

CLOSING REPORT OF THE PUBLIC PROTECTOR 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, 1994



**PUBLIC PROTECTOR
SOUTH AFRICA**

**Report number: 61 of 2021/22
ISBN Number: 978-1-77634-725-4**

CLOSING REPORT: COMPLAINT LODGED BY MS R MAHLOKO AGAINST THE ROAD ACCIDENT FUND RELATING TO VARIOUS ISSUES EMANATING FROM A CLAIM SHE LODGED.

1. INTRODUCTION

- 1.1. This is a closing 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(1) of the Public Protector Act, [Act No. 23 of 1994] (the Public Protector Act).
- 1.2. This Closing Report is submitted in terms of section 8 of the Public Protector Act to the following people to note the outcome of this investigation:
 - 1.2.1. Mr Collins Letsoalo, the Chief Executive Officer of the Road Accident Fund; and
 - 1.2.2. Ms ER Mahloko, the Complainant.
- 1.3. The investigation emanates from a complaint lodged by Ms R Mahloko (the Complainant) against the Road Accident Fund (the “RAF”) relating to various issues emanating from a claim she lodged.

2. THE COMPLAINT

- 2.1. The complaint was lodged with me on 11 June 2019, by Ms ER Mahloko (the Complainant). In essence, the Complainant alleged the following:
 - 2.1.1. The Complainant lodged a claim for the loss of support on behalf a minor child, Mr TNG whose biological father, Mr LJ Ledwaba passed away in a road accident on 27 October 2013.
 - 2.1.2. That her claim for loss of support was processed and an offer to the amount of R601 437.00 was tendered to her by the RAF. Upon receipt of

this offer she requested an actuarial report to explain the calculations of the amount offered as she alleged that the other siblings received more than her child;

- 2.1.3. That however, before she could receive the requested actuarial report, the offer was withdrawn in April 2016, after the RAF became aware of the existence of a maintenance order against the deceased;
- 2.1.4. That the RAF, then approached the actuaries and requested them to re-calculate the loss, taking into account the maintenance order which resulted in a revised offer of R81 208 which was tendered to the Complainant.
- 2.1.5. Subsequent to the offer mentioned in paragraph 2.1.4 the RAF tendered three more offers to the Complainant of which all offers were rejected;
- 2.1.6. The Complainant then lodged a customer complaint against the RAF, and when she did not get any response, she approached the Minister of Transport;
- 2.1.7. That the Minister of Transport then wrote to the RAF Board on 01 August 2018, requesting them to liaise with the Complainant regarding her complain about poor customer service
- 2.1.8. That the RAF Board Chairperson, Dr Mathebula, upon receiving the letter mentioned in paragraph 2.1.7 above, requested a meeting with the Complainant, and the meeting was then scheduled for 20 August 2018;
- 2.1.9. That she attended a meeting which was convened by Dr Mathebula (the then chairperson of the RAF Board) at the RAF office`s in Pretoria on 20 August 2018, and that she then requested the copy of the minutes of the meeting, however the requested minutes were not provided to her.

- 2.1.10. The Complainant further elaborated and stated that during this meeting the following resolutions were taken:
- 2.1.10.1. That the RAF will reinstate the first offer of an amount of R601 437.00 which was made to her on 09 February 2016;
- 2.1.10.2. That the RAF will pay all her legal costs; and
- 2.1.10.3. That the RAF will reimburse the Complainant for the loss of income she suffered when she declined to take a position as personal assistant because of stress attributed to the delay by the RAF to finalise her claim.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1. The Public Protector is an independent constitutional institution established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in the 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 the state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;

(b) to report on that conduct; and

(c) to take appropriate remedial action.”

- 3.3. Section 182(2) directs that the Public Protector has additional powers and functions prescribed by national legislation.
- 3.4. The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration. The Public Protector is also given power to resolve disputes through conciliation, mediation, negotiation advising the complainant regarding appropriate remedies or any other means that may be expedient under the circumstances.
- 3.5. The RAF 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.

4. THE INVESTIGATION

4.1 Methodology

- 4.1.1 The investigation is conducted in terms of section 182 of the Constitution of the Republic of South Africa, 1996 (the Constitution), read with section 6 and 7 of the Public Protector Act, 1994
- 4.1.2 The preliminary investigation process included the consideration of the complaint lodged on 06 June 2019, as well as the analysis of the comprehensive information submitted by the Complainant.
- 4.1.3 All oral evidence provided during the meetings held on 01 October 2019, and 15 October 2019, including response from the RAF received on 14 October 2019, and relevant documents were analyzed.

4.2 Approach to the investigation

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

4.2.1.1 What happened?

4.2.1.2 What should have happened?

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

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

4.2.1.5 The question regarding what happened is resolved through factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. Evidence is evaluated and a determination made on what happened based on balance of probabilities.

4.2.1.6 The enquiry regarding what should have happened, focuses on law or rules that regulate the standard that should have been met by the RAF and its functionaries to prevent maladministration.

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

4.3 Based on the analysis of the complaint and the allegations contained therein, the following issue was identified to inform and focus the investigation:

4.3.1. Whether the RAF unduly delayed to provide the Complainant with minutes of a meeting held on 20 August 2018, and to implement resolutions taken during the said meeting and to further finalise her claim?

4.4 The Key Sources of Information

4.4.1. Documents

4.4.1.1. Complaint form received from the Complainant on 11 June 2019,

4.4.1.2. A copy of a letter from the RAF to the then Minister B Nzimande dated 30 August 2018;

4.3.1.1. Copy of the handwritten notes provided by Dr M Mathebula of the RAF;

4.4.2. Correspondences sent and received

4.4.2.1. The response to the question raised by the Complainant, in preparation for the meeting dated 15 October 2019.

4.4.2.2. E-mail dated 31 August 2020, from the Complainant, a response to the Discretionary Notice letter dated 24 August 2020.

4.4.2.3. E-mail from the Complainant with attachments dated 15 February 2021.

4.4.2.4. E-mail received on 11 March 2021 from the Complainant.

4.4.2.5. E-mails to SNG Argen Actuaries dated 19 April 2021, and 04 May 2021.

4.4.2.6. E-mail to the RAF dated 13 May 2021, and 24 May 2021.

4.4.2.7. Copy of the letter from the RAF dated 02 June 2021

4.4.3. Legislation and case law

4.4.3.1. The Road Accident Fund Act, Act 56 of 1996

4.4.3.2. The Road Accident Fund Regulations, 2008

4.4.3.3. RAF v Monani (241/2008) {2009} ZASCA 18 (20 March 2009)

4.4.3.4. *M v Road Accident Fund* (72700/2013) [2014] ZAGPPHC 984 (15 December 2014)

4.4.3.5. The RAF v Sweatman (162/2014){2015}ZASCA 22 (20 March 2015)

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

5.1. Whether the RAF unduly delayed to provide the Complainant with minutes of meeting held on 20 August 2018, and and to implement resolutions taken during the said meeting and to further finalise her claim?

Common cause issues

5.1.1. It is not disputed that a meeting was convened between the Complainant and Dr M Mathebula on 20 August 2018, and that this meeting was convened as a result of a complaint that was lodged with the Minister of Transport, Dr B Nzimande by the Complainant.

5.1.2. It is further not disputed that RAF made numerous offers to settle the claim to the Complainant. A list of the offer(s) made is listed in the table below:

Date	Offer	Explanation
09/02/2016	R601 437	This offer was withdrawn on 14 April 2016, the RAF stated that this offer was withdrawn after it emerged that there was a maintenance order. Complainant stated that she did not accept the offer because she requested calculation from the RAF and these were not provided.
21/04/2016	R81 208	The RAF states that this offer was made to the Complainant after the first offer was withdrawn. This new offer took into account the new information about the maintenance order. The RAF stated that this offer was not accepted by the Complainant. The Complainant emphasized that she had submitted the maintenance order to the RAF when she lodged the claim. The RAF explained when the maintenance order surfaced, they had move away from the duty to maintain through common law and look at the legal obligation created through the maintenance order.
		The RAF, during our meeting on 15 October 2019, stated that the Complainant's claim was moved from direct claims to litigated claims after she

		instructed attorneys to act on her behalf and as such they had to tender the offer to the attorneys. The RAF also stated that at this time they had to communicate with the Complainant's attorneys, thus the offer that was tendered to the attorneys on 09 November 2017.
09/11/2017	R81 208	The RAF stated that this was not a new offer, this offer was tendered formally to the Complainant's attorneys of record, and however this offer was also not accepted by the Complainant.
05/12/2017	R 596 657	The Complainant's attorneys provided the RAF attorneys with their own actuarial report proposing that the revised offer be based on it. RAF attorneys, based on this report made a tender of R 596 657. The RAF then noted later that these calculations did not take into account the maintenance order of R1000 per month. This offer was then withdrawn on 12 December 2017. During our meeting dated 15 October 2019, the RAF acknowledged that this offer was tendered erroneously as they later realized that the report given to them did not consider the maintenance order. Dr Mathebula further stated that the RAF needs to perform due diligence before tendering offers.
19/01/2018	R 77 809	The RAF informed the Public Protector that, after the withdrawal of the offer made

		<p>on 05 December 2017, they instructed an actuary on their panel to perform a revised calculations taking into account the maintenance order of R1000 per month. Calculations were done and offer of R77 809 was formally tendered in court. The RAF further stated that they convened a meeting with the Complainant's attorneys, Complainant was also present on the 06 March 2018, wherein they agreed that the court should decide on whether to consider the maintenance order or not when making calculations. The attorneys then applied for trial date.</p>
03/09/2018	R 173 846	<p>A day before the trial date, the Complainant's attorneys, provided the RAF with an actuarial report, which considered the maintenance order, report was dated 16 August 2018. The previous offer made on 19 January 2018, was withdrawn and a revised offer was made based on this report. The offer was tendered to the Complainant's attorneys, this offer was rejected and the trial set down for 04 September 2018, was postponed at the request of the Complainant's attorneys. The RAF also explained that they agreed that the calculations was until the child reaches age 21, thus the difference in the amount.</p>

02/05/2019	R 61 786	The RAF stated that this offer was presented to the Complainant's attorneys, and was again presented to the Complainant on 18 July 2019. The RAF stated that the offer made to Complainant's attorneys on 02 May 2019, was not withdrawn and that it's the same offer that was presented to the Complainant.
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5.1.3. The offers which were presented after the first offer of 09 February 2016, were rejected except for the offer of R61 786 that was presented on 02 May 2019, to the Complainant's attorneys. As a result of the withdrawal of her attorneys of record, the same offer was presented to her on 18 July 2019.

5.1.4. It is not in dispute that the offer for an amount of R61 786 is based on the beneficiary being dependent until the age of 21¹.

Issues in dispute

5.1.5. The issue for the determination of the Public Protector is whether the RAF unduly delayed to provide the Complainant with the minutes of the meeting held on 20 August 2018, and to implement the alleged resolutions taken during the said meeting, and to further determine whether the RAF unduly delayed to finalise the Complainant's claim.

5.1.6. The Complainant alleged that she requested the minutes of the meeting held on 20 August 2018, from the RAF through e-mail dated 12 October 2018, however that those minutes were not provided to her.

¹ Confirmed by the RAF to the Public Protector in an e-mail dated 02 June 2021

- 5.1.7. From our meeting dated 01 October 2019, it was established that the meeting held on 20 August 2018, was not recorded, however Dr M Mathebula submitted handwritten notes he took during the meeting. .
- 5.1.8. In the meeting held on 01 October 2019 it was categorically stated by Dr Mathebula that what the Complainant alleges as resolutions taken, were noted by him as demands made by the Complainant and as such encapsulated in the handwritten notes made by him.
- 5.1.9. During our follow up meeting on 15 October 2019, the RAF stated that upon receipt of the claim for loss of support in 2015, they on 22 June 2015, instructed Tswelopele Assessors to investigate and report back to them; and
- 5.1.10. The Assessor issued the report of his investigation on 07 August 2015, and upon receipt of this report the RAF approached the actuaries and requested them to quantify the loss. The RAF further informed during this meeting that the Assessor listed all the documents that were in his possession when he was given the instruction to investigate.
- 5.1.11. That after the loss was quantified by the actuaries, the RAF, tendered an offer of an amount of R601 437 to the Complainant, who after realizing the other claimants were offered more than what she was offered requested calculations from the RAF, and calculation breakdown was only given to her on 12 December 2017. The RAF tendered numerous offers to the Complainant after the first offer of R601 437, none of those offers were accepted by the Complainant.
- 5.1.12. The RAF further explained that each case is assessed on its own merits as documents which are considered relevant to the claim may differ from each case. It was further explained that the maintenance order is a legal document which, in this case is a relevant document;

- 5.1.13. The RAF stated that when quantifying liability for loss of income, two figures become relevant:
- 5.1.13.1. The income of the deceased. This is used to determine the extent to which the dependants will be compensated; and
- 5.1.13.2. The divorce order that dealt with maintenance or maintenance order. Where there is a divorce or maintenance order the RAF will use the order to determine compensation. In this case there is a maintenance order therefor the legal obligation to support departed from common law to an order in terms of the Children's Act, therefore the RAF is under obligation to consider the maintenance order unless it is varied (there's a variation order).
- 5.1.14. The RAF further explained that in the case of the Complainant, the deceased had children who were dependent on him and one of the children had a maintenance order, therefore when making calculations for loss of support for the child that has a maintenance order the income of the deceased becomes irrelevant and the maintenance order is relevant, and this explains the difference in the amounts offered to the children of the deceased.
- 5.1.15. Based on the above information and evidence obtained, a Discretionary Notice dated 24 August 2020, was issued to the Complainant with an opportunity to submit comments thereto.
- 5.1.16. The Complainant responded to the Discretionary notice on 31 August 2020 by stating the following:

“The complaint form submitted was for the Public Protector to assist me in getting answers form RAF. Getting minutes on all meetings with RAF. Implementation of agreement made on 20 August.”

Since they deny the agreements. I still did not get answers to my questions and minutes of meetings attended at RAF. I do not want summaries as submitted. I want full set of minutes.

I am not happy that the file will be closed even after the office Public Protector discovered lot of wrong things done by RAF.

Again what does the Public Protector do if people are no telling the truth?

1. They said I could not accept the 1st offer whereas I have been waiting for calculations which were given to me (22 months).

2. They indicated on several occasions that I did not disclose the maintenance order and all of a sudden I informed them by telephone. How do I hide something and later tell them?

3. They indicated that they noted later that our calculations did not take into account the maintenance order. They enquired how we arrived at the amount. And they proceed to make the offer.

4. They indicated that key outcomes of the meeting of 06 March were shared via email. Can they please made that email available.

On that note, I am requesting the Public Protector to do further investigations and that I also get receipts and documents submitted with the claim (sic) ”.

Kind regards
RE Mahloko

5.1.17. That since the RAF denies the agreement reached with Dr Mathebula, she is still not satisfied with the responses tendered and is of the opinion that she did not get answers to her questions raised, She still insists on a full set of minutes of the meetings attended at the RAF. She does not want summaries of the meetings as contained in the e-mail she received, but a full set of minutes for the meetings held on 06 March 2016, and 12 December 2017.

5.1.18. The Complainant mentioned that she did not accept the first offer made to her by the RAF as she was still awaiting calculations which she requested from the RAF. The Complainant alleges that the requested calculations were only provided to her after 22 months from the date of her request, which was 12 December 2017.

- 5.1.19. During our meeting on 15 October 2019, the RAF explained that an offer made to a claimant is valid for 30 (thirty) days. The claimant can either accept the offer within 30 (thirty) days or the RAF can withdraw the offer during the 30 (thirty) days.
- 5.1.20. It was stated by the RAF that the Complainant did not initially disclose the maintenance order, and that she informed them about the maintenance order through a telephone call at a later stage.
- 5.1.21. The RAF, through their response dated 14 October 2019, and during our meeting dated 15 October 2019, indicated that they became aware of the existence of the maintenance order only in April 2016.
- 5.1.22. The Complainant disputed the allegation that the maintenance order was only submitted to the RAF in April 2016, and stated that she submitted it when she lodged the claim with the RAF in 2014, however she couldn't provide proof that it was submitted.
- 5.1.23. The Public Protector cannot adjudicate on the contentions raised, and in the absence of any evidence, as to when the maintenance was submitted or received by the RAF. However, for any present calculations of any benefits payable the maintenance order must be considered when making actuarial calculations and this was confirmed by the courts in the matter of *M v RAF* mentioned in paragraph 5.1.33 below.
- 5.1.24. On 11 March 2021, the Complainant submitted the following question:
Dear Adv Raubenheimer
- “Thank you and just be aware that I am pulling very hard financially with the child and would request your speedy intervention.*

Just to add on your investigations, Argen provided me with the copy of the maintenance order on 16 November 2020. The maintenance order RAF indicated that I did not disclose. I had enquired from them where they got the copy of

maintenance order and this is what they say: "Willie Ek sien sy vra alweer dieslfde vrae as twee jaar gelede. _Moet asb nie verder met haar kommunikeer in hierdie verband nie – sy mors net ons almal se tyd. Tommie"

Again they say "The payslip (part of Assessor's report information) of the late Mr. Ledwaba indicated a maintenance order of R 1000 was being paid. As per the instruction letter from the RAF we were instructed to allow for this in our calculations. During the joint calculations (April 2019) with the opposing (your) actuary, we were notified that he was in possession of the original maintenance order and requested that this be provided to us such that both our offices based our calculation on the same set of data".

In 2016, they indicated that they got information from the Assessor Report of 10 November 2015. On 15 October 2019 at the Public Protector, they indicated that they used verbal information to do the calculations. On 16 November 2020 they sent me the copy of the maintenance order. In 2021 they say part of the payslip showed that the deceased was paying maintenance. Again in 2021 they indicated that they were notified that the opposing actuary was in the possession of the original maintenance order and requested that this be provided, the meeting was held in 2019.

All this different statements does not make sense to me and request you to also attend to this.

*Who provided them with the maintenance order and when?
Are they allowed to make calculations based on verbal information?
Did the opposing actuary indeed bring the original maintenance order which they indicated that they were notified of "(sic)*

Regards
RE Mahloko

- 5.1.24.1. Who provided them (the RAF) with the maintenance order and when?
 - 5.1.24.1.1. During our meeting dated 15 October 2019, the RAF stated that they became aware of the existence of the maintenance order in April 2016.
 - 5.1.24.1.2. The RAF also stated that the Complainant confirmed during her telephonic conversation dated 14 April 2016, that there is a maintenance order and following that conversation with Ms Zandile Mthombeni, Claims Officer at

the RAF forwarded an e-mail to the Complainant requesting a copy of the maintenance order.

5.1.24.1.3. The e-mail mentioned in paragraph 5.1.24.1.2. above was produced as evidence during our meeting dated 15 October 2019, a copy of the maintenance order date stamped 15 April 2016, is the only copy that the RAF has on file. This copy of the maintenance order was obtained by the Complainant from the Magistrates' Court after she was requested to submit it, and therefore the date of April 2016.

5.1.24.2. On whether the RAF is allowed to make calculations based on information received verbally?

5.1.24.2.1. The RAF during the meeting dated 15 October 2019, stated that they, before receiving the copy of the maintenance order were proactive and contacted the actuaries to do calculations prior to them receiving the actual maintenance order.

5.1.24.3. The Complainant further indicated that the RAF was not truthful in their response and requested receipts and documents submitted with the claim.

5.1.24.3.1 During the meeting with the RAF on 15 October 2019, the RAF made reference to the documents that were in the claim file and submitted to the Actuaries. No mention was made to any receipts submitted by the Complainant nor did the Complainant alluded to any such documents during the meeting. The Complainant only alluded to the receipts after the meeting held on 15 October 2019 in her response to the Discretionary Notice dated 31 August 2020² and without submitting supporting evidence.

² Paragraph 5.1.16 supra

Applicable legal prescripts and case law:

5.1.25. Section 7(1)(a) of the Public Protector Act, 1994 provides that:

“The Public Protector shall have the power, on his or her own initiative or on receipt of a complaint or an allegation or on the ground of information that has come to his or her knowledge and which points to conduct such as referred to in section 6(4) or (5) of this Act, to conduct a preliminary investigation for the purpose of determining the merits of the complaint, allegation or information and the manner in which the matter concerned should be dealt with.”

5.1.26. Section 3 of the Road Accident Fund Act 56, of 1996 provides *“that the object of the Fund shall be the payment of compensation in accordance with this Act for loss or damage wrongfully caused by driving of motor vehicles”*.

5.1.27. Section 17(4)(c) *“where the claim for compensation under subsection (1) includes a claim for loss of income or support, the annual loss, irrespective of the actual loss, shall be proportionately calculated to an amount not exceeding*

(i) R160 000 per year in the case of claim for loss of income; and

(ii) R160 000 per year, in respect of each deceased breadwinner, in case of claim for loss of support”

5.1.28. Section 4(1) provides that

- (a) *The stipulation of the terms and conditions upon which claims for compensation contemplated in section 3, shall be administered*
- (b) *The investigation and settling, subject to this Act of claims arising from loss or caused by the driving of damage of motor vehicles whether or not the identity of the owner or driver thereof or the identity of both the owner and the driver thereof, has been established”.*
- 5.1.29. Section 24. (1) of the Road Accident Fund Act, 56 of 1996 provides that “a claim for compensation and accompanying medical report under section 17 (1) shall-
- (a) *be set out in the prescribed form, which shall be completed in all its particulars;*
- 5.1.30. *Regulation 7, of the Road Accident Fund Regulations, 2008 provides that (1)“ A claim for compensation and accompanying medical report referred to in section 24(1(a) of the Act, shall be on the form RAF 1 attached as Annexure A to these Regulations, or such amendment or substitution thereof as the Fund may from time to time give notice in the Gazette”.*
- 5.1.31. *Annexure A, RAF form 1, part 18 Loss of support has a note which states that “as proof of the relationship between the deceased and the particular dependent please attach certified copies of the relevant documentation, i.e marriage certificate, unabridged birth certificate, adoption court order etc”*
- 5.1.32. In the case of the RAF v Thembeke Monani³ Erasmus J approached the matter on the basis that what was available for distribution to the

³ (241/2008) {2009} ZASCA 18 (20 March 2009)

dependants was the present day value of the amount which the deceased would have contributed to the upkeep of his family members (with the customary allowances for contingencies, discounting to the current value)

5.1.33. In the matter between the *M v Road Accident Fund*⁴ the court found that the amount in the maintenance order was fair and reasonable with annual increases until the minor child reached the age of 21. *The judge further stated that “in my view, it accommodates the reality of the court order and what existed in terms of the duty to support of the deceased to his minor child”.*

5.1.34. In the Supreme Court of Appeals matter between the *Road Accident Fund v Sweatman*⁵, the court had to determine the effect of the amendment to the Road Accident Fund Act 56, of 1996 in 2008 in so far as the limitation on the liability of the RAF for loss of income or support suffered as a result of a motor vehicle collision, is concerned. The court approved the use of actuarial calculations based on whatever evidence that was available.⁶

5.1.35. The Road Accident Fund Regulations, 2008, set out a form, the RAF 1 form which must be completed by claimants where the accident occurred after 31 July 2008, and the claimant who has lodged a claim for loss of support has to submit relevant documents as proof of relationship between the deceased and the dependent and in this case the maintenance order provided proof of the father/dependent relationship.

Conclusion

⁴ (72700/2013) [2014] ZAGPPHC 984 (15 December 2014)

⁵ (162/2014){2015}ZASCA 22 (20 March 2015)

⁶ Paragraph 7 162/2014){2015}ZASCA 22 (20 March 2015)

- 5.1.36. The evidence received during our meetings with the Complainant and the RAF on 01 October 2019, and 15 October 2019, respectively indicates that, following allegations of undue delay to provide the Complainant with minutes of the meeting dated 20 August 2018, and to implement resolutions taken during the meeting and to further finalise her claim, RAF responded by stating the following:
- 5.1.37. That the issue of the minutes of the meeting dated 20 August 2018, is already addressed in paragraph 3.1.9 above. Therefore on the evidence provided (the handwritten notes) submitted by Dr Mathebula seems, on the balance of probabilities to be the most probable version of the events.
- 5.1.38. That RAF could not implement what they regarded as demands. That throughout, different offers were made to the Complainant and her legal representatives, and that the RAF applied for trial date and the matter was set down for trial on 04 September 2018, however the matter could not proceed as the Complainant was no longer represented by attorneys.
- 5.1.39. The evidence further indicates that the claim for loss of support was processed, investigations conducted by the Assessors and calculations done by the Actuaries and an offer of R601 437 was presented to the Complainant in February 2016. However this offer of R601 437 was withdrawn after the maintenance order surfaced, new Actuarial calculations were done taking into account the maintenance order of R1000.00 and that resulted in a reduced offer of R81 208.
- 5.1.40. It is further evidenced from the matter of the *RAF v Sweatman* that in interpreting section 17(4)(c) of the Road Accident Fund, which deals with same issue, the court had to rely on the evidence led by actuaries to decide the matter.
- 5.1.41. It is further evidenced from the above that the offers tendered to the Complainant by the RAF, were not accepted and subsequently a reduced

offer of R61 786 tendered on 02 May 2019, to the Complainant's legal representatives and this offer was reduced due to the fact that the calculations were done considering the age of the child when the offer is made until the age of 21.

- 5.1.42. The offer tendered on 18 July 2019, was the same offer tendered on 02 May 2019, the offer of 02 May 2019, and presented to the Complainant's legal representatives, and the offer made on 18 July 2019, was presented to the Complainant after her attorney withdrew as attorneys of record.

6. FINDINGS

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

- 6.1. **Regarding whether the RAF unduly delayed to provide the Complainant with minutes of the meeting dated 20 August 2018, and and to implement resolutions taken during the said meeting and to further finalise her claim?**

- 6.1.1. The allegation that the RAF unduly delayed to provide the Complainant with minutes of the meeting dated 20 August 2018, and and to implement resolutions taken during the said meeting and to further finalise her claim is unsubstantiated.

- 6.1.2. Dr M Mathebula, during our meeting dated 01 October 2019, stated that the meeting was not recorded, he only took notes. Dr Mathebula further advised that what the Complainant alleged were resolutions, he noted them as demands, and provided the Public Protector with handwritten notes of their discussions.

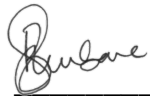
- 6.1.3. During our meeting on 15 October 2019, the RAF stated that they processed the Complainant's claim for loss of support and made an offer of R 601 437, however this offer was withdrawn in April 2016, after the maintenance order surfaced and a new offer was tendered but this offer was rejected by the Complainant.
- 6.1.4. The Public Protector has made the following observations for the RAF to note for future reference to avoid any such disputes:
- 6.1.4.1. It is clear that RAF did not adhere to due processes in processing the claim. RAF must develop/ and or ensure the proper implementation of due processes to avoid future complaints of this nature; and
- 6.1.4.2. The RAF must ensure that all meetings are recorded to avoid such disputes and to further keep a checklist of all documents that are to be submitted and documents that are received in support of the claim.

7. REASONS FOR CLOSURE

7.1. Regarding the RAF unduly delayed to provide the Complainant with minutes of the meeting dated 20 August 2018 and and to implement resolutions taken during the meeting and to further finalise her claim?

- 7.1.1. The allegation that RAF unduly delayed to provide the Complainant with minutes of the meeting dated 20 August 2018, and to implement resolutions taken during the meeting and to further finalise her claim is unsubstantiated.

- 7.1.2. The evidence received during the investigation indicates that the RAF presented several settlement offers to the Complainant and that the offers were rejected by the Complainant.
- 7.1.3. Kindly note that I am *functus officio* in the matter and cannot reconsider this matter or take it further. Should you wish to take the matter further you are advised to approach a Court of Law.



ADV. BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE: 07/10/2021

Assisted by Ms Nomvimbi Mtsweni, Investigator: Investigations Branch