A COSTLY DELAY

A report on an investigation into allegations of undue failure by Matlosana Local Municipality to submit the deceased's beneficiaries' life assurance cover claim to the South African Local Authorities Pension Fund within the prescribed period from the date of his death

Report No: 1 of 2015/16
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Executive Summary

(i) "A Costly Delay" is my report as the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 and section 8(1) of the Public Protector Act 23 of 1994.

(ii) The report communicates my findings and the appropriate remedial action I am taking in terms of section 182(1)(c) of the Constitution, following an investigation into allegations of undue failure by the City of Matlosana Local Municipality (the Municipality) to timely submit the Deceased (Mr SJ Malefo)'s beneficiaries' Life Assurance Cover claim to the South African Local Authorities Pension Fund (the Fund).

(iii) The complaint was lodged on 16 February 2011 by Mr Peter Malefo (the Complainant) acting on behalf of the minor children of his late brother, Mr Setshogo Jeremiah Malefo (the Deceased). The Complainant alleged that the Deceased was an employee of the Municipality until his death on 09 September 2005 and that during his employment at the Municipality, he was a member of the South African Local Authorities Pension Fund (the Fund).

(iv) The Complainant alleged that one of the Deceased's benefits was a Life Assurance Cover which was separate from the pension benefit from the Fund. The said Life Assurance Benefit Cover was administered by Old Mutual (the Insurer) and was only payable on the death of the Deceased.
(v) The Complainant alleged that the Deceased’s beneficiaries became entitled to claim the Life Assurance Benefit upon the death of his brother. The Municipality was obliged to complete the claim forms with all other required documents and submit them to the Fund, within a period of twelve (12) months from the date of death of the Deceased, for the claim to be processed.

(vi) The Complainant alleged that when he realised that the Fund had not processed payment for the Life Assurance Benefit, he approached the Municipality and enquired whether it had submitted the Deceased’s beneficiaries’ Life Assurance Benefit claim. The Municipality informed him that the claim had been submitted to the Fund.

(vii) The Complainant further alleged that he approached the Fund to enquire about the delay on its part to process the Deceased’s beneficiaries’ claim. The Fund informed him that the Deceased’s beneficiaries’ claim was repudiated due to late submission made by the Municipality. He further alleged that the Fund advised him that it only received the claim on 17 August 2007, twenty three (23) months after the death of the Deceased.

(viii) The Complainant also alleged that he approached the Financial Services Board (FSB) and requested its intervention. The FSB in its investigation confirmed that the Fund repudiated the Deceased’s beneficiaries claim because the Municipality submitted the claim outside the prescribed period of twelve (12) months.

(ix) On analysis of the complaint, the following issues were considered and investigated:

(a) Did the Municipality unduly fail to timely complete and submit the Deceased’s beneficiaries’ Life Assurance Cover claim to the Fund
within the prescribed twelve (12) month period from the date of the Deceased’s death? If so, did such failure amount to maladministration and improper conduct?

(b) If there was maladministration, did the Deceased’s beneficiaries suffer prejudice as a result of such maladministration?

(x) The investigation process included interviews with the Complainant; correspondence with the Fund and the Municipality; analysis of the relevant documents; research conducted; and the consideration and application of the relevant laws, policies and other aspects of the regulatory framework that should have been complied with by the Municipality.

(xi) The standard used to determine whether there had been maladministration by the Municipality and prejudice to the Deceased’s beneficiaries with regard to the alleged failure to complete and submit the Deceased’s beneficiaries’ Life Assurance Cover claim is provided for in the South African Local Authorities Pension Fund Revised Rules of 2008 and the South African Local Authorities Pension Master Policy of 2005. In terms Rule 8.11 of the South African Local Authorities Pension Fund Revised Rules of 2008 read with clause 3.2 of Schedule 2 of the South African Local Authorities Pension Master Policy of 2005, the Municipality was obliged to have completed and submitted the Deceased’s beneficiaries’ Life Assurance Cover claim within a period of twelve (12) months from the date of the Deceased’s death. I also took into account the responsibilities of state functionaries as envisaged in sections 195 of the Constitution dealing with principles of public administration and section 237 requiring that all constitutional obligations must be performed diligently and without delay.

(xii) Regarding the facts, the Municipality did not deny submitting the relevant claim forms late, outside the prescribed period. The only issue in dispute
was whether the delay in lodging the claim for the Deceased's beneficiaries Life Assurance Cover was due to the fault of the Municipality or the Complainant.

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

1. Did the Municipality unduly fail to timely complete and submit the Deceased's beneficiaries' Life Assurance Cover claim to South African Local Authorities Pension Fund within the prescribed twelve (12) months from the date of the Deceased's death? If so, did such failure amount to maladministration?

(a) The allegation that the Municipality unduly failed to timely complete and submit the Deceased's beneficiaries' Life Assurance Cover claim to the Fund within the prescribed twelve (12) months from the date of the Deceased's death is substantiated;

(b) I find that the Municipality failed to complete and submit the Deceased's beneficiaries' claim forms to the Fund within the twelve (12) months period as prescribed by Rule 8.11 of the South African Local Authorities Pension Fund Revised Rules of 2008 read with clause 3.2 of Schedule 2 of the South African Local Authorities Pension Fund Master Policy of 2005. The Municipality only submitted the Deceased's beneficiaries Life Assurance Benefit Cover claim forms to the Fund on the 17th of August 2007, twenty three (23) months after the death of the Deceased. The conduct was inconsistent with the Municipality's obligations under section 195 of the Constitution which requires among others that public administration must be accountable and
section 237 of the Constitution which requires that all constitutional obligations must be performed diligently and without delay. Such failure to comply with the said twelve (12) months period constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(i) of the Public Protector Act; and

(c) The Municipality failed to ensure that the best interests of the Deceased’s minor beneficiaries were taken into account as required by section 28(2) of the Constitution when handling the claim despite actions taken by the Complainant.

2. If there was maladministration, did the Deceased’s beneficiaries suffer prejudice as a result of such maladministration?

(a) I find that the Municipality’s conduct in failing to abide by Rule 8.11 of the South African Local Authorities Pension Fund Revised Rules of 2008 read with clause 3.2 of Schedule 2 of the South African Local Authorities Pension Fund Pension Fund Master Policy of 2005, by not submitting the Deceased’s beneficiaries’ Life Assurance Benefit Cover claim in time, caused the Fund to repudiate the claim which resulted in financial prejudice amounting to R697 206.00 to the Deceased’s beneficiaries; and

(b) The Deceased’s beneficiaries including three (3) minor children one aged 14 and two aged 12 at the time when the claim was repudiated by the Fund, were unlawfully deprived enjoyment of their right to social security as envisaged in section 27(1)(c) of the Constitution and the minor children were further deprived
their human rights as entrenched in section 28 of the Constitution and the Convention on the Rights of the Child.

(xiv) The appropriate remedial action I am taking in pursuit of section 182(1)(c) of the Constitution, with the view of placing the Deceased’s beneficiaries as close as possible to where they would have been had the improper conduct or maladministration not occurred is the following:

(a) The Municipality must within 90 days from the date of this report compensate the Deceased’s beneficiaries in the amount of R697 206.00, which amount represents what the beneficiaries would have been paid as a Life Assurance Benefit had the Municipality submitted the beneficiaries’ claim forms to the Fund within the prescribed period. The abovementioned compensation must be paid with interest at the prescribed rate of 15.5% p.a. effective from 04 August 2010 until the date of payment;

(b) In effecting the abovementioned payment to the Deceased’s beneficiaries, the Municipality must liaise with the Fund for proper and full identification of the Deceased’s legitimate beneficiaries as at 04 August 2010;

(c) In order to prevent similar cases in the future, the Municipal Manager must ensure that the best interests of the child are protected in cases where adults assist the beneficiaries with pension claims and other entitled benefits, since it is the minor beneficiaries who suffer prejudice;

(d) The Municipal Manager should write a letter of apology to the Deceased’s legitimate beneficiaries for the prejudice caused due to
maladministration on the part of the Municipality within a period of 14 days from the date of this report; and

(e) The South African Law Reform Commission is requested to consider the fairness of the Fund’s rules and possible law reform to protect the best interest of the child.
1. INTRODUCTION

1.1 “A Costly Delay” is my report as the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act), following a complaint regarding the Matlosana Municipality’s alleged failure to submit life assurance claims for minor children of the deceased resulting in the repudiation of the claim by the South African Local Authorities Pension Fund (the Fund).

1.2 The report is submitted in terms of section 8(1) of the Public Protector Act to the following persons:

1.2.1 Honourable Collen Maine, Member of the Executive Council (MEC) for Local Government and Traditional Affairs, North West Provincial Government;

1.2.2 Mr. M.K. Khauwe, the Executive Mayor of the Matlosana Local Municipality;

1.2.3 Cllr Lebena Mpolokeng Kortjias, the Speaker of the Matlosana Local Municipality; and

1.2.4 Mr. SG Mabuda, the Acting Municipal Manager of the Matlosana Local Municipality.
1.3 A copy of the report is also provided to the Complainant, Mr Peter Malefo, in terms of section 8(3) of the Public Protector Act.

1.4 A copy of the report is also provided to Honourable Judge Mandisa Maya, the Chairperson of the South African Law Reform Commission (SALRC) in terms of section 8(1) of the Public Protector Act, 1994 for the SALRC to consider law reform regarding the application of the Fund's rules.

1.5 The report relates to an investigation into alleged undue failure by the Matlosana Local Municipality (the Municipality) to submit the Deceased’s beneficiaries' Life Assurance Cover claim to the South African Local Authorities Pension Fund (the Fund), within the prescribed period from the date of the Deceased’s death in accordance with the South African Local Authorities Pension Fund Master Policy of 2005 and South African Local Authorities Pension Fund Revised Rules of 2008.

2. THE COMPLAINT

2.1 The complaint was lodged on 16 February 2011 by Mr Peter Malefo (the Complainant) acting on behalf of the minor children of his late brother, Mr Setshogo Jeremiah Malefo (the Deceased). The Complainant alleged that the Deceased was an employee of the Municipality until his death on 09 September 2005 and that during his employment at the Municipality; he was a member of the Fund.

2.2 The Complainant alleged that one of the Deceased's benefits was a Life Assurance Cover which was separate from the pension benefit from the Fund. The said Life Assurance Benefit Cover was administered by Old Mutual (the Insurer) and was only payable on the death of the Deceased.
2.3 The Complainant alleged that the Deceased’s beneficiaries became entitled to claim the Life Assurance Benefit upon the death of his brother. The Municipality was obliged to complete the claim forms with all other required documents and submit them to the Fund, within a period of twelve (12) months from the date of death of the Deceased, for the claim to be processed.

2.4 The Complainant alleged that when he realised that the Fund did not process payment for the Life Assurance Benefit, he approached the Municipality around August 2010 and enquired whether it had submitted the Deceased’s beneficiaries Life Assurance Benefit claim. The Municipality informed him that the claim had been submitted to the Fund.

2.5 The Complainant further alleged that he approached the Fund on the 12 February 2012 to enquire about the delay on their part to process the Deceased’s beneficiaries’ claim. The Fund informed him that the Deceased’s beneficiaries’ claim was repudiated due to late submission made by the Municipality. He further alleges that The Fund advised him that it only received the claim on 17 August 2007, twenty three (23) months after the death of the Deceased.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

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

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

"The Public Protector has the power as regulated by national legislation-"
(a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;
(b) to report on that conduct; and
(c) to take appropriate remedial action.”

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

3.4 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector is also given power to resolve disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.5 The Matlosana Local Municipality is an organ of state and its conduct amounts to conduct in state affairs, as a result the matter falls within the ambit of the Public Protector’s mandate.

3.6 The Public Protector’s power and jurisdiction to investigate and take appropriate remedial action was not disputed by any of the parties.

4. THE ISSUES CONSIDERED AND INVESTIGATED BY THE PUBLIC PROTECTOR

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

(a) Did the Municipality unduly fail to timely complete and submit the Deceased’s beneficiaries’ Life Assurance Cover claim to the Fund
within the prescribed twelve (12) month period from the date of the 
Deceased’s death? If so, did such failure amount to 
maladministration?

(b) If there was maladministration, did the Deceased’s beneficiaries suffer 
prejudice as a result of such maladministration?

5. THE INVESTIGATION

5.1 Scope and methodology

(xv) 5.1.1 The investigation was conducted in terms of section 182 of the 
Constitution and sections 6 and 7 of the Public Protector Act, 1994. The 
process included interviews with the Complainant; correspondence with 
the Fund and the Municipality; analysis of the relevant documents; 
research conducted; and the consideration and application of the relevant 
laws, policies and other aspects of the regulatory framework that should 
have been complied with by the Municipality.

5.1.2 An Alternative Dispute Resolution (ADR) was held with the Municipal 
Manager on 12 July 2013 in terms of section 6(4)(b) of the Public 
Protector Act which gives the Public Protector authority to resolve any 
dispute though ADR measures. However, the attempt to resolve the 
matter through ADR failed which resulted in the matter being escalated 
into a formal investigation.

5.2 Approach to the investigation

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

5.2.1.2 What should have happened?

5.2.1.3 Is there a discrepancy between what happened and what should have happened and if there is a deviation does that deviation amount to improper conduct or maladministration?

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

5.2.2 The question regarding what happened is resolved through a factual investigation relying on the evidence provided by the parties and independently sourced during the investigation and making a determination based on a balance of probabilities. In this particular case, the factual enquiry principally focused on whether or not the Matlosana Local Municipality unduly failed to timely complete and submit the Deceased’s beneficiaries’ Life Assurance Cover claim within the stipulated twelve (12) month period to the Fund.

5.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Matlosana Local Municipality to prevent maladministration and prejudice.

5.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for correcting maladministration and redressing its consequences. In this case where the Complainant or persons for whom he is acting on their behalf has suffered prejudice, the idea is to place him/her or them as close as possible to where they would have been had the Matlosana Local
Municipality complied with the regulatory framework regarding the lodging of claims for the Deceased's beneficiaries' Life Assurance Cover.

5.3 Key sources of information

5.3.1 Interviews and Meetings

5.3.1.1 Meeting with the Complainant, Mr Peter Malefo, on 15 September 2012.

5.3.2 Correspondence

5.3.2.1 A letter of complaint dated 16 February 2011;

5.3.2.2 A copy of a letter of enquiry dated 07 August 2014 to the South African Local Authorities Pension Fund;

5.3.2.3 An email dated 12 August 2014 from the South African Local Authorities Pension Fund Head of Administration, Mr Peter Ziegler, confirming that the Fund would have paid the Deceased's beneficiaries an amount of R697 206.00 if the Municipality had submitted the claim within a period of twelve (12) months from the date of the Deceased's death;

5.3.2.4 Section 7(9) letter from the Public Protector dated 22 January 2015, sent to the Municipality; and

5.3.2.5 A letter dated 18 February 2015 from the Municipal Manager, Mr ET Motsemme, responding to the abovementioned Public Protector's section 7(9) letter.
5.3.3 Documents

5.3.3.1 A copy of the investigative report from the South African Local Authorities Pension Fund dated 19 April 2012 confirming that the Municipality failed to submit the Deceased’s beneficiaries’ Life Assurance Cover claim to South African Local Authorities Pension Fund within the prescribed twelve (12) month period; and

5.3.3.2 A copy of the Deceased’s death certificate showing that South African Local Authorities Pension Fund received the Deceased’s beneficiaries Life Assurance Cover claim on 17 August 2007.

5.3.4 Legislation and other prescripts

5.3.4.1 South African Local Authorities Pension Fund Revised Rules of 2008;

5.3.4.2 South African Local Authorities Pension Fund Master Policy of 2005;

5.3.4.3 The Constitution of the Republic of South Africa, 1996; and

5.3.4.4 The United Nations Convention on the Rights of the Child.

6. EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION

6.1 Regarding whether the Municipality unduly failed to timely complete and submit the Deceased’s beneficiaries’ Life Assurance Cover claim to South African Local Authorities Pension Fund within the prescribed twelve (12) month period from the date of the Deceased’s death and if so, whether such failure amounted to maladministration:
6.1.1 The Complainant's submission.

6.1.1.1 The Complainant in his complaint lodged on 16 February 2011 alleged that he approached the FSB on 22 February 2012 to request its intervention after the Municipality failed to submit the Deceased's beneficiaries Life Assurance Cover claim to the Fund which resulted in their claim being repudiated by the Fund. According to the FSB, it enquired from the Fund about the Deceased's beneficiaries' claim which the Fund investigated and gave it its investigation report dated 19 April 2012. The FSB thereafter gave the Complainant this investigation report.

6.1.1.2 The Complainant submitted this report received from FSB to the Public Protector. The report confirmed that the:

"The Deceased was a member of the Fund [South African Local Authorities Pension Fund] by virtue of being employed by City of Matlosana [the Municipality] a participating employer in the Fund.

The Deceased passed away on 09 September 2005, at which time he ceased to be a member of the Fund and he became entitled to a death benefit."

6.1.1.3 South African Local Authorities Pension Fund report further advised that Rule 6.1 which was applicable in September 2005 (at the time of the deceased's death) provided as follows-

"If a MEMBER dies whilst in the service, the following cash benefit will become payable:

1. The LIFE ASSURANCE BENEFIT COVER

PLUS
2. The MEMBER’S ACCUMULATED CREDIT determined as at the
death of date [sic].”

6.1.1.4 The report further stipulates that around 4 August 2010, a death benefit of R611 458.00 representing the Deceased’s Accumulated Credit arising out of his membership at the Fund was paid to the Deceased’s beneficiaries.

6.1.1.5 South African Local Authorities Pension Fund stated in the report that the LIFE ASSURANCE BENEFIT of R697 206.00 was subsequently repudiated by the Insurer due to the late notification of death. The Fund further advised that the repudiation of the Deceased’s beneficiaries’ Life Assurance Benefit claim-

"Was due to failure by the Employer [the Municipality] to submit the death claim within the 12 months period as required by the Insurer.”

6.1.1.6 With regard to the aforementioned, the Fund attached the death certificate of the Deceased which shows that-

"The date it was received by Old Mutual [the Insurer] as being 17 August 2007- almost 2 years after the date of death of the Deceased.”

6.2 The Municipality’s response

6.2.1 The Public Protector sent a letter of enquiry dated 15 September 2012 to the Municipality but it did not respond.

6.2.2 On 12 July 2013, an ADR was held with the Municipal Manager who undertook to respond to the Public Protector’s enquiries. Despite the undertaking the Municipality failed to provide the response.
6.3 The South African Local Authorities Pension Fund's response:

6.3.1 The Public Protector addressed a letter dated 07 August 2014 to Mr Peter Ziegler the Fund Pension Fund: Head of Administration enclosing its report dated 19 April 2012 to FSB, with a request to respond specifically to the following issues:

a) To advise whether had the Municipality submitted the Deceased's beneficiaries' Life Assurance Cover claim within twelve (12) months, the Administrator would have paid the claim?

b) What amounts, if any, would the South African Local Authorities Pension Fund Pension Fund have paid to the Deceased's beneficiaries had the Municipality submitted the claim forms within the twelve (12) months as stipulated in the Rules?

c) If the amount was payable, would the Fund have paid it on the 4th of August 2010 with the “Accumulated Credit” paid to the Deceased’s beneficiaries on that date?

6.3.2 In an email dated 12 August 2014, South African Local Authorities Pension Fund through Mr Ziegler confirmed the following that:

"a)...the insurer would have paid the GLA [Group Life Assurance benefit] amount if the death certificate was submitted to them within 12 months from the member's date of death."

6.3.3 Mr Ziegler further informed in this email that
"3. The GLA amount of R697 206.00 would have been paid with the accumulated credit [that was paid on 4 August 2010] to the beneficiaries."

6.3.4 In a follow up telephonic discussion with Mr Peter Ziegler, Head of Department at the Fund on 8 June 2015, he advised the Public Protector that where the Municipality experiences challenges in submitting the claim with all the necessary documents, the municipality should communicate this to the Fund, with sufficient proof that they have written to the beneficiaries, or their representatives, advising them that as a result of the death of their employee, a claim has arisen and which specific documents are required to lodge the claim. According to Mr Ziegler, the communication from the Municipality to the beneficiaries or their representatives, must further advise the family that if the claim is not lodged within 12 months from the date of death of member, such claim shall lapse. In this instance, according to the Fund, the Municipality never advised the Fund of any challenges they were experiencing in securing the requisite documents to lodge the claim with the Fund.

6.4 Response to the section 7(9) letter addressed to the then Municipal Manager, Mr Motsemme

6.4.1 I addressed a letter to Mr Motsemme on 22 January 2015, in terms of section 7(9) of the Public Protector Act to which he contended that he found no failure on the part of the Municipality to submit the Deceased’s beneficiaries’ Life Assurance Cover claim to the Fund within the prescribed period. On 18 February 2015, in his response he alleged that the following incidents contributed to the delay:

"During the month of September 2005, Mr Peter Malefo [the Complainant] approached our offices to enquire about the pension fund which the late Mr Malefo SJ [the Deceased] was affiliated to. The office informed Mr
Peter Malefo that the pension fund in question was South African Local Authorities Pension Fund, and he informed our office that all information should be forwarded to the Executor appointed by the family.

The office informed Mr Peter Malefo that the death claim is administered by Prosperity Management and that the death benefits are administered by Old Mutual. Though he was made aware, he insisted that The [sic] Executor will be dealing with both the death claim and death benefits which were never claimed by our office as per his instruction.

After the appointed Executor failed to process the claims, Mr Peter Malefo approached our office in 2007 August the 10th. During that visit he brought his mother Mrs Kelebogile Malefo and ex-girlfriend to the deceased by the name of Mqokolo from Potchefstroom to apply for the benefits for the first time.

On the 19th October 2007, Mr Peter Malefo brought the birth certificate of the child he claimed belonged to the deceased who lived in Lesotho to also apply for the benefits for the first time.

The Executor could not process the benefit claim because South African Local Authorities Pension Fund informed him that only the Municipality reserves the right to claim on behalf of the deceased family [Deceased's family] and not the third party. In this case the Third Party being the Executor.

Mr Peter Malefo was in the possession of both the Identity Document and Death Certificate which also contributed to the delay as some of the beneficiaries could not claim.

In 2007 Mr Peter Malefo prohibited the deceased’s ex-wife to claim on behalf of her children because he claimed that they were not part of the will of the deceased. The office did inform him that all beneficiaries should
submit their claims because the death benefit does [sic] not form part of the will of the deceased. Furthermore, Mr Peter Malefo was informed that the ex-wide [ex-wife] should be the one applying on behalf of her minor children since she is their guardian as instructed by the South African Local Authorities Pension Fund.

After a number of visit[s] to our office from 09 September 2005, our office only heard from him again on the 10th of August 2007 were [where] he wanted the deceased’s personal file to verify if our office allowed the deceased ex-wife [Deceased’s ex-wife] to apply for the benefits.

The application was finally processed on the 10th of August 2007 for both the then current girlfriend and the mother of the deceased. On the 18th of October 2007 the office processed applications of the ex-wife (on behalf of her minor children) and the deceased child [the Deceased’s child] from Lesotho.

Only on the 19th of March 2010 beneficiaries who applied for death benefits of the deceased were paid by the pension fund [South African Local Authorities Pension Fund].”

7. EVALUATION OF THE EVIDENCE OBTAINED DURING THE INVESTIGATION

7.1 Regarding whether the Municipality unduly failed to timely complete and submit the Deceased’s beneficiaries’ Life Assurance Cover claim to South African Local Authorities Pension Fund within the prescribed twelve (12) months from the date of the Deceased’s death and if so, whether such failure amounted to maladministration:
7.1.1 Common cause issues

7.1.1.1 It is common cause that the Deceased was employed by the Municipality until he passed away on 09 September 2005.

7.1.1.2 It is also common cause that the Deceased was a member of the Fund until he passed away on 09 September 2005. One of his benefits with the Fund was a Life Assurance Benefit Cover which was administered by the Insurer and payable in the event of his death whilst in the service of the Municipality. It is further common cause that the amount payable to the beneficiaries under this benefit was R697 206.00 as per the report of the Fund to FSB dated 19 April 2012 and also confirmed in an email dated 12 August 2014 from Mr Ziegler, Head of South African Local Authorities Pension Fund.

7.1.1.3 It is common cause that the Fund repudiated the Deceased's beneficiaries' Life Assurance Cover claim on the basis that the Municipality submitted the claim outside the prescribed timeframe of twelve (12) months, in that the Fund received notification of the Deceased's death on 17 August 2007, which is about twenty three (23) months after the death of the Deceased when the last day on which the claim was supposed to be submitted was 10 September 2006.

7.1.1.4 It is common cause that the Fund paid the Deceased's beneficiaries the Accumulated Credit an amount of R611 458.00 on 4 August 2010. This was confirmed by the investigative report from South African Local Authorities Pension Fund dated 19 April 2012 prepared for FSB.
7.1.2 Issues in dispute:

7.1.2.1 It is disputed whether the Municipality unduly failed to timely complete and submit the Deceased's beneficiaries Life Assurance Cover claim to the Fund within the prescribed twelve (12) months period from the date of the Deceased's death.

7.1.2.2 The report dated 19 April 2012 compiled by FSB and an email of 12 August 2014 from Mr Ziegler further confirms that had the Deceased's death certificate been submitted to the Administrator within twelve (12) months from the date of the Deceased's death, the Deceased's beneficiaries would have been paid the additional benefit of R697 206.00 on 04 August 2010 when they (the Deceased's beneficiaries) were paid their benefits in terms of the "Accumulated Credit". The Fund further advised that the repudiation of the Deceased's beneficiaries' Life Assurance Benefit claim was due to failure by the Municipality to submit the death claim within the twelve (12) month period as prescribed by clause 3.2 of Schedule 2 of the South African Local Authorities Pension Fund Master Policy of 2005. The subsequent repudiation of the claim by the Insurer was therefore due to the late notification of the Deceased's death submitted by the Municipality.

7.1.2.3 I have accepted the version of the Complainant that the Deceased's beneficiaries' Life Assurance Cover claim was submitted more than twelve (12) months after the death of the Deceased. The Municipality has further confirmed that they submitted such claim after the prescribed twelve (12) months after the death of the Deceased but deny that it was as a result of wrongdoing from the Municipality's part.
7.1.2.4 The Municipal Manager, Mr Motsemme, in his response to the Public Protector's section 7(9) letter dated 18 February 2015, stated that the Complainant was responsible for delays in the Municipality submitting the relevant documents to the Fund. The Municipal Manager indicated that the Complainant approached the Municipality in September 2005 and "insisted that The [sic] Executor will be the one dealing with both the death claim and death benefits" which were subsequently never claimed by the Municipality "as per his instruction". After the appointed Executor failed to process the claims, the Complainant approached the Municipality on 10 August 2007, almost 2 years after the death of the Deceased, to apply for the benefits for the first time. Further that the Fund informed the Complainant that the Executor was not authorised to process the benefit claim and that only the Municipality could claim on behalf of the Deceased's family. The Municipal Manager further asserted that because the relevant documents (Identity Document and Death Certificate) were in the possession of the Complainant, some of the Deceased's beneficiaries could not claim, and this further contributed to the delay.

7.1.2.5 Initially the Municipality did not dispute that it had an obligation to submit the Deceased's claim to the Fund within the prescribed twelve (12) months from the date of the Deceased's death. However, in his response to the Provisional Report the Municipal Manager contended that the Complainant caused the delay regarding the processing of the Life Assurance Cover by refusing to provide the Municipality with the Deceased's death certificate and other documents within a prescribed period of 12 months of the date of deceased's death. The Municipality has further indicated that the complainant, Mr Peter Malefo prohibited the deceased's ex-wife to claim on behalf of her children because he claimed that they were not part of the will of the deceased.
7.1.2.6 The Municipality's contention that it was waiting for all the documentation before submitting the application is rejected.

7.1.2.7 It has been established in the evidence of a telephonic conversation with Mr Peter Ziegler, Head of Department at the Fund on 8 June 2015 that where the Municipality experiences challenges in submitting the claim with all the necessary documents, the municipality should communicate this to the Fund, with sufficient proof that they have written to the beneficiaries, or their representatives, advising them that as a result of the death of their employee, a claim has arisen and which specific documents are required to lodge the claim. It has also been established from Mr Ziegler that the communication from the Municipality to the beneficiaries or their representatives, must further advise the family that if the claim is not lodged within 12 months from the date of death of member, such claim shall lapse.

7.1.2.8 It was further established that in this instance the Municipality did not advise the Fund of any challenges they were experiencing in securing the requisite documents to lodge the claim with the Fund.

7.1.2.9 The Municipality failed to notify the Fund about the deceased's death within the prescribed period of 12 months and did not inform the Fund of the challenges it allegedly experienced which caused them to submit the claim 23 months after the death of the deceased.

7.2 Regarding whether such failure amounted to maladministration which resulted in prejudice to the Deceased's beneficiaries:

7.2.1 I accept the undisputed version of the Complainant that as a result of the Municipality's failure to notify the Fund within twelve (12) months from the date of the Deceased's death, the Deceased's beneficiaries were not paid.
the amount of R697 206.00 which the Fund, in their report dated 19 April 2012, confirmed to have repudiated as a result of the aforesaid delay.

8. LEGAL AND REGULATORY FRAMEWORK

8.1 Regarding whether the Municipality failed to timely complete and submit the Deceased’s beneficiaries’ Life Assurance Cover Claim to South African Local Authorities Pension Fund within the prescribed twelve (12) months from the date of the Deceased’s death and if so, whether such failure amounted to maladministration:

8.1.1 Rule 8.11 of the South African Local Authorities Pension Fund Revised Rules of 2008 Rules provides that-

“The Employer must lodge a formal claim in writing with the REGISTERED INSURER in respect of disability and death claim in accordance with the period set out in the policy under provision that all participating MEMBERS were informed and a month notice has passed.”

8.1.2 This period stated above in Rule 8.11 is twelve (12) months as provided for in clause 3.2 of Schedule 2 of South African Local Authorities Pension Fund Pension Fund Master Policy of 2005.

8.1.1.2 In terms of the two abovementioned provisions, the Municipality was obliged to lodge the Deceased’s beneficiaries’ Life Assurance Cover claim within a period of twelve (12) months from the date (09 September 2005) of the Deceased’s death after a month notice had passed.
8.1.3 Section 195(1)(f) of the Constitution provides that public administration must be governed by democratic values and principles enshrined in the Constitution including that public administration must be accountable.

8.1.3.1 It then follows that the Municipality was constitutionally obliged to be accountable for its conduct in ensuring that the Deceased’s beneficiaries’ Life Assurance Cover claim is submitted to the Fund within the prescribed period.

8.1.4 Section 237 of the Constitution provides that all constitutional obligations must be performed diligently and without delay.

8.1.4.1 Accordingly the Municipality was obliged to perform its obligations arising from the Constitution in terms of section 195(1)(f) and its obligations regarding the protection and fulfilment of the rights of the Deceased’s minor beneficiaries enshrined in section 27(1)(c) and section 28(2) of the Constitution diligently and without delay.

8.2 Regarding whether such failure amounted to maladministration which resulted in prejudice to the Deceased’s beneficiaries:

8.2.1 Section 27(1)(c) of the Constitution provides that everyone has the right to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.

8.2.1.1 The Deceased’s life assurance policy with the Fund constituted social security in favour of his dependants including minor children. Therefore the Municipality had a constitutional obligation in terms of section 27(1)(c) of the Constitution to ensure that the Deceased’s dependants or beneficiaries including minor children had access to the benefits accruing from the his life assurance policy with the Fund.
8.2.2 Section 28(2) of the Constitution states that-

"A child's best interests are of paramount importance in every matter concerning the child."

8.2.3 The provisions of section 28(2) of the Constitution are also enshrined in Article 3(1) of the United Nations Convention on the Rights of the Child (CRC), which provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

8.2.3.1 In terms of section 28(2) of the Constitution and Article 3(1) of the CRC which the Republic of South Africa signed in 1993 and ratified in 1995, the Municipality had a duty to protect the best interests of the Deceased's beneficiaries who were minor children when dealing with the Deceased's claim.

9. ANALYSIS AND CONCLUSION

9.1 Regarding whether the Municipality unduly failed to timely complete and submit the Deceased's beneficiaries' Life Assurance Cover claim to SOUTH AFRICAN LOCAL AUTHORITIES PENSION FUND within the prescribed twelve (12) months from the date of the Deceased's death and if so, whether such failure amounted to maladministration:

9.1.1 In terms of Rule 8.11 of South African Local Authorities Pension Fund Pension Fund Revised Rules of 2008, the Municipality was obliged to submit the Deceased's beneficiaries Life Assurance Cover claim within a period of twelve (12) months, as provided for in clause 3.2 of Schedule 2
of the South African Local Authorities Pension Fund Master Policy of 2005, from the date (09 September 2005) of the Deceased’s death after a month notice had passed; however, the Municipality only submitted such claim after about twenty three (23) months after the death of the Deceased. This late notification further resulted in the repudiation of the Deceased’s beneficiaries’ Life Assurance Cover claim.

9.1.2 The reasons advanced by the Municipality, in the Municipal’s Manager response dated 18 February 2015 to the Public Protector stating that the delay was occasioned by the Complainant does not hold water as the Municipality was in terms of its agreement with the Fund as well as Rule 8 of the South African Local Authorities Pension Fund Revised Rules of 2008 obligated to report the death of the member (the Deceased). The Complainant was not an Executor of the estate of the Deceased, even if he was, the Municipality was still not obliged to disregard its obligations as a result of the Complainant instructing them not to process the Deceased’s beneficiaries’ Life Assurance Cover claim. Despite the Complainant’s actions of appointing an Executor to process the claim, the Fund had notified him that only the Municipality, and not the appointed Executor, could process the claim. Therefore, the Municipality is expected to have been aware that the Complainant could not appoint an Executor since the Municipality was the only entity that could process the Deceased’s beneficiaries’ Life Assurance Cover claim to the Fund.

9.1.3 The Municipality also failed to inform the Fund of the challenges it experienced in submitting the requisite documents with the claim.

9.1.4 The Municipality did not perform its obligations of being accountable as provided for in section 195(1)(f) of the Constitution diligently and without delay with regard to the Deceased’s life assurance claim, as required by section 237 of the Constitution.
9.2 Regarding whether such failure amounted to maladministration which resulted in prejudice to the Deceased's beneficiaries:

9.2.1 The Municipality's failure to comply with Rule 8.11 of the South African Local Authorities Pension Fund Revised Rules of 2008 by submitting the Deceased's beneficiaries' claim within the twelve (12) months period was the direct cause of the repudiation of the Deceased's beneficiaries' claim of R697 206.00, which is the benefit that they are entitled to as a result of the Deceased's death while in the service of the Municipality.

9.2.2 The Municipality's failure to process the Deceased's beneficiaries' Life Assurance Cover claim is inconsistent with South African Local Authorities Pension Fund Revised Rules of 2008 and the South African Local Authorities Pension Fund Master Policy of 2005 in that the Municipality did not act in accordance with the South African Local Authorities Pension Fund Revised Rules of 2008 and the South African Local Authorities Pension Fund Master Policy of 2005 when processing the claim of the Deceased's beneficiaries. This failure cannot be justified because there was no reasonable cause for the Municipality to abdicate its obligations in terms of the South African Local Authorities Pension Fund Revised Rules and its Master Policy and allow the Complainant to direct them on how to treat the Deceased's beneficiaries' claim.

9.2.3 The Municipality's failure to process the Deceased's beneficiaries' claim was further in contravention of section 28(2) of the Constitution and Article 3(1) of the United Nations Convention on the Rights of the Child because the Municipality, despite the actions of the Complainant which according to the Municipal Manager delayed the claiming process, still had a Constitutional obligation to ensure that the best interest of the Deceased's beneficiaries who were minors at the time were protected. Furthermore,
the Municipality by acting on the instructions of the Complainant who was not the recipient of the Life Assurance Cover claimed, but was merely assisting the minors, failed to consider what was in the best interest of the children who could not act for themselves. The Municipality despite not having the Identity Document and Death Certificate of the Deceased which according to the Municipal Manager in his response dated 18 February 2015, was in the possession of the Complainant, should have informed the Fund to keep the claim alive until it could obtain such documents to process the Deceased's beneficiaries' claim. This would have been in the best interests of the children who were not in the position to act for themselves.

9.2.4 The Municipality also failed to ensure that the Deceased's minor beneficiaries' (children) right to have access to social security guaranteed in section 27(1)(c) of the Constitution, in the form of benefits accruing from the Deceased's life assurance policy with the Fund were protected and fulfilled.

10. FINDINGS

Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:

10.1 Did the Municipality unduly fail to timely complete and submit the Deceased's beneficiaries' Life Assurance Cover claim to South African Local Authorities Pension Fund within the prescribed twelve (12) months from the date of the Deceased's death? If so, did such failure amount to maladministration?

10.1.1 The allegation that the Municipality unduly failed to timely complete and submit the Deceased's beneficiaries' Life Assurance Cover claim to the
Fund within the prescribed twelve (12) months from the date of the Deceased's death is substantiated;

10.1.2 I find that the Municipality failed to complete and submit the Deceased's beneficiaries' claim forms to the Fund within the twelve (12) months period as prescribed by Rule 8.11 of the South African Local Authorities Pension Fund Revised Rules of 2008 read with clause 3.2 of Schedule 2 of the South African Local Authorities Pension Fund Master Policy of 2005. The Municipality only submitted the Deceased's beneficiaries Life Assurance Benefit Cover claim forms to the Fund on the 17th of August 2007, twenty three (23) months after the death of the Deceased. The conduct was inconsistent with the Municipality's obligations under section 195 of the Constitution which requires among others that public administration must be accountable and section 237 of the Constitution which requires that all constitutional obligations must be performed diligently and without delay. Such failure to comply with the said twelve (12) months period constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(i) of the Public Protector Act; and

10.1.3 The Municipality failed to ensure that the best interests of the Deceased's minor beneficiaries were taken into account as required by section 28(2) of the Constitution when handling the claim despite actions taken by the Complainant.

10.2 If there was maladministration, did the Deceased's beneficiaries suffer prejudice as a result of such maladministration?

10.2.1 I find that the Municipality's conduct in failing to abide by Rule 8.11 of the South African Local Authorities Pension Fund Revised Rules of 2008 read with clause 3.2 of Schedule 2 of the South African Local
Authorities Pension Fund Pension Fund Master Policy of 2005, by not submitting the Deceased’s beneficiaries’ Life Assurance Benefit Cover claim in time, caused the Fund to repudiate the claim which resulted in financial prejudice amounting to R697 206.00 to the Deceased’s beneficiaries; and

10.2.2 The Deceased’s beneficiaries including three (3) minor children one aged 14 and two aged 12 at the time when the claim was repudiated by the Fund, were unlawfully deprived enjoyment of their right to social security as envisaged in section 27(1)(c) of the Constitution and the minor children were further deprived their human rights as entrenched in section 28 of the Constitution and the Convention on the Rights of the Child.

11. REMEDIAL ACTION

11.1 The appropriate remedial action I am taking in pursuit of section 182(1)(c) of the Constitution, with the view of placing the Deceased’s beneficiaries as close as possible to where they would have been had the improper conduct or maladministration not occurred is the following:

11.1.1 The Municipality must within 90 days from the date of this report compensate the Deceased’s beneficiaries in the amount of R697 206.00, which amount represents what the beneficiaries would have been paid as a Life Assurance Benefit had the Municipality submitted the beneficiaries claim forms to the Fund within the prescribed period. The abovementioned compensation must be paid with interest at the prescribed rate of 15.5% p.a. effective from 04 August 2010 until the date of payment;
11.1.2 In effecting the abovementioned payment to the Deceased's beneficiaries, the Municipality must liaise with the Fund for proper and full identification of the Deceased's legitimate beneficiaries as at 04 August 2010;

11.1.3 In order to prevent similar cases in the future, the Municipal Manager must ensure that the best interests of the child are protected in cases where adults assist the beneficiaries with pension claims and other entitled benefits, since it is the minor beneficiaries who suffer prejudice;

11.1.4 The Municipal Manager should write a letter of apology to the Deceased's legitimate beneficiaries for the prejudice caused due to maladministration on the part of the Municipality within a period of 14 days from the date of this report; and

11.1.5 The South African Law Reform Commission is requested to consider the fairness of the Fund's rules and possible law reform to protect the best interest of the child.

12. MONITORING AND ACKNOWLEDGEMENTS

I will require:

12.1 An implementation plan from the Municipality indicating how the remedial action referred to in paragraph 11 above will be implemented within 30 days from the date of this report;

12.2 A progress report from the Municipal Manager within 30 days of submission of the implementation plan referred to above; and
12.3 The Public Protector will monitor the implementation of the remedial action taken in paragraph 11 above at regular intervals.

12.4 The investigation team extends sincerest gratitude to all the parties, particularly the respondent institution, for their assistance which expedited the investigation.

ADV. THULI. N. MADONSELA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 23/07/2015

Assisted by:
Adv. Paballo Moseki, Investigator: Mr S J Keebine, Provincial Representative, North West Province