
"Alleged systemic failure by the SAPS to timeously process disability claims"

REPORT NO 11 OF 2018/2019

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REPORT ON A SYSTEMIC INVESTIGATION INTO ALLEGATIONS OF FAILURE BY THE SOUTH AFRICAN POLICE SERVICE TO TIMEOUSLY PROCESS DISABILITY CLAIMS IN ACCORDANCE WITH THE RULES OF THE SOUTH AFRICAN LOCAL AUTHORITIES PENSION FUND MASTER POLICY
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Executive Summary

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

(ii) The report communicates my findings and appropriate remedial action taken in terms of section 182(1)(c) of the Constitution, following an investigation into the alleged failure by the South African Police Service (SAPS) to timeously submit disability claims in accordance with the rules of the South African Local Authorities Pension Fund (SALA Pension Fund), thus financially prejudicing the Complainants.

(iii) My office received complaints from seven (7) Complainants, all employees of the SAPS and members of the SALA Pension Fund. The Complainants alleged that the SAPS failed to submit disability and death claims to the SALA Pension Fund timeously in terms of the SALA Pension Fund Master Policy (Master Policy). The late submission resulted in claims being repudiated by the SALA Pension Fund. As a result of the late submission of claims and subsequent repudiation, the members of the SALA Pension Fund suffered financial prejudice in that they did not receive compensation they are entitled to in terms of the Master Policy.

(iv) My office received complaints from the following former members and a spouse of a deceased member of the SAPS:

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<thead>
<tr>
<th>No</th>
<th>Complainant</th>
<th>Date received</th>
<th>Summary of Complaint</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Sejake M Force Nr: 0624034-8 Date of birth: 23 Nov 1955</td>
<td>27 July 2015</td>
<td>Mr M. Sejake is a male who retired due to ill-health from the SAPS on 31 October 2008. He was sick for a considerable time before being granted ill-health retirement by the SAPS. He was informed by the</td>
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<td>SALA Pension Fund on 24 April 2009 that his disability claim was repudiated as it was not received within the prescribed 3 month period. The application was only submitted by the SAPS to the SALA Pension Fund on 29 June 2009.</td>
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</table>
| 2 | Makhaba N Force Nr 0623944-7  
Date of birth: 11 March 1955 | 27 July 2015 | Ms N. Makhaba is a female who suffered a gunshot wound whilst on duty during 2003. She was placed on sick leave for a period of three years and eventually retired due to ill-health as a result of an injury on duty on 30 September 2008. The disability claim was only submitted to the SALA Pension Fund by the SAPS on 04 June 2009 and consequently the SALA Pension Fund repudiated the claim. |
| 3 | Dlomo SA Force Nr 630460-5  
Date of birth: 15 January 1960 | 21 November 2014 | Mr Dlomo is a male who was a member of the SAPS and retired due to ill-health on 31 December 2008. His last active working day was 10 March 2008 and the SAPS only informed the SALA Pension Fund on 30 October 2008. The SAPS submitted his documents to the SALA Pension Fund on 07 July 2009. |
| 4 | Mashigo L Force Nr 628244-0  
Date of birth: 28 August 1965 | 17 August 2012 | Mr Mashigo is a male who suffered post-traumatic stress disorder from 07 April 2005 and his services were terminated on 31 October 2007 due |
to ill-health. His claim for disability and ill-health benefits was submitted to the SALA Pension Fund on 16 April 2008 and was repudiated because the SAPS submitted the documents late.

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<tr>
<th>5</th>
<th>Nyokong J Force Nr 0624981-7</th>
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<tr>
<td></td>
<td>Date of birth: 26 December 1959</td>
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<td></td>
<td>04 August 2014</td>
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<td></td>
<td>Mr Nyokong is a male whose services were also terminated due to ill-health on 31 January 2009. He also alleged that his claim for disability and ill-health benefits was repudiated because the SAPS submitted his documents to the SALA Pension Fund after the prescribed period.</td>
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<th>6</th>
<th>The Late Seitheko SA Force Nr 623883-1</th>
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<tr>
<td></td>
<td>Deceased’s date of birth: 02 September 1964</td>
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<tr>
<td></td>
<td>Complainant Seitheko GP</td>
</tr>
<tr>
<td></td>
<td>21 January 2013</td>
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<td></td>
<td>Ms. Seitheko’s husband passed away on 01 September 2008 whilst on duty. She alleged that her claim for death benefits was repudiated because the SAPS did not inform the SALA Pension Fund about her husband’s death within three months from the date of death as required, and the benefits claim documents were submitted more than 15 months from the date of death instead of within 12 months as required by the rules of the SALA Pension Fund.</td>
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</table>

(v) The seventh complaint was resolved in accordance with section 6(4)(d)(i) of the Public Protector Act, through mediation. The Complainant was declared
medically unfit by the SAPS during the time of the rule change by the SALA Pension Fund where the period for submission of applications was extended to six months. The SALA Pension Fund then accepted the Complainant's retirement documents in terms of the extended period.

(vi) In the main, the complaints were that the SAPS failed to submit disability and death claims to the SALA Pension Fund timeously resulting in the said claims being repudiated. This resulted in the members of the SALA Pension Fund suffering financial prejudice in that they did not receive compensation they are entitled to in terms of the Master Policy.

(vii) The SAPS did not dispute that it submitted the claim documents outside the prescribed period as required by the Master Policy. The SAPS also did not submit any reasons as to why the documents were not submitted timeously. The SAPS however disputed that it was liable for the monetary loss suffered by the Complainants and submitted that the SALA Pension Fund should be held liable.

(viii) On analysis of the complaints, I decided to conduct a systemic investigation and the following issues were identified and investigated:

(a) Whether there was failure by the SAPS to timeously notify the SALA Pension Fund of the Complainants' disabilities?

(b) Whether the Complainants were improperly prejudiced by the alleged conduct of the SAPS?

(ix) The investigation process was conducted through correspondence, meetings and interviews with the Complainants and relevant officials of the SAPS and SALA Pension Fund, as well as an inspection of all relevant documents, analysis and application of all relevant laws, policies and related prescripts.

(x) Key laws and policies taken into account to determine if there had been maladministration by the SAPS and prejudice to the Complainants were principally those imposing administrative standards that should have been
upheld by the SAPS or its officials when processing claim documents for compensation. Those are the following:

(a) Section 195(1)(a) and (f) of the Constitution which provides for a public administration that must be governed by the democratic values and principles enshrined in the Constitution which include, *inter alia*, the promotion and maintenance of a high standard of professional ethics and an accountable public administration. These principles enjoin the SAPS to exercise a high level of professionalism and ethics, including accountability in the performance of their duties;

(b) Section 237 of the Constitution provides that all constitutional obligations must be performed diligently and without delay;

(c) The Pension Funds Adjudicator and Public Protector's touchstones; and

(d) The Master Policy which regulates the SALA Pension Fund disabilities and death claims.

(xi) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings and observations:

(a) Regarding whether there was failure by the SAPS to timeously notify the SALA Pension Fund of the Complainants' disabilities:

(aa) The allegation that the SAPS failed to timeously submit the notices and disability and death claims to the SALA Pension Fund within the prescribed period is substantiated.

(bb) The failure of the SAPS to submit the notices and disability and death claims to the SALA Pension Fund within the prescribed period was in violation of paragraph 4.1 and Rule 8.11 of the Master Policy. The SAPS was aware of the prescripts of the Master Policy and despite this still failed to submit the notices and claims on time.
(cc) This failure by the SAPS constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration and undue delay as envisaged in section 6(4)(a)(i) and (ii) of the Public Protector Act.

(b) Regarding whether the Complainants were improperly prejudiced by the alleged conduct of the SAPS, the Public Protector finds that:

(aa) The allegation that the Complainants were improperly prejudiced by the conduct of the SAPS is substantiated;

(bb) The SAPS conceded to submitting the Complainants’ claim documents outside the prescribed period as required by the Master Policy;

(cc) The failure of the SAPS to perform its duties diligently and without delay was in contravention with the constitutional obligations in terms section 237 of the Constitution.

(dd) Such failure resulted in financial prejudice to the Complainants as they lost the following benefits:

<table>
<thead>
<tr>
<th>No</th>
<th>Complainant</th>
<th>Calculation of loss</th>
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<tbody>
<tr>
<td>1</td>
<td>Sejake M</td>
<td>Mr Sejake was 54 years and eleven months old when he received a resignation benefit amounting to R877 872.21 when he left the service due to ill-health on 31 October 2008. In terms of the Master Policy he was entitled to a monthly income until the age of 60 valued at R556 777.50 and a cash retirement value at the age of 60 valued at R1 293 305.09. This totals to R1 850 082.59. His total loss amounts to R972 210.38.</td>
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<tr>
<td>2</td>
<td>Makhaba N</td>
<td>Ms Makhaba was 52 years and six months old when she received a resignation benefit amounting to R574 290.84 when she left the service due to injury on duty on 30 September 2008. In terms of the Master Policy she was entitled to a monthly income until the age of 60 valued at R681 239.70 and a cash retirement value at the age of 60</td>
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<td>valued at R1 076 445.04. This totals to R1 757 684.74. Her total loss calculates to R595 369.50.</td>
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<td>3</td>
<td>Diomo SA</td>
<td>Mr Diomo was 48 years old when he received a resignation benefit amounting to R878 140.93 when he left the service due to ill-health on 31 December 2008. In terms of the Master Policy he was entitled to a monthly income until the age of 60 valued at R547 650.00 and a cash retirement value at the age of 60 valued at R1 735 311.28. This totals to R2 275 961.28. His total loss amounts to R1 397 820.35.</td>
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<td>4</td>
<td>Mashigo L</td>
<td>Mr Mashigo was 43 years and five months old when he received a resignation benefit amounting to R510 128.41 when he left the service due to ill-health on 31 October 2007. In terms of the Master Policy he was entitled to a monthly income until the age of 60 valued at R553 428.04 and a cash retirement value at the age of 60 valued at R1 419 140.71. This totals to R1 972 568.75. His total loss calculates to R1 462 440.34.</td>
</tr>
<tr>
<td>5</td>
<td>Nyokong J Force Nr</td>
<td>Mr Nyokong was 50 years and one month old when he received a resignation benefit amounting to R699 505.48 when he left the service due to ill-health on 31 January 2009. In terms of the Master Policy he was entitled to a monthly income until the age of 60 valued at R1 086 172.50 and a cash retirement value at the age of 60 valued at R1 348 571.65. This totals to R2 434 744.15. His total loss amounts to R1 735 238.67.</td>
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<tr>
<td>6</td>
<td>The Late Seithioko SA Complainant Seithioko GP</td>
<td>Ms Setheko’s husband passed away on the 01 September 2008 while on duty. Due to late submission of the claim for death benefit she did not receive an amount R1 041 851.74.</td>
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</table>
(ee) The failure by SAPS in this regard constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in Section 6(4)(a)(v) of the Public Protector Act.

(c) Observations

(aa) I have observed serious systemic failures by the SAPS with regard to the administration of disability, death and pension benefits. People affected by these systemic failures are South African citizens who dedicated their lives to protecting this country.

(bb) As indicated above, the SALA Pension Fund indicated that an audit on repudiated claims was conducted and the outcome of that audit is as follows:

(i) 68 Group Life cases identified where no funeral claims to the value of R35.5 million were submitted;

(ii) 11 Group Life cases dating back to the previous administrator to the value of R2.9 million;

(iii) 35 possible disability cases to the total value of R55.8 million. The insurer never had the opportunity to assess these cases to determine whether they qualify;

(iv) 42 Group Life cases for funeral benefits totalling R22.8 million; and

(v) The total value of the repudiated claims due to the SAPS's failure and/or undue delay to submit claims, is estimated to be R117 million.

(xii) The appropriate remedial action the Public Protector is taking in terms of section 182(1)(c) of the Constitution, with the view of placing the Complainants as close as possible to where they would have been had the improper conduct and maladministration not occurred, is the following:
The SAPS National Commissioner must:

(aa) Issue letters of apology to the Complainants for the prejudice caused due to maladministration on the part of the SAPS within 21 working days from the date of this report;

(bb) Ensure that the SAPS pay the following amounts within 60 working days from the date of this report to the following Complainants:

(i) The first Complainant, Sejake M, the amount of R972 210.38;

(ii) The second Complainant, Makhaba N, the amount of R595 369.50;

(iii) The third Complainant, Dlomo SA, the amount of R1 397 820.35;

(iv) The fourth Complainant, Mashigo L, the amount of R1 462 440.34;

(v) The fifth Complainant, Nyokong J, the amount of R1 735 238.87; and

(vi) The sixth Complainant, Seitheko GP, the amount of R1 041 851.74.

(cc) Pay interest at the prescribed rate of interest in terms of the Prescribed Rate of Interest Act 55 of 1975 to the Complainants on these amounts from the date of this report until date of payment;

(dd) Within 90 days from the date of this report, ensure that the SAPS appoints an independent audit firm to conduct an audit to establish how many employees, who were SALA Pension Fund members, were similarly affected by the late submission of disability and/or death claims;

(ee) The audit conducted by SALA Pension Fund, as identified in this report shall be the starting point of audit.

(ff) The Minister of Police must within 60 working days after the audit ensure that:
(i) All affected employees are compensated for any loss they may have suffered;

(ii) Develop and implement Standard Operating Procedures (SOPs) for the handling of disability claims of the SALA Pension Fund members, within six months from date of this report. These SOPs must specifically address the speedy submission of claims; and

(iii) Arrange, in conjunction with the SALA Pension Fund, a training workshop on the Master Policy for all personnel tasked with such duties to mitigate future recurrence and submit proof to my office within 12 months from the date of this report. Any such recurrence by any SAPS official after training is provided, such official must be disciplined accordingly and whatever loss incurred by the SAPS be recovered from the said official.
REPORT ON A SYSTEMIC INVESTIGATION INTO ALLEGATIONS OF FAILURE BY THE SOUTH AFRICAN POLICE SERVICE TO TIMEOUSLY PROCESS DISABILITY CLAIMS IN ACCORDANCE WITH THE RULES OF THE SOUTH AFRICAN LOCAL AUTHORITIES PENSION FUND MASTER POLICY

1. INTRODUCTION

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

1.2. This report is submitted in terms of section 8(1) of the Public Protector Act to the following to note the outcome of this investigation:

1.2.1. The Minister of Police, Honourable B Cele, MP; and

1.2.2. The National Commissioner of the South African Police Service (SAPS), Lieutenant-General KJ Sithole.

1.3. A copy of the report is also provided in terms of section 8(3) of the Public Protector Act to the following people to inform them of the outcome of my investigation:

1.3.1 The Complainants, M Sejake; N Makhaba; SA Dlomo; L Mashigo; J Nyokong; and GP Seitlheko;

1.3.2 The Principal Officer of the South African Local Authorities Pension Fund, Mr Sipho Sidu; and

1.3.3 The Chairperson of the Board of Trustees of the South African Local Authorities Pension Fund, Mr Lucas Mabila.
1.4. The report relates to a systemic investigation into the alleged failure by the South African Police Service (SAPS) to timeously submit disability claims of the Complainants who were employees of the SAPS, in accordance with the rules of the South African Local Authorities Pension Fund Master Policy (Master Policy) and as a result their claims were repudiated.

2. SYSTEMIC ISSUES IDENTIFIED

2.1 My office received complaints from seven Complainants, all employees of the SAPS and who were members of the SALA Pension Fund alleging that the SAPS failed to timeously submit their disability claims to the SALA Pension Fund in terms of the Master Policy. As a result of the late submission of claims and subsequent repudiation, the Complainants suffered financial prejudice in that they did not receive the compensation they are entitled to in terms of the Master Policy.

2.2 The Complainants are:

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   Date of birth: 23 Nov 1955 | 27 July 2015 | Mr M. Sejake is a male who retired due to ill-health from the SAPS on 31 October 2008. He was sick for a considerable time before being granted ill-health retirement by the SAPS. He was informed by the SALA Pension Fund on 24 April 2009 that his disability claim was repudiated as it was not received within the prescribed 3 month period. The application was only submitted by the SAPS to the SALA Pension Fund on 29 June 2009. |
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<th></th>
<th>Name</th>
<th>Date of Birth</th>
<th>Date of Claim</th>
<th>Details</th>
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<tbody>
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<td>Makhaba N Force</td>
<td>11 March 1955</td>
<td>27 July 2015</td>
<td>Ms N. Makhaba is a female who suffered a gunshot wound whilst on duty during 2003. She was placed on sick leave for a period of three years and eventually retired due to ill-health as a result of an injury on duty on 30 September 2008. The disability claim was only submitted to the SALA Pension Fund by the SAPS on 04 June 2009 and consequently the SALA Pension Fund repudiated the claim.</td>
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<td>3</td>
<td>Diomo SA Force Nr 630460-5</td>
<td>15 January 1980</td>
<td>21 November 2014</td>
<td>Mr Diomo, a male, was a member of the SAPS and retired due to ill-health on 31 December 2008. His last active working day was 10 March 2008 and the SAPS only informed the SALA Pension Fund on 30 October 2008, more than 4 months out of time. The SAPS submitted his documents to the SALA Pension Fund on 07 July 2009.</td>
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<td>4</td>
<td>Mashigo L Force Nr 628244-0</td>
<td>28 August 1965</td>
<td>17 August 2012</td>
<td>Mr Mashigo is a male who suffered post-traumatic stress disorder from 07 April 2005 and his services were terminated on 31 October 2007 due to ill-health. His claim for disability and ill-health benefits was submitted to the SALA Pension Fund on 16 April 2008 and was repudiated because the SAPS submitted the documents late.</td>
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| 5 | Nyokong J Force Nr 0624981-7  
Date of birth: 26 December 1959 | 04 August 2014 | Mr Nyokong is a male whose services were also terminated due to ill-health on 31 January 2009. He also alleged that his claim for disability and ill-health benefits was repudiated because the SAPS submitted his documents to the SALA Pension Fund after the prescribed period. |
| 6 | The Late Seitlheko SA Force Nr 623883-1  
Deceased’s date of birth: 02 September 1964  
Complainant Seitlheko GP | 21 January 2013 | Ms. Seitlheko’s husband passed away on 01 September 2008 whilst on duty. She alleged that her claim for death benefits was repudiated because the SAPS did not inform the SALA Pension Fund about her husband’s death within three months from the date of death as required, and the benefits claim documents were submitted more than 15 months from the date of death instead of within 12 months as required by the rules of the SALA Pension Fund. |

2.3 A seventh complaint was resolved in accordance with section 6(4)(d)(i) of the Public Protector Act, through mediation between the Complainant, SAPS and SALA Pension Fund. The Complainant was declared medically unfit by the SAPS during the time of the rule change by SALA Pension Fund where the period for submission of applications was extended to six months. The SALA Pension Fund then accepted the Complainant’s retirement documents in terms of the extended period.
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.

3.2 Section 182(1) of the Constitution provides:

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

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

(b) to report on that conduct; and

(c) to take appropriate remedial action."

3.3 In the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect.\(^1\) 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."\(^2\)

3.4 In the above-mentioned Constitutional matter, Mogoeng CJ, stated the following, when confirming the powers of the Public Protector:

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

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\(^1\) [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].

\(^2\) Supra at para [73].
3.4.2 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced (paragraph 67);

3.4.3 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has the effect, if it is the best attempt at curing the root cause of the complaint (paragraph 68);

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

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

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

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

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

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

3.6 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.

3.7 The SAPS is an organ of state within the meaning of section 239 of the Constitution and its conduct amounts to conduct in state affairs as a result, the matter falls within the ambit of the Public Protector's mandate.

3.8 The Public Protector has the necessary power and jurisdiction to investigate the above-mentioned complaints and to take appropriate remedial action and these powers and jurisdiction were neither disputed nor challenged by any of the implicated parties.

4. THE INVESTIGATION

4.1 Methodology

4.1.1 The investigation was conducted in terms of section 182(1)(a) of the Constitution; and sections 6 and 7 of the Public Protector Act.
4.1.2. The Public Protector Act confers on me the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.1.3. The investigation process commenced with a preliminary investigation, which included interviews and correspondence with the Complainants; correspondence and meetings with the SAPS and SALA Pension Fund officials; analysis of the relevant documentation, research and consideration of the relevant laws.

4.1.4. Due to the number of similar complaints received, my office looked beyond the resolution of the individual complaints and conducted a systemic investigation to look at the root causes of these individual similar complaints of a similar nature.

4.2. Approach to the investigation

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

4.2.1.1. What happened?

4.2.1.2. What should have happened?

4.2.1.3. Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration?

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

4.2.2. The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally
focused on whether or not the SAPS acted improperly or failed to timeously submit the disability claims of the Complainants to the SALA Pension Fund.

4.2.3. The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the SAPS or organ of state to prevent maladministration and prejudice.

4.2.4. The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration. Where a complainant has suffered prejudice the idea is to place him or her as close as possible to where they would have been had the organ of state complied with the regulatory framework setting the applicable standards for good administration.

4.2.5. Due to the number of similar complaints, my office also looked beyond the resolution of the individual complaints and conducted a systemic investigation to look at the root causes of these individual complaints.

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

4.3.1 Whether there was failure by the SAPS to timeously notify the SALA Pension Fund of the Complainants’ disabilities

4.3.2 Whether the Complainants were improperly prejudiced by the alleged conduct of the SAPS

4.3 Key sources of information

4.3.1 Documents

4.3.1.1 The SALA Pension Fund revised rules dated 01 October 2008

4.3.1.2 Disability Calculation sheet dated March 2016 in respect of M Sejake and N Makhaba received from the SALA Pension Fund calculated on my office’s request

4.3.1.3 Calculations of payments dated 01 September 2017 from the SALA Pension Fund that would have been made to the Complainants
4.3.2 Interviews and Meetings held

4.3.2.1 Interview of the SALA Pension Fund National Manager, Mr W Turner dated 25 August 2015

4.3.2.2 A meeting on 18 February 2016 with officials from the SALA Pension Fund and SAPS Medical Administration Unit.

4.3.2.3 Interview of the Complainants on 30 April 2016 and 05 May 2016.

4.3.2.4 A meeting with the SAPS and SALA Pension Fund officials on 22 November 2017 on the implementation of my intended remedial action.

4.3.2.5 A meeting with the SAPS and SALA Pension Fund officials on 07 February 2018 on the implementation of my intended remedial action.

4.3.3 Correspondence sent and received

4.3.3.1 A letter dated 19 September 2008 from the SAPS informing N Makhaba of her retirement due to ill-health from 31 October 2008;

4.3.3.2 A letter dated 24 April 2009 from the SALA Pension Fund repudiating the disability claim of N Makhaba due to late submission;

4.3.3.3 A letter dated 23 August 2013 from the SAPS Deputy Provincial Commissioner, Major General Maloka, to all Station Commissioners, all Unit Commanders, all Provincial heads, Divisional Commissioners restating the process for the SALA Pension Fund disability claims;

4.3.3.4 An email dated 01 September 2015 to the SAPS requesting its response and to submit reasons for the late submission of the Complainants' SALA Pension Fund disability claims;
4.3.3.5 A letter dated 01 April 2016 from the SALA Pension Fund confirming that the claims that would be payable were repudiated due to late notification by the SAPS;

4.3.3.6 An email dated 07 February 2017 from the SAPS indicating late submissions to the SALA Pension Fund that the latter did not repudiate;

4.3.3.7 The SALA Pension Fund's response dated 21 February 2017 to the submissions of the SAPS of 07 February 2017;

4.3.3.8 The SALA Pension Fund letter on calculations dated 01 September 2017 on the Complainants' losses;

4.3.3.9 Notice in terms of section 7(9)(a) of the Public Protector Act to the SAPS National Commissioner dated 10 October 2017;

4.3.3.10 The SAPS' response to the notice dated 31 October 2017; and

4.3.3.11 A response from the SALA Pension Fund to the notice dated 18 February 2018.

4.3.4 Legislation and other prescripts

4.3.4.1 The Constitution;

4.3.4.2 Public Protector Act; and

4.3.4.3 The SALA Pension Fund Master Policy

4.3.5 The Public Protector and Pensions Funds Adjudicator's Touchstone

4.3.5.1 Report 1 of 2015/2016 – “Costly Delay” – A report by the Public Protector on an investigation into allegations of undue failure by Matlosana Local Municipality to submit the deceased’s beneficiaries' life assurance cover claim to the South African Local Authorities Pension Fund within the prescribed period from the date of his death
4.3.5.2 The Pension Funds Adjudicator's matter: Shongwe GS vs South African Local Authorities Pension Fund (First Respondent) and the South African Police Service (Atteridgeville) (Second Respondent) on payment of interest

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

5.1 Regarding whether there was failure by the SAPS to timeously notify the SALA Pension Fund of the Complainants' disabilities:

Common cause issues

5.1.1 The Complainants submitted all the required documents timeously to enable the SAPS to notify the SALA Pension Fund of their impending disability claims.

5.1.2 It is further not disputed that the SAPS failed to timeously notify the SALA Pension Fund within the prescribed period of 3 months in respect of the disability claims of the Complainants.

5.1.3 The first Complainant, M Sejake, submitted that the SAPS confirmed that he retired due to ill-health from the SAPS on 31 October 2008. The application for disability was only submitted by the SAPS to the SALA Pension Fund on 29 June 2009. The application for disability benefits was signed by Captain Sithebe of the SAPS on 26 May 2009 and received by the SALA Pension Fund on 29 June 2009.

5.1.4 The second Complainant, N Makhaba, submitted that the SAPS confirmed that she sustained a gunshot wound whilst on duty during 2003. She was placed on sick leave for a period of three years and eventually retired due to ill-health by the SAPS on 30 September 2008. The disability claim was only submitted by the SAPS to the SALA Pension Fund on 04 June 2009.
5.1.5 The third Complainant, SA Dlomo, was a member of the SAPS and retired due to ill-health on 31 December 2008. His last active working day was 10 March 2008 and the SAPS only informed the SALA Pension Fund on 30 October 2008 more than 4 months out of time. The SAPS submitted his documents to the SALA Pension Fund on 07 July 2009.

5.1.6 The fourth Complainant, L Mashigo, suffered post-traumatic stress disorder from on 07 April 2005 and his services were terminated on 31 October 2007 due to ill-health. His claim for disability and ill-health benefits was submitted to the SALA Pension Fund on 16 April 2008 and was repudiated because the SAPS submitted the documents late.

5.1.7 The services of the fifth Complainant, J Nyokong, were also terminated due to ill-health on 31 January 2009. He also alleged that his claim for disability and ill-health benefits was repudiated because the SAPS submitted his documents to the SALA Pension Fund after the prescribed period.

5.1.8 The husband of the sixth Complainant, GP Seithoko, passed away on 01 September 2008 whilst on duty. She alleged that her claim for death benefits was repudiated because the SAPS did not inform the SALA Pension Fund about her husband’s death within three months from the date of death as required, and the benefits claim documents were submitted more than 15 months from the date of death instead of within 12 months as required by the SALA Pension Fund rules.

5.1.9 On 23 August 2013, the Deputy Commissioner, Major General Maloka, addressed a written instruction to all Station Commissioners, all Unit Commanders, all Provincial heads and Divisional Commissioners. The instruction referred to long periods of sick leave of members contributing to the SALA Pension Fund. The addressees were instructed that when a contributing SALA Pension Fund member is on sick leave for 30 days and longer, the Human Resources Commander of the member must inform the SALA Pension Fund accordingly, and copy the Deputy Commissioner. The contact details of the SALA Pension Fund were included in the letter.
5.1.10 All the parties conceded that they were aware of the prescribed period in relation to the lodging of disability claims to the SALA Pension Fund.

5.1.11 The SAPS National Commissioner responded on 31 October 2017 to my section 7(9) notice. He indicated that the findings were not disputed and requested a meeting on the implementation of the intended remedial actions.

*Application of the relevant law*

5.1.12 Section 195(1)(a) and (f) of the Constitution provides for a public administration that must be governed by democratic values and principles enshrined in the Constitution which include, *inter alia*, the promotion and maintenance of a high standard of professional ethics and an accountable public administration. These principles enjoin the SAPS to exercise a high level of professionalism and ethics, including accountability in the performance of their duties.

5.1.13 The notification to the SALA Pension Fund of disability claims are regulated by the Claim Notification and Recognition of Disability Rules of the Master Policy.

5.1.14 Paragraph 4.1 of the SALA Pension Fund provides that "the Policyholder, Employer and/or Life Insured (SALA Member) shall notify the Administrator in writing immediately that an incident occurs that is likely to give rise to a claim under this Policy. Formal written notification must also be provided to the Administrator within 3 (three) months in the event of-

4.1 (1) "a member being absent from work, unless on authorized holiday, for a period of at least 3 (three) weeks.

5.1.15 The employer is obliged to complete a Notification of Impending Disability Form (Ref No 200). The form specifically states on its cover that it is "To be completed by the Employer". The form further lists the circumstances under which it should be completed. One of the listed circumstances is "where a
member wishes to apply for disability benefit or has been boarded by his
attending medical practitioner, and the Employer is preparing the initial claim
package for submission”.

5.1.16 In terms of the afore going provisions the SAPS was obliged to notify the
administrator immediately about Complainants 1 to 5 about their possible
disability and to lodge the claims for disability benefits within 3 months from
the date of their disability.

5.1.17 Rule 8.11 of the Master Policy provides, inter alia, that:

“The Employer must lodge a formal claim in writing with the REGISTERED
INSURER in respect of disability and death claim in accordance with the
period set out in the policy.”

5.1.18 The period stated above in Rule 8.11 is twelve months as provided for in
clause 3.2 of schedule 2 of the Master Policy. In terms of the provisions, the
SAPS, as the Employer, was obliged to lodge a deceased’s beneficiaries’ Life
Assurance Cover claim within a period of twelve months from the date of the
deceased’s death.

Conclusion

5.1.19 All the five Complainants fell within the category of disabled in terms of the
provisions of paragraph 4.2 of the Master Policy due to their lengthy absence
from work as a result of illness.

5.1.20 The SAPS was required to notify the SALA Pension Fund within three months
of the possible disability of the Complainants. It is an inevitable consequence
that failure to issue this notification of disability within the required time would
result in the insurer repudiating the claims.

5.1.21 It can be concluded that the SAPS failed to inform the SALA Pension Fund
about the sixth Complainant’s husband’s death and to submit the Deceased’s
beneficiaries’ Life Assurance Cover claim to the SALA Pension Fund within the prescribed time.

5.1.22 The letter of 23 August 2013 from Deputy Commissioner, Major General Maloka confirmed the systemic problems within the SAPS in respect of the submission of disability notifications timeously to SALA Pension Fund.

5.1.23 The National Commissioner responded to my section 7(9) notice on 26 October 2017. The National Commissioner indicated that the findings were not disputed.

5.2 Regarding whether the Complainants were improperly prejudiced by the alleged conduct of the SAPS:

*Common cause issues*

5.2.1 The first Complainant was 54 years and eleven months old when he received a resignation benefit amounting to R877 872.21 from the SALA Pension Fund when he left the service due to ill-health on 31 October 2008. In terms of the Master Policy he was entitled to a monthly income until the age of 60 valued at R556 777.50 and a cash retirement value at the age of 60 valued at R1 293 305.09. This amounts to R1 850 082.59. His total loss amounts to R972 210.38.

5.2.2 The second Complainant was 52 years and six months old when she received a resignation benefit amounting to R574 290.84 when she left the service due to injury on duty on 30 September 2008. In terms of the Master Policy she was entitled to a monthly income until the age of 60 valued at R681 239.70 and a cash retirement value at the age of 60 valued at R1 076 445.04. This amounts to R1 757 684.74. Her total loss amounts to R595 369.50.

5.2.3 The third Complainant was 48 years old when he received a resignation benefit amounting to R878 140.93 when he left the service due to ill-health on 31 December 2008. In terms of the Master Policy he was entitled to a monthly
income until the age of 60 valued at R547 650.00 and a cash retirement value at the age of 60 valued at R1 735 311.28. This amounts to R2 275 961.28. His total loss amounts to R1 397 820.35.

5.2.4 The fourth Complainant was 43 years and five months old when he received a resignation benefit amounting to R510 128.41 when he left the service due to ill-health on 31 October 2007. In terms of the Master Policy he was entitled to a monthly income until the age of 60 valued at R553 428.04 and a cash retirement value at the age of 60 valued at R1 419 140.71. This amounts to R1 972 568.75. His total loss amounts to R1 462 440.34.

5.2.5 The fifth Complainant was 50 years and one month old when he received a resignation benefit amounting to R699 505.48 when he left the service due to ill-health on 31 January 2009. In terms of the Master Policy he was entitled to a monthly income until the age of 60 valued at R1 086 172.50 and a cash retirement value at the age of 60 valued at R1 348 571.65. This totals to R2 434 744.15. His total loss amounts to R1 735 238.67.

5.2.6 The sixth Complainant lost the Group Life Insurance after her husband’s death due to the late submission of the claim by the SAPS. The SALA Pension Fund estimated the benefits to amount to R1 041 851.74.

5.2.7 During a meeting held on the 18 February 2016 with my investigation team, the SALA Pension Fund informed that it repudiated disability claims which would have given rise to an ill-health benefit being paid due to failure by the SAPS to submit a notice of impending disability with the prescribed period. This was further confirmed by the SALA Pension Fund in correspondence dated 01 April 2016.

*Issues in dispute*

5.2.8 In a meeting held on the 18 February 2016 between my team, the SAPS and SALA Pension Fund officials and in the follow up meeting on the 03 February
2017 with the SAPS only, the SAPS officials submitted that they were not in a position to deny and/or accept liability as they were still awaiting a legal opinion from the State Attorney. However, the SAPS conceded that the notifications to the SALA Pension Fund were not submitted within the period prescribed of the Master Policy.

5.2.9 During the meeting of 03 February 2017, the SAPS indicated that there were instances where the SALA Pension Fund paid a number of claims despite the late notifications in terms of the Master Policy.

5.2.10. Flowing from the meeting, the SAPS submitted through an email on 07 February 2017 a list of claims that were initially repudiated due to late notification and were later accepted by the SALA Pension Fund.

5.2.11 The SAPS submitted the following names of claimants whose notifications were submitted late, but accepted by the SALA Pension Fund:

(a) Ntsangani JT
(b) Dhlamini TE
(c) Myeni TC
(d) Jimba LM
(e) Bothetele NA
(f) Cele NR
(g) Matema KC
(h) Modise AD

5.2.12. In response to the allegations raised by the SAPS, the SALA Pension Fund informed that it amended the Master Policy in respect of the period of notification from 01 July 2013 from the previous 3 months notification period to 6 months.

5.2.13. All the disability claims with notifications received before 01 July 2013 were assessed according to the 3-month notification period (Old rules) and all
claims with notifications received from 01 July 2013 onwards were assessed according to the 6-month notification period. (New rules).

5.2.14. The SALA Pension Fund further informed that the claims identified by the SAPS were dealt with as follows:

<table>
<thead>
<tr>
<th>Claimant</th>
<th>“New Notification /Old Notification Rules”</th>
<th>Last Active Date at Work</th>
<th>Notification Date to SOMA</th>
<th>Decision: (Valid or Repudiated)</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ntsangani JT</td>
<td>New (6 Months)</td>
<td>2/12/2013</td>
<td>15/5/2014</td>
<td>Validated</td>
<td>Paid - Claim within notification period</td>
</tr>
<tr>
<td>Dhlamini TE</td>
<td>Old (3 Months)</td>
<td>20/04/2010</td>
<td>29/11/2012</td>
<td>Repudiated</td>
<td>Not Paid - Late notification</td>
</tr>
<tr>
<td>Myeni TC</td>
<td>Old (3 Months)</td>
<td>19/08/2009</td>
<td>29/08/2009</td>
<td>Initially Repudiated due to insufficient medical information</td>
<td>Validated on Appeal and Paid, but then cancelled due to Member’s withdrawal from the Fund. Please refer to the PFA ruling.</td>
</tr>
<tr>
<td>Bothetele NA</td>
<td>Old (3 Months)</td>
<td>28/02/2009</td>
<td>19/03/2009</td>
<td>Validated</td>
<td>Paid - Claim within notification period</td>
</tr>
<tr>
<td>Cele NR</td>
<td>New (6 Months)</td>
<td>2/12/2015</td>
<td>7/12/2015</td>
<td>Validated</td>
<td>Paid - Claim within notification period</td>
</tr>
<tr>
<td>Matema KC</td>
<td>Old (3 Months)</td>
<td>7/02/2008</td>
<td>3/03/2008</td>
<td>Validated</td>
<td>Paid - Claim within notification period</td>
</tr>
<tr>
<td>Modise AD</td>
<td>New (6 Months)</td>
<td>30/12/2014</td>
<td>25/03/2015</td>
<td>Validated</td>
<td>Paid - Claim within notification period</td>
</tr>
</tbody>
</table>
5.2.15 The SALA Pension Fund submitted that based on the above-mentioned information, the assessment and payment of claims were in terms of the notification period rules applicable at the time.

*Application of the relevant law*

5.2.16 Section 195(1)(a) and (f) of the Constitution provides for a public administration that must be governed by democratic values and principles enshrined in the Constitution which include, inter alia, the promotion and maintenance of a high standard of professional ethics and an accountable public administration. Section 237 of the Constitution further provides that all constitutional obligations must be performed diligently and without delay.

5.2.17 These principles enjoin the SAPS to exercise a high level of professionalism and ethics, including accountability in the performance of their duties. It was never in dispute that the SAPS failed to submit the claims of both Complainants within the prescribed period. It is important to note that the SAPS was aware at all material times that it had to notify the SALA Pension Fund in terms of paragraph 4.1 and 4.2 of the Master Policy.

5.2.18 Section 6(4)(a)(l) of the Public Protector Act was relied upon to determine if the Complainants suffered prejudice as a result of the conduct of the SAPS and whether such conduct amounted to maladministration.

5.2.19 My office found in a report, "Costly Delay" (Report 1 of 2015/2016), that the Municipality’s failure to submit the notification to the SALA Pension Fund was negligent and caused financial prejudice suffered by the Complainant. In the same report my office held the Municipality liable for the financial loss of the Complainant and the remedial action was the repayment with interest by the Municipality of the loss suffered.
5.2.20 The Pension Funds Adjudicator in the matter of “Shongwe GS vs South African Local Authorities Pension Fund (First Respondent) and the South African Police Service (Atteridgeville) (Second Respondent)” determined on 07 July 2016 in terms of Section 30M of the Pension Funds Act 24 of 1956, that the Applicant was entitled to interest on the amount owing in terms of unpaid pension resulting from a similar omission by the SAPS to lodge the applicant’s claim within the prescribed timeframes in terms of the Master Policy.

**Conclusion**

5.2.21 Based on the evidence obtained it can be concluded that failure by the SAPS to comply with its constitutional obligations to submit the claims diligently and without delay, within the prescribed periods of the rules, irregularly deprived the Complainants of their benefits. The Complainants lost the following benefits:

5.2.21.1 The first Complainant lost R972 210.38;
5.2.21.2 The second Complainant lost R595 369.50;
5.2.21.3 The third Complainant lost R1 397 820.35;
5.2.21.4 The fourth Complainant lost R1 462 440.34;
5.2.21.5 The fifth Complainant lost R1 735 238.67; and
5.2.21.6 The sixth Complainant lost R1 041 851.74.

5.2.22 The SALA Pension Fund indicated that an audit on repudiated claims resulted in the following information:

5.2.22.1 68 Group Life cases identified where no funeral claims to the value of R35.5 million were submitted;
5.2.22.2 11 Group Life cases dating back to the previous administrator to the value of R2.9 million;
5.2.22.3 35 possible disability cases to the total value of R55.8 million. The insurer never had the opportunity to assess these cases to determine whether they qualify; and

5.2.22.4 42 Group Life cases for funeral benefits totalling R22.8 million.

5.2.23. The SAPS National Commissioner responded to my section 7(9) notice on 26 October 2017 in which he indicated that the findings were not disputed and requested a meeting on the implementation of the remedial action. The meeting was held on 22 November 2017 wherein the SAPS officials agreed to implement the remedial action once I issue this report. The officials, however, requested the Public Protector to reconsider the remedial action which provides that the SAPS National Commissioner "must ensure that the SAPS pays interest at the prescribed rate determined in terms of the Prescribed Rate of Interest Act, 1975 on these sums within sixty (60) working days from the date of the final report."

5.2.24 The SAPS officials indicated that the interest would have serious financial implications on the SAPS budget if it were to be paid in terms of the Prescribed Rate of Interest Act, 1975 and proposed that the interest imposed be at a lower rate than the prescribed one. The parties agreed to meet again with the SALA Pension Fund officials present in order to, inter alia, determine how the calculations of the disability and death benefits were done.

5.2.25 A subsequent meeting was held with the SALA Pension Fund and SAPS officials on 07 February 2018 wherein the SALA Pension Fund officials explained the formula it used to calculate the benefits and subsequently provided my office with the documents in this regard.

5.2.26 Of critical importance in this matter is the information by the SALA Pension Fund that in addition to the 6 Complainants who approached my office there were over 100 similar cases which remained unpaid and the amount owed was about R112 million.
6. **FINDINGS AND OBSERVATIONS**

After careful examination of the evidence obtained during the investigation, and the regulatory framework setting the standard that should have been upheld by the SAPS, I make the following findings and observations:

6.1 **Regarding whether there was undue delay by the SAPS to timeously notify the SALA Pension Fund of the Complainants' disabilities:**

6.1.1 The allegation that the SAPS failed to timeously submit the notices and disability and death claims to the SALA Pension Fund within the prescribed period is substantiated.

6.1.2 The failure of the SAPS to submit the notices and disability and death claims to the SALA Pension Fund within the prescribed period was in violation of paragraph 4.1 and Rule 8.11 of the Master Policy. The SAPS was aware of the prescripts of the Master Policy and despite this still failed to submit the notices and claims on time.

6.1.3 This failure by the SAPS constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration and undue delay as envisaged in section 6(4)(a) (i) and (ii) of the Public Protector Act.

6.2 **Regarding whether the Complainants were improperly prejudiced by the alleged conduct of the SAPS:**

6.2.1 The allegation that the Complainants were improperly prejudiced by the conduct of the SAPS is substantiated;

6.2.2 The SAPS conceded to submitting the Complainants' claim documents outside the period as required by the Master Policy.
6.2.3 The failure of the SAPS to perform its duties diligently and without delay was in contravention with the constitutional obligations in terms section 237 of the Constitution.

6.2.4 Such failure resulted in financial prejudice to the Complainants as they lost the following benefits:

<table>
<thead>
<tr>
<th>No</th>
<th>Complainant</th>
<th>Calculation of loss</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Sejake M</td>
<td>Mr Sejake was 54 years and eleven months old when he received a resignation benefit amounting to R877 872.21 when he left the service due to ill-health on 31 October 2008. In terms of the Master Policy he was entitled to a monthly income until the age of 60 valued at R556 777.50 and a cash retirement value at the age of 60 valued at R1 293 305.09. This totals to R1 850 082.59. His total loss calculates to R972 210.38.</td>
</tr>
<tr>
<td>2</td>
<td>Makhaba N</td>
<td>Ms Makhaba was 52 years and six months old when she received a resignation benefit amounting to R574 290.84 when she left the service due to injury on duty on 30 September 2008. In terms of the Master Policy she was entitled to a monthly income until the age of 60 valued at R681 239.70 and a cash retirement value at the age of 60 valued at R1 076 445.04. This totals to R1 757 684.74. Her total loss amounts to R595 369.50.</td>
</tr>
<tr>
<td>3</td>
<td>Diomo SA</td>
<td>Mr Diomo was 48 years old when he received a resignation benefit amounting to R878 140.93 when he left the service due to ill-health on 31 December 2008. In terms of the Master Policy he was entitled to a monthly income until the age of 60 valued at R547 650.00 and a cash retirement value at the age of 60 valued at R1 735 311.28. This totals to</td>
</tr>
<tr>
<td></td>
<td>Name</td>
<td>Description</td>
</tr>
<tr>
<td>----</td>
<td>-----------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>4</td>
<td>Mashigo L</td>
<td>Mr Mashigo was 43 years and five months old when he received a resignation benefit amounting to R510 128.41 when he left the service due to ill-health on 31 October 2007. In terms of the Master Policy he was entitled to a monthly income until the age of 60 valued at R553 428.04 and a cash retirement value at the age of 60 valued at R1 419 140.71. This totals to R1 972 568.75. His total loss calculates to R1 462 440.34.</td>
</tr>
<tr>
<td>5</td>
<td>Nyokong J Force Nr</td>
<td>Mr Nyokong was 50 years and one month old when he received a resignation benefit amounting to R699 505.48 when he left the service due to ill-health on 31 January 2009. In terms of the Master Policy he was entitled to a monthly income until the age of 60 valued at R1 086 172.50 and a cash retirement value at the age of 60 valued at R1 348 571.65. This totals to R2 434 744.15. His total loss amounts to R1 735 238.67.</td>
</tr>
<tr>
<td>6</td>
<td>The Late Seithheko SA Complainant</td>
<td>Ms. Seithheko’s husband passed away on the 01 September 2008 whilst on duty. Due to late submission of the claim for death benefit she did not receive an amount of R1 041 851.74.</td>
</tr>
</tbody>
</table>

6.2.5 The failure by SAPS in this regard constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in Section 6(4)(a)(v) of the Public Protector Act.

6.3 OBSERVATIONS

6.3.1 I have observed serious systemic failures by the SAPS with regard to the administration of disability, death and pension benefits. People affected by
these systemic failures are South African citizens who dedicated their entire lives to protecting this country.

6.3.2 As indicated above, the SALA Pension Fund indicated that an audit on repudiated claims was conducted and the outcome of that audit is as follows:

(a) 68 Group Life cases identified where no funeral claims to the value of R35.5 million were submitted;

(b) 11 Group Life cases dating back to the previous administrator to the value of R2.9 million;

(c) 35 possible disability cases to the total value of R55.8 million. The insurer never had the opportunity to assess these cases to determine whether they qualify;

(d) 42 Group Life cases for funeral benefits totalling R22.8 million; and

(e) The total value of the repudiated claims due to the SAPS's failure and/or undue delay to submit claims, is estimated to be R117 million.

7 REMEDIAL ACTION

7.1 The appropriate remedial action I am taking in pursuit of section 182(1)(c) of the Constitution, with the view of placing the Complainants as close as possible to where they would have been had the improper conduct or maladministration not occurred, while also addressing systemic issues within the SAPS regarding the future lodgement of documents to the SALA Pension Fund are the following:

7.1.1 The SAPS National Commissioner must:
7.1.1.1 Issue letters of apology to the Complainants for the prejudice caused due to maladministration on the part of the SAPS within 21 working days from the date of this report;

7.1.1.2 Ensure that the SAPS pay the following amounts within 60 working days from the date of this report to the following Complainants:

(a) The first Complainant, Sejake M, the amount of R972 210.38;

(b) The second Complainant, Makhaba N, the amount of R595 369.50;

(c) The third Complainant, Dlomo SA, the amount of R1 397 820.35;

(d) The fourth Complainant, Mashigo L, the amount of R1 462 440.34;

(e) The fifth Complainant, Nyokong J, the amount of R1 735 238.67; and

(f) The sixth Complainant, Seilttheko GP, the amount of R1 041 851.74.

7.1.1.3 Pay interest at the prescribed rate of interest in terms of the Prescribed Rate of Interest Act 55 of 1975 to the Complainants on these amounts from the date of this report until date of payment;

7.1.1.4 Within 90 days from the date of this report, ensure that the SAPS appoints an independent audit firm to conduct an audit to establish how many employees, who were the SALA Pension Fund members, were similarly affected by the late submission of disability and/or death claims;

7.1.1.5 The audit conducted by SALA Pension Fund, as identified in this report shall be the starting point of audit.

7.1.1.6 Ensure that, within 60 working days after the audit and in consultation with the SALA Pension Fund and where necessary, the Minister of Police and/or Minister of Finance:
(a) All affected employees are compensated for any loss they may have suffered;

(b) Develop and implement Standard Operating Procedures (SOPs) for the handling of disability claims of the SALA Pension Fund members, within six months from date of this report. These SOPs must specifically address the speedy submission of claims; and

(c) Arrange, in conjunction with the SALA Pension Fund, a training workshop on the Master Policy for all personnel tasked with such duties to mitigate future recurrence and submit proof to my office within 12 months from the date of this report. Any such recurrence by any SAPS official after training is provided, such official must be disciplined accordingly and whatever loss incurred by the SAPS be recovered from the said official.

8. MONITORING

8.1 The SAPS National Commissioner must submit an action plan to my office on implementation of the remedial action referred to in paragraph 7 above within 15 working days from the date of this report.

8.2 My office will monitor implementation of the remedial action quarterly until such time as it has been complied with in full.

8.3 The submission of the implementation plan and the implementation of my remedial action shall, in the absence of a court order, be complied with within the period prescribed in my report to avoid being in contempt of the Public Protector.

ADV/BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 07/08/2018

Assisted by Administrative Justice and Service Delivery Branch and Free State Provincial Office of the Public Protector