiaries with the right to make a claim against the RAF for the cost of the funeral, ceded their rights to claim to him;

(c) The RAF refused or failed to reimburse him for such costs as they indicated that, they had put in place a tender for a panel of funeral parlours/service providers to provide such a service;
(d) Despite the existence of the said panel of funeral parlours/service providers, the RAF had paid some of his claims; and

(e) He is entitled to be reimbursed for the outstanding seven claims in respect of which he signed cession agreements with bereaved families, and had rendered a service.

(v) The investigation was conducted in terms of section 182 of the Constitution which gives me the power to investigate alleged or suspected improper or prejudicial conduct in state affairs, to report on such conduct and to take appropriate remedial action; and in terms of section 6(5) of the Public Protector Act that regulates the manner in which the power conferred by section 182 of the Constitution may be exercised in respect of government at any level.

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

(aa) Whether the RAF unduly delayed or failed to reimburse the Complainant for services rendered in accordance with signed cession agreements, and if so, whether this constitutes maladministration; and

(bb) Whether the Complainant suffered prejudice as a result of the RAF’s delay or failure to reimburse the Complainant for services rendered.

(vii) Key laws taken into account to determine if there had been maladministration and improper conduct by the RAF were principally those imposing standards that should have been complied with by the RAF and are the following:
In the matter between Zah Ndlovu and the Road Accident Fund

(aa) Road Accident Fund Act, 56 of 1996 which provides for the liability of the RAF for claims for compensation arising out of the driving of a motor vehicle where a third party has suffered loss or damage to himself or herself, or the death of or any bodily injury to any other person; and

(bb) The Road Accident Fund Amendment Bill of 2016 which seeks to create a scheme that facilitate effective financial management and enables the timely, efficient and cost effective delivery of compensation.

(viii) Upon completion of the investigation, a notice was issued in terms of section 7(9)(a) of the Public Protector Act, and the said notice was addressed to the Acting Chief Executive Officer of the RAF, Ms Lindelwa Xingwana-Jabavu. In her response, Ms Xingwana-Jabavu indicated that RAF had paid the burial expenses directly to the bereaved families and some of the families had submitted sworn declarations to RAF confirming that they paid the money to the Complainant.

(ix) After careful examination of the evidence and information obtained during the investigation and the regulatory framework setting the standard that should have been upheld by RAF, I make the following findings:

(a) Regarding whether the RAF unduly delayed or failed to reimburse the Complainant for services rendered in accordance with signed cession agreements, and if so, whether this constitutes maladministration:

(aa) The allegation that the RAF unduly delayed or failed to reimburse the Complainant for services rendered in respect of the seven (7) claims in accordance with signed cession agreements is partially substantiated.

(bb) The RAF appointed a panel of service providers in October 2015 to provide professional funeral services to families of deceased persons killed in motor
vehicle accidents in order to regularise the process in compliance with the applicable laws, PFMA included. The purpose of the RAF panel system was mainly, to assist with the burial of public transport mass funerals and where an affected family of a road accident victim has no financial means to bury the said victim.

(cc) The RAF panel system implied that there was a two way process of claiming payment from the RAF by funeral parlours, namely, the RAF’s panel payment process and the non-panel funeral parlours payment process. The Complainant was covered under the latter process because his company was not appointed to be on the panel.

(dd) In terms of the non-panellist payment process, the funeral parlours, the Complainant included, could proceed to bury the road accident victims, but will claim the burial costs from the RAF through the victim’s family. Only panel members can claim funeral costs direct from the RAF.

(ee) Even though the RAF could have publicized the introduction of the panel system widely, I found that some of its officials, as indicated in the Dr Watson’s telephone conversation with the Complainant, might have misinformed the public on the purpose of the said panel system, hence this complaint and others. The RAF initially rejected payment of the Complainant’s claims because, according to its officials, he was not part of the service providers on the RAF’s panel. Based on the evidence gathered, this information by the RAF officials was clearly incorrect.

(ff) My observation with the panel system is that it does not cover all communities across the country. A lot of the small business enterprises who provide the funeral parlour services and are based in far flung areas are excluded from this panel system which also impacts on the bereaved families. The current panel system tends to favour specific service providers to the exclusion of the smaller funeral parlours.
(gg) The allegation that the RAF unduly delayed or failed to reimburse the Complainant does not constitute improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

(hh) However, the RAF irregularly paid six (6) claims directly to the Complainant which he lodged after the grace period of November 2015 until October 2016 had expired and whilst the panel agreement was operational. The RAF indicated that its staff paid the said claims under duress following intimidation, but disciplinary action was taken by RAF against the implicated staff. My investigation revealed that it was not the Complainant who intimidated the RAF’s officials, but NAFUPA, a union, of which the Complainant was a member, hence the RAF’s interdict application was against NAFUPA to prevent further intimidation of its staff.

(ii) The payment of the six (6) claims by the RAF to the Complainant was irregular and constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

(b) **Regarding whether the Complainant suffered prejudice as a result of the RAF’s delay or failure to reimburse the Complainant for services rendered:**

(aa) The allegation that the Complainant suffered prejudice as a result of the RAF’s failure to reimburse the Complainant for services rendered is unsubstantiated.

(bb) The Complainant suffered prejudice, but such prejudice was not as a result of improper conduct of the RAF. Prejudice was suffered due to the victim families’ failure to pay him the entire burial costs paid to them by the RAF.
The Complainant could proceed to institute civil claims against the families for the balance.

(cc) The following is a breakdown of the payments made by the RAF to the families and what the families paid over to the Complainant:

<table>
<thead>
<tr>
<th>A. Name of family</th>
<th>B. Amount claimed by Mr Ndlovu and paid by RAF to families</th>
<th>C. Amount paid to Mr Ndlovu by each family</th>
<th>D. The difference between Columns B and C</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Jaca</td>
<td>R26 205.00</td>
<td>R15 000.00</td>
<td>R11205.00</td>
</tr>
<tr>
<td>2. Mavuka</td>
<td>R25 351.90</td>
<td>R20 000.00</td>
<td>R5 351.90</td>
</tr>
<tr>
<td>3. Dlamini</td>
<td>R22 872.60</td>
<td>R20 370.00</td>
<td>R2 502.60</td>
</tr>
<tr>
<td>4. Chamane</td>
<td>R31 116.40</td>
<td>R30 803.00</td>
<td>R313.40</td>
</tr>
<tr>
<td>5. Ngeza</td>
<td>R22 319.52</td>
<td>Awaiting affidavit from RAF</td>
<td>Not confirmed yet</td>
</tr>
<tr>
<td>6. Buthelezi</td>
<td>R21 727.80</td>
<td>Awaiting affidavit from RAF</td>
<td>Not confirmed yet</td>
</tr>
<tr>
<td>7. Phungula</td>
<td>R22 598.10</td>
<td>Awaiting affidavit from RAF</td>
<td>Not confirmed yet</td>
</tr>
</tbody>
</table>

TOTAL DIFFERENCE

R19372.90 (for only families who submitted affidavits)

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

The Chief Executive Officer of the RAF must:

(aa) Within 60 working days from the date of this report, review the panel of service providers’ agreement to ensure inclusivity of service providers across the country. The RAF’s panel system must incorporate as two of its critical requirements the inclusion of service providers from every local
Municipality and development of a system which enables service providers who are not on the panel to claim directly from the RAF; and

(bb) Within 90 working days from the date of this report, ensure that information sessions are conducted with funeral parlours on the roles of the RAF’s panel and the non-panel members. Measures must also be put in place to ensure that the RAF’s officials provide accurate information to the public during these information sessions. This will avoid recurrence of cases and complaints similar to this of Mr Ndlovu.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF FAILURE BY THE ROAD ACCIDENT FUND TO REIMBURSE MR ZAH NDLOVU FOR EXPENSES INCURRED IN BURYING VICTIMS OF ROAD ACCIDENTS

1. INTRODUCTION

1.1 This is my report in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and published in terms of section 8(2A)(a) of the Public Protector Act 23 of 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 to inform them of the outcome of the investigation and implementation of remedial action:

1.2.1 The Minister of Transport, Honourable Dr BE Nzimande;

1.2.2 The Director-General of the Department of Transport, Mr PG Selepe;

1.2.3 The Acting Chief Executive Officer of the Road Accident Fund, Ms Lindelwa Xingwana-Jabavu; and

1.2.4 The Complainant, Mr Zah Ndlovu.

1.3 The report relates to an investigation into allegations of failure by the RAF to reimbursee Mr Zah Ndlovu for costs incurred in respect of the burial of victims of motor vehicle accidents.
2. THE COMPLAINT

2.1 Mr Zah Ndlovu (the Complainant), the proprietor of Ikhaya Funeral Home lodged a complaint with my office on 13 January 2017 alleging that the Road Accident Fund (RAF) was unduly delaying or failing to reimburse him for costs incurred regarding the burial of victims of motor vehicle accidents.

2.2 In the main, the Complainant alleged that:

2.2.1 He conducted funerals for victims of motor vehicle accidents;

2.2.2 He entered into cession agreements with the relatives of victims of motor vehicle accidents in terms of which he, at his own cost, buried such victims, and the relatives of the victims as beneficiaries with the right to make a claim against the RAF for the cost of the funeral, ceded their rights so to claim to him;

2.2.3 The RAF refused or failed to reimburse him for such costs as it indicated that it had put in place a tender for a panel of funeral parlours/service providers in 2013 to provide such a service;

2.2.4 Despite the existence of the said panel of funeral parlours/service providers, the RAF had paid him six of his claims;

2.2.5 He was entitled to be reimbursed for the outstanding seven claims in respect of which he signed cession agreements with beneficiaries, and had rendered a service, but the RAF failed to pay;

2.2.6 Since 2012, when he and other claimants began to claim directly from the RAF, they made use of cession agreements that were provided by the RAF;
2.2.7 In 2013, when the RAF put in place a panel of service providers, he had submitted a bid, but was unsuccessful; and

2.2.8 On 21 January 2016, the RAF informed him and other service providers that they were not allowed to claim directly from the RAF anymore although he was paid six of his claims from January 2016 to August 2016.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

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

3.2. Section 182(2) 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) of the Constitution states 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 the powers to
resolve disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.5. In *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11*, the Constitutional Court, per Mogoeng CJ, held that the remedial action taken by the Public Protector has a binding effect [at para 76]. 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 above-mentioned matter of the *Economic Freedom Fighters v Speaker of the National Assembly and Others*, the Chief Justice Mogoeng 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 that 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);

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

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

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

3.6.10 In the matter of the President of the Republic of South Africa v Office of the Public Protector and Others (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP); [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017), the court held as follows, when confirming the powers of the Public Protector:

3.6.10.1 The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the constitution (paragraph 71 of the judgment);

3.6.10.2 The Public Protector has the power to take remedial action, which include instructing the President to exercise powers entrusted on them under the constitution if that is required to remedy the harm in question. (paragraph 82 of the judgment);

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

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

3.6.10.4 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or prima facie findings. (paragraph 104 of the judgment);
3.6.10.5 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court. (Paragraph 105 of the judgment). This was a finding in the EEF judgment as well;

3.6.10.6 The fact that there is no firm findings on the wrong doing, this does not prohibit the Public Protector form taking remedial action. The Public Protector’s observations constitute \textit{prima facie} findings that point to serious misconduct (paragraphs 107 and 108 of the judgment); and

3.6.10.7 \textit{Prima facie} evidence which point to serious misconduct is a sufficient and appropriate basis for the Public Protector to take remedial action (paragraph 112 of the judgment).

3.7 Section 182(2) of the Constitution directs that the Public Protector has additional powers and functions prescribed by national legislation.

3.8 The RAF is a public entity as listed in Schedule 3 to the Public Finance Management Act, 1 of 1999 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 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 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 through Appropriate Dispute Resolution (ADR) measures such as conciliation, mediation and negotiation.

4.1.3. The investigation process included telephonic and written correspondence with the Complainant and the RAF, as well as meetings with the RAF’s acting Chief Executive Officer, Ms Xingwana-Jabavu and former Chief Executive Officer, Dr Eugene Watson, and perusal of documents received. An attempt to resolve the matter through ADR means failed and my office proceeded to adjudicate on the matter in terms of the Public Protector Act. The Constitution and applicable legislation were also analysed and applied.

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? If there is a discrepancy, does the conduct amount to improper conduct or maladministration? If there was indeed improper conduct or maladministration, what would be the appropriate remedial action?

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 and making a determination on a balance
of probabilities. In this particular case, the factual enquiry focused on whether the Complainant suffered any prejudice as a result of maladministration by the RAF in delaying or failing to reimburse him for costs incurred for the burial of victims of motor vehicle accidents.

4.2.3 The question regarding what should have happened, on the other hand, focuses on the rules and standards that the conduct in question should have been complied with by the RAF to prevent maladministration and prejudice. In this particular case, the question focused on whether the delay or refusal by the RAF to reimburse the Complainant complied with the substantive and procedural requirements of the law and related prescripts. Key in this regard was whether the RAF was within its right in delaying or failing to reimburse the Complainant the costs he incurred in burying victims of motor vehicles based on cession agreements signed with bereaved families.

4.2.4 The question regarding the remedial action seeks to redress the consequences of maladministration. Where the Complainant has suffered prejudice the intention is to restore the Complainant as close as possible to where he or she would have been had the RAF complied with the regulatory framework setting the applicable rules and standards for good administration.

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

4.3.1 Whether the RAF unduly delayed or failed to reimburse the Complainant for services rendered in accordance with signed cession agreements, and if so, whether this constitutes maladministration; and

4.3.2 Whether the Complainant suffered prejudice as a result of the RAF’s delay or failure to reimburse the Complainant for services rendered.
4.4 Key sources of information

4.4.1 Correspondence

4.4.1.1 Written and telephonic communication with the Complainant;
4.4.1.2 A copy of the letter from the RAF’s former Chief Operations Officer, Ms Xingwana-Jabavu, to funeral parlours dated 21 January 2016;
4.4.1.3 A copy of the letter from the RAF to National Treasury dated 9 December 2016;
4.4.1.4 A copy of the letter from the RAF’s acting Chief Executive Officer, Ms Xingwana-Jabavu, dated 12 April 2018;
4.4.1.5 A section 7(9)(a) notice addressed to Ms Xingwana-Jabavu dated 19 April 2018;
4.4.1.6 A response from Ms Xingwana-Jabavu to the section 7(9)(a) notice dated 2 May 2018;
4.4.1.7 A supplementary response to the section 7(9)(a) notice dated 11 May 2018;
4.4.1.8 A supplementary section 7(9)(a) notice dated 19 October 2018;
4.4.1.9 A response from Ms Xingwana-Jabavu to the supplementary notice dated 02 November 2018;
4.4.1.10 A follow up response from Ms Xingwana-Jabavu dated 11 December 2018;
4.4.1.11 A copy of the letter from my office to the Complainant dated 13 December 2018;
4.4.1.12 An email from the Complainant dated 20 December 2018;
4.4.1.13 A copy of the letter from my office to Ms Xingwana-Jabavu dated 21 December 2018;
4.4.1.14 A copy of the letter from Ms Xingwana-Jabavu dated 03 January 2019 in response to my letter of 21 December 2019; and
4.4.1.15 A copy of my letter dated 27 February 2019 to Dr Watson inviting him to a meeting of 08 March 2019 in my office.
4.4.2 Meetings

4.4.2.1 A meeting between my former Executive Manager: Provincial Investigations and Integration, Mr Reginald Ndou, and Ms Xingwana-Jabavu, Mr Justice Mdhluli, Senior Manager Legal and Mr Ignatius Briel, Manager, Panel Management, on 20 February 2018;

4.4.2.2 A meeting between Mr Ndou with the following officials of the RAF, Mr Momelezi Kula, General Manager, Stakeholder Relations, Mr Justice Mdhluli, Senior Manager, Legal, and Mr Ignatius Briel, Manager: Panel Management on 07 May 2018; and

4.4.2.3 A meeting between myself and Dr Watson on 08 March 2019.

4.4.3 Documents

4.4.3.1 A complaint by email dated 13 January 2017 and supporting documents submitted by the Complainant;

4.4.3.2 A copy of a cession agreement signed between Ikhaya Funeral Home and Ms ZP Myeza dated 5 August 2016;

4.4.3.3 A copy of a cession agreement signed between Ikhaya Funeral Home and Mr MS Chamane dated 21 June 2016;

4.4.3.4 A copy of a cession agreement signed between Ikhaya Funeral Home and Ms LN Buthelezi dated 17 August 2016;

4.4.3.5 A copy of a cession agreement signed between Ikhaya Funeral Home and Mr PD Jaca dated 26 February 2016;

4.4.3.6 A copy of a cession agreement signed between Ikhaya Funeral Home and Ms NP Phungula dated 20 July 2016;

4.4.3.7 A copy of a cession agreement signed between Ikhaya Funeral Home and Mr T Mavuka dated 1 July 2016; and
4.4.3.8 A copy of a cession agreement signed between Ikhaya Funeral Home and Mr/Ms BT Dlamini (date unclear).

4.4.4 Legislation and other prescripts

4.4.4.1 The relevant provisions of the following legislation and other prescripts were considered and applied where appropriate:

(a) The Constitution;
(b) The Road Accident Fund Act 56 of 1996; and
(c) The Road Accident Act Amendment Bill.

5. THE DETERMINATION OF ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW PRESCRIPTS AND THE STANDARD THAT SHOULD HAVE BEEN COMPLIED WITH BY THE ROAD ACCIDENT FUND

5.1. Regarding whether the RAF unduly delayed or failed to reimburse the Complainant for services rendered in accordance with signed cession agreements, and if so, whether this constitutes maladministration:

Common cause issues

5.1.1 The RAF advertised a tender for a panel of service providers/funeral parlours to provide professional funeral services to families of deceased persons including the collection of deceased bodies from government mortuaries to the service provider’s funeral parlour, arrangement for the issuing of the deceased’s death certificate, preparation of the deceased body, supplying of coffins, provisions of burial or cremation services, and transportation of the deceased body to the place of burial or cremation.
5.1.2 The tender was advertised on 25 November 2013 and awarded on 28 January 2015. The panel came on board on 28 October 2015.

5.1.3 By a letter dated 21 January 2016, the Chief Operations Officer of the RAF, Ms Lindelwa Xingwana-Jabavu, wrote to funeral parlours indicating the appointment of the panel of funeral parlours. In the said letter, she indicated to funeral parlours that "any claims you may have where the family was assisted by you before 1 February 2016 will still be honoured in accordance with the process which existed before the implementation of the panel".

5.1.4 Before the issuing and award of the aforementioned tender, the RAF had honoured claims in cases where bereaved families had signed over their rights to claim from the RAF costs relating to the burial or internment of victims of motor vehicle accidents.

5.1.5 After the award of the tender, the RAF informed service providers, including the Complainant, that the RAF was giving them a grace period from November 2015 to January 2016 to submit any claims for payment, after which only service providers on the panel of funeral parlours would be entitled to claim for rendering services mentioned in paragraph 5.1.1 above.

5.1.6 The seven cession agreements forming the basis of this complaint were all signed after 1 February 2016 (that is after the expiry of the grace period).

5.1.7 The Complainant's company was amongst the companies that submitted tender bids for inclusion on the panel of service providers, but was unsuccessful.

5.1.8 On 20 October 2016, the Complainant sent a letter of demand to the RAF demanding an amount of R171 191.32 made up of the following seven (7) invoices:
5.1.8.1.1 MA Chamane (claimant): Invoice number 0486 for R31 116.40;
5.1.8.1.2 T Mavuka (claimant): Invoice number 0487 for R25 351.90;
5.1.8.1.3 PD Jaca (claimant): Invoice number 0488 for R26 205.00;
5.1.8.1.4 NP Phungula (claimant): Invoice number 0489 for R22 598.10;
5.1.8.1.5 ZZP Ngeza (claimant): Invoice number 0490 for R22 319.52;
5.1.8.1.6 NL Buthelezi (claimant): Invoice number 0491 for R21 727.80; and
5.1.8.1.7 BT Dlamini (claimant): Invoice number 0492 for R22 872.60.

*Issues in dispute*

5.1.9 It is in dispute whether the RAF is legally obliged to refund the Complainant for services rendered in line with the cession agreements that were signed after the grace period provided by the RAF of November 2015 to January 2016, and at the time when a panel of service providers was put in place after a tender process.

5.1.10 The Complainant alleged that the RAF paid him six other claims after the expiry of the grace period and as a result, the seven outstanding claims should be paid as well.

5.1.11 The Complainant further argued that Dr Watson gave him permission to continue to use the cession agreements after the implementation of the panel of service providers and the expiry of the grace period to submit outstanding claims from November 2015 to January 2016. On 9 May 2016, the Complainant made an 08 minute 15 second telephone call to Dr Watson, which he recorded. In the recording, the Complainant requested a meeting with Dr Watson after indicating that he had met previously with some officials of the RAF. The conversation went as follows:

"[Complainant] The agreement was that everybody is allowed to carry on working up until you guys, as I have mentioned, you come to the meeting
then we talk to you guys. So, but we find that last week I had a meeting with Dino Singh...he said no no only the panel that is working now ...the agreement ...the problem is only one. If somebody walks into my office as a funeral parlour and want you to assist him and he doesn't have any money and he trusts you...this is how it works...we need to understand the people because the majority that uses these facilities are black people... if they want to use Dlamini you cannot change them to use somebody else...you cannot take his right of getting assistance from Road Accident Fund. This is our issue with Road Accident Fund. [At this point Dr Watson asks for the Complainant's number and undertakes to speak to] Lindi our COO who is in charge in Durban. I just want to get an update and later today my PA is going to call you to see how we can [inaudible] [Complainant then continues] The last thing that Dino told us ...I have got my claims that are inside there already in the Road Accident Fund. He told me that those claims were not gonna be paid now because the panel started in January 1 but we said the agreement was don't call us for jobs to conduct any funerals but if somebody walks in my office don't stop him. Let him use that thing. [Dr Watson responds] Yes no that is the process. People can choose if they are gonna use an undertaker on our panel. Their claims will have to be reimbursed later. [Complainant continues] But the issue with them they are saying if Pillay lost a member of his family and he doesn't want anybody else except AVBOB...let's say AVBOB is not on the panel he doesn't want anybody else. He trusts AVBOB with his member of the family and he doesn't have money and AVBOB is not on the panel this is what we saying. Pillay must go to AVBOB and say please help me out here. [Dr Watson] But that is what we allow. [Complainant] But now they say Pillay cannot go to AVBOB. If he goes to AVBOB, he must pay from his pocket. [Dr Watson] No that is not accurate. Let me get the update. We gonna call you later today”.

5.1.12 The RAF, on the other hand, contended in a letter dated 12 April 2018, that the claims that had been paid were paid as a result of intimidation by the
Complainant against officials in their Durban region. They also indicated that senior management in their Durban region who paid the claims were reprimanded, the view of the RAF being that given the extent of the intimidation experienced by them, stronger action was not warranted.

5.1.13 This is confirmed by an earlier letter dated 09 December 2016, which the RAF wrote to the National Treasury indicating that the Complainant’s claim which was paid on 26 August 2016, was paid under duress, and further that the RAF had to obtain an interdict against NAFUPA, of which the Complainant was a member, to prevent further intimidation of RAF staff.

5.1.14 At a meeting between my office and the RAF on 20 February 2018 chaired by Mr Ndou, Ms Lindelwa Jabavu contended that the RAF was unable to make any payments to the Complainant based on the cession agreements, given that there was a contract in place. She further indicated that the service providers on the panel had indicated to RAF in no uncertain terms that any such payments would expose RAF to litigation for breach of contract.

5.1.15 At the above-mentioned meeting, Ms Xingwana-Jabavu also indicated that RAF had obtained a legal opinion that indicated that in terms of the law, cessions could not be used to claim from the RAF. The RAF made a copy of the opinion available to my office.

5.1.16 Ms Xingwana-Jabavu further indicated that RAF had always been willing to pay the costs of the funeral to the bereaved families directly, but the Complainant had been unwilling to accept this offer.

5.1.17 Finally, she indicated that RAF would trace the beneficiaries in respect of the seven outstanding claims and make payments directly to them, and the
Complainant would then be at liberty to claim from them, after which she would inform my office once this is done.

5.1.18 In a response to the notice dated 02 May 2018, the RAF indicated as follows:

"...

5. We wish to confirm that, with one exception, the families / beneficiaries were traced and claims were processed...resulting in payments to them as per the schedule below:

<table>
<thead>
<tr>
<th>Link Number</th>
<th>Claimant</th>
<th>Progress</th>
<th>Payment requested</th>
<th>Payment made</th>
</tr>
</thead>
<tbody>
<tr>
<td>3916315</td>
<td>NP Chamane</td>
<td>Family still to be located</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3949045</td>
<td>ZZP Myeza</td>
<td>Paid</td>
<td>22/03/2018</td>
<td>31/03/2018</td>
</tr>
<tr>
<td>3938428</td>
<td>NL Buthelezi</td>
<td>Paid</td>
<td>28/03/2018</td>
<td>02/05/2018</td>
</tr>
<tr>
<td>3923717</td>
<td>NP Phungula</td>
<td>Paid</td>
<td>19/03/2018</td>
<td>28/03/2018</td>
</tr>
<tr>
<td>3927198</td>
<td>T Mavuka</td>
<td>Paid</td>
<td>27/03/2018</td>
<td>25/04/2018</td>
</tr>
<tr>
<td>3923734</td>
<td>PD Jaca</td>
<td>Paid</td>
<td>27/03/2018</td>
<td>31/03/2018</td>
</tr>
<tr>
<td>3962074</td>
<td>BT Dlamini</td>
<td>Paid</td>
<td>27/03/2018</td>
<td>31/03/2018</td>
</tr>
</tbody>
</table>

6. We have noted the reference to section 17 and section 18(4) of the RAF Act and the interpretations that is preferred by the Public Protector relating to the two sections. We have further noted the case law used in substantiating thereof and we hold a view that the conclusion [sic] made therein are purely point of law as opposed to facts and the RAF does not agree with the conclusion as the crux thereof lies within the definition
of a third party. We however reserve our rights to address these crucial points of law, should it become necessary, at any appropriate forum.

7. Despite the contents of the preceding paragraph, the RAF confirms the content of the Notice on common cause facts and conclusions relating to the RAF’s liability towards bereaved families and submits that had the families approached the RAF and followed its normal claim processes, same would have been dealt with and paid within the applicable / reasonable timelines for the processing of funeral expenses claims. The delays in respect of the claims brought by Mr Zah Ndlovu was [sic] occasioned by the deliberate use of a discontinued process by the funeral undertaker following the introduction of the panel of funeral undertakers [sic] by the RAF.

8. In light of the above, we respectfully submit that the RAF has now discharged its obligations, save for the Chamane claim, in terms of section 17 read together with section 18(4) of the Act, towards the bereaved families for funeral expenses incurred. We wish to confirm that our efforts to trace the Chamane family has [sic] been unsuccessful so far and we have instructed one of our assessors, Censeo Assessors, a division of EOH, to continue with the search. As soon as the family has been located, the payment will be facilitated in the same manner as the other 6 claims were dealt with…”

5.1.19 On 11 May 2018, the RAF submitted a supplementary response to my Notice and stated as follows:

“1. Our response to your section notice [sic] dated 02 May 2018 refers.

2. In addition to submissions made in the aforementioned response, we wish to make further submissions as fully set out below:
PAYMENTS MADE TO THE FAMILIES

3. The RAF has managed to make payments directly to the bereaved families. The full details of the payments are as follows:

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1</td>
<td>ZZP Myeza</td>
<td>R22 319, 52</td>
<td>31/03/2018</td>
</tr>
<tr>
<td>2.2</td>
<td>NL Buthelezi</td>
<td>R21 727, 80</td>
<td>02/05/2018</td>
</tr>
<tr>
<td>2.3</td>
<td>NP Phungula</td>
<td>R22 598, 10</td>
<td>28/03/2018</td>
</tr>
<tr>
<td>2.4</td>
<td>T Mavuka</td>
<td>R25 351, 90</td>
<td>25/04/2018</td>
</tr>
<tr>
<td>2.5</td>
<td>PD Jaca</td>
<td>R26 205, 00</td>
<td>31/03/2018</td>
</tr>
<tr>
<td>2.6</td>
<td>BT Dlamini</td>
<td>R22 872, 60</td>
<td>31/03/2018</td>
</tr>
</tbody>
</table>

OUTSTANDING CLAIM – NP CHAMANE

5. We instructed Censeo Assessors, a division of EOH to locate the bereaved family...

6. In light of the fact that the family has now been located, a claim for funeral expenses will be facilitated by the RAF and payment will be made directly to the family.

WHETHER THE RAF DELAYED OR FAILED TO PAY THE COMPLAINANT FOR SERVICES RENDERED

8. We wish to submit that the RAF set up a panel of funeral parlours following tender process. This panel was put in place to efficiently and speedily deal with funeral expenses claims.

9. Prior to the utilization of the panel, funeral parlours were allowed to submit claims to the RAF using the cession agreement concluded between the bereaved family and the funeral parlours.
10. Following the successful conclusion of the tender and the implementation of the panel, all funeral parlours who were traditionally dealing with the RAF on the basis of cession agreements were advised in writing that the practice will no longer be applicable. This communication to the funeral parlours included the complainant herein.

11. The complainant, having been an unsuccessful bidder in the tender, elected to disregard the decision by the RAF and continued to use the cession agreements. He also resorted to intimidation and threats of violence directed at RAF staff members forcing them to pay his claims which were submitted contrary to the processes as laid down after the implementation of the panel or funeral parlours.

12. We submit that the delay in the processing of the claims submitted by the complainant was solely as a result of his deliberate continued use of the cession agreements in circumstances where the use of same was stopped.

SUBMISSIONS RELATING TO THE INTENDED REMEDIAL ACTIONS BY THE PUBLIC PROTECTOR

13. We have noted the intended remedial actions by the Public Protector and wish to make the following submissions related thereto:

14. We submit the [sic] 6 of the 7 claims have already been paid directly to the family of the deceased as the RAF holds a view that it is liable for payment of funeral expenses to the bereaved families and not the complainant. Additionally, this course of action was agreed with your office previously.
15. ...the Chamane family has now been located and a claim will be processed in [sic] for funeral expenses incurred as a result of the death of NP Chamane.

....

17. We further submit that in the event that the Public Protector takes this remedial action, same can only be in respect of the outstanding matter on NP Chamane. Moreover, we submit that the remedial action should direct the RAF to make payment to the bereaved family and not the Complainant since the RAF’s liability towards the family is not in dispute.

18. We have indicated in our preceding paragraphs that the interactions between the RAF and the Complainant involved acts of intimidation and threats of violence by the Complainant directed at RAF staff. This followed the Complainant’s deliberate disregard of RAF processes, which he on a number of occasions was advised of. It is our considered view that any remedial action by the Public Protector calling upon the RAF to apologize to the Complaint [sic] will be irrational, unreasonable and have the effect of condoning the Complainant’s unlawful behavior, [sic] which was even brought to the attention of law enforcement agencies.

19. A total disregard of the law and RAF processes by an unsuccessful bidder in tender processes cannot be condoned, neither can acts of intimidation and threats of violence directed at public officials in their execution of their public functions. Sadly, this was the case with the Complainant. It is in light of this that we submit that a remedial action, of an apology by the RAF under these circumstances, is unwarranted and will have unintended consequences and we plead with the Public Protector to reconsider same.
20. We are of the considered view that in light of the submissions made above, there is no reason for the Public Protector to proceed taking the intended remedial actions. However, in the event where the Public Protector holds a contrary view and proceed to take such remedial actions, we shall adhere to same albeit reserving our rights thereon”.

5.1.20 My office issued a supplementary notice dated 19 October 2018 in which adverse findings were made against the RAF. In response to the supplementary Notice, the RAF, through Ms Xingwana-Jabavu, responded as per a letter dated 02 November 2018 as follows:

“3. Note that the RAF [sic] have through its internal investigatory channels, Forensic Investigation Department ("FID"), established that some of the families who were paid directly by the RAF have paid the money over to Mr ZAH Ndlovu. The RAF’s FID is in the process of obtaining statements under oath from the families confirming the payments and will be submitted to your office as soon as same is available. The RAF deems it necessary to reflect the full details regarding payments and status of such claims to assist the Public Protector in coming to rational findings as per the schedule below:
<table>
<thead>
<tr>
<th>CLAIMANT</th>
<th>AMOUNT PAID</th>
<th>PAYMENT DATES</th>
<th>STATUS/COMMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>ZZP Ngeza</td>
<td>R 22 319.52</td>
<td>31/03/2018</td>
<td>Claimant was away at the time of investigations, however sworn affidavit will be provided on a later stage.</td>
</tr>
<tr>
<td>NL Buthelezi</td>
<td>R 21 727.80</td>
<td>02/05/2018</td>
<td>Claimant could not be reached for confirmation thereof.</td>
</tr>
<tr>
<td>NP Phungula</td>
<td>R 22 598.10</td>
<td>28/03/2018</td>
<td>Claimant could not be reached for confirmation thereof.</td>
</tr>
<tr>
<td>T Mavuke</td>
<td>R 25 351.90</td>
<td>25/04/2018</td>
<td>Claimant acknowledged receipt of payment, however only R20000 was paid to Mr Ndlovu the reason being that Mr Ndlovu did not give them the breakdown of expenses i.e. coffin, mortuary, transport, etc. Sworn affidavit to be provided.</td>
</tr>
<tr>
<td>PD Jaca</td>
<td>R 26 205.00</td>
<td>31/03/2018</td>
<td>Claimant acknowledged receipt of payment and he confirmed having paid Ikhaya Funerals. Sworn Affidavit to be provided.</td>
</tr>
<tr>
<td>BT Dlamini</td>
<td>R 22 872.60</td>
<td>31/03/2018</td>
<td>Claimant acknowledged receipt of payment and she confirmed having paid Ikhaya Funerals. Sworn Affidavit to be provided.</td>
</tr>
<tr>
<td>MA Chamane</td>
<td>R31 116.40</td>
<td>01/08/2018</td>
<td>Claimant acknowledged receipt of payment and confirmed that they paid Mr Ndlovu, however they were short of R200, but Mr Ndlovu told them not to worry about outstanding R200. Sworn Affidavit to be provided.</td>
</tr>
</tbody>
</table>

4. In view of the aforementioned, it is clear that RAF has discharged its statutory obligation by making payments to the Claimants, and Mr Ndlovu has duly received some of the payments form the Claimants.”

5.1.21 In a follow up letter dated 11 December 2018, Ms Xingwana-Jabavu provided the following information to my office:

“2. In our letter dated 2 November 2018, we undertook to furnish your office with statements under oath from affected families confirming that payments were made to them and the money was paid over to Mr ZAH Ndlovu. The RAF’s Forensic Investigation Department (FID) obtained
three affidavit from the families in question, which are attached herein for your ease of reference. Investigations are still underway to obtain affidavits from outstanding families.

<table>
<thead>
<tr>
<th>CLAIMANT</th>
<th>AMOUNT PAID</th>
<th>PAYMENT DATES</th>
<th>STATUS/COMMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>NP Phungula</td>
<td>R 22 598. 10</td>
<td>28/03/2018</td>
<td>Claimant could not be reached for confirmation thereof. Investigations are still underway.</td>
</tr>
<tr>
<td>NL Buthelezi</td>
<td>R 21 727. 80</td>
<td>02/05/2018</td>
<td>Claimant could not be reached for confirmation thereof. Investigation is still underway.</td>
</tr>
<tr>
<td>ZZP Myeza</td>
<td>R 22 319. 52</td>
<td>31/03/2018</td>
<td>Claimant was away at the time of investigations, however sworn affidavit will be provided on a later stage.</td>
</tr>
</tbody>
</table>

4. We shall provide progress on the outstanding affidavits once the investigation is concluded.”

5.1.22 Based on the information obtained from the RAF, my office wrote to the Complainant on 13 December 2018 requesting his affidavit confirming or disputing receipt of payments from the affected families.

5.1.23 In his email of 20 December 2018, the Complainant attached an affidavit which reflects, inter alia, the following information:

"2. I have done a follow up with my bookkeeper and administration and we have checked our bank statements and established that the following people [sic] has paid:
<table>
<thead>
<tr>
<th>Name</th>
<th>Amount</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jaca PD</td>
<td>R15 000.00</td>
<td>3 May 2018</td>
</tr>
<tr>
<td>T Mavuka</td>
<td>R20 000.00</td>
<td>30 April 2018</td>
</tr>
<tr>
<td>Thobile Dlamini</td>
<td>R20 370.00</td>
<td>2 May 2018</td>
</tr>
<tr>
<td>Chamane</td>
<td>R30 803.00</td>
<td>7 August 2018</td>
</tr>
</tbody>
</table>

5.1.24 Based on the above information, my office wrote to Ms Xingwana-Jabavu as per a letter dated 21 December 2018 to pay to the Complainant the difference of what the affected families paid over to him. She responded as follows in a letter dated 03 January 2019:

"1. Your letter dated 21 December 2018 refers.

2. We have noted the contents thereof, which we consider unfair and uneven, and wish to advise that in light of the suggestions made therein, which clearly have not taken into account our respective submissions made to your office previously, we have deemed it necessary to obtain legal counsel on the matter..."

5.1.25 In order to get further clarity on the dispute between the Complainant and the RAF regarding payment of his service rendered, I invited Dr Watson to a meeting which took place on 08 March 2019.

5.1.26 On enquiring from him to explain the RAF’s process of burying road accident victims and payment method at the time he was the RAF’s Chief Executive Officer, he, in essence, clarified as follows:

5.1.26.1 When he joined the RAF as its Chief Executive Officer, the process of burying road accident victims was not regularised and therefore subject
to abuse. He observed that certain specific funeral parlours were always appointed by the RAF to bury the road accident victims;

5.1.26.2 He said prior to regularisation of this process, the RAF would appoint funeral parlours to bury the victims and claim direct from RAF or the families would bury the victims and claim from the RAF directly or through attorneys or funeral parlours. He had never seen a cession form which was allegedly used prior to his appointment;

5.1.26.3 As the Chief Executive Officer and in order to comply with the Public Finance Management Act, 1999 (PFMA), he established a panel of service providers' system to regularise the procurement of this service;

5.1.26.4 Subsequently, the RAF advertised a tender to appoint a panel of service providers to bury the road accident victims. Several funeral parlours were appointed in the panel. The Complainant tendered, however was not successful and therefore not part of the appointed panel;

5.1.26.5 The main purpose of the RAF's panel system is two-fold, namely, to firstly, assist with the burial of mass funerals, like public transport mass deaths and secondly, where a family of a road accident victim approaches RAF for assistance to bury the said victim due to lack of finance;

5.1.26.6 The panel system means that there were now funeral parlours who were non-panel members. This implied that there was a two way process of claiming payment from the RAF by funeral parlours, namely, the RAF panel payment process and the non-panel funeral parlours payment process. The Complainant was covered under the latter process;
5.1.26.7 In terms of the non-panellist payment process, the funeral parlours, the Complainant included, could proceed to bury the road accident victims, but will claim the burial costs from the RAF through the victim’s family. Only panel members can claim funeral costs direct from the RAF. This is the only difference between the service providers on the panel and those not on the panel;

5.1.26.8 He further indicated that this new panel system was publicised widely;

5.1.26.9 I played the recorded conversation between him and the Complainant, he confirmed it, but insisted that he informed him of the process as explained above; and

5.1.26.10 He mentioned further that there is a RAF Amendment Bill being debated in order, inter alia, to simplify the process of the road accident fund burial and payment.

5.1.27 We agreed with Dr Watson that it was improper by a RAF official to have misinformed for the Complainant that his claims were not going be paid because of the existence of the panel as indicated in the recorded telephonic conversation.

Application of the law

5.1.28 Section 17 of the Road Accident Fund Act, 56 of 1996, provides for the liability of the RAF for claims for compensation arising out of the driving of a motor vehicle where a third party has suffered loss or damage to himself or herself, or the death of or any bodily injury to any other person.

5.1.29 Section 18(4) limits the liability of the RAF to compensate a third party for any loss or damage contemplated in section 17 which is the result of the
death of any person in respect of funeral expenses to the necessary actual costs to cremate the deceased or to inter him or her in a grave.

5.1.30 The RAF Act does not limit or confine the use of panel services only to mass funerals.

5.1.31 The Ministry of Transport has initiated a process of amending the Road Accident Fund Act and has proposed the Road Accident Fund Amendment Bill (RAF Bill) published in the Government Gazette No. 40441 of 24 November 2016. The RAF was created to ensure financial compensation for road accident victims, but the system is a bit complex which impact on the turnaround time of the burial of the victims and payment of the funeral costs.

5.1.32 The object of the amendment is, *inter alia*, to create a scheme that facilitate effective financial management and enables the timely, efficient and cost effective delivery of compensation.

5.1.33 Clause 3 of the RAF Bill, *inter alia*, seeks to increase the RAF’s accountability and to effect payments quickly.

5.1.34 Clause 5 proposes the capping of all funeral expenses for third party victims at R10 000.00 as opposed to R25 000.00 as provided by the RAF Act.

_Cession Agreements and panel of funeral parlours/service providers_

5.1.35 Prior to October 2015, the RAF had honoured claims, including the Complainants, in cases where bereaved families had signed over their rights to claim from the RAF costs relating to the burial or interment of victims of motor vehicle accidents. This implies that there were cession agreements between the RAF, funeral parlours and the bereaved families.
5.1.36 As indicated by Dr Watson above, in order to comply with the PFMA and regularise this process, the RAF advertised a tender on 25 November 2013 for a panel of service providers/funeral parlours to provide professional funeral services to families of deceased persons including the collection of deceased bodies from government mortuaries to the service provider’s funeral parlour, arrangement for the issuing of the deceased’s death certificate, preparation of the deceased body, supplying of coffins, provisions of burial or cremation services, and transportation of the deceased body to the place of burial or cremation. The tender was awarded on 28 January 2015 and the panel came on board on 28 October 2015. The Complainant’s company was not appointed as part of the panel.

5.1.37 After the award of the tender, the RAF informed service providers, the Complainant included, that the RAF was giving them a grace period from November 2015 to January 2016 to submit any claims for payment, after which only service providers on the panel of funeral parlours would be entitled to claim for rendering services. The Complainant continued to sign cession agreements after the November 2015 to January 2016 grace period. The Complainant indicated that the RAF settled six (6) claims he lodged after the grace period as Dr Watson had promised in their telephone conversation. The RAF, however, refused to pay him for the last outstanding seven (7) claims on the basis of the existence of the panel. Dr Watson refuted the Complainant’s assertion and indicated that he merely informed him of the two-pronged process of lodging claims with the RAF since the introduction the panel system.

**Conclusion**

5.1.38 Based on the evidence gathered, it can be concluded that since the RAF appointed a panel of service providers, the bereaved families could not legally enter into cession agreements with a person who was not on the
panel. Any cession agreement signed outside the grace period would be in
contravention of the agreement of the panel of service providers.
Furthermore, any payment effected by RAF in respect of claims outside the
grace would be irregular.

5.1.39 From the evidence gathered, it can be concluded that the RAF has since
paid all the seven (7) families directly for the costs of interment of the victims
of motor vehicle accidents relating to the seven claims, although evidence
also indicates that some of the families have since paid some, not the entire
balance owed to the Complainant. The RAF has complied with its statutory
obligation by paying the full claim for funeral costs to the families of the
victim of road accident.

5.2 Regarding whether the Complainant suffered prejudice as a result of
the RAF’s failure to compensate the Complainant for services rendered:

5.2.1 The Complainant reported that he suffered prejudice as a result of the
conduct of the RAF in failing to reimburse him for the costs of the burial of
deceased persons after the beneficiaries ceded their right to claim from the
RAF to him in respect of the seven claims. He indicated that he paid the
costs for the burial of the victims of motor vehicles giving rise to his seven
claims.

5.2.2 The RAF, on the other hand, indicated that it has paid the costs for the burial
in all of the seven (7) claims directly to the bereaved families. It has also
obtained affidavits from some of the families who confirmed having paid the
money to the Complainant. The Complainant has also acknowledged
receipt of certain payments from the four (4) affected families.
5.2.3 The following is a breakdown of the payments made by the RAF to the families and what the families paid over to the Complainant (RAF was still obtaining affidavits from the four outstanding families):

<table>
<thead>
<tr>
<th>A. Name of family</th>
<th>B. Amount claimed by Mr Ndlovu and paid by RAF to families</th>
<th>C. Amount paid to Mr Ndlovu by each family</th>
<th>D. The difference between Columns B and C</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Jaca</td>
<td>R26 205.00</td>
<td>R15 000.00</td>
<td>R11 205.00</td>
</tr>
<tr>
<td>2. Mavuka</td>
<td>R25 351.90</td>
<td>R20 000.00</td>
<td>R5 351.90</td>
</tr>
<tr>
<td>3. Dlamini</td>
<td>R22 872.60</td>
<td>R20 370.00</td>
<td>R2 502.60</td>
</tr>
<tr>
<td>4. Chamane</td>
<td>R31 116.40</td>
<td>R30 803.00</td>
<td>R313.40</td>
</tr>
<tr>
<td>5. Ngeza</td>
<td>R22 319.52</td>
<td>Awaiting affidavit from RAF</td>
<td>Not confirmed yet</td>
</tr>
<tr>
<td>6. Buthelezi</td>
<td>R21 727.80</td>
<td>Awaiting affidavit from RAF</td>
<td>Not confirmed yet</td>
</tr>
<tr>
<td>7. Phungula</td>
<td>R22 598.10</td>
<td>Awaiting affidavit from RAF</td>
<td>Not confirmed yet</td>
</tr>
<tr>
<td><strong>TOTAL DIFFERENCE</strong></td>
<td></td>
<td></td>
<td><strong>R19372.90 (for only families who submitted affidavits)</strong></td>
</tr>
</tbody>
</table>

**Conclusion**

5.2.4 Based on the evidence gathered, it can be concluded that the RAF paid the costs for the burial in all of the seven (7) claims lodged after January 2016 directly to the bereaved families, who in turn paid over some of the money (not all) to the Complainant.

6 FINDINGS

Having regard to the evidence, the regulatory framework determining the standard the RAF should have complied with and the impact on the Complainant, I am making the following findings against the RAF:
6.2 Regarding whether the RAF unduly delayed or failed to reimburse the Complainant for services rendered in accordance with signed cession agreements, and if so, whether this constitutes maladministration:

6.2.1 The allegation that the RAF unduly delayed or failed to reimburse the Complainant for services rendered in respect of the seven (7) claims in accordance with signed cession agreements is partially substantiated.

6.2.2 The RAF appointed a panel of service providers in October 2015 to provide professional funeral services to families of deceased persons killed in motor vehicle accidents in order to regularise the process in compliance with the applicable laws, the PFMA included. The purpose of the RAF panel system was mainly, to assist with the burial of public transport mass funerals and where an affected family of a road accident victim has no financial means to bury the said victim.

6.2.3 The RAF panel system implied that there was a two way process of claiming payment from the RAF by funeral parlours, namely, the RAF’s panel payment process and the non-panel funeral parlours payment process. The Complainant was covered under the latter process because his company was not appointed to be on the panel.

6.2.4 In terms of the non-panellist payment process, the funeral parlours, the Complainant included, could proceed to bury the road accident victims, but will claim the burial costs from the RAF through the victim’s family. Only panel members can claim funeral costs direct from the RAF.

6.2.5 Even though the RAF could have publicized the introduction of the panel system widely, I found that some of its officials, as indicated in Dr Eugene Watson’s telephonic conversation with the Complainant, had misinformed the public on the purpose of the said panel system, hence this complaint
and others. The RAF initially rejected payment of the Complainant’s claims because, according to its officials, he was not part of the service providers on the RAF’s panel. Based on the evidence gathered, this information was clearly incorrect by the RAF officials.

6.2.6 My observation with the panel system is that it does not cover all communities across the country. A lot of the small business enterprises who provide the funeral parlour services and are based in far flung areas are excluded from this panel system which also impacts on the bereaved families in incurring costs to bury their loved ones.

6.2.7 The allegation that the RAF unduly delayed or failed to reimburse the Complainant does not constitute improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

6.2.8 However, the RAF irregularly paid six (6) claims directly to the Complainant which he lodged after the grace period of November 2015 until October 2016 had expired and whilst the panel agreement was operational. The RAF indicated that its staff who paid the said claims under duress following intimidation, but disciplinary action was taken by RAF against the implicated staff. My investigation revealed that it was not the Complainant who intimidated the RAF’s officials, but NAFUPA, a union, of which the Complainant was a member, hence the RAF’s interdict application was against NAFUPA to prevent further intimidation of its staff.

6.2.9 The payment of the six (6) claims by the RAF to the Complainant was irregular and constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.
6.3 Regarding whether the Complainant suffered prejudice as a result of the RAF’s delay or failure to reimburse the Complainant for services rendered:

6.3.1 The allegation that the Complainant suffered prejudice as a result of the RAF’s failure to reimburse the Complainant for services rendered is unsubstantiated.

6.3.2 The Complainant suffered prejudice, but such prejudice was not as a result of improper conduct of the RAF. Prejudice was suffered due to the victim families’ failure to pay him the entire burial costs paid to them by the RAF. The Complainant could proceed to institute civil claims against the families for the balance.

6.3.3 The following is a breakdown of the payments made by the RAF to the families and what the families paid over to the Complainant:

<table>
<thead>
<tr>
<th>A. Name of family</th>
<th>B. Amount claimed by Mr Ndlovu and paid by RAF to families</th>
<th>C. Amount paid to Mr Ndlovu by each family</th>
<th>D. The difference between Columns B and C</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Jaca</td>
<td>R26 205.00</td>
<td>R15 000.00</td>
<td>R11205.00</td>
</tr>
<tr>
<td>2. Mavuka</td>
<td>R25 351.90</td>
<td>R20 000.00</td>
<td>R5 351.90</td>
</tr>
<tr>
<td>3. Diamini</td>
<td>R22 872.60</td>
<td>R20 370.00</td>
<td>R2 502.60</td>
</tr>
<tr>
<td>4. Chamane</td>
<td>R31 116.40</td>
<td>R30 803.00</td>
<td>R313.40</td>
</tr>
<tr>
<td>5. Ngeza</td>
<td>R22 319.52</td>
<td>Awaiting affidavit from RAF</td>
<td>Not confirmed yet</td>
</tr>
<tr>
<td>6. Buthelezi</td>
<td>R21 727.80</td>
<td>Awaiting affidavit from RAF</td>
<td>Not confirmed yet</td>
</tr>
<tr>
<td>7. Phungula</td>
<td>R22 598.10</td>
<td>Awaiting affidavit from RAF</td>
<td>Not confirmed yet</td>
</tr>
<tr>
<td><strong>TOTAL DIFFERENCE</strong></td>
<td><strong>R19372.90 (for only families who submitted affidavits)</strong></td>
<td><strong>Not confirmed yet</strong></td>
<td><strong>Not confirmed yet</strong></td>
</tr>
</tbody>
</table>
7. REMEDIAL ACTION

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

7.1 The Chief Executive Officer must:

7.1.1 Within 60 working days from the date of this report, review the panel of service providers' agreement to ensure inclusivity of service providers across the country. The RAF's panel system must incorporate as two of its critical requirements the inclusion of service providers from every local Municipality and development of a system which enables service providers who are not on the panel to claim directly from the RAF; and

7.1.2 Within 90 working days from the date of this report, ensure that information sessions are conducted with funeral parlours on the roles of the RAF's panel and the non-panel members. Measures must also be put in place to ensure that the RAF's officials provide accurate information to the public during these information sessions. This will avoid recurrence of cases and complaints similar to this of Mr Ndlovu;

8. MONITORING

8.1 I will require the RAF's Chief Executive Officer to submit an Implementation Plan to my office within 15 working days from the date of this report indicating how the remedial action referred to in paragraph 7 above will be implemented.
8.2 The submission of the Implementation Plan and the implementation of my remedial actions shall, in the absence of a court order, be complied with within the period prescribed in this report to avoid being in contempt of the Public Protector.

ADV. BUSISWE MKHWEBANE
THE PUBLIC PROTECTOR OF
REPUBLIC OF SOUTH AFRICA
DATE: 28/03/2019