



REPORT NO. 27 OF 2025/26

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NEWCASTLE KWAZULU-NATAL

INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND MALADMINISTRATION BY THE FUNCTIONARIES OF THE NEWCASTLE MUNICIPALITY BY IMPROPERLY DISBURSING FUNDS IN PAYMENT FOR LEGAL SERVICES RENDERED TO NEWCASTLE INDUSTRIAL LAUNDERS

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LIST OF ACRONYMS AND ABBREVIATIONS

ACRONYMS/ ABBREVIATIONS	DESCRIPTIONS
Constitution	Constitution of the Republic of South Africa, 1996
Public Protector Act	Public Protect Act, 1994
Public Protector Rules	Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018, as amended and promulgated under section 7(11) of the Public Protector Act
MFMA	Municipal Finance Management Act, 2003
The Municipality	Newcastle Municipality
The Court	High Court of South Africa KwaZulu Natal Provincial Division Pietermaritzburg
NIL	Newcastle Industrial Launderers

1. INTRODUCTION

1.1 This is a Report issued in terms of Rule 41(1) of the Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018¹ as amended (the Public Protector Rules) and promulgated under section 7(11) of the Public Protector Act, 1994 (Public Protector Act).

1.2 The report is submitted in terms of section 8(1) read with section 8(3) of the Public Protector Act and Rule 40(b) of the Rules Relating to Investigations by the Public Protector and Matters Incidental Thereto, 2018, as amended (Public Protector Rules)¹, which empowers the Public Protector to make known the findings of an investigation, to the following affected parties, for such persons to note the outcome of the investigation:

1.2.1 Mr Michael Beaumont, National Chairperson ACTIONSA, and

1.2.2 Mr ZW Mcineka, Municipal Manager: Newcastle Municipality

1.3 The Report relates to an investigation into allegations of irregular payment by the functionaries of the Newcastle Municipality for legal services rendered to a privately owned company, Newcastle Industrial Launderers (NIL).

¹ Published under Government notice No 945, Government Gazette 41903 of 14 September 2018 and amended in Government Notice No 1047, Government Gazette 43758 dated 02 October 2020.

2. THE COMPLAINT

- 2.1 The complaint was lodged with the Public Protector on 15 November 2024, by Mr Michael Beaumont on behalf of ACTIONSA, a political party (the Complainant). In the main, the Complainant alleged that Mr Faizel Cassim (Mr Cassim), as the Chief Whip of Council in the Municipality, together with functionaries of the Municipality committed acts of maladministration premised on the facts stated hereunder:
- 2.1.1 During the course of 2021, the Municipality obtained an interim interdict against Newcastle Industrial Launderers CC (NIL), a company owned by Mr Cassim. The Municipality and Mr Cassim concluded an “Out of Court” settlement, in terms of which the interim interdict against NIL would be discharged and the legal costs incurred by NIL would be paid by the Municipality;
- 2.1.2 On 07 March 2023, the KwaZulu-Natal Provincial Division of the High Court of South Africa, sitting in Pietermaritzburg, discharged the interim interdict and ordered the Municipality to pay the agreed costs;
- 2.1.3 At all material times, when the Municipality agreed to pay the legal costs incurred by NIL, Mr Cassim, who is the owner of NIL, was the Chief Whip of the Municipality and was, thus, in a position of influence and authority within the Municipality;
- 2.1.4 Mr Cassim improperly used his position of authority within the Municipality to influence Municipal officials to consent to the discharge of the interim interdict against NIL and to consent to payment of the legal costs incurred by NIL, in the sum of approximately one million Rand (R1 000 000);

- 2.1.5 On 01 November 2023, NIL, together with Mr Cassim and others, sued the Municipality for payment of damages in the sum of approximately eighteen million Rand (R18 000 000), for pure economic loss suffered by NIL as a result of the interim interdict obtained by the Municipality. During the period the parties were engaged in such settlement negotiations, Mr Cassim was the Chief Whip of the Municipality and was thus in a position of influence and authority within the Municipality;
- 2.1.6 The Municipality entered into settlement negotiations with NIL, Mr Cassim and others (through their legal representatives), in respect of the damages claim instituted against the Municipality by NIL, Mr Cassim and others; and
- 2.1.7 Mr Cassim improperly used his position of authority within the Municipality to influence Municipal officials to settle the pending lawsuit instituted by NIL, Mr Cassim and others; and to consent to payment of the legal costs incurred by NIL in the sum of approximately one million Rand (R1 000 000).

Further communication with Complainant

- 2.1.8 On 28 November 2024, the lead investigator wrote to the Complainant requesting further information in terms of Rule 5(3) of the Public Protector Rules, seeking to obtain clarity relating to the background and circumstances of the complaint in respect of the following issues:
- 2.1.9 Whether the complaint is lodged against the former member of the Complainant's political party (its former councillor), or against the Municipality;

- 2.1.10 The identities of the specific Municipal functionary/functionaries that the complaint was laid against;
- 2.1.11 If the complaint is lodged against the former councillor (member of the Complainant's political party), then clarity was sought as to whether such individual was still a councillor and whether the complaint was lodged against him in his private capacity as an individual, or against him in his capacity as a councillor;
- 2.1.12 The specific relief that the Complainant sought from the Public Protector's intervention;
- 2.1.13 In terms of Section 6(3)(b) of the Public Protector Act 1994, as amended, information was sought regarding all prior steps taken by the Complainant to address the matter; and
- 2.1.14 The requirements of Rule 5(3) of the Public Protector Rules were set out, and the Complainant was requested to provide all required information contemplated in terms of the said Rule.
- 2.1.15 The Complainant did not provide any response.
- 2.1.16 On 11 December 2024, the investigator again wrote to the Complainant requesting a response by 18 December 2024, to the request for information in terms of Rule 5(3).
- 2.1.17 On 11 December 2024, the Complainant replied with an apology and an undertaking to respond accordingly. There was, however, no further response from the Complainant.

2.1.18 The lead investigator wrote to the Complainant again on 10 February 2025, requesting a response by 17 February 2025, however, no further response was received from the Complainant.

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 state affairs.

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

“The Public Protector has 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 the additional powers and functions prescribed by national legislation.

3.4 The Public Protector’s powers are regulated and amplified by the Public Protector Act which states, amongst others, that the Public Protector has the

powers to investigate and redress maladministration and related improprieties in the conduct of state affairs.

- 3.5 The Newcastle Municipality is an organ of state as envisaged in section 239 of the Constitution and its conduct amounts to conduct in state affairs. As a result, the Public Protector is satisfied that the complaint falls within its competency to conduct an investigation as envisaged in section 182(1)(a) of the Constitution and section 6(4) of the Public Protector Act.

4. ISSUE IDENTIFIED FOR INVESTIGATION

- 4.1 Based on the analysis of the complaint, the following issue was identified to inform and focus the investigation:

- 4.1.1 Whether the functionaries of the Newcastle Municipality improperly disbursed funds in payment for legal services rendered to Newcastle Industrial Launderers and, if so, whether such conduct is improper in terms of section 182(1)(a) of the Constitution and amounts to maladministration as envisaged in sections 6(4)(a)(i) of the Public Protector Act.

5. INVESTIGATION

5.1 Methodology

- 5.1.1 The investigation was conducted in terms of section 182(1) of the Constitution, read with sections 6 and 7 of the Public Protector Act.

- 5.1.2 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.
- 5.2 Approach to the investigation
- 5.2.1 The approach to the investigation included an analysis of the relevant documentation, consideration and application of the relevant laws, regulatory framework and prescripts.
- 5.2.2 The investigation was approached using an enquiry process that seeks to determine:
- (a) What happened?
 - (b) What should have happened?
 - (c) Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration, or other improper conduct; and
 - (d) In the event of a violation, what action should be taken?
- 5.2.3 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 is evaluated and a determination is made on a balance of probabilities. In this case, the factual enquiry principally focused on whether the functionaries of the Newcastle Municipality improperly disbursed funds in payment for legal services rendered to Newcastle Industrial Launderers.

5.2.4 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Newcastle Municipality and its functionaries when procuring legal services and disbursing funds in order to prevent maladministration and improper conduct.

5.2.5 The enquiry regarding what action should be taken, in the event of a violation, focuses on what remedial action will be appropriate to take in the prevailing circumstances for the purpose of putting the Complainant in or closest to the position he would have been in, but for the improper conduct and/or maladministration.

5.3 **Key sources of information**

5.3.1 **Documents**

5.3.1.1 Complaint dated 14 November 2024, received by the Public Protector on 15 November 2024.

5.3.1.2 Request for Information dated 28 November 2024 submitted to the Complainant in terms of Rule 5(3) of the Public Protector Rules, as amended.

5.3.1.3 Further correspondence with the Complainant dated 11 December 2024 and 10 February 2025.

5.3.1.4 Notice, dated 21 February 2025, in terms of Rule 23(1) of the Public Protector Rules, as amended addressed to the Municipal Manager of the Newcastle Municipality requesting a response to the allegations raised by the Complainant.

5.3.1.5 Response from Municipality, dated 17 April 2025, together with Annexures thereto.

5.4 **Legal Framework**

5.4.1 Constitution of the Republic of South Africa, 1996;

5.4.2 Public Protector Act, 1994;

5.4.3 Municipal Finance Management Act, 2003

5.4.4 Public Protector Rules, 2018

5.5 **Notice issued in terms of Rule 41(1) of the Public Protector Rules**

5.5.1 Rule 41(1) of the Public Protector Rules provides that when the Public Protector intends concluding a complaint by means of a closing report, the Complainant shall be informed in writing accordingly and be given an opportunity to make representations in connection with the intended closure of the complaint within fourteen (14) days of delivery of the notification.

5.5.2 A Rule 41(1) Notice dated 17 November 2025, was issued to the Complainant on 17 November 2025, to afford him an opportunity to make representations thereto by 01 December 2025.

6. **DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAWS AND PRESCRIPTS**

6.1 **Whether the functionaries of the Newcastle Municipality improperly disbursed funds in payment for legal services rendered to Newcastle**

Industrial Launderers and, if so, whether such conduct is improper in terms of section 182(1)(a) of the Constitution and amounts to maladministration as envisaged in sections 6(4)(a)(i) of the Public Protector Act

Common cause

- 6.1.1 On 06 October 2021 the Municipality obtained an interim interdict against Newcastle Industrial Launderers CC (NIL), a company which is owned by Mr Cassim.
- 6.1.2 Mr Cassim was the Chief Whip of the Municipality from 22 November 2021 to 11 January 2022.
- 6.1.3 After resigning as Chief Whip, he was an ordinary member of Council until 30 August 2023.

Issue in dispute

- 6.1.4 The issue for the Public Protector's determination is whether the functionaries of the Municipality paid fees for legal services rendered to NIL in line with applicable prescripts and the law.

Complainant's version

- 6.1.5 The Complainant contends that the Municipality, acting in collusion with and/or under the influence of Mr Cassim, the owner of Newcastle Industrial Launderers, paid fees for legal services rendered to Newcastle Industrial Launderers.

Response by the Newcastle Municipality

- 6.1.6 On 21 February 2025, the Investigation Team issued a Notice in terms of *Rule 23(1) of the Public Protector Rules* to Mr Zamani Mcineka: The Municipal Manager of Newcastle Municipality (Mr Mcineka). The Notice mainly sought to inform the Municipality of the complaint and the decision of the Public Protector to conduct a preliminary investigation in relation thereto, as well as to request specific responses to the Complainant's allegations, including copies of supporting documentation and evidence, where relevant. The Municipality was further requested to provide its response on or before 28 February 2025.
- 6.1.7 On 22 February 2025, the office of the Municipal Manager acknowledged receipt and indicated that same would be brought to the attention of the Municipal Manager. However, no response was received from the Municipality by 28 February 2025, being the date on which the response was due.
- 6.1.8 On 04 April 2025, an e-mail was forwarded to the office of the Municipal Manager requesting a response by 17 April 2025.
- 6.1.9 The Municipal Manager responded in a letter dated 10 April 2025, wherein he undertook to respond by 17 April 2025 and further stated that the delay in responding to the Public Protector's enquiry was regretted but was not an act of undermining the Public Protector's office. It was due to the fact that the period from January to March is an extremely busy period in the work of local government.
- 6.1.10 The Municipal Manager provided a substantive response to the Public Protector's Rule 23(1) Notice through a letter dated 17 April 2025 and furnished numerous annexures in support of the response. The response stated as follows:

- 6.1.10.1 The Municipality rejects the Complainant's version that Mr Cassim was the Chief Whip of the Municipality when the settlement agreement was drafted. He occupied the position of Chief Whip for the period 22 November 2021 to 11 January 2022;
- 6.1.10.2 The payment of Mr Cassim's legal costs, by the Municipality was done in keeping with the Court Order issued against the Municipality, failing which the Municipality would be in contempt of the said Court Order, which could result in Mr Cassim applying for a writ of execution against the Municipality;
- 6.1.10.3 Municipality knew NIL as a company that was a rate payer and a consumer of Municipal services. The Municipality had no need for laundry services offered by NIL and NIL never performed any such services on behalf of the Municipality;
- 6.1.10.4 The Municipality had not procured any services from NIL;
- 6.1.10.5 The only payment/s made by the Municipality on behalf of NIL were the wasted costs ordered by the High Court;
- 6.1.10.6 Mr Cassim did not utilise legal representation services provided by the Municipality; and
- 6.1.10.7 An out of court settlement was concluded between the Municipality and NIL, pursuant to the Court Order, in terms of which the Municipality had to pay the legal costs incurred by NIL in defending the Rule Nisi (obtained by the Municipality) that was later discharged.

Documentary evidence provided by the Municipality

- 6.1.11 In support of its response dated 17 April 2025, the Municipality furnished the Public Protector with various supporting documents attached to the response as Annexures as detailed below:

Copy of the Combined Summons

- 6.1.11.1 A copy of the Combined Summons issued out of the High Court of South Africa, KwaZulu Natal Division sitting in Pietermaritzburg, under case number 18018/23P on 01 December 2023, in terms of which Newcastle Industrial Launderers sued the Newcastle Municipality for economic loss suffered as a result of the alleged wrongful conduct of the Municipality in relation to the interim interdict that was obtained by the Municipality and later discharged. The economic loss claim is still pending and had not yet been taken to trial or finalised.

Copy of the Court Order, dated 06 October 2021

- 6.1.11.2 A copy of the Court Order issued by the High Court of South Africa, KwaZulu Natal Division sitting in Pietermaritzburg, under case number 8610/2021P on 06 October 2021, granting the Municipality an interim interdict against Newcastle Industrial Laundry CC Newcastle Industrial Laundry CC was interdicted from disposing of effluent and/or contaminants into the stormwater drainage and sewerage system.

Court Order on the Discharge of Interim Interdict and Payment of Wasted Costs: 13 March 2023

6.1.11.3 The Court Order, dated 13 March 2023, issued by the High Court of South Africa, KwaZulu Natal Division, Pietermaritzburg, under case number 8610/2021P. In terms of this Court Order, the *Rule Nisi* obtained by the Newcastle Municipality against Newcastle Industrial Launderers was discharged and the Municipality was ordered to pay the agreed costs of the respondents, i.e. Newcastle Industrial Launderers.

Settlement Agreement

6.1.11.4 The Settlement Agreement, dated 06 April 2023, entered into by and between the Newcastle Municipality and Newcastle Industrial Launderers, pursuant to the Court Order dated 13 March 2023, in terms of which the parties agreed that the *Rule Nisi* obtained by the Municipality be discharged and that the Municipality pay the respondents agreed costs in the sum of one million one hundred and thirty seven thousand six hundred and sixty three Rand and thirty six Cents (R1 137 663.36).

6.1.11.5 The Municipality paid an amount of R1 137 663.36, in terms of the Settlement Agreement to give practical effect to the Court Order. The payment did not relate solely to legal costs, but also included various other costs that were due to Mr Cassim. These included travelling from Newcastle to the attorneys and the High Court in Pietermaritzburg (five trips costing ten thousand six hundred and fifty two Rand per trip), travelling from Newcastle to advocates in Durban (three trips costing eight thousand two hundred and ninety six Rand per trip), water testing at a cost of thirty seven thousand eight hundred and eighty two Rand and eighty Cents), hire of a water truck at a cost of six hundred and forty thousand Rand) and the legal costs, referred to above, amounting to four

hundred and forty thousand eight hundred and thirty two Rand and fifty six Cents.

Itemised Bill

- 6.1.11.6 The detailed itemised bill, in the sum of four hundred and forty thousand eight hundred and thirty two Rand and fifty six Cents (R 440 832, 56) in respect of legal costs, including fees and disbursements due to the attorney and advocate that represented Newcastle Industrial Launderers.

Document titled "Computation of Cost"

- 6.1.11.7 An itemised, "Computation of Cost", setting out various cost items that, taken together, constituted the total of the agreed costs payable by the Municipality in the sum of one million one hundred and thirty seven thousand six hundred and sixty three Rand and thirty six Cents (R1 137 663.36).

Direct Expenditure Vouchers

- 6.1.11.8 Copies of three (03) Newcastle Municipality, "Direct Expenditure Vouchers" respectively dated 06 April 2023, 09 May 2023 and 07 June 2023, each one verifying payment in the sum of three hundred and seventy nine thousand two hundred and twenty one Rand and twelve Cents (R379 221.12) totalling R1 137 663.36.

Copies of Municipal Council Minutes

- 6.1.11.9 Copy of an extract from the Minutes of the Municipal Council meeting held on 22 November 2021 which confirmed that, at the said meeting, Councillor F Cassim was elected as the Chief Whip of the Newcastle Municipal Council.
- 6.1.11.10 Furthermore, a copy of an extract from the Minutes of the Municipal Council meeting held on 11 January 2022, which confirmed the resignation of the Chief Whip of the Newcastle Municipal Council.

Meeting with the Municipality

- 6.1.12 On 22 August 2025, a meeting was held in Newcastle with, Mr Mcineka and his Legal Manager, Mr P Dlamini and Acting Director: Governance Ms K Pentz-Coates.
- 6.1.13 The Municipality traversed the written response submitted by the Municipality in response to the queries contained in the Notice in terms of Rule 23(1) of the Public Protector Rules issued by the Public Protector and explained the annexures thereto.

Notice issued in terms of Rule 41(1) of the Public Protector Rules

- 6.1.14 A Notice in terms of Rule 41 (1) of the Public Protector Rules, dated 17 November 2025, was issued to the Complainant affording him an opportunity to make representations in connection with the intended closure of the matter, however, no response was received.

Applicable Law

Constitution of the Republic of South Africa, 1996

6.1.15 Section 165(5) of the Constitution, 1996 provides that:

“An order or decision issued by a court binds all persons to whom and organs of state to which it applies”.

Municipal Finance Management Act, 2003

6.1.16 Section 60 of the Municipal Finance Management Act, 2003 provides that the municipal manager of a municipality is the accounting officer of the municipality for the purposes of this Act, and, as accounting officer must –

“exercise the functions and powers assigned to an accounting officer in terms of this Act”.

6.1.17 Section 61(1) of the Municipal Finance Management Act, 2003 provides that:

*“The accounting officer of a municipality must –
(a) act with fidelity, honesty, integrity and in the best interests of the municipality in managing its financial affairs”.*

6.1.18 Section 65 of the Municipal Finance Management Act provides that:

(1) “The accounting officer of a municipality is responsible for the management of the expenditure of the municipality.

(2) *The accounting officer must for the purpose of subsection (1) take all reasonable steps to ensure that –*

(e) that all money owing by the municipality be paid within 30 days of receiving the relevant invoice or statement...

Public Protector Rules, 2018 as amended

6.1.19 Rule 23(1) of the Public Protector Rules provides that:

“when the Public Protector requires information from a state institution for purposes of an investigation, he or she shall in writing; inform the state institution of the investigation, advise the state institution if the investigation is conducted in terms of legislation other than the Act; and indicate to the state institution what information is required and the format thereof”.

Analysis

6.1.20 The Public Protector derives the investigative authority from section 182(1) of the Constitution to investigate any conduct in state affairs or in the public administration that is alleged or suspected to be improper, to report on such conduct, and to take appropriate remedial action. This broad mandate is further reinforced by the Public Protector Act, 1994, which explicitly mandates investigations into maladministration, abuse of power and improper conduct by organs of state.

6.1.21 The complaint before the Public Protector concerns allegations that functionaries of the Municipality unlawfully paid legal fees for services rendered to NIL, purportedly, as a result of collusion with or undue influence by Mr Cassim. The complaint raised *prima facie* issues of maladministration,

improper conduct, and non-compliance with applicable municipal financial and legal prescripts, matters which would ordinarily fall squarely within the Public Protector's investigative mandate.

- 6.1.22 In evaluating the matter, the Public Protector considered the versions of both the Complainant and the Municipality, as well as the documentary evidence furnished and established that the payments made by the Municipality to NIL flowed directly from a court order issued on 13 March 2023, which discharged the Rule Nisi obtained by the Municipality and ordered it to pay the agreed costs incurred by NIL. The subsequent Settlement Agreement merely quantified and implemented the court order and did not create a new or discretionary financial obligation.
- 6.1.23 The existence of a court judgment fundamentally altered the nature of the municipal conduct under investigation, in that, once a valid court order exists, compliance becomes a mandatory legal obligation rather than discretion. Therefore, officials acting to implement the court order are fulfilling their statutory and constitutional duty to obey the courts, as required by section 165(5) of the Constitution, rather than exercising discretion in a way that could be improper or constitute maladministration.
- 6.1.24 Consequently, while allegations of improper conduct normally trigger the Public Protector's investigatory powers, however, the existence of a binding Court Order removes the discretionary element necessary for such an investigation. In this context, the element of discretion, which is a prerequisite for assessing improper conduct, maladministration, or abuse of power, is absent.
- 6.1.25 In other words, there is no "improper conduct" for the Public Protector to investigate in the traditional sense because the Municipality's actions are

compelled by law. While the Public Protector has broad investigative powers under section 182(1) of the Constitution and the Public Protector Act 23 of 1994, these powers are not unfettered.

- 6.1.26 This distinction is crucial, since the Public Protector's mandate is to investigate discretionary acts by state functionaries that may constitute maladministration or other forms of improper conduct. The Public Protector assesses compliance with constitutional principles, legislation, policies, and administrative justice standards and not on acts that are obligatory under judicial authority.
- 6.1.27 Furthermore, the Constitution envisages the Public Protector as an oversight mechanism over administrative discretion and conduct, not as an appellate body over judicial determinations. Therefore, investigating conduct that is compelled by judicial authority would effectively require the Public Protector to review the judicial decision itself, a function explicitly outside the Public Protector's constitutional and statutory powers.
- 6.1.28 In addition, the evidence does not substantiate the allegation of collusion or undue influence by Mr Cassim. The Municipal Council minutes confirm that Mr Cassim was no longer serving as Chief Whip at the time the court order was granted and the Settlement Agreement concluded. There is also no evidence that the Municipality procured legal services from NIL or its legal representatives, as the legal services in question were rendered to NIL in litigation against the Municipality.

Conclusion

- 6.1.29 Based on the totality of the evidence, the payment by the Municipality to NIL were made pursuant to a binding Court Order. Therefore, although the

complaint initially raised issues typically falling within the Public Protector's mandate, the binding nature of the Court Order means that the Municipality's conduct cannot be classified as improper, unlawful, or discretionary.

- 6.1.30 The Public Protector is therefore precluded from investigating compliance with a judicial order, as doing so would exceed the constitutional and statutory authority envisaged by the Constitution. The mandate of the Public Protector is to safeguard administrative justice and prevent abuse of discretionary power, not to challenge or re-examine judicial determinations, which are the proper domain of the courts.

7. FINDINGS

Having regard to the evidence as well as the regulatory framework determining the standard that should have been complied with by the functionaries of the Newcastle Municipality, the Public Protector makes the following findings:

- 7.1 **Whether the functionaries of the Newcastle Municipality improperly disbursed funds in payment for legal services rendered to Newcastle Industrial Launderers and, if so, whether such conduct is improper in terms of section 182(1)(a) of the Constitution and amounts to maladministration as envisaged in sections 6(4)(a)(i) of the Public Protector Act**

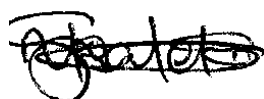
- 7.1.1 The investigation established that the payments made by the Municipality to NIL were made pursuant to a Court Order issued on 13 March 2023, which discharged the Rule Nisi and ordered the Municipality to pay the agreed costs incurred by NIL. The subsequent Settlement Agreement merely quantified and implemented the Court Order and did not create any new financial obligation.

- 7.1.2 The Public Protector's mandate under section 182(1) of the Constitution and the Public Protector Act 23 of 1994 is to investigate discretionary acts or omissions by state functionaries that may constitute maladministration, improper conduct, abuse of power, or non-compliance with applicable prescripts. Since the payments were compelled by a Court Order, there was no discretionary administrative action by municipal officials that could constitute maladministration, improper conduct, or abuse of power triggering an investigation by the Public Protector.
- 7.1.3 Therefore, the Municipality's compliance with the Court Order was legally mandated and non-discretionary and the municipal officials acted in accordance with their statutory and constitutional duty to obey judicial authority under section 165(5) of the Constitution. Actions compelled by judicial authority fall outside this mandate, as the Public Protector cannot review or second-guess court judgments.
- 7.1.4 In light of the above, the Public Protector concludes that there is no basis for a finding of improper conduct, maladministration, or abuse of power in respect of the payments made by the Municipality to NIL. The complaint, while raising issues that would ordinarily fall within the Public Protector's mandate, relates to actions that were legally compelled and therefore cannot constitute a breach of administrative justice or improper conduct.
- 7.1.4.1 Accordingly, the Public Protector cannot make a finding to the effect that the conduct of the Newcastle Municipality constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act, as the evidence

shows that the functionaries of the Municipality made the payments in compliance with a Court Order.

8. CONCLUSION

- 8.1 The Public Protector considers this matter as finalised in terms of Rule 40(b) of the Public Protector Rules, as amended and cannot take it further.



ADV KHOLEKA GCALEKA
PUBLIC PROTECTOR
REPUBLIC OF SOUTH AFRICA
DATE: 31 DECEMBER 2025

Assisted by: Ms M Ngcobo

Acting Provincial Representative: KwaZulu-Natal