REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF A VIOLATION OF THE EXECUTIVE ETHICS CODE BY THE FORMER MINISTER OF SPORT AND RECREATION MR FIKILE APRIL MBALULA, CONFLICT OF INTEREST, IMPROPER AND/OR IRREGULAR CONDUCT IN CONNECTION WITH FUNDING AND/OR SPONSORSHIP FOR A FAMILY HOLIDAY TRIP UNDERTAKEN TO DUBAI DURING THE PERIOD 28 DECEMBER 2016 TO 3 JANUARY 2017
### Contents

**Executive Summary**  
3

1. **INTRODUCTION**  
17

2. **THE COMPLAINTS**  
18

3. **POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**  
21

4. **THE INVESTIGATION**  
27

5. **THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED DURING THE INVESTIGATION AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS**  
34

6. **FINDINGS**  
73

7. **REMEDIAL ACTION**  
80

8. **MONITORING**  
81
Executive Summary

(i) This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), and section 3(2) of the Executive Members’ Ethics Act, 1998 (EMEA) and published in terms of section 8(1) of the Public Protector Act, 1994 (Public Protector Act).

(ii) The report is in connection with an investigation into allegations of a violation of the Executive Ethics Code by the former Minister of Sport and Recreation, Mr Fikile Mbalula (Mr Mbalula), conflict of interest as well as improper and/or irregular conduct with regard to what appeared to be an inappropriate funding and/or a sponsorship for a family holiday trip that he and his family undertook to Dubai during the period 28 December 2016 to 3 January 2017.

(iii) The investigation was conducted in accordance with the provisions of section 3 of the Executive Members’ Ethics Act, 1998 which bestows upon the Public Protector, the sole mandate to investigate complaints of unethical conduct against the Members of the Cabinet as well as section 182 of the Constitution, which also confers upon the Public Protector, the power to investigate any alleged or suspected improper and/or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action, read with sections 6 and 7 of the Public Protector Act which regulates the reporting of matters as well as the additional powers and the investigation by the Public Protector.

(iv) The complaints were lodged by a Democratic Alliance (DA) Member of Parliament, the Hon Mr Tshepo Mthlongo, MP (Hon. Mthlongo) and the Afriforum Head of Anti-Corruption Unit, Ms Monique Taute (Ms Taute).
(v) A further complaint was received on 10 October 2017 from Mr Elias Muller (Mr Muller). His complaint was primarily based on an article published in an electronic publication, the Eye Witness News (EWN) under the title, “[EXCLUSIVE] Mbalula’s R680k Dubai trip bankrolled by sports supplier Sedgars.” The allegations from the article are in effect similar to those of Hon. Mhlongo and Ms Taute hence it was deemed appropriate to consolidate all three complaints into one.

(vi) It was alleged that on or about 28 December 2016 and when Mr Mbalula was still a Minister of Sport and Recreation, undertook a trip to Dubai with his family for a vacation and that the trip was sponsored by a private company named, Sedgars Sport which at the time was conducting business with the South African Sports Confederation and Olympic Committee (SASCOC), one of the sports confederations falling under the auspices of the Department of Sports and Recreation. Further allegations were that:

(a) Sedgars Sport is a technical sponsor and/or supplier of formal clothing worn by Team South Africa. In this regard, it is alleged that the company manufactures clothing for the country’s athletics, boxing and beach volley ball competitors;

(b) The trip cost approximately, R680 000 and that about half of the cost was paid for by Sedgars through a bank account of an inactive company known only as Reimon Uniforms.

(c) In Dubai, Mr Mbalula and his family were accommodated and/or stayed at the Palm Beach Hotel, Atlantis.

(d) Whilst Mr Mbalula was a Member of Parliament and a Member of the Cabinet (Minister), he did not disclose the sponsorship of this family trip in the Register of Member’s Interests as is required in law and in so doing, he violated the Executive Ethics Code.
(e) Mr Mbalula’s conduct constitutes a violation of the Executive Ethics Code and a conflict of interest particularly because, at the time that he undertook the trip he was a Minister of Sport and Recreation whilst Sedgars Sport was conducting business with SASCOC, a confederation that resorted under the Sport and Recreation Portfolio.

(f) Apparently, Mr Mbalula issued a statement on 9 October 2017 in response to the allegations. In the statement, he stated his wish that the matter would not enter public space. He however confirmed that he and his family did travel abroad but denied that he received gifts, sponsorship or gratuities for the trip and that it was solely his private family matter. With regard to allegations of a conflict of interest, Mr Mbalula stated that he had no direct conflict of interest arising from the trip. Mr Mbalula reiterated that his family was responsible for financing the trip with funds from family resources.

(vii) Based on the analysis of the complaints including the allegations contained in the media reports as well as information that came to my attention from various sources, the following issues were identified to inform and focus the investigation:

(a) Whether there was any violation of the Executive Ethics Code by the former Minister of Sport and Recreation, Mr Fikile Mbalula when he undertook a family vacation to Dubai with his wife and children during the period 28 December 26 to 3 January 2017;

(b) Whether there were any irregularities and/or improprieties in the funding for Mr Mbalula and his family to travel to Dubai for a family vacation during the period 28 December 2016 to 3 January 2017 and if so; whether that constitute maladministration and improper conduct in particular considering that Mr Mbalula was at the time, a Member of the Executive; and;
(c) Whether Sedgars Sports, who provides the SASOC, a sports federation under the auspices of the Department of Sports and Recreation, funded and/or sponsored Mr Mbalula’s trip to Dubai during the period 28 December 2016 to 3 January 2017 and if so; whether such conduct constitute conflict of interest.

(viii) The investigation process was conducted by obtaining and analysing all relevant documentation and correspondence. Interviews were held with Mr Mbalula and all relevant stakeholders. Subpoenas were also issued to major banks and the necessary information was obtained and analysed. Relevant laws, policies and related prescripts were considered and applied throughout the investigation.

(ix) The following key legislations, policies, regulations and prescripts were considered in order to determine if Mr Mbalula acted in violation of the Executive Ethics Code, to determine whether a conflict of interest existed and to ascertain whether his conduct was improper and/or irregular in connection with the inappropriate funding and/or a sponsorship for a family holiday trip that was undertaken by Mr Mbalula and his family to Dubai during the Period 28 December 2016 to 3 January 2017:

(a) Section 96(1) of the Constitution which provides that Members of the Cabinet and Deputy Ministers must act in accordance with a Code of Ethics prescribed by national legislation.

(b) Section 96(2) of the Constitution which provides that members of the Cabinet may not:

“(a) undertake any other paid work;

(b) act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or
(c) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person."

(c) Section 195 of the Constitution which regulates basic values and principles governing public administration and subsection 195(1)(a) which envisages "a high standard of professional ethics" in the performance of public duties.

(d) The Executive Members' Ethics Act, 1998, whose primary objective is to provide for a Code of Ethics governing the conduct of members of the Cabinet, Deputy Ministers and members of Provincial Executive Councils.

(e) Section 2 of the Executive Members' Ethics Act which provides that the President must publish a Code of Ethics prescribing standards and rules aimed at promoting open, democratic and accountable government.

(f) The Executive Ethics Code (Ethics Code) as contemplated by the Executive Members' Ethics Act which was published by the President on 28 July 2000 and amended on 7 February 2007.

(g) Paragraph 2.1 of the Ethics Code which provides that:

Members of the Executive must to the satisfaction of the President-

(a) perform their duties and exercise their powers diligently and honestly;

(b) fulfil all the obligations imposed upon them by the Constitution and law;

(c) act in good faith and in the best interest of good governance, and

(d) act in all respects in a manner that is consistent with the integrity of their office or the government.

(h) Paragraph 2.3 of the Ethics Code which states that:
Members may not-

(a) ...

(b) act in a way that is inconsistent with their position;

(c) using their position or any information entrusted to them, to enrich themselves or improperly benefit any other person;

(d) ....

(e) expose themselves to a situation involving the risk of a conflict between their official responsibilities and their private interests; ...

(i) Paragraph 3 of the Ethics Code which refers to the declaration of financial and business interests.

(j) Paragraph 4 of the Ethics Code which refers to gifts and the fact that members should not accept gifts or should obtain permission from the President or Premier to accept a gift valued at more than R1 000.

(k) Paragraphs 5 and 6 of the Ethics Code which deals with the disclosures of financial interests, and explain these interests to be shares, sponsorships, gifts and hospitality, benefits, foreign travel, land and immovable property and pensions.

(x) Having considered the evidence and information obtained during the investigation as well as the applicable regulatory framework determining the standard that Mr Mbalula should have complied with I make the following findings:
(a) On whether there was any violation of the Executive Ethics Code by the former Minister of Sport and Recreation, Mr Fikile Mbalula in undertaking a trip to Dubai with his wife and children for a family vacation during the period 28 December 2016 to 3 January 2017:

(aa) The allegation that the former Minister of Sport and Recreation, Mr Fikile Mbalula violated the Ethics Code when he undertook a family vacation to Dubai with his wife and children during the period 28 December 2016 to 3 January 2017 is substantiated.

(bb) Indeed, the trip was undertaken and what was peculiar about it is that neither Mr Mbalula, his family nor his office arranged for the trip but the bookings were made by Mr Siweya on behalf of the former Minister with Munlin Travel.

(cc) In his response dated 17 November 2017, Mr Mbalula makes no mention of Mr Siweya or his relations to him. However, in his 30 November 2018 response as well as the meeting of 5 December 2018, he confirmed that Mr Siweya was not asked by him to do the bookings but initiated same out of his own volition.

(dd) There is nothing untoward in the Minister taking his family on vacation abroad. He must however have financial means to pay the costs related thereto.

(ee) When Mr Mbalula departed for Dubai, neither did he pay nor knew how much the trip would cost and with respect, this was very irresponsible of him as he could not determine whether he would afford the excursion. This is evidenced in his enquiry from Ms Jennifer Baylis of Munlin Travel about the cost of the trip. He however stated that he had the necessary funds as he had verbally asked for a loan from Mr Dockrat so that he could cover the cost of the trip.

(ff) There is however no evidence in my possession that proves that Mr Mbalula requested and/or obtained the loan prior to boarding a flight to Dubai.
(gg) Evidence in my possession indicates that the payments for the trip commenced only in February 2017 following repeated demands from Ms Baylis for the Minister to settle the costs related to the trip.

(hh) It had to take payments from Sedgars Sport and debt collectors practising under the name and style SVG Legal and Forensic Investigative Services for the costs of the trip to finally be settled.

(ii) By leaving the country for Dubai without making necessary payment arrangements for the trip and not even knowing the costs related thereto, Mr Mbalula acted in a way that was inconsistent with his position as a Member of the Cabinet and thus violated paragraph 2.3(b) of the Executive Ethics Code.

(jj) His conduct was grossly at odds with the provisions of section 96 of the Constitution read with the Executive Ethics Code in particular paragraphs 2 and 3 of the Code.

(kk) Therefore, the information and evidence obtained during the investigation conclusively suggest that Mr Mbalula’s conduct was inconsistent with the standard required of him by the Executive Ethics Code by virtue of being a member of the Cabinet. His conduct in travelling to Dubai without paying for the trip exposed him to the risk of conflict between his official responsibilities and his private family interests. With respect, the situation could have been avoided had due care been exercised.

(b) On whether there were any irregularities and/or improprieties in the funding and/or sponsorship for Mr Mbalula and his family to travel to Dubai for a family vacation during the period 28 December 2016 to 3 January 2017 and if so; whether such conduct constitutes maladministration and improper conduct in particular considering that Mr Mbalula was at the time, a Member of the Executive:
(aa) The allegation that there were irregularities and/or improprieties in the funding and/or sponsorship for Mr Mbalula and his family to travel to Dubai for a family vacation undertaken during the period 28 December 2016 to 3 January 2017 is substantiated.

(bb) It was inappropriate of Mr Mbalula, being a Member of the Executive to undertake a trip for a holiday with his family whilst he did not know what the costs were in relation thereto.

(cc) When Mr Mbalula boarded an aircraft to Dubai, he did not know how much his family vacation in Dubai was going to cost. This is illustrated in a WhatsApp message that he forwarded to Ms Jennifer Baylis in February 2017 enquiring about the total cost of the trip as he was under the impression that it cost R600 000.

(dd) The costs for the trip also escalated because Mr Mbalula and his family were initially booked business class tickets for the Emirates Airlines that would depart to Dubai on 26 December 2016. However the tickets had to be upgraded to first (1st) class tickets because Mr Mbalula and his family could not leave on the 26th due to visa complications for him and his wife. Further thereto, there were no-show costs at Atlantis the Palm hotel, for accommodation for the days that the entourage did not arrive due to delayed departure from South Africa owing to visa complications.

(ee) I did consider Mr Mbalula’s submission that he expected proceeds from a property transaction so as to fund the trip including some funds from family reserves. I however find it odd that he could sell a property and use the proceeds thereof to fund an expensive holiday for him and his family in Dubai for a period of just five (5) days. I find this reasoning quite concerning.

(ff) It was further irresponsible for Mr Mbalula, being a Member of the Executive at the time, to have undertaken the trip without having paid for it. Mr Mbalula only paid for his family vacation in Dubai during the period 28 December 2016 to 3 January 2017 after he had already undertaken the trip and in February and March 2017.
(gg) This was after he was pursued by the travel agent for payment and following demands for payment from debt collectors for the outstanding amount.

(hh) Mr Mbalula was and still, is not a client of Munlin Travel for him not to pay for the trip upfront. According to Ms Jennifer Baylis, the travel agency made the reservations for Mr Mbalula on request by Mr Siweya who is their corporate client and who has an account with Munlin Travel. The travel agency was under the impression that Mr Siweya, who was their client and who made the bookings for Mr Mbalula was going to be responsible for the account. Mr Mbalula is also not a corporate client of Munlin Travel so he should have paid upfront.

(ii) When Mr Mbalula undertook the trip to Dubai, he did not have sufficient funds to cover the cost of the trip. It was for this reason that he had to seek funds from acquaintances such as Mr Yusuf Dockrat, a Director of Sedgars Sport, on his return from vacation is indicative of this fact.

(jj) It was also inappropriate for him to enter into what he termed “loan agreement” with Mr Yusuf Dockrat, a Director of an entity doing business with SASCOC, an autonomous sporting confederation which falls under the auspices of the Department of Sports and Recreation.

(kk) What is peculiar about this loan agreement is that, it was entered into after the fact and when Mr Mbalula could not pay for the trip when demands were made by the travel agent for payment.

(ll) Therefore, Mr Mbalula, being a Member of the Executive undertook a trip to Dubai whilst he was not financially prepared for it thus exposing himself to a pressure of finding financial resources to settle the bill of R684 620.39.
(mm) Again, I reiterate that there is nothing untoward to anyone (Whether he is a Minister or a President) travelling locally and/or abroad on vacation as long as that person has sufficient financial resources to cover the costs related to the holiday. Similarly, there was nothing wrong with Mr Mbalula travelling to Dubai on holiday as long as he had sufficient funds to cover the expenses related to the holiday.

(c) On whether Sedgars Sports, the technical sponsors of SASOC, a sports confederation under the auspices of the Department of Sports and Recreation, funded and/or sponsored Mr Mbalula and his family’s trip to Dubai for a vacation held during the period 28 December 2016 to 3 January 2017 and if so; whether such conduct constitutes a conflict of interest.

(aa) The allegation that Mr Yusuf Dockrat of Sedgars Sport paid R300 000 to Munlin Travel on Mr Mbalula’s behalf using a bank account of Messrs. Reimon Uniforms in respect of his family vacation spent in Dubai during the period 28 December 2016 to 3 January 2017 and that such a transaction constitutes a conflict of interest is substantiated.

(bb) During the investigation, Mr Mbalula, Mr Dockrat and Ms Jennifer Baylis conceded to the payment which was effected from the Nedbank account of Reimon Uniforms into the bank account of Munlin Travel on 27 and 28 February 2017. The payment was made on the instruction of Mr Dockrat. He confirmed during the investigation that he directed Mr Muhammed Moolla of Reimon Uniforms to effect the payments.

(cc) However, Mr Mbalula and Mr Dockrat allege that the amount was a loan and that Mr Mbalula repaid it. What is curious though is that Mr Mbalula’s appears to have he taken the loan when he was under pressure from the travel agent that assisted him in making reservations for his travel and accommodation.
(dd) It is admitted that there was an exchange of funds between Mr Mbalula and Mr Dockrat. At Mr Mbalula’s behest, the latter and through a bank account of one of his family entities, Reimon Uniforms paid R300 000 to Munlin Travel and on 9 and 10 October 2017, the same dates when the matter was reported in the media, Mr Mbalula paid an amount of R200 000 and R75000 respectively into the bank account of Reimon Uniforms. Both Mr Mbalula and Mr Dockrat claim that they entered into a “loan agreement” hence the exchange of funds.

(ee) Having considered their submissions, I do not accept that the arrangement between them constituted a loan agreement. Had the transaction not have been reported in the media, Mr Mbalula would not have repaid the funds. Mr Mbalula sought the funds ex post facto and under extreme desperation. During the investigation, neither Mr Mbalula nor Mr Dockrat submitted proof showing that what they term a “loan agreement” was entered into before he departed for Dubai.

(ff) There was a conflict of interest when Mr Mbalula asked for funds from Mr Yusuf Dockrat who is the Director of Sedgars, a company that provided sporting apparel to Team South Africa through SASCOC. It is not in dispute that SASCOC is an independent organization that operates in accordance with its constitution.

(gg) Mr Mbalula’s argument that he did not know Sedgars is not accepted.

(hh) Mr Mbalula and Mr Dockrat have known each other for several years and on a balance of probabilities, Mr Mbalula ought to have known that Mr Dockrat is the Director of Sedgars or at least, having known him for a period in excess of two decades, Mr Mbalula is expected to have known what his friend’s line of business was and that taking a personal loan from him while he (Mr Mbalula) is the Minister of Sport and Recreation would raise questions of ethical conduct and could also result in a conflict of interest. There is absolutely no way that he could have a friend of twenty (20) years and not know what kind of a business he is running.
(ii) Mr Mbalula, as the Minister of Sport and Recreation, borrowed a sum of R300 000 from the Director of a Company that provided products to the South African Olympic Teams, can have a detrimental effect on the interest of the public as a perceived conflict of interest is created and it could be seen that Mr Mbalula may have experienced difficulty in balancing his duties as a Minister of the Department of Sport and recreation vs his private interests.

(jj) Therefore, there was an undisclosed and unmanaged conflict of interest between Mr Mbalula’s responsibility to act in the best interests of his Department and government and his private interests which had to be looked after by the Dockrats. In this regard, Mr Mbalula is therefore found to have acted in violation of the Constitution and the Executive Ethics Code and his actions constituted improper and unethical conduct.

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

(a) The President of the Republic of South Africa:

(aa) To take note of the findings made in this report with a view to sharing it with other Members of the Cabinet so as to ensure that, they guard against the conduct dealt with in this report from happening in future and to warn Members of the Cabinet against exposing themselves to such situations.

(bb) I am not taking any remedial action against Mr Mbalula as he is no longer a Member of the Executive.

(b) The Cabinet Secretary

(aa) To ensure that subsequent to the appointment of Ministers and Deputy Ministers, they are within 60 days of appointment trained about their constitutional obligations as envisaged by section 96 of the Constitution as well as the Executive Ethics Code.
(c) **The Director: Financial Intelligence Centre to take urgent and appropriate steps to:**

(aa) Investigate in terms of section 29(1) of the Financial Intelligence Centre Act 38 of 2001, the source of the R150 000 cash and or any other funds that were used to pay for Mr Mbalula’s holiday spent in Dubai during the period 28 December 2016 to 3 January 2017.

(d) **The National Director of Public Prosecutions to take urgent and appropriate steps to:**

(aa) Investigate whether the funds used to pay for Mr Mbalula’s trip were not proceeds of money laundering with a view to prosecuting anyone who may have been involved in criminal activities in respect of the arrangements and funding for Mr Mbalula’s holiday trip to Dubai during the period 28 December 2016 to 3 January 2017.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF A VIOLATION OF THE EXECUTIVE ETHICS CODE BY THE FORMER MINISTER OF SPORT AND RECREATION MR FIKILE APRIL MBALULA, CONFLICT OF INTEREST, IMPROPER AND/OR IRREGULAR CONDUCT IN CONNECTION WITH FUNDING AND/OR SPONSORSHIP FOR A FAMILY HOLIDAY TRIP UNDERTAKEN TO DUBAI DURING THE PERIOD 28 DECEMBER 2016 TO 3 JANUARY 2017

1. INTRODUCTION

1.1. This is my report as the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 3(2) of the Executive Members' Ethics Act, 1998 (the Executive Members' Ethics Act).

1.2. The report is submitted in terms of sections 8(1) and 8(3) of the Public Protector Act, 1994 (the Public Protector Act) to the following people to note the outcome of my investigation:

1.2.1. The President of the Republic of South Africa, His Excellency President Matamela Cyril Ramaphosa;

1.3. Copies of the report are circulated to;

1.3.1. The Speaker of the National Assembly, the Hon. Ms Baleka Mbete, MP;
1.3.2. The Chairperson of the National Council of Provinces, the Hon. Ms Thandi Modise, MP;
1.3.3. The Director of the Financial Intelligence Centre, Adv Jennifer Xolisile Khanyile
1.3.4. The National Director of Public Prosecutions, Adv Shamilla Batohi; and;
1.3.5. The Complainants.
1.4. The report is in connection with an investigation into allegations of a violation of the Executive Ethics Code by the Former Minister of Sport and Recreation, Mr Fikile April Mbalula (Mr Mbalula), conflict of interest and improper and/or irregular conduct with regard to funding and/or sponsorship for a family holiday trip undertaken to Dubai during the period 28 December 2016 to 3 January 2017.

2. THE COMPLAINTS

2.1 On 9 and 10 October 2017 I received complaints from a Democratic Alliance (DA) Member of Parliament, the Hon Mr Tshepo Mhlongo, MP (Hon. Mhlongo), the Afriforum Head of Anti-Corruption Unit, Ms Monique Taute (Ms Taute) as well Mr Elias Muller (Mr Muller). The complaints were principally based on an article published in an electronic publication, the Eye Witness News (EWN) under the title, “[EXCLUSIVE] Mbalula’s R680k Dubai trip bankrolled by sports supplier Sedgars.” In the article it was reported that:

“An Eyewitness News investigation has established that a sporting goods supplier allegedly paid at least R300,000 and possibly as much as R680,000 for a trip to Dubai by Minister Fikile Mbalula and his family last year. The payment presents at the very least a conflict of interest, because Mbalula was Sports Minister at the time of this trip, while the company that sponsored involved was doing business with the South African Sports Confederation and Olympic Committee (Sascoc).

The investigation suggests that Sedgars Sports sponsored at least part of the Mbalulas’ getaway in late 2016, by channelling (sic) money through an apparently inactive company called Reimon Uniforms. Sedgars has been a supplier of clothing to Sascoc for more than a decade. Sascoc’s Jessica Choga confirmed to EWN that Sedgars supplied the formal clothing worn by South Africa’s Olympic athletes and officials. She said while there was no formal contract with Sedgars, Sascoc did and continues to buy clothing from the company on a needs basis.
Public reports reveal that Sascoc’s (sic) business relationship with Sedgars extends as far back as 2005, when talks began about the company manufacturing outfits for Team South Africa. At the time, it was reported that the company had produced clothing for the country’s athletics, boxing and beach volleyball competitors.

EWN has established that Mbalula, his wife and three children departed from Johannesburg on 28 December 2016 and returned on 3 January 2017. The family stayed at the Atlantis, The Palm Hotel in Dubai, developed by Sol Kerzner’s Kerzner International Holdings and internationally acclaimed for its Atlantis-themed waterpark. The entire holiday package including return affairs cost about R680,000.

Two independent sources confirmed that Sedgars paid for at least half of the trip. Two payments were made from a bank account linked to Reimon Uniforms on 28 February 2017 the first of R200,000 and then a further R100,000 to Johannesburg-based travel agency, Munlin Travel. Reimon Uniforms appears to be an inactive company whose bank account accepts and channels funds from Sedgars-linked accounts to various other parties. It is not clear how or when the remaining balance on the trip was settled, however, it’s believed it may have been paid in cash.

An official from Munlin Travel, who declined to be identified, would neither confirm nor deny booking the holiday for Mbalula or who paid for it, citing client confidentiality. The minister himself would also neither confirm nor deny that Sedgars had paid for the trip…”

2.2 Based on the above media article, Hon Mhlongo lodged his complaint on 9 October 2017. In his complaint, he alleged that during or about 28 December 2016, Mr Mbalula undertook a trip to Dubai with his family for a vacation and that;

2.2.1. The trip was undertaken during Mr Mbalula’s tenure as the Minister of Sport and Recreation and was sponsored by a private company named, Sedgars Sport which at the time was conducting business with the South African Sports Confederation and Olympic Committee (SASCOC), one of the sports confederations falling under the auspices of the Department of Sports and Recreation.
2.2.2. **Sedgars Sport** is a technical sponsor and/or a supplier of formal clothing worn by Team South Africa. In this regard, it is alleged that the company manufactures clothing for the country’s athletics, boxing and beach volleyball competitors.

2.2.3. The trip cost approximately, R680 000 and that about half of the cost was paid for by Sedgars through a bank account of a company known only as Reimon Uniforms. In Dubai, Mr Mbalula and his family were accommodated and/or stayed at the Palm Hotel in Atlantis.

2.2.4. Whilst he was a Member of Parliament and a Member of the Executive (Minister), Mr Mbalula did not disclose the sponsorship of this family trip in the Register of Member’s Interests as is required in law and in so doing, he violated the Executive Ethics Code.

2.3 It was Hon Mhlongo’s argument that, if the allegations are true, then Mr Mbalula’s actions constitute a violation of the Executive Ethics Code and a conflict of interest as alleged in particular because, at the time that he undertook the trip he was a Minister of Sport and Recreation whilst Sedgars Sport was conducting business with SASCOC, an entity that resorted under Mr Mbalula’s Sport and Recreation portfolio.

2.4 A similar complaint was received on the same day (9 October 2017) from Ms Monique Taute of AfriForum and a third complaint was received on 10 October 2017 from Mr Elias Muller.

2.5 Mr Mbalula issued a statement on the same day (9 October 2017) in response to the allegations. In the statement, he stated his wish that the matter would not enter public space. He however confirmed that he and his family did travel abroad but denied that he received gifts, sponsorship or gratuities for the trip and that it was solely his private family matter. With regard to allegations of a conflict of interest, Mr Mbalula stated that he had no direct conflict of interest arising from the trip. Mr Mbalula reiterated that his family was responsible for financing the trip with funds from family resources.
3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

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

3.2. Section 182(1) of the Constitution provides that:

"The Public Protector has the power as regulated by national legislation –

(a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;

(b) to report on that conduct; and

(c) to take appropriate remedial action."

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

3.4. Section 4(1)(a) of the Executive Members' Ethics Act. Provides inter alia that the Public Protector “...must investigate in accordance with section 3, an alleged breach of the Code of Ethics on receipt of a complaint by the President, a Member of the National Assembly or a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet Member or a Deputy Minister..."
3.5. Section 3 of the Executive Members’ Ethics Act provides that the Public Protector must submit a report on the alleged breach of the Executive Ethics Code by a Cabinet Member within 30 days of the receipt of the complaint. If the Public Protector reports at the end of this period that the investigation has not yet been completed, she must submit another report when the investigation has been completed.

3.6. The Public Protector reported to the President on 31 October 2017 that her investigation of the complaint had not been completed and that she would submit the report when it is finalised.

3.7. Section 3(5)(a) of the Executive Members’ Ethics Act provides that the President must within a reasonable time, but not later than 14 days after receiving the report of the Public Protector, submit a copy thereof and any comments thereon, together with a report on any action taken or to be taken in regard thereto, to the National Assembly.

3.8. 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.

3.9. In the matter of the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect. The Constitutional Court further held that: “When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences.”
3.10. On 15 November 2018, a notice in terms of section 7(9)(a) of the Public Protector Act was issued to Mr Mbalula for him to respond thereto not later than 23 November 2018. At his request, I extended the return date to 30 November 2018 and I interviewed him regarding his response on 5 December 2018.

3.11. In his response, Mr Mbalula challenged my jurisdiction to investigate the matter. In this regard he set out the provisions of section 182(1) of the Constitution, the Executive Members’ Ethics Act and the Code as well as sections 6 and 7 of the Public Protector Act. According to Mr Mbalula, there is no factual basis for me to make findings following the investigation into his conduct. In this regard, he stated that I have no jurisdiction to make any findings that go beyond these three unless they are expressly provided for under the Ethics Act and as such I cannot make any adverse findings that are lawful in as far as this particular investigation is concerned.

3.12. Mr Mbalula further raised an issue regarding procedural fairness stating that I am required by common law rules of natural justice in particular the maxim *audi alteram partem* principle to provide him with a reasonable opportunity to make representations failing which, any findings that I make would be declared invalid as it would have been reached following a procedurally unfair process. In this regard he cited the requirements laid down in section 7(9) of the Public Protector Act.

3.13. With respect, the jurisdictional issues raised by Mr Mbalula in his response to the notice in terms of section 7(9) indicates a failure to understand the Public Protector Act, the Constitution and the peremptory mandate conferred on me by the Executive Members’ Ethics Act. His response which purport to place reliance on the provisions of the said legislations and even suggest that the process followed in conducting the investigation was unfair is misdirected. His arguments are clearly based on a misconception of the mandate, powers, role and functions of the Public Protector.
3.14. The investigative mandate of the Public Protector is derived from the Constitution in particular section 182(1) which provides the Public Protector with powers 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 have resulted in any impropriety or prejudice, to report on that conduct and to take appropriate remedial action with a view to strengthen and support constitutional democracy in the Republic of South Africa.

3.15. Section 7(1)(b)(i) of the Public Protector Act provides that, the format and procedure to be followed in conducting an investigation shall be determined by the Public Protector with due regard to the circumstances of each case.

3.16. Further thereto, section 7(4)(a) of the Public Protector Act provides that, "for purposes of conducting an investigation, the Public Protector may direct any person to submit an affidavit or affirmed declaration to appear before him or her to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on a matter being or to be investigated".

3.17. The Act goes further and provides in section 7(5) that "a direction referred to in subsection (4)(a) shall be by way of a subpoena containing particulars of the matter in connection with which the person subpoenaed is required to appear before the Public Protector and shall be signed by the Public Protector and served on the person subpoenaed either by a registered letter sent through the post or by delivery by a person authorized thereto by the Public Protector".

3.18. Contrary to the subpoena proceedings referred to in sections 7(4)(a) and 7(5) of the Public Protector Act, section 7(4)(b) provides that, "The Public Protector or any person duly authorised thereto by him or her may request an explanation from any person whom he or she reasonably suspects of having information which has a bearing on the matter being or to be investigated".
3.19. In exercising the powers conferred on me by section 7(1)(b)(i) of the Public Protector Act, I determined the format and procedure to be utilized in conducting the investigation of the matter.

3.20. I cannot overemphasize the mandate bestowed upon me by the Executive Members' Ethics Act. Regrettably, once a complaint is lodged in terms of this Act, I have no other option but to investigate it and report on it. The Act is a peremptory legislation and affords me no discretion.

3.21. I accept that at the time of reporting Mr Mbalula was no longer a Member of the Executive. However of importance is that when the complaint was lodged with my office, he was a Minister and therefore a Member of the Cabinet. Needless to say, the Act does not curtail on any of the powers conferred on me by the Public Protector Act hence conducting the investigation in terms of the three legislations.

3.22. The Executive Ethics Code as contained in Chapter 1 of the Ministerial Handbook provides *inter alia*:

3.22.1. Section 4 relates to gifts received and provides that:

   "4.1. A Member may not solicit or accept a gift or benefit which –
   
   a. *is in return for any benefit received from the Member in the Member's official capacity*;
   
   b. *constitutes improper influence on the Member*, or
   
   c. *constitutes an attempt to influence the Member in the performance of the Member's duties.*
4.2. When a Member, in the course of the Member’s duties, has received or has been offered a gift with a value of more than R1000, the Member must request permission from the President or the Premier, as the case may be, to retain or accept the gift. If the permission is granted, the Member may retain or accept the gift, but must disclose particulars thereof in terms of paragraph 6.3 of this Code. Where such permission has not been requested or granted the Member must either –

a. return the gift or decline the offer; or

b. donate the gift to the State.

For the purposes of paragraph 4.2 "gift" does not include travel facilities or hospitality arising from attendance at meals, functions, meetings, cocktail parties, conventions, conferences or similar events attended by the Member as part of the Member’s executive duties.”

3.22.2. Section 6 relates to financial interests to be disclosed as follows:

"Members must disclose the following interests and details:

6.3 Gifts and hospitality other than that received from a spouse or permanent companion or family Member. A description, including the value, source and date of any-

a. gift with a value of more than R500;

b. gifts received from a single source which cumulatively exceed the value of R500 in any calendar year;

c. hospitality intended as a personal gift and with a value of more than R500; and

d. hospitality intended as a gift and received from a single source, and which cumulatively exceeds the value of R500 in any calendar year."
4. THE INVESTIGATION

4.1. Methodology

4.1.1. The investigation was conducted in terms in accordance with the provisions of section 182 of the Constitution and sections 3 and 4 of the Executive Members' Ethics Act, read with sections 6 and 7 of the Public Protector Act.

4.1.2. The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.1.3. Section 4(1)(a) of the Executive Members' Ethics Act provides that the Public Protector “...must investigate in accordance with section 3, an alleged breach of the Code of Ethics on receipt of a complaint by the President, a Member of the National Assembly or a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet Member or a Deputy Minister...”.

4.1.4. However, section 3(4) of the Executive Members' Ethics Act provide that when conducting an investigation in terms of this section, the Public Protector has all the powers vested in her in terms of the Public Protector Act, 1994.

4.2. Approach to the investigation

4.2.1. The investigation approach included the analysis of relevant documentation and the consideration and application of the relevant laws, regulatory framework and prescripts.

4.2.2. Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:
4.2.2.1. What happened?

4.2.2.2. What should have happened?

4.2.2.3. Is there a discrepancy between what happened and what should have happened and does that deviation amount to irregular and/or improper conduct, maladministration, and/or a violation of legislation and the Executive Ethics Code?

4.2.2.4. In the event of a violation, what action should be taken?

4.2.3. 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.

4.2.4. In this particular case, the factual enquiry principally focused on whether or not the alleged conduct by Mr Mbalula constituted a violation of the Executive Ethics Code, maladministration, improper and/or irregular conduct as well as whether it amounted to a conflict of interest.

4.2.5. The enquiry regarding what should have happened, focuses on the laws and prescripts that regulate the standard that should have been complied with by Mr Mbalula in his capacity as a Minister of Sport and Recreation with a view to preventing any conduct that would expose him to a risk of a conflict between his official responsibilities and his private interests.

4.2.6. The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper and/or irregular conduct.
4.3. Based on the analysis of the complaints including the allegations contained in the media reports as well as information that came to my attention from various sources, the following issues were identified to inform and focus the investigation:

4.3.1 Whether there was any violation of the Executive Ethics Code by the former Minister of Sport and Recreation, Mr Mbalula when he undertook a family vacation to Dubai with his wife and children during the period 28 December 2016 to 3 January 2017;

4.3.2 Whether there were any irregularities and/or improprieties in the funding for Mr Mbalula and his family to travel to Dubai for a family vacation during the period 28 December 2016 to 3 January 2017 and if so; whether that constitute maladministration and improper conduct in particular considering that Mr Mbalula was at the time, a Member of the Executive; and;

4.3.3 Whether Sedgars Sports, who provides the SASCOC, a sports federation under the auspices of the Department of Sports and Recreation, funded and/or sponsored Mr Mbalula’s trip to Dubai during the period 28 December 2016 to 3 January 2017 and if so; whether such conduct constitute conflict of interest.

4.4. The Key Sources of information

4.4.1. Documentation

4.4.1.1. Affidavit in terms of Section 212(3) of the Criminal Procedure Act, 51 of 1977 of Margaret Veronica Lepule, Team Manager, Records Management Section of the Companies and Intellectual Property Commission (CIPC) together with relevant CIPC records;
4.4.1.2. Statement from Ms Jennifer Baylis of *Munlin Travel*, 19 March 2018, with relevant Annexures;

4.4.1.3. Statement of Mr Yusuf Dockrat, 26 April 2018, including bank statements for *Sedgars Sport* and *Reimon Uniforms* and proof of payment of R200,000 and R100,000 to *Munlin Travel*;

4.4.1.4. Statement of Mr Muhammed Moolia of *Reimon Uniforms*, 26 April 2018 Including proof of payment of R200,000 and R100,000 to *Munlin Travel*, an email sent to Jennifer Baylis of *Munlin Travel* requesting her to raise an invoice against the R300,000.00 that was deposited into the account of *Munlin Travel* and a computer generated tax invoice for the R300,000.00, annual financial statements for *Reimon Uniforms* for the year ended 28 February 2017 and *Reimon Uniforms* bank statement;

4.4.1.5. Statement of Ms Zakkliyah Dockrat of *Reimon Uniforms*, 26 April 2018;

4.4.1.6. Affidavit and Annexures from Ms Refiloe Mokhoeyane from *Emirates Airlines*, 4 June 2018;

4.4.1.7. *Emirates Electronic Ticket Information and Airline Credit Card Company Financial Reports* received from Ms Refiloe Mokhoeyane of *Emirates Airlines* on 4 June 2018;

4.4.1.8. Bank statements received from major banks;

4.4.1.9. Relevant tax invoices;

4.4.1.10. Travel itineraries;

4.4.1.11. Printouts of WhatsApp communication between Ms Jennifer Baylis and Mr Mbalula regarding payment for the holiday;
4.4.1.12. Email communication, printouts;

4.4.1.13. Payment confirmation from *Reimon Uniforms*, to Nedbank, R100,000.00, 27 February 2017;

4.4.1.14. Payment confirmation from *Reimon Uniforms*, to Nedbank, R200,000.00, 27 February 2017;

4.4.1.15. Letter dated 11 December 2007, from Rev. Dr. M A Stofile, the then Minister of Sport and Recreation, to Mr Moss Mashishi (the President of SASCOC), recognising SASCOC as a Sports Confederation in terms of the National Sport and Recreation Amendment Act, 2007. SASCOC is recognised as the national coordinating macro body for the promotion and development of high performance sport in the Republic of South Africa;

4.4.2. **Meetings and Interviews conducted**

Meetings called upon by way of a Subpoena in terms of sections 7(4) and (5) of the Public Protector Act, 1994 were held with the following persons and officials:

4.4.2.1. Mr Mbalula, former Minister of Sport and Recreation, on 28 February and 5 December 2018 respectively;

4.4.2.2. Ms Zakkiyah Dockrat, owner of *Reimon Uniforms*, on 26 April 2018;

4.4.2.3. Mr Yusuf Dockrat, director of *Sedgars Sport*, on 26 April 2018;

4.4.2.4. Mr Muhammed Moolla from *Reimon Uniforms*, on 26 April 2018;

4.4.2.5. Ms Jennifer Baylis, former CEO of *Munlin Travel*, on 3 May 2018;

4.4.2.6. Ms Sarah Bezuidenhout from *Munlin Travel*, on 3 May 2018;
4.4.2.7. Ms Zinhle Mahlababa from *Munlin Travel*, on 3 May 2018;

4.4.2.8. Ms Mbali Charlotte Msondo from *Munlin Travel*, on 3 May 2018;

4.4.2.9. Ms Abongile Mhlonto, former PA to Mr Mbalula, on 4 May 2018;

4.4.2.10. Mr Mokoditloa Eliakim Moemi, *Director General of Sport and Recreation*, on 4 May 2018;

4.4.2.11. Ms Tsakani Mabasa from *Munlin Travel*, on 8 May 2018;

4.4.2.12. Ms Charmaine Shoai from *Munlin Travel*, on 8 May 2018;

4.4.2.13. Mr Hendry Van Graan from *SVG Forensic Advisory Services*, on 8 May 2018;

4.4.2.14. Mr Dhiren Soni, Director of *Munlin Travel*, on 8 May 2018;

4.4.2.15. Ms Refiloe Mokhoeyane from *Emirates Airlines*, on 8 May 2018;

4.4.3. **Correspondence exchanged between the Public Protector and:**

4.4.3.1. The Complainant, Hon Mhlongo, 9, 10, and 20 October 2017;

4.4.3.2. The Complainant, Ms Taute, dated 9, 10 and 20 October 2017:

4.4.3.3. The former President of the Republic of South Africa, His Excellency President J G Zuma, dated 23, 31 October 2017;


4.4.3.5. The CEO, Atlantis, the *Palm Beach Hotel*, United Arab Emirates (UAE), 23, 31 October 2017;

4.4.3.6. Ms Jennifer Baylis of *Munlin Travel*, 23, 26, 27 October 2017, 2 November 2018, 7 March 2018;

Report of the Public Protector December 2018
4.4.3.7. His Excellency, Ambassador Manabile Shogole, the Consul-General of the Republic of South Africa in Dubai, UAE, 23 October 2017;

4.4.3.8. His Excellency, Ambassador M K Lekgoro, the Ambassador of the Republic of South Africa in the United Arab Emirates, 23 October 2017;

4.4.3.9. Ms Geeta Daya, Consul (Political), South African Consulate General, Dubai, UAE, 24, 31 October, 13 November and 10 December 2017;

4.4.3.10. Mr Serge Zaalof, the Chief Operating Officer (COO) of Atlantis Resorts and Residences, The Palm, Dubai, 27 November 2017, 26 February, 1 March 2018 and 15 March 2018;

4.4.4. Legislation and other prescripts


4.4.4.2. Public Protector Act, No 23 of 1994;

4.4.4.3. The Executive Members' Ethics Act, No 82 of 1998;

4.4.4.4. The Executive Ethics Code;

4.4.4.5. The Constitution of the SASCOC;

4.4.4.6. The Memorandum of Association of the SASCOC (Association incorporated under Section 21);

4.4.4.7. The Service Level Agreement entered into between the Department of Sport and Recreation South Africa, represented by Director-General Mr M E Moemi, and the SASCOC, represented by the Chief Executive Officer, Sundrasagren Reddy, 2015.
5. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED DURING THE INVESTIGATION AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

5.1 Whether there was any violation of the Executive Ethics Code by the former Minister of Sport and Recreation, Mr Fikile Mbalula in undertaking a trip to Dubai with his wife and children for a family vacation during the period 28 December 2016 to 3 January 2017;

Issues that are Common Cause

It is not disputed that:

5.1.1. During the period 28 December 2016 to 3 January 2017, Mr Mbalula and his family undertook a trip to Dubai on a family vacation and that at the time of undertaking the trip, he was a Minister that was responsible for the Department of Sport and Recreation in the government of the Republic of South Africa;

5.1.2. Mr Mbalula did not entirely fund the trip as he had to source funding therefore on his return from vacation with his family in Dubai, but was assisted in some instances by personal friends and acquaintances some of whom he refers to as “the lender”.

Issues that are in dispute

5.1.3. The issue for my determination is whether in undertaking the trip, Mr Mbalula had in any way violated the provisions of the Executive Ethics Code, in particular considering that at the period thereof, he was occupying a position of a Minister responsible for the Department of Sport and Recreation and therefore a Member of the Executive that is bound by the provisions of the Executive Ethics Code.
5.1.4. On 1 November 2010, the former President of the Republic of South Africa, His Excellency, Mr J G Zuma appointed Mr Mbalula in the portfolio of a Minister for the Department of Sport and Recreation, until a reshuffle announced on 31 March 2017 that Mr Mbalula was appointed as a Minister of Police.

5.1.5. During the investigation, it was established that, reservations were made for Mr Mbalula and his family to travel to Dubai on a family vacation just after Christmas in December 2016 and to return just after New Year in January 2017.

5.1.6. According to Ms Jennifer Baylis of Munlin Travel, a client of her travel agency by the name Mr Malwandle Siweya contacted them in November 2016 requesting travel and accommodation quotes for Mr Mbalula and his family to travel to Dubai for a family vacation in December 2016.

5.1.7. Travel Consultants from the agency were then appointed to assist in making travel and accommodation reservations for Mr Mbalula and his family with a view to looking at various options for flights and accommodation.

5.1.8. On 9 November 2016, quotations were obtained and forwarded to Mr Siweya who gave permission on 14 November 2016 for the travel agency to proceed with the reservations. In giving a go ahead, Mr Siweya wrote to a travel consultant and said:

"Can we go ahead with this booking"

5.1.9. On 18 November 2016, a correspondence was forwarded to Mr Mbalula's wife and to Mr Siweya reminding them that tickets had to be issued on the same day to avoid cancellation as business class tickets were limited, and that accommodation had to be paid as well so as to guarantee the rate and avoid cancellation. No payments were made.
5.1.10. The travelling and accommodation consultants obtained visas to the United Arab Emirates for Mr Mbalula’s children. His family was going to depart on 26 December 2016. However, there was a delay caused by failure to obtain visas for Mr Mbalula and his wife and as a result thereof, the date of departure had to be changed.

5.1.11. On 28 December 2016, Mr Mbalula and his family departed for Dubai without making payments for the trip. Further thereto, Mr Mbalula did not make any payment arrangements with the travel agency, Munlin Travel regarding the method he was going to use in paying for his family’s traveling and accommodation costs to Dubai.

5.1.12. It was only in February 2017 that Mr Mbalula started making payment arrangements in that, on 2 February 2017, Ms Baylis from Munlin Travel demanded payment for his family trip to Dubai. The total cost for the trip R684 620.39.

5.1.13. On 3 February 2017, an amount of R150 000 in cash was delivered to Ms Jennifer Baylis’ Munlin Travel offices on Mr Mbalula’s behalf and on the same day, she took the money and deposited it into the bank account of Munlin Travel. On 6 February 2017, two further cash deposits were made into the entity’s bank account with an amount of R75 000 deposited in Hatfield and another R75 000 deposited in Brooklyn.

5.1.14. On 27 and 28 February 2017 amounts of R100 000 and R200 000 respectively were deposited into Munlin Travel bank account from Reimon Uniforms Nedbank account.

5.1.15. Thereafter, on 21 March 2017, through the services of SVG Legal & Forensic Investigative Services an amount of R85000 was collected from Mr Mbalula and Munlin Travel was paid R79000 with the rest covering the collection costs of SVG Legal & Forensic Investigative Services.

5.1.16. On 15 November 2018, a notice in terms of section 7(9)(a) of the Public Protector Act was issued to Mr Mbalula for him to respond thereto not later than 23 November 2018. At his request, I extended the return date to 30 November 2018 and I interviewed him regarding his response on 5 December 2018.

Report of the Public Protector

December 2018
5.1.17. Section 7(9)(a) of the Public Protector Act provides that;

"If it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter being investigated and that such implication may be to the detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector shall afford such person an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances." (my emphasis)

5.1.18. In his response to the notice, Mr Mbalula dismally attempted to refute the allegation that he violated the provisions of section 96 of the Constitution and the Executive Ethics Code by denying that he violated those prescripts.

5.1.19. With regard to the bookings for the trip having been made by Mr Siweya who is not Mr Mbalula’s family member, he said that Mr Siweya made the bookings out of his own accord as he never asked him to do so. He however stated that it was Mr Siweya who introduced him to Munlin Travel and sent the quotations for the trip to his wife via e-mail.

5.1.20. Mr Mbalula was afforded a further opportunity to be heard and in this regard an interview was held with him on 5 December 2018. At the meeting, he explained that he planned the trip as far back as October 2016 as he had long desired to take his family on a vacation in Dubai. He met Mr Siweya in Saxon Hotel and communicated his wishes to him and Siweya advised him of the Munlin Travel. That is how he knew of the travel agent. With regard to Mr Siweya making bookings for him, Mr Mbalula stated that, he never asked him to do the bookings, Mr Siweya and on his own volition provided him with quotations which were sent to his wife’s e-mail address.
5.1.21. According to Mr Mbalula, he had an agreement with Ms Jennifer Baylis of Munlin Travel to pay for the trip on his return from Dubai hence he even phoned her prior to his departure to Dubai and whilst on Emirates Aircraft to thank her and her staff for the professional service provided to him.

5.1.22. This is however disputed by Ms Baylis who said, she did not even know Mr Mbalula. Her client was Mr Siweya and it was only after the payments were not forthcoming that she had to pursue same. She stated that in the course of their business payments are made upfront and it is only corporate clients who have accounts with the agency would have been afforded the service that Mr Mbalula received.

5.1.23. With regard to funding for the trip, Mr Mbalula stated that he expected proceeds from a sale of a certain property. However the funds were not readily available to him at the time of undertaking the trip hence he resorted in asking Mr Yusuf Dockrat for a loan. He did not present any evidence to prove that the loan was taken prior to undertaking the trip. He said that the loan agreement was verbal. There is also no proof to the effect that Mr Dockrat or any of his entities is a financial services provider.

The Application of the relevant laws and precepts

The Constitution

5.1.24. Section 96 of the Constitution regulates the conduct of the Members of the Cabinet and Deputy Ministers. At the time of undertaking the trip to Dubai for a family vacation in December 2016, Mr Mbalula was by virtue of occupying the position of Minister of Sport and Recreation as well as his appointment as such by President Jacob Zuma, a Member of the Cabinet and thus bound by the provisions of section 96 of the Constitution in so far as he conducted himself.

5.1.25. Section 96(1) provides that Members of the Cabinet and Deputy Ministers must act in accordance with a Code of Ethics prescribed by national legislation.
5.1.26. Section 96(2)(b) of the Constitution provides that, "Members of the Cabinet and Deputy Ministers may not act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests".

5.1.27. Subsection 2(c) provides that, "Members of the Cabinet and Deputy Ministers may not:

Use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.

The Executive Members’ Ethics Act

5.1.28. The primary objective of the Executive Members’ Ethics Act, 1998 is to provide for a Code of Ethics governing the conduct of members of the Cabinet, Deputy Ministers and members of Provincial Executive Councils.

5.1.29. Section 2 of the Act provides that the President must publish a Code of Ethics prescribing standards and rules aimed at promoting open, democratic and accountable government.

5.1.30. Section 3 of the Act provides that the Public Protector must investigate any alleged breach of the Code of Ethics on receipt of a complaint by inter alia a Member of the National Assembly or a permanent delegate to the National Council of Provinces.

5.1.31. Sub-sections 3(1) and (2) (a) provides that the Public Protector must submit a report of the alleged breach of a Code of Ethics within thirty (30) of receipt of the complaint to the President if the complaint is against a Cabinet Member, Premier or Deputy Minister.
5.1.32. However, section 3(3) provides that if the investigation has not yet been completed, the Public Protector must submit another report when the investigation has been completed.

5.1.33. Section 3(4) provides that when conducting an investigation in terms of this section, the Public Protector has all the powers vested in her in terms of the Public Protector Act.

5.1.34. Section 3(5)(a) of the Act provides that the President must within a reasonable time, but not later than 14 days after receiving a report from the Public Protector on an investigation into allegations of a violation of the Code by a Cabinet member, submit a copy of the report and any comments thereon, together with a report on any action taken or to be taken in regard thereto, to the National Assembly.

The Executive Ethics Code

5.1.35. The Executive Ethics Code contemplated by the Executive Members’ Ethics Act was published by the President on 28 July 2000 and amended on 7 February 2007.

5.1.36. The relevant provisions of the Code with which Cabinet Ministers must comply in performing their official responsibilities, provide as follows:

"General Standards:

2.1 Members of the Executive must to the satisfaction of the President-

(b) perform their duties and exercise their powers diligently and honestly;

(c) fulfil all the obligations imposed upon them by the Constitution and law;

(d) act in good faith and in the best interest of good governance, and

(e) act in all respects in a manner that is consistent with the integrity of their office or the government."
2.2 *In deciding whether members complied with the provisions of paragraph 2.1 above, the President.... must take into account the promotion of an open, democratic and accountable government.*

2.3 *Members may not-*

(a) …

(b) *act in a way that is inconsistent with their position;*

(c) *using their position or any information entrusted to them, to enrich themselves or improperly benefit any other person;*

(d) ..... 

(e) *expose themselves to a situation involving the risk of a conflict between their official responsibilities and their private interests;...*

**The Conclusions that could be made based on the application of the law to the facts**

5.1.37. In travelling to Dubai with his family without paying for the trip or knowing the costs related thereto, Mr Mbalula's conduct appears to have been inconsistent with the provisions of the Executive Ethics Code. He found himself having to be involved in a risk of a conflict between his official responsibilities and private family interests.

5.1.38. Further thereto, Mr Mbalula's conduct exposed him to a risk of having to compromise his position as a Minister and act in a manner that is consistent with the integrity of his office or the government, due to the situation that he exposed himself to which could have been avoided had due care been exercised.
5.2 Regarding whether there were any irregularities and/or improprieties in the funding and/or sponsorship for Mr Mbalula and his family to travel to Dubai for a family vacation during the period 28 December 2016 to 3 January 2017 and if so; whether such conduct constitutes maladministration and improper conduct in particular considering that Mr Mbalula was at the time, a Member of the Executive;

Issues that are Common Cause

It is not disputed that:

5.2.1. Mr Mbalula and his family undertook a trip to the United Arab Emirates (UAE), in particular Dubai, for the period 28 December 2016 to 03 January 2017 for a family vacation at a total cost of R684, 620.39;

5.2.2. At the time of undertaking the trip, Mr Mbalula was the Minister responsible for the Department of Sports and Recreation in the South African government.

Issues that are in Dispute

5.2.3. The issue for my determination is whether Mr Mbalula’s trip to the UAE, was legitimate and not inappropriate as well as whether it was not funded and/or sponsored by private entities doing business with the Department of Sports and Recreation, a department which Mr Mbalula was responsible for, in his official capacity as a Minister in the government of the Republic of South Africa, as alleged.

5.2.4. On 23 October 2017, I corresponded with Mr Mbalula, thus informing him of the allegations and requesting his response to same. On 27 October 2018, Mr Mbalula responded to my enquiries and requested indulgence so as to enable him to provide me with the requested information and documentation by 17 November 2017. The request was acceded to by me.
5.2.5. On 17 November 2018, Mr Mbalula responded through attorneys, Messrs. ENSafrika who commenced his response by denying the allegations that their client violated or breached the Executive Ethics Code as alleged and stated that in December 2016, Mr Mbalula concluded in his personal capacity, an oral short term loan agreement with a personal acquaintance for an amount of R300 000 plus interest.

5.2.6. Mr Mbalula withheld the name of the “lender” to protect his identity due to the fact that he was a private person who concluded a private transaction. Mr Mbalula stated that he sought the funds to partially fund a private holiday to Dubai with his wife and three (3) children for the period 28 December 2016 and 3 January 2018. He also withheld the names of his minor children so as to protect them.

5.2.7. Mr Mbalula stated that he was expecting some personal funds and that the loan was a bridging finance as the funds were urgently required for the family vacation and he would thus repay the loan on receipt of those funds that he was expecting.

5.2.8. Mr Mbalula accordingly stated that he provided the “lender” with the details of the travel agent so as to make arrangements for the payment of a deposit of R300 000 that was loaned from him.

5.2.9. Mr Mbalula informed me that the loan was concluded and he had no knowledge of the entities known as “Sedgars Sport” and “Reimon Uniforms”. He further stated that at the time, he did not know that Sedgars Sport was a technical sponsor and/or supplier of formal clothing worn by Team South Africa or that the company manufactures clothing for the country’s athletics, boxing and beach volleyball competitors.

5.2.10. In connection with the repayment of the loan, Mr Mbalula stated that when he was in a position to commence with loan repayments, he was provided with banking details of an entity known as Reimon Uniforms CC by the “lender” to pay the loan amount into that bank account. In this regard, he stated that an amount of R35000 remains outstanding and will be settled as soon as possible.
5.2.11. Mr Mbalula also denied knowledge of the relationship between the "lender" and "Reimon Uniforms". In conclusion, he emphasised that he was personally liable to Munlin Travel for an amount of R684 620.39 for the holiday and also reiterated that he used his own funds to settle it, R300 000 in respect of which was through a short term loan that he concluded with the "lender". On 28 February 2018, I had an interview with Mr Mbalula in the company of his legal representative, Mr Senzo Mbatha of Messrs. ENSafrika and he confirmed what he said in his statement which he considered to have adequately addressed my enquiries.

5.2.12. During the interview Mr Mbalula confirmed that the Department of Sport and Recreation pays a grant of twelve percent (12%) to SASCOC despite the entity operating according to its own constitution and independently of the Department of Sport and Recreation.

5.2.13. On 23 October 2017, a subpoena was issued against Ms Jennifer Helen Baylis (Ms Baylis) calling upon her to appear before me in connection with the complaint.

5.2.14. Ms Baylis was the Director of Munlin Travel, the travel agent that was responsible for making reservations for Mr Mbalula and his family to travel to Dubai on a family vacation during the period 28 December 2016 to 3 January 2017.

5.2.15. With regard to the reservations made for Mr Mbalula, Ms Baylis stated that, a client of her travel agent by the name Mr Malwandle Siweya contacted Munlin Travel in November 2016 requesting travel quotes for Mr Mbalula and his family to travel to Dubai for a family vacation in December 2016.

5.2.16. Ms Baylis stated that she allocated the reservations to one of her senior consultants, Ms Tsakani Mabasa so that she could look at various options for flights and accommodation reservations. She stated that they obtained visas to the United Arab Emirates for Mr Mbalula's children.
5.2.17. Due to the fact that Mr Mbalula and his wife were travelling on Diplomatic Passports, she could not secure visas for them and that delayed the departure date until 28 December 2016. Initially, the family were meant to depart on 26 December 2016 and as a result of the delay due to visas, the date of departure had to be changed. According to Ms Baylis, on 26 December 2016, she was contacted by Mr Mbalula’s assistant regarding the problem with the visas which was later sorted out. At this stage there were no payments made to the travel agent for the trip.

5.2.18. According to Ms Baylis, when Mr Mbalula was on the aircraft to Dubai on 28 December 2016, he called her to express his gratitude to her and Munlin Travel staff for the professional service he received when handling his travelling and accommodation reservations. Ms Baylis next communication with Mr Mbalula was on 2 February 2017 when she demanded payment that was due for the trip. In this regard, she stated that in the normal course of business, Munlin Travel would require upfront payment.

5.2.19. However, in the case of Mr Mbalula, no advance payment was made due to the period of the year in which the reservations were made as well as the short period of time in which Munlin Travel was required to deliver and the fact that visas could only be obtained on the date of departure which was the 28 December 2016. Therefore, it was only in February 2017 that she required payment for the family vacation from Mr Mbalula. The whole amount that Mr Mbalula was expected to pay for the trip was R684 620.39.

5.2.20. On 3 February 2017 at approximately 08h10, Ms Baylis received a WhatsApp message from Mr Mbalula stating that he was sending her an amount of R300 000 to Munlin Travel and the rest of the amount would be settled on 7 February 2017.

5.2.21. On the same date a cash amount of R150 000 was delivered to Ms Baylis’ office on behalf of Mr Mbalula and she personally went to the bank to deposit the money into Munlin Travel’s Diners Club credit card account.
5.2.22. On 6 February 2017, two further cash deposits were made into the entity's bank account with an amount of R75000 deposited in Hatfield and another R75000 deposited in Brooklyn. The invoices for payment by Mr Mbalula in respect of flights, accommodation, ground transport and travel insurance were as follows:

<table>
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<tr>
<th>AIR TICKETS</th>
<th>Passenger/DepDate/Route/Class</th>
<th>Excl Amt</th>
<th>VAT</th>
<th>Incl Amt</th>
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Report of the Public Protector

December 2018
Report on an investigation into allegations of a violation of the Executive Ethics Code, conflict of interest and improper and/or irregular conduct in connection with funding for a family holiday by the former Minister of Sport and Recreation, Mr Fikile Mbalula

---

**TAX INVOICE**

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<th>Invoice No</th>
<th>Date</th>
<th>Account No</th>
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**AIR TICKETS**

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**LAND ARRANGEMENTS**

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<td>499106</td>
<td>Mbalula Family Single Trip 27/12/2016-04/01/2017 Insurance: Zurich Travel Insurance Ref: Zurich Insurance Co</td>
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Report of the Public Protector December 2018
5.2.23. According to Ms Baylis, from 6 to 27 February 2017, she sent numerous WhatsApp messages to Mr Mbalula requesting payment of the outstanding amount. He responded through a WhatsApp message and stated that, “just spoken to Jusef and he says 300k will clear tomorrow”

5.2.24. Ms Baylis confirmed that on 27 February 2017, at 21h05, she received a WhatsApp message from Jusef with deposit slips for R100 000 and R200 000 respectively. On 2 March 2017 at 10h31 Ms Baylis forwarded another WhatsApp message to Mr Mbalula and stated that,
"Minister you have not paid and this matter needs to be closed urgently – this is the R84 620.39". According to Ms Baylis, between 13 and 20 March 2017, she approached Mr Stephen Van Graan of Messrs. SVG Legal & Forensic Investigative Services for recovery of the outstanding amount of R84 620.39. On 21 March 2017, Mr Mbalula sent Ms Baylis proof of payment of an amount of R85000 in respect of which Munlin Travel received R79000 and the rest went to SVG Legal & Forensic Investigative Services as collection costs. On payment of the outstanding amount, SVG Legal & Forensic Investigative Services furnished Munlin Travel with the following invoice:

---

**Mr. Stephen Hendry Van Graan t/a SVG Legal & Forensic Investigative Services**

**TAX INVOICE:**

**MUNLIN TRAVEL**

**ATTENTION:** JENNY TSEKANE

**DATE:** 24-03-2017

<table>
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<tr>
<th>YOUR CLIENT</th>
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<th>OUR FEES</th>
<th>AMOUNT DUE TO CLIENT</th>
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<td>R85 000-00</td>
<td>R4 231-01</td>
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<tr>
<td>&quot;</td>
<td>&quot;</td>
<td>R1 070-00 (Cash fee – bank deposit)</td>
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<tr>
<td>TOTAL</td>
<td></td>
<td>R592-34</td>
<td></td>
</tr>
<tr>
<td>PLUS 14% VAT</td>
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<td>R592-34</td>
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<td>AMOUNT DUE</td>
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<td>R5 894-35</td>
<td>R79 165-74</td>
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Report of the Public Protector

December 2018
During the investigation, Ms Baylis also provided an extract of a ledger account illustrating payments made towards Mr Mbalula’s account which were as follows:

<table>
<thead>
<tr>
<th>DATE</th>
<th>REFERENCE NUMBER</th>
<th>TRANSACTION DETAILS</th>
<th>RESPONSIBLE CLIENT</th>
<th>AMOUNT</th>
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<td>L3723 – Write – off Balance for Interest</td>
<td>Mbalula Fikile</td>
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During the investigation, Ms Baylis and Mesdames Zinhle Mahlabana, Mbali Charlotte Masondo, Tsakani Mabasa, Charmaine Shoai and Sarah Bezuidenhout of Munlin Travel, who were involved in making reservations for Mr Mbalula were interviewed. They all confirmed the roles they played in making such reservations in their official capacities as Munlin Travel Consultants.
5.2.26 During their testimonies, they confirmed that they went an extra mile in making reservations for Mr Mbalula as the travel agency had already closed on 22 December 2016 for Christmas holidays and they were called to assist even after the official closure of the agency.

5.2.27 On 15 November 2018, a notice in accordance with the provisions of section 7(9)(a) of the Public Protector Act was issued to Mr Mbalula for him to respond thereto not later than 23 November 2018. At his request, I extended the return date to 30 November 2018 and I interviewed him regarding his response on 5 December 2018.

5.2.28 In his response, Mr Mbalula did not appear to appreciate the impropriety of entering into what he termed “loan agreement” with Mr Dockrat. He further did not see it as inappropriate to undertake a trip abroad whilst he had no sufficient funds to finance it. This is despite his concession that the funds that he was waiting for from a property transaction had not at that time become available.

**The Application of the relevant laws and prescripts**

**The Constitution**


5.2.30 The Executive Members’ Ethics Act, 1998, was thereafter promulgated, in terms of which the President had to publish a Code of Ethics prescribing standards and rules aimed at promoting an open, democratic and accountable government, and with which Cabinet members are obliged to comply when performing their official responsibilities.
5.2.31 The Executive Ethics Code\(^1\) affirms and commits to uphold section 96 of the Constitution, setting the vision behind it, as well as outlining the conduct to be upheld by members of Cabinet in their official capacity.

5.2.32 The Executive Ethics Code, paragraph 3, refers to the declaration of financial and business interests.

5.2.33 Paragraph 4 of the Code refers to gifts and the fact that members should not accept gifts or should obtain permission from the President or Premier to accept a gift valued at more than R1 000.

5.2.34 Paragraphs 5 and 6 discuss the disclosures of financial interests, and explain these interests to be shares, sponsorships, gifts and hospitality, benefits, foreign travel, land and immovable property and pensions.

**The Conclusions that could be made based on the application of the law to the facts**

5.2.35 Based on the information and evidence obtained during the investigation and with the application of the legal framework to the facts of the matter it can be concluded that there were irregularities in the manner in which Mr Mbalula’s trip to Dubai was funded.

5.2.36 It can also be concluded that the manner in which the trip was funded is improper and that it was inappropriate of Mr Mbalula to expose himself and his family to that impropriety. With respect, Mr Mbalula should have determined whether he had sufficient funding to undertake the trip and should such a determination be positive, he should have paid for the trip himself prior to boarding a flight to Dubai.

5.3 Whether *Sedgars Sports*, the technical sponsors of SASCOC, a sports federation under the auspices of the Department of Sports and Recreation, funded and/or sponsored Mr Mbalula and his family’s trip to Dubai for a vacation held during the period 28 December 2016 to 3 January 2017 and if so; whether such conduct constitutes a conflict of interest.

**Issues that are Common Cause**

It is not disputed that:

5.3.1. Mr Yusuf Dockrat and/or one of his entities, paid an amount of R300 000 to *Munlin Travel* on Mr Mbalula’s behalf in respect of his trip to Dubai for a family vacation held during the period 28 December 2016 to 3 January 2017. This was also confirmed during the investigation by the former CEO of *Munlin Travel*, Ms Jennifer Baylis and her staff who assisted in making necessary reservations for Mr Mbalula to undertake the trip;

5.3.2. *Sedgars Sports* is a technical sponsor and/or a supplier of formal clothing worn by Team South Africa for athletics, boxing and beach volleyball;

5.3.3. Mr Yusuf Dockrat is a Director of *Sedgars Sports*, an entity that is a technical sponsor of SASCOC a sporting federation that resorts under the Department of Sports and Recreation which Mr Mbalula was responsible for at the time of undertaking a vacation trip to Dubai;

5.3.4. That the Director of *Reimon Uniforms*, Ms Zakkiyah Dockrat is related to Mr Yusuf Dockrat. Mr Dockrat is also part of the management team that administers both *Sedgars Sport* and *Reimon Uniforms*. The latter is the entity that paid an amount of R300 000 to *Munlin Travel* on Mr Mbalula’s behalf; and
5.3.5. *Sedgars Sports* supplies goods to *Reimon Uniforms* who in turn re-supplies the goods to end-users.

5.3.6. Mr Mbalula repaid the amount of R300 000 in instalments

**Issues in dispute**

The issues for my determination are whether:

5.3.7. *Sedgars Sports*, the technical sponsors of SASCOC, a sports federation under the auspices of the Department of Sports and Recreation, funded and/or sponsored Mr Mbalula’s trip to Dubai that was undertaken during the period 28 December 2016 to 3 January 2017 and if so; whether such conduct constitutes a conflict of interest;

5.3.8. The payments amounting to R300 000 made by *Reimon Uniforms* to *Munlin Travel* on Mr Mbalula’s behalf amounted to a loan as alleged;

5.3.9. In Mr Mbalula’s response to my correspondence of 23 October 2017 and in particular with regard to allegations of a conflict of interest due to the payment of an amount of R300 000 by Mr Dockrat to *Munlin Travel* on Mr Mbalula’s behalf whilst he was a Minister responsible for Sports and Recreation and Mr Dockrat, a Director of *Sedgars Sports*, a sporting outfit entity doing business with SASCOC, one of the sporting federations that resorts under the auspices of the Department of Sports and Recreation, he denied the existence of a conflict of interest;

5.3.10. Mr Mbalula primarily based his averments and/or denial on the fact that SASCOC is an independent body distinct from the Department of Sports and Recreation. He further stated that SASCOC’s operations are guided by its Constitution and the Department has no control on how SASCOC is managing its affairs as it has its Board of Directors and as such the question of a conflict of interest does not arise simply because it is a federation that resorts under the Department of Sports and Recreation.
5.3.11. He further stated that neither he nor the Department could have any influence on how SASCOC operates or who the federation could appoint for the provision of goods and services and in fact, he was not even aware of who the various service providers of SASCOC were. Mr Mbalula reiterated that, at the time of concluding the “loan agreement”, with Mr Dockrat, he was not aware that Sedgars Sports were suppliers of clothing apparel for SASCOC as alleged.

5.3.12. During the interview that I held with Mr Mbalula on 28 February 2018, he confirmed what he had said in his statement which he considered sufficient. Mr Mbalula further reiterated the independence and autonomy of SASCOC. However, he conceded that SASCOC receives a twelve (12%) percentage annual grant from the Department of Sports and Recreation.

5.3.13. On 26 April 2018, Mr Yusuf Dockrat of Sedgars Sport was interviewed and he confirmed having made the payment through a Nedbank account of Reimon Uniforms.

5.3.14. He stated that his old friend, Mr Mbalula requested him to provide him with a loan of R300 000 and it was meant to be a short-term loan and the period of repayment was not expressly discussed though it was understood that it would be a few months.

5.3.15. According to Mr Dockrat, he instructed Mr Muhammed Moola of Reimon Uniforms to make the payment into the travel agency bank account. On 27 and 28 February 2017, payments of R200 000 and R100 000 respectively were made from the Nedbank account of Reimon Uniforms.

5.3.16. Subsequent to making the payment, on 23 March 2017, Mr Muhammed Moola forwarded an e-mail to Ms Jennifer Baylis of Munlin Travel requesting her to raise an invoice against Reimon Uniforms for the R300 000 paid on 27 and 28 February 2017. In his e-mail Mr Moola wrote as follows; “As discussed, please raise the invoice as follows:
5.3.17. Whilst investigating the matter, it was established that during the financial year 2016/17 which is within the period when Mr Mbalula travelled to Dubai, the Department of Sports and Recreation paid SASCOC a grant amounting in excess of R17 million which was as follows:

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</tr>
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<td>43102513...<em>(The rest of the number has been Deliberately omitted to protect the entity)</em></td>
</tr>
<tr>
<td>Amount</td>
<td>R300 000.00 incl vat*</td>
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84  SRSA Annual Report 2016-2017

Report of the Public Protector  December 2018
5.3.18. The payment of the grant to SASCOC was confirmed by the Director General of the Department of Sports and Recreation, Mr Alec Moemi, who also stated that inasmuch as the Department pays the grant to SASCOC, it has no influence on how the funds are utilized by the federation, therefore, the Department does not prescribe on SASCOC how to utilize the funds as the entity is an independent and autonomous body. SASCOC only reports to the Department on how the funds have been utilized.

5.3.19. On 15 November 2018, a notice in terms of section 7(9)(a) of the Public Protector Act was issued to Mr Mbalula for him to respond thereto not later than 23 November 2018. At his request, I extended the return date to 30 November 2018 and I interviewed him regarding his response on 5 December 2018.

5.3.20. In his response, Mr Mbalula conceded that he has known Mr Dockrat for over twenty (20) years and they are friends. With regard to the allegation of a conflict of interest, he stated that there are two different forms of a conflict of interest that may arise with one under common law and the other one is provided for under the Executive Ethics Code.

5.3.21. He was of the view that I am only empowered to make finding in respect of only one form of a conflict of interest which is the one provided for in the Executive Ethics Code as I only have those power of investigation that are expressly bestowed upon me by legislation.

5.3.22. He also conceded that he indeed received the R300 000 from Mr Dockrat in February 2017 and that the trip was undertaken during the period 28 December 2016 to 3 January 2017.
The Application of the relevant laws and prescripts

The Constitution

5.3.23. Section 96(1) of the Constitution provides that members of the Cabinet must act in accordance with a Code of Ethics prescribed by National Legislation.

5.3.24. In terms of section 96(2), members of the Cabinet may not:

(a) undertake any other paid work;

(b) act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or

(c) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.”

5.3.25. Section 195 of the Constitution regulates basic values and principles governing public administration and in subsection 195(1)(a) envisages “a high standard of professional ethics” in the performance of public duties.

The Executive Members’ Ethics Act

5.3.26. The preamble to the Act states that its aim is to provide for a Code of Ethics governing the conduct of members of the Cabinet, Deputy Ministers and members of Provincial Executive Councils.
The Executive Ethics Code

5.3.27. The relevant provisions of the Code with which Cabinet Ministers must comply in performing their official responsibilities, provide as follows:

“General Standards:

2.1 Members of the Executive must to the satisfaction of the President-
perform their duties and exercise their powers diligently and honestly;
fulfil all the obligations imposed upon them by the Constitution and law;
act in good faith and in the best interest of good governance, and
act in all respects in a manner that is consistent with the integrity of their office or the government.

2.3 Members may not-

Deliberately or inadvertently mislead the President, or the Premier or as the case may be: the legislature:

act in a way that is inconsistent with their position;

using their position or any information entrusted to them, to enrich themselves or improperly benefit any other person;

.....

expose themselves to a situation involving the risk of a conflict between their official responsibilities and their private interests; ...
3. **Conflict of Interest**

3.2. *A Member must withdraw from the proceedings of any committee of the Cabinet or an Executive Council considering a matter in which the Member has any personal or private financial or business interest, unless the President or the Premier decides that the Member's interest is trivial or not relevant.* (Emphasis added)

5.3.28. Paragraph 4 of the Executive Ethics Code regulates acceptance of gifts and provides that:

"4.1. *A Member may not solicit or accept a gift or benefit which –*

a. *is in return for any benefit received from the Member in the Member's official capacity;*

b. *constitutes improper influence on the Member, or*

c. *constitutes an attempt to influence the Member in the performance of the Member's duties.***

4.2. *When a Member, in the course of the Member's duties, has received or has been offered a gift with a value of more than R1000, the Member must request permission from the President or the Premier, as the case may be, to retain or accept the gift. If the permission is granted, the Member may retain or accept the gift, but must disclose particulars thereof in terms of paragraph 6.3 of this Code. Where such permission has not been requested or granted the Member must either –*

a. *return the gift or decline the offer; or*

b. *donate the gift to the State.*
4.3. For the purposes of paragraph 4.2 "gift" does not include travel facilities or hospitality arising from attendance at meals, functions, meetings, cocktail parties, conventions, conferences or similar events attended by the Member as part of the Member's executive duties."

5.3.29. Paragraph 6 regulates the disclosure of financial interests and provides that:

"Members must disclose the following interests and details:

6.3 Gifts and hospitality other than that received from a spouse or permanent companion or family Member. A description, including the value, source and date of any-
  a. gift with a value of more than R500;
  b. gifts received from a single source which cumulatively exceed the value of R500 in any calendar year;
  c. hospitality intended as a personal gift and with a value of more than R500; and
  d. hospitality intended as a gift and received from a single source, and which cumulatively exceeds the value of R500 in any calendar year."

Conflict of interest, The General Principles

5.3.30. The Public Protector and in her report issued on 18 February 2009 titled, "Report on an investigation into allegations of improper conduct by the former Chairperson of the Board of Directors of Eskom Holdings Limited, Mr Valli Moosa," relating to the awarding of a contract: Report Number: 30 of 2008/2009 under the heading, "Conflict of Interests: General Principles" made the following observations about the conflict of interest;
5.3.31. The identification and management of a conflict between the personal interests of a decision maker in the private and public sector and that of the entity that he/she serves, has been the subject of much discussion and debate in academic, business and public administration circles for centuries.

5.3.32. Some writers on the issue claim that the identification and management of conflicts of interests is merely a part of sound and proper business ethics, which originated in the application of everyday moral or ethical norms to business and public service dealings, since times immemorial.

5.3.33. Currently, the global discussion on the prevalence and impact of conflicts of interests in the public service is more alive than ever. Wilson R Abney, in his paper entitled: “A brief history of public service ethics in the United States: 1787-1997, 2007 Ethics Counts, LLC for example, stated the following in this regard:

“Every recent study of the American electorate has found that most citizens do not believe that government officials make decisions in the public interest. Instead, Americans are convinced that the campaign donations which politicians and political parties have solicited from, and which have been provided by special interest groups, are more important to the politicians and parties in deciding positions on issues of public policy than the achievement of the common good. Because people no longer trust the politicians, the politicians call the people ‘cynical’, but history and current events demonstrate that politicians have provided ample reason for the public’s lack of trust.”

5.3.34. The sentiments referred to by Abney equally apply in many other parts of the world and some of it also finds expression in the views and perceptions of many South Africans.
5.3.35. M H Kanyane of the University of Limpopo and in his work, “Conflict of Interest in South Africa: Unravelling the revolving door” published in the October 2005 Journal of Public Administration, supports the notion that conflict of interest is becoming more and more prevalent in our present day society:

“It’s affects are disastrous to an institution or a department in as far as both finances and reputation risks are concerned. This obviously affects the country as a whole.

... One of the achievements of the first term of the post-1994 era is the enactment, in the wake of ethical concerns, of legislation, codes of conduct, and the establishments of institutional mechanisms, as a basis for resolving ethical questions of governance. However, conflict of interests proved to be a resilient test to the government and contributed to corroding the moral and economic fabric of the country. In spite of these shortcomings, the institutional and legislative mechanisms put in place should be turned into potent weapons for combating conflict of interests.

The public is entitled to feel confident that their power or sovereignty is being exercised for their benefit. For as the famous counsel, Archibald Cox, has noted, the stability of government rests on the maintenance of public confidence. Both a free society and democratic government require a high degree of public confidence in the integrity of those chosen to govern.

However, the confidence is sometimes eroded by the appearance of a conflict of interest. For this reason, the ethical requirements for legislators, ministers and officials are apparent and imperative to build public confidence. In this way a politician or official who creates the appearance of a conflict of interest is simply inviting the closer inspection of his or her motive.” (Emphasis added)
5.3.36. There are many different views on the definition of ‘a conflict of interest’. However the common theme present in all definitions relates to a clash between the official or business duties of the decision maker concerned and his/her personal interests.

5.3.37. According to Dr M J Mafunisa, Senior Lecturer at the School for Public Management and Administration at the University of Pretoria in his work, “Conflict of interest: Ethical Dilemma in politics and administration, South African Journal of Labour Relations”: Winter 2003, stated that interest includes:

“...all those influences, emotions and loyalties that could influence a public functionary and compromise the exercise of his or her competent judgment. Conflict of interest involves a clash between influences of this nature and the interests of the public that the functionaries serve.”

5.3.38. Judy Nadler and Miriam Schulman of the Markkula Center for Applied Ethics at the Santa Clara University in California,(see: http://www.scu.edu/ethics/practising/focuseareas/government_ethics/introduction/conflicts) give a very simple definition to the concept:

“Conflict of interest occurs when an officeholder puts his or her personal or financial interest ahead of the public interest.”

5.3.39. They also hold the view that the law regulating conflict of interests is aimed at the perception as well as the reality, that a public official’s personal interest may influence a decision. “Even the appearance of impropriety undermines the public’s faith that the process is fair.” (Emphasis added)

5.3.40. Dr Mafunisa (supra) supports this view, as follows:

“The concept (of conflict of interests) is applicable not only to situations where a conflict of interest actually exists, but also to situations where it appears to exist.
A charge of conflict of interest may arise not only when public duty clashes with private interest, but also when they appear to converge.”

5.3.41. Nadler and Schulman (supra) further stated in this regard that:

“Another common misconception about conflicts of interest is that office holders are absolved of their responsibility merely by being transparent about their stake in the issue.

It is not sufficient for government officials to make conflicts public. They must take themselves out of the decision-making process altogether.” (Emphasis added)

5.3.42. The South African Public Service Commission (PSC) conducted a comprehensive study into the occurrence and management of conflicts of interest in the Public Service. In its report, issued in July 2006 and entitled ‘Report On Managing Conflicts Of Interest In The Public Service’, Public Service Commission, July 2006, from page 15, the PSC referred to the generally accepted definition of a conflict of interest in the public service i.e. “a conflict between the public duties and private interests of a public official, in which the public official has private capacity interests which could improperly influence the performance of his/her official duties and responsibilities”, and stated that:

“The above mentioned is a rather narrow approach when looking at conflicts of interest. One needs to look at conflicts of interest more comprehensively. In this respect it needs to be mentioned that the interaction between the private and public sectors has made the issue of conflicts of interest much more complex. In recent years, especially in South Africa, a great velocity between the public and private sectors was evident. In South Africa, for example, the government promotes mechanisms such as Black Economic Empowerment.
This interaction has given rise to the fact that whilst conflicts of interest in the past focused on traditional sources of influence such as nepotism, gifts and hospitality, conflicts of interest in recent years are more directed on:

- a public official having private business interests in the form of partnerships, shareholdings, board membership, investments and government contracts;

- a public official leaving to work in a private company or a Chief Executive Officer taking up a key position in a government department with a commercial relationship with his/her former company; and

- a public official having affiliations with other organizations."

5.3.43. In dealing with the question as to whether it is wrong to have a conflict of interests, the Report of the PSC makes the following important observation:

“There are many misconceptions about conflicts of interest. Some of them are that it is something to be ashamed of and should be hidden or ignored. In terms of media commentary on the matter it would appear that in the South African context we have fallen into these misconceptions. Conflicts of interest are not wrong in themselves. It is how they are managed that is important. In this regard it should be noted that public officials are also private individuals, and there will be occasions when an official’s own private interests may come into conflict with his/her public duty which is to put public interest first at all times. Where reasonably possible, a public official should avoid conflicts between his/her personal interest and the public interest. However, where conflicts of interest cannot reasonably be avoided, an official has a responsibility to identify and effectively manage any conflicts of interest he/she may have, in consultation with his/her supervisor.” (Emphasis added)
5.3.44. The King Report on Corporate Governance for South Africa-2002 from page 47 stated the following in regard to conflict of interests of directors of companies:

“The personal interests of a director, or persons closely associated with the director, must not take precedence over those of the company and its shareowners. A director should avoid conflicts of interest, even when these could only be perceived as such. Full and timely disclosure of any conflict, or potential conflict, must be made known to the board. Where an actual or potential conflict does arise, on declaring their interest, a director can participate in the debate and/or vote on the matter, but must give careful consideration to their own integrity in such circumstances and the potential consequences it may have for the board, company and themselves personally.” (Emphasis added)

5.3.45. In his book “The Corporate Citizen” published by Penguin Books, South Africa, 2006 and from page 51, Mervyn King SC dealt extensively with the duties of good faith, care, skill and diligence of directors of companies and the fact that courts in the twenty-first century are applying more objective tests to compliance with these duties. The modern test therefore, according to King, is what a reasonable director who acted honestly, diligently and with skill would have done in the circumstances of each case.

5.3.46. King emphasized that the average director cannot be expected to apply these legal tests in the heat of the boardroom. This is particularly true when one considers the different aspects of these duties gleaned from American, English and Commonwealth jurisprudence.

5.3.47. In order to address this dilemma, King developed 10 pertinent questions that every director should ask himself/herself in regard to the issues before the board. The very first question is:
“Do I as a director of this board have any conflict in regard to the issue before the Board?”

5.3.48. As remote as the conflict might be, King recommends that it (the conflict) is disclosed. “This disclosure is not the end to the enquiry. The following question should then be asked: ‘Should I excuse myself from the remainder of the board meeting or should I make my contribution, having regard to the fact that I was asked to be a member of the board either for my practiced ability or because of my representatively?’”

5.3.49. The tenth question that King suggests a director should ask is:

“Will the board be embarrassed if its decision and the process employed in arriving at its decision were to appear on the front page of a national newspaper?”

**Conflict of Interest as defined by the OECD Guidelines for Managing Conflict of Interest in the Public Service, 2003**

5.3.50. According to the OECD guidelines a conflict of interest may be defined as: “A ‘conflict of interest’ involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.”

**THE PUBLIC PROTECTOR TOUCHSTONES: Previous reports of the Public Protector applicable to Ethical Conduct expected from Members of the Executive as well as the management of Conflict of Interest.**

Conflict of interest

5.3.51. The most relevant investigation reports dealing with conflict of interest are those on former Minister Valli Moosa commonly known as the “Hitachi” report; “To be or not to be in conflict” report and the IEC report titled, “Inappropriate Moves”.
“Inappropriate Moves” Report Number 13 of 2013/2014

5.3.52. The conflict of interest concern was whether or not a business partner in a different company than the one bidding presented a conflict of interest for the Chief Electoral Officer who was central to the bid process.

5.3.53. The finding was that it would have been prudent to disclose such a relationship despite the fact that it was not related to the bid in question so as to eliminate any suspicions of conflict of interest and that officials performing a public function should understand that things that can undermine objectivity transcend financial interests.

“To Be Or Not To Be In Conflict” Report Number 9 of 2011/2012

5.3.54. The conflict of interest question was whether or not being a President of a powerful professional body presented a potential conflict of interest for a Director-General of the Department of Labour.

5.3.55. The finding was that there was a perceived conflict of interest that needed to be managed.


5.3.56. The allegations of improper conduct related to a contract by a public entity that was awarded to a company in which a political party had an interest.

5.3.57. At the time of the awarding of the contract, the Chairperson of the Board of the public entity was also a member of the highest decision making body of the political party and as a result thereof, it was alleged that he had a conflict of interest.
5.3.58. The finding was that there was an unmanaged conflict of interest between the personal interest of the public official in the political party and his duty towards the public entity at the time when a resolution was taken to award the contract to the Hitachi Consortium, in which the political party had an interest.

5.3.59. It was further held that it is desirable that the conducting of business between government institutions or public entities and political parties should be regulated by legislation.

Abuse of benefits and privileges for Members of the Executive: “In the Extreme” Report Number 11 of 2011/2012

5.3.60. In the Public Protector report titled in “In the Extreme”, it was found that extending benefits to persons not provided for in the Ministerial Handbook amounted to a violation of the Executive Ethics Code. In the case in point the Minister concerned flew a person he classified as his father though not his father and booked him at for hotels for non-official trips. The remedial action included a requirement that the money be repaid to the state.

5.3.61. The reasoning was that the general standards determined by paragraph 2 of the Executive Ethics Code require a Minister to act in good faith, in the best interest of good governance and in a manner that is not inconsistent with the integrity of his/her office or the government. Even though Members of the Executive are entitled to leave their travel and accommodation arrangements to the administration of their offices, they are expected to ensure that the provisions of the Ministerial Handbook were adhered to by their administrative staff.
5.3.62. In a report following allegations in the media to the effect that the former Premier of Mpumalanga Province said it was acceptable and normal for politicians to lie to members of the public.

5.3.63. The Public Protector found that the statement issued by the former Premier of Mpumalanga was unbecoming of a Member of an Executive Council.

5.3.64. The statement was also found to have been inconsistent with the office of the Premier in that it compromised the credibility and integrity of that office and of government.

5.3.65. The finding was also that the former Premier’s statement was in violation of the provisions of sections 136(2)(b) and 182(1)(a) of the Constitution read with section 6(4)(a)(ii) of the Public Protector Act.

Abuse of Benefits and Privileges for Members of the Executive: “Unsolicited Donation” A Report of the Public Protector on an investigation into allegations of maladministration, corruption and a potential conflict of interest made against the former Minister of Communications, Hon. Ms Dina Pule, MP (Hon Pule), in connection with the appointment of service providers to render event management services for the hosting of the Department of Communications’ ICT Indaba (The ICT Indaba) held in Cape Town from 4-7 June 2012.

5.3.66. In a report following an investigation into allegations that the former Minister of Communications, Ms Dina Pule abused her powers, privileges and benefits which accrued to her by virtue of being a Member of the Cabinet to benefit her boyfriend, the Public Protector held that her conduct was, grossly improper and unethical.
5.3.67. With regard to an allegation of the existence of a conflict of interest, the Public Protector held that there was a real and not just a potential conflict of interest on the part of Hon Pule regarding her duty to act in the best interest of the DOC and her loyalty to Mr Mngqibisa on account of their relationship. Faced with divided loyalties, as is always the case in a conflict of interest situation, I am convinced that Hon Pule chose Mr Mngqibisa’s interests above those of her Department and ultimately, the State.

The Conclusions that could be made based on the application of the law to the facts

5.3.68. Based on the information and evidence obtained during the investigation and following an application of the relevant legal framework regulating Mr Mbalula’s conduct as a Member of the Executive at the time, it can be concluded that he failed to manage a conflict between his private interests and his public and/or official duties.

5.3.69. Mr Mbalula could not manage a potential conflict of interest that existed by virtue of Mr Dockrat’s business relationship with SASCOC and the position that he held as the Minister of Sport and Recreation. Mr Mbalula was reckless and irresponsible in entering into a financial transaction with Mr Dockrat of Sedgars Sport, a supplier of apparel for Team South Africa, a national team that falls under SASCOC, a federation that falls under his portfolio.
6. FINDINGS

6.1. On whether there was any violation of the Executive Ethics Code by the former Minister of Sport and Recreation, Hon Fikile Mbalula when he undertook a family vacation to Dubai with his wife and children during the period 28 December 2016 to 3 January 2017;

6.1.1. The allegation that the former Minister of Sport and Recreation, Mr Fikile Mbalula, violated the Executive Ethics Code when he undertook a family vacation to Dubai with his wife and children during the period 28 December 2016 to 3 January 2017 is substantiated.

6.1.2. Indeed, the trip was undertaken and what was peculiar about it is that neither Mr Mbalula, his family nor his office arranged for the trip but the bookings were made by Mr Siweya on behalf of the former Minister with Munlin Travel.

6.1.3. In his response dated 17 November 2017, Mr Mbalula makes no mention of Mr Siweya or his relations to him. However, in his 30 November 2018 response as well as the meeting of 5 December 2018, he confirmed that Mr Siweya was not asked by him to do the bookings but initiated same out of his own volition.

6.1.4. There is nothing untoward in a Minister taking his family on vacation abroad. He must however have financial means to pay for the costs related thereto.

6.1.5. When Mr Mbalula departed for Dubai, neither did he pay nor knew how much the trip would cost and with respect, this was very irresponsible of him as he could not determine whether he would afford the excursion. This is evidenced in his enquiry from Ms Jennifer Baylis of Munlin Travel about the cost of the trip. He however stated that he had the necessary funds as he had verbally asked for a loan from Mr Dockrat so that he could cover the cost of the trip.
6.1.6. There is no evidence in my possession that proves that Mr Mbalula requested and/or obtained the loan prior to boarding a flight to Dubai.

6.1.7. Evidence in my possession indicates that the payments for the trip commenced only in February 2017 following repeated demands from Ms Baylis for the Minister to settle the costs related to the trip.

6.1.8. It had to take payments from Sedgars Sport and debt collectors practising under the name and style SVG Legal and Forensic Investigative Services for the costs of the trip to finally be settled.

6.1.9. By leaving the country for Dubai without making necessary payment arrangements for the trip and not even knowing the costs related thereto, Mr Mbalula acted in a way that was inconsistent with his position as a Member of the Cabinet and thus violated paragraph 2.3(b) of the Executive Ethics Code.

6.1.10. His conduct was grossly at odds with the provisions of section 96 of the Constitution read with the Executive Ethics Code in particular paragraphs 2 and 3 of the Code.

6.1.11. Therefore, the information and evidence obtained during the investigation conclusively suggest that Mr Mbalula’s conduct was inconsistent with the standard required of him by the Executive Ethics Code by virtue of being a member of the Cabinet. His conduct in travelling to Dubai without paying for the trip exposed him to the risk of conflict between his official responsibilities and his private family interests. With respect, the situation could have been avoided had due care been exercised.
6.2. **On whether there were any irregularities and/or improprieties in the funding and/or sponsorship for Mr Mbalula and his family to travel to Dubai for a family vacation during the period 28 December 2016 to 3 January 2017 and if so; whether such conduct constitutes maladministration and improper conduct in particular considering that Mr Mbalula was at the time, a Member of the Executive;**

6.2.1. The allegation that there were irregularities and/or improprieties in the funding and/or sponsorship for Mr Mbalula and his family to travel to Dubai for a family vacation undertaken during the period 28 December 2016 to 3 January 2017 is substantiated.

6.2.2. It was inappropriate of Mr Mbalula, being a Member of the Executive to undertake a trip for a holiday with his family whilst he did not know what the costs were in relation thereto.

6.2.3. When Mr Mbalula boarded an aircraft to Dubai, he did not know how much his family vacation in Dubai was going to cost. This is illustrated in a *WhatsApp* message that he forwarded to Ms Jennifer Baylis in February 2017 enquiring about the total cost of the trip as he was under the impression that it cost R600 000.

6.2.4. The costs for the trip also escalated because Mr Mbalula and his family were initially booked business class tickets for the Emirates Airlines that would depart to Dubai on 26 December 2016. However the tickets had to be upgraded to first (1st) class tickets because Mr Mlula and his family could not leave on the 26th due to visa complications for him and his wife. Further thereto, there were no-show costs at *Atlantis the Palm hotel*, for accommodation for the days that the entourage did not arrive due to delayed departure from South Africa owing to visa complications.
6.2.5. I did consider Mr Mbalula’s submission that he expected proceeds from a property transaction so as to fund the trip including some funds from family reserves. I however find it odd that he could sell a property and use the proceeds thereof to fund an expensive holiday for him and his family in Dubai for a period of just five (5) days. I find this reasoning quite concerning.

6.2.6. It was further irresponsible for Mr Mbalula, being a Member of the Executive at the time, to have undertaken the trip without having paid for it. Mr Mbalula only paid for his family vacation in Dubai during the period 28 December 2016 to 3 January 2017 after he had already undertaken the trip and in February and March 2017. This was after he was pursued by the travel agent for payment and following demands for payment from debt collectors for the outstanding amount.

6.2.7. Mr Mbalula was and still, is not a client of *Munlin Travel* for him not to pay for the trip upfront. According to Ms Jennifer Baylis, the travel agency made the reservations for Mr Mbalula on request by Mr Siweya who is their corporate client and who has an account with *Munlin Travel*. The travel agency was under the impression that Mr Siweya, who was their client and who made the bookings for Mr Mbalula was going to be responsible for the account. Mr Mbalula is also not a corporate client of *Munlin Travel* so he should have paid upfront.

6.2.8. When Mr Mbalula undertook the trip to Dubai, he did not have sufficient funds to cover the cost of the trip. It was for this reason that he had to seek funds from acquaintances including Mr Yusuf Dockrat, a Director of Sedgars Sport on coming back from vacation is indicative of this fact.

6.2.9. It was also inappropriate for him to enter into what he termed “loan agreement” with Mr Yusuf Dockrat, a Director of an entity doing business with SASCOC, an autonomous sporting federation which falls under the auspices of the Department of Sports and Recreation.
6.2.10. What is peculiar about this loan agreement is that, it was entered into after the fact and when Mr Mbalula could not pay for the trip when demands were made by the travel agent for payment. Therefore, Mr Mbalula, being a Member of the Executive undertook a trip to Dubai whilst he was not financially prepared for it thus exposing himself to a pressure of finding financial resources to settle the bill of R684 620.39.

6.2.11. Again, I reiterate that there is nothing untoward to anyone (whether he is a Minister or a President) travelling locally and/or abroad on vacation as long as that person has sufficient financial resources to cover the costs related to the holiday. Similarly, there was nothing wrong with Mr Mbalula travelling to Dubai on holiday as long as he had sufficient funds to cover the expenses related to the holiday.

6.3. On whether Sedgars Sports, the technical sponsors of SASCOC, a sports federation under the auspices of the Department of Sports and Recreation, funded and/or sponsored Mr Mbalula’s trip to Dubai during the period 28 December 2016 to 3 January 2017 and if so; whether such conduct constitutes a conflict of interest

6.3.1. The allegation that Mr Yusuf Dockrat of Sedgars Sport paid R300 000 to Munlin Travel on Mr Mbalula’s behalf using a bank account of Messrs. Reimon Uniforms in respect of his family vacation spent in Dubai during the period 28 December 2016 to 3 January 2017 and that such a transaction constitutes a conflict of interest is substantiated.

6.3.1. During the investigation, Mr Mbalula, Mr Dockrat and Ms Jennifer conceded to the payment which was effected from the Nedbank account of Reimon Uniforms into the bank account of Munlin Travel on 27 and 28 February 2017. The payment was made on the instruction of Mr Dockrat. He confirmed during the investigation that he directed Mr Muhammed Moolla of Reimon Uniforms to effect the payments.
6.3.2. However, Mr Mbalula and Mr Dockrat alleges that the amount was a loan and that Mr Mbalula repaid it. What is curious though is that, Mr Mbalula took the loan when he could not pay for his trip to Dubai undertaken in December 2016 and when he was under pressure from the travel agent that assisted him in making reservations for his travel and accommodation.

6.3.3. It is admitted that there was an exchange of funds between Mr Mbalula and Mr Dockrat. At Mr Mbalula’s behest, the latter and through a bank account of one of his family entities, Reimon Uniforms paid R300 000 to Munlin Travel and on 9 and 10 October 2017, the same dates when the matter was reported in the media, Mr Mbalula paid an amount of R200 000 and R75000 respectively into the bank account of Reimon Uniforms. Both Mr Mbalula and Dockrat claim that they entered into a “loan agreement” hence the exchange of funds.

6.3.4. Having considered their submissions, I do not accept that the arrangement between them constituted a loan agreement. Had the transaction not have been reported in the media, Mr Mbalula would not have repaid the funds. Mr Mbalula sought the funds ex post facto and under extreme desperation. During the investigation, neither Mr Mbalula nor Mr Dockrat submitted proof showing that what they term a “loan agreement” was entered into before he departed for Dubai.

6.3.5. There was a conflict of interest when Mr Mbalula asked for funds from Mr Yusuf Dockrat who is the Director of Sedgars, a company that provided sporting apparel to Team South Africa through SASCOC. It is not in dispute that SASCOC is an independent organization that operates in accordance with its constitution.

6.3.6. Mr Mbalula’s argument that he did not know Sedgars is not accepted.
6.3.7. Mr Mbalula and Mr Dockrat have known each other for several years and Mr Mbalula ought to have known that Mr Dockrat is the Director of Sedgars or at least, having known him for a period in excess of two decades, Mr Mbalula is expected to have known what his friend’s line of business was and that taking a personal loan from him while he (Mr Mbalula) is the Minister of Sport and Recreation would raise questions of ethical conduct and could also result in a conflict of interest. There is absolutely no way that he could have a friend of twenty (20) years and not know what kind of a business he is running.

6.3.8. Mr Mbalula, as the Minister of Sport and Recreation, borrowed a sum of R300 000 from the Director of a Company that provided products to the South African Olympic Teams, can have a detrimental effect on the interest of the public as a perceived conflict of interest is created and it could be seen that Mr Mbalula may have experienced difficulty in balancing his duties as a Minister of the Department of Sport and recreation vis-a-vis his private interests.

6.3.9. Therefore, there was an undisclosed and unmanaged conflict of interest between Mr Mbalula’s responsibility to act in the best interests of his Department and government and his private interests which had to be looked after by the Dockrats. In this regard, Mr Mbalula is therefore found to have acted in violation of the Constitution and the Executive Ethics Code and his actions constituted improper and unethical conduct.
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 President of the Republic of South Africa:**

7.1.1. To take note of the findings made in this report with a view to sharing it with other Members of the Cabinet so as to ensure that, they guard against the conduct dealt with in this report from happening in future and to warn Members of the Cabinet against exposing themselves to such situations.

7.1.2. I am not taking any remedial action against Mr Mbalula as he is no longer a Member of the Executive. Neither is he a Member of Parliament.

7.2. **The Cabinet Secretary**

7.2.1. To ensure that subsequent to the appointment of Ministers and Deputy Ministers, they are within 60 days of appointment trained about their constitutional obligations as envisaged by section 96 of the Constitution as well as the Executive Ethics Code.

7.3. **The Director: Financial Intelligence Centre to take urgent and appropriate steps to:**

7.3.1. Investigate in terms of section 29(1) of the Financial Intelligence Centre Act 38 of 2001, the source of the R150 000 cash and or any other funds that were used to pay for Mr Mbalula’s holiday spent in Dubai during the period 28 December 2016 to 3 January 2017.
7.4. The National Director of Public Prosecutions to take urgent and appropriate steps to:

7.4.1. Investigate whether the funds used to pay for Mr Mbalula’s trip were not proceeds of money laundering with a view to prosecuting anyone who may have been involved in criminal activities in respect of the arrangements and funding for Mr Mbalula’s holiday trip to Dubai during the period 28 December 2016 to 3 January 2017.

8. MONITORING

8.1. The Administration Heads of the Financial Intelligence Centre and the National Prosecuting Authority are to submit action plans within 30 working days indicating how the remedial action in paragraphs 7.2 and 7.3 above will be implemented; and

8.2. All remedial action to be implemented within 6 months of the issuing of this report.

ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 19/12/2018

Assisted by the Branch: Good Governance and Integrity

Report of the Public Protector

December 2018