REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IRREGULAR APPOINTMENT OF OFFICIALS AT THE MAMELODI REGIONAL HOSPITAL
# TABLE OF CONTENTS

Executive Summary........................................................................................................3

1. INTRODUCTION..........................................................................................................11

2. THE COMPLAINT.......................................................................................................11

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR.............................14

4. THE INVESTIGATION.................................................................................................17

5. THE DETERMINATION OF ISSUES IN RELATION TO THE EVIDENCE
   OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE
   APPLICABLE LAW AND PRESCRIPTS.................................................................25

6. FINDINGS..................................................................................................................76

7. REMEDIAL ACTION.................................................................................................80

8. MONITORING............................................................................................................81
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 published in terms of 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 allegations of irregular appointment of officials at the Mamelodi Regional Hospital (MRH).

(iii) The complaint was lodged with my office on 23 February 2017 by the Mamelodi Organized Labour, represented by Mr Patrick M Monyatsi (the Complainant).

(iv) The investigation was conducted in terms of section 182 of the Constitution which gives me the power to investigate alleged or suspected improper or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action; and in terms of sections 6 and 7 of the Public Protector Act.

(vi) Based on an analysis of the complaint, the following issues were identified and investigated:

(a) Whether there were irregularities in the recruitment and selection processes in the appointment of Ms Mphulwane, Ms Nkuna-Boikanyo, Ms Sebela and eighteen (18) cleaners, by the Gauteng Department of Health (GDH);

(b) Whether Ms Mahlangu, who was the chairperson of the interviewing panel, made a unilateral decision which sought to improperly favour the appointment of Ms Mogweng to a position of Operational Manager: Mental Unit;
Whether the GDH improperly excluded Ms Makgatho from being shortlisted for the Operational Manager position; and

Whether the Complainant or any other person suffered prejudice as a result of the alleged irregular appointments.

The investigation process included an exchange of correspondence and analysis of all relevant documents and application of all relevant laws, policies and related prescripts and interviews were also conducted with the Complainants and relevant officials of the GDH.

Key laws and policies taken into account to determine if there was irregular appointments by the GDH and whether prejudice was suffered by the Complainant and GDH were principally those imposing administrative standards that should have been complied with by the GDH. Those are the following:

(a) The Constitution of the Republic of South Africa, 1996 (the Constitution);
(b) The Public Protector Act, 23 of 1994 (the PPA);
(c) Public Finance Management Act 01 of 1999 (PFMA);
(d) Labour Relations Act 66 of 1995;
(e) Nursing Act No. 33 of 2005;

Having considered the submissions made and evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:
(a) Regarding whether there were irregularities in the recruitment and selection processes in the appointment of Ms Mphulwane, Ms Nkuna-Boikanyo, Ms Sebela and eighteen (18) cleaners by GDH:

Appointment of Ms Mphulwane

(aa) The allegation that the appointment of Ms Mphulwane, to a position of Operational Manager Speciality (Neonatal) with reference number 001537 lacked the requisite experience, is unsubstantiated.

(bb) Based on the evidence obtained, the process was fair and there was no objection recorded by the candidates, including the Complainant. The candidates were qualified and the best person was appointed emanating from a transparent and a fair recruitment process.

(cc) The post was advertised, interviews held and there was a set criteria for selection that was observed which ultimately led to the appointment of a suitably qualified candidate.

(dd) Accordingly, the conduct of the GDH in the circumstances does not amount to improper conduct in terms of section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(ii) of the Public Protector Act.

Appointment of Ms Nkuna–Boikanyo

(aa) The allegation that Ms Nkuna-Boikanyo did not have the requisite experience for the post of Operational Manager: Mental Unit and as such she should not have been appointed and further that she was only appointed to the position due to her friendship with Matron Khoza who served on the interviewing panel, is unsubstantiated.
(bb) It is clear from the evidence that Ms Nkuna-Boikanyo was qualified and the process of recruitment was fair, transparent and above board.

(cc) Accordingly, the conduct of the GDH in the circumstances does not amount to improper conduct in terms of section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(ii) of the Public Protector Act.

Appointment of Ms Sebela

(aa) The allegation that Ms Sebela was improperly appointed to the position of Operational Manager: Trauma is substantiated.

(bb) It has been established by evidence that the normal recruitment process was not exhausted by the GDH before embarking on a headhunting process in appointing Ms Sebela to the above position.

(cc) The evidence shows that the process of headhunting followed was flawed and fell short of complying with Clause 7 of the Recruitment and Selection Policy.

(dd) Evidence at my disposal further shows that the shortlisting of Ms Sebela to the position of Deputy Manager: Nursing which was also alleged by complainant to have emanated from misleading information or misrepresentation on her Curriculum Vitae. However, I make no finding in this regard due to the fact that Ms Sebela’s shortlisting to the position of Deputy Manager: Nursing did not result in the ultimate appointment of Ms Sebela.

(ee) Accordingly, the conduct of the GDH in the circumstances, and to the extent that the appointments are irregular, amounts to improper conduct in terms of section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(ii) of the Public Protector Act.
Appointment of eighteen (18) cleaners

(aa) The allegation that the cleaners were improperly appointed, is substantiated.

(bb) GDH admitted to my investigation team that the said appointment of eighteen (18) cleaners was irregular, even in terms of their own investigation.

(cc) The Former Chief Executive Officer (CEO) of MRH: Dr Adonis failed to adhere to sections 23, 33 and 195 of the Constitution of South Africa 1996, section 186 of the LRA, section 38 of PFMA, Clauses 6.5.5 and 5.2 of the Recruitment and Selection Policy for GDH and Social Development through his conduct of appointing unsuitable candidates/cleaners, who failed the interviews.

(dd) Such failure constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

(b) Regarding whether Ms Mahlangu, who was the Chairperson of the interview panel, made a unilateral decision that sought to improperly favour the appointment of Ms Mogweng to the position of Operational Manager: Mental Unit.

(aa) The allegation that Ms Mahlangu took a unilateral decision to appoint Ms Mogweng to the position of Operational Manager: Mental Unit is substantiated.

(bb) It is clear from the evidence/post advertisement that midwife experience which was considered by Ms Mahlangu in appointing Ms Mogweng was not part of the requirements and as such her decision was unfair, capricious, arbitrary and biased.

(cc) The conduct of the Deputy Director Nursing: Ms Mahlangu, as chairperson of the interviewing panel, failed to adhere to the standards envisaged in sections 23,
33 and 195 of the Constitution of South Africa 1996. Her conduct was also at odds with section 186 of the LRA, section 38 of PFMA, Clauses 5.2, 6.4.2, 6.4.4 and 6.5.5 of the Recruitment and Selection Policy for GDH and Social Development.

(dd) It is clear from the evidence that the appointed candidate was not qualified and the process of recruitment was neither fair, nor transparent.

(ee) Accordingly the conduct of the MRH, in particular Ms Mahlangu, in the circumstances constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

(c) **Regarding whether the GDH improperly excluded Ms Makgatho from being shortlisted for the operational manager position;**

(aa) The allegation that Ms W Makgatho was not shortlisted for a position in an area of patient care on the basis that she had a speciality, is unsubstantiated.

(bb) Evidence at my disposal reveals that Ms W Makgatho was not shortlisted because she failed to submit her proof of SANC registration as per the requirements on the advert. Ms Makgatho therefore failed to comply with the requirements of the advert, hence she was not shortlisted.

(cc) Accordingly the conduct of the GDH in the circumstances does not amount to improper conduct in terms of section 182(1) of the Constitution and improper and unfair as envisaged in section 6(4)(a)(ii) of the Public Protector Act.

(d) **Regarding whether the Complainant or any other person suffered prejudice as a result of the alleged irregular:**
(aa) The allegation that the Complainant suffered prejudice as a result of the conduct of the Department, is substantiated.

(bb) The evidence shows that TM Nhlengethwa was prejudiced by the conduct of Ms Mahlangu who appointed Ms Mogweng ahead of her without sound or valid reasons. Ms Nhlengethwa was scored higher and the reasons for preference of another candidate, was without just cause. The conduct of Ms Mahlangu was in contravention of section 23 (1) of the Constitution which affords all people the right to fair labour practice.

(cc) Accordingly the conduct of the GDH, in particular Ms Mahlangu, in the circumstances constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

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

The Head of Department: GDH must take appropriate steps to ensure that:

(aa) Within thirty (30) working days from the date of this report take disciplinary steps against Ms Mahlangu who failed to adhere to the standard envisaged in sections 23, 33 and 195 of the Constitution of South Africa 1996. Also for violating section 186 of the LRA, section 38 of PFMA, Clauses 5.2, 6.4.2, 6.4.4 and 6.5.5 of the Recruitment and Selection Policy for GDH and Social Development.

(bb) Within sixty (60) working days of the issue of this report; all MRH's officials who are involved in the recruitment and selection process, including all the senior management, to attend a workshop on the Recruitment and Selection procedures and processes.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IRREGULAR APPOINTMENT OF OFFICIALS AT MAMELODI REGIONAL HOSPITAL (MRH)

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 published in terms of section 8(2A)(a) of the Public Protector Act 23 of 1994 (Public Protector Act).

1.2 The report is submitted in terms of section 8(3) of the Public Protector Act to the following people to note the outcome of my investigation and implement remedial action:

1.2.1 The Minister of Health, Dr Zweli Mkhize,

1.2.2 The MEC GDH, Dr Bandle Masuku;

1.2.3 The GDH, Acting Head Prof Mkhululi Lukhele;

1.2.4 The National Department Health, Director General Ms. MP Matsosto;

1.2.5 Chief Executive Officer Makgabo Johanna Manamela Mamelodi Regional Hospital;

1.2.6 A copy of the report is also provided to the Complainant to inform him/her about the outcome of the investigation.

2. THE COMPLAINT

2.1 The complaint was lodged with my office on 23 February 2017 by Mameidogi Organized Labour represented by Mr Patrick M Monyatsi (the Complainant).
2.2 The complainant filed this complaint due to suspected impropriety and maladministration by GDH in connection with the processes followed in the filling of the following positions:

(a) Operational Manager: Neonatal Unit;
(b) Operational Manager: Mental Unit x 3 positions;
(c) Operational Manager: Speciality Trauma;
(d) Deputy Manager: Nursing; and
(e) Eighteen (18) posts for cleaners (cleaner positions)

2.3 In essence, the Complainant alleged as follows:

**Operational Manager: Neonatal Unit**

2.3.1 Ms SC Selowa is a registered nurse who started the Neonatal Unit at GDH in 2010, after realising the poor outcomes of neonates delivered.

2.3.2 Ms Selowa successfully ran the Unit for a number of years, but when the Operational Manager's post for the Neonatal Unit was advertised she was overlooked due to the fact that she was disliked by her immediate Supervisor, Ms Sebela.

2.3.3 Ms Mphulwane, who was appointed to the position of Operational Manager, did not possess the requisite experience in Neonatal and Intensive Care Unit (ICU).

2.3.4 Ms Mphulwane was chosen and coached by Ms Sebela prior to the interviews being conducted, as a result the interview process was a mere formality. Further that, the questions asked were unrelated or not relevant to the field of the post.

2.3.5 The Hospital Management and the Labour Manager were requested to place the appointment of Ms Mphulwane (Operational Manager) on hold pending the outcome of an investigation which should have been conducted, however such did not occur.
2.3.6 Ms M V Khalo also lamented the unfairness of the process followed in the appointment of Operational Manager: Mental Unit in that she too, was not appointed to the post despite meeting the requirements as stated the advertisement.

2.3.7 Further that the successful candidate to this position (Operational Manager: Mental Unit), Ms Nkuna-Boikanyo, was appointed sorely due to her friendship with Matron Khoza who was on the panel during the interviews.

2.3.8 During the interviews held for the three Operational Manager posts, Ms Mahlangu, who was the Chairperson of the panel, took a unilateral decision to recommend her preferred candidate, Ms Mogweng, over others.

2.3.9 The GDH failed to follow proper recruitment process by not shortlisting Ms W Makgatho for a post in the area of patient care for the reason that she had a specialty skill or expertise while the Patient Care GDH does not accommodate a person with a specialty in terms of the Occupation Specific Dispensation (OSD).

2.3.10 In April 2012, Ms Sebela was appointed as Operational Manager of casualty despite her not meeting the criteria for the post. During the same year, Ms Sebela was made to act as Assistant Director and further made Manager of the Trauma, Intensive Care Unit (ICU) and Neonatal units without acquiring specialist ICU training or experience.

2.3.11 In 2016, Ms Sebela was shortlisted and interviewed for the post of Deputy Manager Nursing despite her not meeting the minimum requirements. She could
not manage both the ICU and neonatal ICU as she did not have good interpersonal relationships with subordinates.

Eighteen (18) posts for cleaner positions

2.3.12 On 25 January 2013, eighteen (18) posts for cleaners were advertised. Thirty one (31) candidates were shortlisted and interviewed, however, during the interviews the panel was not convinced by the candidates. They recommended that the entire process, including shortlisting and interviews be started afresh. This was not done and the same candidates who were previously interviewed were appointed in February 2013, despite failing the interviews or not having the required experience and qualifications for the posts.

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) of the Constitution directs that the Public Protector has additional powers and functions prescribed by legislation.

3.4 The Public Protector’s powers are further regulated and amplified by the Public Protector Act, which states, among others, that the Public Protector has the
power to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector Act also confers power to resolve the disputes through conciliation, mediation, negotiation or any other appropriate dispute resolution mechanism as well as subpoena persons and information from any person in the Republic for the purpose of an investigation.

3.5 In the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect.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.

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

3.7 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);

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

¹ [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at paragraph [76].
3.9 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).

3.10 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).

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

3.12 Implicit in the words "take action" is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And "action" presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence, (paragraph 71(a)).

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

3.14 "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)).

3.15 The remedial action taken by the Public Protector has a binding effect (para 76). The Constitutional Court further held that: "When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial
action taken against those under investigation cannot be ignored without any legal consequences" (paragraph 73).

3.16 The GDH is an organ of state and its conduct amounts to conduct in state affairs, as a result of this, the matter falls squarely within the ambit of the Public Protector’s mandate.

3.17 The jurisdiction of the Public Protector was not disputed by GDH in this matter.

3.18 Regarding the exercise of my discretion in terms of section (9) to entertain matters which arose more than two(2) years from the occurrence of the incident, and in deciding what constitute ‘special circumstances’, some of the special circumstances that I took into account to exercise my discretion favourably to accept this complaint, includes the nature of the complaint and the seriousness of the allegations; whether the outcome could rectify systemic problems in state administration; whether I would be able to successfully investigate the matter with due consideration to the availability of evidence and/or records relating to the incident (s); whether there are any competent alternative remedies available to the Complainant and the overall impact of the investigation; whether the prejudice suffered by the Complainant persists; whether my refusal to investigate perpetuates the violation of section 195 of Constitution; whether my remedial action will redress the imbalance of the past. What constitute ‘special circumstances’ depends on the merits of the each case.

4 THE INVESTIGATION

4.1 Methodology

4.1.1 The investigation was conducted in terms of section 182(1)(a), (b) and (c) of the Constitution which gives the Public Protector the power to investigate
alleged or suspected improper or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action; and in terms of section 6(5) of the Public Protector Act, regulating the manner in which the power conferred by section 182 of the Constitution may be exercised in respect of public entities.

4.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration. Section 6 of the Public Protector Act gives the Public Protector the authority to resolve a matter without conducting an investigation and resolve a complaint through appropriate dispute resolution (ADR) measures such as conciliation, mediation and negotiation.

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 or other improper conduct?

4.2.1.4 In the event of maladministration or improper conduct, what would it take to remedy the wrong or to right the wrong occasioned by the said 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. Evidence was evaluated and a
determination made on what happened based on a balance of probabilities.
The Supreme Court of Appeal\(^2\) (SCA) made it clear that it is the Public
Protector’s duty to actively search for the truth and not to wait for parties to
provide all of the evidence as judicial officers do.

4.2.3 In this particular case, the factual enquiry primarily focused on whether or
not there irregular appointment by GDH of Health.

4.2.4 The enquiry regarding what should have happened, focuses on the
applicable legal prescripts that regulate the standard that should have been
met by GDH to prevent improper conduct and/or maladministration as well
as prejudice. In this case, key laws and policies taken into account to
determine if there had been irregular appointment by GDH and prejudice to
the Complainant were principally those imposing administrative standards
that should have been complied with by the GDH or its officials.

4.2.5 The enquiry regarding the remedy or remedial action seeks to explore
options for redressing the consequences of improper conduct, corruption,
conflict of interests and irregular appointment. Where a complainant has
suffered prejudice, the idea is to place him or her as close as possible to
where he or she would have been had the GDH or organ of state complied
with the regulatory framework setting the applicable standards for good
administration.

4.2.6 In the case of conduct failure as was the case in this matter, remedial action
seeks to right or correct identified wrongs while addressing any systemic
administrative deficiencies that may be enabling or exacerbating identified
maladministration or improper conduct.

\(^2\) Public Protector versus Mail and Guardian, 2011(4) SA 420 (SCA),
4.2.7 The substantive scope of the investigation focused on compliance with the law and prescripts regarding the complaint and allegations.

4.3 On analysis of the complaint, the following issues were identified to inform and focus the investigation:

4.3.1 Whether there were irregularities in the recruitment and selection processes in the appointment of the following officials by GDH namely, Ms Mphulwane, Ms Nkuna-Boikanyo, Ms Sebela and eighteen (18) cleaners;

4.3.2 Whether Ms Mahlangu who was the chairperson of the interviews made a unilateral decision that sought to improperly favour the appointment of Ms Mogweng to a position of Operational Manager: Mental Unit;

4.3.3 Whether the GDH improperly excluded Ms Makgatho from being shortlisted for the operational manager position; and

4.3.4 Whether the Complainant and the GDH suffered prejudice as a result of the alleged irregular appointment.

4.4 The Key Sources of information

Documents

4.4.1 A completed complaint’s form from the complainant dated 18 November 2016;

4.4.2 A copy of a meeting request letter dated 27 September 2016 by Organised Labour-Mamelodi Hospital (OLMH) addressed to Mamelodi Hospital Management, regarding Operational Manager General X3 posts and Speciality (Neo Natal ICU;
4.4.3 A copy of request for a joint mass meeting letter dated 27 September 2016 by Organised Labour-Mamelodi Hospital addressed to the Labour Relations Office, regarding the report back from Management in relation to the Operational Manager posts;

4.4.4 A copy of a meeting request letter dated 27 September 2016 by Organised Labour-Mamelodi Hospital, addressed to Mamelodi Regional Hospital Management, in relation to the appointments of Operational Manager General X3 and Operational Manager Speciality (Neo Natal ICU);

4.4.5 A copy of email correspondence dated 27 September 2016 addressed to Mamelodi Regional Management and MEC GDH Qedani Mahlangu, HoD GDH Barney Selebano and DG Human Resource Management Marry-Gracy Msimango respectively, regarding Organised Labour issues in Mamelodi Hospital;

4.4.6 A copy of Letter of Grievances from MRH’s professional nurse, MV Khalo, addressed to “whom it may concern” dated 29 September 2016 with the attached Government Gazette, No 2509 13 personal information form, dated 25 July 2003;

4.4.7 A copy of Interviews Report for Operation Manager Nursing (Speciality Unity) to the Deputy Director of Corporate services, Mr K Nethavhani, from the EAP officer, Mr PM Monyatsi on behalf of Employment Equity, Dated 06 September 2016.

4.4.8 A copy of an Investigation report into the processes followed of the posts acquired by Mrs Sebela (ASD post).

4.4.9 A file containing copies of the application for Employment, supporting documents of the Deputy Manager of nursing at MRH, Ms NB Sebela (CV,
Identity document, candidate’s Qualification) and preliminary investigation report from Labour Relations Office;

4.4.10 A copy of the advertisement of the Operational Manager of Nursing Speciality/General; and Deputy Director of Finance posts by GDHPOST 29/116, POST 30/72.

4.4.11 A copy of Recruitment and Selection Policy dated 28 March 2012, Health and Social Development;

4.5 **Correspondence between the Public Protector and GDH**

4.5.1 Allegations letter addressed to the Acting Head of Department- Gauteng GDH of Health, Dr ME Kenoshi, dated 12 April 2017;

4.5.2 Correspondence (response) letter from the Acting Head of GDH Dr ME Kenoshi, dated 16 May 2017;

4.5.3 Further information request letter from the Public Protector, dated 05 June 2017 addressed to the Acting Head of GDH of DR ME Kenoshi;

4.5.4 Email correspondence dated 07 June 2019 by Chief Executive Officer, Mamelodi Hospital Dr LN Pooe;

4.5.5 Reminder letter addressed to Mr Mdlolo Of GDH of Health, dated 19 September 2017 from the Public Protector;

4.5.6 Another reminder letter dated 02 October 2017 sent to Mr Mdlolo of GDH from the Public Protector;

4.5.7 Further information request email dated 09 November 2017 sent to Mr Malatji, of Gauteng GDH of Health from the Public Protector;
4.5.8 Email dated 28 November 2017 from Mr Malatji, GDH from the Public Protector;

4.5.9 Reminder letter(s) dated 11 December 2017 addressed to Mr Malatjie, GDH from the Public Protector;

4.5.10 Response letter dated 16 March 2018 from Dr MP Mathebula, Acting Chief Executive Officer, GDH to the Public Protector;

4.5.11 Correspondence letter dated 11 February 2019 from Prof M Lukhele Head of Department: to the Public Protector;

4.5.12 Section 7(9) Notice issued in terms of the Public Protector Act, dated 29 July 2019 served to Dr Mkhize- Minister of Health (Department Health), Dr Lesego Pooe – Former Chief Executive Officer( Mamelodi Regional Hospital), Prof Mkhululi Lukhele- Acting Head of Departments( Gauteng GDH) and Ms MP Matsoso-National Department of Health Director General, respectively;

4.6 Legislation and other legal prescripts

4.6.1 The Constitution of the Republic of South Africa, 1996 (the Constitution);
4.6.2 The Public Protector Act, 23 of 1994 (the PPA);
4.6.3 Public Finance Management Act 01 of 1999 (PFMA);
4.6.4 Nursing Act No. 33 of 2005;
4.6.5 The Recruitment and Selection Policy of GDH and Social Development dated 28 March 2012.
4.7 Case law

4.7.1 Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC);

4.7.2 Public Protector vs Mail and Guardian, 2011(4) SA 420 (SCA);

4.7.3 MA Gamede vs The Public Protector (2018) JOL 40338 (GP);

4.7.4 Khumalo and Another v Member of the Executive Council for Education: KwaZulu Natal (CCT 10/13) [2013] ZACC 49; 2014 (3) BCLR 333 (CC); (2014) 35 ILJ 613 (CC); 2014 (5) SA 579 (CC) (18 December 2013)

4.8 Interviews/Meetings conducted

4.8.1 Telephonic interview between the Complainant and the investigation team on 13 October 2017.

4.9 Notices issued in terms of section 7(9) of the Public Protector Act (Notices)

4.9.1 A notice was issued to the Minister of Department Health Dr Z Mkhize; on 29 July 2019;

4.9.2 A notice was issued to the of GDH, Acting Head Prof Mkhululi Lukhele on 29 July 2019;

4.9.3 A notice was issued to the National Department of Health, Director General Ms. MP Matsosto on 29 July 2019;

4.9.4 A notice was issued to Former Chief Executive Officer Dr L Pooe, GDH on 29 July 2019;
5. THE DETERMINATION OF ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO APPLICABLE LAW AND PRESCRIPTS

5.1 Regarding whether there were irregularities in the recruitment and selection process of the following officials by GDH namely: Ms Mphulwane, Ms Nkuna-Boikanyo, Ms Sebela and eighteen (18) cleaners:

Appointment of Ms Mphulwane

Common cause issues

5.1.1 The position of Operational Manager Speciality (Neonatal) with reference number 001537 was advertised in the Gauteng Provincial Government’s website with a closing date of 12 August 2016.

5.1.2 The advertisement had the following requirements:

"Grade 12 or ABET level 4;
Degree or Diploma in Nursing
Registration with the South African Nursing Council (SANC) with proof of current registration;
Post basic nursing qualification of one year accredited with SANC in Neonatal Nursing;
Minimum nine years’ experience after registration as a Professional Nurse with SANC;
Minimum five years’ experience must be appropriate/recognisable experience after obtaining the one year post basic qualification in Neonatal ICU;
Knowledge of clinical work in Neonatal ICU nursing;
Knowledge of all legislation relevant to Health Care Services".
5.1.3 The shortlisting criteria for the abovementioned position was:

5.1.3.1 Diploma/Degree;
5.1.3.2 9 years’ experience as a General Nurse;
5.1.3.3 5 years’ experience in Neonatal Specialty.

5.1.4 A total of seven (7) applications were received for the post of Operational Manager Nursing Speciality (Neonatal) with reference number 001537. All seven applications received are reflected as captured in the table below:

<table>
<thead>
<tr>
<th>No</th>
<th>Applicants</th>
<th>Remarks of shortlisting</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Selowa SC</td>
<td>Qualifies, has 9 years’ experience and 5 years specialty</td>
</tr>
<tr>
<td>2.</td>
<td>Mphulwane BR</td>
<td>Qualifies, has 9 years’ experience and 5 years specialty</td>
</tr>
<tr>
<td>3.</td>
<td>Nene D.J</td>
<td>No council receipt</td>
</tr>
<tr>
<td>4.</td>
<td>Tsatsane-Zwane L</td>
<td>Less than 5 years qualified</td>
</tr>
<tr>
<td>5.</td>
<td>Selowa SC</td>
<td>Duplicate</td>
</tr>
<tr>
<td>6.</td>
<td>Sebeelo A.M</td>
<td>Copies not certified</td>
</tr>
<tr>
<td>7.</td>
<td>Ngobeni SD</td>
<td>No certificate copies</td>
</tr>
</tbody>
</table>

5.1.5 The following officials as reflected in the table below constituted the interview panel:

<table>
<thead>
<tr>
<th>No</th>
<th>Panellist</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Ms S Mahlangu</td>
<td>Deputy Director : Nursing</td>
</tr>
<tr>
<td>2.</td>
<td>Dr L N Pooe;</td>
<td>Acting CEO; (Chairperson)</td>
</tr>
<tr>
<td>3.</td>
<td>Ms B G Khoza</td>
<td>Assistant Director : Nursing</td>
</tr>
<tr>
<td>4.</td>
<td>Ms N B Sebela</td>
<td>Assistant Director : Nursing</td>
</tr>
<tr>
<td>5.</td>
<td>Mr MPM Monyatsi</td>
<td>Employment Equity Representative</td>
</tr>
<tr>
<td>6.</td>
<td>Ms S C Masilela</td>
<td>Human Resources Scriber</td>
</tr>
</tbody>
</table>
5.1.6 The interviews were held on 1 September 2016 and the scoring outcome was captured by the Chairperson as follows:

<table>
<thead>
<tr>
<th>Surname</th>
<th>Initial</th>
<th>Ms M</th>
<th>S Mahlangu</th>
<th>Ms B G Khoza</th>
<th>Ms N B Sebela</th>
<th>Dr L N Pooe</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selowa</td>
<td>SC</td>
<td>14</td>
<td>16</td>
<td>16</td>
<td>15</td>
<td>61</td>
<td></td>
</tr>
<tr>
<td>Mphulwane</td>
<td>BR</td>
<td>19</td>
<td>21</td>
<td>23</td>
<td>16</td>
<td>79</td>
<td></td>
</tr>
</tbody>
</table>

5.1.7 Ms M S Selowa worked in the Neonatal unit and applied for the Operational Manager post however her application was unsuccessful.

5.1.8 Ms Mphulwane also applied for the Operational Manager post and was appointed as the successful candidate as per a letter dated 27 September 2016.

**Issues in dispute**

5.1.9 The Complainant argued that Ms Selowa started the Neonatal Unit at GDH in 2010 and successfully ran the unit for a number of years. Upon the Operational Manager post becoming vacant, she applied but was overlooked for the position due to the fact that she was disliked by her immediate Supervisor, Ms Sebela.

5.1.10 The Complainant further argued that the person appointed lacked Neonatal experience and was coached prior to the interview. Also that the interview questions asked were irrelevant to the post.

5.1.11 Prof M Lukhele in a letter dated 11 February 2019 addressed to my office contended that the allegations were unfounded and that there were no irregularities, as the recruitment and selection process was fairly conducted.

5.1.12 The former HOD provided my office with an investigation report signed on 20 January 2017 by Mr L Motsogi, Director: Labour Relations. The investigation
Report into allegations of irregular appointments at the Mamelodi Regional Hospital August 2019

report was compiled by Mr S M Mpyana, Assistant Director: Discipline Management, who signed it on 18 January 2017 and he determined that there were no irregularities in the appointment of Ms Mphulwane as the Operational Manager.

5.1.13 In the same investigation report, the GDH responded to the allegation that Ms Mphulwane was coached before the interview. The GDH clarified that the caucus between the three interview panelists was related to feedback in terms of the allocation of newly appointed staff who resumed their duties on the day.

5.1.14 The Employment Equity (EE) report compiled by Mr Patrick M Monyatsi in his capacity as Employee Equity Representative dated 6 September 2016 which was provided by the GDH observed that:

"The environment was conducive and welcoming. The candidates were presented with an opportunity to indicate if he/she is comfortable with the panel composition. All the candidates confirmed that the questions were fair and relevant. The interview process went well and it kept the professionalism required".

5.1.15 The Acting Chief Executive Officer of Steve Biko Academic Hospital, Dr M P Mathebula confirmed in a response letter to my office dated 16 March 2018, that Ms Mphulwane was employed at Steve Biko Academic Hospital for fourteen (14 ) years commencing from 1 July 2001 to 31 March 2015 as a Specialty Nurse in the Paediatric Unit.

Application of the relevant legal framework

5.1.16 Section 195 of the Constitution of the Republic of South Africa, 1996 which regulates the basic values and principles governing public administration:
(1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(a) A high standard of professional ethics must be promoted and maintained.

(b) ..............................................................

(c) ..............................................................

(d) ..............................................................

(e) ..............................................................

(f) Public administration must be accountable.

(g) ..............................................................

(h) ..............................................................

(i) ..............................................................

5.1.17 The advertisement required the incumbent to possess nine (9) years’ experience as a Nurse after registration with SANC and five (5) years relevant experience in Neonatal speciality after obtaining a qualification. The Acting CEO, Dr Mathebula confirmed that Ms Mphulwane has the required work experience as a Speciality Nurse working in the Paediatric Unit (Neonatal) at Steve Biko Academic Hospital.

5.1.18 The panel recommended Ms Mphulwane as the successful candidate as per letter dated 27 September 2016. There is no evidence which shows that the process of recruitment leading up to the filling of this post was unfair and lacked professional ethics. The appointed candidate was suitably qualified as shown by her vast experience and ability to execute her mandate.

5.1.19 Furthermore, the GDH displayed accountability by initiating an investigation into the allegations of irregular appointment.

5.1.20 The scoring by the panel was also consistent and Ms Sebela scored Ms Selowa the same points as another panel member. The person who scored Ms Selowa the lowest was Ms Mahlangu. Overall, the scores show that there was a one point
difference by the panelist which is evident that Ms Sebela could not have influenced the scoring based on the consistency displayed.

5.1.21 Clause 6.4.4 of the Recruitment and Selection Policy for GDH and Social Development (Recruitment and Selection Policy) signed and approved on 28 March 2012 provides as follows:

"The committee should discuss and consider the applicants with due regard to the specific criteria set for selection. The committee should recommend the suitable candidate or the second best candidate in line with the proceedings of the interviews conducted".

5.1.22 Clause 6.4.2 of the Recruitment and Selection Policy provides as follows:

"The committee must ensure that all processes are conducted fairly, justly and in an unbiased manner."

5.1.23 The EE report compiled by Mr Monyatsi after the interviews affirmed that the recruitment process was fair and candidates were granted an opportunity to disclose their discomfort with the panel composition and there were no objections recorded from the interviewed candidates. There is no evidence at my disposal which indicates that Ms Selowa raised an objection to the composition of the panel.

5.1.24 Clause 6.4.3 of the Recruitment and Selection Policy provides as follows:

"Interview questions should be relevant to the requirements of the post. No questions, which contain traces of direct or indirect discrimination, may be asked during the interview".
5.1.25 The submission to the CEO dated 1 September 2016 shows that the question asked related to the requirements of the post. There is also no evidence of an objection lodged by Ms Selowa in relation to the relevancy of the questions.

Conclusion

5.1.26 The successful candidate possessed the requisite qualifications for the advertised position.

5.1.27 The available evidence at my disposal points to a conclusion that the GDH followed the relevant prescripts regulating recruitment and selection of its staff.

5.2 Appointment of Ms Sebela as Operational Manager: Speciality Trauma and her shortlisting as Deputy Manager Nursing

Common cause issues

5.2.1 Ms Sebela was appointed to the position of Operational Manager Speciality Trauma at GDH in March 2010 through a headhunting process.

Issues in dispute

5.2.2 The Complainant argued that in April 2012, Ms Sebela was appointed as Operational Manager: Speciality Trauma despite not meeting the requirements for the post because she did not have a Trauma Certificate at the time she applied for the position.

5.2.3 The Department, in the report compiled by Mr S M Mpyana, Assistant Director: Discipline Management disputed the allegations by the Complainant. The report alleged that the recruitment and selection process was conducted fairly.
5.2.4 In an email forwarded to my office on 4 July 2017 by Mr Mike Malatjie; Dr L N Pooe, he stated that the post was advertised twice before and could not attract a suitable candidate. Ms Sebela was headhunted and appointed on 16 March 2010 for Trauma Speciality despite the fact that she had recently qualified as a Trauma Nurse.

5.2.5 Furthermore, the Complainant argued that in 2016, Ms Sebela was shortlisted and interviewed for the post of Deputy Manager Nursing despite her not meeting the minimum requirements.

5.2.6 In an email forwarded to my office on 4 July 2017 from Mr Mike Malatjie, Dr L N Pooe responded as follows to this allegation:

"According to Ms Sebela’s CV, she was appointed acting Area Manager in January 2011, still to be confirmed. According to her CV, she was appointed permanently as Area Manager in 2012. Evidence points out that she was only permanently appointed (as Area Manager) on 01 December 2013. Based on the above, it would seem that she misled the panel in her application and that the panel, which included myself (Dr L N Pooe) was not diligent enough in scrutinising the documents"

5.2.7 Ms Sebela’s application for Deputy Manager Nursing post was unsuccessful and Dr L N Pooe conceded that they were not diligent when they assessed her CV which was misleading.

Application of the relevant legal framework

5.2.8 Clause 7. of the Recruitment and Selection Policy provides as follows:

7.1 “This is a process that is engaged only when the normal recruitment route has been exhausted and no suitable candidate has been attracted"

“There must be sufficient documented evidence to support (a) above".
"The post must be scarce or critical skills that are difficult to recruit".

"the process of headhunting must be approved by the Head or the GDH or delegate".

"The CVs and qualifications of the Head Hunted candidates must be submitted to the Head Hunting Committee".

"The Head Hunting committee must interview the candidates that are head hunted and submit a recommendation of the suitable candidate to the Head of GDH or delegate".

5.2.9 The GDH provided my office with evidence in a letter dated 19 January 2010 indicating that two advertisements for the position of Operational Manager Speciality Trauma were placed in an effort to attract a suitable candidate however they were unsuccessful in their quest.

5.2.10 There is not enough evidence to support the argument that the Hospital followed the normal recruitment process before headhunting because there is no proof of advertisements published. In addition, there is also no evidence that a suitable candidate could not be found prior to the initiation of the headhunting process as required by the Departmental Policy.

5.2.11 It is evident that the post required someone with specialised skills therefore it could classified as scarce or critical skill.

5.2.12 There is no proof of an approval for headhunting by Head of GDH or delegated authority. Further, there is no evidence of the Headhunting Committee considering this matter and that Ms Sebela was the only applicant.

5.2.13 Clause 6.1.2 of the Recruitment and Selection Policy provides as follows:
"The advertisement for a post should specify the inherent requirements of the job, job title, remuneration and the criteria to be used for selection".

5.2.14 There is no evidence of an advertisements hence it is concluded that there was no sufficient documented evidence to support the decision for headhunting or that a suitable candidate could not be found.

5.2.15 Furthermore, Ms Sebela had just completed her Diploma in Medical and Surgical Nursing Science from University of Pretoria (Emergency Nursing) in 2010 which is the equivalent of a Trauma qualification, surely that cannot be the only inherent requirement that made her the ideal candidate to be headhunted and appointed.

Conclusion

5.2.16 It is evident that the process of headhunting was flawed and that there is no documentary proof to show that normal processes were exhausted prior to headhunting.

5.2.17 It is further evident that the headhunting provisions as set out in the Recruitment and Selection policy were not followed.

5.2.18 Ms Sebela’s application for the position of Deputy Manager Nursing was unsuccessful and her shortlisting which GDH claim was based on misleading information in her CV did not have a bearing on the outcome of the interview process, since she was not successful.

Appointment of eighteen (18) cleaners

Common cause issues

5.2.19 On 25 January 2013, eighteen (18) posts for cleaners were advertised. Thirty (31) candidates were shortlisted and interviewed, however, during the interviews
the panel did not find the candidates that were interviewed suitable for appointment.

5.2.20 After the interviews the panel recommended that the entire process, including shortlisting and interviews be conducted afresh.

Issues in dispute

5.2.21 The nub of the complainant’s argument was that GDH did not start the process afresh as recommended by the panel. Instead, the same candidates that were previously interviewed and found not to be suitable by the panel were nonetheless appointed in February 2013, notwithstanding the fact that they failed the interviews and did not have the required experience and qualifications for the posts.

5.2.22 GDH conceded in their response that the process followed in the appointment of cleaners was flawed and indicated in the response that the former Chief Executive Officer (CEO) Dr Adonis overruled the recommendations of the panel and gave a directive for the appointment of the first eighteen (18) candidates.

5.2.23 The Panel recommended that no appointment should be made and the posts must be re-advertised

Application of the relevant legal framework

5.2.24 Section 23 of the Constitution provides as follows:

(1) “Everyone has the right to fair labour practice”.

5.2.25 Section 186 of the LRA provides as follows:
"(2) Unfair labour practice means any unfair act or omission that arises between an employer and an employee involving:

(a) unfair conduct by the employer relating to the promotion of an employee."

5.2.26 The interview panel concluded their assessment and recommended none of the candidates for appointment due to their lack of experience and unsatisfactory performance during the interviews. A selection criteria for appointment ensures that the process of recruitment is fair and objective. However, the former CEO overruled the panel and proceeded with the approval of the appointment of first 18 candidates without justifiable reasons.

5.2.27 Section 33 of the Constitution of the Republic of South Africa provides as follows:

(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

5.2.28 The process of appointing the cleaners was unlawful, procedurally unfair and unreasonable in that the decision of the former CEO, Dr Adonis were arbitrary and unjustifiable and fell outside the regulatory statute.

5.2.29 It has long been accepted that the decision to promote or not to promote falls within the managerial prerogative of an employer and that the courts will interfere only where such discretion was exercised capriciously, or for insubstantial reasons or based upon a wrong principle or in a biased manner.³

5.2.30 By overruling the decision of the interview panel merely on the basis that the position is non-technical, the former CEO, Dr Adonis acted capriciously and appointed the first eighteen (18) candidates unfairly because there was no criteria followed.


36
5.2.31 Section 38 of the Public Finance Management Act No. 1 of 1999 Public Management of Finance Act provides as follows: General responsibilities of accounting officers.—(1) The accounting officer for a department, trading entity or constitutional institution—

(h) must take effective and appropriate disciplinary steps against any official in the service who:-
(iii) makes or permits an unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure;

5.2.32 The GDH incurred an irregular expenditure due to Dr Adonis's conduct, who unlawfully appointed the first 18 cleaners without following the selection criteria.

5.2.33 Clause 5.2 of the Recruitment and Selection Policy provides as follows:

"All recruitment actions should be undertaken with a view to seek from the relevant target group, the ideal application with the necessary training, skills, competence, potential and knowledge relevant to the requirements of the post concerned".

5.2.34 The irregular expenditure was as a result of the contravention of the Recruitment and Selection criteria which requires fairness, objectivity and compliance with the applicable law during the recruitment process.

5.2.35 Whereas the interview panel concluded that none of candidates were suitable for appointment, however, the former CEO overruled the panel and proceeded to appoint the first 18 candidates despite the recommendation to the contrary by the panel.

5.2.36 Clause 6.4.5 of the Recruitment and Selection Policy provides as follows:

"Record of the proceedings of the interview process should be kept, including decisions taken and reasons for specific decisions. The report and the
recommendation of the interview process must be submitted to the relevant management office for approval”.

5.2.37 The former CEO overruled the decision of the panel capriciously without just cause. The rationale behind the former CEO’s decision was that the panel was harsh as the job was non-technical. As a result the appointment of the first 18 candidates was arbitrary.

5.2.38 Clause 6.5.5 of the Recruitment and Selection Policy provides as follows:

“The liability with respect to any unauthorised appointment will remain with those responsible for the appointment; however HR has a role to play in advising the responsible authority on the procedures and policies to be followed”.

5.2.39 The former CEO, Dr Adonis overruled the recommendations of the interview panel and appointed 18 cleaners hence the liability for the unauthorised appointments falls squarely on him.

5.2.40 The Labour Court, in the Khumalo and another v Member of the Executive Council for Education⁴ case declared that the promotion of Mr Khumalo and the protected promotion of Mr Ritchie were unlawful, unreasonable and unfair and were set aside. However, it is worth noting that the Court ordered that no deductions were to be made from the salaries of the unlawfully appointed persons in respect of payments made at a higher salary scale.

⁴Khumalo and Another v Member of the Executive Council for Education: KwaZulu Natal (CCT 10/13) [2013] ZACC 49; 2014 (3) BCLR 333 (CC); (2014) 35 ILJ 613 (CC); 2014 (5) SA 579 (CC) (18 December 2013) at para 15
5.2.41 The appointment of eighteen (18) cleaners is equally unlawful, unreasonable and unfair. The Acting CEO did not follow any definable criteria and his choice of the first eighteen appears to be random and irrational.

Conclusion

5.2.42 The panel did not recommend any candidate for appointment to the positions of cleaners and the former CEO overruled the recommendation of the panel by appointing the first 18 candidates.

5.2.43 The former CEO, Dr Adonis actions were not in line with the policy and as a result arbitrary.

5.3 Whether Ms Mahlangu, who was the chairperson of the interviewing panel, made a unilateral decision which sought to improperly favour the appointment of Ms Mogweng to a position of Operational Manager: Mental Unit.

Common cause Issues

5.3.1 Three (3) X position for Operational Managers: Mental Unit with reference number 001538 were advertised by the Gauteng Provincial Government on its website with a closing date of 5 August 2016.

5.3.2 The advertisement had the following requirements:

"Grade 12 or ABET level 4;
Degree or Diploma in Nursing
Registration with the South African Nursing Council (SANC) with proof of current registration;
Diploma/ Degree in Nursing Administration/Management will be an added advantage;"
Minimum nine years' experience after registration as a Professional Nurse with SANC in general nursing;
Leadership and Good Managerial skill required.
Knowledge of all legislation relevant to Health Care Services”.

5.3.3 A total of thirty-four (34) applications were received by the GDH for the above positions and were captured as shown in the table below:

<table>
<thead>
<tr>
<th>Name</th>
<th>Qualifications</th>
<th>Experience</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Makgatho W</td>
<td>Matric Certificate; Diploma in Nursing Administration;</td>
<td>1980-01 to 1993-01 (13 years) as a Enrolled Nurse Kalafong Hospital;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1993-01 to 2003-06 (10 years) as Registered Nurse at Kalafong Hospital;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2003-06 to 2007-11 (4 years) as a Unit Manager at Kloof Private Hospital;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2008-07 to date (8 years) as a Professional Nurse at Mamelodi Regional Hospital.</td>
</tr>
<tr>
<td>2. Malobola E</td>
<td>Diploma in Nursing Science and Midwifery; Matric Certificate; Degree, Bachelor of Nursing Science.</td>
<td>2002-2003 (1 year) as a Professional Nurse at Dr George Mukhari Hospital;</td>
</tr>
<tr>
<td>Name</td>
<td>Qualification</td>
<td>Years of Experience</td>
</tr>
<tr>
<td>--------------</td>
<td>----------------------------------------------------</td>
<td>----------------------------------------------------------</td>
</tr>
<tr>
<td>3. Motsitsi LB</td>
<td>Diploma in Nursing Science and Midwifery.</td>
<td>2003-2004 (1 year) as an Assistant at Medforum Hospital;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2010-01 to 2010-12 (1 year) as Registered Nurse at Steve Biko Hospital;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2011 to 2013 (2 years) as Registered Nurse at Steve Biko Hospital;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2013-03 to 2013-07 (4 months) as a Nurse at Wilgers Hospital;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2013-08 to 2015-09 (2 years) as a Nurse at Legacy Medi Clinic Hospital;</td>
</tr>
<tr>
<td>4. Mabetwa ME</td>
<td>B. Tech in Nursing; Diploma in General Nursing; Matric Certificate;</td>
<td>2004-01 to 2013-12 (9 years) as Student Nurse, Enrolled Nurse</td>
</tr>
</tbody>
</table>
| 5. Ramatsetse MM | Diploma in Nursing Science and Midwifery; 
Diploma in Nursing Administration; 
Matric Certificate; | 1991-1996 (5 years) as a Student Nurse at Kalafong Hospital; 
1996-2001 (5 years) as Professional Nurse at Kalafong Hospital; 
2001-2004 (3 years) as a Senior Professional Nurse at Kalafong Hospital; 
2004-2006 (2 years) worked as a Nurse at Steve Biko Hospital; 
2006 to date (10 years) as a Professional Nurse at Weskoppies Hospital. |

| 6. Twala NS | Matric Certificate; 
Diploma in Nurse and Midwifery; 
Postgraduate Diploma in HIV/AIDS Management; | 2004 to 2005-01 (1 year) as Professional Nurse at Vlaklaagte No.1 Clinic; |
<p>| 7. Maepa EB | No qualifications | 1995-04 to 2003-01 (7 years) as a Professional Nurse at Dr George Mukhari Hospital; 2003-10 to 2005-10 (2 years) as a charge nurse at Saudi Arabia Hospital; 2006-02 to 2007-02 (1 year) as a Phlebotomist at Lancet Laboratories; 2007-03 to 2007-09 (6 months) as a Phlebotomist at Malik Laboratories; 2008-01 to date (8 years) as a Professional Nurse at Mamelodi Hospital; |
| Postgraduate Diploma in Public Health; | 2005-02 to 2007-12 (2 years) at Vlaklaagte No.1 Clinic; 2008-01 to 2010-11 (2 years) as Mental Health Co-ordinator at Metsweding District; 2010-12 to 2011-04 (1 year) as Sister in a Verena Mobile Clinic; 2011-05 to date as a Cordi |
| 8. Maepa EB | Matric Certificate; | No CV attached. |</p>
<table>
<thead>
<tr>
<th></th>
<th>Name</th>
<th>Qualifications</th>
<th>Experience</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Rangongo P</td>
<td>Diploma in General Nursing; Diploma in Midwifery; Matric Certificate; B.Tech in Nursing; Diploma in General Nursing; Diploma in Nursing Administration; Diploma in Nursing Education;</td>
<td>2002-2006 (4 years) as a Professional Nurse at W.F Knobel Hospital; 2004-06 to 2005-06 (1 year) as Acting Unit Manager at W.F Knobel Hospital; 2007-05 to 2008-05 (1 year) as a Senior Occupational Health Nurse at Life Health Care Group; 2008-06 to 2014-03 (5 years) as Clinical Programme Coordinator Grade 2 at Gauteng GDHof Health; 2014-04 to date (2 years) as Clinical Programme Coordinator Grade 2 at Gauteng GDHof Health;</td>
</tr>
<tr>
<td>10</td>
<td>Fenyane L</td>
<td>Matric Certificate; Diploma In Nursing Administration; Diploma in Midwifery; Diploma In General Nursing;</td>
<td>1998-11-26 to 1999-09-30 (10 months) as Professional Nurse at Saint Rita's Hospital; 1999-10-01 to 2000-11-30 (1 year) as</td>
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<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Professional Nurse at Groblersdal Hospital; 2000-12-01 to 2005-10-31 (4 years) as Professional Nurse at Kalafong Hospital; 2005-11-01 to 2007-10-29 (23 months) as Operational Manager Nursing at Kalafong Hospital; 2007-10-30 to 2012-10-24 (5 years) as Operational Manager Nursing at Kalafong Hospital; 2012-10-25 to 2016-02-29 (3 years) as an Assistant Director Nursing at Kalafong Hospital;</td>
<td></td>
</tr>
<tr>
<td>11. Khalo MV</td>
<td>Diploma in Nursing; Diploma in Psychiatric Nursing Science; Degree of Bachelor of Arts.</td>
<td>2000-2005 (5years) Nurse at Pretoria Academic Hospital; 2005-2009 (4years) Tshwane District Hospital. 2009- till to date (7years) Mamelodi Regional Hospital</td>
<td></td>
</tr>
<tr>
<td>12. Bale B</td>
<td>Matric Certificate; Diploma in Nursing Science and Midwifery;</td>
<td>1998-01 to 2001-10 (3 years) as a Professional</td>
<td></td>
</tr>
<tr>
<td>Name</td>
<td>Education and Experience</td>
<td></td>
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</tr>
<tr>
<td>Modiba ES</td>
<td>Degree in Bachelor of Nursing Science; Diploma in Nursing Education; Diploma in Nursing Administration; Degree of Bachelor of Arts;</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Nurse Tshilidzini Hospital; 2001-11 to 2004-01 (2 years) as a Senior Professional Nurse Carletonville Hospital; 2004 to 2014-03 (10 years) as a Professional Nurse Weskoppies Hospital; 2014-11 to 2015-03 (4 months) as a Professional Nurse Netcare Sunninghill Hospital;</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Diploma in Nursing Administration; B. Tech: Degree in Nursing; Diploma in Nursing Science and Midwifery; Matric Certificate.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2007-2008 as a Professional Nurse at Pretoria Academic hospital; 2008-12 to 2012-08 (3 years) as a Clinical Nurse Practitioner at Refilwe Clinic; 2012-08 to 2013-03 (7 months) as a Professional Nurse at Femina Hospital; 2013-04 to 2015-09 (2 years) as an Occupational Health Nurse Practitioner at Ford Clinic;</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Degree in Magister Artium;  
Degree of Bachelor of Nursing Science and Art;  
Degree B.Cur; | CV unclear at Nursing Experience. |
|-----------------|--------------------------------------------------|-------------------------------------|
| 15. Motsitsi SL | Diploma in Nursing Administration;  
Diploma in Medical and Surgical; Nursing Science;  
Diploma in Nursing Science and Midwifery;  
Matric Certificate; | 1996-04 to 1999-12 (3 years) as a Enrolled Nurse Auxiliary at F.H Odendaal Hospital;  
2000-01 to 2003-12 (3 years) as a Student Nurse at S.G Lourens Nursing College  
2004-01 to 2007-03 (3 years) as a Professional Nurse at Dr George Mukhari Hospital;  
2007-04 to 2014-04 (7 years) as a Professional Nurse at Kwa-Mhlanga Hospital;  
2014-05 to date (2 years) as a Professional |
<p>| | | |</p>
<table>
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<tr>
<td></td>
<td><strong>16. Mabena TE</strong></td>
<td><strong>Nurse at Netcare Montana Hospital</strong></td>
</tr>
<tr>
<td></td>
<td>Matric Certificate;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Diploma in Nursing Science and Midwifery;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Diploma in Medical and Surgical; Nursing Science;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Btech in Nursing Occupational Health;</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>CV not attached</strong></td>
</tr>
<tr>
<td></td>
<td><strong>17. Bunu NP</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Matric certificate;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Degree of Bachelor of Curationis;</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>1996-03-13 to 1996-11-30 (8 months) as a Professional Nurse at Untunjambili Hospital;</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>1996-12-01 to 1997-10-30 as a Professional Nurse at Amandlalathi Clinic;</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>1997-11-01 to 1997-11-30 and 1997-12-01 to 1999-03-30 (16 months) as a Professional Nurse at Settlers Hospital;</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>1999-04-01 to 2007-10-31 (8 years) as a Senior Professional Nurse at Settlers Hospital;</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>2007-09-01 to 2009-04-30 (19 months) Chief</strong></td>
</tr>
<tr>
<td></td>
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<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>18. Ramabulana AM</td>
<td>No attachments</td>
<td>Professional Nurse at Nkwenkwezi Clinic; 2009-05-01 to 2010-05-16 (1 year) as an Acting Manager at Makana Sub District; 2010-05-17 to 2015-12-31 (5 years) as Program Manager at Eastern Cape GDHof Health.</td>
</tr>
<tr>
<td>19. Ramburran P</td>
<td>Degree in bachelor of Nursing Science; Matric Certificate; Diploma in Nursing Science and Midwifery;</td>
<td>2001-01-01 to 2005-12-01 (4 years) Student Nurse at Baragwanath Hospital; 2006-01-01 2012-12-01 (6 years) as a Clinical Nurse GDH and Limpopo; 2013-01-01 to 2015-12-01 (12 years) as a HIV case manager; 2016-01-01 to 2016-02-01 (month) as a Back office support 1988-12-07 to 1995-03-31(7 years) as a Enrolled Nurse Assistant; 1995-04-01 to 1995-06-30 (2 months) as a Enrolled Nursing auxiliary;</td>
</tr>
<tr>
<td>Period</td>
<td>Position</td>
<td>Institution</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>-----------------------------------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td>1995-07-01 to 1997-09-17</td>
<td>Student Nurse</td>
<td></td>
</tr>
<tr>
<td>1998-05-01 to 2002-12-31</td>
<td>Enrolled Nurse</td>
<td></td>
</tr>
<tr>
<td>2003-01-01 to 2003-01-31</td>
<td>Professional Nurse</td>
<td>Grey's Hospital</td>
</tr>
<tr>
<td>2003-04-06 to 2005-08-31</td>
<td>Professional Nurse</td>
<td>Townhill Hospital</td>
</tr>
<tr>
<td>2005-10-17 to 2006-02-20</td>
<td>Professional Nurse</td>
<td>Grey's Hospital</td>
</tr>
<tr>
<td>2006-03-01 to 2008-07-31</td>
<td>Senior Professional Nurse</td>
<td>Townhill Hospital</td>
</tr>
<tr>
<td>2008-08-01 to 2012-02-29</td>
<td>Senior Professional Nurse</td>
<td>Northdale Hospital</td>
</tr>
<tr>
<td>2012-06-01 to 2012-11-30</td>
<td>Theater Sister</td>
<td>Netcare St Anne's Hospital</td>
</tr>
<tr>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td></td>
<td>2012-12-01 to 2014-11-30 (23 months) as Operational Manager Northdale Hospital; 2015-06-01 to date (1 year) as a Lecturer: Psychiatry/Social Science Charles Johnson Memorial.</td>
</tr>
<tr>
<td>20. Seekoei GP</td>
<td>Matric Certificate; Diploma in Nursing Administration; Degree of Bachelor of Nursing Science; Diploma in Medical and Surgical Nursing Science; Diploma in Nursing Science and Midwifery;</td>
<td>2014 to date (2 years) as a Professional Nurse at Mamelodi Regional Hospital; 2013 to 2014 (1 year) as a Professional Nurse at Muelmed MediClinic; 2010-2013 (3 years) as a Professional Nurse at Steve Biko Academic Hospital;</td>
</tr>
<tr>
<td>21. Dingaan MI</td>
<td>Degree in Bachelor of Arts in Nursing Science; Diploma in post basic Community Nursing Science; Matric Certificate; Diploma in Nursing Administration; Diploma in Nursing Education;</td>
<td>1992-04-06 to 2004-07-31 (12 years) as a Chief Professional Nurse at Vlaklaagte Number 2 Community Health Center; 2004-08-01 to 2016-02-29 (12 years) Community Health</td>
</tr>
<tr>
<td>22. Maluleka JC</td>
<td>Diploma in Nursing Science and Midwifery;</td>
<td>Nurse at Mamelodi West Clinic</td>
</tr>
<tr>
<td>Matric Certificate; Diploma in Nursing Science and Midwifery; Diploma in Nursing Administration;</td>
<td>2007 to date (9 years) as Occupational Health Nurse Practitioner; 2006-05 to 2006-03 (2 months) as Occupational Health Nurse Practitioner; 1996-04 to 2006-04 (10 years) Senior Professional Nurse at Weskoppies.</td>
<td></td>
</tr>
</tbody>
</table>

<p>| 23. Moruane ML | Matric Certificate; Diploma in Nursing and Midwifery; Diploma in Medical and Surgical; Nursing Science; Degree in Bachelor of Arts in Nursing Science; | 1998-04-19 to 2005-04-30 (7 years) as a Professional Nurse at Helen Joseph Hospital; 2005-05-01 to 2008-01-31 (31 months) as a Chief Professional Nurse Brits District Hospital; 2008-02-01 to 2012-07-31 (5 years) at Oukasie Maternity Clinic; 2012-08-01 to 2014-07-31 (23 months) at Hast Clinic; |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>24. Nkadimeng MC</td>
<td>Matric Certificate; Diploma in Midwifery; Degree in Bachelor of Nursing; Diploma in Nursing Administration; Diploma in Community Nursing Science.</td>
<td>2014-08-01 to date (2 years) at Night Supervisor.</td>
</tr>
<tr>
<td>25. Nhlengethwa TM</td>
<td>Matric Certificate; Diploma in Nursing Science and Midwifery; Diploma in Medical and Surgical; Nursing Science; Diploma in Nursing Administration; Diploma in Nursing Education;</td>
<td>1995-03-31 to 1995-12-31 (9 months) as a Professional Nurse at Philadelphia Hospital; 1996-01-01 to 2002-06-30 (6 years) Professional Nurse at Middleburg; 2002-07-01 to date (14 years) Professional Nurse at Pretoria Academic Hospital.</td>
</tr>
<tr>
<td>26. Ledwaba CR</td>
<td>N3 and Matric Certificate; Diploma in Nursing Administration;</td>
<td>2008-01 to 2016 to date (8 years) as a Professional Nurse at Kalafong Hospital.</td>
</tr>
<tr>
<td></td>
<td>Diploma in Medical and Surgical; Nursing Science; Diploma in Nursing Science and Midwifery</td>
<td></td>
</tr>
<tr>
<td>---</td>
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</tr>
<tr>
<td>27.</td>
<td>Peta RG</td>
<td>No attachments</td>
</tr>
<tr>
<td>28.</td>
<td>Tyeni ZB</td>
<td>Degree Bachelor Curationis; Matric Certificate;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1996-03-13 to 1999-01-30 (35 months) Professional Nurse Untunjambili( Amatimatolo Clinic) Hospital; 2000-02-01 to 2001-03-30 (13 months) Professional Nurse Dr P N Mafuya and Associates; 2001-04-01 to 2003-03-30 (23 months) Professional Nurse GDHof Correctional Services IDutywa Health Centre; 2003-04-01 to 2009-09-30 (6 years) Professional Nurse Dutywa Health Centre; 2009-01-10 to 2009-12-31 (12 months) Professional Nurse Life Beacon Bay Hospital;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2010-01-01 to 2014-09-03 (4years)</td>
</tr>
<tr>
<td>---</td>
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<td>---------------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Professional Nurse Frere Hospital;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2015-03-03- to date (17 months) as a Professional Nurse Life Groenkloof Hospital;</td>
</tr>
<tr>
<td>29. Sithole PML</td>
<td>Matric Certificate; Diploma in Nursing Science and Midwifery; Degree of Nursing Science</td>
<td>2001-2014 (13years) specialty Nurse at Weskoppies; 2014 to date (2years) Nurse Educator at Ithemba Nursing Academy.</td>
</tr>
<tr>
<td>30. Nonovi LB</td>
<td>According to application. No attachments. BCuR Nursing; Post Graduate Diploma in Nursing Education; Diploma in Safety Management;</td>
<td>2014-02-01 to 2016-03-01 Lecture Mmabatho College of Nursing; 2001-05-01 to 2013-01-01 Registered Nurse at Lonmin Platinum</td>
</tr>
<tr>
<td>31. Hartzenberg SG</td>
<td>Matric Certificate; Diploma in Nursing; Diploma in Midwifery; Certificate Nursing Administration;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>32. Hlaka FFN</td>
<td>Matric 1981; Diploma in Nursing Science and Midwife; B Tech Community Nursing Science; Diploma in Clinical Nursing Science, Health assessment, Treatment and Care.</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td></td>
<td>33. Bokanyo NSB</td>
<td>Matric Certificate; Diploma in General Nursing Kalafong; Diploma in Midwifery Chris Hani Baragwanath; Diploma in Psychiatric Nursing Sterkfontein Hospital; B.Cur UNISA; Degree in Advanced Psychiatric Nursing Science UK; Degree of Bachelor of Arts in Nursing Science UNISA; Counselling in Individual Therapy Leeds University;</td>
</tr>
<tr>
<td>No</td>
<td>Surname</td>
<td>Initials</td>
</tr>
<tr>
<td>----</td>
<td>------------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>1.</td>
<td>Ramatsetse</td>
<td>MM</td>
</tr>
<tr>
<td>2.</td>
<td>Twala</td>
<td>NS</td>
</tr>
<tr>
<td>3.</td>
<td>Nkuna-Boikanyo</td>
<td>NSM</td>
</tr>
<tr>
<td>4.</td>
<td>Rangogo</td>
<td>P</td>
</tr>
<tr>
<td>5.</td>
<td>Fenyane</td>
<td>L</td>
</tr>
<tr>
<td>6.</td>
<td>Mogweng</td>
<td>TM</td>
</tr>
</tbody>
</table>

5.3.4 The following 18 candidates were shortlisted for interview as per the minutes of the shortlisting committee held on 18 May 2016 at 10h00:

<table>
<thead>
<tr>
<th>34.</th>
<th>Mogweng TM</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Matric Certificate;</td>
</tr>
<tr>
<td></td>
<td>Diploma In Midwifery;</td>
</tr>
<tr>
<td></td>
<td>Diploma in Community Nursing Science;</td>
</tr>
<tr>
<td></td>
<td>Bachelor Nursing Science;</td>
</tr>
<tr>
<td></td>
<td>Diploma in Community Nursing;</td>
</tr>
<tr>
<td></td>
<td>B.CUR;</td>
</tr>
<tr>
<td></td>
<td>Diploma in Nursing Administration.</td>
</tr>
</tbody>
</table>
7. KHALO MV
8. Bale B
9. Modiba ES
10. Motsitsi SL
11. Hlaka FN
12. Ramburan P
13. Dingaan MI
14. Moruane ML
15. Maluleka JC
16. Nkadimeng MC
17. Nhlengethwa TM
18. Hartzenberg SJ

5.3.5 The interview panel comprised of the following people:

<table>
<thead>
<tr>
<th>No</th>
<th>Panelist</th>
<th>Position and role</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Ms S Mahlangu</td>
<td>Deputy Director Nursing (Chairperson);</td>
</tr>
<tr>
<td>2.</td>
<td>Ms B G Khoza</td>
<td>Assistant Director Nursing;</td>
</tr>
<tr>
<td>3.</td>
<td>Ms M Legodi</td>
<td>Assistant Director Nursing;</td>
</tr>
<tr>
<td>4.</td>
<td>Mr M P Monyati</td>
<td>Employment Equity Representative;</td>
</tr>
<tr>
<td>5.</td>
<td>Ms S C Masilela</td>
<td>Human Resources Scriber.</td>
</tr>
</tbody>
</table>

5.3.6 The following people did not attend the interviews, namely Hartzenberg SJ, Ramburan P, Fenuye L, Rangongo P and Moruane ML.

5.3.7 The scoring was captured as follows:

<table>
<thead>
<tr>
<th>No</th>
<th>Surname</th>
<th>Initials</th>
<th>Ms S Mahlangu</th>
<th>Ms B G Khoza</th>
<th>Ms M Legodi</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Nkuna-Boikanyo</td>
<td>NSM</td>
<td>24</td>
<td>22</td>
<td>20</td>
<td>66</td>
</tr>
<tr>
<td>2.</td>
<td>Hlaka</td>
<td>FN</td>
<td>22</td>
<td>19</td>
<td>14</td>
<td>55</td>
</tr>
<tr>
<td>3.</td>
<td>Nhlengethwa</td>
<td>TM</td>
<td>18</td>
<td>15</td>
<td>16</td>
<td>49</td>
</tr>
</tbody>
</table>
5.3.8 The following were appointed as successful candidates for the Operational Manager posts (Mental Unit X3) as per the appointment letters dated 26 September 2016, which were signed by the Acting Chief Executive Officer, Dr L N Pooe:

5.3.8.1 Ms N S M Nkuna-Boikanyo
5.3.8.2 Ms F N Hlaka and
5.3.8.3 Ms T M Mogweng.

5.3.9 Ms Mahlangu as the Chairperson of the interviews unilaterally recommended the appointment of Ms Mogweng despite the advice from the EE observer.

5.3.10 Ms TM Mogweng was appointed as Operational Manager whilst she scored sixth in the interview.

5.3.11 The Acting Chief Executive Officer, Dr L N Pooe approved the appointment of Mogweng as per letter date 26 September 2016.
5.3.12 Complainant contended that Ms Mogweng was not scored number one during the interviews. Ms Mogweng scored number six, yet the chairperson of the interviews made a unilateral decision to handpick her for appointment.

5.3.13 The Complainant further argued that Ms Khalo was not appointed to the position of Operational Manager (Mental Unit) despite meeting the requirements as placed in the advertisement.

5.3.14 The GDH conceded in the letter from Mr Mike Malatjie dated 16 May 2017 addressed to my office that Ms Mahlangu, the Chairperson of the interviews took a unilateral decision to recommend the appointment of Mogweng on the basis that she had midwife experience which was not part of the requirements for appointment. The GDH further contended that the allegations in respect of Ms V Khalo were investigated and found to be unsubstantiated as per the investigation report compiled Mr Mpyana.

5.3.15 My investigation team held an interview with the Complainant on 13 October 2017 wherein she further alleged that Ms Nkuna-Boikanyo did not have the requisite experience for the post and should not have been appointed. She was only appointed to the position due to her friendship with Matron Khoza who was on the interview panel.

5.3.16 The EE report dated 6 September 2016 by Mr Monyatsi states as follows:

"At the end of process the first three (03) candidates was recommended as they have performed well. The Chairperson unilaterally instructed the panel that with the power vested on her, she will replace the third candidate with candidate scored at number six in the list. As EE member we advised that the practice is not in line with policy but nevertheless she continued to recommended on that basis of saying the person has a specialty whereas on the advert specialty was not a requirement”
5.3.17 The above citation from the EE report clearly indicated and further flagged impropriety by the Chairperson. Determination of the conduct of the Chairperson has been gauged against the standard that should have been complied with in the circumstances\(^5\).

5.3.18 The highest scoring candidates were as follows in the table below and as seen, Mogweng was scored sixth on the list but was appointed instead of the three candidates who scored higher.

<table>
<thead>
<tr>
<th>Candidate</th>
<th>Initials</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Nkuna Boikanyo</td>
<td>NSM</td>
<td>66</td>
</tr>
<tr>
<td>2. Hlaka</td>
<td>FN</td>
<td>55</td>
</tr>
<tr>
<td>3. Nhlengethwa</td>
<td>TM</td>
<td>49</td>
</tr>
<tr>
<td>4. Ramatsetse</td>
<td>MM</td>
<td>46</td>
</tr>
<tr>
<td>5. Bale</td>
<td>B</td>
<td>46</td>
</tr>
<tr>
<td>6. Mogweng</td>
<td>TM</td>
<td>44</td>
</tr>
</tbody>
</table>

Application of the relevant legal framework

5.3.19 Section 23 of the Constitution of the Republic of South Africa provides as follows:

\(1\) "Everyone has the right to fair labour practices".

5.3.20 It is evident that the recruitment process followed was unfair in relation to Ms Nhlengethwa who was the third highest scored candidate. The Chairperson overlooked the third and fourth highest scoring candidates in favour of someone who scored sixth of the six candidates interviewed.

\(^5\) Infra at para 8.2.25.
5.3.21 Ms Mahlangu appointed Ms Mogweng on the basis that she had midwifery experience however midwifery was not part of the set requirements. It was improper of Ms Mahlangu to introduce a new requirement during this stage of the selection process to justify/motivate for the appointment of Ms Mogweng.

5.3.22 Ms Mahlangu afforded Ms Mogweng preferential treatment to the detriment of Ms Nhlengethwa and the other two highest scoring candidates. Therefore the entire process of appointing Ms Mogweng constitutes an unfair labour practice as it was prejudicial to Ms Nhlengethwa and others.

5.3.23 Section 33 of the Constitution of the Republic of South Africa provides as follows:

(1) "Everyone has the right to administrative action that is lawful, reasonable and procedurally fair".

5.3.24 The process of appointing Ms Mogweng was procedurally unfair and detrimental to the other candidates, as it is evident that Ms Mahlangu preferred Mogweng over other candidates.

5.3.25 The reasons proffered for appointing Mogweng were unreasonable and arbitrary hence they were prejudicial over others.

5.3.26 The conduct of Ms Mahlangu in her appointment of Ms Mogweng was unfair and subjective.

5.3.27 Section 195(1) of the Constitution of 1996, provides as follows:

"Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(a) A high standard of professional ethics must be promoted and maintained.

(b) Efficient, economic and effective use of resources must be promoted."
(c) .........

(d) Services must be provided impartially, fairly, equitably and without bias."

5.3.28 Although Ms Khalo met the requirements of the position, she scored less than the appointed candidates as captured in the scoring sheet. There is no evidence to demonstrate that the process of recruitment was unfair in relation to Ms Khalo, however it is evident that the process was unfair and biased towards Nhlengethwa, Ramatsetse and Bale as they hey were overlooked in favour of Ms Mogweng who was scored sixth.

5.3.29 The process lacked professional ethics, was further unfair and biased towards Mogweng. Although Mogweng qualified for the position, it was evident that she was scored sixth on the list. There were three people who scored higher than her but were overlooked without just cause.

5.3.30 The recruitment and selection process followed in the appointment of Mogweng fell short of promoting or maintaining a high standard of professional ethics.

5.3.31 The third highest performing candidate in terms of the scoring was overlooked and the candidate who was scored sixth was promoted above other candidates.

5.3.32 The rationale for this decision by the Chairperson was that the sixth candidate had midwife experience which was not part of the requirements. The Chairperson was cautioned that her conduct which constituted unfair labour practice by the EE representative but she remained indifferent to such advice and executed her decision based on the position she occupied as Chairperson of the interviews.

5.3.33 Section 38 of the Public Finance Management Act No. 1 of 1999 provides as follows:

"General responsibilities of accounting officers:

(1) The accounting officer for a department, trading entity or constitutional institution—
(h) must take effective and appropriate disciplinary steps against any official in the service who:-
(iii) makes or permits an unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure;

5.3.34 The appointment of Mogweng was caused by the apparent wrongful actions of Ms Mahlangu which could have been avoided. As a result of her failure to heed advice, she contravened the Recruitment and Selection Policy which required fairness, objectivity and compliance with the applicable policy.

5.3.35 The GDH incurred an irregular expenditure due to Ms Mahlangu's conduct who unlawfully appointed Ms Mogweng to the prejudice of other qualifying candidates without just cause.

5.3.36 Clause 6.5.5 (the Recruitment and Selection Policy) provides as follows:

"The liability with respect to any unauthorised appointment will remain with those responsible for the appointment; however HR has a role to play in advising the responsible authority on the procedures and policies to be followed"

5.3.37 The GDH conceded that Ms Mahlangu as Chairperson of the interview panel took a unilateral decision to recommend the appointment of Mogweng on the basis that she had midwife experience which was not part of the requirements for the position. It is evident that she was advised by the EE representative that her conduct was improper but did not heed the advice.

5.3.38 Clause 6.4.4 of the Recruitment and Selection Policy provides as follows:

"The committee should discuss and consider the applicants with due regard to the specific criteria set for selection. The committee should recommend the
suitable candidate or the second best candidate in line with the proceedings of the interviews conducted”.

5.3.39 Although Ms Khalo also had the requisite experience as per the advert, she was scored 10th position out of 13 candidates hence her non appointment.

5.3.40 The scoring sheet shows consistency and there was a difference of 2 points in the scoring of both Ms Nkuna-Boikanyo and Ms Khalo.

5.3.41 It is evident that Ms Nkuna-Boikanyo met the inherent requirements of the job based on the fact that she registered with SANC in 1981 as a General Nurse. She further trained and worked at Kalafong Hospital for more than 6 years and worked at Weskoppies Psychiatric Hospital for more than 10 years. At the time of her appointment, she was an Operational Manager at MRH’s Mental Health Unit for three (3) years.

5.3.42 It has also been established that Ms Nkuna-Boikanyo had more than 9 years’ experience as a General Nurse and in addition, she scored the highest of all candidates during the interview. The committee is tasked with recommending a suitable candidate as outlined in the policy.

5.3.43 Clause 6.4.2 of the Recruitment and Selection Policy provides as follows:

“The committee must ensure that all processes are conducted fairly, justly and in an unbiased manner”.

5.3.44 There was no objection recorded in the process undertaken. The employment equity (EE) report compiled by Mr P M Monyatsi dated 6 September 2016 affirmed the fairness of the process.

5.3.45 Clause 6.3.5 of the Recruitment and Selection Policy provides as follows:
“A member of the selection committee who is a relative or a close associate to any candidate for a post shall divulge such information to the selection committee and may not sit in the interview of such a candidate”.

5.3.46 Matron Khoza signed an interview form which required her to “declare any conflict of interest or any vested interest, in the vacant positions or interviews”. There is no evidence that Matron Khoza and Ms Nkuna-Boikanyo are friends. Furthermore the evidence shows that Ms Mahlangu (Chairperson) scored Ms Nkuna-Boikanyo the highest out of everyone and not Ms Khoza.

Conclusion

5.3.47 The appointment of the sixth candidate (Ms Mogweng) in the instant case, was a unilateral decision of Ms Mahlangu done against the advice of the panel members and as such it is improper, biased and constitutes lack of transparency and fairness.

5.3.48 It has been established that Nhlengethwa, Ramatsetse and Bale scored higher than Mogweng during the interview and Khalo scored 10th on the list.

5.3.49 The available evidence clearly shows that Ms Nkuna–Boikanyo was qualified and it is established that she met the inherent requirements of the job. It is further evident that the appointment of Mogweng over the other higher scoring candidates was irrational and not in line with Clause 6.4.4 of the Recruitment and Selection Policy.

5.4 Whether the GDH improperly failed to follow proper recruitment processes by not shortlisting Ms W Makgatho for the Operational Manager position.
Common cause issues

5.4.1 Ms Makgatho applied for a post of Operational Manager: Mental Unit 3 and she was captured as candidate number one (1) on the applicants table in paragraph 8.1.25 above.

Issues in dispute

5.4.2 The Complainant argued that the GDH failed to follow a proper recruitment process by not shortlisting Ms Makgatho. It was further argued that the reason was that she had a specialty and the patient care GDH did not accommodate a person with a specialty in terms of the Occupational Specific Dispensation (OSD).

5.4.3 In a response email dated 7 June 2017 sent to my office from Mr Mike Malatjie, the GDH contended that their internal investigation found that Ms Makgatho was not shortlisted because she failed to attach her South African Nursing Council (SANC) receipt.

5.4.4 Ms Makgatho was interviewed through telephone on 3 June 2019 and she states that it is a standard requirement to submit the SANC receipt when applying. She was adamant that she submitted the receipt but could not say what transpired thereafter, as there is no checklist that is signed when one submits their application.

Application of the relevant legal framework

5.4.5 Section 31(1) Nursing Act No. 33 of 2005, subject to the provisions of section 37 provides that:

"No person may practise as a practitioner unless he or she is registered to practise in at least one of the following categories:"
(a) Professional nurse;
(3) An employer must not employ or retain in employment a person to perform the functions pertaining to the profession of nursing, other than a person who holds the necessary qualification and who is registered under subsection (1) or (2)”.

5.4.6 Ms Makgatho’s application did not have proof of her registration with SANC and according to section 31(3) of the Nursing Act No. 33 of 2005, the employer must employ a person with necessary qualifications and who is registered under the Act.

5.4.7 Clause 6.1.2 of the Recruitment and Selection Policy provides as follows:

“The advertisement for a post should specify the inherent requirements of the job, job title, remuneration and the criteria to be used for selection”.

5.4.8 Ms W Makghatho’s application for the Operational Manager position had the following documents; Z83 form, covering letter, Curriculum Vitae, SANC registration of an additional qualification for Diploma in Nursing Administration at the University of Pretoria 1998, matric certificate, and certificate of registration with SANC dated 1 January 1993 and certified copy of identity document but no proof of current registration with SANC.

5.4.9 According to the evidence obtained during the investigation, Ms W Makgatho proof of current registration with SANC was not submitted or attached to her application and there is no manner of proving that she attached it when applying as there is no checklist.

5.4.10 The advertisement required “Registration with the South African Nursing Council (SANC) with proof of current registration” and Ms Makgatho’s application form did not have same. Ms W Makgatho’s application in our evidence does not have the SANC receipt attached although she contended
that she submitted it. There is also no evidence that it was removed by someone either.

Conclusion

5.4.11 It is part of the requirements of the job to attach SANC receipt with an application and Ms W Makgatho’s application in our evidence did not have the SANC receipt attached to it.

5.4.12 The applicable prescript imposes a duty on the employer to employ a person with necessary qualifications and who is registered with the Nursing Council (professional body).

5.5. Whether the Complainant or any other person suffered prejudice as a result of the conduct of the GDH in the circumstances.

Common cause issues

5.5.1 Ms Mahlangu was Chairperson of the interview panel for the three Operational Manager positions ref number 001538 (Mental Unit).

5.5.2 Ms Mogweng applied for the position of Operational Manager and was successfully appointed to the position.

5.5.3 Ms Nhlangethwa scored higher than Ms Mogweng during the interview however she was not appointed.

5.5.4 The eighteen (18) cleaners were appointed based on the directive of the former CEO, Dr Adonis.
Issues in dispute

5.5.5 The Complainant argued that the appointment of Ms Mogweng was unfair and prejudicial due to the fact that she scored lower than Ms Nhlengethwa and two other candidates.

5.5.6 The Complainant further contended that the former CEO, Dr Adonis appointed the first eighteen candidate cleaners on the list whilst the panel had recommended that the interview process be conducted de novo due to inadequacy in these candidates. However, the CEO overruled the recommendation without sound reasons thereby causing prejudice to other potential applicants with cleaning experience and training in cleaning services.

5.5.7 The GDH conceded in their response that the process followed in the appointment of cleaners was flawed. It was indicated in the response that the former CEO, Dr Adonis overruled the recommendations of the panel and gave a directive for the appointment of the first eighteen (18) candidates.

Application of the relevant legal framework

5.5.8 Section 23 of the Constitution of the Republic of South Africa 1996 provides as follows:

(1) Everyone has the right to fair labour practices.

5.5.9 It is evident that the recruitment process followed was unfair in relation to Ms Nhlengethwa. She was overlooked without just cause and as a result the decision was arbitrary and capricious.

5.5.10 Ms Mahlangu afforded Ms Mogweng preferential treatment to the detriment of Ms Nhlengethwa and others. The process followed in appointing Ms Mogweng constitutes unfair labour practice as it was unfair and prejudicial to Ms Nhlengethwa.
5.5.11 The interview panel recommended none of the candidates for appointment to the cleaner positions. However the former CEO overruled the panel on the basis that the job was not technical and proceeded to appoint the first eighteen (18) candidates despite the recommendation of the panel to the contrary.

5.5.12 Section 33 of the Constitution of the Republic of South Africa provides as follows:

(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

5.5.13 The process of appointing Ms Mogweng was procedurally unfair and the conduct of Ms Mahlangu lacked fairness and objectivity as it was based on personal random selection by Ms Mahlangu as opposed to a unanimous decision of the panel, scores or equity.

5.5.14 The process of appointing the cleaners was procedurally unfair, the reasons by the former CEO, Dr Adonis were arbitrary in the sense that they were against the recruitment policy and also against the recommendations of the interview panel.

5.5.15 Section 195(1) of the Constitution of 1996, provides as follows:

"Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(a) A high standard of professional ethics must be promoted and maintained.
(b) Efficient, economic and effective use of resources must be promoted.
(c) ........................................................................................................
(d) Services must be provided impartially, fairly, equitably and without bias".

5.5.16 The process of recruitment followed in the appointment of Mogweng fell short of the ethical standard required by the Constitution and the process further lacked impartiality.
5.5.17 The resources of the Hospital were ineffectively utilised thereby resulting in irregular appointments.

5.5.18 The former CEO, Dr Adonis overruled the decision of the interview panel on the basis that the position is non-technical, which can only be construed as unsound and without substance.

5.5.19 Section 38 of the Public Finance Management Act No. 1 of 1999 Public Management of Finance Act provides as follows:

“General responsibilities of accounting officers—

(1) The accounting officer for a department, trading entity or constitutional institution—

(h) must take effective and appropriate disciplinary steps against any official in the service who:-

(iii) makes or permits an unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure”

5.5.20 The GDH incurred irregular expenditure due to Ms Mahlangu's conduct of unfairly, unlawfully and irregularly appointing Ms Mogweng to the prejudice of other qualifying candidates without a valid reason.

5.5.21 To this end, I would like to accentuate that irregular expenditure in relation to government departments, means expenditure other than unauthorised expenditure that is incurred in contravention of or that is not in accordance with the recruitment and selection policy of the GDH

5.5.22 The irregular expenditure incurred in the appointment of Mogweng was in contravention of the PFMA and the Recruitment and Selection policy which required fairness and objectivity. As such Ms Mahlangu exposed the GDH to financial misconduct prohibited by section 38 of the PFMA.

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6Infra at para 8.4.28.
5.5.23 The GDH further incurred irregular expenditure due to Dr Adonis' conduct by unfairly appointing the first 18 cleaners in contravention of the Recruitment and Selection policy. As such Dr Adonis also exposed the GDH to financial misconduct prohibited by section 38 of PFMA.

5.5.24 The term "irregular appointment" is utilised to describe a wrongful action that has taken place during the process of Recruitment and Selection which is in contravention with legislation, regulations and other subordinate prescripts. Simply put, irregular appointments entail transgression of the requirements of applicable legislative and policy frameworks in the appointment process.

5.5.25 The Recruitment and Selection process has a couple of steps that need to be followed which are guided by legislation, regulations and other frameworks. Failure to comply with the recruitment and selection requirements stipulated in these frameworks would result in an irregular appointment. Any expenditure incurred on an irregular appointment would therefore results in an irregular expenditure regardless of how good the service/job rendered by that person.

5.5.26 A wrong recruit might have a negative impact in the performance of the organisation, hence it is crucial for management to apply its mind when appointing. A "bad hiring decisions could not only negatively affect a company financially, but could also harm employee morale and result to time loss due to grievance, disputes and litigation processes".

5.5.27 Clause 5.2 of the Recruitment and Selection Policy provides as follows:

“All recruitment actions should be undertaken with a view to seek from the relevant target group, the ideal application with the necessary training, skills, competence, potential and knowledge relevant to the requirements of the post concerned”.

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7 Bressler MS 2014 at page 2 Building the winning organisation through high-impact hiring.
5.5.28 The former CEO overruled the interview panel and proceeded to appoint the first 18 candidates despite its recommendation.

5.5.29 Ms Mahlangu took a unilateral decision to appoint Ms Mogweng despite the fact that Ms Nhlengethwa was scored the highest.

5.5.30 Clause 6.5.5 of the Recruitment and Selection Policy for GDHand Social Development provides as follows:

"The liability with respect to any unauthorised appointment will remain with those responsible for the appointment; however HR has a role to play in advising the responsible authority on the procedures and policies to be followed"

5.5.31 GDH in its investigation conceded that the conduct of both Ms Mahlangu and the former CEO, Dr Adonis were improper.

**Conclusion**

5.5.32 Ms Mahlangu and Dr Adonis acted in contravention of the Constitution, PFMA, Labour Relations Act and the Recruitment and Selection policy in making the above appointments.

5.5.33 Ms T M Nhlengethwa was prejudiced by the conduct of Ms Mahlangu when she unilaterally appointed Ms Mogweng without just cause. Similarly, other potential candidates with experience and training in cleaning services were prejudiced by the conduct of Dr Adonis.
Response to my Notice in terms of the provisions of section 7(9)(a) of the Public Protector Act

5.5.34 On 29 July 2019, I signed off and subsequently issued all implicated officials of the GDH with a notice in terms of section 7(9)(a) of the Public Protector Act, (notice/s) with a view to afford them an opportunity to respond to the allegations against them, particularly in relation to the role they played in this matter. 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.”

5.5.35 In what follows, I will proceed to consider the response(s) submitted regarding the section 7(9) notices. I have, however, not dealt with each and every aspect raised in the responses, but that should not be misconstrued as an admission of any kind of the averments contained therein.

5.5.36 A written response was received by my office via an email on 01 August 2019 from Dr Pooe in which she indicated that she is no longer the CEO of GDH and that she no longer works for the GDH. Dr Pooe further indicated she is unable to comment any further and that the Notice would be best addressed by GDH since all the actions she took as the CEO were on behalf of on behalf of GDH.

5.5.37 The Director- General of the National Department of Health: Ms Matsoso also replied to my section 7(9) Notice as per letter dated 27 August 2019 and basically indicated that this is a matter for GDH and the preliminary findings should all be
referred to the current Acting Head of Department Prof M Lukhele for his response.

5.5.38 Save for the response by Dr Pooe, Ms Matsoso as indicated above no other comment or response was received by my office from the GDH. However, Ms Matsosto, the current CEO: Prof Lukhele and Minister Mkhize were also served with the Notices.

6 FINDINGS

Having carefully examined the evidence obtained during the investigation, and the regulatory framework setting the standard that should have been complied with, I make the following adverse findings against GDH:

6.1 Regarding whether there were irregularities in the recruitment and selection processes in the appointment of the following officials by GDH namely, Ms Mphulwane, Ms Nkuna-Boikanyo, Ms Sebela and eighteen (18) cleaners:

Appointment of Ms Mphulwane

6.1.1 The allegation that the appointed candidate, Ms Mphulwane, to a position of Operational Manager Speciality (Neonatal) with reference number 001537 lacked the requisite experience, is unsubstantiated.

6.1.2 It is clear from the evidence that the appointed candidate was qualified and that the process of recruitment was fair.

6.1.3 Based on the evidence obtained, the process was fair and there was no objection recorded by the candidates, including the Complainant. The candidates were qualified and the best person was appointed emanating from a transparent and a fair recruitment process.
6.1.4  The post was advertised, interviews held and there was a set criteria for selection that was observed which ultimately led to the appointment of a suitably qualified candidate.

6.1.5  Accordingly the conduct of the GDH in the circumstances does not amount to improper conduct in terms of section 182(1) of the Constitution and improper and unfair as envisaged in section 6(4)(a)(ii) of the Public Protector Act.

Appointment of Ms Nkuna-Boikanyo

6.1.6  The allegation that Ms Nkuna-Boikanyo did not have the requisite experience for the post of Operational Manager: Mental Unit and as such she should not have been appointed and further that she was only appointed to the position due to her friendship with Matron Khoza who served on the interviewing panel, is unsubstantiated.

6.1.7  It is clear from the evidence that Ms Nkuna-Boikanyo was qualified and the process of recruitment was fair, transparent and above board.

6.1.8  Accordingly, the conduct of the GDH in the circumstances does not amount to improper conduct in terms of section 182(1) of the Constitution and improper and unfair as envisaged in section 6(4)(a)(ii) of the Public Protector Act.

Appointment of Ms Sebela

6.1.9  The allegation that Ms Sebela was improperly appointed to the position of Operational Manager Trauma is substantiated.

6.1.10  It has been established by evidence that the normal recruitment process was not exhausted by the GDH before embarking on a headhunting process in appointing Ms Sebela to the above post.
6.1.11 The evidence shows that the process of headhunting followed was flawed and fell short of complying with Clause 7 of the Recruitment and Selection Policy.

6.1.12 Evidence at my disposal further shows that the shortlisting of Ms Sebela to position of Deputy Manager Nursing which was also alleged by complainant emanated from misleading information or misrepresentation on her Curriculum Vitae. However, I make no finding in this regard due to the fact that Ms Sebela’s shortlisting to post of Deputy Manager Nursing did not result in the ultimate appointment for Ms Sebela.

6.1.13 Accordingly, the conduct of the GDH in the circumstances amounts to improper conduct in terms of section 182(1) of the Constitution and improper and unfair as envisaged in section 6(4)(a)(ii) of the Public Protector Act.

Appointment of eighteen (18) cleaners

6.1.14 The allegation that the cleaners were improperly appointed, is substantiated.

6.1.15 GDH admitted to my investigation team that the said appointment of 18 cleaners was irregular, even in terms of their own investigation.

6.1.16 The Former Chief Executive Officer (CEO) of MRH: Dr Adonis failed to adhere to sections 23, 33 and 195 of the Constitution of South Africa 1996, section 186 of the LRA, section 38 of PFMA, Clauses 6.5.5 and 5.2 of the Recruitment and Selection Policy for GDH and Social Development through his conduct of appointing unsuitable candidates/cleaners, who failed the interviews.

6.1.17 Such failure constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.
6.2 Regarding whether Ms Mahlangu, who was the Chairperson of the interview panel, made a unilateral decision that sought to improperly favour the appointment of Ms Mogweng to the position of Operational Manager: Mental Unit.

6.2.1 The allegation that Ms Mahlangu took a unilateral decision to appoint Ms Mogweng to the position of Operational Manager: Mental Unit is substantiated.

6.2.2 It is clear from the evidence/post advertisement that midwife experience which was considered by Ms Mahlangu in appointing Ms Mogweng was not part of the requirements and as such her decision was unfair, capricious, arbitrary and biased.

6.2.3 The conduct of the Deputy Director Nursing: Ms Mahlangu, as chairperson of the interviewing panel, failed to adhere to the standards envisaged in sections 23, 33 and 195 of the Constitution of South Africa 1996. Her conduct was also at odds with section 186 of the LRA, section 38 of PFMA, Clauses 5.2, 6.4.2, 6.4.4 and 6.5.5 of the Recruitment and Selection Policy for GDHand Social Development.

6.2.4 It is clear from the evidence that the appointed candidate was not qualified and the process of recruitment was neither fair, nor transparent.

6.2.5 Accordingly the conduct of the MRH, in particular Ms Mahlangu, in the circumstances constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

6.3 Regarding whether the GDH improperly excluded Ms Makgatho from being shortlisted for the operational manager position:

6.3.1 The allegation that Ms W Makgatho was not shortlisted for a position in an area of patient care on the basis that she had a speciality, is unsubstantiated.
6.3.2 Evidence at my disposal reveals that Ms W Makgatho was not shortlisted because she failed to submit her proof of SANC registration as per the requirements on the advert. Ms Makgatho therefore failed to comply with the requirements of the advert, hence she was not shortlisted.

6.3.3 Accordingly the conduct of the GDH in the circumstances does not amount to improper conduct in terms of section 182(1) of the Constitution and improper and unfair as envisaged in section 6(4)(a)(ii) of the Public Protector Act.

6.4 Regarding whether the Complainant or any other person suffered prejudice as a result of the alleged irregular:

6.4.1 The allegation that the Complainant suffered prejudice as a result of the conduct of the Department, is substantiated.

6.4.2 The evidence shows that TM Nhlengethwa was prejudiced by the conduct of Ms Mahlangu who appointed Ms Mogweng ahead of her without sound or valid reasons. Ms Nhlengethwa was scored higher and the reasons for preference of another candidate, was without just cause. The conduct of Ms Mahlangu was in contravention of section 23 (1) of the Constitution which affords all people the right to fair labour practice.

6.4.3 Accordingly the conduct of the GDH in particular Ms Mahlangu, in the circumstances constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

7. REMEDIAL ACTION

The appropriate remedial action that I am taking in pursuit of section 182(1)(c) of the Constitution is the following:
The Head of Department: GDH must take appropriate steps to ensure that:

7.1.1 Within thirty (30) working days from the date of this report take disciplinary steps against Ms Mahlangu who failed to adhere to the standard envisaged in sections 23, 33 and 195 of the Constitution of South Africa 1996. Also for violating section 186 of the LRA, section 38 of PFMA, Clauses 5.2, 6.4.2, 6.4.4 and 6.5.5 of the Recruitment and Selection Policy for GDHand Social Development.

7.1.2 Within sixty (60) working days of the issue of this report; all MRH’s officials who are involved in the recruitment and selection process, including all the senior management, to attend a workshop on the Recruitment and Selection procedures and processes.

8. MONITORING

8.1.1 The HoD of the GDH must submit an Implementation Plan to my office within 30 working days from the date of receipt of this report indicating how the remedial action referred to in paragraph 7 above will be implemented.

8.1.2 I wish to bring to your attention that in line with the Constitutional Court Judgement in the matter of Economic Freedom Fighters v Speaker of the National Assembly and other; Democratic Alliance v Speaker of the national Assembly and others [2016] ZACC 11; 2016 (3) SA 580 (CC), and in order to ensure the effectiveness of the Office of the Public Protector, the remedial actions prescribed in this Report are legally binding on the Head of the GDH, unless an Interim Interdict or Court Order directing otherwise is obtained.

ADV. BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 16 09 2019