

**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**

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**INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION AND IMPROPER
CONDUCT RELATING TO THE IMPROPER PAYMENT OF THE DEATH GRANT
BENEFITS TO THE MOTHER OF THE LATE MR RANKITSI WILLIAM MOLEKI BY
THE DEPARTMENT OF CORRECTIONAL SERVICES TO THE EXCLUSION OF HIS
DEPENDANTS**

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LIST OF ACRONYMS AND ABBREVIATIONS

ACRONYMS / ABBREVIATIONS	DESCRIPTIONS
Constitution	The Constitution of the Republic of South Africa, 1996
Complainant	Ms ND
DOJCD	Department of Justice and Constitutional Development
DGP	Death Grant Policy
DCS	Department of Correctional Services
EMAIL	Electronic mail correspondence
GPAA	Government Pensions Administration Agency
Investigation Team	Public Protector's Investigation Team
Public Protector Act	Public Protector Act, 1994
Public Protector	Public Protector South Africa
The Master	The Master of the High Court

EXECUTIVE SUMMARY

- (i) This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution, which empowers the Public Protector to report on any conduct in state affairs that is suspected to be improper or to result in any impropriety or prejudice; and section 8(1) of the Public Protector Act, which provides that the Public Protector may make known the findings, point of view or recommendation of any matter investigated by her.
- (ii) The report relates to an investigation into allegations of maladministration and improper conduct by the Department of Correctional Services (DCS) relating to the payment of the death grant benefits to the mother of the late Mr Rankitsi William Moleki (the deceased) by the Department of Correctional Services (DCS), to the exclusion of his dependants.
- (iii) The complaint was lodged with the Public Protector by Ms ND (the Complainant) on 20 January 2020.
- (iv) In the main, the Complainant alleged that:
 - (a) The deceased, who was an employee of the DCS had three (3) children with three (3) different women, including herself (the Complainant);
 - (b) She and another mother of the deceased's child were requested by the DCS in 2017, to both apply for Letters of Authority over the estate of the deceased at the Office of the Master of the High Court (the Master). The Letter of Executorship was issued by the Master on 29 August 2017 and was duly submitted to the DCS by the Complainant;
 - (c) On 22 August 2018, death claims in terms of the Death Grant Policy (DGP) of the DCS were lodged on behalf of the respective minor children of the deceased

by the Complainant and on 29 August 2018, by the deceased's mother, Ms Maria Moleki (Ms Moleki), respectively;

- (d) Regardless of the claim for death benefits she and the other mothers had submitted and the registration as an executrix of the deceased's estate, the DCS still proceeded to effect payment to Ms Moleki only, to the exclusion of the three (3) children who were beneficiaries of the deceased; and
- (e) This was done notwithstanding the fact that the DCS was aware that the deceased had dependent children since she, also as an employee of the DCS, had previously submitted to the DCS a maintenance order obtained from the court against the deceased in March 2012 prior to his death and a garnishee order against the deceased's salary in the same year.
- (v) Based on the analysis of the complaint, the following issue was considered and investigated:
 - (a) Whether the DCS improperly paid benefits of a death grant to the late Mr Moleki's mother to the exclusion of his minor children, and if so, whether such conduct amounts to improper conduct in terms of section 182(1) of the Constitution and maladministration in terms of section 6(4)(a) of the Public Protector Act.
 - (vi) The investigation was conducted in terms of section 182(1) of the Constitution and section 6(4)(a)(i) of the Public Protector Act. It included the analysis of all relevant documents, application of relevant laws, case law and related prescripts.
 - (vii) On 15 February 2023, a notice in terms of section 7(9)(a) of the Public Protector Act was issued to the National Commissioner of the Department of Correctional Services, to provide him with an opportunity to the likely adverse findings and

proposed remedial action. Section 7(9)(a) of the Public Protector Act, provides that persons implicated in an investigation by the Public Protector are to be allowed the opportunity to make representations regarding same. On 22 February 2023, Ms Thembi Gwamanda the Personal Assistant to the National Commissioner acknowledged receipt of the section 7(9) notice.

- (viii) The National Commissioner submitted a response dated 29 March 2023 to the Public Protector. The response and information/evidence submitted in response to the notice in terms of section 7(9) of the Public Protector Act, were duly considered by the Public Protector in relation to the substance of any allegations against the person(s) concerned or the grounds for adverse comments or findings against or remedial action involving them.
- (ix) Having regard to the evidence and regulatory framework determining the standard that the DCS should have complied with, the following findings are made:
 - (a) Whether the DCS improperly paid the death grant benefits to the late Mr Moleki's mother to the exclusion of his minor children, and if so, whether such conduct amounts to improper conduct in terms of section 182(1) of the Constitution and maladministration in terms of section 6(4)(a) of the Public Protector Act.
 - (aa) The allegation that the DCS improperly paid benefits of a death grant to Ms Moleki to the exclusion of the deceased's minor children, is substantiated.
 - (bb) The DCS did not pay the Death Grant benefit to the estate late account as directed by the DGC and approved by the Chief Deputy Commissioner, instead it paid the total benefit into a personal account of Ms Moleki, which resulted in the exclusion of the other three (3) defendants.

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- (cc) Based on the evidence gathered, the Public Protector finds that the conduct of the DCS was improper as it did not comply with the DGP and approval of the Chief Deputy Commissioner dated 22 August 2019 when it processed and paid out the Death Grant benefit to only Ms Moleki to the exclusion of the deceased's three(3) minor children.
- (dd) The conduct of the functionaries of the DCS therefore constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.
- (x) The appropriate remedial action the Public Protector is taking in terms of section 182(1)(c) of the Constitution is the following:

The National Commissioner

- (a) Within sixty (60) calendar days from the date of the report, inform the Public Protector of the steps that the DCS is taking to rectify and effect payment of the portions of the Death Grant benefits due to the minor dependants of the deceased, in line with the response to the Public Protector dated 29 March 2023;
- (b) Within sixty (60) calendar days from the date of the report, evaluate the effectiveness of the internal claims processes and controls of the DCS, to accurately and effectively implement recommendations of payments made by the Death Grant Committee;
- (c) Within ninety (90) calendar days from the date of the report, amend the Death Grants policy to be unerring, in the following areas –
- (aa) Correcting the paragraph numbering of the policy;

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- (bb) Appending signature to the policy;
 - (cc) Indicating the effective date of the policy; and
 - (dd) Include the definition of “*Dependant*” in the policy.
- (d) Within ninety (90) calendar days from the date of the report, amend the Death Grant application form to capture the relationship of the applicants to the deceased.

1. INTRODUCTION

- 1.1. This is a report of the Public Protector 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, 1994 (the Public Protector Act).
- 1.2. The report communicates the findings and appropriate remedial action taken by the Public Protector in terms of section 182(1)(c) of the Constitution, following an investigation into allegations of improper conduct and maladministration, in connection with the payment of the death grant benefits to the mother of the late Mr Rankitsi William Moleki (the deceased) by the Department of Correctional Services (DCS), to the exclusion of his dependants.
- 1.3. The report is submitted in terms of section 8(1) read with section 8(3) of the Public Protector Act to the following persons:
 - 1.3.1. Mr MS Thobakgale, the National Commissioner of the DCS;
 - 1.3.2. Ms ND, the Complainant;
 - 1.3.3. Ms SMM (mother of beneficiary); and
 - 1.3.4. Ms MM (mother of beneficiary).

2. THE COMPLAINT

- 2.1 The investigation originates from a complaint lodged on 20 January 2020 by Ms ND (Complainant), the mother of one of the deceased's children.
- 2.2 In the main, the Complainant alleged that:

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- 2.2.1 The deceased, who was an employee of the DCS had three (3) children with three (3) different women, including herself (the Complainant);
- 2.2.2 She and another mother of the deceased's child were requested by the DCS in 2017, to both apply for Letters of Authority over the estate of the deceased at the Office of the Master of the High Court (the Master). The Letter of Executorship was issued by the Master on 29 August 2017 and was duly submitted to the DCS by the Complainant;
- 2.2.3 On 22 August 2018, death claims in terms of the Death Grant Policy (DGP) of the DCS were lodged on behalf of the respective minor children of the deceased by the Complainant and on 29 August 2018, by the deceased's mother, Ms Maria Moleki (Ms Moleki), respectively;
- 2.2.4 Regardless of the claim for death benefits she and the other mothers had submitted and the registration as an executrix of the deceased's estate, the DCS still proceeded to effect payment to Ms Moleki only, to the exclusion of the three (3) children who were beneficiaries of the deceased; and
- 2.2.5 This was done notwithstanding the fact that the DCS was aware that the deceased had dependent children since she, as also an employee of the DCS, had previously submitted to the DCS a maintenance order obtained from the court against the deceased in March 2012 prior to his death and a garnishee order against the deceased's salary in the same year.

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 of the Republic of South Africa, 1996 (the Constitution) to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

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

“The Public Protector has the power, as regulated by national legislation –

(a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice,

(b) to report on that conduct; and

(c) to take appropriate remedial action”.

3.3. Section 182(2) directs that the Public Protector has 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 DCS is an organ of state and its conduct amounts to conduct in state affairs, and as a result, the Public Protector is satisfied that the complaint falls within her competency to conduct an investigation as envisaged in section 182(1)(a) of the Constitution and section 6(4)(a)(i) 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 DCS improperly paid the death grant benefits to the mother of the late Mr Moleki to the exclusion of his minor children, and if so, whether such conduct amounts to improper conduct in terms of section 182(1)(a) of the

Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

5. THE INVESTIGATION

5.1. Methodology

5.1.1. The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

5.1.2. The Public Protector Act confers on the Public Protector the sole discretion to determine the format and procedure to be followed in conducting any investigation with due regard to the circumstances of each case.

5.2. Approach to the investigation

5.2.1. The approach to the investigation included the exchange of documents, analysis of the relevant documentation and consideration and application of the relevant law, 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, abuse of power or other improper conduct?
- (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. In this particular case, the factual enquiry principally focused on whether or not the alleged conduct was inconsistent with the applicable prescripts.

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 DCS when processing and paying the death grant to the respective dependants.

5.3. **The Investigation Process**

5.3.1. The investigation commenced with correspondence to the DCS on 20 May 2020, where the institution was informed of the investigation, the legislation in terms of which the investigation was conducted as well as what information was required and the format thereof.

5.4. **Key sources of information and documentation received**

5.4.1. **Documents and email correspondences exchanged**

5.4.1.1. The complaint received by the Public Protector from the Complainant on 20 January 2020;

5.4.1.2. Allegations letter from the Public Protector to the DCS, dated 20 May 2020;

5.4.1.3. A response letter from DCS to the Public Protector, dated 19 August 2020;

5.4.1.4. Email to the DCS, dated 27 August 2020;

5.4.1.5. Email to the DCS, dated 28 October 2020;

5.4.1.6. Email to the DCS, dated 18 May 2021;

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- 5.4.1.7. Email to the DCS, dated 15 June 2021;
 - 5.4.1.8. Email to the DCS, dated 05 October 2021;
 - 5.4.1.9. Letter to the Acting Commissioner of the DCS, dated 20 October 2021;
 - 5.4.1.10. Subpoena to the DCS, dated 04 January 2022;
 - 5.4.1.11. Response from the DCS with copies of the internal investigation report and minutes of the meeting of the Death Grant Committee, dated 06 January 2022;
 - 5.4.1.12. Alternative Dispute Resolution(ADR) Notice in terms of section 6(4)(b)(i) of the Public Protector Act, 1994;
 - 5.4.1.13. Email from Ms Mmanare Kubyane (Ms Kubyane) of the DCS, dated 11 May 2022;
 - 5.4.1.14. Email with copies of death claim documents from Ms Kubyane of the DCS, dated 30 May 2022;
 - 5.4.1.15. Email to Ms Cynthia Ramulifho (Ms Ramulifho) of the DCS, dated 03 June 2022;
 - 5.4.1.16. Follow up email to Ms Ramulifho, dated 14 June 2022;
 - 5.4.1.17. Response from the DCS, dated 04 October 2022;
 - 5.4.1.18. Email from the Department of Justice and Constitutional Development (DoJCD), dated 18 January 2023; and
 - 5.4.1.19. Letter from the National Commissioner of DCS to the Acting Public Protector, dated 29 March 2023.

5.4.2. **Meetings**

5.4.2.1. Meeting held between DCS, Complainant and the Investigation Team on 21 April 2022; and

5.4.2.2. Meeting with the DCS and the Investigation Team held on 30 May 2022.

5.4.3. **Legislation and other prescripts**

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

5.4.3.2. The Public Protector Act, 1994;

5.4.3.3. Children's Act, 2005;

5.4.3.4. Intestate Succession Act, 1987; and

5.4.3.5. The Department of Correctional Services Death Grant Policy.

5.4.4. **Case law**

5.4.4.1. *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others (CCT143/15; CCT171/15) [2016]*

5.4.5. **Notice issued in terms of section 7(9)(a) of the Public Protector Act**

5.4.5.1. On 15 February 2023, the Public Protector issued the DCS with a Notice in terms of section 7(9)(a) of the Public Protector Act, to afford the DCS an opportunity to respond to the likely adverse findings and proposed remedial action.

5.4.5.2. The response and information/evidence submitted in response to the notice in terms of section 7(9) of the Public Protector Act, were duly considered by the Public Protector in relation to the substance of any allegations against the person(s) concerned or the grounds for adverse comments or findings against or remedial action involving them.

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

6.1 **Whether the DCS improperly paid the death grant benefits to the mother of the late Mr Moleki to the exclusion of his three minor children, and if so, whether such conduct amounts to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act**

Common cause issues

6.1.1 The deceased was employed by the DCS as a Correctional Supervision Official from 06 March 2006 until his death on 02 July 2017, after he was shot by a parolee, whilst on duty. He is survived by his mother, Ms Moleki, and three (3) minor children. (The names are withheld to protect the identity of the minor children).

6.1.2 The Complainant is the mother of the deceased's biological minor child. She had a maintenance order against the deceased, obtained in March 2012.

6.1.3 On 22 August 2018 and 29 August 2018 respectively, claim forms for the payment of the Departmental Death Grant benefits were received the DCS from the mothers of the deceased's minor children, who lodged the claims for

death grant benefits on their behalf of their children, as well as from the mother of the deceased, Ms Moleki.

Issue in dispute

- 6.1.4 The issue for determination by the Public Protector is whether the DCS improperly paid the Departmental Death Grant benefits to the mother of the deceased, to the exclusion of his three (3) minor biological children.

The Complainant's version

- 6.1.5 The Complainant stated that she informed the DCS about the three (3) minor children who are the deceased's biological children and submitted claims for payment of the Death Grant benefit. However, notwithstanding the submission of their claims, the DCS only paid the benefit to the mother of the deceased as a beneficiary.

The response from the DCS

- 6.1.6 The allegations made by the Complainant were raised with the DCS through a letter dated 20 May 2020. On 20 August 2020, Mr Pontso Motloug (Mr Motloug), Senior Legal Administration Officer at the DCS responded to the enquiry and stated, *inter alia, that:*

- 6.1.6.1 The DCS had indeed received a death grant claim from the Complainant, who is the biological mother of the deceased's child after his death on 02 July 2017;

- 6.1.6.2 Since the value of the estate exceeded the amount of one hundred and seventy five thousand rand (R175 000, 00), an executrix should have been appointed to administer the estate. As the deceased died intestate and was unmarried, a competent person in law should have been appointed to act as

executor dativo in terms of section 19 of the Administration of the Deceased Estate Act 66 of 1965 as amended;

- 6.1.6.3 Under this circumstance, a family member who would have been assisted by an attorney, should have been appointed as a first preference, that being the late Mr Moleki's mother. However, the Complainant and Ms SMM (the mother of one of the deceased minor child) were jointly appointed as executrixes of the estate of the deceased, in terms of a copy of a Letter of Authority (J170) provided to the Public Protector;
- 6.1.6.4 In terms of paragraph 7.10 of the Death Grant Policy (DGP), the DCS paid out the death grant benefits to the next of kin, who is the deceased's mother; and
- 6.1.6.5 In the circumstances, it is not the obligation of the DCS to administer the estate of the deceased, but that of a legally appointed executor. As such, the Complainant had a duty to pursue a maintenance claim against the estate of the deceased, since her child was dependent on the deceased for maintenance.
- 6.1.7 In a letter dated 25 October 2021, the Investigation Team requested from the DCS a list of qualifying dependants, the investigation report and the minutes of the meeting of the Death Grant Committee.
- 6.1.8 On 06 January 2022, the DCS responded to the Investigation Team by providing copies of the requested documents and furthermore, stated that:
- 6.1.8.1 The benefit of the Death Grant was paid to the deceased's mother, because she was the only family member or next of kin who submitted a claim in that regard;
- 6.1.8.2 Although the Complainant also submitted a claim form on Z894 as a beneficiary of the deceased, the DCS indicated that according to their records,

the Complainant was not related to the deceased and thus could not claim to be his beneficiary;

- 6.1.8.3 In section D of the Z894 form completed by the Complainant and Ms SMM, it was declared that they were the beneficiaries of the deceased's estate, whereas they were not. Upon consideration of the applications, the Finance Directorate could not process payment into the Complainants' accounts since they were not lawful beneficiaries.

Meeting held between DCS, Complainant and the Investigation Team

- 6.1.9 In the meetings held between the Investigation Team, officials of the DCS and the Complainant on 21 April 2022 and 30 May 2022 respectively, the following was established:

- 6.1.9.1 The Complainant stated that, after the death of the deceased she enquired about the payment of the death grant to her minor child who is a beneficiary, and she was advised by the officials of the DCS that she and the other mothers should obtain a Letter of Authority from the Master's office;

- 6.1.9.2 She indicated that she was accompanied to the Master's Office by the mothers of the two (2) minor children and the mother of the deceased. The Master informed them that only two people can be appointed as executrices of an estate. The mothers of the three minor children resolved amongst themselves and with the consent of Ms MM, who is also a mother of the deceased's child, that the Complainant and Ms SMM should be appointed as joint executrix of the estate;

- 6.1.9.3 On 29 August 2018, Ms Moleki duly submitted a death grant application form used in terms of the Death Grant Policy to the DCS. In part E of the form, the names of the three minor dependants are listed and copies of their birth

certificates were attached to the application. The personal bank account details of Ms Moleki were provided with the application;

- 6.1.9.4 An internal memo titled “*Application for Death Grant: Moleki RW (22907320): Leeuwkop Management Area: Gauteng Region*”, dated 6 September 2018 under reference S5/5/1, addressed to the Area Coordinator: Corporate Services, the Acting Area Commissioner, the Regional Head Corporate Services and the Deputy Regional Commissioner, in paragraph 2 under the heading “*Annexures*” listed the beneficiaries together with their biological mothers;
- 6.1.9.5 On 14 October 2019, the Finance Unit of the DCS paid the full amount of the grant into the personal account of Ms Moleki, and no payment was made either into the Late Estate account as recommended by the Death Grant Committee or to the individual bank accounts supplied on behalf of the minor children by their respective mothers; and
- 6.1.9.6 It was agreed during the meeting of 21 April 2022, that it was not in dispute that the DCS paid the death grant to the amount of two hundred and twelve thousand rand (R212 000. 00), into the bank account of the Ms Moleki. However, the DCS contented that the death grant did not appear on the list of assets of the Master of the High Court recorded on the certificate, to authorise two of the mothers of the children of the deceased who were appointed as executrices, to take control of the estate. The DCS further argued that the payment made to the mother of the deceased must be considered against the fact that the mother of the deceased is the one who applied for the payment of the death grant.

Evidence obtained from the DCS

- 6.1.10 The DCS submitted the following evidence to substantiate its response and payment of the death grant benefit to the deceased's mother:
- 6.1.10.1 Copies of the Z894 application for pension benefits claim forms from the mother of the deceased and the mothers of the three minor children;
 - 6.1.10.2 A copy of a Letter of Authority (Form J170) issued by the Master, Gauteng on 29 August 2017, appointing the Complainant and Ms SMM as executrixes of the estate of the deceased;
 - 6.1.10.3 A copy of a report on an investigation that was conducted on the instruction of the Acting Area Commissioner: Leeuwkop, Mr AB Gina, following the death of the deceased. The report which was approved by the Acting Area Coordinator: Corporate Services, Mr GN Mthethwa, on 25 October 2017, concluded that: "Mr Moleki died in the line of duty and death grant benefits must be paid to the beneficiary.
 - 6.1.10.4 A copy of the minutes of the Death Grant Committee meeting that was held on 25 June 2019, chaired by Adv Mashibini, (Chief Deputy Commissioner) where it was resolved as follows:

"It is recommended that the Delegated authority approves the payment of Two Hundred and Twelve Thousand Rand (R212 000. 00) to the respective claimants.

The application has two claimants, the family to be advised to obtain and provide letter of Authority as well as the late Estate account (latest) so that the money should be paid in the relevant account.

The application forms for the death grant to be amended to include the relationship of the applicant to the deceased” (sic)

- 6.1.10.5 A copy of an internal memorandum titled “*Request for approval of payment of death grant of Mr Moleki and another, dated 1 July 2019*”. The memorandum approved by the delegated authority¹ recommended that payment should be made into the late estate account.

Further information obtained from the DCS

- 6.1.11 In an email dated 04 October 2022, from Ms Mmnanare Kubyane (Ms Kubyane), Deputy Director Human Resource Retention and Terminations, to the Investigation Team, she attached a response dated 27 September 2022 from the National Commissioner, Mr Thobakgale (National Commissioner).
- 6.1.12 In the letter, the National Commissioner stated that, he has decided to institute an investigation into the circumstances that led to the payment of the death grant into the account of Ms Moleki, instead of paying the funds into the estate of the deceased, in accordance with the decision of the death grant committee and further to determine if there was any omission or negligence.
- 6.1.13 He further stated that, the investigation would be finalised within sixty (60) days of the date of his letter, after which the Public Protector would be informed of the outcome.
- 6.1.14 A follow-up email dated 16 January 2023, was sent by the Investigation Team to Ms Kubyane enquiring about the outcome of the investigation as undertaken

¹ The Department has an approved Death Grant Policy as well as the latest approved delegations .The Death Grant Policy indicates that the application must be approved by the National Commissioner, however, the Delegated Authority to approve the application of the Death Grant is CDC: Human Resources as outlined in the Departmental Delegations approved on 28 August 2019 and gazetted on 21 September 2018.

by the National Commissioner to provide the Public Protector with the report of their investigation within sixty (60) days of his letter.

6.1.15 On 18 January 2023, an email was received from Mr Martin Mthetho, Senior Assistance State Attorney from the DoJ&CD. In the email which was addressed to the Public Protector Senior Investigator, Ms Nomvimbi Mtsweni and Mr Raman Govender from DCS, he stated, *inter alia*, that:

6.1.15.1 Upon perusal of all documents correspondence pertaining to the above matter in their possession, they noted as follows:

- (a) Payment was made on the 14th of October 2019;
- (b) The payment was mistakenly paid to Ms kgomo personal account, instead of the Estate account;
- (c) Ms kgomo was alerted about the mistake, however, she made decision not to comply or to pay back the money.
- (d) The matter is now reported to the Public Protector for investigation.

6.1.15.2 He further stated that as the matter stands, they are not in a position to make an informed legal opinion, due to fact that more documents or information is still outstanding in their file e.g. letter of executor, claim forms and other relevant documents.

6.1.15.3 He submitted that, however, they can state provisionally that:

- (a) There is an element of theft (criminality) on the party of the recipient (Ms Kgomo), after she was advised about the mistake, she made a decision to keep the money for herself which was not due to her. Criminal action and civil action may be instituted against her to recover the money; and
- (b) Money was paid to Ms Kgomo by mistake of the Department's official, which action denies the right beneficiaries to benefit from the fund,

therefore, it is his opinion that the department must rectify their mistake by reimbursing the beneficiaries.

6.1.15.4 Mr Mthetho recommended that:

- (a) The DCS furnish the necessary information and outstanding relevant document to enable them to make an informed legal opinion;
- (b) They request indulgence from the DCS to appoint junior legal counsel, to assist them as a matter of urgency, in providing them with an informed legal opinion.

6.1.16 In a response email dated 29 March 2023 to the Investigation Team, Mr Shumani Ndou, Senior Legal Administration Officer: Litigation at the DCS, stated, amongst other things, that all the required documents were first delivered to the office of the state attorney around November 2022 and they were misplaced at state attorney's office. He further stated that other copies were delivered on 20 January 2023 and again on 02 February 2023.

Application of the relevant law to the merits

The Constitution of the Republic of South Africa, 1996

6.1.17 Section 195(1)² of the Constitution stipulates the democratic values and principles governing public administration and provides, amongst other things,

² Section 195 of the Constitution reads

(1) *Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:*

- (a) *A high standard of professional ethics must be promoted and maintained.*
- (b) *Efficient, economic and effective use of resources must be promoted.*
- (c) *Public administration must be development-oriented.*
- (d) *Services must be provided impartially, fairly, equitably and without bias.*
- (e) *People's needs must be responded to, and the public must be encouraged to participate in policy-making.*

that Public Administration must be governed by the democratic values and principles enshrined in the Constitution, which include *inter alia*, that services must be provided impartially, fairly, equitably and without bias, transparency must be fostered by providing the public with timely, accessible and accurate information.

6.1.18 In this case, upon finding that the DGC made a determination as to the payment of the death grant to the beneficiaries, the functionaries of the DCS operating within the requirements of the public administration would ordinarily be expected to have followed the values and principles in section 195(1)(a) and (d), by promoting a high standard of ethics and provide services to the Complainant impartially, fairly, equitably and without bias.

6.1.19 Transparency in terms of section 195(1)(g) of the Constitution would have been fostered by sharing the correct information when the Complainant approached the officials regarding the status of the death grant claim.

Children's Act, 2005

6.1.20 Section 18(3)³ of the Children's Act regulates the responsibilities of a parent or other person who acts as guardian to, *inter alia*, administer and safeguard

(f) *Public administration must be accountable.*

(g) *Transparency must be fostered by providing the public with timely, accessible and accurate information.*

(h) *Good human-resource management and career-development practices, to maximise human potential, must be cultivated*

(i) *Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.*

³Section 18 of the Children's Act reads:

Parental responsibilities and rights.—

(1) *A person may have either full or specific parental responsibilities or rights in respect of a child.*

(2) *The parental responsibilities and rights that a person may have in respect of a child, include the responsibility and the right—*

(a) *to care for the child;*

the child's property and property interests and to assist or represent the child in administrative, contractual and other legal matters.

6.1.21 Section 19(1)⁴ stipulates that the biological mother of a child, whether married or unmarried, has full parental responsibilities and rights in respect of the child.

6.1.22 In line with the provisions of section 19(1) of the Children's Act, in this regard the mothers of the minor children are considered to act on behalf of the minors in dealing with administrative issues such as claiming in terms of the death grant policy and to safeguard any of the child's property and property interest including money.

Intestate Succession Act, 1987

6.1.23 Section 1 of the Act states *inter alia* that: "If after the commencement of this Act a person (hereinafter referred to as the 'deceased') dies intestate, either wholly or in part, and-

(a) is survived by a spouse, but not by a descendant, such spouse shall inherit the intestate estate;

(b) is survived by a descendant, but not by a spouse, such descendant shall inherit the intestate estate".

(b) to maintain contact with the child;

(c) to act as guardian of the child; and

(d) to contribute to the maintenance of the child.

(3) Subject to subsections (4) and (5), a parent or other person who acts as guardian of a child must—

(a) administer and safeguard the child's property and property interests;

(b) assist or represent the child in administrative, contractual and other legal matters

⁴ Section 19 of the Children's Act reads:

Parental responsibilities and rights of mothers.—(1) The biological mother of a child, whether married or unmarried, has full parental responsibilities

- 6.1.24 The evidence presented to the Public Protector by the DCS indicates that the deceased was, at the time of death, unmarried and did not have a Will. In this regard, his descendants should in terms of section 1 of the Intestate Succession Act inherit the intestate estate.

The Department of Correctional Services Death Grant Policy

- 6.1.25 Paragraph 2 of the Policy, under the heading *Background*, it is stated that the “*death grant will serve as a gesture of goodwill on the side of the employer to ensure financial sustainability of bereaved families/dependants*”.
- 6.1.26 Paragraph 2.3 of the Policy, a death grant is defined as a “*lump sum payable to the dependants of an official who dies in the course of duty*”.
- 6.1.27 Paragraph 4.1 of the policy states that “*the qualifying conditions are as follows:*
- *The claimants must be dependants of the officials who died during and in the course of their duties*”.
- 6.1.28 Paragraph 7 regulates the procedure for payment of a death grant as per the following:
- “7.1 *Upon receiving an application for the payment of the Death grant for the Correctional official who died in the course of his/her duties, the following proceedings shall be followed;*
 - 7.2 *The Regional Commissioner shall institute an investigation to establish the cause of death;*
 - 7.3 *The investigation shall include getting the name list of the qualifying dependants (own emphasis);*

-
- 7.4 *The dependants shall be required to submit required documentation as per 5.2 (sic);*
- 7.5 *Upon completion of investigation, a report of findings shall be presented before the Death Grant Committee by the investigating officer;*
- 7.6 *The Death Grant Committee shall be responsible for considering the applications for the Death Grant;*
- 7.7 *The National Commissioner shall approve/disapprove the application;*
- 7.8 *The National Commissioner shall provide reasons for disapproved cases to the dependants should there be any enquiry regarding this purpose;*
- 7.9 *The Death Grant shall be payable within the period of three months after receipt of an application;*
- 7.10 *The death grant shall be paid into the bank account of the qualifying bereaved families/dependants;*
- 7.11 *If no banking account exists the money will be paid into the estate."*
- 6.1.29 The Death Grant Policy required that the DCS conduct an investigation to establish the cause of death. The investigation shall in terms of paragraph 7.3 of the Death Grant Policy include obtaining the name list of the qualifying dependants.
- 6.1.30 In terms of paragraph 7.4, the dependants shall be required to submit the required documentation as per paragraph 5.2. It was noted, however, that the policy provided to the Investigation Team does not have paragraph 5.2,

instead, paragraph 4.2 of the policy deals with the documentation that should be submitted with the application.

Analysis of the evidence

- 6.1.31 The deceased passed away on 02 July 2017 and at the time of his death, he was survived by his mother and three (3) minor dependants.
- 6.1.32 An investigation into the deceased's death was instituted by the DCS and concluded that he died in the line of duty and that a death grant must be paid to the dependants, as contained in the report dated 25 October 2017.
- 6.1.33 The Complainant and the mothers of the deceased's children approached the Department on 22 August 2018, to claim the death grant benefits on behalf of the three (3) minor children.
- 6.1.34 It became evident during the meeting that was held between the Investigation Team, the DCS and the Complainant that the DCS provided Ms Moleki with the death grant claim form to complete, however, this form was not provided to the mothers of the minor children.
- 6.1.35 The claim forms submitted by the Complainant and the other mothers, are Z894 forms used by the Government Pension Administration Agency (GPAA), for the processing of claims against the pension fund of the deceased. It was later confirmed to the Investigation Team that the Z894 forms are not used for claims in terms of the Death Grant Policy, as the application for the death grant is completed using its own unique claim form.
- 6.1.36 The investigation revealed that the deceased's mother lodged a claim for death grant benefits on 29 August 2018, using the correct claim form and included in the claim the names of the three (3) minor children. It was noted that the

internal memorandum with the internal memorandum requesting approval of the death grant payment, included the names of all the dependants.

- 6.1.37 The death grant claim was then tabled before the DGC on 25 June 2019, where a resolution was taken that the payment should be made to the estate late account. Approval of payment into the estate late account was issued by the Chief Deputy Commissioner on 22 August 2019. However, the DCS paid the full amount of the death grant into the personal account of Ms Moleki on 14 October 2019.
- 6.1.38 The Public Protector has taken cognisance of the contention by the DCS that the death grant amount was not recorded on the list of the assets when the estate was reported to the Master of the High Court on 29 August 2017. However, the approval of the payment of the death grant was only authorised on 25 June 2019, twenty two (22) months after the appointment of the Executrixes.
- 6.1.39 It is clear in the application form completed by the mother of the deceased, who provided different residential addresses for the children that they did not reside with her. This is further corroborated by the garnishee order that was obtained by the Complainant against the deceased and effected by the DCS on the deceased's salary since 2012.
- 6.1.40 In terms of paragraphs one and two of the DGC meeting resolutions, it is clear that the DGC considered more than one claim. This is also corroborated by the sworn affidavit by, Ms Tebogo Eunice Rapalane, dated 27 September 2018, stating that she requested death grant claim documentation from the three mothers. The affidavit further confirms that two of the mothers had already submitted the documents for their application.
- 6.1.41 The DGC resolved that the family should be advised to obtain and provide a Letter of Authority as well as the most recent Estate Late account in which the

money will be paid. Although the DCS was in possession of the Estate Late account and in this instance there was more than one claimant, the DCS paid the money into the personal bank account of Ms Moleki, whilst the evidence before them indicated that she was not the guardian of the deceased's minor children.

6.1.42 This matter was brought to the attention of the National Commissioner during October 2021. Subsequently, two meetings were held with the DCS, where after in September 2022, the National Commissioner undertook to conduct an investigation into the matter. This was eleven (11) months after the matter was brought to the attention of the DCS.

6.1.43 Furthermore, the Investigation Team identified inconsistencies and discrepancies between the Death Grant Policy and the resolution of the Death Grant Committee, in that:

6.1.43.1 Paragraph 4.2 of the Policy states that the birth certificates of the dependants, amongst other documents, are required for applications to be processed. In this instance, the Death Grant Committee was in possession of the unabridged birth certificate of one of the dependants, as well as abridged birth certificates of the other two dependants. The particulars of the mothers of the minor dependants, who are claimants to the pension benefits as per the form provided to them by the DCS are clearly visible, which should have alerted the Committee that there were dependants to be considered for the death grants benefit.

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

6.1.44 The Public Protector issued a Notice in terms of section 7(9)(a) of the Public Protector Act to National Commissioner, DCS on 15 February 2023. On 22

February 2023, Ms Thembi Gwamanda the Personal Assistant to the National Commissioner acknowledged receipt of the section 7(9) notice.

6.1.45 The National Commissioner provided a response dated 29 March 2023, to the Public Protector wherein he stated inter alia, that:

“...I sought and obtained a legal opinion on the matter which I am applying my mind to.

In essence, the legal opinion paves way for the Department of Correctional Services to pay the amount of R212 000.00 into the estate of the deceased.

I can assure your good office that we are attending to the remedial actions as per your preliminary report and will provide regular updates on progress made with the implementation thereof.

I am kindly seeking your indulgence to be given an opportunity to process the legal opinion”.

Conclusion

6.1.46 The evidence traversed above confirms that the records at the disposal of the DGC and the DCS accurately reflect that the deceased is survived by three (3) minor children, who were mentioned in part D of the Death Grant Application, dated 29 August 2018 that was completed by Ms Moleki, as well as by the mother of one of the children. In addition, the DCS was in possession of an affidavit dated 22 September 2018 from the Complainant confirming that the deceased had three (3) minor children.

6.1.47 The DCS’s contention that the death grant was paid to Ms Moleki because she was the only family member or next of kin who submitted a claim cannot be sustained, as the evidence above confirms that the DCS received a claim from the Complainant, albeit not in the correct form. The DCS was also aware of

the other dependants, namely; the other minor children of the deceased, as they were listed in both forms.

- 6.1.48 Furthermore, the DCS' contention that Ms Moleki is the only next of kin, is not entirely correct as read against the provisions of section 1 of the Intestate Succession Act, 1987, which provides that if the deceased is survived by a descendant, but not by a spouse, such descendant shall inherit the intestate estate. In this instance, the deceased is survived by three (3) minor children, who are his descendants under the Intestate Succession Act.
- 6.1.49 The DGC was correct in concluding that the Death Grant be paid into the Late Estate account as the deceased had more than one dependant.
- 6.1.50 The Chief Deputy Commissioner being the delegated authority correctly approved the recommendations of the DGC on 02 August 2019. However, the DCS did not give effect to the approval and instead paid the money into the personal bank account of Ms Moleki on 14 October 2019, who is not the guardian of the minor children.

7. FINDINGS

Having regard to the evidence, the regulatory framework determining the standard that the DCS should have complied with and the impact thereof on good administration, the Public Protector makes the following adverse findings against the DCS.

- 7.1 Whether the Department improperly paid the death grant benefits to the late Mr Moleki's mother to the exclusion of his three minor children, and if so, whether such conduct amounts to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act**

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- 7.1.1 The allegation that the DCS improperly paid the Death Grant to the late Mr Moleki's mother to the exclusion of his three minor children, is substantiated.
- 7.1.2 The DCS did not pay the death grant benefit to the late estate account as directed by the DGC and approved by the Chief Deputy Commissioner, instead it paid the total benefit into a personal account of Ms Moleki, which resulted in the exclusion of the other three (3) dependants.
- 7.1.3 Based on the evidence gathered, the Public Protector finds that the conduct of DCS was improper as it did not comply with the Death Grant Policy and approval of the Chief Deputy Commissioner, dated 22 August 2019, when it processed and paid-out the death grant benefits to only Ms Moleki to the exclusion of the three (3) minor children.
- 7.1.4 The conduct of the functionaries of the DCS therefore constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

8. REMEDIAL ACTION

- 8.1 The Public Protector is empowered in terms of section 182(1)(c) of the Constitution to take appropriate remedial action with a view of redressing the conduct referred to in this notice upon the conclusion of an investigation where adverse findings are made.
- 8.2 In terms of In the matter of the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* the Constitutional Court per Mogoeng, CJ held that the remedial action taken by the Public Protector has a binding effect.
- 8.4 Having regard to the evidence, the regulatory framework determining the standard the DCS should have complied with and the impact on the

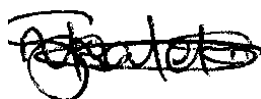
Complainant, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

The National Commissioner

- 8.4.1 Within sixty (60) calendar days from the date of the report, inform the Public Protector of the steps that the DCS is taking to rectify and effect payment of the portions of the Death Grant benefits due to the minor dependants of the deceased, in line with the response to the Public Protector dated 29 March 2023;
- 8.4.2 Within sixty (60) calendar days from the date of the report, evaluate the effectiveness of the internal claims processes and controls of the DCS to accurately and effectively implement recommendations of payments made by the Death Grant Committee.
- 8.4.3 Within ninety (90) calendar days from the date of the report, amend the Death Grants policy to be unerring, in the following areas –
- (a) Correcting the paragraph numbering of the policy;
 - (b) Appending signature to the policy;
 - (c) Indicating the effective date of the policy; and
 - (d) Include the definition of “*Dependant*” in the policy.
- 8.4.4 Within ninety (90) calendar days from the date of the report, amend the Death Grants application form to capture the relationship of the applicants to the deceased.

9. MONITORING

- 9.1 The National Commissioner, Mr MS Thobakgale to provide a report to the Public Protector on the implementation of the remedial action and the close-out report within ninety (90) calendar days from the date of this report.



ADV KHOLEKA GCALEKA
ACTING PUBLIC PROTECTOR OF
THE REPUBLIC OF SOUTH AFRICA
DATE: 31 MARCH 2023

Assisted by: Vusumuzi Xolani Dlamini

Acting Executive Manager: Investigations Branch