
REPORT NO. 39 OF 2009/2010

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION AND UNDUE DELAY RELATING TO THE SUBMISSION OF PENSION DOCUMENTS OF A FORMER EMPLOYEE OF THE LIMPOPO PROVINCIAL DEPARTMENT OF EDUCATION, MS C BREDELL, TO THE GOVERNMENT EMPLOYEES PENSION FUND.
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Executive Summary

(i) The Public Protector investigated a complaint relating to allegations of maladministration and undue delay by the Limpopo Provincial Department of Education (the Department) in connection with the processing and submission of pension documents of an ex-employee, Ms C Bredell (the Complainant), to the Government Employees Pension Fund (the GEPF).

(ii) From the investigation it was found that:

(a) The Department was responsible for the delayed payment of benefits to the Complainant;

(b) The Department had been aware of the maladministration and delay for a considerable period and failed to resolve the matter;

(c) The failure of officials to attend to the matter resulted in an additional financial obligation to the GEPF, as interest in the amount of R37 334.41 was paid to the Complainant;

(d) The payment of interest could have been avoided if documents were submitted to the GEPF within the prescribed period of 6 weeks;

(e) The Complainant received a reduced benefit as a result of the incorrect service period reflected on the form Z102;

(f) The Complainant was prejudiced by the lack of service delivery and undue delay by officials of the Department.

(iii) The remedial action to be taken is as follows:

The HOD has to:
(a) Submit an amended form Z102 to the GEPF within two months of the date of this report, stating the service period as 1 January 1992 to 30 April 2007;

(b) Consider whether disciplinary action should be taken against the officials responsible for the undue delay in the processing of the pension documents of the deceased; and

(c) Report to the Public Protector on the implementation of the remedial action referred to in paragraphs (a) and (b) above within 3 months of the date of this report.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF
MALADMINISTRATION AND UNDUE DELAY RELATING TO THE SUBMISSION
OF PENSION DOCUMENTS OF A FORMER EMPLOYEE OF THE LIMPOPO
PROVINCIAL DEPARTMENT OF EDUCATION, MS C BREDELL, TO THE
GOVERNMENT EMPLOYEES PENSION FUND

1. INTRODUCTION

1.1 This is a report 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). It is submitted to:

1.1.1 The Complainant;

1.1.2 The Limpopo Provincial Legislature;

1.1.3 The Member of the Executive Council responsible for Education in the
Limpopo Provincial Government;

1.1.4 The Head of the Limpopo Provincial Department of Education (the HOD);
and

1.1.5 The Chief Executive Officer of the Government Employees Pension Fund.

1.2 It relates to an investigation into allegations of maladministration and
undue delay by the Limpopo Provincial Department of Education (the
Department) to process and submit pension documents of an ex-
employee, Ms Bredell (the Complainant) to the Government Employees
Pension Fund (the GEPF).
2. BACKGROUND

2.1 The Complainant was employed by the Department for the period 1 January 1992 to 30 April 2007.

2.2 She resigned on 15 March 2007 and submitted the necessary documents to the Department for processing and submission to the GEPF, for payment of her pension benefits.

2.4 She subsequently inquired into progress of the process and was informed that the Department had never submitted the documents to the GEPF and that the documents were “lost”.

2.5 She submitted a new set of documents on 27 November 2007.

2.6 These documents were also not processed and submitted to the GEPF and she attempted to address the maladministration and delay in the matter with the assistance of her Labour Union, without success.

2.7 On 11 November 2008 she was again requested by the Department to submit new documents.

2.8 The documents were processed and submitted to the GEPF on 24 March 2009, but erroneously stating the service period on the form Z102 as 1 January 1992 to 28 February 2007.

2.13 Benefits were calculated on the incorrect period and paid to the Complainant on 7 April 2009.
3. THE COMPLAINT

The Complainant lodged her complaint in connection with the failure of the Department to process and to submit her pension documents to the GEPF with the Public Protector on 24 March 2009.

4. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT

4.1 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.”

4.2 In terms of section 6(4)(a) of the Public Protector Act, the Public Protector is competent to investigate, on his or her own initiative or on receipt of a complaint, any alleged maladministration in connection with the affairs of government, abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function.

4.3 In terms of section 6(4)(c) of the Act, the Public Protector may at any time prior to, during or after an investigation, inter alia, make any appropriate
recommendation that he/she deems expedient to the public body or authority affected by it.

4.4 The allegations of maladministration and undue delay fall within the powers and jurisdiction of the Public Protector to investigate.

5. THE INVESTIGATION

5.1 The investigation was conducted in terms of sections 6 and 7 of the Public Protector Act, 1994 and comprised:

5.1.1 Consideration of the documents submitted by the Complainant;

5.1.2 Consultation with the Complainant;

5.1.3 Consultation with officials of the GEPF;

5.1.4 Consultation and correspondence with officials of the Legal Services Division of the Department; and

5.1.5 Consultation and correspondence with the HOD.

6. THE GOVERNMENT EMPLOYEES PENSION LAW, 1996

6.1 In terms of Section 26(1) of the Government Employees Pension Law, 1996 (Proclamation 21 of 1966)(the Act), pension benefits shall be paid to a beneficiary within a period of 60 days, after the date on which the benefit becomes payable to the member, i.e. the last day of service of the member or the date of death of the member.

6.2 Section 26(2) of the Act provides that if a member is not paid within the period referred to in subsection (1), interest shall be paid by the GEPF to
the beneficiary, at the rate prescribed.

6.3  Section 17(4) read with Rule 20 of the GEPF Rules, provides that:

"If any action taken by the employer or if any legislation adopted by Parliament places any additional financial obligation on the Fund, the employer or the Government or the employer and the Government, as the case may be shall pay to the Fund an amount which is required to meet such obligation." (emphasis added)

7.  COMMON CAUSE

7.1  From the investigation it appeared that the following is common cause:

7.1.1  The Complainant was employed by the Department for the period 1 January 1992 to 30 April 2007.

7.1.2  She resigned on 15 March 2007 and submitted her pension documents to the Department.

7.1.3  The Department failed to process her documents and to submit it to the GEPF.

7.1.4  She submitted another two sets of documents to the Department in the period November 2007 to November 2008.

7.1.5  The Department eventually processed and submitted the documents to the GEPF on 24 March 2007, stating an incorrect service period.

7.1.6  Benefits were calculated and paid to the Complainant on 7 April 2009.
7.1.7 Interest in the amount of R37 334.41 was paid to the Complainant as a result of the delayed submission of documents by the Department.

8. RESPONSE FROM THE HEAD OF THE DEPARTMENT

8.1 The complaint of Ms Bredell was brought to the attention of the HOD on 25 March 2009, requesting his response and comments on the matter.

8.2 In terms of section 7(9) of the Public Protector Act the HOD was informed that the Public Protector might make an adverse finding against the officials who were supposed to process and submit the pension documents to the GEPF and that the Department might be directed to refund the GEPF the interest paid to the Complainant.

8.3 Despite several requests by the Public Protector to do so, the HOD failed to respond.

8.4 The Public Protector issued a notice of intention to subpoena to the HOD on 26 May 2009.

8.5 On 11 August 2009 the HOD commented as follows:

"The Senior Manager of (the) Sekhukhune District has brought an explanation for the delay in submitting (the) pension documents of Ms Bredell to the GEPF. The explanation is that the 2005 general salary increase was not affected on Ms Bredell's salary and the whole calculation had to be re-done, causing the delay."

8.6 No justification was afforded for the loss of the original documents and the second set of documents that the Complainant submitted to the Department.
8.7 The lack of response to the Public Protector and the disturbing lack of co-operation with the Public Protector were also not accounted for.

9. POLICY ON SERVICE DELIVERY: BATHO PELE PRINCIPLES

9.1 In 1997 the Department of Public Service and Administration (DPSA) published a White Paper on Transforming Public Service Delivery (General Notice 1459 of 1997, published on 1 October 1997 in Government Gazette No. 18340). The purpose of the White Paper was to provide a policy framework and a practical implementation strategy for the transformation of public service delivery. The White Paper is also known as the Batho Pele White Paper. Batho Pele can be translated as “People First”.

9.2 The White Paper identified eight Batho Pele Principles for transforming public service delivery. At least three of these principles are relevant to the present matter, namely:

9.2.1Courtesy:

Citizens should be treated with courtesy and consideration;

9.2.2Redress:

If the promised standard of service is not delivered, citizens should be offered an apology, a full explanation and a speedy and effective remedy; and when complaints are made, citizens should receive a sympathetic, positive response; and

9.2.3Value for money:

Public services should be provided economically and efficiently in order to give citizens the best possible value for money.
10. OBSERVATIONS

10.1 Numerous calls, letters and e-mails to different sections of the Department went unanswered in the period the Complainant attempted to address the matter, resulting in the undue delay of the matter for a period of more than two years.

10.2 With reference to the Batho Pele Principles, it cannot be said that the Complainant was treated with consideration. She was neither provided with a speedy and effective remedy, nor was the Department efficient in their service delivery in this specific case.

10.3 The Department was unable to provide just cause for the loss of pension documents and the inability to process and submit the required documents to the GEPF for more than two years.

11. FINDINGS

11.1 From the investigation the following key findings were made:

11.1.1 The Department was responsible for the loss of pension documents and the delayed payment of benefits to the Complainant;

11.1.2 The Department had been aware of the maladministration and delay for a considerable period and failed to resolve the matter;

11.1.3 The failure of officials to attend to the matter resulted in an additional financial obligation to the GEPF, as interest in the amount of R37 334.41 was paid to the Complainant;

11.1.4 The payment of interest could have been avoided if documents were submitted to the GEPF within the prescribed period of 6 weeks;
11.1.5 The Complainant received a reduced benefit as a result of the incorrect service period reflected on the form Z102;

11.1.6 The Complainant was prejudiced by the lack of service delivery and undue delay by officials of the Department.

12. **REMEDIAL ACTION TO BE TAKEN**

In terms of the provisions of section 182(1)(c) of the Constitution, 1996 and section 6(4)(c)(ii) of the Public Protector Act, the remedial action to be taken is as follows:

The HOD has to:

12.1 Submit an amended form Z102 to the GEPF within two months of the date of this report, stating the service period as 1 January 1992 to 30 April 2007;

12.2 Consider whether disciplinary action should be taken against the officials responsible for the undue delay in the processing of the pension documents of the deceased; and

12.3 Report to the Public Protector on the implementation of the remedial action referred to in paragraphs 12.1 and 12.2 above within 3 months of the date of this report.

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ADV T N MADONSELA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
Date: 28/02/2010
Assisted by: Mrs M J Fourie (Senior Investigator)