

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 No: 39 of 2021/22

ISBN No: 978-1-77634-707-0

CLOSING REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF POSSIBLE VIOLATION OF THE CODE OF ETHICAL CONDUCT AND DISCLOSURE OF MEMBERS' INTERESTS FOR ASSEMBLY AND PERMANENT COUNCIL MEMBERS BY THE LEADER OF THE DEMOCRATIC ALLIANCE AND MEMBER OF PARLIAMENT MR MMUSI MAIMANE

INDEX		
ITEM	DESCRIPTION	PAGE NO
1.	INTRODUCTION	4
2.	THE COMPLAINT	4
3.	THE ISSUES CONSIDERED AND INVESTIGATED	6
4.	POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR	6
5.	THE INVESTIGATION	8
6.	THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAWS AND PRESCRIPT	12
7.	CONCLUSION	23
8.	REASON FOR CLOSURE	23

List of acronyms

CEO	Chief Executive Officer
Complainant	The Leader of Hindu Unity Movement Mr Jayraj Bachu
Constitution	The Constitution of the Republic of South Africa, 1996
DA	The Democratic Alliance
Email	Electronic mail correspondence
Mr Jacobs	Mr Wessel Jacobs, the owner of the property situated in the suburb of Claremont in Cape Town
Mr Maimane	The former Member of Parliament and Leader of the Democratic Alliance, Mr Mmusi Maimane
Discretionary Notice	Notice issued in terms of rule 42(1) of the <i>Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018</i> (the Public Protector Rules) as promulgated under section 7(11) of the Public Protector Act, 23 of 1994 (Public Protector Act).
PPSA	Public Protector South Africa
Public Protector Act	Public Protector Act 23 of 1994
SCA	Supreme Court of Appeal
Steinhoff	Steinhoff International Holdings
SUV	Sport Utility Vehicle
the Code	Code of Ethical Conduct and Disclosure of Members' Interests for Assembly and Permanent Council Members
The Public Protector	Public Protector of the Republic of South Africa

1. INTRODUCTION

1.1. This is my closing report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa Act, [Act No. 108 of 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. The report relates to an investigation conducted in connection with alleged violation of the Code of Ethical Conduct and Disclosure of Members' Interests for Assembly and Permanent Council Members (the Code) by the Leader of the Democratic Alliance (the DA) and Member of Parliament Mr Mmusi Maimane (Mr Maimane).

1.3. Copy of the closing report is provided to Mr Jayraj Bachu (Mr Bachu) and the former Leader of the Democratic Alliance (the DA) and Member of Parliament Mr Maimane in terms of section 8(3) of the Public Protector Act, 1994.

1.4. THE COMPLAINT

1.4.1. The complaint was lodged by the Leader of the Hindu Unity Movement, Mr Jayraj Bachu (the Complainant) on 11 October 2019, in connection with what he had considered to be the violation of the Code by Mr Mmusi Maimane.

1.4.2. In his complaint, the Complainant asserted that, in the past two (2) years (ostensibly 2017 and 2018) Mr Maimane had declared in the Parliament Register of Members' Interest, a property valued at approximately Four Million Rand Only (R4 million) located in the suburb of Claremont in Cape Town as his own, notwithstanding the fact that the house belonged to a shelf company with registration number K2016495571, owned by a Durban-based businessman, Mr Wessel Jacobs (Mr Jacobs).

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- 1.4.3. In addition, the Complainant alleged that, the relationship between Messrs Maimane and Jacobs appears to extend beyond that of a lessor and lessee on the basis that they both confirm that they have been friends for a long time. As a consequence, the Complainant requested that an investigation be instituted with a view to determining, *inter alia*, whether:
- 1.4.3.1. Mr Maimane deliberately misled Parliament by declaring the property located in the suburb of Claremont, Cape Town as his own and in so doing, whether he had violated the Code;
- 1.4.3.2. Mr Maimane and/or any other senior members of the DA, as well as the organisation itself were financially supported by Mr Jacobs;
- 1.4.3.3. Mr Jacobs was involved and/or funded Mr Maimane's leadership campaign and the DA during the 2014 national election campaign; and
- 1.4.3.4. Mr Maimane financially benefitted from the former Chief Executive Officer (CEO) of Steinhoff International Holdings (Steinhoff), Mr Marcus Jooste and whether Mr Maimane owned a Toyota Fortuner Sport Utility Vehicle (SUV) donated by Steinhoff.
- 1.5. Mr Bachu contends that, Mr Maimane might have misled and/or misrepresented information to Parliament by declaring, in the Parliament Register of Members' Interest, the Claremont property as his own and later on retracted the declaration by stating that he was renting the property from his long-time friend.

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

2.1. Whether Mr Maimane misled Parliament by declaring, in the Parliament Register of Members' Interests, that he was the owner of the property located in the suburb of Claremont, Cape Town as well as failure to declare any funding or gifts received from Messrs Jacobs and Steinhoff, and if so, whether the conduct constituted the violation of the Code.

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

3.1. **The mandate of the Public Protector**

3.1.1. The Public Protector is an independent constitutional institution, established in terms of section 181(1)(a) of the Constitution to support and strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.1.2. 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."

- 3.1.3. Section 182(2) directs that the Public Protector has additional powers and functions prescribed by national legislation.
- 3.1.4. 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, advising the complainant regarding appropriate remedies or any other means that may be expedient under the circumstances.
- 3.1.5. In the matter of the ***President of the Republic of South Africa v Office of the Public Protector and Others (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP) ; [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017)***, the court held as follows, when confirming the powers of the Public Protector:
- 3.1.5.1. The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the Constitution (paragraph 71);
- 3.1.5.2. The Public Protector has the power to take remedial action, which include instructing the President to exercise powers entrusted on him under the Constitution if that is required to remedy the harm in question (paragraph 82);
- 3.1.5.3. Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers (paragraph 100 and 101):
- (a) Conduct an investigation;
 - (b) Report on that conduct; and
 - (c) To take remedial action.

- 3.1.5.4. The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or *prima facie* findings (Paragraph 104);
- 3.1.5.5. The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court (Paragraph 105);
- 3.1.5.6. The fact that there are no firm findings on the wrong doing, does not prohibit the Public Protector from taking remedial action. The Public Protector's observations constitute *prima facie* findings that point to serious misconduct (paragraph 107 and 108); and
- 3.1.5.7. *Prima facie* evidence which point to serious misconduct is a sufficient and appropriate basis for the Public protector to take remedial action (paragraph 112).

4. THE INVESTIGATION

4.1. Methodology

- 4.1.1. The Public Protector conducted a preliminary investigation into the matter in terms of section 7(1) of the Public Protector Act, 1994 [Act No. 23 of 1994], to determine the merits of the complaint and also to determine how the matter concerned should be dealt with.
- 4.1.2. The preliminary investigation process included the assessment of the complaint and legal research and the analysis of relevant documents.
- 4.1.3. All relevant documents and correspondence were obtained and analysed. Relevant laws, policies and related prescripts were also considered and applied throughout the preliminary investigation.

4.2. Approach to the investigation

4.2.1. The investigation was approached using an enquiry process that seeks to find out:

4.2.1.1. What happened?

4.2.1.2. What should have happened?

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

4.2.1.4. In the event of 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?

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

4.2.3. The Supreme Court of Appeals (SCA) made it clear that it is the Public Protector's duty to actively search for the truth and not to wait for parties to provide all of the evidence as judicial officers do. In the case of ***The Public Protector v Mail and Guardian***¹ the court stated that,

“The Public Protector is not a passive adjudicator between citizens and the state, relying upon evidence that is placed before him or her before acting. His or her mandate is an investigatory one, requiring pro-action in appropriate circumstances”.

¹ (422/10 [2011] ZASCA 108 (1 June 2011))

- 4.2.4. In this particular case, the factual enquiry principally focused on whether or not Mr Maimane breached the Code, and in doing so, misled Parliament by declaring, in the Parliament Register of Members' Interests, that he was the owner of the property located in the suburb of Claremont, Cape Town.
- 4.2.5. The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Minister or duly appointed representative to prevent maladministration and improper conduct.
- 4.2.6. 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 him or 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. **The Key Sources of information**

4.3.1. **Documents**

4.3.1.1. A copy of the Complainant's complaint document dated 11 October 2019;

4.3.1.2. A copy of the 2017 Joint Committee on Ethics and Members' Interests: Register of Members' Interests;

4.3.1.3. A copy of Joint Committee on Ethics and Members' Interests: Register of Members' Interests dated April 2018;

4.3.2. **Correspondence**

4.3.2.1. A copy of the Public Protector's Discretionary Notice dated 6 July 2017, addressed to Mr Bachu (the Complainant in the matter);

4.3.2.2. A copy of a response to the Discretionary Notice dated 06 July 2021, from the Mr Bachu addressed to the Public Protector

4.3.3. **Legislation and other prescripts**

4.3.3.1. The Constitution of the Republic of South Africa, 1996;

4.3.3.2. The Public Protector Act, 1994 [Act No. 23 of 1994];

4.3.3.3. The Code of Ethical Conduct and Disclosure of Members' Interest for Assembly and Permanent Council Members

4.3.4. **Websites**

4.3.4.1. www.parliament.gov.za;

4.3.4.2. <https://www.news24.com/citypress/news/the-curious-case-of-mmusi-maimanes-r4m-house-20190916>;

4.3.4.3. <https://www.thesouthafrican.com/news/maimane-r4-million-home-debacle-has-caused-a-division-within-da/>;

4.3.4.4. <https://www.news24.com/SouthAfrica/News/businessman-confirms-maimane-rents-home-through-his-company-report-20190922>;

4.3.4.5. <https://www.iol.co.za/news/politics/maimane-resigns-as-da-mp-35781152>;

4.3.5. **Case Law**

4.3.5.1. *President of the Republic of South Africa v Office of the Public Protector and Others (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP) ; [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017;*

4.3.5.2. *President of the Republic of South Africa, the Speaker of Parliament of the National Assembly v The Public Protector & Others*(55578/2019) [2020] ZAGPPHC 9

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. **Regarding whether Mr Maimane misled Parliament by declaring, in the Parliament Register of Members' Interests, that he was the owner of the property located in the suburb of Claremont, Cape Town, as well as failure to declare any funding or gifts received from Messrs Jacobs and Steinhoff, and if so, whether the conduct constituted the violation of the Code:**

Common Cause Issues

5.1.1. It is not disputed that, Mr Maimane was elected as the Leader of the Democratic Alliance at the party's Federal Congress held on 10 May 2015. Further that, on 29 May 2015, he was elected as the Leader of the Opposition in the National Assembly.

5.1.2. It is also not disputed that on 23 October 2019, Mr Maimane announced, in a press conference held in Bruma, Gauteng Province that he was resigning as the leader of the Democratic Alliance and relinquishing his position as a Member of Parliament.

Issue in Dispute

5.1.3. The issue for determination is whether Mr Maimane misled Parliament by declaring, in the Parliament Register of Members' Interests, that he was the owner of the property located in the suburb of Claremont, Cape Town, and in so doing violated the Code.

- 5.1.4. The Complainant alleged that, in the past two (2) years (ostensibly 2017 and 2018) Mr Maimane had declared in the Parliament Register of Members' Interest that he was the owner of the property located in the suburb of Claremont in Cape Town, notwithstanding the fact that the house belonged to a shelf company with registration number K2016495571, owned by a Durban businessman, Mr Wessel Jacobs (Mr Jacobs)
- 5.1.5. It is the Complainant's contention that, Mr Maimane might have misled and/or misrepresented information to Parliament by declaring the property as his own, and later on, following various media reports exposing the exact ownership of the property, he retracted the declaration and averred that he was renting the property from his long-time friend (ostensibly Mr Jacobs).
- 5.1.6. It was noted from a media article published in the *Times* newspaper dated 15 September 2019, with a caption "*Mmusi Maimane: 'I moved my family because we were getting death threats'*", that Mr Maimane conceded to disclosing the property located in the suburb of Claremont in Cape Town in the Parliament Register of Members' Interest as his own in 2017/2018 and 2018/2019 financial years as he believed he was required to do so as a Member of Parliament.
- 5.1.7. Furthermore, it was noted from an online media article published in the *South African* website on 29 September 2019, with a caption "*Maimane's R4 million home debacle has caused a division within DA*", that Mr Maimane issued a statement indicating that he had over-declared the property in his Declaration of Members' Interests. The statement reads as follows:

"I wish to use this opportunity to state upfront that I believe there is nothing unlawful or illegal about the home or its purchase. If required, I am open to discussing this matter in the appropriate fora within the party. It now appears that I was not required to declare a home I am renting, therefore I over-declared the property in my Declaration of Members' Interests". (sic)

5.1.8. According to the information obtained during the investigation, Mr Maimane disclosed in the Declaration of Members' Interests the following registrable interests to the Registrar of Members' Interests:

1. BENEFITS				
		Source	Description	
1.1.		W Jacobs	N/A	
1.2		Samsonite, KwaZulu-Natal	N/A	
2. LAND AND PROPERTY				
		Description	Location	Extent
2.1.		House	Weltevreden Park, Roodepoort	1400sq.m
2.2		House	Cleveland Road, Claremont	Residential

5.1.9. It was also noted that about ten (10) days following the lodging of the complaint, on 23 October 2019, Mr Maimane announced, in a press conference held in Bruma, Gauteng Province that he was resigning as the leader of the Democratic Alliance.

5.1.10. Following the announcement by Mr Maimane of his resignation as the leader of the Democratic Alliance, on 24 October 2019, Mr Maimane announced, on his *Twitter* account (@MmusiMaimane) that, he was relinquishing his position as the Democratic Alliance's Member of Parliament and all party structures.

5.1.11. In the tweet referred to *supra*, Mr Maimane stated as follows:

"Mmusi Maimane 9:34 AM - Oct 24, 2019"

✓ @MmusiMaimane

I have worked tirelessly to build the project of One SA for All. It's been my greatest honour to serve the people of SA and will continue to do so. I have today resigned from the DA and Parliament. Thank you to the people of this country for your faith in our nation. God bless SA". (sic)

- 5.1.12. Based on a preliminary investigation conducted, on 6 July 2021, a notice in terms of rule 42(1) of the *Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018* (the Public Protector Rules) as promulgated under section 7(11) of the Public Protector Act, 23 of 1994 (Public Protector Act) was issued to the Complainant informing him in writing the intention of concluding the complaint by means of a closing report, as well as affording him the opportunity to make representations in connection with the intended closure of the complaint within fourteen (14) days of delivery of the notification.
- 5.1.13. In terms of the notice referred to *supra*, the Complainant was expected to submit representations in connection with the intended closure by not later than 24 July 2021. However, the Complainant's failed to submit his representations nor respond to the notice.

Application of the relevant laws and prescripts

- 5.1.14. **The Constitution of the Republic of South Africa, 1996** (the Constitution) which is the supreme law of the Republic. Section 1(c) thereof provides that "*The Republic of South Africa is one, sovereign, democratic state founded on the supremacy of the Constitution and the rule of law*".
- 5.1.15. Section 47(3)(c) of the Constitution provides that, "*A person loses membership of the National Assembly if that person ceases to be a member of the party that nominated that person as a member of the Assembly, unless that member has become a member of another party in accordance with Schedule 6A*".
- 5.1.16. It is manifest that Mr Maimane ceased to be a member of the Democratic Alliance, which nominated him to be a Member of Parliament and as its

Parliamentary Leader following a media briefing held on 23 October 2019, wherein he announced that he was resigning from the party and as a Member of Parliament, as well as from all party structures. As a consequence, the Code ceased to apply to Mr Maimane.

5.1.17. Section 182 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.*

5.1.18. Section 239 of the Constitution defines an organ of state as follows:

"Unless the context indicates otherwise -

'Organ of state' means:

- a) *Any department of state or administration in the national, provincial or local sphere of government; or*
- b) *Any other functionary or institution -*
 - (i) *Exercising a power or performing a function in terms of the Constitution or a provincial constitution; or*
 - (ii) *Exercising a public power or performing a public function in terms of any legislation but does not include a court or judicial officer”.*

- 5.1.19. **The Public Protector Act, 1994 [Act No. 23 of 1994]**, which gives effect to the provisions of section 182 of the Constitution. Section 6(4)(a)(i) of the Public Protector Act, 1994 provides that *“The Public Protector shall be competent to investigate, on his or her own initiative or receipt of a complaint, any alleged maladministration in connection with the affairs of government at any level”*.
- 5.1.20. It is manifest that for an improper conduct or prejudicial conduct to be investigated by the Public Protector in terms of section 6(4) of the Public Protector Act, 1994, such conduct must have occurred in any of the three spheres of government (national, provincial or local government) and/or within an institution or a public entity defined in section 1 of the Public Finance Management Act, 1999 [Act No. 1 of 1999] in which the state is the majority or controlling shareholder. Unambiguously, government at any level involves i.e. state departments and administration in the national, provincial and local sphere which fall within the ambit of an organ of state.
- 5.1.21. It is common cause that Mr Maimane was nominated by the Democratic Alliance to be its Member of Parliament and successively as its Parliamentary Leader following the 2019 South African general elections.
- 5.1.22. Mr Maimane, was not at the time of making the disclosure in the Declaration of Members’ Interests the property situated in the suburb of Claremont in Cape Town as his own, performing a public function in any of the state departments nor administrative functions in the national, provincial and local sphere of government.
- 5.1.23. The Public Protector’s investigating powers were enunciated in the case between the ***President of the Republic of South Africa, the Speaker of***

Parliament of the National Assembly v The Public Protector & Others²

where the Court held in paragraphs [81] to [83] that,

“[81] The source of the Public Protector's powers lies in section 182 of the Constitution. It reads, in relevant part:

(1) 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.*

(2) The Public Protector has the additional powers and functions prescribed by national legislation”. (Emphasis added)

[82] The PPA sets out her additional powers and functions. Her sphere of competence, insofar as her investigative powers are concerned, is determined by section 6(4), which reads:

“The Public Protector shall be competent-

- (a) to investigate, on his or her own initiative or on receipt of a complaint, any alleged-*
 - (i) maladministration in connection with the affairs of government at any level;*

² (55578/2019) [2020] ZAGPPHC 9

- (ii) *abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function;*
- (iii) *improper or dishonest act, or omission or offences referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, with respect to public money;*
- (iv) *improper or unlawful enrichment, or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or omission in the public administration or in connection with the affairs of government at any level or of a person performing a public function; or*
- (v) *act or omission by a person in the employ of government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any other person; ...” (Emphasis added)*

[83] Section 6(7) is also relevant. It provides that “The Public Protector shall be competent to investigate, on his or her own initiative or on receipt of a complaint, any alleged attempt to do anything which he or she may investigate under subsections (4) or (5)”.

5.1.24. Notwithstanding the fact that the Public Protector is empowered, in terms of section 6(7) of the Act, to investigate allegations of maladministration in connection with the affairs of government at any level upon on receipt of a complaint, the evidence indicates that the Complainant’s matter does not fall within the ambit of sections 6(4) and (5) of the Act, but within the ambit of the Code.

- 5.1.25. In addition, the evidence indicates that, Mr Maimane was not performing a public function in any of the state departments nor administrative functions in the national sphere of government as envisaged by sections 182 and 239(a) of the Constitution. Conversely, he was subject to the Code by virtue of him being a Member of Parliament ten (10) days before the lodging of the complaint by Mr Bachu.
- 5.1.26. The investigation of the matter would naturally have been proceeded with in terms of the Public Protector Act had it not been for the reasons advanced above, that is, he was not performing a public function nor administrative functions as envisaged by the provisions of the Constitution.
- 5.1.27. Therefore, the Public Protector is precluded from investigating the allegation made by the Complainant on the basis that same does not fall within the ambit of the Public Protector's jurisdiction as envisaged by section 182 and 239(a) of the Constitution read with sections 6(4), 6(5) and 6(7) of the Public Protector Act, 1994.
- 5.1.28. **The Code of Ethical Conduct and Disclosure of Members' Interest for Assembly and Permanent Council Members** is intended to provide a framework of reference for Members of Parliament when discharging their duties and responsibilities.
- 5.1.29. The Code details the minimum ethical standards of behaviour that South Africans expect of public representatives, including upholding propriety, integrity and ethical values in their conduct.
- 5.1.30. Clause 1 of the Code defines the *"Committee"* as meaning *the Joint Committee on Ethics and Members' Interests as established by the Joint Rules of Parliament*.
- 5.1.31. Clause 4.1.1 of the Code provides that, *"Members must abide by the principles, rules and obligations of this Code"*.

- 5.1.32. Clause 9.2.1 of the Code provides that, *“Members must disclose to the Registrar, on the form prescribed for this purpose by the Committee, particulars of all their registrable interests”*.
- 5.1.33. Clause 10.1.1.2 of the Code provides that, *“A Member breaches the Code if the Member-*
- 10.1.1.1 contravenes or fails to comply with the requirements of the provisions for disclosing interests;*
- 10.1.1.2 when disclosing registrable interests, wilfully or is grossly negligently, provides the Registrar with incorrect or misleading details;”*
- 5.1.34. Clause 10.2.2.1 of the Code provides that, *“The Committee may only consider complaints based on an alleged breach of the Code, as contemplated in clause 10.1 of the Code”*.
- 5.1.35. Clause 10.2.2.2 of the Code provides that, *“Any person or body may submit a complaint to the Office of the Registrar concerning a breach of the Code, as contemplated in clause 10.1 of the Code by a Member. The Complaint may be in the form of a sworn affidavit or an affirmation stating the facts upon which the complaint is based”*.
- 5.1.36. As indicated *supra*, Mr Maimane was nominated by the Democratic Alliance as its Member of Parliament and successively as its Parliamentary Leader. As a consequence, he was expected to abide by the principles, rules and obligations of this Code.
- 5.1.37. It is also manifest that Mr Maimane disclosed to the Registrar, property belonging to Mr Jacobs, situated in the suburb of Claremont in Cape Town as one of his registrable interests with a view to comply with clause 9.2.1 of the

Code. However in doing so, Mr Maimane provided the Registrar with incorrect or misleading details in breach of clause 10.1.1.2 of the Code.

- 5.1.38. The conduct of Mr Maimane thereof contravened the objects of Code, especially the requirement of not providing the Registrar with incorrect or misleading details, as well as abiding with the ethical standards, propriety, integrity and behavioural values expected from public representatives in line with the Code.
- 5.1.39. As indicated *supra*, ten (10) days after the lodging of the complaint by Mr Bachu, Mr Maimane ceased to be a member of the Democratic Alliance, which nominated him to be a Member of Parliament and as its Parliamentary Leader, following a media briefing held on 23 October 2019, wherein he announced that he was resigning from the party and as a Member of Parliament, as well as from all party structures.
- 5.1.40. Consequently, the referral of the breach of the Code by Mr Maimane to the Joint Committee on Ethics and Members' Interests as established by the Joint Rules of Parliament will serve no judicious purpose on the basis that the provisions of the Code ceased to apply to Mr Maimane following his resignation as a Member of Parliament. Any further action regarding the complaint would therefore have been inconsequential.
- 5.1.41. **The Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018** (the Public Protector Rules) as promulgated under section 7(11) of the Public Protector Act, 23 of 1994 (Public Protector Act).
- 5.1.42. Rule 42(1) of the Public Protector Rules provides that when the Public Protector intends concluding a complaint by means of a closing report provided for in rule 41(b), 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.

- 5.1.43. It is manifest that the Complainant was informed, in writing, and given an opportunity to make representations in connection with the intended closure of the complaint within fourteen (14) days of delivery of the notification. Despite having been issued with the notice, the Complainant failed to submit representations in response to the intended closure of the complaint.

Conclusions that could be made based on the application of the law to the facts

- 5.1.44. Having regard to the preliminary investigation conducted in the matter, the evidence and information obtained therewith, it can be concluded that the conduct of Mr Maimane, having resigned as a Member of Parliament, does not fall within the ambit of the breach of the Code, as well as the Public Protector's jurisdiction envisaged by sections 182 and 239(a) of the Constitution read with section 6(4), 6(5) and 6(7) of the Public Protector Act, 1994. Therefore, the Public Protector is precluded from investigating the allegation made by the Complainant and is intent on finalising the matter by means of a closing report.

6. REASONS FOR CLOSURE

- 6.1. The Public Protector is precluded from investigating the allegation made by the Complainant on the basis that it does not fall within the ambit of the breach of the Code, as well as the Public Protector's jurisdiction envisaged by sections 182 and 239(a) of the Constitution read with section 6(4), 6(5) and 6(7) of the Public Protector Act, 1994.

7. **KINDLY TAKE NOTICE THAT** in terms of section 7(2) of the Public Protector Act, 1994, the contents of this letter are confidential. No person may disclose the content hereof without the authorisation of the Public Protector and any

person who breaches the confidentiality of this document “... *shall be guilty of an offence*” which is punishable, upon conviction, with “a fine not exceeding R40 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment” as contemplated in section 11 of the Act.

8. Should there be any enquiries of responses to this closing report, you are kindly requested to approach the Lead Investigator of the matter, **Mr Masekela Maphosa**, who is contactable at **012 366 7100** alternatively at **MasekelaM@pprotect.org** quoting the above reference number.



ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE: 16/08/2021

Assisted by: Mr Masekela Maphosa (Senior Investigator: Investigations Branch)